



NEO EXCHANGE INC.

# DATA VENDOR AGREEMENT

This DATA VENDOR AGREEMENT, with an effective date as of the date appearing on the signature page hereto, is made between **NEO EXCHANGE INC.** (the “**Exchange**”) and \_\_\_\_\_ (the “**Data Recipient**”).

## 1. Interpretation

- (a) **Definitions.** In addition to words and phrases defined elsewhere herein, the following words and phrases that are capitalized other than for grammatical purposes have the respective meanings set out below.

“**Additional Agreements**” means the Data Fee Schedule and any additional terms and conditions, policies or agreements entered into in writing by Data Recipient and the Exchange relating to the subject matter hereof, as amended from time to time.

“**Affiliate**” means any person that controls, is controlled by, or is under common control with another person.

“**Agreement**” means this data vendor agreement, as amended from time to time.

“**Application**” means a system or application that is accessing, processing or consuming the Data for a purpose other than in support of its display, internal distribution or external distribution. Such purposes include, but are not limited to, algorithmic trading and smart order routing as described in the Data Requirements.

“**Business Day**” means a day that is not a Saturday, Sunday or statutory holiday in Toronto, Ontario.

“**Connectivity Provider**” means a third party approved by the Exchange that has executed a connectivity services agreement with the Exchange and connects directly to the Data System for the purpose of providing Data to Data Recipient.

“**Data**” means market data and other information that has been collected, validated, processed and recorded by the Data System or other sources, including Third Party Information Providers, made available by or received from the Exchange relating to: (i) eligible securities or other financial instruments, markets, products or indices; (ii) activities of the Exchange’s listed issuers; (iii) other information regarding the Exchange’s listed issuers; or (iv) any element of the market data or other information used or processed in such a way that it can be identified, recalculated or re-engineered from the processed market data or information or that the processed market data or information can be used as a substitute for such market data or other information.

“**Data Client**” means a client of the Data Recipient that receives Data from the Data Recipient, in accordance with section 5 of this Agreement.

“**Data Fee Schedule**” means the Exchange’s data fee schedule, which provides details of the fees for internal and external use and distribution of Data, for professional and non-professional users, among others, as in effect and amended from time to time.

“**Data Fees**” means fees charged in connection with the use, distribution or redistribution of Data.

“**Data Instructions**” means the written information regarding how the Data Recipient may use the Data, the explanation of the Data Fees and explanation of reporting and audit obligations with which the Data Recipient must comply, as amended from time to time following notice to Data Recipient in accordance with this Agreement and published on the Website.

“**Data Order Form**” means the form attached as Exhibit A to the Agreement, as amended from time to time.

“**Data Recipient**” means the legal entity referenced on the signature page hereto, and any Affiliate(s) of such legal entity named in accordance with section 4 of this Agreement.

“**Data Recipient’s Service**” means the goods or services provided by Data Recipient, whether internally or externally, which are based on or use the Data or of which Data is a part.

“**Data Recipient’s Service Facilitator**” means a third party authorized by the Exchange in accordance with section 4 of this Agreement to receive Data from Data Recipient for the sole purpose of facilitating, processing and dissemination of Data in Data Recipient’s Service in accordance with the terms and conditions of this Agreement.

“**Data Recipient’s System**” means one or more of Data Recipient’s systems which meet the Data Specifications (including, but not limited to, interface and operational requirements) through which Data Recipient accesses Data and provides Data Recipient’s Service.

“**Data Recipient’s System Description**” means the description in Exhibit B to this Agreement, as amended, of Data Recipient’s System for receiving, transmitting and disseminating Data that is approved by the Exchange.

“**Data Requirements**” means: (i) the Data Specifications; (ii) the Data Instructions; (iii) any other Exchange decision, policy, interpretation, user guide, operating procedure, specifications, requirement or other documentation that is regulatory or technical in nature in relation to Data and published from time to time on the Website; and (iv) all applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions and other requirements with respect to Data promulgated by a governmental or regulatory authority having jurisdiction over Data.

“**Data Specifications**” means the documented set of specifications provided by the Exchange relating to the Data System with which Data Recipient’s System must comply, as amended from time to time following notice to Data Recipient in accordance with this Agreement and published on the Website.

