

## TRADING CONNECTION AGREEMENT

This Trading Connection Agreement (the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Alpha ATS L.P., 70 York Street, Suite 1501, Toronto, Ontario, M5J 1S9 ("Alpha ATS") and \_\_\_\_\_, \_\_\_\_\_ ("Connecting Party")

WHEREAS, Alpha ATS operates an alternative trading system for trading financial instruments listed for trading in Canada;

AND WHEREAS the Sponsoring Dealer has provided the Connecting Party with DMA Access;

AND WHEREAS, the Connecting Party desires to connect to Alpha ATS;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agrees as follows:

### 1. DEFINITIONS.

- a. "Affiliate" shall mean a corporation, partnership or venture more than fifty percent (50%) (or, if lesser, the maximum allowable by local law) of whose voting stock or ownership interest is owned directly or indirectly by a party to this Agreement.
- b. "Alpha Trading Data" shall mean the (i) pre-trade order data entered on the Alpha Trading System; and (ii) post trade transaction data pertaining to all trading related activity on Alpha ATS; each as it specifically relates to the Connecting Party. For greater certainty, Alpha Trading Data does not include pre-trade order data of the Connecting Party whether or not such data related to Alpha Trading Data.
- c. "Alpha Trading System" shall mean the electronic trading system operated by Alpha ATS to provide trading related services to subscribers and clients of Sponsoring Dealers to whom such Sponsoring Dealer has provided DMA Access.
- d. "Confidential Information" shall mean information, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing about the disclosing party's (or any of its clients') business or business related activities that is proprietary and confidential, which will include all business, financial and technical and other information including:
  - i. information expressly marked or disclosed or implicitly disclosed as confidential or proprietary, including, without limitation, all forms and types of financial, business, scientific, technical, economic, competitively sensitive or engineering information including, but not limited to, patterns, plans, compilations, program devices, discoveries, ideas, concept, know-how, techniques, formulas, blueprints, designs, prototypes, methods, processes, procedures, codes, unpatented inventions, marketing plans, financial plans, business plans, or names of customers or suppliers or Intellectual Property;
  - ii. all proprietary software programs, and proprietary computer software designs and architecture, in whatever form, regardless of whether marked or designated as confidential or proprietary;
  - iii. information commonly recognized as proprietary trade secrets; and
  - iv. all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing.

Confidential Information shall not include any information that the receiving party can show:

- i. was in receiving party's possession free of any obligation of confidence prior to receipt from the disclosing party;
  - ii. is independently developed by the receiving party without access to or unauthorized use or disclosure of Confidential Information;
  - iii. is in the public domain or becomes generally available to the public through no breach of this Agreement by the receiving party; or
  - iv. is received by the receiving party independently from a third party which, to the best of the receiving party's knowledge, is free to disclose such information to the receiving party.
- e. "DMA Access" shall mean access to the Alpha Trading System facilitated by a Sponsoring Dealer on behalf of a client of that Sponsoring Dealer in accordance with Alpha ATS policies and procedures and requirements under applicable statutes, regulations or rules of governmental authorities or regulatory entities.
  - f. "Effective Date" shall mean the date of this agreement as set out in the preamble above.
  - g. "Force Majeure" shall mean any act of God, weather conditions, accident, fire, lockout, strike or other labor dispute, act of public enemy, war, riot or civil commotion, law, regulation, rule, order or any other act of any government, including any agency, branch, department, ministry, division or level thereof, acting in its sovereign capacity, or any other cause beyond the reasonable control of a party.

- h. "Intellectual Property" shall mean all intellectual, moral, industrial or proprietary rights recognized under applicable law anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyrights, patents, trademarks and service marks, and rights in trade secrets, and all of the tangible embodiments thereof.
- i. "Regulatory Organization" shall have the meaning set out in Section 2.d. of this Agreement.
- j. "Sponsoring Dealer" shall mean the entity that is a subscriber of Alpha ATS who has entered into an agreement providing the Connecting Party with DMA Access to the Alpha Trading System.
- k. "Term" shall mean a period commencing on the Effective Date of this Agreement and extending until terminated as provided for in this Agreement.

