

# NON-PROFESSIONAL APPLICATION AGREEMENT FOR RECEIPT OF CANADIAN EXCHANGE GROUP MARKET DATA

## 1. DEFINITIONS

- (a) "Canadian Exchange Group" or "CEG" means TSX Inc. ("TSX") and TSX Venture Exchange Inc., together with such other Persons as may become CEG members from time to time. CEG members have appointed TSX as agent for the purposes of entering into this and other agreements necessary for provision of Market Data to Subscriber on their behalf, and to establish the terms and conditions under which Market Data is to be made available to Subscriber. For the purposes of this Agreement, "Canadian Exchange Group" or "CEG" shall refer to the members comprising Canadian Exchange Group jointly and severally.
- (b) "Interrogation Device" means any device or equipment, including, without limitation, any computer, data processing equipment, communications equipment, terminal, Cathode Ray Tube ("CRT") or monitor, which is authorized by CEG to receive the Market Data from a Supplier or which does in fact receive Market Data from a Supplier, and which at any time during any month either (i) displays, transmits or communicates the Market Data to any individual in visible, audible, or other comprehensible form or (ii) uses or processes the Market Data for any purpose or in any manner other than solely to transmit Market Data to devices as described in the preceding clause (i). The term "Interrogation Device" includes any device or equipment which is capable of being used as an "Interrogation Device".
- (c) "Market Data" means any information provided through the facilities of TSX and/or CEG, directly or indirectly, relating to (i) securities or other financial instruments, markets, products or indices; (ii) information, data and services from Third Party Contributors; and (iii) other information and data, and includes, without limitation, order data provided from CEG and Third Party Contributors.
- (d) "Non-Professional" shall mean a natural person who is not a securities professional and who is acting in his/her personal capacity and not as a principal, officer, partner, employee nor agent of any business nor on behalf of any individual. 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. Also excluded are persons engaged as consultants, independent contractors, software developers and others that use market information for any purpose for profit other than the trading of that person's personal account.

### **A Non-Professional cannot be registered or qualified with:**

- A provincial Securities Commission;
- Securities Exchange Commission;
- Commodities Futures Trading Commission;
- Any provincial, state or other government securities agency;
- Any securities exchange or association;
- Any commodities or futures contract market or association or other entity that performs functions that are equivalent to those of such Persons.

- (e) "Person" includes any natural person or proprietorship or any corporation, partnership or other organization.
- (f) "Receipt of Market Data" means the physical capability whether used or not of successfully retrieving Market Data through the means of an Interrogation Device.
- (g) "Subscriber" means any Person in Receipt of Market Data through facilities furnished by the Supplier and who has accepted the terms and conditions of this Agreement.
- (h) "Supplier" means any Person delivering Market Data to Subscriber.

- (i) "Third Party Contributor" means any Person, other than the members of CEG, who provides any information to CEG for dissemination by CEG pursuant to the terms of this Agreement.

## **2. CEG DISTRIBUTION OF THIRD PARTY CONTRIBUTOR MARKET DATA**

CEG and Third Party Contributors have entered into agreements whereby Third Party Contributors have made their Market Data available to CEG for distribution to Subscriber. In consideration of CEG and Third Party Contributors, as applicable, making Market Data available to Subscriber pursuant to this Agreement, Subscriber agrees to the terms and conditions of this Agreement.

## **3. PROPRIETARY INTEREST IN MARKET DATA**

Subscriber understands and acknowledges that CEG and/or Third Party Contributors have a proprietary interest in the Market Data and that the same is not within the public domain. Any Market Data that is provided directly or indirectly to Subscriber by CEG pursuant to this Agreement has been derived from databases owned by CEG and/or Third Party Contributors, is copyrighted by CEG and/or Third Party Contributors, and as such Subscriber's use of such Market Data is subject to the limitations set out in this Agreement.

## **4. DATA SECURITY**

- (a) **RETRANSMISSION PROHIBITED** - Subscriber shall use Market Data only for its individual use. Subscriber shall not furnish Market Data to any other person nor retransmit Market Data without prior written approval from CEG.
- (b) **EQUIPMENT SECURITY** - Subscriber understands that this Section 4 requires Subscriber to carefully locate and protect Interrogation Devices in Subscriber's possession. Subscriber shall abide by any written requirements that CEG specifies to regulate the location or connection of Subscriber Interrogation Devices or to otherwise assure compliance with this Section 4. Subscriber guarantees that any Person installing or maintaining Subscriber Interrogation Devices will comply with this Section 4.

