

S&P SERVICES END USER AGREEMENT

WHEREAS, Licensee (as defined below) has acquired access to S&P Services (as defined below) and makes such services available to Subscribers (as defined below).

WHEREAS, Subscriber accesses directly, or indirectly, through Licensee S&P Services and agrees to use such products and services as provided herein.

Subject to the terms and conditions of this S&P End User Agreement (the “Agreement”) and any master distribution agreement (“Master Distribution Agreement”) governing the S&P Services as made available by Licensee to Subscribers, each of Folio Investments, Inc., including its affiliates, (“Licensee”) and each Subscriber (as defined below) agrees to the following terms and conditions with respect to the use of the S&P Services (as defined below). For the avoidance of doubt, in the event of a conflict or inconsistency in the terms of the Agreement and Master Distribution Agreement, the terms of the Master Distribution Agreement shall control.

1. For purposes of this Agreement, a “Subscriber” shall mean one or more of the following terms:
 - (i) “Authorized Users” shall mean employees of Licensee who can access any of the S&P Services for their internal use for business purposes only, via a password/user ID issued by Licensee.
 - (ii) “Licensee Customer” shall mean an entity that is a customer of Licensee and (a) provides access to the S&P Services to its employees only for their internal use for business purposes; and (b) can access any of the S&P Services only via a password/user ID issued by Licensee.
 - (iii) “End User” shall mean an individual that is a customer of Licensee and (a) whose use of the S&P Services shall be solely for his/her personal non-commercial use; and (b) who can access any of the S&P Services only via a password/user ID issued by Licensee.
 - (iv) “Visitor” shall mean an individual who can access only those S&P Services specifically designated on the applicable Order Schedule via the non-password protected public access area of the Licensee Service.

The following additional terms are incorporated in this Agreement:

“Licensee’s Products” means Licensee’s proprietary products including, if applicable, those which may incorporate S&P Services.

“Licensee Service” means Licensee’s proprietary service(s) through which it makes available the S&P Services.

“S&P” has the meaning set forth in Section 3 below.

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2. Each Subscriber, as applicable, accessing the S&P Service(s) agrees that:
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 - (ii) Either Licensee, S&P, their affiliates or third-party licensors have exclusive proprietary rights in any information and software received;
 - (iii) Subscriber shall not use or permit anyone to use the information or software provided through the Licensee Service for any unlawful or unauthorized purpose;
 - (iv) Subscriber is not authorized or permitted to furnish such information or software to any person or firm for reuse or retransmission without prior written approval of the source of such information or software;

- (v) Access to the S&P Services is subject to termination in the event that any agreement between Licensee and a provider of information or software distributed through the Licensee Service is terminated in accordance with its terms; and
 - (vi) The use of the S&P Services by End Users and Licensee Customers shall be in compliance with Section 1(ii-iii) above.
 - (vii) Subscriber agrees that it shall not use nor permit use of the S&P Service(s) or any data included therein by any End User with the creation, structuring, development, managing, trading, marketing and/or promotion of any financial instrument, portfolio or other investment product that is based on, or seeks to match the performance of, all or any portion of the S&P Services or such data, such as, without limitation, a security, portfolio or account whose capital and/or income value is calculated based on changes in value of an S&P index or the components thereof, without a separate written agreement with S&P for such purpose.
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4. Each Subscriber agrees that the obligations set forth above are legally binding and enforceable against such Subscriber and that Licensee may broadly enforce any of such obligations as though same were set forth in any other existing customer agreement or other legal agreement by Subscriber in favor of Licensee including, without limitation, any other applicable rights and/or remedies that may exist in favor of Licensee. Each Subscriber further agrees that Licensee may enable S&P and each Third Party Licensor to enforce such obligations in favor of Licensee pursuant to this Section as an intended third party beneficiary of such Subscriber's obligations set forth herein.