## 2. CONNECTION TO ALPHA TRADING SYSTEM.

- a. Network Connection. The parties hereby agree that during the Term of this Agreement, Alpha ATS shall allow the Connecting Party to access the Alpha Trading System to allow the Connecting Party to enter, amend and cancel pre-trade order related data in accordance with and subject to the terms of this Agreement (including all Schedules hereto which are incorporated as a part of this Agreement by reference) and its agreement with the applicable Sponsoring Dealer providing DMA Access. For greater certainty, this agreement does not grant the Connecting Party: (i) a license or comparable right to utilize the Alpha Trading System software, (ii) a right to utilize receive or utilize Alpha ATS marketplace data (subject to the provisions of Section 3 of this Agreement); or (iii) a right to technology services offered by Alpha ATS or Alpha Trading Systems Limited Partnership. Marketplace data and technology services may be secured through Alpha Trading Systems Limited Partnership under separate agreements.
- b. Authorized Users. The Connecting Party has supplied Alpha ATS with all the information requested in Exhibit A hereto and confirms that such information is complete and accurate. The Connecting Party agrees to provide such further documents and information as may be requested by Alpha ATS from time to time concerning the Connecting Party and its use of the Alpha Trading System in connection with applicable regulatory obligations or requirements imposed on Alpha ATS by an applicable regulatory authority with jurisdiction over Alpha ATS or any trading activity relating to or occurring on the Alpha Trading System or at the request of such applicable regulatory authority or as Alpha may reasonably require in connection with this Agreement.
- c. Suspension of Access. The Connecting Party acknowledges that Alpha ATS may, in its sole and absolute discretion, suspend access to the Alpha Trading System by the Connecting Party or the Sponsoring Dealer for any period of time as Alpha ATS believes is advisable. Alpha ATS shall, where practical, provide the Connecting Party and the Sponsoring Dealer with prior written notification of such a suspension. Where the provision of prior written notice is impractical, Alpha ATS shall promptly notify the Connecting Party and Sponsoring Dealer that access has been suspended. In each case the notification shall advise of the reasons for such suspension.
- d. System Suspension or Termination. Alpha ATS may, in its sole and absolute discretion, suspend or terminate the operation of the Alpha Trading System in the event of (i) any failures, malfunctions, faults or errors within the Alpha Trading System, (ii) any external events or circumstances affecting the use of the Alpha Trading System which are material to its integrity, capacity or security or (iii) a request or requirement by any government, regulatory authority or applicable self-regulatory organization or self-regulating entity with authority over Alpha ATS or trading activity conducted on Alpha Trading System ("Regulatory Organization"). Alpha ATS shall give advance notice to the Connecting Party and Sponsoring Dealer of any such suspension or termination where reasonably practicable, and in each case, shall provide prompt notice to the Connecting Party and Sponsoring Dealer after such termination or suspension is imposed.
- e. Maintenance of System Connectivity. The Connecting Party is responsible for providing and maintaining all necessary electronic communications with Alpha ATS and connectivity to the Alpha Trading System, including, wiring, computer hardware, software, communication line access, and external networking devices.
- f. Technical failure or security breach. The Connecting Party shall cease use of the Alpha Trading System as soon as practicable upon notification by Alpha ATS or the Sponsoring Dealer, or it otherwise becomes aware of or suspects, a technical failure or security breach of the Alpha Trading System and shall immediately notify the Sponsoring Dealer of such failure or breach.
- g. Confirmation of Sponsoring Dealer. As a condition to connection to the Alpha Trading System, the Connecting Party shall provide Alpha with a confirmation executed by the Sponsoring Dealer substantially in the form attached as Exhibit B.
- h. Fees. The Connecting Party shall not be subject to the payment of fees for the services provided by Alpha ATS explicitly described in this Agreement.

## 3. TRADING DATA.

- a. Access to data. Alpha Trading Data may only be obtained through Alpha ATS either directly or through the Sponsoring Dealer or the services of the information processors and/or information vendors with connectivity to Alpha ATS. The Connecting Party agrees that receipt and use of Alpha Trading Data shall be subject to the terms and conditions set out in

this Section of this Agreement and all other agreements pertaining to Alpha Trading Data between the Sponsoring Dealer and Alpha ATS.

- b. Use of Alpha ATS Trading Data. The Connecting Party shall be permitted to use the Alpha ATS Trading Data for internal trading activity purposes only. The Connecting Party shall not retransmit, disseminate, sell, lease, license, distribute, publish, broadcast, circulate or commercially exploit Alpha Trading Data or assign their rights in relation to such Alpha Trading Data without Alpha ATS's express prior written consent. All Alpha Trading Data is protected by copyright and Alpha ATS reserves all Intellectual Property rights therein.
- c. No warranties. Neither Alpha ATS nor any partner, associate, related party or Affiliate makes any warranty, representation or guarantee as to the sequence, accuracy, completeness or timeliness of Alpha Trading Data. Without limiting the foregoing, all express or implied, direct or indirect, representations, warranties and conditions in respect of Alpha Trading Data arising or implied by statute, common law, custom, usage of trade, course of performance, course of dealing or otherwise, including but not limited to any representations or warranties or conditions of merchantable quality and/or fitness for a particular purpose, are expressly excluded.

