



## DATA USE AGREEMENT

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

**Alpha Trading Systems Limited Partnership**  
70 York Street, Suite 1501  
Toronto, Ontario M5J 1S9  
**(Called "Alpha")**

-AND-

Full Corporate Name

Head Office Address

**(Called the "Client")**



## Alpha Trading Systems Limited Partnership

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

#### 1. PROVISION OF DATA

- (a) Access to Data. During the term of this Agreement, Alpha shall provide the Client and its related parties with non-exclusive, non-transferable licenses to receive feeds of data and use the information provided by Alpha, as identified in Schedule 1 (the "Alpha Data") in accordance with the terms of this Agreement. A data feed will be considered to be any access to the feed of Alpha Data utilizing a unique data identification number ("Feed") The number and type of Feeds to be provided shall be as indicated in the Order Form found in Schedule 2. In this Agreement related parties shall be defined to include: (i) any person controlled by a party to this Agreement, (ii) any person controlling a party to this Agreement; or (iii) any person controlled by the same person that controls a party to this Agreement. For the purpose of this Agreement the Client shall be deemed to include any related party to the Client. For greater certainty, each Client shall be entitled to utilize each Feed through any number of delivery systems without restriction where such delivery systems utilize a single user identification number.
- (b) Ownership of Alpha Data. The Client acknowledges that it has no interest, including proprietary rights or copyright, over the Alpha Data. The Client further acknowledges that its use of the Alpha Data is subject to all limitations set out herein.
- (c) Continuation of Alpha Data Dissemination. The Client acknowledges that nothing in this Agreement constitutes an obligation on Alpha to continue to make the Alpha Data available in its present form or configuration or to continue to utilize existing communication facilities. Alpha will endeavour to give the Client written notice of any material change to the form or configuration of the Alpha Data, such change being provided at least 60 days prior to the implementation of such change unless, in Alpha's discretion, circumstances are such that they necessitate an immediate implementation of such changes to prevent failure or degradation of the performance of Alpha's technology systems, to prevent unauthorized use of or access to the Alpha Data or prevent a violation of any applicable regulatory requirements. The Client shall be solely responsible for making any modifications to its service resulting from any change.
- (d) Data Not Guaranteed. The Client agrees that Alpha makes no representation or warranty, express or implied, with respect to the Alpha Data, its 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 statute or otherwise by law. 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 ("Losses") unless such Losses are a result of the bad faith, willful misconduct or fraud of Alpha or its officers, directors, employees or agents.
- (e) Best Efforts. Subject to the provisions of Section 1(d), Alpha shall utilize its reasonable best efforts to ensure that all Alpha Data is provided as promptly and as accurately as possible. For greater certainty, Alpha shall take reasonable efforts to ensure that the Alpha Data is provided to the Client in at least as prompt and accurate a manner as it is provided to other clients.
- (f) Authorized use of Data. The Client is authorized by this Agreement to access, process, transmit and use the Alpha Data only as approved by Alpha and 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.
- (g) Adverse Alteration of Alpha Data. The Client agrees not to alter the Alpha Data in any manner that adversely affects its accuracy or integrity or renders it misleading.
- (h) Onsite Reviews. Subject to the terms of Section 7(l), Alpha shall be entitled, at its discretion, upon the provision of not less than 30 days advance written notice, to conduct (or arrange for an agent to conduct) onsite reviews or audits of the Client's facilities no more than once during any twelve month period to monitor the Client's compliance with the terms of Section 1 of this Agreement. Notwithstanding the foregoing, Alpha shall be entitled, upon providing not less than 2 business days prior notice, to conduct additional reviews upon Alpha becoming aware of an actual or potential material breach of the provisions set out in Section 1 of this Agreement.

## 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 that Alpha has authorized to receive the Alpha Data (the "Receiving Devices") are secure and prevent any person that is not authorized from gaining access to the Alpha Data.
- (c) Public Displays. Notwithstanding the provisions of Section 2(a) and 2(b), the Client may permit persons who are not otherwise authorized under this Agreement to access the Alpha Data without fee hereunder where: (i) the Client controls the premises and access to the premises; and (ii) the Client 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. Public displays other than those described above in this section shall be subject to fees and reporting as provided in Sections 4(a) and 4(d).
- (d) Unauthorized Access. If Alpha 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 Alpha with evidence as Alpha 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 Alpha) in respect of such unauthorized access to Alpha. The Client shall reasonably cooperate with any investigation undertaken by Alpha in relation to any matter regarding unauthorized access to Alpha Data that may be occasioned by the Client and acknowledges that Alpha is entitled to take any actions Alpha deems necessary in relation to unauthorized persons and the Client shall, at Alpha's expense, take all reasonable action to cooperate with and assist Alpha in relation to such an action.
- (e) Valid Agreement. This Agreement constitutes a valid and binding obligation of the Client, 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.

