



### Data Distribution Agreement

This Data Distribution Agreement (this “**Agreement**”), dated \_\_\_\_\_, 20\_\_\_\_, is between Nasdaq CXC Limited (“Nasdaq CXC”), located at 21st Floor, 130 King Street West, Toronto, and [ \_\_\_\_\_ ], whose principal offices are located at [ \_\_\_\_\_ ] (“**Distributor**”).

WHEREAS, Nasdaq CXC operates an alternative trading system (ATS) known as Nasdaq CXC ATS (the “**CXC System**”) that will permit Distributor to Use (as defined below) certain data feeds for its internal purposes and those of its Related Parties (as defined below), and to redistribute those data feeds to third parties as described herein; and

WHEREAS, Nasdaq CXC also operates an ATS known as Nasdaq CX2 ATS (the “**CX2 System**”) that will permit Distributor to Use certain data feeds for its internal purposes and those of its Related Parties, and to redistribute those data feeds to third parties as described herein; and

WHEREAS, Nasdaq CXC also operates an ATS known as Nasdaq CXD ATS (the “**CXD System**”) and together with the CXC System and CX2 System, the “**Systems**”) that will permit Distributor to Use certain data feeds for its internal purposes and those of its Related Parties, and to redistribute those data feeds to third parties as described herein; and

WHEREAS, Nasdaq CXC desires to provide the Systems to the extent indicated by the box or boxes checked below to Distributor and Distributor desires to utilize the System to Use and redistribute certain data feeds as described herein. All references to a “System” in this Agreement, unless the context requires otherwise, are as indicated immediately below; and

CXC                      CX2                      CXD  
                                                           

WHEREAS, Distributor agrees that, in the event Distributor indicates more than one System using the checkboxes immediately above, each System used shall be treated as subject to a separate Data Distributor Agreement, each in the form of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, Nasdaq CXC and Distributor hereby agree as follows:

#### **1. Approval**

Distributor acknowledges and agrees that its receipt and use of Nasdaq CXC Data (as defined below) is at all times subject to approval by Nasdaq CXC (“**Approval**”), which Approval shall be conditioned, among other things, on: (a) the timely payment of fees set out in this Agreement; (b) monthly notification to Nasdaq CXC of the number of professional and non-professional market data users; and (c) prompt provision to Nasdaq CXC

on request of information required by it to confirm accuracy of fee calculations and monthly notifications of data distribution to various categories of user. Distributor shall be required to meet and to continue to meet Nasdaq CXC's criteria for Approval of which Nasdaq CXC provides notice to Distributor, in accordance with Section 17. In order to maintain Approval, Distributor shall provide Nasdaq CXC with all documentation reasonably requested by Nasdaq CXC that is necessary to conduct the Approval analysis and must use the Nasdaq CXC Data in a manner consistent with applicable rules and regulations.

## 2. Use and Access

### (a) License to Data.

- (i) Subject to Approval being granted and Distributor's compliance with Section 2(c), Nasdaq CXC shall provide Distributor with a non-exclusive, non-transferable, worldwide, limited license, for the uses and purposes described in Section 2(c) (collectively, "**Use**") the data provided by Nasdaq CXC, as identified in Schedule A hereto (the "**Nasdaq CXC Data**") during the term of this Agreement in accordance with the terms and conditions hereof.
- (ii) For purposes of this Agreement: (A) an "**Open Feed**" is a feed of Nasdaq CXC Data that is disseminated by a person that does not retain entitlement control; and (B) a "**Terminal Control Feed**" is a feed of Nasdaq CXC Data that is disseminated by a person that retains entitlement control. A "**Feed**" is either an Open Feed or a Termination Control Feed. The number and type of Feeds to be provided shall be as indicated in the order form found in Schedule B hereto (the "**Order Form**").

### (b) Limited Access to the System. Only Distributor and its employees who are authorized by Distributor shall be authorized to use the System and the Nasdaq CXC Data (Distributor and authorized employees together comprising "**Authorized Users**"). Distributor will not permit any person that is not an Authorized User to access or use the System and shall implement security systems and procedures reasonably designed to prevent unauthorized use or misuse of the Nasdaq CXC Data created or made available by use of the System by third parties or by persons accessing the System. Without limiting the generality of the foregoing, Distributor shall ensure that access to the System 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**").

