



## DATA USE AGREEMENT

This Data Use Agreement (this “**Agreement**”) is entered into as of the Effective Date, by and between Nasdaq CXC Limited (“**Nasdaq**”), with its principal place of business at 9th Floor, 25 York Street, Toronto and Client, (each a “**Party**” and collectively the “**Parties**” to this Agreement.) The Parties hereby agree to the following terms and conditions:

<b>Client:</b>	
<b>Client Address:</b>	
<b>Client Phone:</b>	
<b>Client Email:</b>	
<b>Client Contact:</b>	

<b>Client Billing Contact:</b>	
<b>Address:</b>	
<b>Email:</b>	
<b>Phone::</b>	

<b>Client Technical Contact:</b>	
<b>Address:</b>	
<b>Email:</b>	
<b>Phone:</b>	

**Terms and Conditions.** The terms and conditions set forth in **Exhibit A** and definitions detailed in **Exhibit B**, each attached hereto, are made an integral part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, have executed this Agreement as of the Effective Date:

**Nasdaq CXC Limited:**

**Client:**

\_\_\_\_\_  
By

\_\_\_\_\_  
By

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**  
**TERMS AND CONDITIONS**

**1. License and Restrictions.**

- 1.1 Client shall submit a Data Feed Order Form (“**Order Form**”) for the Information it wants to license. Nasdaq shall provide the Information either directly or through a Distributor. Nasdaq grants to Client a worldwide, non-exclusive, non-transferable license to receive, use, process and store the Information during the Term solely for the use(s) detailed in Section 1.2 and subject to the terms and conditions of the Agreement including the Nasdaq Requirements.
- 1.2 Client and its Internal Users are authorized to receive, use, copy, store, commingle, process, package and prepare derivative works of the Information for the internal purposes of Client and its Affiliates only. Client must use the Information in a manner consistent with all applicable rules and regulations.
- 1.3 Except as detailed above, all other use of the Information by Client including, but not limited to, retransmission or reprocessing, are prohibited. Without limiting the above, Client shall not: (i) copy, modify, reverse engineer, decode, decompile, attempt to tamper with, evade, or discover the method of operation of the Services; (ii) sell, lease, rent, furnish, retransmit, redistribute, disseminate, divert, release, license, sublicense or otherwise permit or provide access to the Information; (iii) format, display, or alter the Information in violation of the Agreement; (iv) alter or affect the Information in any manner that adversely impacts its accuracy or integrity including, but not limited to, rendering the Information inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory; (v) use the Services in violation of this Agreement or Applicable Law; (vi) introduce any harmful data, computer code, or viruses to the Services or damage, disrupt, disable, or harm the Services; or, except on Nasdaq’s prior written approval, (viii) remove or alter any copyright, ownership and/or identification notices found within the Information.
- 1.4 Client acknowledges and agrees that its receipt and use of the Information is at all times subject to approval by Nasdaq (“**Approval**”), which Approval shall be conditioned, among other things, on: (a) the timely payment of fees set out in this Agreement; (b) compliance with all reporting obligation; and (c) prompt provision to Nasdaq on request of information required by it to confirm accuracy of fee calculations and monthly notifications of data distribution to various categories of user or otherwise necessary to conduct the Approval process. Client shall be required to meet and continue to meet Nasdaq’s criteria for Approval.

**2. Affiliates**

Prior to permitting any Affiliate to use the Information, Client shall notify Nasdaq of Client’s wish to permit such use and shall receive written approval of same from Nasdaq. Any reference in this Agreement to Client shall be deemed to include any Affiliate that uses the Information. Any breach of this Agreement by an Affiliate shall be deemed to be a breach by Client. Client shall be solely responsible for the acts and omissions of: (i) Internal Users; and (ii) Affiliates

**3. Security, Unauthorized Use**

- 3.1 Client shall implement reasonable security measures and safeguards in accordance with industry standards to prevent unauthorized individuals or entities from gaining access to the Information. Client shall comply with all Nasdaq reasonable security specifications and requirements in order to prevent improper use or access of the Information. Without limiting the generality of the foregoing, Client shall ensure that access to the Services 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**”). Client shall notify Nasdaq promptly upon any known breach in security procedures related to the Information.