## 3. 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 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.

## 4. FEES AND ACCESS

- (a) Fees and access. In consideration for the provision of the Alpha Data, the Client shall pay such fees as set out in Schedule 1. Such fees will be subject to change by Alpha from time to time in accordance with Section 4(b). The Client shall only be entitled to utilize the Alpha Data, including Alpha Data relating to trading activity that has occurred more than ten minutes previously ("Delayed 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 except as specifically provided for herein. The Client 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 shall be entitled to amend Schedule 1 upon providing the Client with 60 days advance written notice. All fees are net of all taxes and duties. In all cases, the Client shall pay all fees and charges to Alpha in full, without any right of set-off or deduction. 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 Client with written notice of such fee deduction.
- (c) Termination of access for failure to pay fees. All fees shall be due and payable within 30 days of Alpha's invoice. If the Client has not paid any undisputed fees or charges within 45 days of Alpha's notice to the Client of its failure to pay the fees, after they have become due and payable, Alpha may, without further notice and without incurring liability to the Client, or the Client's customers, suspend the Client's access to the Alpha Data until all outstanding fees have been paid by the Client. Alpha shall be entitled to charge interest on any fees which have not been paid within 45 days of Alpha's delivery of a notice of failure to pay at a rate that is the lesser of: (i) 1.5% per month; and (ii) the maximum rate of interest under applicable law.
- (d) Reporting Obligations for Interactive Accesses. 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 Client 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 standard form as Alpha may provide to the Client from time to time, which shall provide required information, including the number of: (i) unique User ID's utilized by the Client to access the Alpha Data provided under this Agreement regardless of the nature or source of such access, except where such access is: (w) a System Access (as defined in Section 4(d)(ii) below); (x) only provided through a system that only allows Per Quotes Queries (as defined in Section 4(f) below); (y) relates only to Delayed Data (as defined in Section 4(a) above), or (z) only relates to Development Access (as defined in Section 4(h) below) (such access shall be referred to herein as an "**Individual Access**"); (ii) subject to the provisions of Section 4(e) below, unique User ID's utilized by technology applications or systems which utilize the Alpha Data provided to the Client under 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 (iii) uses of the Alpha Data 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**"). 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 Client must report the type of Alpha Data described in Schedule 1 which is being received. Where the Client 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.

- (e) Reporting Obligations for Systems Access. Notwithstanding the provisions of Subsection 4(d)(ii), the Client will have no obligation to report the numbers of Systems Accesses where the fees payable in relation to such Systems Accesses would exceed, in the aggregate the amount of the System Access fee cap as set out in the Schedule 1.
- (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 Client 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 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 meet or exceed the Per Quote Query cap set out in Schedule 1 during the month; and (ii) of individual users of Per Quote Queries that met or 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 Client's technology systems in relation to the use of market data. For each individual accessing per quote queries during any month, Client must report the type of Alpha Data (as described in Schedule 1) which was accessed by such individual. Where the Client 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. Reports will be provided in such standard form as Alpha shall provide to the Client from time to time.

- (g) Reporting Obligations for Delayed Data. The Client shall have no obligations to report the use of Delayed Data by the Client.
- (h) 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 Client 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 utilizing the Alpha Data for the purposes of developing, testing or maintaining technology systems utilized by the Client or its related parties ("**Development Access**"). Reports will be provided in such standard form as Alpha shall provide to the Client from time to time.
- (i) Right to Review. Alpha shall be entitled upon the provision of not less than 60 days prior written notice, to conduct review of the Client's technology and records to monitor the accuracy of reports provided pursuant to Sections 4(d), 4(e), 4(f) and 4(h) of this Agreement. Subject to the provisions of Section 7(l), the Client shall allow Alpha, or its authorized representatives, access to its premises to examine all such technology and records. Notwithstanding the foregoing, Alpha shall be entitled, upon providing not less than 2 business days prior notice to conduct additional audits pursuant to this Section 4(f) upon Alpha becoming aware of a potential material error or inaccuracy in the reports provided pursuant to Section 4(d), 4(e), 4(f) and 4(h). Where Alpha, as a result of any inaccuracy relating to reporting, determines that there has been an underpayment or an overpayment exceeding 5% of the total amount paid during the review period, Alpha shall: (i) in the case of an underpayment be entitled to invoice the Client in the amount of such underpayment; or (ii) in the case of an overpayment reimburse the Client in the amount of such overpayment. The Client shall pay to Alpha such audit, legal or administrative costs incurred by Alpha to detect and rectify errors in the event that such the review detects errors resulting in an underpayment exceeding 10% during the review period.
- (j) Review Period. Alpha's written notice in relation to a review shall set out a specific period that the review will encompass. This review period shall not commence more than two years prior to the date of the review notice.

