



## DATA DISTRIBUTION AGREEMENT

This agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by and between:

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| <p><b>Alpha Trading Systems Limited Partnership</b><br/>70 York Street, Suite 1501<br/>Toronto, Ontario M5J 1S9<br/><b>(Called "Alpha")</b></p> |
|---|

-AND-

|   |
|---|
| <p>Full Corporate Name</p>                    |
| <p>Head Office Address</p>                    |
| <p><b>(Called the "Data Distributor")</b></p> |



## Alpha Trading Systems Limited Partnership

### DATA DISTRIBUTION AGREEMENT (the "Agreement")

#### 1. PROVISION OF DATA

(a) Access to Data. Alpha shall provide the Data Distributor with access to the data feeds specified in the Order Form (attached as **Schedule 2**) provided through the facilities of Alpha (the "**Feeds**"), if any. The number and type of Feeds to be provided will be as set out in Schedule 2. Each Feed hereunder will entitle the Data Distributor to a single access to Alpha Data (as that term is defined herein), provided by Alpha, utilizing a unique identification number. For greater certainty, access to Alpha Data provided by a third-party data distributor is not considered a Feed.

(b) License for Use of Data. During the term of this Agreement Alpha grants to the Data Distributor and Data Distributor's Group (as defined herein) a worldwide, non-exclusive, non-transferable license to receive and use the Alpha data (the "**Alpha Data**") and thereafter to use the Alpha Data only in accordance with the specific terms of this Agreement. For the purposes of this Agreement an entity will be deemed to be within the "**Data Distributor's Group**" where:

(i) it directly or indirectly Controls, is Controlled by, or is under common control with Data Distributor; OR

(ii) it is a successor (including without limitation, by change of name, dissolution, merger, consolidation, reorganization, sale or other disposition) to the Data Distributor or its business and assets;

(iii) as a material element of its business, it distributes trading data; AND

(iv) shall not be involved in the Control or day-to-day operations of an exchange, alternative trading system or comparable type of business.

For all purposes under this Agreement "**Control**" means the power to direct or cause the direction of the management of policies of another entity, whether through ownership of voting securities, by contract, or otherwise. The Data Distributor will be liable for the compliance of the Data Distributor's Group members with the terms of this Agreement. Except as specifically set out herein, the members of the Data Distributor's Group will have the same rights and be subject to the same requirements and restrictions as the Data Distributor.

(c) Ownership of Alpha Data. The Data Distributor acknowledges that Alpha has proprietary rights and copyright over Alpha Data regardless of whether that data originated with Alpha or was derived by Alpha from information gathered from other sources and regardless of whether the Alpha Data was provided by Alpha directly through a Feed or by a third-party data distributor, and that the Data Distributor's rights in relation to the Alpha Data shall be limited to those specifically set out in this Agreement. The Data Distributor further acknowledges that its use of such Alpha Data is subject to all limitations set out herein.

(d) Continuation of Alpha Data Dissemination. The Data Distributor acknowledges that nothing in this Agreement constitutes an obligation on Alpha to continue to provide the Feeds and/or make the Alpha Data available in its present form or configuration or to continue to utilize existing communication facilities. Alpha shall give the Data Distributor such prior notice of any material change to the Feeds or the Alpha Data as Alpha determines is commercially reasonable in the circumstances, which shall not be less than 60 days, unless circumstances are such that, in Alpha's sole and absolute discretion, they necessitate an immediate implementation of such changes which would, preclude the provision of such notice. The Data Distributor shall be solely responsible for making any modifications to its service resulting from any change.

(e) Data Not Guaranteed. The Data Distributor agrees that Alpha makes no representation or warranty, either express or implied, with respect to the Feeds or the Alpha Data, or the Alpha Data's provision, timeliness, accuracy or completeness, including, but not limited to, implied warranties or conditions of merchantability, quality or fitness for a specific purpose and those arising by stature or otherwise by law. Alpha will not be liable in any way to the Data Distributor, or any other person, for any inaccuracy, omission, error or delay in any Alpha Data or delivery of such Alpha Data or other information or messages or any loss or damage arising from any such inaccuracy, omission, error or delay in any Alpha Data. Notwithstanding the foregoing Alpha shall use commercially reasonable best efforts to: (i) ensure that the Alpha Data is accurate and complete and will take and (ii) notify the Data Distributor of any material errors to the Alpha Data.

(f) Authorized Use of Data. As an element of the services provided pursuant to this Agreement, the Data Distributor is authorized, for legitimate business

purposes, to access, store, process, retransmit by any means and in any format and use the Alpha Data to facilitate distribution of such Alpha Data to: (i) persons receiving the Alpha Data from the Data Distributor for their own individual or internal purposes (“**Client**”); (ii) agents, employees, officers, directors and/or partners of the Data Distributor or a member of the Data Distributor’s Group receiving the Alpha Data for their internal purposes (“**Internal User**”); and (iii) persons receiving the Alpha Data from the Data Distributor for the purpose of Redistributing the Alpha Data to third parties (“**Redistributor**”). Each Client and Redistributor must comply with their obligations as set out in Part 2 prior to receiving Alpha Data. Any use of Alpha Data other than as prescribed in this Agreement is prohibited.

- (g) Derived Information. The Data Distributor, and its Clients and Internal Users are entitled to use the Alpha Data to create or derive information or data (including, without limitation, indices or weighted average prices) where such data or information is such that any element of the underlying Alpha Data can not be extracted (“**Derived Information**”).
- (h) Delayed Data. The Data Distributor shall be entitled to retain, store and utilize the Alpha Data for its internal business purposes. Subject to the specific provisions of this Agreement, the Data Distributor shall not be entitled to distribute Alpha Delayed Data (as defined herein) to any persons. Notwithstanding the above, the Data Distributor will be entitled to provide Clients, Internal Users and Redistributors with Alpha Data which would otherwise be considered to be Alpha Delayed Data where such data is being provided to facilitate the delivery of Alpha Data where, due to technical failures on the part of any party, the intended recipient was unable to receive such Alpha Data in a timely manner.
- (i) Adverse Alteration of Alpha Data. The Data Distributor agrees not to alter the Alpha Data in any manner that adversely affects its accuracy or integrity or renders it misleading.
- (j) Restrictions on Transmission of Alpha Data. Neither the Data Distributor nor any Data Distributor Group member shall, by any means, transmit Alpha Data to any person unless that person is a Client, an Internal User, a Redistributor or a Data Distributor’s Group member.
- (k) Data Distributor System Security. The Data Distributor is responsible for ensuring that all of its systems, including hardware and software systems, will, to the extent reasonably possible, prevent any person other than a Client, an Internal User, or a Redistributor (or a Client or Redistributor’s directors, officers, employees and/or agents) from accessing the Alpha Data. If Alpha determines, in its sole and absolute discretion, that one or more persons have gained unauthorized access to Alpha Data through the Data Distributor’s systems, the Data Distributor shall take such steps necessary to change its systems to preclude such unauthorized access and provide Alpha with such evidence, as Alpha may reasonably request, of such steps. If the Data Distributor has a reasonable belief that an unauthorized person has gained access to Alpha Data, it shall use its commercially reasonable best efforts to ascertain the source and manner of access and shall promptly provide a written report in respect of such suspected unauthorized access to Alpha. The

Data Distributor shall cooperate with any investigation undertaken by Alpha in relation to any matter regarding unauthorized access to Alpha Data and acknowledges that Alpha is entitled to take any actions Alpha deems necessary in relation to unauthorized persons and the Data Distributor shall take all reasonable action to cooperate with and assist Alpha in relation to such an action.

