

# Non-Professional Agreement for Receipt of Canadian Market Data

This Agreement is between TSX Inc. and the Subscriber, as defined below to permit the undersigned Subscriber to receive Market Data on the terms and conditions set out in this Agreement.

## Subscriber Name

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## Subscriber Address

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Street Suite

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City State/Province

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Country Zip/Postal Code

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Email Address

## 1. Definitions

The following terms when used in this Agreement shall have the meanings set out below:

“**Agreement**” means this agreement together with any Schedule executed by the Subscriber made in connection with this agreement, such Schedule forming an integral part of this agreement.

“**CEG**” means the Canadian Exchange Group, an agency operated by TSX Inc. (TSX) on behalf of itself, and TSX Venture Exchange Inc. together with such other Persons as may become members of the Canadian Exchange Group from time to time, for whom TSX acts as agent. For the purposes of this Agreement, CEG shall refer to the members comprising the Canadian Exchange Group jointly and severally.

“**Interrogation Device**” means any device or equipment (i.e., computer, data processing equipment, communications equipment, monitor, terminal) that CEG has authorized to be in Receipt of Market Data from a Supplier and which, at any time, either (i) displays, transmits or communicates Market Data to any Person in visible, audible, or other comprehensible form or (ii) uses or processes Market Data for any purpose or in any manner which is different than described herein.

“**Market Data**” means any information provided through the facilities of TSX and/or CEG, directly or indirectly, relating to (i) securities or other financial instruments, markets, products or indices; (ii) information, data and services from Third Party Contributors; or (iii) other information and data; including without limitation, order data provided from TSX, CEG and Third Party Contributors.

“**Person**” means a natural person, proprietorship, or any corporation, partnership or organization.

“**Receipt of Market Data**” means the physical capability, whether used or not, of receiving Market Data through an Interrogation Device.

“**Schedule**” means a schedule executed by the Subscriber pursuant to this Agreement.

“**Subscriber**” means the Person who has executed this Agreement.

“**Supplier**” means a Person who has executed a distribution agreement with TSX and from whom the Subscriber is in Receipt of Market Data.

“**Third Party Contributor**” means any Person, other than the members of CEG, who provides any information to TSX for dissemination by TSX pursuant to the terms of this Agreement.

“**TSX**” means TSX Inc., a corporation continued pursuant to the laws of the Province of Ontario, Canada.

## 2. Non-Professional Definition

For the purposes of this Agreement, “Non-Professional” means any natural Person who is not a “securities professional”, in their personal capacity and not as a principal, officer, director, partner, employee or agent of any business or on behalf of any other Persons. A “securities professional” means any broker, dealer, investment advisor or Person, otherwise employed by an organization conducting professional activities involving the buying and selling of financial instruments, such as stocks, bonds, options, futures contracts or other trading vehicles. In addition, a Person shall not be considered Non-Professional if they are consultants, independent contractors, software developers or others that use Market Data for any purpose for profit other than the trading of a personal account. For greater certainty, a Non-Professional cannot be registered or qualified with:

- (a) a provincial securities commission;
- (b) the Securities Exchange Commission;
- (c) the Commodities Futures Trading Commission;
- (d) any provincial, state or other government securities agency;
- (e) any securities exchange or association; or
- (f) any commodities or futures contract market or association or perform functions that are the equivalent to those of such Persons.

### 3. **Subscriber's Representations And Warranties**

The Subscriber represents and warrants that it is a Non-Professional.

### 4. **Failure To Qualify**

- (a) **Determination.** The Subscriber understands that TSX may determine at any time that, for any of the following reasons, the Subscriber does not qualify as a Non-Professional subscriber:
  - (i) Supplier made an erroneous initial determination regarding the Subscriber's qualification;
  - (ii) Supplier discovered a misrepresentation herein;
  - (iii) the Subscriber failed to furnish all material information; or
  - (iv) the Subscriber failed to update information contained herein.

The Subscriber understands that following such a determination he/she may continue to receive Market Data only after entering into one or more appropriate agreements with TSX. TSX may deny the Subscriber the opportunity to enter into such agreement(s) if his/her failure to qualify results from wilful misrepresentations or omissions or from wilful breach of this Agreement.