- (k) Maintaining Records. The Client shall be responsible for maintaining any records required to allow Alpha to exercise its rights as set out in Section 4(i) for a period of at least three years
- (l) Fees on Launch. Alpha shall waive all fees for Alpha Data until such time as Alpha may determine appropriate. Alpha shall commence charging the fees set out in Schedule 1 upon providing the Client with not less than 45 days prior written notice. Such notice shall indicate the specific date upon which receipt of data shall attract fees which shall be the first business day of a calendar month following the conclusion of the 45 day period referenced above. The Client shall provide reports relating to the number of Interactive Accesses, Per Quotes Queries and Development Accesses prior to the date of that Alpha commences charging the Schedule 1 Fees, however such reports shall not be subject to the Right to Review set out in Section 4(i) of this Agreement and Alpha shall not be entitled to exercise any rights or remedies hereunder as a result of any inaccuracies contained in such reports.

## 5. CONFIDENTIAL INFORMATION

- (a) Definition of Confidential Information. “**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 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;
  - 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 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.
- (b) Treatment of Confidential Information. The receiving party shall treat the Confidential Information with at least the same degree of care that it 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.
  - (c) Need to know. All such persons receiving Confidential Information shall:
    - i. have a need to know such Confidential Information for performance of their duties; and
    - ii. have been informed of the confidential nature of the Confidential Information; and
    - iii. be bound, by terms of their employment to maintain the confidentiality of confidential information in their possession; or
    - iv. be a party to an agreement that contains provisions relating to the maintenance, use and redistribution of the Confidential Information.
  - (d) 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 or self-regulatory body exercising legitimate authority, civil investigative demand or similar process) to disclose any Confidential Information of the disclosing party, the receiving party will, to the extent permitted by law, provide the disclosing party with prompt notice of such request or requirement, and shall reasonably cooperate with the disclosing party, 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 and take reasonable steps to ensure that the party requiring or requesting such information will treat such disclosed information as confidential information.

- (e) Return or Destruction of Confidential Information. Upon termination of this Agreement, or upon reasonable notice, either party may require the other party to return immediately or, at the other party's discretion, destroy all copies of its Confidential Information the other party then has and to certify it has complied with this provision. Notwithstanding the terms of this Section 5(e), the receiving party shall not be required to return or destroy electronic media containing such Confidential Information and shall be entitled to retain a copy of such Confidential Information where required to do so pursuant to applicable legal requirements including statutory requirements or the requirements of any regulatory or self-regulatory body but all such Confidential Information will be retained and utilized only in accordance with the terms of this Agreement. .
- (f) Survival. The provisions of this Section 5 shall survive the termination of this Agreement for a period of 2 years.

## 6. TERMINATION

- (a) Termination for Convenience. Either the Client or Alpha may terminate this Agreement upon providing not less than thirty (30) days written notice to the other party.
- (b) Termination for Breach. Either the Client or Alpha may terminate this Agreement 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 or suspend access to the Alpha Data without notice where Alpha determines, in its discretion, that the termination or suspension, acting reasonably, is necessary to prevent failure or degradation of performance of Alpha's technology systems or to prevent unauthorized use of the Alpha Data. Alpha shall provide the Client with written notice of the reasons for termination or suspension as soon as practicable after the termination or suspension.
- (d) Effect of Termination. Upon termination of this Agreement, subject to the provisions of Section 7(k), the obligations of both parties shall immediately cease and the Client shall pay to Alpha within thirty (30) days of termination all outstanding fees or other amounts as may be payable pursuant to this Agreement. 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.

## 7. 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 confirmed facsimile, by registered or certified mail, by overnight delivery (postage prepaid) to the respective party, or by electronic mail sent to the Client at:

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and to Alpha at:

Alpha Trading Systems Limited Partnership  
70 York Street, Suite 1501  
Toronto, Ontario, M5J 1S9  
Attention: Head of Legal  
Fax: 416-642-2120  
E-Mail: [legal@alphatrading.com](mailto:legal@alphatrading.com)

or to such other address or facsimile number 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.