- (l) Onsite Reviews. Alpha shall be entitled, at its discretion, but subject to the provisions of this Section, not more than one time per year, upon the provision of not less than 30 days advance written notice, to conduct (or arrange for an agent to conduct) reviews or audits of the Data Distributor’s records and/or facilities, and/or the records and/or facilities of a member of the Data Distributor’s Group in relation to the Data Distributor’s or member of the Data Distributor’s Group’s compliance with the terms set out in Part 1 of this Agreement, at Alpha’s expense. In addition, Alpha shall be entitled to conduct additional reviews upon Alpha becoming aware of potential material breaches of any of the provisions within Part 1 of this Agreement, upon providing not less than 2 business days prior notice. The scope of such review shall be limited to the Data Distributor use and distribution of the Alpha Data pursuant to this Agreement. All information obtained by Alpha through such onsite reviews shall be considered to be Confidential Information hereunder and held in the strictest confidence.
- (m) Terminating Transmission. If Alpha has a reasonable belief that a Client, an Internal User or Redistributor has misused the Alpha Data or breached the terms of this Agreement or their Data Use Agreement; or a Redistributor ceases to be approved by Alpha; the Data Distributor shall cease to retransmit Alpha Data to any such Client, Internal User or Redistributor immediately upon receipt of Alpha’s instructions to do so.

## 2. CLIENT/REDISTRIBUTOR REQUIREMENTS

- (a) Definitions. “**Top of Book Data**” shall mean the Alpha Data which, at any point of time, for each security tradable on Alpha ATS L.P.: (i) the best bid and best ask prices on Alpha ATS L.P.; (ii) Alpha ATS L.P. order volumes at the best bid price and the best ask price aggregated by price; and (iii) public information relating to trades executed on Alpha ATS L.P. “**Alpha Delayed Data**” shall mean Alpha Data distributed or transmitted 10 or more minutes after the Data Distributor receives such data from Alpha and all reports and information developed utilizing such data provided that such reports and information derived utilizing the Alpha Delayed Data that are not Derived Information. “**Alpha Real-Time Data**” shall mean all Alpha Data except Alpha Delayed Data. For greater certainty, Alpha Data shall include Top of Book Data, Alpha Delayed Data and Alpha Real-Time Data but does not include Derived Information.
- (b) Distribution of Alpha Data. The Data Distributor will be entitled to retransmit, in the form provided by Alpha, a third-party data distributor or in such other form as the Data Distributor may wish to provide, Alpha Data, to (i) any Clients which have executed and provided the Data Distributor or a member of the Data Distributor’s Group an executed version of a data use agreement that includes terms substantially

similar to those attached hereto as **Schedule 3** (the agreement adopted by the Data Distributor will be referred to herein as the "**Data Use Agreement**"); (ii) Redistributors, in compliance with Section 2(c) below; (iii) to Internal Users; and (iv) to any other persons through means of radio, newspaper and other print media or by television or internet where Alpha Data is utilized to provide streaming quotes or support a news report ("**Media Services**") as long as: (x) the person viewing such Media Services is precluded from making specific information inquiries; (y) the distribution through such Media Services can not be considered to be a substitute for a subscription to Alpha Data; and (z) that the data is attributed as being Alpha Data. In relation to each Client, the Data Distributor shall maintain a copy of the Data Use Agreement executed by the Client which shall promptly be made available to Alpha upon Alpha's written request.

- (c) **Redistributor Data Distribution Agreement.** The Data Distributor shall be entitled to retransmit the Alpha Data, either in the form provided by Alpha or in such other form the Data Distributor may elect to provide, in accordance with the terms of this Agreement, to all Redistributors which have been authorized to act as a Redistributor by Alpha. The Data Distributor or a member of Data Distributor's Group must obtain written confirmation from Alpha that the potential Redistributor has been authorized to act as such prior to providing Alpha Data. Where the Data Distributor has requested confirmation of the Status of a potential Redistributor Alpha shall promptly respond to such a request for confirmation, in writing.
- (d) **Public Displays.** Notwithstanding the provisions of Section 2(b), the Data Distributor may permit persons who are not otherwise authorized under this Agreement to access Alpha Data and Derived Information without fee hereunder where: (i) the Data Distributor controls the premises and access to the premises; and (ii) the Data Distributor allows such persons to operate or view the Receiving Devices, for the purposes of viewing the Alpha Data, occasionally and for a limited period of time. For the purpose of this section, Receiving Devices shall include, but shall not be limited to, wallboard displays and displays providing scrolling quotations. Individuals accessing the Alpha Data utilizing such Receiving Devices shall not be required to comply with the provisions related to User IDs set out in Section 5(a) of this Agreement. Public displays other than those described above in this section shall be subject to fees and reporting as provided in Sections 5(a) and 5(d).
- (e) **Derived Information.** The Internal User or Client creating Derived Information shall be entitled to use such Derived Information for internal purposes without charge and without any obligation to report such use. Where the Derived Information has been created using only Top of Book Data, the Data Distributor shall be entitled to distribute such information to any person without fee or obligation to report such distribution.

### 3. DATA DISTRIBUTOR REPRESENTATIONS AND COVENANTS

- (a) **Provision of Information.** The Data Distributor agrees to provide such further documents and information as

may be requested by Alpha, from time to time, concerning the Data Distributor, its Internal Users and its Clients, Redistributors and Media Services, as reasonably deemed necessary by Alpha, in its sole discretion. All such information shall be considered to be Confidential Information hereunder.

- (b) **Appropriate Resources.** The Data Distributor has appropriate resources, policies and procedures in place to ensure that it can provide its Clients, Internal Users, and Redistributors with consistent and timely access to the Alpha Data.
- (c) **Capacity.** The Data Distributor has the power and capacity to enter into this Agreement and perform its obligations under this Agreement. The execution and delivery of this Agreement and the performance of the obligations hereunder have been duly authorized by all necessary corporate or other legal action on the part of the Data Distributor.
- (d) **Valid Agreement.** This Agreement constitutes a valid and binding obligation of the Data Distributor, enforceable against it in accordance with its terms, subject however to limitations with respect to enforcement imposed by laws in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

### 4. ALPHA REPRESENTATIONS

- (a) **Capacity.** Alpha has the power and capacity to enter into this Agreement and perform its obligations under this Agreement. The execution and delivery of this Agreement and the performance of the obligations hereunder have been duly authorized by all necessary corporate and legal action on the part of Alpha.
- (b) **Valid Agreement.** This Agreement constitutes a valid and binding obligation of Alpha, enforceable against it in accordance with its terms, subject however to limitations with respect to enforcement imposed by laws in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.
- (c) **Ownership of Alpha Data.** Alpha warrants that it is the exclusive owner of the Alpha Data and all rights to such data and has full power to grant the rights set out herein without any other party's consent or without infringing the intellectual property rights of a third party.
- (d) **Data Quality.** Alpha warrants that where the Alpha Data is provided by way of a Feed, the Alpha Data provided to the Data Distributor by way of such Feeds will be of similar quality and quantity as the data that Alpha provides to other Data Distributors through Feeds provided by Alpha.