- 3.2 In the event Client fails to comply or becomes aware that it or any Internal User or Affiliates has failed to comply with any terms, conditions, or provisions of this Agreement, Client shall, promptly, but not later than five (5) business days: (i) cease providing the Information to such user or utilizing such Information as applicable; and (ii) notify Nasdaq and confirm suspension of such access and/or use of the Information. Client shall be held responsible and liable for any continuing actions of the user that occur after the five (5) business day period.
- 3.3 In the event Client knowingly receives Unauthorized Information, Client shall promptly notify Nasdaq. If Nasdaq becomes aware that Client is receiving Unauthorized Information, Nasdaq shall promptly notify Client. Client shall not knowingly use, furnish or permit to be furnished Unauthorized Information. Client shall be deemed to have knowingly furnished or used the Unauthorized Information if Client intentionally distributes the Unauthorized Information in part or whole. If Client knowingly uses or distributes the Unauthorized Information, Client shall be liable to Nasdaq pursuant to this Agreement, including, but not limited to, any applicable fees.
4. **Service Changes.**
- 4.1 Client acknowledges and agrees that nothing in this Agreement constitutes an undertaking by Nasdaq to continue to provide the Information, the Service, or any aspect of either, in the present form or configuration.
- 4.2 Nasdaq may, in its sole discretion and at any time, make changes, modifications and/or deletions to the Information, the Services, or any aspect of either, which shall include, but not be limited to decisions, policies, operating procedures, requirements, user guides or other documentation.
- 4.3 Nasdaq shall not be required to provide notice of any routine modifications, additions or deletions to the Service. For all other modifications, additions or deletions, Nasdaq shall endeavor to provide at least thirty (30) days' advance notice of any non-material changes and at least ninety (90) days' advance notice of any material changes, except to the extent a shorter period is: (i) otherwise permitted herein; (ii) required due to a malfunction of the Service or Information; (iii) required due to emergency or priority situation that necessitates such change on an accelerated basis or otherwise precludes advance notice; or (iv) required pursuant to an order of a court, an arbitrator, or a regulatory agency.
- 4.4 Receipt or use of the Information and/or Services after the applicable notice period shall constitute acceptance of any such change.
5. **Fees, Payment and Taxes.**
- 5.1 Client agrees to make timely payment of the fees for the Information as set out in Order Form, as may be amended from time to time by Nasdaq by providing Client with reasonable notice, which shall not be less than 30 days in accordance with Section 14. The failure of Client to make such payment within thirty (30) days from the invoice date may result in suspension or termination of Client's access to the Service or the Information without further notice to Client and without Nasdaq incurring any liability to Client. Except for amounts disputed in good faith by writing sent to Nasdaq on or before the payment due date; amounts that remain outstanding more than thirty (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 shall have the right to set off any sums due from Client to Nasdaq against any sums due from Nasdaq to Client.
- 5.2 Client shall pay any taxes, including, but not limited to, any VAT, charges or assessments (other than taxes imposed on the net income of Nasdaq) by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof relating to the provision of the Information pursuant to this Agreement, and any related penalties or interest. If Client is required by applicable law to deduct or withhold any such tax, charge or assessment from the amounts due Nasdaq, then such amounts due shall be increased

so that the net amount actually received by Nasdaq after the deduction or withholding of any such tax, charge or assessment, will equal one hundred percent (100%) of the charges that are owed.

## 6. Reporting.

- 6.1 Commencing after the close of the first month following the effective date of this Agreement, Client shall on a monthly basis, not later than the 15th day of the following month, provide Nasdaq with a report, in such form as Nasdaq may prescribe for Client from time to time, which shall state the number of Feeds provided to: (i) Internal Users; and (ii) Affiliates, in each case which were registered for each type of Feed (including open feeds (entitlement not controlled) and closed terminal feeds (entitlement controlled) during the applicable month.
- 6.2 Client shall have seventy five (75) days from the end of the applicable reporting period in which to revise or correct the report in order to obtain retroactive credits (the "**Revised Reporting Period**"). Nasdaq will not provide Client with back credits for original or revised reporting received after the expiration of the Revised Reporting Period. This Section 6 does not limit Client liability to Nasdaq for underreporting of usage.

## 7. Audit.

- 7.1 From time to time, and no more than once in any twelve (12) month period unless necessary due to suspected material non-compliance with this Agreement, Nasdaq, or its designee, may review Client's: (i) records relating to the Information; (ii) reports and payments relating to the Information; and (iii) all instruments and apparatus used in connection with the Services. For avoidance of doubt, Nasdaq shall not access, examine, observe, review or in any way gain disclosure to any information of Client, which is protected under applicable banking secrecy regulations. Nasdaq will make reasonable efforts to provide at least thirty (30) days advance written notice of the audit, unless the audit is scheduled due to suspected material non-compliance. The audit shall occur during Nasdaq's normal business hours, and conducted in locations where, as applicable, Client's records are kept, Client's system is located, and/or Client uses the Information. Nasdaq shall comply with Client's security policies while performing the audit which are provided to Nasdaq in advance in writing.
- 7.2 Client shall provide reasonable cooperation to Nasdaq including: (i) promptly providing information or materials in response to any reasonable request; and (ii) making available for examination all records, reports, payments, and supporting documentation necessary to reach a conclusion as to the accuracy and completeness of: (a) Client's reports to Nasdaq; (b) the payments connected therewith; and (c) compliance with this Agreement.
- 7.3 Nasdaq shall endeavor to provide Client with a preliminary audit response within ninety (90) days following the completion of any audit. Nasdaq shall discuss the outcome of any preliminary audit response in good faith with Client or, at Client's election, with Client's designee.
- 7.4 After receipt of the preliminary audit response, Client may elect, at Client's sole cost and expense, to conduct a subsequent review. This subsequent review shall be completed and submitted to Nasdaq within ninety (90) days after the preliminary audit response is received by Client.
- 7.5 If Nasdaq and Client are not able to reach agreement concerning the preliminary audit response nor the subsequent review within: (i) sixty (60) days of Client's submission or the subsequent review; or (ii) one hundred fifty (150) days of Client's receipt of the preliminary audit response, provided that Nasdaq has proceeded with such examination and audit in good faith in accordance with the provisions hereof, then Nasdaq's determination (the "**Final Audit**") shall be deemed conclusive.
- 7.6 If the Final Audit determines an underreporting, underpayment or other financial non-compliance with this Agreement (and/or discloses additional underreported or underpaid amounts or other financial non-