- (b) Effective Date. This Agreement will take effect immediately upon execution by both the Client 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 the federal laws of Canada applicable therein and both parties unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
- (d) 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.
- (e) 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 of competent jurisdiction in any jurisdiction, such invalidity or unenforceability shall attach only to such provision or condition in such jurisdiction where such court has jurisdiction. 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. This provision shall survive the termination of this Agreement.
- (f) Natural Disasters. Notwithstanding any other term or condition of this Agreement, neither Alpha nor the Client shall be obligated to perform or observe its obligations undertaken in the Agreement (except for obligations to make payments hereunder in relation to

Alpha Data actually provided, 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 the Client's obligations related to the timely payment of fees for Alpha Data actually provided and regulatory obligations) 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.

(g) 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.

(h) 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 Client in the 6 month period 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 either party's related parties, affiliates, or partners or such other entities officer's, directors, employees or agents have any liability to the other party 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.

iv. The parties agree that money damages may both be incalculable and an insufficient remedy for any breach of the Agreement by either party or its employees, agents or representatives and that any such breach may 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. Neither Alpha nor the Client shall be liable under any circumstances for any indirect, incidental, reliance, special, punitive or consequential damages including, but not limited to lost profits and lost opportunities, even

if the applicable party has been advised of the possibility of such damages.

The provisions of this Section 7(h), except Sub-section (iv), shall survive the termination of this Agreement.

(i) Disclaimers. All disclaimers and limitations herein shall survive a fundamental breach or breaches of this Agreement.

(j) Rights to intellectual property. Alpha retains ownership of 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 Client 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. Except as specifically set out herein, this Agreement does not provide either party with a right to use any of the trademarks or trade names of, or used by, the other party except with the prior written consent of that party.

(k) Indemnifications.

i. Alpha agrees to indemnify and hold harmless, subject to the limitations set forth in this Sub-section 7(k)(i), the Client and its respective non-public shareholders, partners, officers, employees and directors (collectively, the "Client Indemnified Parties" and each a "Client Indemnified Party") from and against any actual or threatened demand, loss, claim, judgment, liability, action, proceeding, damage, cost, suit and investigation, or expense ("Claims") incurred or suffered by any Client Indemnified Party arising from any Claims 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, Alpha's performance hereunder or use of or access to the Alpha Data ("**Infringement Claim**"). The Client agrees that Alpha shall be relieved of the foregoing obligations unless the Client 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 expense, acting reasonably, gives Alpha proper and full information and assistance to settle and/or defend any such Infringement Claim, suit or proceeding. Alpha shall not be liable for any costs or expenses incurred without its prior written authorization unless, in the opinion of the Client, acting reasonably, circumstances make it impractical to obtain such authorization prior to incurring such an expense and such expenses are necessary to minimize the potential liability of Alpha and/or the Client and further provided that such limitation shall not apply if Alpha has had a reasonable opportunity to assume and actively pursue a defense but fails to do so. Infringement Claims resulting from the modification of the Alpha Data by the Client or any third party acting on behalf of the Client, the use or combination of the Alpha Data with the data or products of any other person (including any entity), other than as provided by or on behalf of Alpha or at the direction of Alpha, 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, without restricting the indemnity: (i) obtain a license to enable Alpha to continue to distribute 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 Client. Any settlement entered into by Alpha shall not include any provision which would admit wrongdoing or liability on the part of the Client or any Client Indemnified Party.

- ii. The Client will, subject to the limitations set forth in this Sub-section 7(k)(ii), indemnify, defend, and hold Alpha, its related parties, and their respective partners, officers, directors and employees (collectively, the "Alpha Indemnified Parties" and each a "Alpha Indemnified Party") from and against any actual or threatened Claims (other than for Infringement Claims) that are incurred or suffered by any Alpha Indemnified Party arising out of or relating to the Client's access to the Alpha Data, the Client's use or misuse of the Alpha Data, or the inability of any third party to access the Alpha Data provided that such arise from or relate to the Client's breach of this Agreement. Alpha agrees that the Client shall be relieved of the foregoing obligations unless Alpha notifies the Client promptly in writing of such Claim and gives the Client authority to defend and settle such proceeding as contemplated herein, and, at the Client's expense, acting reasonably, gives the Client proper and full information and assistance to settle and/or defend any such Claim. The Client shall not be liable for any costs or expenses incurred without its prior written authorization unless, in the opinion of Alpha, acting reasonably, circumstances make it impractical to obtain such authorization prior to incurring such an expense and such expenses are necessary to minimize the potential liability of Alpha and/or the Client and further provided that such limitation shall not apply if the Client has had a reasonable opportunity to assume and actively pursue a defense but fails to do so. This indemnity shall

not apply to the extent that any Claim arises directly and primarily as a result of the gross negligence, bad faith or fraud of Alpha or an Alpha Indemnified Party.