“**Data System**” means any system that the Exchange has developed for creation, collection or dissemination of Data.

“**Delayed Data**” means Real-time Data that has been subjected to a delay by the Data Recipient of at least 15 minutes from the time it was transmitted by the Exchange.

“**Derived Data**” means any work that is created partly or wholly from the Data, such that the Data as distributed by the Exchange cannot be identified, recalculated or reverse-engineered when

displayed or incorporated and the work cannot be used as a substitute for the Data. Derived Data shall not be considered Data hereunder.

“**Exchange Systems**” has the meaning set out in the Trading Policies.

“**Historical Data**” means Delayed Data or other information that is updated and provided no more frequently than end-of-day.

“**Individual User**” means a director, officer, employee, agent or other representative of, as the context requires: (i) the Data Recipient, and/or (ii) a Data Client of the Data Recipient who, in each case, only receives displayed Data from the Data Recipient in circumstances where Data Recipient can substantially control Data for the purpose of reporting usage or qualification. An Individual User does not redistribute Data.

“**Member**” means a signatory to a Member Agreement with the Exchange that remains a member in good standing, subject to all Exchange rules and policies.

“**Member Agreement**” has the meaning attributed thereto in the Trading Policies.

“**Member’s Private Data**” means Data relating to a Member’s and its clients’ trading-related activities on the Exchange Systems, including pre-trade information and data and post-trade transaction and other information provided to the Member by the Exchange regarding such trading-related activities; if there is any conflict between this definition and that set out in the Member Agreement, the Member Agreement prevails.

“**Real-time Data**” means Data within 15 minutes of its transmission by the Exchange.

“**Regulatory Authority**” means any government, regulatory, self-regulatory or administrative authority, agency, commission, utility or board having jurisdiction in the relevant circumstances and any person acting under the authority of any of the foregoing and any judicial, administrative or arbitral court, authority, tribunal or commission having jurisdiction in the relevant circumstances.

“**Third Party Information Providers**” means those persons that provide information, goods and services to the Exchange in connection with the creation of the Data.

“**Trading Policies**” means the trading policies of the Exchange, as posted on the Website and in effect and amended from time to time.

“**Website**” means [www.neostockexchange.com](http://www.neostockexchange.com) or a successor site.

- (b) Incorporation by Reference. The Data Order Form, the Data Recipient’s System Description, the Data Requirements and the Additional Agreements are incorporated by reference into and form part of this Agreement.

## 2. Scope and Licence

- (a) Exchange's Representations. The Exchange has full power and authority to meet its obligations under the Agreement and to grant the rights hereunder without the consent of any other party. The Exchange shall use reasonable efforts to: (i) ensure that the Data is accurate and complete, (ii) notify Data Recipient promptly of any errors or omissions in the Data, and (iii) correct any such error or omissions promptly.
- (b) Access to Data System. The Data Recipient has the right to access (directly, or indirectly through a Connectivity Provider) the Data System to receive Data feeds from the Exchange for the purposes described in the Data Recipient's System Description, as approved by the Exchange, and not for any purposes inconsistent with the terms of this Agreement. Where Data Recipient is connected directly to the Exchange Systems, and not through a Connectivity Provider, Data Recipient will also be required to execute a connectivity services agreement with the Exchange.
- (c) Data Licence. The Exchange hereby grants to Data Recipient a worldwide, non-exclusive licence to (i) receive Data during the term of this Agreement, and (ii) use, process and store such Data in perpetuity only for the purposes of using or distributing the Data in the Data Recipient's Services in accordance with this Agreement. The license is non-transferable, except in the case of an assignment pursuant to section 23. Any use or distribution of the Data, other than Member's Private Data, whether Real-time Data or Delayed Data, by the Data Recipient in the Data Recipient's Services must be as described in the Data Recipient's System Description approved by the Exchange and, for greater certainty, subject to section 5, may include one or more of the following purposes:
- (i) for display to Data Recipient's own Individual Users (internal display use);
  - (ii) for internal use in Data Recipient's Applications (internal non-display use);
  - (iii) to act as a Data distributor to distribute Data to Data Clients for display to the Data Clients' Individual Users (distribution for external display use);
  - (iv) to act as a Data distributor to distribute Data to Data Clients for internal use in Data Clients' Applications (distribution for external non-display use);
  - (v) to act as a Data distributor to provide Data feeds to Data Clients; and/or
  - (vi) to act as a Data distributor to Data Clients that redistribute Data.
- Any use or distribution of Member's Private Data must be in accordance with the Member Agreement, whereby any use or distribution by a Member of Member's Private Data beyond internal purposes requires prior notice to the Exchange.
- (d) Prohibited Uses. Unless otherwise provided under this Agreement, Data Recipient may not sell, lease, licence, furnish, publish, distribute or otherwise permit or provide access to the Data in any manner that is inconsistent with the terms of this Agreement or that has not been previously approved by the Exchange in writing, or alter Data in any manner that adversely affects its accuracy or integrity or that renders it misleading.
- (e) Non-Authorized Data and Information. If the Data Recipient becomes aware that it has received data or information for which Data Recipient has not been authorized ("**Non-authorized Information**") or if the Exchange otherwise inadvertently transmits Non-authorized Information to Data Recipient, Data Recipient shall notify the Exchange and shall not knowingly distribute or knowingly permit to be distributed such Non-authorized Information to any other person or other place; provided however, Data Recipient shall not be obligated to monitor whether or not the data