### (c) Authorized Use. Distributor may Use the Nasdaq CXC Data as follows:

- (i) The Authorized Users of Distributor and its Related Parties (collectively, "**Internal Users**") are authorized to receive, use, copy, store, commingle, process, package and prepare derivative works of the Nasdaq CXC Data for the internal purposes of Distributor and its Related Parties only. In this Agreement, "**Related Parties**" shall be defined to include: (A) any person controlled by a party to this Agreement; (B) any person controlling a party to this Agreement; or (C) any person controlled by the same person that controls a party to this Agreement. Prior to permitting any Related Party to Use the Nasdaq CXC Data, Distributor shall notify Nasdaq CXC of Distributor's wish to permit such Use and shall receive written approval of same from Nasdaq CXC. Any reference in this Agreement to Distributor shall be deemed to include any Related Party that Uses the Nasdaq CXC Data in accordance with this Section 2(c)(i). Any breach of this Agreement by a Related Party shall be deemed to be a breach by Distributor.
- (ii) Distributor is authorized to distribute the Nasdaq CXC Data to: (A) persons receiving the Nasdaq CXC Data for their own individual or internal purposes ("**Clients**") as

either an Open Feed or a Terminal Control Feed; and (B) persons receiving the Nasdaq CXC Data for the purpose of redistributing the Nasdaq CXC Data to third parties ("**Redistributors**") as an Open Feed. Each Client and Redistributor must comply with its respective obligations as set out in Section 2(f) prior to receiving Nasdaq CXC Data. Any use of Nasdaq CXC Data other than as prescribed in this Agreement is prohibited.

- (d) Restrictions on Transmission of Nasdaq CXC Data. Neither the Distributor nor any Related Party shall, by any means, transmit Nasdaq CXC Data to any person unless that person is an Internal User, a Client or a Redistributor.
- (e) Terminating Transmission. If: (i) Nasdaq CXC believes that an Internal User, a Client or a Redistributor has misused the Ch-X Data or breached the terms of this Agreement or its respective Data Use Agreement; or (ii) a Client or Redistributor ceases to be approved by Nasdaq CXC, then Distributor shall cease to retransmit Nasdaq CXC Data to any such Internal User, Client or Redistributor immediately upon receipt of Nasdaq CXC's instructions to do so.
- (f) Prerequisites to Distribution of Nasdaq CXC Data. Distributor's authorization to commence distributing the Nasdaq CXC Data in accordance with Section 2(c)(ii) is conditioned upon:
  - (i) each Redistributor having executed Nasdaq CXC's then-current Data Distribution Agreement and obtaining a written confirmation of same from Nasdaq CXC; and
  - (ii) each Client having executed Nasdaq CXC's then-current Data Use Agreement and obtaining a written confirmation of same from Nasdaq CXC.

For greater certainty, Nasdaq CXC may determine, in its sole discretion, not to require a Client that receives a Terminal Control Feed to comply with Section 2(f)(ii) above. Distributor represents, warrants and covenants that, at all times during the term of this Agreement, it will have a written agreement in place with any such Client which requires the Client to comply with the terms and conditions of this Agreement. Distributor agrees to be liable for any breach of this Agreement by any such Client.

- (g) Rights to Intellectual Property. As between the parties, Nasdaq CXC has all rights, title and interest in the Nasdaq CXC Data and the System, including all patents, copyrights, trade secrets and other intellectual property rights therein. Except for the limited license expressly provided herein, this Agreement does not grant or give Distributor any right, title or interest of any nature in the Nasdaq CXC Data or the System or in any patents, copyrights, trade secrets or other intellectual property rights associated with the Nasdaq CXC Data or the System.
- (h) Responsibility for Technology Failures. Distributor is solely responsible for any losses, damages or costs that it may incur from Use of Nasdaq CXC Data or the System arising from a failure from technology including, but not limited to, those arising as a result of errors made by, or the failure of, software or equipment whether belonging to Nasdaq CXC or a third party.
- (i) Continuation of Nasdaq CXC Data Dissemination. Distributor acknowledges that nothing in this Agreement constitutes an obligation by Nasdaq CXC to continue to make the Nasdaq CXC Data available in its present form or configuration or to continue to utilize existing communication facilities. Nasdaq CXC will endeavour to give Distributor notice of any material change to the form or configuration of the Nasdaq CXC Data, such change being provided at least 30 days prior to the implementation of such change in accordance to

Section 17 unless, in Nasdaq CXC's sole discretion, circumstances are such that they necessitate an immediate implementation of such changes to prevent failure or degradation of the performance of Nasdaq CXC's technology systems, to prevent unauthorized use of or access to the Nasdaq CXC Data or to prevent a violation of any applicable regulatory requirements. Distributor shall be solely responsible for making any modifications to its service resulting from any such change.

- (j) Adverse Alteration of Nasdaq CXC Data. Distributor agrees not to alter the Nasdaq CXC Data in any manner that adversely affects its accuracy or integrity or renders it misleading.
- (k) Access to Delayed Data. Notwithstanding Section 2(d), Distributor may permit persons who are not otherwise authorized under this Agreement to access Nasdaq CXC Data that is at least 15 minutes delayed without fee hereunder where Distributor controls such persons' access to the Nasdaq CXC Data displayed. Individuals accessing the delayed Nasdaq CXC Data in accordance with this Section 2(k) shall not be required to comply with the provisions related to User IDs set out in Section 2(b) of this Agreement. Access to Nasdaq CXC Data other than those described above in this Section 2(k) shall be subject to fees as provided in Section 3.