- (b) **Retroactive Payment.** In the event that such a determination is based upon any of clauses (ii) through (iv) of section 4(a), TSX may notify the Subscriber in writing (i) of such determination, (ii) of the period, as determined by TSX, during which the Subscriber received Market Data but did not qualify as a Non-Professional Subscriber and (iii) of the amount, calculated at in accordance with the fees for professional Subscribers, applicable to such period. Within thirty (30) days of receipt of such notice, the Subscriber shall pay such amount to TSX.

### 5. **License for Use of and Proprietary Interest in Market Data**

- (a) During the term of this Agreement, TSX grants to the Subscriber a non-exclusive, non-transferable license to receive and use the Market Data transmitted to it and thereafter to use such Market Data in accordance with the terms of this Agreement.
- (b) The Subscriber acknowledges and agrees that TSX and/or CEG: (i) have copyright, *sui generis* and other proprietary rights in the Market Data that originates on or derives from markets regulated or operated by TSX and/or CEG and that such Market Data has been derived from databases owned by TSX and/or CEG; and (ii) compilation or other rights in Market Data gathered from other sources. As such the Subscriber's use of such Market Data is subject to the limitations set out herein. The Subscriber further acknowledges and agrees that the Third Party Contributors have proprietary rights in their respective Market Data. In the event of any misappropriation or misuse, TSX, CEG or the Third Party Contributors shall have the right to obtain injunctive relief for its respective materials.

### 6. **Data Security**

- (a) **Transmission Prohibited.** The Subscriber shall use the Market Data only for its individual use. The Subscriber shall not sell, lease, furnish, distribute or otherwise permit or provide access to the Market Data to any other Person without prior written approval from TSX. The Subscriber shall not present the Market Data in any unfair, misleading or discriminatory format.
- (b) **Equipment Security.** The Subscriber shall take reasonable security precautions to prevent unauthorized Persons from gaining access to the Market Data and the Interrogation Devices, including without limitation carefully locating and protecting all Interrogation Devices to ensure compliance with this Agreement. The Subscriber must ensure that any Person installing or maintaining the Subscriber's Interrogation Devices complies with all such security requirements.

### 7. **Data Not Guaranteed**

- (a) **Warranties/Disclaimer of Warranties.** TSX shall endeavour to offer the Market Data provided as promptly and accurately as reasonably practicable. In the event that the Market Data is not available as a result of a failure by TSX to perform its obligations under the Agreement, TSX will endeavour, giving due regard for the cost, time and effect on other users, to correct such failure. TSX expressly disclaims, and the Subscriber hereby expressly waives, all warranties, representations, conditions, covenants or undertakings, express or implied, including without limitation warranties or conditions of merchantability and fitness for a particular purpose, timeliness, truthfulness, sequence, completeness, accuracy and freedom from interruption.
- (b) **Limitation of Liability.**

- (i) TSX shall not be liable to the Subscriber or any other Person for any loss, damage, cost, expense or other liability or claim (including without limitation, loss of business profits, trading losses, loss of anticipated profits, business interruption, loss of business information or for indirect, special, punitive, consequential or incidental loss or damage or other pecuniary loss) of any nature arising from any use or inability to use the Market Data, howsoever caused, including by TSX's negligence or reckless or wilful acts or omissions, even if TSX is advised of such possibilities.
- (ii) TSX shall not be liable to the Subscriber or any other Person for the unavailability, interruption, delay, incompleteness or inaccuracy of the Market Data.
- (iii) If TSX is for any reason held liable to the Subscriber or to any other Person, whether in tort or contract, the cumulative liability of TSX to the Subscriber and any other Person claiming through or on behalf of the Subscriber is limited to the greater of:
  - (A) one (1) month fees paid by the Subscriber under this Agreement; and
  - (B) \$500.

#### 8. **CEG and Third Party Contributors Limitations of Liability**

- (a) **Disclaimer of Warranties.** CEG and the Third Party Contributors make no representations, conditions, warranties, covenants or undertakings, express or implied, including without limitation, warranties or conditions of merchantability and fitness for a particular purpose, timeliness, truthfulness, sequence, completeness, accuracy and freedom from interruption.
- (b) **Limitation of Liability.** CEG and the Third Party Contributors shall not be liable to the Subscriber or any Person for any loss, damage, cost, expense or other liability or claim, (including without limitation, loss of business profits, trading losses, loss of anticipated profits, business interruption, loss of business information or for indirect, special, punitive, consequential or incidental loss or damage or other pecuniary loss) of any nature arising from any use or inability to use the Market Data, howsoever caused, including by CEG's or the Third Party Contributors' negligence or reckless or wilful acts or omissions, even if CEG or the Third Party Contributor advised of such possibilities.