### 5. FEES AND ACCESS

- (a) **Fees and access.** In consideration of the provision of the Feeds, where applicable, and the Alpha Data the Data Distributor shall pay the fees and charges as set out by Alpha in **Schedule 1**, as amended from time to time, for each Feed and each Use (as defined below) in accordance with the terms of this Agreement

directly to Alpha, without setoff. All fees are net of all taxes and duties. A Data Distributor may choose to change its selected services with 30 days written notice. In all cases, the shall pay all fees and charges to Alpha in full, without any right of set-off or deduction. For greater certainty, the Data Distributor will be pay the fees, included Interactive Accesses and Per Quote Queries pertaining to Internal Users and Clients. All fees shall be payable within 30 days of the date of the invoice. All fees unpaid within 45 days of Alpha's written notification of a failure to make payment shall be subject, at Alpha's discretion, to charge interest at the lesser of (i) 1.5% per month; or (ii) the maximum rate of interest under applicable law. Except as specifically stated herein, the Data Distributor shall ensure that access to the Alpha Data shall be strictly controlled through the use of passwords and unique user identifiers which prevent multiple simultaneous accesses utilizing such single user identifier ("**User ID**").

- (b) Changes. Alpha may at any time, and from time to time, on not less than 60 days' prior written notice, change any or all such fees or services set out in the **Schedule 1**, such change to be implemented no later than the beginning of the calendar month immediately following the expiration of the aforementioned 60 day notice period. Notwithstanding the notice requirements indicated above, where a proposed amendment solely relates to a decrease of the standard fees under Schedule 1 Alpha shall be entitled to implement such amendment upon providing the Data Distributor with written notice of such fee deduction.
- (c) Termination of access for failure to pay fees. If the Data Distributor has not paid fees or charges (which are not subject to a dispute made by the Data Distributor in writing) within 45 days of Alpha's written notification of failure to make payment, Alpha may, upon notice and without incurring liability to the Data Distributor, the Data Distributor Clients, Redistributors or recipients of Media Services, suspend the Data Distributor's Feeds and/or access to the Alpha Data until all undisputed outstanding fees or charges have been paid by the Data Distributor. Where the Data Distributor disputes any fees or charges pursuant to this Section, its written notice of dispute shall outline the amount of the fees or charges that are being disputed and shall provide a full description of the reason that the fees or charges are being disputed.
- (d) Reporting Obligations for Interactive Accesses. Commencing after the close of the first month following the effective date of this Agreement, the Data Distributor shall on a monthly basis, not later than the 15<sup>th</sup> day of the following month, provide Alpha with a report, in such form as Alpha may provide to the Data Distributor from time to time, which shall include: (i) a complete list of Redistributors authorized by the Data Distributor to redistribute any element of the Alpha Real-Time Data; and (ii) the number of unique User ID's utilized by each Client and each Internal User to access the Alpha Real-Time Data provided by the Data Distributor pursuant to this Agreement regardless of the nature or source of such access, except where such access is: (x) a System Access (as defined in Section 5(d)(iii) below); (y) only provided through a system that only allows Per Quotes Queries (as defined in Section 5(f) below);, or (z) only relates to Development Access (as defined in Section 5(i)

below) (each such access shall be referred to herein as an "**Individual Access**"); (iii) subject to the provisions of Section 5(e) below, the number of unique User IDs utilized by each Client or Internal User for that Client's or Internal User's technology applications or systems, whether hosted by the Client, the Internal User, the Data Distributor or a third party, which utilize the Alpha Real-Time Data provided to the Client or Internal User pursuant to this Agreement to allow those applications or systems to make decisions with respect to the entry or routing of orders to any marketplace or marketplaces (each such access shall be referred to herein as a "**System Access**"); and (iv) the number of uses of the Alpha Real-Time Data by the Data Distributor or any Client for display to the general public through screens that: (x) provide only streaming quotes; (y) preclude the person viewing such screen from making specific information inquiries; and (z) can not, in any way, be utilized as a substitute source of any Alpha Data product hereunder (each such access shall be referred to herein as "**Public Access**"). Individuals accessing the Alpha Real-Time Data utilizing such Public Access will not be subject to the requirement to utilize a User ID set out in Section 5(a) of this Agreement. Individual Accesses, System Accesses and Public Accesses shall be collectively referred to herein as "**Interactive Accesses**". Subject to the specific provisions set out below, for each Interactive Access, the Data Distributor must report the type of Alpha Real-Time Data described in Schedule 1 which is being provided to each Client or Internal User pursuant to the terms of this Agreement. Where the Data Distributor subsequently determines that there has been any inaccuracy in past reports they will immediately provide an updated report for the relevant month or months with the correct number of Interactive Accesses. Where a corrected report has been provided, Alpha shall debit or credit the appropriate amounts on the next monthly invoice. All information provided pursuant to this subsection shall be considered to be Confidential Information pursuant to the terms of this Agreement.

- (e) Reporting Obligations for System Access. Notwithstanding the provisions of Subsection 5(d)(ii), the Data Distributor will have no obligation to report the numbers of System Accesses for a specific Client where the fees payable in relation to such Client's System Accesses would exceed, in the aggregate, the amount of the System Access fee cap as set out in the Schedule 1, if any. In all cases where the System Access fee cap is applied, the Data Distributor will only be required to report the identity of the Client and the fact that the number of System Accesses utilized by that Client exceeds the aforementioned fee cap. Where the number of System Accesses for the Data Distributor's Internal Users would exceed, in the aggregate, the System Access fee cap set out in Schedule 1, if any, the Data Distributor will only be obliged to report that the number of System Accesses exceeded the fee cap referenced above.
- (f) Reporting Obligations for Per Quote Queries. Commencing after the close of the first month following the date on which Alpha commences to provide the Alpha Data pursuant to this Agreement, the Data Distributor shall, on a monthly basis, not later than the 15<sup>th</sup> day of the following month, report to Alpha the number of: (i) queries made by Clients

and Internal Users, that are individual users, with access to the Alpha Data through a system that restricts access to the ability to access information relating to one and only one security simultaneously at a specific point in time (each an “**Per Quote Query**”) which do not exceed the Per Quote Query cap set out in **Schedule 1** during the month; and (ii) Clients and Internal Users that are individual users of Per Quote Queries that have exceeded the Per Quote Query cap set out in **Schedule 1** during the month. For greater certainty, an individual's access to the Alpha Data shall not be considered to be a Per Quote Query where such access is utilized solely for the support, maintenance, testing, or development of the Data Distributor's technology systems in relation to the use of market data. For each individual accessing Per Quote Queries during any month, the Data Distributor must report the type of Alpha Data (as described in **Schedule 1**) which was accessed by such individual. Where the Data Distributor subsequently determines that there has been any inaccuracy in past reports they will immediately provide an updated report for the relevant month or months with the correct number of Per Quote Queries. Where a corrected report has been provided, Alpha shall debit or credit the appropriate amounts on the next monthly invoice. All such reports will be provided in such form as Alpha shall provide to the Data Distributor from time to time.