### **3. Fees; Reporting and Audits**

- (a) Fees. Client agrees to make timely payment of the fees for the Nasdaq CXC Data as set out in Schedule A hereto, as may be amended from time to time by Nasdaq CXC by providing Clients with reasonable notice, which shall not be less than 30 days in accordance with Section 17. The failure of Client to make such payment within 30 days from the invoice date may result in suspension or termination of Client's access to the System or the Nasdaq CXC Data without further notice to Client and without Nasdaq CXC incurring any liability to Client. Except for amounts disputed in good faith by writing sent to Nasdaq CXC on or before the payment due date; amounts that remain outstanding more than 30 days after the date of invoice shall be subject to a late fee of 1.5% above the prime rate of the Royal Bank of Canada, or if less, the maximum rate allowed by law. Nasdaq CXC shall have the right to set off any sums due from Client to Nasdaq CXC against any sums due from Nasdaq CXC to Client.
- (b) Reporting Obligations of Distributor. Commencing after the close of the first month following the effective date of this Agreement, Distributor shall on a monthly basis, not later than the 15<sup>th</sup> day of the following month, provide Nasdaq CXC with a report, in such form as Nasdaq CXC may prescribe for Distributor from time to time, which shall state the number of Feeds provided to:
  - (i) Internal Users; and
  - (ii) Authorized Users of Clients and Redistributors,

in each case which were registered for each type of Feed during the applicable month. If Distributor subsequently determines that there has been an inaccuracy in a report from a prior month, Distributor will immediately provide a corrected report for the relevant month. Nasdaq CXC shall debit or credit any fees that are owed by or to Distributor in accordance with Section 3(a) based on a corrected report on a monthly invoice following the issuance of the corrected report.

- (c) Onsite Reviews. Nasdaq CXC shall be entitled, in its sole discretion, upon the provision of not less than 30 days prior written notice, to conduct (or arrange for an agent to conduct) onsite reviews or audits of Distributor's facilities and systems no more than once during any

twelve month period to monitor Distributor's compliance with the terms of this Agreement. Notwithstanding the foregoing, Nasdaq CXC shall be entitled, upon providing not less than two business days prior written notice, to conduct additional reviews upon Nasdaq CXC becoming aware of an actual or potential material breach by Distributor of this Agreement. Any onsite reviews or audits conducted by Nasdaq CXC pursuant to this Agreement shall be conducted during normal business hours of Distributor and Nasdaq CXC (or its agents or representatives) will comply with Distributor's reasonable written policies or procedures relating to site or information security. Nasdaq CXC will only access and review Distributor's information as part of such review or audits to the extent reasonably necessary to conduct such review or audit. All such information shall be considered the Confidential Information of Distributor. If any review or audit conducted by Nasdaq CXC reveals an over-payment or under-payment by Distributor of any fees payable in accordance with Section 3(a), Nasdaq CXC shall debit or credit any such fees on Distributor's monthly invoice following the review or audit.

#### 4. Levies

Distributor shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Distributor by any provincial or federal government bodies, or subdivisions thereof, and any penalties or interest, (other than income taxes imposed on Nasdaq CXC) relating to the provision of the Nasdaq CXC Data to Distributor. In addition, if Distributor is required under applicable law to deduct or withhold any such tax, charge or assessment from the amounts due to Nasdaq CXC under Section 3(a) of this Agreement, then such amount shall be increased so that the net amount actually received by Nasdaq CXC after the deduction or withholding of such tax, charge or assessment, will equal one hundred per cent (100%) of the charges due under Section 3(a) hereof.

#### 5. Confidentiality

- (a) 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 and program devices;
  - (ii) discoveries, ideas, concepts, 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;
  - (iii) all proprietary software programs, and proprietary computer software designs and architecture, in whatever form, regardless of whether marked or designated as confidential or proprietary;
  - (iv) information commonly recognized as proprietary trade secrets; and
  - (v) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing.

- (b) Exclusions from definition. Confidential Information shall not include any information that the receiving party can show:
- (i) was in the receiving party's possession free of any obligation of confidentiality 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 or becomes publicly available through no breach of this Agreement by the receiving party;
  - (iv) was communicated by the disclosing party to a third party free of an obligation of confidentiality; or
  - (v) is received by the receiving party independently from a third party that is permitted to disclose such information to the receiving party.
- (c) Treatment of Confidential Information. The receiving party shall treat the Confidential Information with at least the same degree of care that is used 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 to 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.
- (d) 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.
- (e) 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.