or information received from the Exchange has been authorized. If the Exchange becomes aware that Data Recipient is receiving Non-authorized Information, the Exchange shall so notify Data Recipient. If, upon becoming aware of such Non-authorized Information, the Data Recipient knowingly distributes Non-authorized Information to any other person or to any other place, or knowingly permits Non-authorized Information to be so distributed, or otherwise knowingly makes use of Non-authorized Information, Data Recipient shall be liable to the Exchange pursuant to this Agreement for Non-authorized Information, including but not limited to, for fees, charges and other amounts for Non-authorized Information. Notwithstanding the foregoing, if Data Recipient is not able to remove the Non-authorized Information from the Data, or such removal would disrupt or delay its delivery of Data in any way, Data Recipient shall be deemed to have a limited license to distribute the Non-authorized Information with the Data, at no additional cost, for the time period determined to be necessary by Data Recipient, acting reasonably, to remove the Non-authorized Information from the Data.

- (f) Other Permitted Uses of Data. Data Recipient may use, internally, the Data in connection with Data Recipient's System, without additional charge for advertising, demonstration, product development and other permitted uses as set out in the Data Requirements. Data Recipient may also make limited use, externally, of the Data as part of Data Recipient's Service for sales and marketing purposes (including but not limited to use at trade shows) and for demonstration purposes to potential customers. For greater certainty, unless the Data Fee Schedule is amended in accordance with this Agreement and related changes made to the Data Instructions, Data Recipient, may distribute Delayed Data to Data Clients without any reporting obligations and without additional charge.
- (g) Termination of External Distribution. The Exchange retains the right to direct Data Recipient to terminate any external distribution of Data for any reason, in which event the Exchange shall notify Data Recipient and Data Recipient shall cease retransmitting Data as soon as commercially practicable.

### 3. Data Recipient's Obligations

- (a) Data Recipient's Representations. Data Recipient has full power and authority to meet its obligations under the Agreement and to grant the rights hereunder without the consent of any other party.
- (b) Data Recipient's System. Data Recipient shall, to the best of its ability, ensure that the detailed description of Data Recipient's System for receiving, transmitting and disseminating Data, as described in Data Recipient's System Description, including but not limited to, the data processing equipment, software and communications facilities related thereto, is true, complete and not intentionally misleading.
- (c) Security. Data Recipient shall take reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the Data through either Data Recipient's Service or Data Recipient's System for receiving, transmitting, or disseminating Data. Data Recipient shall comply with all reasonable security specifications or requirements of the Exchange or provide assurances to the Exchange of the use of comparable security specifications or requirements in order to prevent the Data from being improperly used or accessed. Data Recipient shall notify the Exchange promptly upon any breach in its security procedures related to the Data of which it becomes aware.