- iii. Notwithstanding other provisions herein the obligations set out in this Section 7(k) shall continue in force for a period of two (2) years following the termination of this Agreement.

- (l) Reviews and Audits. Any onsite reviews or audits conducted by Alpha pursuant to this Agreement shall be conducted during normal business hours of the Client and Alpha (or its agents or representatives) will comply with the Client's written policies or procedures relating to site or information security. All information obtained by Alpha through such onsite reviews or audits shall be considered to be Confidential Information hereunder and held in the strictest confidence.
- (m) Further Documents. Each of Alpha and the Client 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.
- (n) Currency. Unless otherwise expressly specified, all amounts referred to herein shall be denominated in Canadian dollars.
- (o) Time of the Essence. Time shall be of the essence in this Agreement.
- (p) 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. Except as specifically set out herein, this Agreement may be amended only by a writing signed by all parties to this Agreement and any such amendment shall not be deemed to be a cancellation of this Agreement.

<b>CLIENT AUTHORIZATION</b>	
Client	
Name of Signing Officer	Title
Signature	Date

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

## SCHEDULE 1

### Market Data Fees<sup>1</sup>

Data Service	Feed <sup>5, 10</sup>		Interactive Access				Per Quote <sup>9</sup>
	Primary Feed	Each Additional Feed	Individual Access		Systems Access <sup>8</sup>	Public Access	
			Professional <sup>6</sup>	Non-Professional <sup>7</sup>			
<b>Alpha Top of Book (ATB)<sup>©</sup></b>							
TSX	\$200	\$50	\$20	\$3	\$20	\$20	
TSXV	\$200	\$50	\$10	\$1.50	\$10	\$10	
Combined	\$300	\$75	\$30	\$4.50	\$30	\$30	\$0.0050
<b>Alpha Top Five (ATF)<sup>©2</sup></b>							
TSX	\$250	\$60	\$23	\$6	\$23	\$23	
TSXV	\$250	\$60	\$12	\$3	\$12	\$12	
Combined	\$400	\$100	\$35	\$9	\$35	\$35	\$0.0075
<b>Alpha Price Depth (APD)<sup>©3</sup></b>							
TSX	\$275	\$75	\$33	\$10	\$33	\$33	
TSXV	\$275	\$75	\$17	\$5	\$17	\$17	
Combined	\$500	\$120	\$50	\$15	\$50	\$50	\$0.0100
<b>Alpha Full Book (AFB)<sup>©4</sup></b>							
TSX	\$325	\$90	\$53	\$18	\$53	\$53	
TSXV	\$325	\$90	\$27	\$9	\$27	\$27	
Combined	\$600	\$150	\$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> Clients subscribing to the ATF Feed shall also be entitled to receive the ATB Feed at no extra charge. Interactive Accesses licensed to utilize the ATF data will also be licensed to utilize the ATB data at no extra charge.

<sup>3</sup> Clients subscribing to the APD Feed shall also be entitled to receive the ATF and ATB feeds at no extra charge. 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> Clients subscribing to the AFB Feed shall also be entitled to receive the APD, ATF and ATB feeds at no extra charge. Interactive Accesses licensed to utilize APD data will also be entitled to utilize the APD, ATF and ATB data at no additional fee.

<sup>5</sup> 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, provided through the facilities of Alpha or through the facilities of the TMX Information Processor.

<sup>6</sup>An Individual Access who does not meet the definition of a Non-Professional User in Note 7 below shall be deemed to be a Professional User and is subject to the Individual Access fees specified for Professionals.

<sup>7</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>8</sup>The System Access fee is subject to a cap of \$1,500 per Client per month.

<sup>9</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, 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>Clients subscribing to the TMX IP CBBO and/or CLS products will be considered subscribers of the ATB Feed. Clients subscribing to the TMX IP CDB product will be considered 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 Use Agreement and the agreement with the TMX IP, the terms of this Data Use Agreement will govern. Notwithstanding the foregoing, Section 1(e) of this Data Use Agreement will not be applicable to any Alpha Data received through the TMX IP.



**NOTES**

<sup>1</sup> A Feed will be considered to be 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 Use 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 Use Agreement and the agreement with the TMX IP, the terms of this Data Use Agreement will govern. Notwithstanding the foregoing, Section 1(e) of this Data Use Agreement will not be applicable to any Alpha Data received through the TMX IP. 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:** \_\_\_\_\_

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