compliance), then such amounts shall be remitted to Nasdaq, together with applicable interest within sixty (60) days of the completion of the Final Audit. If Client fails to remit such additional amounts to Nasdaq by the end of this sixty (60) day cure period, Nasdaq may upon advance notice to Client, terminate as provided in Section 9 of this Agreement.

- 7.7 For any underreporting, underpayment or other financial non-compliance that is a result of a good faith error by Client, Client's liability shall be limited to unpaid fees, together with interest, for the three (3) years preceding the earlier of the date that: (i) client; (ii) Client's auditors; or (iii) Nasdaq first knew or determined that such underreporting, underpayment or other financial non-compliance has occurred.
- 7.8 If any underreporting, underpayment or other Client financial non-compliance is found to be equal to or greater than ten percent (10%) of the reported number of Reportable Units for any audited or unaudited period referred to herein, Client shall, in addition to remitting the fees and applicable interest due relative to such underreporting, underpayment or other financial non-compliance, reimburse Nasdaq for any reasonable audit, legal or administrative costs and expenses incurred.
- 7.9 If the Final Audit reveals any material errors or omissions and/or other material non-financial non-compliance with the Nasdaq Requirements, Client shall submit a revised materials demonstrating compliance with the Nasdaq Requirements, where reasonably practicable, within one hundred fifty (150) days after receipt of the preliminary audit response. If Client fails to demonstrate compliance during this cure period, Nasdaq may, in its discretion at any time, with prior notice to Client, terminate as provided in Section 9 of this Agreement.
- 7.10 If the Final Audit discloses an overpayment, then Nasdaq will apply the overpayment for the sixty (60) days prior to the end of the period being reviewed as a credit against amounts due from Client.
- 7.11 If Client's payment of fees for Information is fixed, and does not fluctuate with the number of Reportable Units, Nasdaq will, in lieu of an audit, request relevant information or documentation related to Client's use of the Information; provided, however, that Nasdaq shall retain the right, with reasonable Notice to Client, during normal business hours, to conduct an audit on a Confidential basis of any relevant documentation of Client to ensure that Client's use of the Information conforms to the Nasdaq Requirements. Such audit may only take place once per calendar year and only if such audit is deemed reasonably necessary by Nasdaq due to suspected non-compliance by Client with the material provisions of this Agreement.

## 8. **Ownership.**

- 8.1 Subject to Section 8.2, Nasdaq shall retain all proprietary rights in the Information and data that: (i) originates on or relates to trading on any of the Nasdaq markets; (ii) relates to activities that are regulated or operated by one or more of the Nasdaq markets; (iii) Nasdaq derives from Information and data that originates on or relates to any Nasdaq market; and (iv) compilation or other rights in Information and data that Nasdaq gathers from other sources. Subject to Section 8.2 below, all Information, including without limitation any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between the two parties, be and remain the sole and exclusive property of Nasdaq. Client shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by Nasdaq, its licensees, transferees and assignees, of Nasdaq's proprietary rights in the Information and Service. Client acknowledges and agrees that Third Party Information Providers have exclusive proprietary rights in their respective information and data and services.
- 8.2 Notwithstanding anything contained herein or the Nasdaq Requirements Nasdaq makes no proprietary claim to any Derived Data created by the Client.
- 8.3 Client acknowledges and agrees that Nasdaq has proprietary rights in certain trademarks, service marks, copyrights or patents, registered or unregistered including, but not limited to the names and trademarks of

the Nasdaq and the Nasdaq markets. Client shall not: (i) use the Nasdaq names, trademarks or service marks in any advertising or marketing materials, except with Nasdaq's prior written consent; or (ii) use these trademarks, service marks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents. Nasdaq acknowledges and agrees that Client has proprietary rights in certain trademarks, service marks, copyrights or patents, registered or unregistered. Nasdaq shall not: (a) use the Client's names, trademarks or service marks in any advertising or marketing materials, except with Client's prior written consent; or (b) use these trademarks, service marks, copyrights or patents, registered or unregistered, in any way that would infringe upon such marks, copyrights or patents.

## 9. **Term, Termination, and Survival.**

9.1 The term of this Agreement shall commence on date of last signature of the Agreement and shall continue in effect until terminated in accordance with this Section 9 (the "**Term**").