- (d) Monitoring of Data Clients. Where Data Recipient provides Data to Data Clients, the Data Recipient shall provide to the Exchange, upon request by and at no cost to the Exchange, two subscriptions to Data Recipient's Service and all equipment, if any, as is required to receive Data, and used to receive and to display or communicate the Data Recipient's Service and the related telecommunications facilities. The Exchange will use such subscriptions solely for purposes of monitoring Data and demonstrating Data Recipient's Service. Upon request from the Exchange (such request to be limited to no more than once in any twelve (12) month period), Data Recipient shall make available to the Exchange all marketing materials and user guides for all components of Data Recipient's Service that include Data. The access is granted to the Exchange subject to the following conditions: (i) the Exchange shall be subject to and abide by any security policies and procedures of Data Recipient, and (ii) the Data Recipient's Service shall be used only by employees, officers and consultants of the Exchange.
- (e) Attribution. Data Recipient shall use commercially reasonable efforts to ensure that Data is clearly attributed as originating from the Exchange. Data Recipient shall not remove or alter any intellectual property ownership or identification notices found within the Data.
- (f) No Endorsement. None of Data Recipient or any of its directors, officers, employees, agents or other representatives shall represent, or shall cause or permit any other person to represent, either directly or indirectly, that Data Recipient or all or any part of the Data Recipient's Service or any equipment utilized by Data Recipient is sponsored or endorsed by the Exchange or any of its Affiliates.
- (g) Obligations re: Use of CUSIPs. Data Recipient agrees and acknowledges that the CUSIP database and the information contained therein is and shall remain valuable intellectual property owned by, or licensed to, CUSIP Global Services ("CGS") and the American Bankers Association ("ABA"), and that no proprietary rights are being transferred to Data Recipient in such materials or in any of the information contained therein. Any use by Data Recipient outside of the clearing and settlement of transactions requires a license from CGS, along with an associated fee based on usage. Data Recipient agrees that misappropriation or misuse of such materials will cause serious damage to CGS and ABA, and that in such event money damages may not constitute sufficient compensation to CGS and ABA; consequently, Data Recipient agrees that in the event of any misappropriation or misuse, CGS and ABA shall have the right to obtain injunctive relief in addition to any other legal or financial remedies to which CGS and ABA may be entitled.

Data Recipient agrees that Data Recipient shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal clearing and settlement of security transactions. Data Recipient further agrees that the use of CUSIP numbers and descriptions is not intended to create or maintain, and does not serve the purpose of the creation or maintenance of, a master file or database of CUSIP descriptions or numbers for itself or any third party recipient of such service and is not intended to create and does not serve in any way as a substitute for the CUSIP MASTER TAPE, PRINT, DB, INTERNET, ELECTRONIC, CD-ROM Services and/or any other future services developed by the CGS.

Data Recipient acknowledges that NEITHER CGS, ABA NOR ANY OF THEIR AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN

THE CUSIP DATABASE. ALL SUCH MATERIALS ARE PROVIDED TO DATA RECIPIENT ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR, PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS. NEITHER CGS, ABA NOR THEIR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL THE LIABILITY OF CGS, ABA OR ANY OF THEIR AFFILIATES PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY DATA RECIPIENT FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH SUCH CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. FURTHERMORE, CGS AND ABA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.

Data Recipient agrees that the foregoing terms and conditions shall survive any termination of its right of access to the materials identified above.

