



# THE NASDAQ STOCK MARKET LLC VENDOR AGREEMENT FOR UTP PLAN SERVICES

This page is intended solely for informational purposes and should not be considered as an agreement or an amendment to any agreement. This document is for an applicant (“Vendor”) intending to receive ~~a Data Feed containing quotation and/or trade information for~~ Unlisted Trading Privileges (“UTP”) Services from Nasdaq, Inc. and its subsidiaries and affiliates (collectively “Nasdaq”).

The Information (as that term is defined herein) can be received ~~directly from Nasdaq, through an Approved Extranet or~~ through an authorized ~~Data Feed provider or Redistributor~~ Retransmission Vendor, such as ~~directly from Nasdaq, through an Approved Extranet or another Nasdaq Vendor.~~

Applicants must also follow the policies and procedures outlined in the [UTP Plan Data Policies](#) accessible via the [www.utpplan.com](http://www.utpplan.com) website.

## INSTRUCTIONS

In order to receive UTP Plan Data Level 1 Services ~~in a Data Feed~~, applicants must fulfill the requirements at the below links:

DOCUMENT	DETAILS
1) <a href="#">VENDOR AGREEMENT for UTP PLAN SERVICES</a>	All applicants interested in receiving UTP <a href="#">Plan Level 1 Data</a> Services must execute one copy of the Agreement by having an authorized officer sign in the name of the organization receiving the Data Feed.
(2) <a href="#">DATA FEED REQUEST</a>	All applicants are required to complete a Data Feed Request that will detail the data products ordered.
(3) <a href="#">VENDOR’S SYSTEM DESCRIPTION</a>	All applicants are required to complete a Vendor’s System Description, which serves as the technical description of the service.
(4) <a href="#">NON-DISPLAY DECLARATION</a>	Real-Time applicants are required to complete a Non-Display Declaration for Non-Display usage.
(5) <a href="#">LIST OF AFFILIATES</a>	All applicants that provide data to affiliate organizations are required to complete a List of Affiliates form listing each relevant affiliate.

For a single page that includes supplemental forms as well as the online versions of the above forms, please see [http://www.utpplan.com/data\\_admin](http://www.utpplan.com/data_admin).

After completion of the above documents, submit one copy to [admin@utpplan.com](mailto:admin@utpplan.com). If your firm prefers to mail the documents, please use the following address: UTP Plan Administration, Four Irvington Centre, 805 King Farm Boulevard, Rockville, MD 20850. Please allow a minimum of one week for the review of your submission. Once the documentation has been approved, an authorization for initiation of the ~~Data Feed(s)~~ UTP Plan Services to the applicant will be provided.

**QUESTIONS** Please contact UTP Plan Administration at [admin@utpplan.com](mailto:admin@utpplan.com) or (301) 978-8080.

## THE NASDAQ STOCK MARKET LLC VENDOR AGREEMENT FOR UTP PLAN SERVICES

THIS VENDOR AGREEMENT FOR UTP PLAN SERVICES ("Agreement"), is made by and between The NASDAQNasdaq Stock Market LLC ("NASDAQNasdaq"), a Delaware limited liability company, whose executive offices are located at One Liberty Plaza, New York, NY, 10006, as Administrator and Processor for UTP Plan Services ("UTP Plan Administrator"), and Vendor. All capitalized terms, unless otherwise noted, are defined in Article I.

### RECITALS

(1) NASDAQNasdaq, as UTP Plan Administrator, has developed the UTP Plan Services which make the Information that has been collected, validated, processed, and recorded by the NASDAQNasdaq System ("System") available for transmission to and reception by authorized vendors.

(2) NASDAQNasdaq, as UTP Plan Administrator, is willing to use the System to make available the Information for transmission to and reception by Vendor, and Vendor desires to transmit the Information to Interrogation Devices owned and/or controlled by Vendor or its Subscribers.

(3) Vendor has developed the Service whereby it intends to receive, transmit and disseminate the Information to Interrogation Devices owned and/or controlled by Vendor or its Subscribers.

(4) Vendor desires to receive and use the Information from the System through a communications interface between Vendor's data processing equipment and the System to provide the Service in accordance with the detailed description of Vendor's system and service set forth in Vendor's NASDAQ System Description submitted in accordance with the NASDAQNasdaq UTP Plan Requirements.

(5) NASDAQNasdaq, as UTP Plan Administrator, is willing to make available and Vendor is willing to receive the UTP Plan Services subject to the terms and conditions of this Agreement.

### TERMS AND CONDITIONS

In consideration of the recitals and the terms and conditions contained in this Agreement, Vendor and NASDAQNasdaq,

as UTP Plan Administrator, agree as follows:

### ARTICLE I Definitions

*Section 1.01. Defined Terms.* The following words or phrases shall have the meanings set forth below when used in this Agreement:

- (a) "*Affiliate*" means ~~is~~ any entity that controls, is controlled by, or under common control with another entity.
- (b) "*Claims or Losses*" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, judgments, settlements, and expenses of whatever nature, including, without limitation, (i) direct, indirect, punitive, special, consequential and incidental damages, and (ii) administrative costs, litigation costs, and attorneys' and auditors' fees and disbursements.
- (c) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended.
- (d) "*Indemnified Parties*" means the NASDAQNasdaq Companies and each of their officers, directors, employees and agents.
- (e) "*Information*" means certain market data and other data disseminated on the UTP Plan Services that has been collected, validated, processed, and recorded by the NASDAQ System or other sources made available for transmission to and receipt from either a Retransmission Vendor or NASDAQNasdaq relating to: a) eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; b) activities of the Nasdaq Companies; c) other information and data from the Nasdaq Companies.
- (f) "*Interrogation Device*" means any device or equipment, including, without limitation, any computer, data processing equipment, communications equipment, terminal, cathode ray tube ("CRT") or monitor, which is authorized by Vendor to receive the Information from Vendor or which does in fact receive the Information from Vendor, and which at any time during any month either (i) displays, transmits or communicates the Information to any

individual in visual, audible, or other comprehensible form or (ii) uses or processes the Information for any purpose or in any manner other than solely to process the Information for transmission to or to transmit the Information to devices described in the preceding clause (i). The phrase shall include any device or equipment which is capable of being used as an "Interrogation Device."

(g) "~~NASDAQ~~Nasdaq Companies" means ~~NASDAQ~~Nasdaq and its affiliates.

(h) "~~NASDAQ~~Nasdaq Invoiced Subscriber" means Subscribers invoiced by ~~NASDAQ~~Nasdaq.

(i) "~~NASDAQ~~Nasdaq Vendor" means a person other than Vendor (i) which is authorized by ~~NASDAQ~~Nasdaq to be a vendor of the Information, (ii) which is a party to an effective Vendor Agreement for UTP Plan Services with ~~NASDAQ~~Nasdaq, and (iii) which is under contract with a Retransmission Vendor to receive the Information from such Retransmission Vendor.

(j) "Retransmission Vendor" means a person (i) which is authorized by ~~NASDAQ~~Nasdaq to be a vendor of the Information and (ii) which is a party to an effective Vendor Agreement for UTP Plan Services with ~~NASDAQ~~Nasdaq that authorizes such person to transmit or provide the Information to ~~NASDAQ~~Nasdaq Vendors. This Agreement does not authorize Vendor to be a Retransmission Vendor except as expressly provided in *section 3.06*.

(k) "SEC" means the Securities and Exchange Commission, an agency of the government of the United States of America.

(l) "Service" means Vendor's service, including the data processing equipment, software, and communications facilities related thereto, for receiving, transmitting and disseminating the Information to Interrogation Devices owned and/or controlled by Vendor or its Subscribers, as further described in Vendor's System Description.

(m) "Subscriber" means any person that which subscribes to Vendor's Service and is authorized to receive the Information in accordance with *Section 4.06*, and may include both ~~NASDAQ~~Nasdaq Invoiced Subscribers and Vendor Invoiced Subscribers.

(n) "System" means the computerized securities information system for ~~NASDAQ~~Nasdaq securities operated by the ~~NASDAQ~~Nasdaq Companies as UTP Plan Administrator.

(o) "~~NASDAQ~~Nasdaq UTP Plan Requirements" shall mean (i) the rules, regulations, interpretations, decisions, opinions, orders and other requirements of the SEC; (ii) the rules, regulations, disciplinary decisions, and rule interpretations of the ~~NASDAQ~~Nasdaq Companies (iii) the ~~NASDAQ~~Nasdaq Companies' operating procedures, specifications, requirements, and other documentation published by Nasdaq as UTP Plan Administrator that is regulatory or technical in nature (including, but not limited to, user guides) published on the UTPPlan 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 ~~NASDAQ~~Nasdaq UTP Plan Requirements.

~~(p)~~ "UTP Plan Services" shall mean the UTP Quotation Data Feed and the UTP Trade Data Feed (as defined in the UTP Plan) or other UTP products and services as determined by ~~NASDAQ~~Nasdaq the UTP Plan participant exchanges and associations.

~~(p)~~ "Vendor" shall mean an entity that executes this Agreement and has access to a data feed containing quotation and/or trade information for UTP Plan Services from Nasdaq, Inc., and any affiliate listed on the List of Affiliates Form provided with this Agreement.

~~(q)~~ "Vendor's System Description" shall mean the description of Vendor's ~~s~~system.