9.2 This Agreement may be terminated by:

- i. either Party for any reason or no reason whatsoever upon thirty (30) days prior written notice, with expiry effective at the end of the calendar month.
- ii. either Party following material breach of this Agreement by the other, upon not less than thirty (30) days prior written notice to the breaching party, unless, if the breach is capable of being cured, the breach is cured within the notice period;
- iii. either Party, immediately, in the event that the other party becomes insolvent; or the other party makes an assignment for the benefit of creditors; or the other party does not pay its debts as they become due or admits its inability to pay its debts when due; or the other party files or has filed against it any petition under any provision of the Bankruptcy Act or an application for a receiver, trustee, or custodian is made by anyone or other party becomes the subject of any proceedings of bankruptcy, insolvency, reorganization, dissolution, receivership, liquidation or arrangement, adjustment, or composition with creditors;
- iv. Nasdaq, immediately, in the event that the Client is not permitted or not able to receive or Nasdaq is prevented from disseminating the Information, or any part thereof; or any representation, warranty or certification made by Client in this Agreement or in any other document furnished by Client is, as of the time made or furnished, materially false or misleading; Client proceeds with a proposed action which would result in a default of its obligations or covenants under this Agreement or in a breach of any representation, warranty or certification, which is material to the Nasdaq Markets for regulatory, commercial or other reasons, made by Client in connection herewith, after Nasdaq has notified Client that such proposed action would constitute a default hereunder Client; Nasdaq may terminate for cause Client's receipt of any other service or product provided by or on behalf of Nasdaq; or Nasdaq, in its sole reasonable discretion, determines that any failure on the part of the Client to comply with this Agreement has or is likely to have a materially adverse impact on the operation or performance of the System, Information or a Nasdaq market or likely to cause disproportionate harm to Nasdaq's interests should termination be delayed;
- v. Nasdaq, upon not less than thirty (30) days prior written notice, in the event that any representation, warranty or certification made by Client in the Agreement or in any other document furnished by Client becomes untrue or inaccurate and is not made true or accurate within the notice period;
- vi. Nasdaq, upon not less than ninety (90) days prior written notice, should it determine that it will cease providing the same type of Information to all other eligible individuals or entities that were receiving the same type of Information as Client; or

vii. Either Party, upon not less than thirty (30) days prior written notice, should Client determine that it cannot implement the applicable security measures pursuant to Section 3.1.

9.3 Client, to the extent permissible under applicable law, waives any right to represent or assert that the exercise by Nasdaq of the remedies set forth herein for failure of Client to pay any charges, taxes, or assessments related to its receipt of the Information shall be deemed or considered to be, or constitute an improper denial or limitation of access to any Information or facility operated by Nasdaq as contemplated in any applicable statutory obligation.

9.4 The right of termination set forth herein is in addition to any other remedy at law or in equity, consistent with this Agreement, that is available to one party (including any individual Nasdaq Market) with respect to a breach by the other and is in addition to anything otherwise set forth herein.

9.5 The terms of Sections 1, 5, 7, 8, 9.5, 10, 11, 12, 13, 14, 16, and 18 through 23 shall survive expiration or termination of this Agreement.

## 10. Confidentiality.

10.1 Nasdaq shall keep confidential the Client's records, reports and payments that it or its designee has reviewed or audited, and any other Client information or material reasonably considered to be of a confidential nature (whether or not designated as such), as well as any and all information received in connection with this Agreement, including but not limited to, business, financial, operational, product, service and other information. Client acknowledges that it may also obtain Nasdaq Confidential Information. All such confidential information shall be deemed confidential upon disclosure to the recipient and any related confidential oral or written information shall be deemed confidential upon disclosure to the recipient. Subject to Section 10.2, the recipient shall use such confidential information solely for use consistent with the purposes of this Agreement; shall hold such confidential information in confidence; and shall not use, disclose, copy, or publish any such confidential information without the prior written approval of the other party except as otherwise set forth herein. The recipient shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the disclosing party. The recipient shall notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of confidential information, and will cooperate with disclosing party in every reasonable way to help disclosing party regain possession of the confidential information and prevent its further unauthorized use or disclosure. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of confidential information, and that disclosing party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

10.2 Nasdaq or the Client may disclose confidential information to the extent: (i) demanded by a court, arbitrator or government agency with regulatory jurisdiction over one or more of the Nasdaq markets or over Client or any judicial or government order; (ii) necessary to fulfill any Nasdaq or Client regulatory responsibility; or (iii) necessary for Nasdaq and its employees, directors, and other agents to use consistent with the purposes of this Agreement. The duties in this Section 10 do not apply to data, information or techniques that are: (A) lawfully within a party's possession prior to the date of this Agreement and not under a duty of non-disclosure; (B) voluntarily disclosed to a party by a third-party so long as the party does not know that the third-party has breached any obligation not to reveal such data, information or techniques; (C) developed by a party independently of the disclosure; or (D) is or subsequently becomes publicly available without recipient's breach of any obligation owed disclosing party. All confidential information is and shall remain the property of the disclosing party. By disclosing confidential information to recipient, disclosing party does not grant any express or implied right to recipient to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein.