#### **4. Affiliates and Data Recipient's Service Facilitators**

- (a) At the option of Data Recipient, all of the rights and licenses granted to Data Recipient under this Agreement may also apply to Affiliate(s) of Data Recipient to the same extent as applicable to Data Recipient. For this Agreement to apply to Affiliate(s), Data Recipient must submit a list of any such Affiliate(s) to the Exchange in Exhibit C, as amended from time to time. By submitting the names of its Affiliate(s), Data Recipient acknowledges and agrees that the contact information set forth herein shall be deemed to be the contact information for each Affiliate and that DATA RECIPIENT SHALL ASSUME ALL RESPONSIBILITY FOR AND WILL HOLD HARMLESS AND INDEMNIFY THE EXCHANGE AGAINST ANY ACTION OR INACTION BY AN AFFILIATE AS IF SUCH ACTION OR INACTION WERE THAT OF DATA RECIPIENT, AND, WHERE DATA RECIPIENT IS LIABLE FOR ACTIONS AND/OR INACTIONS OF THE OTHER(S), DATA RECIPIENT AND ITS AFFILIATE(S) SHALL BE JOINTLY AND SEVERALLY LIABLE THEREFOR.
- (b) Data Recipient may use service facilitator(s) to facilitate the processing or dissemination of Data in Data Recipient's Service. Data Recipient must submit a list of any service facilitator(s) to the Exchange for approval, such approval not to be unreasonably delayed or withheld. Once approved, Data Recipient must have a legally valid and enforceable agreement with each Data Recipient's Service Facilitator before Data Recipient distributes any Data to such Data Recipient's Service Facilitator, which ensures that the Exchange is protected to substantially the same extent and has substantially the same rights as if each Data Recipient's Service Facilitator were a party to the Exchange's Data Agreement. DATA RECIPIENT SHALL ASSUME ALL RESPONSIBILITY FOR AND WILL HOLD HARMLESS AND INDEMNIFY THE EXCHANGE AGAINST ANY ACTION OR INACTION BY ANY DATA RECIPIENT'S SERVICE FACILITATOR AS IF SUCH ACTION OR INACTION WERE THAT OF DATA RECIPIENT.

#### **5. Permitted Recipients of Data**

- (a) Permitted Recipients of Data. Except as otherwise set forth in this Agreement, Data Recipient shall only furnish, or cause or permit to be furnished, all or any part of Data to Affiliates, Data

Recipient's Service Facilitators, Individual Users, Applications and Data Clients, or other recipient specified in the Data Requirements.

- (b) Data Recipient's own Individual Users and Applications. Data Recipient will be solely responsible for all acts and omissions of its own Individual Users and Applications (and jointly responsible for those of its named Affiliates) in relation to the use and distribution of Data under this Agreement.
- (c) Data Clients. Subject to section 5(d), Data Recipient may not distribute Data to a Data Client unless the Data Client has signed a Data agreement with the Exchange.
- (d) Agreement with Data Clients that do not Receive Direct Feeds or Redistribute Data. Where the Data Client will not receive direct feeds or redistribute Data, Data Recipient is not required to obtain an executed Data agreement from the Data Client if: (i) Data Recipient represents and warrants that it has, or will have, in place before distributing Data to any Data Client who has not signed a Data agreement, a valid and legally enforceable agreement with such Data Client; (ii) such agreement contains provisions for the benefit of the Exchange substantially similar to the provisions set out in Exhibit D attached hereto, except that if the agreement relates only to the distribution and use of Delayed Data, no provisions relating to the Exchange's audit rights and Data Clients' indemnification obligations are required; and (iii) such agreement shall be subject to applicable Data Requirements.
- (e) Data Client Disputes. In the event of a dispute between the Exchange and a Data Client relating to Data, Data Recipient shall provide to the Exchange a copy of the relevant agreement between the Data Recipient and Data Client. If the Data Client fails to comply with any of the conditions, terms or provisions of this Agreement applicable to the Data Client or the Data Recipient agreement to which it is a party, as the case may be, or any other agreement between Data Client and the Exchange, or has made any representation in any such agreement which was or has become untrue, Data Recipient shall, within five (5) Business Days after receipt of notice from the Exchange of such failure or misrepresentation, cease providing Data to such Data Client and shall, within seven (7) Business Days following the receipt of such notice, confirm such cessation by notice to the Exchange.

## 6. Modifications

- (a) Modifications by the Exchange. Nothing in this Agreement constitutes an undertaking by the Exchange to continue to: (i) provide Data, the Data System, or any aspect of either, in the present form or configuration or under the current Data Specifications; or (ii) use existing communications facilities. The Exchange, in its sole discretion, may make modifications, additions and/or deletions to: (i) the Data or the Data System; (ii) the Exchange's communication facilities; or (iii) the Data Requirements. The Exchange will provide Data Recipient with at least ninety (90) days' advance notice (by way of email distribution to members and vendors and by posting on the Website) of any material modification, addition or deletion, except to the extent a shorter period of time is required due to any situation that necessitates modifications, additions or deletions on an accelerated basis or otherwise precludes such advance notice or required pursuant to an order of a court, arbitrator or regulatory agency. If any such modification, addition or deletion is not acceptable to Data Recipient, Data Recipient may terminate this Agreement in accordance with section 18(b)(ii). Data Recipient shall be solely responsible for making any modifications to Data Recipient's Service or Data Recipient's System resulting from any modifications, additions and/or deletions made by the Exchange as contemplated in this section.