#### 9. **Dissemination, Discontinuance or Modification**

TSX is not obligated to continue to provide any type of Market Data in the present form or configuration or under the current specifications or requirements or to continue to use existing communications facilities. TSX, in its sole discretion, may from time to time make additions to, deletions from or modifications to the Market Data or manner of disseminating such Market Data.

#### 10. **Indemnification**

The Subscriber shall indemnify and hold harmless and defend TSX, CEG and/or Third Party Contributors, their directors, officers, employees and agents from and against any and all suits, claims, proceedings at law or in equity, and any and all liability, loss or damage, including reasonable solicitor's fees, arising out of or in connection with (i) any claim made by any Person in respect of or as a result of any non-compliance by the Subscriber with the terms and conditions of this Agreement; or (ii) any claim made by any Person arising out of or related to the Subscriber's receipt and use of the Market Data, whether authorized or unauthorized under this Agreement, including without limitation any claim in respect of delays in providing, any errors in or omissions from the Market Data, or the transmission and delivery thereof, or the termination of, or the failure to supply any of the Market Data to a Supplier.

#### 11. **Term, Termination and Use of Market Data Following Termination**

- (a) Either party may terminate this Agreement on thirty (30) days prior written notice.
  - (i) If any member of CEG or any Third Party Contributor ceases to provide trading information to TSX, this Agreement will immediately terminate in respect of such CEG Member or Third Party Contributor.
- (b) Upon termination of this Agreement the Subscriber shall cease using all Market Data.

#### 12. **Entire Agreement; Modifications**

This Agreement constitutes the entire agreement between the parties regarding this subject matter and supersedes each previous Agreement between the Subscriber and TSX. The Subscriber needs to submit only one Agreement in respect of Market Data even if the Subscriber is receiving Market Data from multiple Suppliers. Either party may only modify this Agreement by a document in writing signed by both parties, other than a Schedule which may be executed by the Subscriber.

#### 13. **Assignments**

The Subscriber shall not assign all or part of this Agreement without TSX's prior written consent.

#### 14. **Governing Law; Construction**

This Agreement shall be governed and interpreted by the laws of the Province of Ontario, Canada. In prohibiting the Subscriber in doing any act, this Agreement also prohibits the Subscriber from doing the act indirectly (e.g., by causing or permitting any other Person to do the act). Headings are provided for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**15. Notices; Notification of Changes**

TSX Inc.  
The Exchange Tower  
130 King Street West  
Toronto ON M5X 1J2  
Attention: TSX Markets

Each party shall notify one another in writing of any address change. The Subscriber shall promptly send TSX a written notice of any change in the information it provided pursuant to this Agreement and other information relating to the Receipt of Market Data.

**16. TSX Authority**

TSX represents that it has the authority to furnish the Market Data on the terms and conditions set out in this Agreement.

**17. Provisions to survive termination**

The Terms and sections 5(b), 7, 8, 10, 11, 14, 17 and 18 will survive the termination of this Agreement for any reason.

**18. Third Party**

The Subscriber acknowledges and agrees that the Third Party Contributors are an express third party beneficiary of this Agreement and the such Third Party Contributor may enforce any rights granted to it by this Agreement in its own name against the Subscriber.

**19. Contract in English language**

The parties agree that this Agreement be drawn up in English only but without prejudice to any such documents or instruments which may from time to time be drawn up in French only, or in both French and English. Les parties aux présent confirment leur volonté avec le présent contrat de même que tous autres documents s'y rapportant soient rédigés en anglais seulement, mais sans préjudice cependant à tous tels documents que pourront à l'occasion être rédigés en français ou à la fois en français et en anglais.

The parties have signed this Agreement effective as of: \_\_\_\_\_

**[Subscriber]**

**TSX Inc.**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_