## 6. LIMITATIONS ON LIABILITIES

- (a) DISTRIBUTOR AGREES THAT, IN THE ABSENCE OF FRAUD, GROSS NEGLIGENCE OR DELIBERATE MISCONDUCT, NONE OF NASDAQ CXC, ITS PARENT COMPANIES, STOCKHOLDERS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR ANY RELATED PERSONS OR ENTITIES, WILL BE LIABLE FOR ANY LOSS OR CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF OPPORTUNITY, LOSS OF USE, TRADING LOSSES, LOSS OF OTHER COSTS OR SAVINGS, OR FOR ANY DAMAGES SUFFERED, OR COST AND EXPENSES INCURRED, BY DISTRIBUTOR, ANY INTERNAL USER, ANY CLIENT OR ACCOUNT OF DISTRIBUTOR, ANY REDISTRIBUTOR, ANY MEDIA SERVICE OR ANY OTHER THIRD-PARTY, OF ANY NATURE, OR FROM ANY CAUSE WHATSOEVER, WHETHER DIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL, ARISING OUT OF THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF, OR INABILITY TO USE, THE SYSTEM OR THE NASDAQ CXC DATA OR ANY OTHER MATERIAL FURNISHED BY OR ON BEHALF OF NASDAQ CXC, NOTWITHSTANDING THAT NASDAQ CXC MAY HAVE BEEN ADVISED OF THE POSSIBILITY THAT DAMAGES MAY OR WILL ARISE IN ANY GIVEN SITUATION. NEITHER DISTRIBUTOR NOR ANY OF ITS OFFICERS, EMPLOYEES AND/OR AGENTS ARE EMPLOYEES, OFFICERS, AGENTS OR PERSONS WHO HAVE THE AUTHORITY OR CAPACITY TO ACT FOR OR ON BEHALF OF NASDAQ CXC. NEITHER NASDAQ CXC NOR ITS PARENT COMPANIES, STOCKHOLDERS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ANY RELATED PERSONS AND ENTITIES WILL BE LIABLE IN ANY WAY FOR ANY INDIRECT DAMAGES CAUSED OR BASED UPON ANY INACCURACY, ERROR, OR DELAY IN, OR OMISSION OF THE TRANSMISSION OR DELIVERY OF THE NASDAQ CXC DATA IN THE ABSENCE OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR ANY DIRECT DAMAGES CAUSED OR BASED UPON ANY INACCURACY, ERROR, OR DELAY IN, OR OMISSION OF THE TRANSMISSION OR DELIVERY OF THE NASDAQ CXC DATA IN THE ABSENCE OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR NASDAQ CXC'S MATERIAL BREACH OF OR FAILURE TO REASONABLY FOLLOW ITS PUBLISHED CLEARLY ERRONEOUS POLICY.
- (b) NASDAQ CXC'S ENTIRE AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES CHARGED AND RECEIVED BY NASDAQ CXC TO DISTRIBUTOR IN THE TWO MONTHS PRECEDING THE DATE THAT THE FIRST CAUSE OF ACTION AROSE, EVEN IF A CONTINUING ONE.

## **7. Warranties**

- (a) THE SYSTEM AND THE NASDAQ CXC DATA ARE PROVIDED "AS IS". NONE OF NASDAQ CXC, ITS AFFILIATES OR ANY THIRD PARTY PROVIDER MAKES ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF THE NASDAQ CXC DATA OR AS TO RESULTS TO BE ATTAINED BY DISTRIBUTOR OR ANYONE ELSE FROM THE USE OF THE SYSTEM. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, NASDAQ CXC, ITS AFFILIATES AND ALL THIRD PARTY PROVIDERS DISCLAIM ALL WARRANTIES, CONDITIONS, GUARANTEES 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, GUARANTEES OR REPRESENTATIONS OF FITNESS FOR PURPOSE, MERCHANTABILITY OR MERCHANTABLE OR SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. NONE OF NASDAQ CXC, ITS AFFILIATES OR ANY THIRD PARTY PROVIDER SHALL HAVE ANY RESPONSIBILITY TO MAINTAIN THE SYSTEM OR TO SUPPLY ANY CORRECTIONS, UPDATES OR RELEASES IN CONNECTION THEREWITH. NONE OF NASDAQ CXC, ITS AFFILIATES OR ANY THIRD PARTY

PROVIDER IS SOLICITING ANY ACTION BASED UPON THE USE OF THE SYSTEM OR THE NASDAQ CXC DATA.

- (b) The entire risk as to the quality and performance of the System and the Nasdaq CXC Data are with Distributor and there is no guarantee that the services provided by Nasdaq CXC will meet Distributor's requirements, be error free, or operate without interruption.