- (g) Public Access to Alpha Delayed Data. The Data Distributor is entitled to provide the general public with access to Alpha Delayed Data through screens that: (i) preclude the person viewing such screen from making specific information inquiries; and (ii) can not, in any way, be utilized as a substitute source of any Alpha Data product hereunder without fee or reporting obligations. Individuals accessing the Alpha Delayed Data in accordance with the terms of this subsection will not be subject to the requirement to utilize a User ID set out in Section 5(a) of this Agreement.
- (h) Reporting Obligations for Alpha Delayed Data. The Data Distributor shall have no obligations to report the use of Alpha Delayed Data by any Client or Internal User.
- (i) Reporting Obligation for Development Access. Commencing after the close of the first month following the date on which Alpha commences to provide the Alpha Data pursuant to this Agreement, the Data Distributor shall, on a monthly basis, not later than the 15<sup>th</sup> day of the following month, report to Alpha the number of individuals that are employees, officers, contractors or agents of the Data Distributor, the Data Distributor Group or a Client utilizing the Alpha Data for the purposes of developing, testing or maintaining technology systems utilized by the Data Distributor, the Data Distributor Group or a Client (or any of such entities related parties) (“**Development Access**”). Reports will be provided in such form as Alpha shall provide to the Data Distributor from time to time.
- (j) Client Reporting. The Data Distributor shall be entitled to rely on Client statements or reports relating to the number of Interactive Accesses, Per Quote Queries and Development Accesses utilized by that Client for the purpose of the Data Distributor's reporting obligations hereunder unless that Data

Distributor is aware, or reasonable believes, that a Client report is inaccurate at the time it is provided. The Data Distributor shall not be responsible for any inaccurate reports (except for the remittance of any underpayment of fees collected from Clients) where the Data Distributor has acted reasonably in relying on such a report.

- (k) Record Inspection. The Data Distributor shall make available for review, upon provision of no more than once in a 12 month period and with reasonable prior written notice, all records and supporting documentation necessary to allow Alpha officer, employees or agents to monitor compliance with the terms of this Agreement and to verify the accuracy of: (i) payments made by the Data Distributor to Alpha; and (ii) any reports submitted to Alpha pursuant to Part 5 of this Agreement. All information obtained pursuant to this subsection shall be considered to be Confidential Information pursuant to the terms of this Agreement. Notwithstanding the limitation of one review per 12 month period Alpha shall be entitled to conduct additional reviews where Alpha has a reasonable belief that any payment made to Alpha or report provided to Alpha pursuant to this Agreement is materially incorrect or inaccurate.
- (l) Client Inspection. Upon Alpha providing not less than 60 days prior written notice, the Data Distributor shall, no more than once in a 12 month period, facilitate the review by Alpha or its agents of any Client's facilities, records and supporting documentation as necessary to allow Alpha or its agents to verify the accuracy of: (i) payments made by the Data Distributor to Alpha resulting from that Client's use of the Alpha Data; and (ii) any reports related to the Client's use of the Alpha Data submitted to Alpha pursuant to Part 5 of this Agreement. All information obtained pursuant to this subsection shall be considered to be Confidential Information pursuant to the terms of this Agreement. Notwithstanding the limitation of one review per 12 month period Alpha shall be entitled to conduct additional reviews where Alpha has a reasonable belief that any payment made to Alpha or report provided to Alpha pursuant to this Agreement is materially incorrect or inaccurate.
- (m) Erroneous Information. Subject to the provisions of Section 5(j), if Alpha determines that the Data Distributor has provided erroneous information which has resulted in Alpha billing the Data Distributor or another person less than would have been billed if such information was accurate, the Data Distributor shall pay Alpha such amounts as Alpha would have the right to receive if such information would have been accurate plus such audit, legal or administrative costs incurred by Alpha to detect and rectify such errors in the event that the amount underpaid exceeds 5% of the total payable hereunder.
- (n) Ongoing Obligation. The obligations set out in subsection 5(j), 5(k) and 5(l) of this Agreement shall remain in force for a period of three years following the date of termination of this Agreement.
- (o) Maintaining records. The Data Distributor shall be responsible for maintaining any records required to allow Alpha to exercise its rights as set out in this Section 5 for a period if at least 3 years.

## 6. PERSONAL AND CONFIDENTIAL INFORMATION

- (a) Personal Information. Alpha will not release personal information relating to the Data Distributor, Data Distributor's Group or its directors, officers, employees, contractors or Clients or Data Distributor Clients or Distributors unless:
  - (b) the individual in question has consented in writing to the release of the information;
  - (c) the release of the information is required by a regulatory requirement or pursuant to a regulatory purpose; or
  - (d) the information has been publicly disclosed by another person or company and the disclosure was lawful.
  - (e) The Data Distributor represents that they have obtained or shall obtain, as applicable, all necessary consents to allow the Data Distributor to disclose the information relating to its directors, officers, employees, and contractors and its Data Distributor Clients and Distributors referenced above as required under this Agreement.
  - (f) Definition of Confidential Information. "Confidential Information" shall mean information about the disclosing party's (or any of its clients') business 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, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing;
    - 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.
- iv. was communicated by the disclosing party to a third party free of obligation of confidence; or
- v. is received by the receiving party independently from a third party free to disclose such information to the receiving party.
- (g) Treatment of Confidential Information. The receiving party shall treat the Confidential Information with at least the same degree of care that is uses to protect its own confidential and proprietary information of a similar nature, but no less than a reasonable degree of care under the circumstances and shall not disclose, duplicate, copy, transmit or otherwise disseminate in any manner whatsoever, Confidential Information provided to the receiving party by reason of the relationship established by this Agreement, or learned by the receiving party by reason of this Agreement, except to the receiving party's regular employees. Including the employees of the receiving party's corporate parent (if any) and those of its direct subsidiaries and if the subsidiaries of its corporate parent, and, subject to the provisions below, to the agents, partners, limited partners, contractors, advisers, and consultants of the receiving party.
- (h) Need to know. All such persons receiving Confidential Information shall:
  - i. have a need to know such Confidential Information for performance of duties or obligations related to the purpose; and
  - ii. have been informed of the confidential nature of the Confidential Information.
- (i) Notice of request by a third party. In the event that the receiving party is requested or required (by the order of a court of competent jurisdiction or other governmental or regulatory body exercising legitimate authority, civil investigative demand or similar process) to disclose any Confidential Information of the disclosing party, that the receiving party will, to the extent permitted by law, provide the disclosing party with prompt notice of such request or requirement so that the disclosing party may seek an appropriate protective order or waive compliance by the receiving party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the receiving party is nonetheless, in the opinion of the receiving party's counsel, legally required to disclose such Confidential Information forwarded by the disclosing party or else stand liable for contempt or suffer other censure or penalty, the receiving party may disclose such information without liability hereunder, provided, however, that the receiving party shall disclose only that portion of such Confidential Information which it is legally required to disclose.