10.3 Nasdaq shall not disclose its audit findings to any third parties (other than to its directors, independent consultants/subcontractors who are subject to confidentiality obligations or as otherwise set forth herein) and all information learned in connection with an audit shall constitute Client's confidential information. However, nothing herein shall prevent Nasdaq from using the audit findings to the extent the findings are used in the aggregate with other information and such aggregation does not: (i) specifically identify Client or (ii) create a context where Client's identity may be reasonably inferred.

#### 11. **Disclaimer.**

NASDAQ WILL ENDEAVOR TO OFFER THE INFORMATION AS PROMPTLY AND AS ACCURATELY AS IS REASONABLY PRACTICABLE. NOTWITHSTANDING THE FOREGOING, CLIENT ACKNOWLEDGES AND AGREES THAT THE SERVICE AND THE INFORMATION AND ANY AND ALL MATERIAL RELATED TO THE INFORMATION, INCLUDING, BUT NOT LIMITED TO, THE SPECIFICATIONS, ARE BEING PROVIDED "AS IS" WITH NO WARRANTIES WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, OR STATUTORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION, ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. IN THE EVENT THAT THE SERVICE OR INFORMATION IS NOT AVAILABLE AS A RESULT OF A FAILURE BY NASDAQ TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, NASDAQ WILL ENDEAVOR, GIVING DUE REGARD FOR THE COST, TIME, AND EFFECT ON OTHER USERS, TO CORRECT ANY SUCH FAILURE. BEYOND THE WARRANTIES STATED IN THIS SECTION, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY.

#### 12. **Limitation of Liability.**

12.1 EXCEPT FOR CLAIMS ARISING FROM NASDAQ'S WILLFUL MISCONDUCT, FRAUD, OR GROSS NEGLIGENCE, NASDAQ AND ITS THIRD PARTY INFORMATION PROVIDERS SHALL NOT BE LIABLE TO CLIENT OR TO ANY OTHER PERSON FOR TRADING LOSSES, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR FOR INCREASED EXPENSES OF OPERATION, OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGE OF ANY NATURE ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF NASDAQ AND/OR ITS THIRD PARTY INFORMATION PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 NASDAQ SHALL NOT BE LIABLE TO CLIENT OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS, OR INACCURACY OF THE INFORMATION THAT: (I) LASTS LESS THAN FOUR (4) CONTINUOUS HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION; OR (II) LASTS LESS THAN TWELVE (12) HOURS DURING THE TIME THAT NASDAQ REGULARLY TRANSMITS THE INFORMATION DURING A SINGLE CALENDAR MONTH. IN THE EVENT OF SUBSECTION (I) OR (II) ABOVE, CLIENT'S OR ANY OTHER INDIVIDUAL'S OR ENTITY'S SOLE AND EXCLUSIVE REMEDY AGAINST NASDAQ SHALL BE, AT CLIENT'S OPTION, EITHER A PRORATED CREDIT OR A PRORATED REFUND OF ANY MONIES DUE TO NASDAQ FROM CLIENT (LESS MONIES REFUNDED OR CREDITED TO CLIENT'S RECIPIENTS) FOR THE INFORMATION AT ISSUE FOR THE PERIOD AT ISSUE. SUCH CREDIT OR REFUND SHALL BE REQUESTED BY WRITTEN NOTICE TO NASDAQ WITH ALL PERTINENT DETAILS INCLUDED WITHIN THIRTY (30) DAYS OF SUCH ISSUE ARISING. NOTWITHSTANDING THE ABOVE, NASDAQ SHALL NOT BE LIABLE TO CLIENT OR TO ANY OTHER PERSON FOR THE UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF INFORMATION FROM OR IN CONNECTION WITH THE ACTS OR OMISSIONS OF NASDAQ'S THIRD PARTY INFORMATION PROVIDERS OR A REDISTRIBUTOR.

12.3 IF NASDAQ OR ANY NASDAQ COMPANY IS FOR ANY REASON HELD LIABLE TO CLIENT, OR TO ANY OTHER PERSON, FOR CLAIMS ARISING FROM THE INFORMATION OR SERVICE, WHETHER IN TORT OR IN CONTRACT, THE LIABILITY OF NASDAQ WITHIN A SINGLE YEAR OF THIS AGREEMENT (FROM THE EFFECTIVE DATE OF THIS

AGREEMENT) IS LIMITED TO AN AMOUNT OF CLIENT'S DIRECT DAMAGES THAT IS ACTUALLY INCURRED BY CLIENT IN REASONABLE RELIANCE, AND WHICH AMOUNT DOES NOT EXCEED, AT CLIENT'S OPTION, A MONTH'S CREDIT OR A MONTH'S REFUND OF THE AVERAGE MONTHLY AMOUNT PAID NASDAQ, CALCULATED OVER THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THIS SUBSECTION SHALL NOT RELIEVE NASDAQ FROM LIABILITY FOR DAMAGES THAT RESULT FROM ITS OWN GROSS NEGLIGENCE OR WILLFUL TORTIOUS MISCONDUCT, OR FROM PERSONAL INJURY OR WRONGFUL DEATH CLAIMS.