## **5. DATA NOT GUARANTEED**

- (A) **NO WARRANTIES - THE SUBSCRIBER AGREES THAT CEG AND THIRD PARTY CONTRIBUTORS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MARKET DATA, ITS TRANSMISSION, TIMELINESS, ACCURACY OR COMPLETENESS, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE.**
- (B) **NO GUARANTY - CEG and Third Party Contributors do not guarantee the timeliness, sequence, accuracy or completeness of Market Data or other market information or messages disseminated by CEG. CEG and Third Party Contributors will not be liable in any way to Subscriber or to any other Person for:**
  - (a) any inaccuracy, error or delay in, or omission of, (i) any such data, information or message or (ii) transmission or delivery of any such data, information or message, or
  - (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission (ii) non-performance, or (iii) interruption in any such data, information or message, due either to any negligent act or omission by CEG or Third Party Contributors or "force majeure" (i.e., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labour dispute, accident, action of government, communications or power failure, equipment or software malfunction) or any other cause beyond reasonable control of CEG or Third Party Contributors.

## **6. DISSEMINATION DISCONTINUANCE OR MODIFICATION**

CEG may discontinue disseminating any type of Market Data, may change or eliminate any transmission method and may change transmission speed or signal characteristics. CEG and Third

Party Contributors shall not be liable for any resulting liability, loss or damages to Subscriber.

Toronto, ON M5X 1J2, Canada  
**Attention: TSX Datalinx**

**7. ENTIRE AGREEMENT;  
MODIFICATIONS**

This writing contains the entire Agreement between the parties in respect of its subject matter. This Agreement supersedes each previous Agreement between Subscriber and CEG pursuant to which Subscriber has been receiving Market Data. In the event that Subscriber has previously submitted an executed agreement to CEG in respect of the Receipt of Market Data from a Supplier other than that indicated herein, and Subscriber is continuing to receive Market Data from such Supplier, this Agreement shall serve as a companion agreement to the agreement previously submitted to CEG. The parties may only modify this Agreement in writing signed by or on behalf of each of them.

**8. ASSIGNMENTS**

Subscriber may not assign all or part of this Agreement without the written consent of CEG.

**9. GOVERNING LAW; CONSTRUCTION**

This Agreement shall be governed and interpreted by the laws of the Province of Ontario, Canada. In prohibiting Subscribers in doing any act, this Agreement also prohibits Subscriber from doing the act indirectly (e.g., by causing or permitting any other Person to do the act).

**10. INDEMNIFICATION**

The Subscriber shall indemnify and hold harmless and defend CEG and Third Party Contributors, their members, governors, directors, managers, officers, employees and agents, from and against any and all suits, proceedings at law or in equity, and any and all liability, loss or damage, including reasonable legal fees, arising out of or in connection with the Subscriber's use of Market Data.

**11. NOTICES; NOTIFICATION OF CHANGES**

Subscriber shall send communications relating to this Agreement to their data supplier and:

TSX Inc.  
The Exchange Tower  
130 King Street West

CEG may each change its address for notice by written notice to Subscriber. Subscriber shall give CEG prompt written notice of any change in (a) its representations and warranties hereunder, and (b) any other information provided to CEG by Subscriber in connection with the receipt of Market Data.

**12. SUBSCRIBER'S REPRESENTATIONS AND WARRANTIES**

Subscriber represents and warrants that (s)he is a Non-Professional, as defined herein.

**13. FAILURE TO QUALIFY**

(a) Non-Qualification - Subscriber understands that if CEG determines at any time that Subscriber does not qualify as a Non-Professional subscriber, Subscriber may continue to receive Market Data only after entering into one or more appropriate agreements with CEG. CEG may deny Subscriber the opportunity to enter into such agreement(s) if Subscriber's failure to qualify results from wilful misrepresentations or omissions or from wilful breach of this Agreement.

(b) Retroactive Payment - In the event that a determination of non-qualification is based upon a misrepresentation made herein by Subscriber, or a failure by Subscriber to update information provided to CEG, CEG may notify Subscriber in writing (i) of such determination, (ii) of the period, as determined by CEG, during which Subscriber received Market Data but did not qualify as a Non-Professional Subscriber and (iii) of the amount, calculated at CEG's then-current Professional Subscriber rates, applicable to such period. Within thirty (30) days of receipt of such notice, Subscriber shall pay such amount to CEG.

Signature of Subscriber: \_\_\_\_\_

Name of Subscriber: \_\_\_\_\_

Date: \_\_\_\_\_