## 8. Distributor's Representations and Warranties

Distributor represents, warrants and covenants that: (i) its use of the System and the Nasdaq CXC Data, any order entered by Distributor on the System and any provision of access to the System by Distributor to Authorized Users, is in compliance with all applicable rules and regulations; (ii) it has appropriate resources, policies and procedures in place to ensure that it can provide its Internal Users, Clients and Redistributors with consistent and timely access to the Nasdaq CXC Data; and (iii) this Agreement constitutes a valid and binding obligation of Distributor, enforceable against it in accordance with its terms.

## 9. Indemnities

- (a) Distributor agrees to indemnify and hold harmless and at Distributor's expense defend Nasdaq CXC, its parent companies and their respective officers, directors, employees, agents, members, successors and assigns ("**Indemnified Parties**") from and against any cost, expense, liability claim, loss or damage (collectively, "**Losses**") which any Indemnified Party may incur as a result of any material breach by Distributor, any Related Party or any of their respective employees, agents, representatives, Clients or Redistributors of any of the terms of this Agreement, except to the extent caused by the gross negligence, willful misconduct or fraud of Nasdaq CXC or any Indemnified Parties, provided that Distributor shall not be liable to indemnify for indirect, special, punitive or other such consequential damages which an Indemnified Party may suffer except those arising from a breach of Section 8. Nasdaq CXC will use reasonable efforts to promptly notify Distributor of any claim falling under the foregoing indemnity, provided, however, that the delay of or failure to provide prompt notice will not affect Nasdaq CXC's right of indemnity hereunder except to the extent Distributor has been prejudiced by reason of such delay or failure. Distributor may elect to assume the defense of any third party claim to which this Section 9 applies, and upon receipt by Nasdaq CXC of notice of such election, Distributor shall not be liable to Nasdaq CXC under this Section 9 for any legal expenses of additional counsel or any other additional expenses provided Distributor carries out such defense with reasonable diligence.
- (b) Nasdaq CXC agrees to indemnify and hold harmless Distributor from or against any action or claim that Distributor's use of the System or Nasdaq CXC Data infringes the Intellectual Property Rights (and, for the purpose of this Agreement, "**Intellectual Property Rights**" means all rights and inventions, copyrights, design rights, trade names, service marks, trade secrets, know-how and any other intellectual property or proprietary rights of a third party, whether registered or unregistered) of a third party ("**IPR Claim**") and shall indemnify Distributor from and against any Losses incurred by or awarded against Distributor as a result of any IPR Claim. Distributor agrees to (i) notify Nasdaq CXC in writing of any IPR Claim of which it has notice as soon as reasonably practicable, provided however that the delay of or failure to provide prompt notice will not affect Distributor's right of indemnity hereunder except to the extent Nasdaq CXC has been prejudiced by reason of such delay or failure; (ii) maintain reasonable consultation with Nasdaq CXC in relation to the IPR Claim; and (iii) provide Nasdaq CXC with all the information reasonably requested by Nasdaq CXC for the purpose of enabling Nasdaq CXC to assess the claim.

## 10. Distributor's Obligations and Additional Warranties



- (a) Documentation. Distributor agrees to provide such further documents and information as may be requested by Nasdaq CXC from time to time concerning the Distributor, its Clients or its Redistributors, reasonably deemed necessary by Nasdaq CXC, in its sole discretion. All such information shall be considered Confidential Information.
- (b) Connectivity. Distributor is solely responsible for all telecommunications costs and all other expenses incurred in linking to, and maintaining its link to, the System. Distributor shall maintain a connection of such quality as Nasdaq CXC may reasonably prescribe from time to time. The failure to provide an adequate connection or adequate equipment shall constitute a breach of a material term hereof and shall entitle Nasdaq CXC to terminate this Agreement.
- (c) Distributor Security. 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 Distributor and its directors, officers, employees and agents from obtaining access to the Nasdaq CXC Data.
- (d) System Security. Distributor shall take reasonable steps to ensure that all Distributor devices and equipment that Nasdaq CXC has authorized to receive the Nasdaq CXC Data (the “**Receiving Devices**”) are secure and prevent any person that is not authorized from gaining access to the Nasdaq CXC Data.
- (e) Unauthorized Access. If Nasdaq CXC determines, in its sole discretion, that one or more persons that are not authorized pursuant to this Agreement to have access to Nasdaq CXC Data have gained access to Nasdaq CXC Data through Distributor’s systems, Distributor shall take such steps as may be necessary to change its systems to preclude such unauthorized access and provide Nasdaq CXC with such evidence as it may reasonably request. If Distributor becomes aware that an unauthorized person has gained access to Nasdaq CXC 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 Nasdaq CXC) to Nasdaq CXC in such regard. Distributor shall reasonably cooperate with any investigation undertaken by Nasdaq CXC in relation to any matter regarding unauthorized access to Nasdaq CXC Data and acknowledges that Nasdaq CXC is entitled to take any actions Nasdaq CXC deems necessary in relation to unauthorized persons and Distributor shall, at Nasdaq CXC’s expense, take all reasonable action to cooperate with and assist Nasdaq CXC in relation to such an action.