~~(r)~~ "Vendor Invoiced Subscribers" means Subscribers invoiced by Vendor in accordance with *Section 4.02*.

## ARTICLE II Making the Information Available

*Section 2.01. System Interface.* (a) If Vendor has contracted to obtain the UTP Plan Services directly from ~~NASDAQ~~Nasdaq as UTP Plan Administrator, ~~NASDAQ~~Nasdaq will make available the Information to Vendor from the System. Vendor shall be responsible for (a) obtaining the requisite quantity and quality of common carrier communication lines, (b) the reliability and continued availability of such communications lines, and (c) interfacing with the System at such other places as designated from time to time by ~~NASDAQ~~Nasdaq. Vendor will meet any reasonable requirement of ~~NASDAQ~~Nasdaq concerning the location of the interface or interfaces with the System.

(b) If Vendor has contracted to obtain the Information from a Retransmission Vendor, then Vendor and such Retransmission Vendor are responsible for all communications and other arrangements necessary for Vendor to receive the Information from such Retransmission Vendor. Further, Vendor acknowledges and agrees that ~~NASDAQ~~Nasdaq is not responsible for, and makes no representations or warranties regarding, the quality of service Vendor obtains from a Retransmission Vendor.

(c) If the interface with the System described in *subsection (a)* above enables Vendor to receive data other than the

Information from [NASDAQNasdaq as UTP Plan Administrator](#), [NASDAQNasdaq](#) shall so notify Vendor, and Vendor shall only furnish or permit to be furnished such Information to any other party or place in accordance with the [NASDAQNasdaqUTP Plan](#) Requirements. If [NASDAQNasdaq](#) inadvertently transmits data to Vendor other than the Information, Vendor shall not knowingly furnish or permit to be furnished such other data to any other party or place.

*Section 2.02. Configuration.* Vendor acknowledges and agrees that nothing in this Agreement shall be deemed to constitute an undertaking by [NASDAQNasdaq](#) to continue to disseminate the Information in the present form or configuration or to continue to use existing communications facilities. [NASDAQNasdaq](#), in its sole discretion and without Vendor's consent, may from time to time make modifications to the Information and the System irrespective of whether such modifications would require changes to be made by Vendor to its Service, the Interrogation Devices, or other equipment, or would render them inoperative with respect to the Information. [NASDAQNasdaq](#) agrees to give Vendor at least ninety (90) days prior notice of any change in the speed, code, format, operating hours, or any other material changes in the operational requirements unless a malfunction in the System necessitates modifications on an accelerated basis or an emergency situation precludes such advance notice. Vendor shall bear all risks of failing to make concurrent modifications to its Service. Any changes pursuant to this *Section 2.02* will be applicable generally to all persons in the same class of service as Vendor.

*Section 2.03. Non-Exclusive Basis.* [NASDAQNasdaq](#) agrees to make available the Information to Vendor on a non-exclusive basis. Nothing in this Agreement shall be construed to authorize, appoint or license Vendor to act on an exclusive basis. [NASDAQNasdaq](#) reserves the right, without any notice or liability to Vendor or to any other person, to furnish, or to contract with any other person to furnish, the Information or any other market information to any person by any means whatever (including devices or equipment designed or manufactured by the [NASDAQNasdaq](#) Companies or any other person).

*Section 2.04. Securities Information Processor.* Vendor acknowledges that the [NASDAQNasdaq](#) Companies maintain a registration with the SEC as a registered securities information processor pursuant to Section 11A of the Exchange Act. [NASDAQNasdaq](#) acknowledges that a registered securities information processor is obligated to ensure that all qualified Vendors are able to obtain the [UTP Plan](#) Services on terms that are not unreasonably

discriminatory, subject to such orders, rules or regulations as the SEC may adopt.

### ARTICLE III Use of the Information

*Section 3.01. Authorized Use.* (a) Except as otherwise provided in *Section 3.06*, Vendor is authorized by this Agreement to receive, process, transmit and use the Information only for the purposes of providing the Information as described in Vendor's System Description and approved by [NASDAQNasdaq](#) and not for any purpose inconsistent with the terms of the Agreement. Vendor's Subscribers are authorized to receive and use the Information only for the purposes set forth per the [NASDAQNasdaqUTP Plan](#) Requirements. Any use of the Information, whether by Vendor or by its Subscribers, including, but not limited to, retransmission or reprocessing by a Subscriber, unless expressly described in Vendor's System Description and approved by [NASDAQNasdaq](#), is prohibited.

(b) Should Vendor desire to make any use of the Information (including, but not limited to, developing or communicating derivative information based upon the Information, retransmission, redistribution, reproduction or calculation of indices) in any manner not then described in Vendor's System Description, Vendor may do so only with prior approval by [NASDAQNasdaq](#) of such use, which approval shall be reflected in an amendment to Vendor's System Description, and upon payment of the fees applicable to the use approved. [NASDAQNasdaq](#) shall promptly and in good faith approve or disapprove modifications to Vendor's System Description proposed by Vendor. Vendor acknowledges and agrees that it acts at its own risk in developing any modification to its Service prior to receiving approval from [NASDAQNasdaq](#), since [NASDAQNasdaq](#) is not obligated by this Agreement to grant such approval.

(c) Vendor agrees not to alter the Information in any manner that adversely affects its accuracy or integrity or that renders it misleading and agrees to monitor and review the activities of its Subscribers to ensure, to the extent practicable, that no unauthorized use of the Information occurs.

(d) Vendor agrees that it will not use or cause or permit to be used, directly or indirectly, all or any part of the Information except to operate the Service described in Vendor's System Description. Vendor shall be entitled to change the display format described in Vendor's System Description, without prior approval from [NASDAQNasdaq](#), provided that: (i) such change is not misleading to

Subscribers; (ii) Vendor shall notify [NASDAQNasdaq](#), describing such change in reasonable detail, within fifteen (15) days after implementation of any such change; and (iii) such change shall not alter the identification codes for issuers, market makers and securities specified by [NASDAQNasdaq](#).

*Section 3.02. Vendor Interrogation Devices.* (a) Notwithstanding Section 3.01, [NASDAQNasdaq](#) will permit Vendor, in accordance with the [NASDAQNasdaqUTP Plan Requirements](#), to use in connection with its Service certain Interrogation Devices located on Vendor's premises without charge, for advertisement, demonstration, product development, ~~and~~ customer service, and any other support function identified on the UTPPlan website located at [www.UTPPlan.com](#) or another website accessible by and made known to Vendor. Vendor's use of such Interrogation Devices and the number thereof shall be subject to all the provisions of this Agreement other than *Section 4.01*, ~~including, without limitation, audit~~ by [NASDAQ](#).

(b) All other Vendor Interrogation Devices shall be subject to all the provisions of this Agreement (including, without limitation, *Section 4.01* and *Section 3.02 (a)*), except for *Section 4.06*.

*Section 3.03. Description of Vendor's Service.* Vendor represents and warrants that the detailed description of its Service, and the data processing equipment, software, and communications facilities related thereto, including Interrogation Devices, set forth in Vendor's System Description is true, complete and not misleading.

*Section 3.04. Operation of Vendor's Service.*

(a) Vendor shall assume sole responsibility for the design, development, acquisition, installation, testing, implementation, operation and maintenance of any and all software and equipment not directly supplied by [NASDAQNasdaq](#). Vendor represents and warrants that the design, development, acquisition, installation, testing, implementation, operation and maintenance of its Service, and its system supporting the Service, will not interfere with or adversely affect the equipment, software or operation of the System, any of its component parts or processes, or any use thereof by other persons.

(b) Vendor shall ensure that the data processing equipment supporting its Service is capable at all times of communicating with the System as per the [NASDAQNasdaqUTP Plan Requirements](#). Any variation by Vendor from the specifications in the [NASDAQNasdaqUTP Plan Requirements](#) for the interface with the System is

prohibited absent the prior written approval of [NASDAQNasdaq](#). Vendor shall provide notice to [NASDAQNasdaq](#) of any change in location of Vendor's data processing equipment which directly receives the UTP [Plan Services](#) at least sixty (60) days prior to such change.

(c) Vendor shall be responsible for and shall bear all costs associated with the transmission, storage and distribution of the Information after receipt from [NASDAQNasdaq](#). Vendor shall promptly and accurately transmit the Information to its Subscribers.

*Section 3.05. Requirements of Self-Regulatory Organization* Vendor acknowledges that: (a) [NASDAQNasdaq](#) is registered with the SEC as a registered national securities exchange pursuant to Section 6 of the Exchange Act; (b) [NASDAQNasdaq](#) has a statutory obligation to protect investors and the public interest and to ensure the integrity of quotation information (including, without limitation, the Information) supplied to investors and the public; (c) Section 19(g)(1) of the Exchange Act mandates that [NASDAQNasdaq](#), as a self-regulatory organization, comply with the provisions of the Exchange Act, the rules and regulations thereunder, and the [NASDAQNasdaq Rules](#); and (d) [NASDAQNasdaq](#) has jurisdiction over its members to enforce compliance with the Exchange Act, the rules and regulations promulgated thereunder, and the [NASDAQNasdaq Rules](#). Accordingly, Vendor agrees that [NASDAQNasdaq](#), when required to do so by SEC, may by notice to Vendor unilaterally: (i) limit or terminate the right of any or all persons to receive or use the Information; or (ii) control the manner in which the Information is formatted and displayed by Vendor to ensure the completeness, fairness and integrity of the Information received by Subscribers. Vendor shall promptly comply with any such notice. With respect to *clause (i)* above, Vendor shall terminate or limit the furnishing of the Information within three (3) business days after receipt of such notice and shall confirm such compliance by notice to [NASDAQNasdaq](#) not later than five (5) business days after receipt of notice from [NASDAQNasdaq](#). With respect to *clause (ii)* above, Vendor shall make the necessary changes to its Service to comply with any such notice within such period of time as may be determined in good faith by [NASDAQNasdaq](#) to be necessary, consistent with such statutory obligation. Any person or persons the subject of notice issued pursuant to this *Section 3.05* shall have available to them those procedural protections provided by the Exchange Act and applicable rules thereunder.