#### 4. CONFIDENTIALITY.

- a. Use and Disclosure of Confidential Information. Where a party to this Agreement obtains access to the other party's Confidential Information (the receiving party being referred to herein as the "recipient"), the recipient agrees:
  - (i) to protect such Confidential Information from disclosure to others, using the same degree of care used to protect recipient's Confidential Information, but in any case using no less than a reasonable degree of care, provided that a recipient may disclose Confidential Information received hereunder to its employees and independent contractors, and its Affiliates' employees and independent contractors, and who in any event have a need to know for the purposes of this Agreement and who are bound in writing prior to disclosure to protect the received Confidential Information from unauthorized use and disclosure, and Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the discloser;
  - (ii) to use such Confidential Information only for the purposes of this Agreement or as otherwise expressly permitted by this Agreement; and
  - (iii) except as otherwise specified by the discloser in writing, to make only such number of copies of Confidential Information as is reasonably required in connection with the recipient's permitted use under this Agreement and to reproduce and maintain on any such copies such proprietary legends or notices (whether of the discloser or a third party) as are contained in or on the original or as the discloser may otherwise reasonably request.
- b. Disclosure Pursuant to Legal Requirement. The recipient will notify the discloser in writing as far in advance as commercially practicable before making any disclosure of discloser's Confidential Information required by law, regulation or court order, and shall further reasonably cooperate in any efforts of the discloser to seek a protective order or other appropriate remedy from the proper authority. In any event, the recipient will furnish only that portion of the Confidential Information which is legally required and will use all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the disclosed Confidential Information.
- c. Remedies for Breach of Confidentiality Obligations. The parties acknowledge that their respective Confidential Information is unique and valuable, and that breach by either party of the obligations of this Agreement regarding such Confidential Information will result in irreparable injury to the affected party for which monetary damages alone may not be an adequate remedy. Therefore, the parties agree that in the event of a breach or threatened breach of such provisions, the affected party shall be entitled to seek injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
- d. Return of Confidential Information. All Confidential Information shall be and remain the property of the discloser. Except as otherwise expressly provided in this Agreement, all copies of Confidential Information, regardless of form, shall, at the discretion of the recipient, either be destroyed or returned to the discloser promptly upon the earlier of: (i) the discloser's written request, or (ii) termination or expiration of this Agreement, and in any of such events and to the applicable extent shall not thereafter be retained in any form by recipient.

#### 5. LIMITATION OF LIABILITY AND INDEMNITIES.

- a. Limitation of Liability. Except for the obligation to defend, indemnify, or hold harmless expressly assumed by a party under this Agreement in connection with a claim asserted by any third party, neither party, nor any of their respective affiliates, directors, officers, employees, or agents shall be liable to the other party hereunder (whether in contract, tort, negligence, strict liability in tort or by statute or otherwise) in an amount exceeding, in the aggregate, the sum of fifty-thousand dollars (\$50,000).

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS SHALL BE LIABLE FOR ANY

SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING LOST OR ANTICIPATED PROFITS, BASED ON ANY BREACH OR OTHER ACT OR OMISSION ARISING OUT OF, RELATING TO, OR OCCURRING IN CONNECTION WITH, THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER THE LIABILITY ARISES OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY. THESE LIMITATIONS SHALL IN ALL CASES BE DEEMED INDEPENDENT OF EACH AND EVERY REMEDY PROVIDED IN THIS AGREEMENT AND ARE INTENDED BY THE PARTIES TO SURVIVE AND TO BE ENFORCEABLE EVEN IF THE AVAILABLE REMEDIES DO NOT PROVIDE ADEQUATE COMPENSATION, FAIL OF THEIR ESSENTIAL PURPOSE, OR ARE DETERMINED TO BE UNCONSCIONABLE. HOWEVER, NONE OF THESE LIMITATIONS SHALL APPLY TO ANY OBLIGATION TO DEFEND, INDEMNIFY, OR HOLD HARMLESS EXPRESSLY ASSUMED BY A PARTY UNDER THIS AGREEMENT IN CONNECTION WITH A CLAIM ASSERTED BY ANY THIRD PARTY.