## 11. Term and Termination or Suspension of Agreement

This Agreement is for the term of one year from the date of execution and is automatically renewed on an annual basis unless terminated by either party pursuant to the terms of this Agreement. Nasdaq CXC may immediately suspend or terminate Distributor’s access to the System or the Nasdaq CXC Data, or any portion thereof, if it determines that:

- (a) Distributor has breached any material term of this Agreement and Distributor fails to cure such breach within five (5) business days after written notice thereof from Nasdaq CXC (“**Cure Period**”);
- (b) Distributor is engaged in activities that Nasdaq CXC reasonably determines to be detrimental to Nasdaq CXC or its subscribers;
- (c) Distributor, in Nasdaq CXC’s sole discretion, poses a credit risk to Nasdaq CXC; or
- (d) Distributor is retransmitting, rebroadcasting or republishing the Nasdaq CXC Data in breach of any item under Section 2.

Either party may terminate this Agreement upon thirty (30) days written notice to the other party.

## **12. Assignment**

Distributor may not transfer or assign this Agreement to any third party without the prior written approval of Nasdaq CXC. Distributor hereby agrees that this Agreement, and all the terms thereof, will be binding upon Distributor's successors and assignees. Nasdaq CXC may transfer or assign this Agreement to an affiliate of Nasdaq CXC. Nasdaq CXC shall provide Distributor with written notice of any such assignment.

## **13. Arbitration**

With respect to services, matters and proceedings contemplated by this Agreement that are governed by SRO requirements, Nasdaq CXC and Distributor irrevocably agree that they shall submit all disputes arising from or relating to this Agreement to binding arbitration, which shall be conducted in accordance with the UNCITRAL Model Law on International Commercial Arbitration. Any such arbitration shall take place in the English language, in the City of Toronto. The arbitral tribunal shall apply the substantive laws of the Province of Ontario, save and except its conflicts of laws rules. Any adjudicator so appointed shall be satisfactory to Nasdaq CXC.

## **14. Governing Law; Injunctive Relief**

This Agreement shall be governed by the laws of the Province of Ontario without regard to its choice of law provisions. Subject to Section 13, the parties consent to arbitration in relation to any legal action or proceedings arising out of or in connection with this Agreement ("Proceedings"). Distributor agrees that Section 13 operates for the benefit of Nasdaq CXC and accordingly, notwithstanding Section 13, Nasdaq CXC shall be entitled to take Proceedings in any other court or courts having jurisdiction. The parties agree that any remedy at law for any breach of Distributor's obligations under this Agreement will be inadequate and Nasdaq CXC will be entitled to seek temporary and permanent injunctive relief (without the necessity of proving actual damages) to restrain the breach or threatened breach of, or otherwise to specifically enforce Distributor's obligations under this Distributor Agreement. In addition to seeking injunctive relief, Nasdaq CXC retains the right to commence an action for any other relief and nothing contained herein shall be construed as limiting Nasdaq CXC's right to any other remedies at law, including but not limited to the recovery of damages. The terms and conditions of this Section shall survive any termination, cancellation, replacement, expiration, modification, rejection or cessation of effectiveness of this Agreement.

## **15. Material Change to Business; Bankruptcy or Insolvency**

Distributor shall provide Nasdaq CXC with oral and written notice of any: (i) name or address change, (ii) change in control, (iii) change in business structure, or (iv) material change in business or financial condition that could affect Distributor's ability to honor this Agreement, within fifteen (15) calendar days of the occurrence of any such event. Distributor shall provide immediate written notice to Nasdaq CXC in the event of any voluntary or involuntary filing by or against Distributor under any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect.

## **16. Force Majeure**

Neither Party hereunder shall be liable for any delay or failure to perform its obligations hereunder so long as that delay or failure is the result of an event beyond its reasonable control, provided that such Party uses commercially reasonable efforts to fulfill its obligations under this Distributor Agreement. Notwithstanding the foregoing, Distributor agrees and acknowledges that this Section 16 will not relieve Distributor from its payment obligations hereunder in consideration for Nasdaq CXC's provision of the Nasdaq CXC Data or the System.