*Section 3.06. Transmission to Other Vendors.* Vendor shall not transmit or provide the Information to any person for retransmission or redistribution by such person unless authorized per the [NASDAQNasdaqUTP Plan Requirements](#).

Vendor shall not transmit or provide the Information to any [NASDAQNasdaq](#) Vendor unless such transmission or provision has been previously approved by [NASDAQNasdaq](#), and only in accordance with the provisions of the [NASDAQNasdaqUTP Plan](#) Requirements.

*Section 3.07. Delayed Information.* Vendor shall only transmit or provide Delayed Information to any person in accordance with the [NASDAQNasdaqUTP Plan](#) Requirements.

*Section 3.08. Deemed Use.* A person shall be deemed to have received or made use of the Information if he receives, transmits or makes use of all or any part of the Information, to include divulging or publishing the existence, contents, substance, purport, effect or meaning thereof.

#### **ARTICLE IV Payments to [NASDAQNasdaq](#) and Related Provisions**

*Section 4.01. SEC-Approved Fees.* A schedule of fee(s) applicable to the Information has been adopted and approved by [the SECNASDAQ](#). The fee(s) currently in effect are set forth in the [NASDAQNasdaqUTP Plan](#) Requirements. Any changes to these fee(s) are subject to review and approval by the SEC. Subsequent modifications to the schedule of fee(s) approved by the SEC shall become effective upon thirty (30) days prior notice to Vendor. Vendor agrees to pay the amount actually invoiced by [NASDAQNasdaq as UTP Plan Administrator](#), including monthly adjustments for updated reporting. Nothing in this Agreement shall prevent Vendor from separately charging its Subscribers for its Service.

*Section 4.02. Subscriber Invoicing.* All Subscribers shall be Vendor Invoiced Subscribers unless otherwise provided for in the [NASDAQNasdaqUTP Plan](#) Requirements. Vendor shall invoice all Vendor Invoiced Subscribers for the fees and other amounts described in this Article IV and shall remit such fees and other amounts directly to [NASDAQNasdaq](#) in accordance with this *Article IV*.

*Section 4.03. Payment and Taxes.* Vendor shall have the obligation to pay directly to [NASDAQNasdaq](#) one hundred percent (100%) of the appropriate fees for the Information due from Vendor and from the Vendor Invoiced Subscribers specified in the then effective fee schedule, without any deductions whatever. Vendor shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Vendor, Vendor Invoiced Subscribers or [NASDAQNasdaq](#) (except for U.S. federal, state, or local income taxes, if any, imposed on [NASDAQNasdaq](#)) 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. In addition, if Vendor or the Vendor Invoiced Subscribers, respectively, are required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due [NASDAQNasdaq](#) under this Article IV, then the amounts due under this Article IV shall be increased so that the net amount actually received by [NASDAQNasdaq](#) after the deduction or withholding of any such tax, charge or assessment will equal one hundred percent (100%) of the appropriate fees specified on the then effective fee schedule. Vendor shall remit the fees and taxes described in this Section 4.03 to [NASDAQNasdaq](#) no later than fifteen (15) days after the end of the service month; such fees shall be payable in immediately available United States funds by check or electronic funds transfer drawn against a United States bank or other financial institution acceptable to [NASDAQNasdaq](#).

*Section 4.04. Interest.* Vendor shall pay [NASDAQNasdaq](#), on demand or upon invoice, interest on any amounts due [NASDAQNasdaq](#) pursuant to this Agreement which are not paid within fifteen (15) days after the applicable due date specified in this Agreement. Interest shall accrue at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum amount permitted by applicable law, for the period commencing with the applicable due date and ending upon receipt of payment by [NASDAQNasdaq](#).

*Section 4.05. Payment a Condition to Access.* Vendor acknowledges that payment by Vendor of all fees and other amounts described in this Article IV is a condition precedent for continued receipt of the Information by Vendor and by Vendor Invoiced Subscribers. Vendor shall bear all risk of non-payment by Vendor Invoiced Subscribers. [NASDAQNasdaq](#) will bear the risk of non-payment by [NASDAQNasdaq](#) Invoiced Subscribers, provided, however, that if a [NASDAQNasdaq](#) Invoiced Subscriber fails to pay invoiced amounts to [NASDAQNasdaq](#) in a timely fashion, then upon notice from [NASDAQNasdaq](#) to Vendor such Subscriber shall (unless Vendor terminates such Subscriber) become a Vendor Invoiced Subscriber, and Vendor shall pay to [NASDAQNasdaq](#), on behalf of such Subscriber, all fees due [NASDAQNasdaq](#) with respect to such Subscriber for billing periods which commence on or after the date ten (10) days after such notice from [NASDAQNasdaq](#). Vendor shall cooperate, at Vendor's expense, with [NASDAQNasdaq](#) in any lawful efforts by [NASDAQNasdaq](#) to collect unpaid amounts due [NASDAQNasdaq](#) described in this Article IV from current or former [NASDAQNasdaq](#) Invoiced Subscribers. [NASDAQNasdaq](#) shall cooperate, at [NASDAQNasdaq](#)'s expense, with Vendor in any lawful efforts by Vendor to collect unpaid amounts due Vendor

described in this *Article IV* from current or former Vendor Invoiced Subscribers. Upon Vendor's payment to [NASDAQNasdaq](#) on behalf of any Subscriber of any amounts due under this Article IV, Vendor shall be subrogated to any and all rights of [NASDAQNasdaq](#) to recover such amounts.

Section 4.06. *Qualification Requirements.* (a) Except as otherwise set forth in this Agreement, Vendor shall only furnish, or cause or permit to be furnished, all or any part of the Information to a Subscriber who, at the time of receipt thereof, is of a type qualified (as set forth in the [NASDAQNasdaqUTP Plan Requirements](#)) to receive the Information from Vendor. Vendor agrees that [NASDAQNasdaq as UTP Plan Administrator](#) may have different qualification requirements for different Subscribers, including, but not limited to different Subscribers of different types of Vendor Services. Vendor shall have no obligation to obtain an executed [NASDAQ UTP Plan Subscriber Agreement](#) from Subscribers if Vendor represents and warrants that it has, or will have in place before distributing the Information to any person or entity who has not signed the [NASDAQUTP Plan –Subscriber Agreement](#), a legally valid and enforceable contract (a "Vendor Account Agreement") with such Subscriber that (i) governs the accounts held by Subscriber with the Vendor through which the Subscriber is entitled to access the Information, including any limitations on a Subscriber's right to redistribute the Information, and (ii) protects [NASDAQNasdaq](#) and the Indemnified Parties to the same extent as if Vendor had presented and the Subscriber had signed the [NASDAQ UTP Plan Subscriber Agreement](#). Vendor shall indemnify the Indemnified Parties against any assertion of claims or losses relating against the Indemnified Parties made by a Subscriber who receives the Information from Vendor (or any person relying upon the Information received by such a Subscriber) arising from Vendor's election to distribute Information to such Subscriber pursuant to this *Section 4.06* rather than presenting the [UTP Plan Subscriber Agreement](#) to such persons. In terms of recordkeeping and retention, Vendor Account Agreements shall be subject to applicable [NASDAQNasdaqUTP Plan Requirements](#). In the event of a dispute with Subscriber(s) relating to the Information, Vendor agrees to provide [NASDAQNasdaq](#) with copies of the relevant Vendor Account Agreements. Vendor shall be solely responsible for the acts and omissions of internal Subscribers.

(b) If Vendor only provides network connectivity to [NASDAQNasdaq](#) Vendors, whereby Information is distributed to a [NASDAQNasdaq](#) Vendor who has otherwise entered into a separate agreement with [NASDAQNasdaq](#) related to the receipt and use of Information, the Vendor shall only provide, or cause or permit to be provided, connectivity to a [NASDAQNasdaq](#)

Vendor who, at the time of the provision of the connectivity, is eligible to receive Information. Upon an inquiry from Vendor, [NASDAQNasdaq](#) shall undertake reasonable efforts to notify the Vendor via email within three business days whether a [NASDAQNasdaq](#) Vendor is eligible to receive Information from [NASDAQNasdaq](#) and Vendor shall not provide a [NASDAQNasdaq](#) Vendor with access to Information, without [NASDAQNasdaq](#)'s prior written consent.

(c) If any Subscriber or [NASDAQNasdaq](#) Vendor fails to comply with any of the conditions, terms or provisions of this Agreement applicable to Subscribers and/or the Vendor Account Agreement, and/or its agreement with [NASDAQNasdaq](#) and/or Vendor for the Information, or any other agreement between Subscriber or [NASDAQNasdaq](#) Vendor and [NASDAQNasdaq](#), or has made any representation in any such agreement which was or has become untrue, then Vendor shall, within five (5) business days after receipt of notice from [NASDAQNasdaq](#) of such failure or untruth, cease providing the Information to such Subscriber or [NASDAQNasdaq](#) Vendor (as applicable) and shall, within seven (7) business days following the receipt of such notice, confirm such cessation by notice to [NASDAQNasdaq](#).