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 available to the public through no breach of this Agreement by the receiving party;

## 7. TERMINATION

- (a) Termination for Convenience. Either the Data Distributor or Alpha may terminate this Agreement upon providing not less than ninety (90) days written notice to the other party.
- (b) Termination for Breach. Either the Data Distributor or Alpha may terminate this contract by providing the other party with fourteen (14) days written notice in the event that the other party is in breach of any material provision of this agreement and that such

breach has not been cured by the party in default during the fourteen (14) day notice period.

- (c) Termination by Alpha. Alpha shall be entitled to terminate this Agreement, suspend any Feed or suspend access to the Alpha Data without notice where Alpha determines, in its absolute discretion, that the termination or suspension is necessary to prevent failure or degradation of performance of Alpha's technology systems utilized to provide the Feeds or distribute the Alpha Data or to prevent unauthorized use of the Alpha Data. Alpha shall provide the Data Distributor with written notice of the reasons for termination or suspension as soon as practicable after the termination or suspension. In the event of termination by Alpha under this section, Alpha will refund to Data Distributor any prepaid, unearned fees. Alpha shall not treat the Data Distributor less favourably than other data distributors in the enforcement of this provision.
- (d) Effect of Termination. Upon termination of this Agreement, subject to the provisions of subsections 8(k) and 8(n), the rights and obligations of both parties shall immediately cease and the Data Distributor shall pay to Alpha within fifty (50) days of termination all outstanding undisputed fees or other undisputed amounts as may be payable pursuant to this Agreement. Upon termination the Data Distributor shall permit Alpha to immediately remove the Data Distributor's access to the Alpha Data and the Data Distributor shall immediately cease to provide Alpha Data to Clients, Internal Users and Redistributors. Notwithstanding the termination of this Agreement for any reason, the Data Distributor shall be entitled to retain Alpha Data received hereunder to the extent necessary to comply with legal and regulatory requirements or to comply with applicable policies and procedures made pursuant to applicable regulatory requirements.

## 8. GENERAL PROVISIONS

- (a) Notices. All notices hereunder shall be given in writing and shall be deemed to have been duly given upon receipt, by delivery in person, by registered or certified mail, by overnight delivery (postage prepaid) to the respective party, or for operational notices only by electronic mail sent to the applicable party at its address or electronic mail address(es) indicated below or to such other address or electronic mail address(es) subsequently provided in writing by such party to the other. Any such notice shall be effective upon the receipt thereof by the party to whom sent.

Alpha:  
Alpha Trading Systems Limited Partnership  
70 York Street, Suite 1501  
Toronto, ON M5J 1S9  
Attention: Head of Legal  
E-mail: [legal@alphatradingsystem.ca](mailto:legal@alphatradingsystem.ca)

Data Distributor:

•

- (b) Effective Date. This Agreement will take effect immediately upon execution by both Data Distributor and Alpha, and will remain in force until terminated in accordance with the terms hereof.
- (c) Laws governing. This Agreement shall be governed by the laws of the Province of Ontario and both

parties unconditionally agree to the exclusive jurisdiction of the courts of the Province of Ontario.

- (d) Amendments in writing. No amendment to this Agreement shall be valid unless made in writing and signed by Alpha and the Data Distributor.
- (e) Assignment of rights. Except to a member of Data Distributor's Group, the Data Distributor may not transfer or assign its rights and obligations under this Agreement without the prior written consent of Alpha. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- (f) Execution in counterparts. This Agreement may be executed in counterparts. Each executed counterpart may be delivered to the other party by facsimile and/or electronic file, and copies bearing the signature of a party will constitute a valid and binding execution and delivery of this Agreement.
- (g) Whole or partial invalidity. The whole or partial invalidity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. If any provisions or conditions of this Agreement shall be held to be unenforceable by a court, or regulatory or self-regulatory authority, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected thereby and this Agreement shall be carried out as if any such invalid or unenforceable provision or condition were not contained herein. To the extent permitted by law, the parties waive any provision of law that renders any provision of this Agreement invalid or unenforceable in any respect.
- (h) Natural Disasters. Notwithstanding any other term or condition of this Agreement, neither Alpha nor the Data Distributor or the Data Distributor's Group shall be obligated to perform or observe its obligations undertaken in the Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstance found to be beyond its control, including industrial disputes of any nature, acts of nature, acts of a public enemy, acts of government, failure of telecommunications, software or hardware, sabotage, terrorism, lightning or electromagnetic disturbances, earthquake, flood, fire or other casualty and the other party will likewise be excused from performance of its obligations (other than timely payment of fees) to the extent such party's obligations relate to the performance so interfered with; provided that the party so affected uses its reasonable efforts to avoid or remove such causes of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.
- (i) Language. The parties confirm their express wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en la langue anglaise seulement.