## **17. Notices**

Any notice from Nasdaq CXC regarding the administration or operations of the System or amendments to the terms and conditions that govern Distributor's Use or access to the Nasdaq CXC Data or the System (including, for greater certainty, notice provided by Nasdaq CXC in accordance with Sections 1, 2(i) or 3(a)) shall be posted on its website at <http://business.nasdaq.com/trade/canadian-equities/Overview> or any successor web site. Nasdaq CXC shall provide contemporaneous email notification for convenience of clients, provided however, that Client shall be responsible for providing and updating as necessary Client's email address for such email notifications. Such email notification shall be for communication purposes only. Nasdaq CXC's official notification shall be posted on its website. Except as otherwise expressly provided, any other notice which either party is required or authorized by this Agreement to give or make to the other shall be given or made by: (a) prepaid first class post or hand delivery addressed to the other at their last known business address; or (b) if the recipient has provided an email address to receive such notices, then by email to such email address. In the case of Nasdaq CXC, such notice is to be addressed to the Chief Compliance Officer. Notice shall be deemed for the purposes of this Agreement to have been given or made: (i) in the case of hand delivery, at the time of delivery; (ii) if by prepaid first class post, 48 hours after posting (excluding Saturdays, Sundays and public holidays in Canada); or (iii) if by email, on the day of transmittal.

## **18. Entire Agreement**

This Agreement states the entire understanding between the Parties with respect to its subject matter and supersedes all prior proposals, marketing materials, negotiations and other written, oral or electronic communications between the Parties with respect to the subject matter hereof, except that neither Party limits or excludes its liability to the other for fraudulent misrepresentation.

## **19. Counterparts; Amendments**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Nasdaq CXC may amend the terms and conditions that govern Client's Use of or access to the Nasdaq CXC Data or the System by providing notice to Client of such amendment in accordance with Section 17. Except as provided in the preceding sentence, this Agreement may be amended only in writing by authorized representatives of both Parties.

## **20. Definitions; Headings**

Terms defined in any portion of this Agreement shall have the same definition throughout this Agreement. The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

## **21. Waiver; Severability**

Any waiver by the other Party in writing of any of the other Party's obligation hereunder, or any failure to insist upon strict compliance with any obligation shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure. If any provision of this Agreement shall be held invalid, the remaining portions shall remain in full force and effect.

## **22. Precedence**

Where this Agreement and any notice posted by Nasdaq CXC in accordance with Section 17, on its website conflict, the notice prevails.

**23. Survival**

The terms and conditions of this Section and Sections 2(d), 2(e), 2(g), 2(h), 2(i), 2(j), 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 shall survive any termination, cancellation, replacement, expiration, modification, rejection or cessation of effectiveness of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**[DISTRIBUTOR]**

By (signature): \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Nasdaq CXC Limited**

By (signature): \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_



## Schedule A

### Nasdaq CXC Market Data Fee Schedule for CXC, CX2 and CXD Marketplaces

#### 1. CXC Data Fees

Level 1 included with Level 2

##### CXC Real-Time Open Feed Fee Schedule <sup>1</sup>

Product	User/Subscriber		Distributor/Vendor	
	Primary	Additional <sup>2</sup>	Primary	Additional <sup>2</sup>
Level 1 - Top of book	\$300	\$75	\$600	\$150
Level 2 - Full Book MBO or MBP	\$600	\$150	\$1,000	\$250

##### CXC Real-Time Open Feed Fee Schedule via Third party Distributor <sup>3</sup>

Product	User via Third party		Vendor via Third party	
	Primary	Additional <sup>2</sup>	Primary	Additional <sup>2</sup>
Level 1 - Top of book	\$100	\$25	\$500	\$125
Level 2 - Full Book MBO or MBP	\$200	\$50	\$800	\$200

##### CXC – Real-Time Data Access for single user, single Unit Display Fees

Product	Professional	Retail Professional <sup>4</sup>	Non-Professional <sup>4</sup>	Per Quote <sup>5</sup>
<b>Level 1 - Top of Book</b>				
TSX Listed	\$12.00	\$6.00	\$0.00	\$0.000
TSXV Listed	\$5.25	\$2.63	\$0.00	\$0.000
<b>Level 2 Full Book MBO or MBP</b>				
TSX Listed	\$30.00	\$24.00	\$0.00	\$0.0125
TSXV Listed	\$10.00	\$7.38	\$0.00	\$0.0125

#### 2. CX2 Data Fees

Level 1 included with Level 2

##### CX2 Real-Time Open Feed Fee Schedule <sup>1</sup>

Product	User/Subscriber		Distributor/Vendor	
	Primary	Additional <sup>2</sup>	Primary	Additional <sup>2</sup>
Level 1 - Top of book	\$0	\$0	\$0	\$0
Level 2 - Full Book MBO or MBP	\$0	\$0	\$1,000	\$225

##### CX2 Real-Time Open Feed Fee Schedule via Third party Distributor <sup>3</sup>

Product	User via Third party		Vendor via Third party	
	Primary	Additional <sup>2</sup>	Primary	Additional <sup>2</sup>
Level 1 - Top of book	\$0	\$0	\$0	\$0
Level 2 - Full Book MBO or MBP	\$0	\$0	\$0	\$0