*Section 4.07. Records Relating to Interrogation Devices.* (a) Vendor shall maintain complete and accurate records identifying all Interrogation Devices, if any, able to receive the Information through the Service and containing such other information relating to the Service as [NASDAQNasdaq](#) may reasonably request.

(b) Vendor shall comply with the requirements of [NASDAQNasdaq as UTP Plan Administrator](#) as to reporting of Subscriber Interrogation Devices, or those measurements of Information usage that must be reported to [NASDAQNasdaq](#) as set forth in this Agreement and the [NASDAQNasdaqUTP Plan Requirements](#). Unless otherwise set forth in the [NASDAQNasdaqUTP Plan Requirements](#), such reporting shall occur within 15 days of the end of the applicable reporting period set forth by [NASDAQNasdaq](#) in the [NASDAQNasdaqUTP Plan Requirements](#).

(c) Vendor is limited to a sixty (60) calendar-day grace period in which to revise or correct its usage reporting in order to obtain retroactive credits. The grace period begins on the due date of the original report, but is extended to the next business day if the last day of the grace period coincides with a market holiday or weekend day. [NASDAQNasdaq](#) will not provide Vendor with back credits for original or revised reporting received after the end of the grace period. Revised reporting could include, but is not limited to, reclassification of Subscribers, reporting of usage

under alternative pricing structures and correction of errors by Vendor. This section does not limit Vendor's liability to [NASDAQNasdaq](#) for underreporting of usage.

*Section 4.08. Certified Report.* Upon request, and no more than once in per calendar year, Vendor shall comply with [NASDAQNasdaq](#)'s reasonable procedures and requirements for the verification of all Interrogation Devices able to receive the Information through the Service, including, without limitation, delivery to [NASDAQNasdaq](#), in accordance with the [NASDAQNasdaqUTP Plan Requirements](#), of a certified report audited by an independent certified public accountant retained by Vendor at Vendor's sole expense and satisfactory to [NASDAQNasdaq](#) ("Vendor's Auditors"), which shall verify the number of Subscribers and Interrogation Devices receiving the Information. If this certified report discloses that Vendor has underreported the number of Subscribers or Interrogation Devices to [NASDAQNasdaq](#), Vendor shall promptly, but not more than fifteen (15) days after the invoice date, remit any unpaid fees and applicable interest to [NASDAQNasdaq](#) due relative to such underreporting; if such certified report discloses an overpayment, then [NASDAQNasdaq](#) will apply the over-payment as a credit against amounts due from Vendor as per *Section 4.07 (c)*. The certified report shall include information relative to any such underreporting in sufficient detail to determine the amounts due [NASDAQNasdaq](#).

*Section 4.09. Audit by [NASDAQNasdaq](#).* From time to time, [NASDAQNasdaq](#) may cause Vendor's (a) records of Subscriber Interrogation Devices, (b) reports and payments to [NASDAQNasdaq](#) under this Agreement, and (c) data processing equipment and communications facilities used to receive the Information and/or to provide the Service, to be reviewed by [NASDAQNasdaq](#) personnel and/or auditors of [NASDAQNasdaq](#)'s choice (collectively, "Nasdaq Audit Personnel"), subject to the provisions of this Section 4.09. For the avoidance of doubt, any such [Nasdaq Audit Personnel](#) ~~NASDAQ personnel or auditors~~ shall not access, examine, observe, review or in any way gain disclosure to any information of Vendor, which is protected under applicable banking secrecy regulations. The review shall be scheduled upon reasonable notice to Vendor, conducted in Vendor's offices where its records are kept or its data processing equipment and communications facilities are located, and subject to Vendor's reasonable procedures and policies on facility access, provided, however, nothing therein will limit [NASDAQNasdaq](#)'s ability to satisfy its obligations as set forth in this Section 4.09. Upon reasonable request, Vendor shall make available for review all records and supporting documentation necessary in the reasonable judgment of the [NASDAQNasdaq Audit Personnel](#) to reach a conclusion as to the accuracy and

completeness of: (i) Vendor's reports to [NASDAQNasdaq](#), (ii) the payments connected therewith, and (iii) the description set forth in Vendor's System Description. If the examination conducted by [NASDAQNasdaq Audit Personnel](#) ~~or its auditors~~ reveals that there may be errors in Vendor's reporting of Subscriber Interrogation Devices, if any, or those measurements of Information usage that must be reported to [NASDAQNasdaq](#) as set forth in this Agreement and the [NASDAQNasdaqUTP Plan Requirements](#) or exceptions or errors in the audit reports provided to [NASDAQNasdaq](#) pursuant to *Section 4.08*, Vendor shall notify Vendor's Auditors and direct them to perform such procedures as are necessary to determine the magnitude of any adjustments of amounts previously remitted to [NASDAQNasdaq](#) relating to the audit period in question and to provide [NASDAQNasdaq](#) with the results thereof within ninety (90) days after notice from [NASDAQNasdaq](#). If the review conducted by [NASDAQNasdaq](#) relates to a previously unaudited period, then unless Vendor shall cause Vendor's Auditors (at the Vendor's sole expense) to review the unaudited period and to determine the magnitude of any adjustments of amounts previously remitted to [NASDAQNasdaq](#) within ninety (90) days after notice from [NASDAQNasdaq](#), [NASDAQNasdaq](#) or [Nasdaq Audit Personnel](#) ~~its auditors~~ shall determine the magnitude of any such adjustments. In the latter case, [NASDAQNasdaq](#)'s determination shall be deemed conclusive. The conduct of any such review by [NASDAQNasdaq](#) shall not constitute a waiver of the requirement for the annual audit certification as described in *Section 4.08*. If such audit or review discloses additional underreported amounts, such amounts shall be remitted to [NASDAQNasdaq](#), together with applicable interest within fifteen (15) days after notice from [NASDAQNasdaq](#); if such audit or review discloses an overpayment, then [NASDAQNasdaq](#) will apply the overpayment as a credit against amounts due from Vendor. If the examination conducted by [NASDAQNasdaq Audit Personnel](#) ~~or its auditors~~ reveals that there may be errors or omissions in Vendor's System Description, Vendor shall submit a revised Vendor's System Description for [NASDAQNasdaq](#)'s approval, within ninety (90) days after notice from [NASDAQNasdaq](#). Any information obtained by [NASDAQNasdaq](#) pursuant to this Section 4.09, regardless of whether such information has been designated as "confidential" by Vendor, shall be used solely for the purpose of this Agreement and shall be kept confidential in accordance with the provisions of *Section 10.06*.

*Section 4.10. Underreporting.* (a) Should Vendor have underreported to [NASDAQNasdaq as UTP Plan Administrator](#) the number of Interrogation Devices receiving the Information, Vendor shall pay to [NASDAQNasdaq](#) within fifteen (15) days after such underreporting is discovered the fees and applicable

interest due relative to such underreporting. Further, if such underreporting is equal to or greater than three percent (3%) of the reported number of Interrogation Devices for any audited or unaudited period referred to in *Section 4.09*, Vendor shall, upon request by [NASDAQNasdaq](#), in addition to remitting the fees and applicable interest due relative to such underreporting, within fifteen (15) days of invoice from [NASDAQNasdaq](#), reimburse [NASDAQNasdaq](#) for any audit, legal or administrative costs and expenses incurred to detect and rectify such underreporting, provided, however, that such costs and expenses are incurred in good faith and are not unreasonable given the amount of work necessary to detect and determine the extent of such underreporting and the actual amount of underreporting detected.

(b) [NASDAQNasdaq](#) agrees that Vendor's liability pursuant to *Section 4.08* and *Section 4.09* for underreporting the number of Subscribers or Interrogation Devices receiving the Information shall be limited to unpaid Subscriber fees, together with interest, for months ended within the three (3) years preceding the date Vendor, Vendor's auditors or [NASDAQNasdaq](#) first know that such underreporting has occurred, if such underreporting is solely the result of a good faith error by Vendor.