12.4 THE CLIENT AND NASDAQ UNDERSTAND AND AGREE THAT THE PRICING FOR THE INFORMATION REASONABLY REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SET FORTH IN THIS SECTION.

### 13. Indemnification.

13.1 Client shall defend, be liable to, indemnify, and hold the Nasdaq Indemnified Parties harmless from and against, any and all Claims or Losses imposed on or asserted against any of the Nasdaq Indemnified Parties by third parties to the extent that the Claims and Losses result from or relate to: (i) failure of Client, its Internal Users and Affiliates to comply with the terms and conditions of this Agreement; (ii) failure of Clients to comply with the terms and conditions of Nasdaq required agreements for the Information if Client has failed to notify Nasdaq of such non-compliance within ten (10) days after Client knows or should have reasonable known of such non-compliance; (iii) any assertion of Claims or Losses relating to the subject matter or existence of this Agreement against the Nasdaq Indemnified Parties made by a Recipient (or any Person relying upon the Information received by such Recipient), excluding any such assertion relating to acts or omissions of Nasdaq; (iv) any assertion of Claims or Losses against the Nasdaq Indemnified Parties by Recipients relating to Nasdaq's exercise of its remedies against Recipients pursuant to this Agreement excluding any such assertion relating to acts or omissions of Nasdaq; (v) breach of any warranty by Client; (vi) any defense or participation by the Nasdaq Indemnified Parties in any action, suit, arbitration, or judicial or administrative proceeding involving any Claims or Losses described in this section, or (vii) the receipt or use of the Information (including representations about the Information) by Client, its employees, directors, and other agents contrary to the provisions of this Agreement.

13.2 Client's obligation to defend and indemnify under this Section 13 above shall be conditioned on the following (but any limits on Client's obligations are only to the extent that Nasdaq's failure to comply with the following has caused a material harm to Client's ability to defend and indemnify): (i) Nasdaq shall promptly notify Client in writing of the claim, action or allegation (but, in any event, in a time frame that does not prejudice the rights of Client or Nasdaq); (ii) Nasdaq shall cooperate fully with Client in the defense thereof and Client shall be liable to Nasdaq for Nasdaq's reasonable expenses (excluding reimbursement for the time value of Nasdaq employees, directors, and/or other agents in providing such cooperation); (iii) Client shall have sole control of the defense and all related settlement negotiations, but, upon Nasdaq's request, shall apprise Nasdaq of the status of any proceedings or negotiations. Client shall have a right to defend provided that Client demonstrates to Nasdaq's reasonable satisfaction that it is financially able to defend such action and pay any judgment or settlement and counsel retained by Client is reasonably satisfactory to Nasdaq, and Nasdaq shall not reasonably withhold or delay its approval with respect to such matters. Client shall not settle any action against Nasdaq that in any way restricts or impairs Nasdaq's intellectual property rights.

13.3 Nasdaq shall defend, be liable to, indemnify, and hold the Client Indemnified Parties from and against any and all Claims and Losses imposed on or asserted against Client's Indemnified Parties by a third party that Client's use of the Services or Information in accordance with this Agreement 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 Client from and against any Losses incurred by or awarded against Client as a result of any IPR Claim. Client agrees to (i) notify Nasdaq 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 Client's right of indemnity hereunder except to the extent Nasdaq has been prejudiced by reason of such delay or failure; (ii) maintain reasonable consultation with Nasdaq in relation to the IPR Claim; (iii) provide Nasdaq with all the information reasonably requested by Nasdaq for the purpose of enabling Nasdaq to assess the claim; and (iv) Nasdaq shall have sole control of the defense and all related settlement negotiations, but upon Client's request, shall apprise Client of the status of any proceedings or negotiations.

13.4 Nasdaq shall not be obligated to defend, indemnify and hold client's Indemnified Parties for any and all Claims and Losses imposed on, incurred by or asserted against Client, its employees, directors, other agents and affiliates by any fully adjudicated and non-appealable judgment or Nasdaq negotiated settlement as a result of any allegation of infringement or misappropriation if the Services, Information or any specifications have not been used in accordance with this Agreement which resulted in such infringement or misappropriation or if Client uses the Services, Information or any specifications after Nasdaq notifies Client of a potential or actual infringement claim or to the extent it is based on use of a superseded version of the Services, Information or any specifications if such infringement or misappropriation would have been avoided by use of the current version of the Services, Information or specifications or if the infringement or misappropriation claim, action, or allegation is the result of the combination, operation, or use of the Services furnished timely to Client by Nasdaq, Information or any specifications with hardware, software or materials if such infringement or misappropriation would have been avoided by the use of the Services, Information or any specifications without such hardware, software or materials.

13.5 In the event of a claim, action or allegation of infringement or misappropriation or if, in Nasdaq's opinion, such a claim, action or allegation is likely to occur or if the use of the System, Information or any specifications is enjoined because of infringement or misappropriation, Nasdaq may, at its sole option and expense: (i) procure for Client the right to continue using the System, Information or any specifications; (ii) replace or modify the Services, Information or any specifications to be non-infringing, and require the return of the potentially infringing or misappropriating items, if applicable, without liability to Client or any other Person; or (iii) terminate this Agreement immediately without liability to Client or any other Person.