##### CX2 - Real Time Data Access for single user, single Unit Display Fees

Product	Professional	Retail Professional <sup>4</sup>	Non-Professional <sup>4</sup>	Per Quote <sup>5</sup>
<b>Level 1 - Top of Book</b>				
TSX Listed	\$0.00	\$0.00	\$0.00	\$0.000
TSXV Listed	\$0.00	\$0.00	\$0.00	\$0.000
<b>Level 2 Full Book MBO</b>				
TSX Listed	\$0.00	\$0.00	\$0.00	\$0.000
TSXV Listed	\$0.00	\$0.00	\$0.00	\$0.000

## 2. CXD Data Fees

### CXD Real-Time Open Feed Fee Schedule <sup>1</sup>

Product	User/Subscriber		Distributor/Vendor	
	Primary	Additional <sup>2</sup>	Primary	Additional <sup>2</sup>
Last Sale	\$0	\$0	\$0	\$0

### CXD Real-Time Open Feed Fee Schedule via Third party Distributor<sup>3</sup>

Product	User via Third party		Vendor via Third party	
	Primary	Additional <sup>2</sup>	Primary	Additional <sup>2</sup>
Last Sale	\$0	\$0	\$0	\$0

### CXD - Real Time Data Access for single user, single Unit Display Fees

Product	Professional	Retail Professional <sup>4</sup>	Non-Professional <sup>4</sup>
<b>Last Sale</b>			
TSX Listed	\$0.00	\$0.00	\$0.00
TSXV Listed	\$0.00	\$0.00	\$0.00

## Notes

1. Nasdaq CXC market data customers that receive an Open Feed directly from Nasdaq CXC will be provided with one free unicast recovery session as part of the product offering. Multiple usages of multicast market data by the customer or a Related Party is considered to be a single Open Feed only. All additional unicast recovery sessions will be considered additional Open Feeds and will be charged accordingly. The determination of what constitutes an Open Feed may be different than that employed by Nasdaq CXC and may differ between vendors.

The Market Data Fees for Clients subscribing to TMX IP products will be charged at the Use/Subscriber Vendor/Distributor Feed Fee Schedule as applicable. For Clients entering into an agreement with the TMX to receive Nasdaq CXC data via the TMX IP, in the case of any inconsistency between the terms of the Nasdaq CXC Data Distribution Agreement and the agreement with the TMX IP, the terms of the Nasdaq CXC Data Distribution Agreement will override.

2. A Primary Open Feed is defined as the first Open Feed that is consumed by a market data customer. In the case where both a Level 1 and Level 2 feed are consumed by a customer, the Primary Open Feed will be considered to be the Level 2 feed. In the case where multiple Open Feeds are consumed by a customer (whether from Nasdaq CXC directly or a third party), the most expensive Open Feed will be considered the Primary Open Feed. All other Open Feeds will be considered additional Open Feeds and charged at their appropriate rate.
3. Third party Open Feed fees apply to clients receiving data from distributors/vendors of Nasdaq CXC CXC level 1 and Level 2 feed products.
4. A User that does not meet either the definition of a Non Professional or Retail Professional below shall be deemed to be a Professional and is subject to the fees specified for Professionals.

Non-Professional is defined as 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. To provide further clarification but without being limited, the 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. A Non-Professional 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.

**Retail Professional** – is defined as a Registered Representative who trades or advises on trades or branch staff who support a Registered Representative who trades or advises on trades in securities, options, futures contracts, or futures contract options exclusively with Retail Customers and shall include a Registered Representative (mutual funds) approved by IIROC but does not include a Registered Representative working on a retail trading desk.

- 5. Per Quote fees, follow the same principles as all other real-time single unit data fees, but have additional fee features
  - a) Per Quote fees are applicable to Professional, Retail Professional and Non-Professional users.
  - b) Per Quote fees are capped, per user, at the corresponding monthly Professional, Retail Professional or Non-Professional Real-Time Data Access fee.



**Schedule B to the Nasdaq CXC Agreement  
Data Feed Order Form**

Data ID Number <small>(enter "New if new feed")</small>	Number of Feeds	Market Place			Feed Source <small>Nasdaq CXC, TMX IP or Vendor Name</small>	L1	L2	Fee
		CXC	CX2	CXD				
<b>Total Fees</b>								
<b>Comments</b>								

**CLIENT INFORMATION**

**Client Name:**

Address: \_\_\_\_\_

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

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

**Business Contact:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

**Finance/Billing Contact:**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Usage Reporting Contact:**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

[Signature Page Follows]

**Authorized by:**  
**DATE:**

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