*Section 4.11. Information from Subscribers.* In the event that any records are found by [NASDAQNasdaq as UTP Plan Administrator](#) or [NASDAQ's Audit Personnel acting on behalf of the UTP Plan Administrator \("Audit Personnel"\) auditors](#) to be insufficient or incomplete to verify the number of Interrogation Devices being used by a Subscriber, or if [NASDAQNasdaq](#) or [NASDAQ the Audit Personnel's auditors](#) request in good faith information regarding the use, reprocessing, or retransmission of the Information by a Subscriber, Vendor shall, within ten (10) days of being so advised by [NASDAQNasdaq](#) or [NASDAQ Audit Personnel's auditors](#), request in writing from such Subscriber the information required by [NASDAQNasdaq](#) or [NASDAQ Audit Personnel 's auditors](#) and shall advise such Subscriber that failure to provide the requested information to Vendor within thirty (30) days will result in termination of access to the Information until such time as the request is complied with. Vendor shall terminate access to the Information by such Subscriber if the information requested is not received within the applicable period specified above. In no event shall Vendor permit such Subscriber to be provided access to the Information beyond such applicable period unless and until such Subscriber furnishes the requested information. If the information provided by such Subscriber is found by [NASDAQNasdaq](#) or [NASDAQ Audit Personnel 's auditors](#) to be insufficient or incomplete to verify the number of Interrogation Devices or the use made of the Information, Vendor shall, upon being so advised by [NASDAQNasdaq](#) or [NASDAQ Audit Personnel's auditors](#),

send a second request to such Subscriber in accordance with the above procedures. If the information provided by such Subscriber is found by [NASDAQNasdaq](#) or [NASDAQ Audit Personnel 's auditors](#) to still be insufficient or incomplete to verify the number of Interrogation Devices or the use made of the Information, Vendor shall, upon being so advised by [NASDAQNasdaq](#) or [NASDAQNasdaq Audit Personnel's auditors](#), terminate such Subscriber's access to the Information until such time as [NASDAQNasdaq](#) or [NASDAQ Audit Personnel 's auditors](#) determine and advise Vendor that the request has been adequately responded to. Upon [NASDAQNasdaq's](#) reasonable request, Vendor shall use its commercially reasonable efforts to assist [NASDAQNasdaq](#) or [NASDAQ Audit Personnel's auditors](#) in gaining access to Subscriber locations for purposes of verifying the number of Interrogation Devices and the use of the Information at such locations.

*Section 4.12. Facilities Charges.* Vendor acknowledges that facilities charges may in the future be established by the [NASDAQNasdaq](#) Companies. Such charges, and any changes thereto, will be subject to review and approval by the SEC. Vendor will be notified in writing not less than thirty (30) days prior to the imposition of, or changes in, any facilities charges.

## **ARTICLE V Additional Representations and Obligations of Vendor**

*5.01. Security.* (a) Vendor agrees to use its reasonable best efforts to configure and operate its communications network (or to use its reasonable best efforts to cause such communications network to be configured and operated) so that said communications network remains at all times secure from unauthorized entry or interference and to prevent the Information from being taken from said communications network, or in any way communicated, divulged or published except through the authorized channels of transmission or reception described in Vendor's System Description. (b) Vendor agrees to meet any reasonable requirement of [NASDAQNasdaq](#) concerning the security arrangements in Vendor's place or places of business where equipment used to process, store and transmit the Information is located. Vendor will adopt and enforce, as respects persons entering such place or places of business, any reasonable regulation or requirement which [NASDAQNasdaq](#) may deem advisable in order to prevent the Information from being improperly taken from any of Vendor's offices or places of business. [NASDAQNasdaq](#) shall give Vendor prior notice of any such regulations or requirements and agrees that such requirements or regulations shall be applied consistently to similarly-situated vendors of the UTP [Plan Services](#). For the purpose of determining compliance with this Agreement,

and at all reasonable times and upon reasonable notice, any person or persons designated by [NASDAQNasdaq](#) shall have escorted access to the locations where the Information is processed and the Service is provided, and the right to observe the use made of the Information and the Service and to examine and inspect all instruments and apparatus used in connection therewith in any such location, and subject to Vendor's reasonable procedures and policies on facility access. Any information obtained by [NASDAQNasdaq](#) pursuant to this Section 5.01, regardless of whether such information has been designated as "confidential" by Vendor, shall be used solely for the purpose of this Agreement and shall be kept confidential in accordance with the provisions of Section 10.06.

*Section 5.02. Litigation re: Unauthorized Use.* Vendor shall not oppose any suit or proceeding instituted by [NASDAQNasdaq](#) (a) to enjoin any person who is not entitled to receive the Information from Vendor in accordance with the terms of this Agreement, from receiving, transmitting or using the Information or (b) to enjoin any person receiving, assisting in receiving, transmitting, or assisting in transmitting, any Information from Vendor or [NASDAQNasdaq](#) outside the authorized channels of communication set forth in this Agreement. Vendor agrees to cooperate with and assist [NASDAQNasdaq](#) in any such suit or proceeding. If a [NASDAQNasdaq](#) request for cooperation and assistance pursuant to this Section 5.02 imposes substantial burdens upon Vendor outside Vendor's usual course of business, then [NASDAQNasdaq](#) agrees to reimburse Vendor for Vendor's reasonable direct expenses incurred in connection with such request. If Vendor furnishes, or permits to be furnished, any Information to any party other than in accordance with this Agreement and without the prior approval of [NASDAQNasdaq](#), then [NASDAQNasdaq](#), in addition to exercising any other rights it may have under this Agreement, may take any action against such other party to prevent the receipt, transmission or use of the Information by such other party, either with or without making Vendor a party to such action.

*Section 5.03. Compliance with Law.* Vendor represents that it is not engaged in, and agrees not to engage in, any unlawful transaction or business, and agrees not to use or knowingly permit anyone to use the Information for (a) any purpose or in any manner not authorized by this Agreement or (b) for any unlawful purpose or in any manner not in compliance with the statutes, rules and regulations referenced in Section ~~10-07~~10.08(b). The Information furnished to Vendor by [NASDAQNasdaq](#) shall be solely for use in accordance with this Agreement, and Vendor will neither furnish nor permit others to furnish Information other than (i) in accordance with this Agreement and (ii) to a person authorized to receive the Information under the

*procedures set forth in Section 3.06 and Section 4.06.*

*Section 5.04. No Endorsement; Proprietary Rights; Corporate Names.*(a) Neither Vendor nor any officer or employee of Vendor shall represent, or shall cause or permit any other person to represent, either directly or indirectly, that Vendor or all or any part of the Service which Vendor offers or any equipment utilized by Vendor is sponsored or endorsed by the [NASDAQNasdaq](#) Companies.

(b) Vendor acknowledges and agrees that the [NASDAQNasdaq](#) Companies have proprietary rights in certain names, including, but not limited to, "The [NASDAQNasdaq](#) Stock Market LLC", "The Nasdaq Stock Market, Inc.", and "[NASDAQNasdaq](#)", and Vendor shall not use these names in any way that would infringe upon such names and shall not use these names in any advertising or marketing materials, except with [NASDAQNasdaq](#)'s prior written consent. Vendor acknowledges and agrees that the [NASDAQNasdaq](#) Companies have proprietary rights in certain trademarks, servicemarks, copyrights or patents, registered or unregistered, and Vendor shall not use these trademarks, servicemarks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents. This Agreement does not constitute a license of the marks listed in this Section 5.04.

(c) [NASDAQNasdaq](#) acknowledges and agrees that Vendor has proprietary rights in Vendor's name and [NASDAQNasdaq](#) shall not use the corporate name in any way that would infringe upon such name and shall not use the name in any advertising or marketing materials, without Vendor's prior written consent. [NASDAQNasdaq](#) acknowledges and agrees that Vendor has proprietary rights in certain trademarks, servicemarks, copyrights or patents, registered or unregistered, and [NASDAQNasdaq](#) shall not use these trademarks, servicemarks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents.

(d) Vendor acknowledges and agrees that the [NASDAQNasdaq](#) Companies have proprietary rights in the Real-Time Information that originates on or derives from markets regulated or operated by the [NASDAQNasdaq](#) Companies. Further, Vendor acknowledges that the [NASDAQNasdaq](#) Companies assert proprietary rights in the Delayed Information that originates on or derives from markets regulated or operated by the [NASDAQNasdaq](#) Companies.

(e) For purposes of monitoring compliance with this Section 5.04, upon reasonable request, Vendor shall provide [NASDAQNasdaq](#) with any materials made available to

potential users of Vendor's Service.

*Section 5.05. Notice of Breach or Default.* Vendor shall promptly, but in no event later than ten (10) days after Vendor knows that (i) a breach of or default under this Agreement by Vendor or any Subscriber has occurred or (ii) a breach of or default under any [UTP Plan](#) Subscriber Agreement has occurred, deliver to [NASDAQNasdaq](#) notice describing the same in reasonable detail.

## ARTICLE VI Warranties and Liability

*Section 6.01. No Warranties.* [NASDAQNasdaq](#) will furnish the Information from the System to Vendor as promptly and accurately as is reasonably practicable, but the [NASDAQNasdaq](#) Companies do not warrant or guarantee the timeliness, sequence, accuracy or completeness of the Information. Further, with respect to the Information, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

*Section 6.02. Limitation of Liability.* (a) The [NASDAQNasdaq](#) Companies shall not be liable to Vendor, the Subscribers, or any other person, regardless of the cause (unless resulting from the gross negligence or willful misconduct of the [NASDAQNasdaq](#) Companies) or duration, for any errors, inaccuracies, omissions, or other defects in, or untimeliness or unauthenticity of, the Information, or for any delay or interruption in the transmission thereof to Vendor, or for any Claims or Losses arising therefrom or occasioned thereby.

(b) Except with respect to Claims or Losses asserted against the Indemnified Parties by a person described in *Section 7.01(a)(iii)*, Vendor shall not be liable to the [NASDAQNasdaq](#) Companies, the Subscribers, or any other person, for any errors, inaccuracies, omissions, or other defects in, or untimeliness or unauthenticity of, the Information as provided to Vendor by [NASDAQNasdaq](#).

(c) Except for loss of fees due ~~NASDAQ-Nasdaq~~ as described in *Article IV*, the [NASDAQNasdaq](#) Companies and Vendor shall not be liable to each other or to any other person for indirect, punitive, special, consequential or incidental damages, including lost profits, even if Vendor or the [NASDAQNasdaq](#) Companies knew or should have known of the possibility of such damages.