13.6 This section and Section 13 set forth the entire liability of Nasdaq and the exclusive remedy of Client for the infringement or misappropriation of intellectual property.

#### 14. **Notification; Notification of Changes.**

Any notice from Nasdaq regarding the administration or operations of the Services or amendments to the terms and conditions that govern Client's use or access to the Information or the Services (including, for greater certainty, fees) shall be posted on its website at <http://business.nasdaq.com/trade/canadian-equities/Overview> or any successor web site. Nasdaq shall endeavor to 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'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, 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.

#### 15. **Force Majeure.**

Notwithstanding any other term or condition of this Agreement, Nasdaq, its Third Party Information Providers (but not other distributors) nor Client shall be obligated to perform or observe its respective obligations under this

Agreement (except for regulatory obligations) if prevented or hindered from doing so by any circumstances found to be beyond its reasonable control.

#### 16. **Subsequent Parties; Limited Relationship.**

Nothing in this Agreement, express or implied, is intended to or shall: (i) confer on any Person other than the parties hereto, or their respective permitted successors or assigns, any rights to remedies under or by reason of this Agreement; (ii) constitute the parties hereto partners or participants in a joint venture; or (iii) appoint one party the agent of the other. Nothing in this Agreement will create or be deemed to create a partnership or agency relationship between the parties to the Agreement.

#### 17. **Assignment.**

17.1 This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective permitted successors or assigns.

17.2 Neither party shall assign this Agreement (including by operation of law) without the prior written consent of the other party, and such consent not to be unreasonably withheld, provided however, that either party may assign this Agreement (but, for the avoidance of doubt, not any of the Attachments) to one of its Affiliates or subsidiaries, without the prior written consent of the other party, provided that the assigning party is not currently in breach of this Agreement or delinquent in any fees owed.

#### 18. **Claims.**

18.1 In no event shall any claim, dispute, controversy or other matter arising pursuant to this Agreement (other than claims for financial non-compliance arising from an audit performed in accord with the provisions of Section 7 above) be made against Nasdaq, Client, or any Person claiming by or through either Nasdaq or Client, later than three (3) years after the claim, dispute, controversy or other matter in question has arisen.

18.2 Nasdaq, Client, any Person claiming by or through Nasdaq and/or Client and their respective employees, directors, and other agents expressly waive any claims, disputes, controversies, and other matters not brought within the period set forth above

#### 19. **Governing Law; Dispute Resolution.**

19.1 This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein without regard to its choice of law provisions. The parties consent to binding arbitration in relation to any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**") which proceedings 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. Any arbitrator so appointed shall be satisfactory to Nasdaq. Customer agrees that notwithstanding the above arbitration provisions, Nasdaq shall be entitled to take Proceedings in any other court or courts having jurisdiction. Notwithstanding the foregoing anything else in this Section 19.1, neither Party has any obligation to comply with this Section 19.2 before bringing an action in court for injunctive relief in the event of a breach or threatened or attempted breach of Section 10 (Confidential Information), any intellectual property infringement or any other provision of this Agreement which would be reasonably likely to cause such Party immediate harm for which money damages would be inadequate. Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods ("**Convention**"), the Parties agree that the Convention shall not apply to this Agreement.

19.2 Regardless of anything else in the Agreement or this Section 19.2, no party, person, or entity covered by the provisions of this Section 19.2 will be allowed to participate in a class action in court or in class-wide

arbitration, whether as a class representative, class member, or otherwise, or act as a private attorney general, in connection with any arbitration or court proceeding involving the Agreement or any claim, dispute, controversy, or other matter in question, arising out of, or relating to, the Agreement, or to the breach hereof. In addition, any arbitration or court proceeding involving the Agreement or any claim, dispute, controversy, or other matter in question arising out of, or relating to the Agreement, may not be joined or consolidated with any other arbitration or court proceeding involving a different agreement or different parties. The arbitrators have no power or authority to conduct class-wide, consolidated, or private attorney general arbitration. This Section 19.2 shall apply only to the extent permitted by law and the validity and effect of this class action and consolidation waiver may be determined only by a court and not by an arbitrator. If a determination is made in a proceeding involving the parties that this class action and consolidation waiver is invalid or unenforceable, only this sentence of this Section 19.2 will remain in force and the remainder of this Section 19.2 shall be null and void, provided that the determination concerning the class action and consolidation waiver shall be subject to appeal.

## 20. **Amendment; Waiver; Severability.**

20.1 Except as may otherwise be set forth in this Agreement, Nasdaq may alter any term or condition of this Agreement or the Subscriber Agreement on ninety (90) days notice to Client, and any use of the Information after such date is deemed acceptance of the new term or condition. No failure on the part of Nasdaq or Client to exercise, no delay in exercising, and no course of dealing shall operate as a waiver of any right, power, or privilege under the Agreement, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.

