

# Professional Agreement for Receipt of Canadian Market Data

This Agreement is between TSX Inc. (TSX) 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

\_\_\_\_\_  
Company Name

## Subscriber Address

\_\_\_\_\_  
Street

\_\_\_\_\_  
Suite

\_\_\_\_\_  
City

\_\_\_\_\_  
State/Province

\_\_\_\_\_  
Country

\_\_\_\_\_  
Zip/Postal Code

\_\_\_\_\_  
Email Address

## Billing Address (if different from above)

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
Suite

\_\_\_\_\_  
City

\_\_\_\_\_  
State/Province

\_\_\_\_\_  
Country

\_\_\_\_\_  
Zip/Postal Code

## Billing contact

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

## Name and Title of Individual Contact

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Email Address

## Supplier (Person delivering Market Data to The Subscriber)

\_\_\_\_\_

## 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 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. 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.

## 3. Fees

- (a) **Payment.** The Subscriber agrees to pay TSX the then effective charges as set out by TSX from time to time for the Receipt of Market Data, including all applicable interest, late fees or penalties. The Subscriber shall pay the charges invoiced for the Receipt of Market Data in the currency specified in TSX invoice in accordance with the terms and conditions set out in such invoice. The Subscriber shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on the Subscriber or TSX in connection with the Receipt of Market Data, other than income taxes imposed on TSX.
- (b) **Billing.** Unless otherwise notified by TSX, TSX will bill the Subscriber monthly for the Receipt of Market Data in accordance with the information provided to TSX by the Supplier. The Subscriber shall ensure that it is being billed correctly and shall pay the invoice promptly. Errors or omissions in the invoice, any errors, delays, or failure in sending or receiving invoices do not exempt the Subscriber from its payment obligations.
- (c) **Changes.** TSX may modify the fees charged in connection with the Receipt of Market Data. TSX shall provide the Subscriber with ninety (90) days prior written notice of any change to the fees charged in connection with the Receipt of Market Data.

## 4. Equipment and Data Security

- (a) **Transmission Prohibited.** The Subscriber shall use the Market Data only for its individual and/or internal business 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) **Control of Equipment.** The Subscriber shall ensure that only the Subscriber, its partners, officers, and employees have access to any and all Interrogation Devices and that no other Person may access these Interrogation Devices. The Subscriber shall not access Market Data through any means other than such Interrogation Devices.
- (c) **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.
- (d) **Displays Accessible to the General Public.** Notwithstanding sections 4(a) and 4(b) of the Agreement, the Subscriber may permit the general public to access its Interrogation Devices provided that (i) the Subscriber controls the premises and accesses to them; and (ii) the Subscriber notifies TSX in writing of such installation. The Subscriber may allow individuals passing by or visiting the premises to operate or view the Interrogation Devices occasionally and for limited periods of time.
- (e) **Inspection.** At any reasonable time on reasonable notice, the Subscriber shall allow authorized representatives of TSX to access its premises for the purpose of examining any and all Interrogation Devices used by the Subscriber, its partners, officers and employees.

## 5. 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.

## 6. 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.

## 7. 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.

## 8. 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.

**9. Term, Termination and Use of Market Data Following Termination**

- (a) Either party may terminate this Agreement on thirty (30) days prior written notice. In the event that the Subscriber terminates this Agreement, the termination shall be effective thirty (30) days following the date on which TSX receives the later of:
  - (i) the Subscriber's notice of termination; and
  - (ii) confirmation from the Supplier that it has received a notice of termination from the Subscriber and has adjusted its records accordingly.

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.

**10. 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.

**11. Assignments**

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

**12. 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.

**13. 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.

**14. TSX Authority**

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

**15. Provisions to survive termination**

The Terms and sections 2(b), 3, 5, 6, 8, 9, 15 and 16 will survive the termination of this Agreement for any reason.

**16. 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.

**17. 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 au 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 pouvant 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 \_\_\_\_\_