- (j) Alpha Data Provided “as is”. THE ALPHA DATA IS PROVIDED “AS IS”. NONE OF ALPHA, ITS RELATED PARTIES, SUBSIDIARIES, AFFILIATES, AGENTS, PARTNERS OR ANY THIRD PARTY PROVIDER MAKES ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY OF THE ALPHA DATA. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, ALPHA, ITS RELATED PARTIES, SUBSIDIARIES, AFFILIATES, AGENTS, PARTNERS OR ANY THIRD PARTY PROVIDER DISCLAIM ALL WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING, OR THAT ARISE FROM STATUTE OR FROM A COURSE OF DEALING, USAGE OR TRADE INCLUDING WITHOUT LIMITATION ANY WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS OF FITNESS FOR PURPOSE, MERCHANTABILITY OR MERCHANTABLE OR SATISFACTORY QUALITY, OR FOR NON-INFRINGEMENT. NEITHER PARTY, ITS RELATED PARTIES, SUBSIDIARIES, AFFILIATES, AGENTS, PARTNERS OR ANY THIRD PARTY PROVIDER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING ANY TRADING LOSSES OR FAILURE TO SUCCESSFULLY IMPLEMENT ANY INVESTMENT STRATEGY REGARDLESS OF WHETHER SUCH PARTY, ANY OF ITS RELATED PARTIES, SUBSIDIARIES, AFFILIATES, AGENTS, PARTNERS OR ANY THIRD PARTY PROVIDER HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH LOSSES.
- (k) Liability.
- i. Except for Alpha’s indemnity obligations hereunder, Alpha’s entire aggregate liability arising from or related to this Agreement shall not exceed the fees charged by Alpha to the Data Distributor in the year preceding the date that the first cause of action arose, even if such cause of action is continuing.
  - ii. In no event shall any of Alpha’s related parties, affiliates, partners or any third party providers of any of Alpha’s or such other entities officer’s, directors, employees or agents have any liability to the Data Distributor under or related to this Agreement.
  - iii. This Section shall not exclude or restrict Alpha’s liability for death or personal injury arising from either the negligence of Alpha or its officers, employees, agents, or partners, including where they are acting in the ordinary course of their duties. Such liability shall in no event exceed the sum of one million dollars (\$1,000,000).
  - iv. Money damages may both be incalculable and an insufficient remedy for any breach of the Agreement by such party or its employees, agents or representatives and that any such breach would cause the other party irreparable harm. In the event of any such breach or threatened breach of the Agreement, the other party shall be entitled to seek equitable relief, including by way of injunction and specific performance.
  - v. The provisions of this subsection 8(k) shall survive the termination of this Agreement.
- vi. Notwithstanding other provisions herein, the aggregate liability of either party hereunder, including the indemnities set out in Section 8(n), shall not exceed \$500,000 (CAD).
- (l) Disclaimers. All disclaimers and limitation herein shall apply regardless of the nature of any cause of action or demand (including, but not limited to breach of contract, breach of warranty, negligence, strict liability, tort or any other cause of action) and shall survive a fundamental breach or breaches and/or failure of the essential purpose of this Agreement or any remedy contained herein.
- (m) Rights to Intellectual Property. Alpha retains ownership of the Feeds and the Alpha Data and all rights, title and interest therein including all patents copyrights, trade secrets and other intellectual property rights in and to the Alpha Data. This Agreement does not grant or give the Data Distributor any right, title or interest of any type in the Alpha Data or in any patents, copyrights, trade secrets or other intellectual property rights associated with the Alpha Data or the technology systems utilized to provide the Alpha Data. Except as specifically set out herein, the Data Distributor shall not use any of the trademarks or trade names of or used by Alpha in connection with the Alpha Data or any other intellectual property associated with the Alpha Data or the technology systems utilized to provide the Alpha Data without the prior written consent of Alpha. Data Distributor retains ownership of Data Distributor systems, products and services and all rights, title and interest therein including all patents, copyrights, trade secrets and other intellectual property rights thereto. This Agreement does not grant or give Alpha the right, title or interest of any type in Data Distributor systems, products and services or in any patents, copyrights, trade secrets or other intellectual property rights associated with Data Distributor systems, products and services. Neither party shall use any of the trademarks or trade names of or used by the other party without the prior written consent of that other party.
- (n) Indemnifications.
- i. Alpha will indemnify and hold the Data Distributor harmless of and from any demands, losses, claims judgements, liabilities, actions proceedings, penalties, damages, costs or suits incurred by the Data Distributor or Data Distributor Group member arising from any claim, suit or proceeding commenced by a third party alleging that there has been an infringement of any such third party’s intellectual property rights resulting from the execution of this Agreement or use of the Feeds, where applicable, or the Alpha Data (“**Infringement Claim**”). The Data Distributor agrees that Alpha shall be relieved of the foregoing obligations unless the Data Distributor notifies Alpha promptly in writing of such Infringement Claim and gives Alpha authority to defend and settle such proceeding as contemplated herein, and, at Alpha’s, gives Alpha proper and full information and assistance to settle and/or defend any such Infringement Claim. Alpha shall not be liable for any costs or expenses incurred without its prior written authorization. Infringement Claims resulting from the modification of the Alpha Data by the Data

- Distributor or any third party, the use or combination of the Alpha Data with any Alpha Data or products of any other person (including any entity) other than Alpha or the use or combination of the Alpha Data with the data or products of any other person (including any entity) in all such cases where the infringement is a result of such change or use, are not Infringement Claims and therefore are excluded from this indemnity. In the event of any Infringement Claim, Alpha may at its sole option and discretion (i) obtain a license to enable Data Distributor and Data Distributor's Group to continue to use the Alpha Data as contemplated hereunder, (ii) replace or modify the subject matter of the Infringement Claim to make it non-infringing, or (iii) immediately terminate this Agreement by notice to the Data Distributor. In the event of termination by Alpha as a result of this section, any prepaid, unearned fees will be refunded to Data Distributor. This indemnity shall survive the termination of this agreement.
- ii. The Data Distributor will indemnify, defend, and hold Alpha, its related parties, subsidiaries, affiliates, partners, officers, directors and employees harmless of and from any demands, losses, claims, judgment, liabilities, actions, proceedings, penalties, damages, costs or suits (other than for Infringement Claims) that arise out of or relate to: (a) any use of the Alpha Data that is not in compliance with the terms of this Agreement or which result from the fraud, bad faith or gross negligence of the Data Distributor or the Data Distributor Group or the officers, employees, directors or agents of the Data Distributor or Data Distributor Group; or (b) the inaccurate or incomplete transmission of Alpha Data by the Data Distributor or Data Distributor Group unless (i) such inaccurate or incomplete transmission results from any cause or circumstance beyond the control of the Data Distributor or Data Distributor Group; or (ii) they arise as a result of the gross negligence, bad faith, wilful misconduct or fraud of Alpha or its officer, employees, directors or agents ("**Claim**"). Alpha agrees that the Data Distributor shall be relieved of the foregoing obligations unless Alpha notifies the Data Distributor promptly in writing of such Claim and gives the Data Distributor authority to defend and settle such proceeding as contemplated herein, and, at the Data Distributor's expense, gives the Data Distributor proper and full information and assistance to settle and/or defend any such Claim. The Data Distributor shall not be liable for any costs or expenses incurred without its prior written authorization. This indemnity shall survive the termination of this agreement.
- (o) Further Documents. Each of Alpha and the Data Distributor shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of the Agreement.
  - (q) Currency. Unless otherwise expressly specified, all amounts referred to herein shall be denominated in Canadian dollars.
  - (r) Time of the Essence. Time shall be the essence of the Agreement.
  - (s) Complete Agreement. This Agreement, and the schedules as amended from time to time in accordance with the Agreement and any other agreements executed by the parties for additional services, contains the entire Agreement between the parties with respect to the Alpha Data. This Agreement may be modified only by a writing signed by all parties to this Agreement and any such modification shall not be deemed to be a cancellation of this Agreement.

|                                       |        |
|---------------------------------------|--------|
| <b>DATA DISTRIBUTOR AUTHORIZATION</b> |        |
| Data Distributor:                     |        |
| Name of Signing Officer:              | Title: |
| Signature:                            | Date:  |

| <b>Alpha Trading Systems Limited Partnership</b> |        |
|--|--------|
| Name of Signing Officer:                         | Title: |
| Signature:                                       | Date:  |