- b. Connecting Party Indemnity. Connecting Party agrees to indemnify and hold harmless, subject to the limitations herein set forth, any losses, damages or expenses incurred by the Alpha ATS arising from any breach by Connecting Party of its obligations set out in Section 2 or 4 of this Agreement (referred to in this subsection as a "Claim") unless such Claim is the direct result of the gross negligence or willful bad faith of Alpha ATS. Alpha ATS agrees that Connecting Party shall be relieved of the foregoing obligations unless the Alpha ATS notifies Connecting Party promptly, in writing of such Claim and gives Connecting Party authority to defend and settle such proceeding as contemplated herein, and, at the Connecting Party's expense, as applicable, gives Connecting Party proper and full information and assistance to settle and/or defend any such Claim, however such relief shall only apply to the extent that such failure or delay to provide such notice compromises Connecting Party's ability to defend such Claim or causes Connecting Party additional expense. Connecting Party shall not be liable for any costs or expenses incurred without its prior written authorization unless the Alpha ATS reasonable believed that the incurrence of such expense without consent was necessary to preserve its rights or the rights of Connecting Party.
- c. Alpha Systems Indemnity. Alpha ATS agrees to indemnify and hold harmless, subject to the limitations herein set forth, any losses, damages or expenses incurred by Connecting Party arising from: (i) any claim, suit or proceeding commenced by a third party alleging that there has been an infringement of any third party's Intellectual Property rights resulting from the execution of this Agreement or Connecting Party's access to the Alpha Trading System or use of the Alpha Trading Data; or (ii) Alpha ATS's breach of its obligations set out in Section 4 of this Agreement (collectively referred to in this subsection as a "Claim") unless such Claim is the direct result of the gross negligence or willful bad faith of Connecting Party. Connecting Party agrees that Alpha ATS shall be relieved of the foregoing obligations unless Connecting Party notifies Alpha ATS promptly, in writing of such Claim and gives Alpha ATS authority to defend and settle such proceeding as contemplated herein, and, at Connecting Party's expense, as applicable, gives Connecting Party proper and full information and assistance to settle and/or defend any such Claim, however such relief shall only apply to the extent that such failure or delay to provide such notice compromises the Alpha ATS's ability to defend such Claim or causes the Alpha ATS additional expense. Alpha ATS shall not be liable for any costs or expenses incurred without its prior written authorization unless Connecting Party reasonable believed that the incurrence of such expense without consent was necessary to preserve its rights or the rights of the Alpha ATS. Claims resulting from the modification of the Alpha Trading Data by Connecting Party or any third party acting on the direction of or for the benefit of Connecting Party or the use or combination of the Alpha Trading Data with any data or products of any other person (including any entity), other than Alpha ATS or its Affiliates, are not Claims and therefore are excluded from this indemnity. In the event of any Claim, Alpha ATS may at its sole option and discretion (i) obtain a license to enable Alpha ATS to continue to use the System as contemplated hereunder, (ii) replace or modify the subject matter of the Claim to make it non-infringing, or (iii) immediately terminate this Agreement by notice to the Connecting Party.

**6. TRADEMARKS.** All copyrights, trademarks, trade names and other Intellectual Property rights of each party are and will remain the exclusive property of such party. Neither party will acquire any right to the Intellectual Property rights of the other party accept as specifically set out herein.

## **7. MISCELLANEOUS**

- a. Assignment. The respective rights and obligations provided in this Agreement shall bind and inure to the benefit of the parties, their legal representatives, successors and permitted assigns. Neither party will be entitled to assign their rights hereunder without the prior written consent of the other party, however each party shall be entitled to assign its rights and obligations hereunder without such consent to that a party that controls the assigning party, is controlled by the assigning party or shares a common controlling entity with the assigning party by providing prior written notice of such assignment.

- b. Notices. Notices required or permitted to be made under this Agreement shall be in writing, and absent alternative provisions to the contrary with regard to a specific provision of this Agreement, shall be addressed as follows:

If to Connecting Party:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Alpha Systems:

Alpha Trading Systems Limited Partnership  
70 York Street, Suite 1501  
Toronto, ON M5J 1S9  
Attention: Head of Legal  
Fax: 416-642-2120  
E-mail: michael.brady@alphatradingsystems.ca

or such other address as each party may designate in writing to the other party for this purpose. Such notice shall be deemed to have been duly given and received: (i) on the day of delivery if hand delivered or delivered by overnight courier; (ii) on the fifth (5th) day after the date sent if sent by prepaid, certified mail; (iii) on the calendar day following the date of transmission if sent by facsimile; or (iv) upon receipt if sent electronically.