(d) The [NASDAQNasdaq](#) Companies shall not be responsible for any errors, omissions, or other defects in the Information or any delays or interruptions that are

caused by Vendor.

## ARTICLE VII Indemnification

*Section 7.01. Indemnification of the [NASDAQNasdaq](#) Companies.*(a) Vendor shall indemnify the Indemnified Parties against, and hold the Indemnified Parties harmless from, any and all Claims or Losses imposed on, incurred by or asserted against the Indemnified Parties as a result of or relating to: (i) any breach by Vendor with the terms and conditions hereof or any [NASDAQUTP Plan](#) Requirements; (ii) any breach by the Subscribers with the terms and conditions hereof or of any [NASDAQNasdaqUTP Plan](#) Requirements, if Vendor has failed to notify [NASDAQNasdaq](#) of such breach within ten (10) days after Vendor knows of such breach; (iii) any assertion of Claims or Losses relating to the subject matter or existence of this Agreement or any [NASDAQNasdaqUTP Plan](#) Requirements against the Indemnified Parties made by a person who receives the Information from Vendor (or any person relying upon the Information received by such a person) and who is not qualified per the [NASDAQNasdaqUTP Plan](#) Requirements; (iv) any assertion of Claims or Losses against the Indemnified Parties by Subscribers relating to [NASDAQNasdaq](#)'s exercise of its remedies under Article VIII; (v) any breach by Vendor of its warranty set forth in Section 3.04(a); or (vi) any defense of or participation by the Indemnified Parties in any action, suit, arbitration, or judicial or administrative proceeding involving any Claims or Losses described in this subsection (a). The indemnification provided by this Section 7.01(a) shall include, without limitation, [NASDAQNasdaq](#)'s investigative and administrative costs relating to the detection of any material noncompliance by Vendor referred to in *clause (i)* above or any material noncompliance by Subscribers referred to in *clause (ii)* above, provided, however, that such costs are not excessive as compared to the injury the [NASDAQNasdaq](#) Companies could suffer as a result of any such non-compliance.

(b) Vendor shall indemnify the Indemnified Parties against, and hold the Indemnified Parties harmless from, any and all Claims or Losses imposed on, incurred by or asserted against the Indemnified Parties as a result of: (i) any assertion by any person that Vendor's Service infringes any patent, trademark, service mark, trade secret, or copyright, or violates any other intellectual property right; or (ii) any defense of or participation by the Indemnified Parties in any action, suit, arbitration, or judicial or administrative proceeding involving any Claims or Losses described in this subsection (b).

*Section 7.02. Indemnification of Vendor.* [NASDAQNasdaq](#)

shall indemnify Vendor against, and hold Vendor harmless from, any and all Claims or Losses imposed on, incurred by or asserted against Vendor as a result of:

(a) Vendor refusing to furnish the Information to any person, or terminating or suspending delivery of the Information to any Subscriber, solely as a result of, and pursuant to, notice from [NASDAQNasdaq](#): (i) limiting or terminating the right of any person (other than Vendor) to receive or use the Information pursuant to Section 3.05 or (ii) requesting Vendor to cease providing the Information to a Subscriber pursuant to Sections 4.06(c) or 4.11; provided, however, that the indemnification provided by this Section 7.02(a—) shall not be available where Vendor ceases furnishing the Information to any person for whom no enforceable [UTP Plan](#) Subscriber Agreement was completed, executed and delivered in accordance with Section 4.06(a); (b) any assertion by any person that the [UTP Plan](#) Services infringes any patent, trademark, service mark, trade secret or copyright or violates any other intellectual property right; or (c) any defense or participation by Vendor in any action, suit, arbitration, or judicial or administrative proceeding involving any Claims or Losses described in this Section 7.02.

*Section 7.03. Procedure.* The party claiming indemnification under this Article VII agrees to promptly notify (and, in the case of any action, suit, arbitration, or judicial or administrative proceeding, shall so notify no later than fifteen (15) days after the party claiming indemnification has received notice thereof or has been served with a complaint or other process) the other party when it has knowledge of circumstances or the occurrence of any events which are likely to result in an indemnification obligation under this Article VII or when any action, suit, arbitration, or judicial or administrative proceeding is pending or threatened that is covered by this Article VII; and further agrees that, upon request and to the extent permitted by applicable law, the other party shall have the right to defend, settle, or compromise any such suit or proceeding, at the other party's expense, *provided* that: (i) the other party demonstrates to the satisfaction of the party claiming indemnification that it is financially able to defend such action and to pay any settlement or judgment; and (ii) counsel retained by the other party are reasonably satisfactory to the party claiming indemnification. The party claiming indemnification agrees to cooperate with the other party in the defense of any such suit or proceeding, and the other party agrees to reimburse the party claiming indemnification for its expenses with respect thereto. Failure by the party claiming indemnification to promptly notify the other party as required by this Section 7.03 shall not invalidate the claim for indemnification, unless such failure has a material adverse effect on the settlement, defense, or compromise of the matter that is the subject of

the claim for indemnification. In addition, the party claiming indemnification shall be responsible for any Claims or Losses which could have been avoided or mitigated by prompt notice as required by this Section 7.03.

*Section 7.04. Interpretation.* Any conflict between the provisions of this Article VII and the provisions of Article VI, shall be resolved as follows:

(a) With respect to Claims or Losses that are described in Section 7.01 and that are incurred directly by the Indemnified Parties, the provisions of Section 6.02(c) shall apply to preclude recovery by the Indemnified Parties from Vendor of indirect, punitive, special, consequential or incidental damages, including lost profits (except for loss of fees due [NASDAQNasdaq](#) as described in Article IV).

(b) With respect to Claims or Losses that are described in Section 7.02 and that are incurred directly by Vendor, the provisions of Section 6.02(c) shall apply to preclude recovery by Vendor from the Indemnified Parties of indirect, punitive, special, consequential or incidental damages, including lost profits.

(c) With respect to Claims or Losses that are described in Section 7.01 and that are asserted against the Indemnified Parties by third parties, or incurred by or imposed on the Indemnified Parties as the result of Claims or Losses asserted by third parties, the provisions of Section 6.02(c) shall not apply, and the Indemnified Parties shall be entitled to recover from Vendor amounts awarded to or paid in settlement to third parties by the Indemnified Parties for indirect, punitive, special, consequential or incidental damages, including lost profits.

(d) With respect to Claims or Losses that are described in Section 7.02 and that are asserted against Vendor by third parties, or incurred by or imposed on Vendor as the result of Claims or Losses asserted by third parties, the provisions of Section 6.02(c) shall not apply, and Vendor shall be entitled to recover from the Indemnified Parties amounts awarded to or paid in settlement to third parties by Vendor for indirect, punitive, special, consequential or incidental damages, including lost profits.

(e) The provisions of this Article VII should not be construed as authorizing or as providing any basis for the recovery by third parties of indirect, punitive, special, consequential or incidental damages, including lost profits, from the Indemnified Parties or Vendor.

## **ARTICLE VIII Default**

*Section 8.01. Default by Vendor.* Vendor has specifically induced [NASDAQNasdaq](#) to enter into this Agreement based on the representations and undertakings of Vendor contained herein. Strict compliance with the provisions of this Agreement is and shall be a condition precedent to Vendor's right hereunder to continue to receive the Information. Vendor expressly acknowledges and agrees that [NASDAQNasdaq](#) shall have the rights set forth in Article IX if [NASDAQNasdaq](#) shall determine that Vendor is in default of any part of this Agreement.

*Section 8.02. Default by [NASDAQNasdaq](#).* If [NASDAQNasdaq](#) has breached or is in default under this Agreement, and such breach or default continues unremedied for fifteen (15) days after notice to [NASDAQNasdaq](#) by Vendor, then Vendor shall have the immediate right to take one or more of the following actions; provided, however, that if such breach cannot be remedied by [NASDAQNasdaq](#) in good faith and with due diligence within fifteen (15) days and the failure to so remedy within fifteen (15) days does not cause Vendor (or its Subscribers) to be in violation of applicable laws or regulations or to otherwise materially injure Vendor, then [NASDAQNasdaq](#) shall not be considered to be in default for so long as [NASDAQNasdaq](#) commences such actions as are necessary to remedy such breach within such fifteen (15) day period and thereafter diligently pursues such actions to remedy such breach or default: (a) to terminate this Agreement; (b) to demand arbitration under Section 10.05; or (c) to pursue such other remedies, consistent with Section 10.05 and Section ~~10.07~~10.08, as it may be entitled by virtue of or under this Agreement, before regulatory authorities, or at law or in equity.

*Section 8.03. Termination for Non-Payment Not Denial of Access.* To the extent permitted by applicable law, Vendor acknowledges and agrees that the exercise by [NASDAQNasdaq](#) of the remedies to which it is entitled under Article IX as a result of the occurrence of a default by Vendor as described in Section 8.01 shall not be deemed or considered to be, and Vendor waives any right to represent or assert that any such exercise constitutes, an act or omission or an improper denial or limitation of access to any service or facility operated by the [NASDAQNasdaq](#) Companies as contemplated in Section 11A of the Exchange Act, or any other provision of the Exchange Act, or any rule or regulation adopted thereunder.