**SCHEDULE 1 to Data Distribution Agreement****DATA DISTRIBUTION FEES****Feeds<sup>1,5</sup>**

| <b>Data Service</b>                          | <b>Primary Feed / Month</b> | <b>Each Additional Feed / Month<br/>- Distribution<sup>6</sup></b> | <b>Each Additional Feed / Month<br/>- Internal Users<sup>6</sup></b> |
|--|-----------------------------|--|--|
| <b>Alpha Top of Book (ATB)<sup>6</sup></b>   |                             |  |  |
| TSX  | \$1,000                     | \$250  | \$50   |
| TSXV   | \$1,000                     | \$250  | \$50   |
| Combined                                     | \$1,500                     | \$375  | \$75   |
| <b>Alpha Top Five (ATF)<sup>6,2</sup></b>    |                             |  |  |
| TSX  | \$1,250                     | \$300  | \$60   |
| TSXV   | \$1,250                     | \$300  | \$60   |
| Combined                                     | \$2,000                     | \$500  | \$100  |
| <b>Alpha Price Depth (APD)<sup>6,3</sup></b> |                             |  |  |
| TSX  | \$1,500                     | \$375  | \$75   |
| TSXV   | \$1,500                     | \$375  | \$75   |
| Combined                                     | \$2,500                     | \$600  | \$120  |
| <b>Alpha Full Book (AFB)<sup>6,4</sup></b>   |                             |  |  |
| TSX  | \$1,750                     | \$450  | \$90   |
| TSXV   | \$1,750                     | \$450  | \$90   |
| Combined                                     | \$3,000                     | \$750  | \$150  |

**Use<sup>1</sup>**

| Data Service                                 | Interactive Access        |                               |                             |               |  |
|--|---------------------------|-------------------------------|-----------------------------|---------------|--|
|  | Individual Access         |                               | Systems Access <sup>9</sup> | Public Access | Per Quote <sup>10</sup> Quote <sup>8</sup> |
|  | Professional <sup>7</sup> | Non-Professional <sup>8</sup> |                             |               |  |
| <b>Alpha Top of Book (ATB)<sup>6</sup></b>   |                           |                               |                             |               |  |
| TSX  | \$20                      | \$3                           | \$20                        | \$20          |  |
| TSXV   | \$10                      | \$1.50                        | \$10                        | \$10          |  |
| Combined                                     | \$30                      | \$4.50                        | \$30                        | \$30          | \$0.0050                                   |
| <b>Alpha Top Five (ATF)<sup>6,2</sup></b>    |                           |                               |                             |               |  |
| TSX  | \$23                      | \$6                           | \$23                        | \$23          |  |
| TSXV   | \$12                      | \$3                           | \$12                        | \$12          |  |
| Combined                                     | \$35                      | \$9                           | \$35                        | \$35          | \$0.0075                                   |
| <b>Alpha Price Depth (APD)<sup>6,3</sup></b> |                           |                               |                             |               |  |
| TSX  | \$33                      | \$10                          | \$33                        | \$33          |  |
| TSXV   | \$17                      | \$5                           | \$17                        | \$17          |  |
| Combined                                     | \$50                      | \$15                          | \$50                        | \$50          | \$0.0100                                   |
| <b>Alpha Full Book (AFB)<sup>6,4</sup></b>   |                           |                               |                             |               |  |
| TSX  | \$53                      | \$18                          | \$53                        | \$53          |  |
| TSXV   | \$27                      | \$9                           | \$27                        | \$27          |  |
| Combined                                     | \$80                      | \$27                          | \$80                        | \$80          | \$0.0125                                   |

**NOTES**

<sup>1</sup> All fees quoted are in Canadian dollars and, with the exception of the "Per Quote" are quoted on a per month basis. GST is to be charged on all fees. Delayed Data and Development Access can be utilized without charge.

<sup>2</sup> Data Distributors subscribing to the ATF Feed shall also receive the ATB Feed, as an element of the ATF Feed, at no additional fee. Interactive Accesses licensed to utilize the ATF data will also be licensed to utilize the ATB data at no extra charge.

<sup>3</sup> Data Distributors subscribing to the APD Feed shall also receive the ATF and ATB Feeds, as elements of the APD Feed, at no additional fee. Interactive Accesses licensed to utilize APD data will also be entitled to utilize the ATF and ATB data at no additional fee.

<sup>4</sup> Data Distributors subscribing to the AFB Feed shall also receive the APD, ATF and ATB Feeds, as elements of the AFB Feed, at no additional fee. Interactive Accesses licensed to utilize AFB data will also be entitled to utilize the APD, ATF and ATB data at no additional fee.

<sup>5</sup> Where applicable, Feed fees are charged by service to the recipients of the feed, by unique user access identification number. A Feed will be considered to be any access to the feed of Alpha Data utilizing a unique data identification number.

<sup>6</sup> Where an additional Feed is utilized, in whole or in part for the purpose of redistributing Alpha Data, that Feed is charged as a distribution feed. Where an additional Feed is used solely to accommodate Internal Users and is not utilized to distribute Alpha Data to a third party, the Feed will be charged as an Internal User Feed.

<sup>7</sup> An Individual Access who does not meet the definition of a Non-Professional in Note 8 below shall be deemed to be a Professional and is subject to the Individual Access fees specified for Professionals.

<sup>8</sup> A "Non-Professional" Individual Access is defined as:

(i) an individual person who is not a securities, commodities or futures professional, and who is acting in his/her personal capacity and not as a principal, officer, partner, employee, or agent of any business or on behalf of any business or individual, and cannot be registered or qualified with:

- a. Any provincial, state or other government securities agency or other entity that performs functions that are equivalent to those of such persons;
- b. Any securities exchange or association or other entity that performs functions that are equivalent to those of such persons;
- c. Any commodities or futures exchange or association or other entity that performs functions that are equivalent to those of such persons; and
- d. Any Alternative Trading System or other entity that performs functions that are equivalent to those of such persons.

For further clarity but without being limited, this definition excludes brokers, dealers, investment advisors, or persons otherwise employed by organizations conducting professional activities involving the buying and selling of instruments, such as stocks, bonds, options, futures contracts and other trading vehicles but shall include spouses and other family members of such persons who would otherwise be considered to be "pro traders" pursuant to applicable regulatory requirements;

(ii) an individual person who is a securities, commodities or futures professional, as referenced in paragraph (i) above, who: (a) is not acting in their capacity as a principal, officer, partner, employee, or agent; and (b) is not receiving consideration for so acting; or

(iii) is an organization that does not in the ordinary course carry on business activities as a broker, dealer, investment advisory, asset manager or other entity that receives consideration for providing advice or other services related to trading or investment in securities, commodities or futures.

<sup>9</sup>The System Access fee is subject to a cap of \$1,500 per Client per month. In situations where the System Access fee relates to use by the Data Distributor for its internal business purposes only, the System Access fee relating to such usage is subject to the \$1,500 per month.

<sup>10</sup>The Per Quote fees, whilst following the same principles as all other Individual Access Fees, are subject to a number of additional characteristics:

- a. The same Per Quote fee is applicable to any type of user, regardless whether he is a Professional or Non-Professional; and
- b. The Per Quote fee is capped, per user identification number, on a monthly basis to the corresponding monthly Professional or Non-Professional Individual Access fee, depending on whether the user is Professional or Non-Professional.