- c. Termination. Subject to other specific provisions herein, either party shall be entitled to terminate this Agreement by providing the other party with not less than fifteen (15) business days notice, in writing.
- d. Entire Agreement. All exhibits attached to this Agreement are hereby incorporated herein and made a part of this Agreement. This Agreement, including exhibits, constitutes the entire understanding of the parties, and supersedes all prior or contemporaneous written and oral agreements, representations or negotiations, with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing.
- e. Force Majeure. Either party's time of performance will be extended to the extent reasonably necessary in the event of Force Majeure preventing a party's performance under this Agreement, provided that (i) the non-performing party promptly notified the other party of the Force Majeure condition; and (ii) such delay or failure to perform could not have been prevented or mitigated through the use of reasonable precautions or efforts by the non-performing party.
- f. Waiver, Amendment or Modification. Any waiver, amendment or modification to this Agreement shall not be effective unless made via Notices compliant in all respects with Section 14 (Notices) in which such intent to waive, amend or modify is expressly stated by the waiving party in the case of a waiver, and both parties in the case of an amendment or modification. The failure or delay of either party in exercising any right under this Agreement shall not constitute a waiver.
- g. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to its conflict-of-laws provisions.
- h. Headings. The headings in this Agreement are for convenience only and shall not affect in any way the meaning of any provisions of this Agreement.
- i. Severability. The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and this Agreement shall be construed and performed in all respects as if such invalid or unenforceable provisions were omitted to the extent of such invalidity or unenforceability. Any invalid or unenforceable provisions shall be replaced by mutually-acceptable valid and enforceable provisions that most closely reflect the intention of the parties underlying the invalid or unenforceable provisions.
- j. Counterparts. This Agreement may be signed and accepted in counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.
- k. Construction. As used in this Agreement, neutral pronouns and any variations thereof shall be deemed to include the feminine and masculine and all terms used in the singular shall be deemed to include the plural, and vice versa, as the context may require. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including the attachments hereto, as the same may from time to time be amended or supplemented and not to any subdivision contained in this Agreement. The word "including" when used herein is not intended to be exclusive and means "including, without limiting the generality of the foregoing." References herein to articles, sections, exhibits or appendices shall refer to the appropriate article, section, exhibit or appendix in or to this Agreement.
- l. Survival of Termination. The provisions contained in Sections 3, 4, 5, and 7(d-l) shall survive the termination of this Agreement.

Subject to the terms and conditions set forth herein below, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date(s) shown below.

**Alpha ATS L.P.**

\_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



**EXHIBIT A  
INFORMATION FORM**

<b>CONNECTING PARTY</b>			
Full Corporate Name			
Head Office Address:		Business Continuity Address	
Telephone	Fax	Website	
Connectivity Provider(s)	Algorithmic Trading <input type="checkbox"/> YES <input type="checkbox"/> NO	Program Trading <input type="checkbox"/> YES <input type="checkbox"/> NO	
Independent Software Vendor (if more than 1, please provide list)		Data Vendor (if more than 1, please provide list)	
<b>CONNECTING PARTY REPRESENTATIVE</b> (appointed Senior Officer, Director or Partner)		<b>CONNECTING PARTY TECHNICAL CONTACT</b>	
Name and Title		Name and Title	
E-mail	Phone	E-mail	Phone
<b>FACILITATING SPONSORING DEALER</b>			
Full Corporate Name			
Principal Business		Primary Contact	
Primary Contact E-mail		Primary Contact Phone	

EXHIBIT B  
ACKNOWLEDGEMENT OF SPONSORING DEALER

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TO: ALPHA ATS L.P.

\_\_\_\_\_ (the "Sponsoring Dealer") hereby acknowledges that all material required actions applicable to the Sponsoring Dealer pursuant to applicable securities laws and applicable requirements of securities regulatory authorities and as contained in the Subscriber Agreement between the Sponsoring Dealer and Alpha ATS have been taken by the Sponsoring Dealer to provide \_\_\_\_\_ (the "Connecting Party") with sponsored direct market access to Alpha ATS L.P.'s trading system.

Signature \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_