20.2 If any of the provisions of this Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to individuals, entities, or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.3 The parties shall not commit, authorize or permit any action which would cause either party and/or any of its Affiliates to be in violation of any applicable anti-bribery law or regulation. Each party agrees that it will neither offer or give, or agree to give, to any employee, representative or third party acting on behalf of the other party, nor accept, or agree to accept from any employee, representative or third party acting on behalf of the other Party, any unlawful payment, compensation or remuneration, be it monetary or other thing of value, in connection with the negotiation, execution, conclusion, or the performance of this Agreement. The parties shall promptly notify each other if they become aware of any breach of this provision, and either party may terminate this Agreement with immediate effect in the event of such a breach by the other party.

## 21. **English Language Election.**

English Language. It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.*

## 22. **Entire Agreement.**

This Agreement sets forth the entire agreement and supersedes any and all prior agreements of the Parties with respect to the transactions set forth herein. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in the Agreement shall include the plural, and vice versa. Section headings are included for convenience

only and are not to be used to construe or interpret this Agreement. All references contained herein to sections or subsections shall refer to the sections or subsections of this Agreement, unless specific reference is made to the sections or subsections of another document.

23. **Counterparts.**

This Agreement may be executed in one or more counterparts, which shall each be considered an original, but all of which together shall constitute one and the same Agreement

## Exhibit B

### Definitions

The following terms, when used in this Agreement, shall have the meanings set out below:

1. **"Affiliate"** shall mean any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party.
2. **"Attachments"** shall mean any attachments, addenda, cover sheets, amendments and materials referenced herein, including, any Nasdaq requirements and specifications, as any of these items may be added to, deleted from or amended from time-to-time.
3. **"Claims or Losses"** shall mean any and all direct liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, and reasonable costs and expenses of whatever nature, whether incurred by or issued against a Party, including, without limitation: (i) indirect, special, punitive, consequential, or incidental loss or damage (including, but not limited to, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or increased expenses of operation, or other indirect loss or damage); and (ii) reasonable administrative costs, litigation costs, and auditors' and attorneys' fees, both in-house and outside counsel, and related disbursements.
4. **"Derived Data"** shall mean any information or data resulting from Distributor's substantial manipulation or analysis of Information (whether generated by human or machine) whether alone or in conjunction with Distributor data, such that the underlying Information is not discernible as being that of Nasdaq or a Third Party Provider.
5. **"Distributor"** shall mean a company other than Nasdaq (i) from which Client receives the Information and (ii) for which such distributor cannot substantially control the Information received by the Client for the purposes of reporting usage and qualification
6. **"Feed"** shall mean a feed of the Information.
7. **"Information"** shall mean certain market data and other data disseminated that has been collected, validated, processed and recorded by Nasdaq's systems or other sources made available for transmission to and receipt from either a distributor or from Nasdaq relating to: a) eligible securities or other financial instruments, markets, products, vehicles, indicators or devices; b) activities of Nasdaq; c) other information and data from Nasdaq. Information also includes any element of Information as used or processed in such a way that the Information can be identified, recalculated or re-engineered from the processed Information or that the processed Information can be used as a substitute for Information.
8. **"Indemnified Parties"** shall mean the applicable Party all of its officers, directors, employees, and agents of the Party. The Nasdaq Indemnified Parties shall also include Third Party Information Providers.
9. **"Internal User"** shall mean the internal users of Client and its Affiliates who are authorized by Client to use the Services.
10. **"Nasdaq"** shall collectively mean Nasdaq CXC Limited and its subsidiaries and Affiliates.
11. **"Nasdaq Confidential Information"** shall mean the confidential information, data, or techniques that, in the course of performance of the Agreement, Client may obtain from Nasdaq.
12. **"Nasdaq Requirements"** shall mean (i) the rules and regulations, disciplinary decision and rule interpretations applicable to Nasdaq markets; (iii) the Nasdaq markets' decisions, policies, interpretations, operating procedures, specifications, requirements and other documentation that is regulatory or technical in nature (including, but not limited to, user guides) published on the NASDAQ Trader website located <http://business.nasdaq.com/trade/canadian-equities/Overview> or another website accessible by and made known to Client; and (iv) all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions and other requirements, whether promulgated by the applicable jurisdiction (including in the area of intellectual property); and (v) the successors, as they may exist at the time, of the components of the Nasdaq Requirements
13. **"Person"** shall mean any natural person, proprietorship, corporation, partnership, or other entity whatever
14. **"Redistributor"** shall mean another distributor (i) from which Client receives the Information and (ii) for which such distributor cannot substantially control the Information received by the Client for the purposes of reporting usage and qualification

15. **“Reportable Units”** shall mean those measurements of Information usage that, per this Agreement, must be reported to Nasdaq,
16. **“Services”** shall mean any Nasdaq service or system that enables Client to receive the Information.
17. **“System”** shall mean any system Nasdaq has developed for the creation and/or dissemination of Information
18. **“Third Party Information Providers”** shall mean those individuals and entities that provide information, goods and services to Nasdaq in connection with the creation of the Information. Such information, goods and services shall be included in the definition of Information.
19. **“Unauthorized Information”** shall mean Information that Information that has not been authorized under an approved System Description and licensed under an applicable Order Form.