## **ARTICLE IX Term and Termination**

*Section 9.01. Term.* The original term of this Agreement shall commence on the earlier of the date of the Agreement or the date the Information is provided and, unless the Agreement is otherwise terminated, the term shall continue

until this Agreement is terminated as set forth in *Section 9.02.*

*Section 9.02. Termination.* This Agreement may be terminated:

(i) by either party, upon not less than thirty (30) days' prior written notice to the other party;

(ii) in the event of a breach of this Agreement, by the party not in breach upon not less than fifteen (15) days prior written notice to the breaching party, unless, if the breach is capable of being cured, the breach is cured within the notice period;

(iii) by [NASDAQNasdaq](#), immediately, in the event that the Vendor becomes insolvent; makes an assignment for the benefit of creditors; does not pay its debts as they become due; admits its inability to pay its debts when due; files or has filed against it any petition under any provision of the Bankruptcy Act or an application for a receiver, trustee, or custodian is made by anyone; or generally becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;

(iv) by [NASDAQNasdaq](#), immediately, in the event that the Vendor is not permitted or not able to receive, or [NASDAQNasdaq](#) is prevented from disseminating, the Information, or any part thereof;

(v) by [NASDAQNasdaq](#), immediately, in the event that any representation, warranty or certification made by Vendor in this Agreement or in any other document furnished by Vendor is, as of the time made or furnished, false or misleading;

(vi) by [NASDAQNasdaq](#), immediately, in the event that Vendor proceeds with a proposed action which would result in a default of its obligations or covenants under this Agreement or in a breach of any representation, warranty or certification, which is material to the [NASDAQNasdaq](#) Companies for regulatory, commercial or other reasons, made by Vendor in connection herewith, after [NASDAQNasdaq](#) has notified Vendor that such proposed action would constitute a default hereunder;

(vii) by [NASDAQNasdaq](#), immediately, in the event that [NASDAQNasdaq](#) terminates for cause Vendor's receipt of any other service or product provided by or on behalf of [NASDAQNasdaq](#);

(viii) by [NASDAQNasdaq](#), immediately, in the event that [NASDAQNasdaq](#), in its sole discretion, determines that any failure on the part of the Vendor to comply with this Agreement has or is likely to have an adverse impact on the operation or performance of the System, Information or market or likely to cause

disproportionate harm to [NASDAQNasdaq](#)'s interests should termination be delayed;

(ix) by [NASDAQNasdaq](#), upon not less than fifteen (15) days prior written notice, in the event that any representation, warranty or certification made by Vendor in the Agreement or in any other document furnished by Vendor becomes untrue or inaccurate and is not made true or accurate within such 15 day notice period; or

(x) by [NASDAQNasdaq](#), upon not less than ninety (90) days' prior written notice, should it determine that it will cease providing the same type of Information to all other eligible individuals or entities that were receiving the same type of Information as Vendor.

*Section 9.03. No Use of Information after Termination.* Upon termination of this Agreement, Vendor shall cease any and all use of the Information. The right of termination set forth herein is in addition to any other remedy at law or in equity, consistent with the Agreement, that is available to one party (including the [NASDAQNasdaq](#) Companies) with respect to a breach by the other and is in addition to anything otherwise set forth herein.

## ARTICLE X General Provisions

*Section 10.01 Assignment; Third-Party Rights.* This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Vendor shall not assign this Agreement without the prior written consent of [NASDAQNasdaq](#). [NASDAQNasdaq](#) agrees not to unreasonably withhold its consent to an assignment by Vendor *provided that*:

(a) such assignment would not adversely affect [NASDAQNasdaq](#) and would not cause any of the [NASDAQNasdaq](#) Companies to be in violation of applicable law or regulations; and

(b) such assignment is to (i) a successor corporation of Vendor by operation of law, merger or consolidation or (ii) an entity acquiring substantially all of the assets of Vendor or an affiliate controlling, controlled by, or under common control with Vendor, and Vendor unconditionally guarantees the payment and performance by such entity or affiliate of all obligations under this Agreement.

[NASDAQNasdaq](#) shall be free to assign this Agreement to one or more of the [NASDAQNasdaq](#) Companies or to any person as security for or in connection with the borrowing of monies. Except as otherwise provided in Article VI, Article VII, and Section ~~10.10~~10.11, nothing in this Agreement shall entitle any person to any rights as a third- party beneficiary

under this Agreement. Nothing in this Agreement shall constitute the parties as partners or participants in a joint venture, and neither party is appointed the agent of the other.

*Section 10.02. Interpretation; Amendments.* (a) Except as may otherwise be set forth in the Agreement, [NASDAQNasdaq](#) may alter any term or condition of this Agreement on 90 days' notice to Vendor in accordance with Section 10.15~~6~~, and any use after such date is deemed acceptance of the new term or condition. No failure on the part of [NASDAQNasdaq](#) or Vendor to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under the 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 the Agreement. If any of the provisions of the Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the 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 the Agreement shall be valid and enforceable to the fullest extent permitted by law.

b) For purposes of this Agreement, a party shall be deemed to have knowledge of an event or circumstance if such party has, or ought to have on the basis of such party's obligations hereunder, knowledge of such facts as would reasonably cause the party to inquire about such event or circumstance, where such inquiry would disclose the happening or existence of such event or circumstance.

*Section 10.03. Waiver; Good Faith.* (a) No failure on the part of [NASDAQNasdaq](#) or Vendor 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.

(b) [NASDAQNasdaq](#) and Vendor shall act in good faith in the performance of their respective obligations under this Agreement and shall act as promptly as is reasonably practicable under the circumstances in granting or denying any consent or approval required hereunder.

*Section 10.04. Entire Agreement.* This Agreement constitutes the entire agreement between the parties with

respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings, and understandings.

**Section 10.05. Arbitration.** (a) In the event of a demand for arbitration by [NASDANasdaq](#), a demand for arbitration by Vendor pursuant to **Section 8.02** or by mutual consent of [NASDANasdaq](#) and Vendor, the claims, disputes, controversies and other matters in question between [NASDANasdaq](#) and Vendor arising out of, or relating to this Agreement, or to the breach hereof (which cannot be resolved by the parties), shall be settled by binding arbitration in accordance with this Agreement and the procedures (or such other procedures as may be mutually agreed upon by the parties) set forth in this **Section 10.05**.

(b) The party demanding arbitration shall serve upon the other party, by hand or certified mail, return receipt requested, a written demand, specifying in reasonable detail the nature of the claim, dispute, controversy or other matter in question ("Dispute"), that the Dispute be submitted to arbitration. The demand, which shall be effective upon receipt, shall be made within a reasonable time after the Dispute has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such Dispute would be barred by the applicable statute of limitations or laches. In the event of mutual consent of [NASDANasdaq](#) and Vendor to arbitration, the parties shall prepare a joint statement of the Dispute.

(c) After service and receipt of a demand for arbitration, or completion of the joint statement referred to in subsection (b) above, the parties shall attempt to agree upon a single arbitrator within ten (10) days or such longer period as the parties may agree.

(d) In the event the parties fail to agree upon a single arbitrator within the period established under subsection (c) above, then each party shall appoint one arbitrator within an additional ten (10) days and notify the other party of such appointment. If either party fails to timely appoint an arbitrator, then the arbitrator appointed by the other party shall be the sole arbitrator. If, however, both parties appoint an arbitrator, then a third arbitrator shall be selected within ten (10) days thereafter by the first two arbitrators, unless otherwise agreed by the parties. If the arbitrators and the parties fail to appoint a third arbitrator, either party may request the American Arbitration Association or any federal or local court of the District of Columbia to appoint the third arbitrator.

(e) Except as otherwise provided herein, any arbitration

proceeding shall be conducted in accordance with the rules and procedures of the American Arbitration Association, unless otherwise agreed by the parties. Except to the extent provided in the last sentence of **subsection (d)** above, nothing contained herein shall be construed as requiring submission of any Dispute to the American Arbitration Association.

(f) The arbitration proceeding shall be held in the District of Columbia, unless otherwise agreed by the parties.

(g) The decision rendered through arbitration shall be final and binding upon the parties hereto and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof.

(h) In rendering a decision the arbitrators shall be governed by the terms of this Agreement and by applicable precedent and authoritative interpretations of the SEC. At the request of either party, the arbitrators shall suspend the arbitration proceedings pending resolution by the SEC of issues raised in the arbitration (or a determination by the SEC not to resolve such issues) that are before the SEC.

(i) This **Section 10.05** shall not apply to any claims, disputes, controversies or other matters in question between [NASDANasdaq](#) and Vendor that (A) relate to the proprietary or intellectual property rights of [NASDANasdaq](#) in the Information and the UTP [Plan Services](#) or the proprietary or intellectual property rights of Vendor in its Service; (B) are described in **Section 10.134**; (C) relate to violations of the Communications Act of 1934, as amended; or (D) are not specified in subsection (a) above. This **Section 10.05** shall not preclude either party from (X) pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark, or copyright, or the misappropriation or violation of any trade secret or other proprietary or intellectual property right; or (Y) filing or pursuing applications, appeals, comments or other communications with the SEC and appealing or otherwise seeking relief in federal court from actions of, or failures to act by, the SEC.