<sup>10</sup> The Market Data Fees for Clients subscribing to TMX IP CBBO and/or CLS products will be the fee charged to subscribers of the ATB Feed. The Market Data Fees for Clients subscribing to TMX IP CDB product will be the fee charged to subscribers of the APD Feed. The Market Data Fees for Clients subscribing to TMX IP CDF product permissioned for Alpha Data, will be the fee charged to subscribers of the AFB Feed. The Client will also enter into an agreement with the TMX IP to receive data through the TMX IP. In the case of any inconsistency between the terms of this Data Distribution Agreement and the agreement with the TMX IP, the terms of this Data Distribution Agreement will override, except for Section 1(e) of this Data Distribution Agreement which will not be applicable to any Alpha Data received through the TMX IP.

"Alpha Top of Book", "Alpha Top Five", "Alpha Price Depth" and "Alpha Full Book" are all trademarks of Alpha Trading Systems Limited Partnership and any use of these trademarks without the authorization of Alpha Trading Systems Limited Partnership is prohibited.

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**NOTES**

<sup>1</sup> For the purposes of Sections 1(a) and 5(a) of this Data Distribution Agreement, a Feed will include any access to the feed of Alpha Data provided through the facilities of Alpha or through the facilities of the TMX Information Processor (the “**TMX IP**”).

<sup>2</sup> In addition to this Data Distribution Agreement, the Client will enter into an agreement with the TMX IP to receive data through the TMX IP. In the case of any inconsistency between the terms of this Data Distribution Agreement and the agreement with the TMX IP, the terms of this Data Distribution Agreement will govern. Notwithstanding the foregoing, Section 4(d) of this Data Distribution Agreement will not be applicable to any Alpha Data received through the TMX IP. The Data Distributor agrees that Alpha makes no representation or warranty, either express or implied, with respect to the Feeds or Alpha Data received through the TMX IP; and acknowledges that nothing in this Agreement constitutes an obligation on Alpha to continue to make the Alpha Data available through the TMX IP in its present form or configuration.

Alpha will notify the TMX IP of any Client’s request for Feeds and products provided by the TMX IP based on the information in this Order Form.

**Authorized by:**

**DATE:**

**NAME:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

“Alpha Top of Book”, “Alpha Top Five”, “Alpha Price Depth” and “Alpha Full Book” are all trademarks of Alpha Trading Systems Limited Partnership and any use of these trademarks without the authorization of Alpha Trading Systems Limited Partnership is prohibited.

## SCHEDULE 3 to Data Distribution Agreement

### REQUIRED CLIENT AGREEMENT TERMS

#### 1. PROVISION OF DATA

- (a) Access to Data. During the term of the Client Agreement, the Data Distributor shall provide the Client and its related parties with non-exclusive, non-transferable licenses to receive feeds of data and use the Alpha Data in accordance with the terms of the Client Agreement.
- (b) Alpha Data Not Guaranteed. Alpha Trading Systems Limited Partnership ("**Alpha**") will not be liable in any way to the Client, or any other person, for any inaccuracy, omission, error or delay in any Alpha Data or delivery of such Alpha Data or other information or messages or any loss or damage arising from any such inaccuracy, omission, error or delay in any Alpha Data unless such losses are a result of the bad faith, willful misconduct or fraud of Alpha its officers, directors, employees or agents.
- (c) Continuation of Alpha Data Dissemination. The Client acknowledges that nothing in the Client Agreement constitutes an obligation on Alpha to continue to make the Alpha Data available in its present form or configuration.
- (d) Authorized use of Alpha Data. The Client is authorized by this Agreement to access, process, transmit and use the Alpha Data only as described in this Agreement. This Agreement does not give the Client any rights to distribute the Alpha Data, whether in its present form or in a modified form, to any third party.
- (e) Onsite Reviews. The Data Distributor or its agents shall be entitled upon the provision of not less than 30 days advance written notice, to conduct (or arrange for an agent to conduct) onsite reviews of the Client's facilities or records no more than once during any twelve month period to monitor the Client's compliance with the terms relating to the Authorized Use of the Alpha Data and confirm the accuracy of reports provided with respect to the use of Alpha Data. Notwithstanding the foregoing, such parties shall be entitled, upon providing not less than 2 business days prior notice, to conduct additional reviews upon the Data Distributor becoming aware of an actual or potential material breach of the provisions set out in Section 1 of this Agreement or a material inaccuracy in a reports relating to the use of Alpha Data. The Client shall allow the Data Distributor, or its authorized representatives, access to its premises, technology and records as are reasonably required to conduct such reviews.

#### 2. CLIENT REPRESENTATIONS AND COVENANTS

- (a) Client Security. The Client is responsible for ensuring that all of its systems, including hardware and software systems, will, to the extent reasonably possible, prevent any person other than the Client and its directors, officers, employees and agents from obtaining access to the Alpha Data.
- (b) System Security. The Client shall take reasonable steps to ensure that all devices and equipment authorized to receive the Alpha Data are secure and prevent any person that is not authorized from gaining access to the Alpha Data.
- (c) Unauthorized Access. If Data Distributor determines, in its discretion, that one or more persons which are not authorized pursuant to this Agreement to have access to Alpha Data have gained access to Alpha Data through the Client's systems, the Client shall take such steps as necessary to change its systems to preclude such unauthorized access and provide the Data Distributor with evidence, as the Data Distributor may reasonably request, of such steps. If the Client becomes aware that an unauthorized person has gained access to Alpha Data, it shall use its best efforts to ascertain the source and manner of access and shall promptly provide a report (such report being written where specifically requested by the Data Distributor) in respect of such unauthorized access to the Data Distributor. The Client shall reasonably cooperate with any investigation undertaken by the Data Distributor or its agents in relation to any matter regarding unauthorized access to Alpha Data that may be occasioned by the Client and acknowledges that the Data Distributor or its agents are entitled to take any actions the Data Distributor deems necessary in relation to unauthorized persons and the Client shall, at the Data Distributor's expense, take all reasonable action to cooperate with and assist in relation to such an action.
- (d) Access. The Client shall only be entitled to utilize the Alpha Data for the Client's internal purposes or the internal purposes of a related party of the Client, in accordance with the terms of this Agreement. Under no circumstances will the Client redistribute Alpha Data to any third party.

#### 3. TERMINATION

- (a) Termination by the Data Distributor. The Data Distributor shall be entitled to terminate this Agreement or suspend access to the Alpha Data without notice where the Data Distributor determines, in its discretion, that the termination or suspension, acting reasonably, is necessary to prevent unauthorized use of the Alpha Data.
- (b) Effect of Termination. Upon termination the Client shall cease the use of all Alpha Data. Notwithstanding the above, the Client shall be entitled to retain and utilize Alpha Data received pursuant to this Agreement for purposes related to regulatory compliance or the defense of regulatory, civil or criminal actions against the Client or its officers, directors or employees.