**Section 10.06. Confidentiality.** Each party acknowledges that in the course of performance of this Agreement it may obtain confidential data, information or techniques from the other party. With respect to any such data, information or techniques which a party has designated in writing as "confidential" on or before disclosure to the other party, and which are not otherwise publicly available, the other party agrees to hold such data, information or techniques

confidential and to use it only in performance of this Agreement and agrees not to disclose it unless directed to do so by any court or administrative agency. Nothing herein shall constrain the [NASDAQNasdaq](#) Companies from using confidential information in furtherance of their regulatory duties under the Exchange Act.

Section 10.07. Personal Data. In the course of providing services to Vendor or in the submission of applicable reporting by Vendor pursuant to the Agreement, Nasdaq may process Personal Data (as defined in the Nasdaq Vendor Agreement for UTP Plan Services Data Processing Addendum (“Data Processing Addendum”)) as part of the services or in support of its rights (including, but not limited to, its audit and usage review rights) under this Agreement. Vendor shall provide to Nasdaq such Personal Data as reasonably requested by Nasdaq to make available the Information for transmission to and reception by Vendor, and enforce its rights (including, but not limited to, its audit and usage review rights) under this Agreement. The Parties agree to comply with provisions of the Data Processing Addendum (attached as Annex A) with respect to any Personal Data processed by Nasdaq, each acting reasonably and in good faith. With respect to individuals whose Personal Data is processed by Nasdaq, the current publicly-posted Privacy Policy identified on the UTPPlan website located at [www.UTPPlan.com](http://www.UTPPlan.com), or another website accessible by and made known to Vendor, shall apply to such Processing (as defined in the Data Processing Addendum). Vendor agrees to refer any individual whose Personal Data may be processed by Nasdaq to the Privacy Policy with respect to the individual’s rights with respect to such Processing by Nasdaq. Terms not otherwise defined in this Agreement shall be defined in the Data Processing Addendum.

Section 10.087. Governing Law. (a) This Agreement shall be deemed to have been made in New York, NY, United States of America, and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the law of the State of New York, without reference to principles of conflicts of laws thereof. Judicial proceedings for the review of any arbitration decision or proceeding (other than entry or enforcement of an arbitration award or decision) or of any other matter arising under the terms of this Agreement shall be brought solely in the federal or local courts of the State of New York. [NASDAQNasdaq](#) and Vendor hereby consent to submit to the jurisdiction of the courts of the State of New York in connection with any judicial action or proceeding instituted by [NASDAQNasdaq](#) or Vendor pursuant to the provisions of this Agreement.

(b) This Agreement and the Information provided

hereunder are subject to all applicable federal, state and local laws (including, without limitation, state laws regarding misappropriation of proprietary information) and governmental rules and regulations, including, without limitation, the Communications Act of 1934, the Exchange Act, and the Securities Act of 1933, as amended, the rules thereunder, as amended, and to the [NASDAQNasdaq](#) Rules in effect on the Effective Date. In addition, this Agreement and the Information provided hereunder are subject to [NASDAQNasdaq](#) Rules which are approved by the SEC after the Effective Date.

(c) This Section ~~10.0710.08~~ shall not limit either party from filing or pursuing applications, appeals, comments or other communications with the SEC and appealing or otherwise seeking relief in federal court from actions of, or failures to act by, the SEC. Neither this Section ~~10.0710.08~~ nor Section 10.05 shall be construed as affecting the application of the doctrine of exhaustion of administrative remedies.

Section 10.089. Receipt of Services by [NASDAQNasdaq](#). If Vendor’s Service is available to external Subscribers, Vendor agrees that during the term of this Agreement, and upon request by [NASDAQNasdaq](#), it will provide at no cost to [NASDAQNasdaq](#) two (2) subscriptions to the Service covered by this Agreement together with the equipment used to receive and to display or communicate the Service. [NASDAQNasdaq](#) represents and agrees that such subscriptions will be used solely for purposes of monitoring the Information and demonstrating Vendor’s Service.

Section 10.0109. Severability. If any of the provisions of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this 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 Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 10.101. Force Majeure. In addition to the provisions of Article VI, neither Vendor nor the [NASDAQNasdaq](#) Companies shall be liable for delay or failure in performance of any of the acts required by this Agreement when such delay or failure arises from circumstances beyond the control and without the gross negligence or willful misconduct of Vendor or the [NASDAQNasdaq](#) Companies, respectively. Such causes may include, without limitation, acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics,

earthquakes, fire, flood, quarantine restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions. The time for performance of any act delayed by such events may be postponed for a period equal to the delay. This Section ~~10.10~~10.11 shall not apply to the payment of money and shall not toll the accrual of interest.

Section 10.112. Survival. The provisions of Articles VI and VII, and Sections 4.03, 4.04, 4.08, 4.09, 4.10, 4.11, 5.04, 9.03,10.05, 10.06, and ~~10.07~~10.08 shall survive the completion of performance or any termination of this Agreement.

*Section 10.123. Authorization.* This Agreement shall not be binding upon [NASDAQNasdaq](#) unless executed by an authorized officer of [NASDAQNasdaq](#). Vendor and [NASDAQNasdaq](#), and the persons executing this Agreement on their behalf, represent that the persons executing this Agreement have been and are duly authorized by all necessary and appropriate corporate or other action to execute this Agreement on behalf of Vendor and [NASDAQNasdaq](#), respectively.

*Section 10.134. [NASDAQNasdaq](#) Member Vendors.* If Vendor is a member of [NASDAQNasdaq](#), then Vendor expressly acknowledges and agrees that: (i) this Agreement does not limit or reduce in any way Vendor's obligations and responsibilities as a member of [NASDAQNasdaq](#); (ii) this ~~Vendor~~ Agreement does not in any way alter the procedures or standards generally applicable to disciplinary or other actions taken by [NASDAQNasdaq](#) to enforce compliance with, or impose sanctions for violations of, the [NASDAQNasdaq](#)UTP Plan Requirements; and (iii) the nonpayment of amounts under this ~~Vendor~~ Agreement could result in the suspension or cancellation of Vendor's [NASDAQNasdaq](#) membership in accordance with the [NASDAQNasdaq](#)UTP Plan Requirements.

*Section 10.145. Effective Date.* The execution date of this Agreement shall be the date it is executed by an authorized officer of [NASDAQNasdaq](#) and this Agreement shall become effective upon such date ("Effective Date").

*Section 10.156 Notification.* All notices and other communications (except for invoices) required to be given in writing under the Agreement shall be directed to the signatories or, in the alternative, to the individuals identified in subsections (a) and (b) below and 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) if the notice is generally applicable to similarly situated Vendors of Information which are parties to effective Vendor Agreements for UTP Plan Services with [NASDAQNasdaq](#), upon posting the notice or other communication on [www.UTPPlan.com](#) or a successor site.

If an email address is provided, [NASDAQNasdaq](#) may, in lieu of the above, give notice to or communicate with Vendor by email addressed to the persons identified in subsection (a) or to such other email address or persons as Vendor shall hereafter specify by prior written notice. By providing an email address, Vendor agrees that any receipt received by [NASDAQNasdaq](#) from Vendor's service provider or internet computer server indicating that the email was received shall be deemed proof that Vendor received the message. If any portion of the messages or notices is not printable or readable, you must contact [NASDAQNasdaq](#). If individuals are not identified in subsection (a) below, then [NASDAQNasdaq](#) will, by default, provide notification to signatory.

(a) if to **Vendor**:

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

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

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

(b) If to **[NASDAQNasdaq](#)**:

Attn: ~~UTP Plan Administrator~~ orion Manager, Market Data Distribution  
The [NASDAQNasdaq](#) Stock Market LLC  
805 King Farm Boulevard  
Rockville, MD 20850  
Attn: Manager, Market Data Distribution  
Telephone #: (301) 978 - 53078080

With, in the event of notices of default or dispute, a

required copy to:

Attn: Office of General Counsel  
The [NASDAQNasdaq](#) Stock Market LLC  
805 King Farm Boulevard  
Rockville, MD 20850

*Section 10.167. Counterparts.* This 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 Agreement.

*Section 10.178. General.* The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the other number or genders where the context

so indicates or requires. The word "person" shall refer to any natural person, proprietorship, corporation, partnership, or other entity whatever. Unless otherwise expressly provided, references to days, months or years are to calendar days, months or years. A "business day" means any day other than: Saturday, Sunday, Good Friday, or a day which is a "market holiday" which is defined as a day appointed a federal holiday in the United States of America or determined to be a holiday per the [NASDAQNasdaqUTP Plan](#) Requirements. Section headings are included for convenience only and are not to be used to construe or interpret the Agreement. All references contained herein to sections or subsections shall refer to the sections or subsections of this Agreement, unless specific reference is made to the sections or subsections of another document.

If this Agreement will be applicable to Vendor's affiliates, list each relevant affiliate on the List of Affiliates Form (located at [http://www.utpplan.com/data\\_admin](http://www.utpplan.com/data_admin)). By submitting the List of Affiliates Form, Vendor agrees that the contact information set forth herein is the contact information for all each of Vendor's affiliates. **EACH OF VENDOR'S AFFILIATES SHALL BE CONSIDERED A VENDOR AND THE VENDORS SHALL BE JOINTLY AND SEVERALLY LIABLE.**

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY AN AUTHORIZED PERSON.

requirements

The [NASDAQNasdaq](#) Stock Market LLC

By: \_\_\_\_\_  
(SIGNATURE)

Name of Signatory: \_\_\_\_\_  
(PRINT NAME OF SIGNATORY)

Title: \_\_\_\_\_  
AUTHORIZED OFFICER

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