- (b) Modifications to Data Recipient's System Description. If Data Recipient desires to make use of any Data (including but not limited to developing or communicating derivative information based on the Data, retransmission, redistribution, reproduction or calculation of indices) in any manner not then described in Data Recipient's System Description, Data Recipient may submit a revised Data Recipient's System Description for approval by the Exchange. The Exchange shall promptly approve or reject proposed modifications to Data Recipient's System Description. Data Recipient acknowledges that it is within the discretion of the Exchange and that it is not obligated to grant any such approval and until such approval, if any, is granted by the Exchange, Data Recipient will be acting at its own risk in developing any modification to Data Recipient's Service. If the Exchange approves the revised Data Recipient's System Description, it shall update or replace the then current Data Recipient's System Description.

## 7. Fees

- (a) Payment a Condition to Access. Data Recipient acknowledges that payment by Data Recipient of all undisputed fees and other amounts set forth in the Data Fee Schedule is a condition precedent for continued receipt of Data by Data Recipient.
- (b) Fees. Data Recipient shall make timely payment of all undisputed Data Fees (as set forth in the Data Fee Schedule as posted from time to time on the Website and provided to Data Recipient by general email distribution) as well as any and all other amounts payable in connection with this Agreement. Subject to all applicable laws, the Exchange reserves the right to change the Data Fee Schedule on ninety (90) days' advance notice to Data Recipient (which notice shall be provided by way of general email notice to members and vendors and posted to the Website). If any such change to the Data Fee Schedule is not acceptable to Data Recipient, Data Recipient may terminate this Agreement in accordance with section 18(b)(ii).
- (c) Costs of Connection. Data Recipient is solely responsible for any and all telecommunications costs and all other expenses incurred in connecting to and maintaining its connection to the Exchange, including but not limited to any fees payable under any connectivity services agreement the Data Recipient has entered into with the Exchange.
- (d) Payment; Failure to Pay. Undisputed Data Fees are payable within thirty (30) days following the date of Data Recipient's receipt of the invoice. Data Recipient will pay all undisputed Data Fees and other amounts due without regard to any right of setoff or counterclaim. Data Recipient shall pay to the Exchange interest at the rate set forth from time to time in the Data Fee Schedule on all past due fees and other amounts that are not the subject of a legitimate and *bona fide* dispute. Failure to make full payment of outstanding undisputed Data Fees or other amounts within fifteen (15) days of the Exchange's notice that payment is past due may result in suspension or termination of distribution of Data to Data Recipient without notice. If all outstanding Data Fees and other amounts have not been paid in full within the fifteen (15) day notice period, the Exchange may terminate this Agreement without liability or obligation to Data Recipient.
- (e) Fees Collected by Data Recipient. Unless a Data Client has signed a Data agreement with the Exchange which covers such Data, Data Recipient shall be responsible for, and bear the risk of non-payment of, all fees and other amounts associated with Data distributed by Data Recipient to its Data Clients. If Data Recipient or any of its Data Clients is required by applicable law to deduct or withhold any tax, charge or assessment from fees or other amounts due to the Exchange, the fees and other amounts payable to the Exchange shall be increased so that the net amount actually

received by the Exchange after the deduction or withholding of any such tax, charge or assessment, is equal to 100% of the fees and other amounts that are owed.

## 8. Record Retention and Reporting

- (a) Maintenance of Records. Data Recipient shall maintain complete and accurate records in accordance with standard industry practice relating to the receipt and usage of Data and such other information relating to Data Recipient's System and Data Recipient's Service as the Exchange may from time to time request.
- (b) Reporting. Data Recipient shall comply with the requirements of the Exchange as to reporting on Data used or distributed as set forth in this Agreement and the Data Requirements, including reporting on Individual Users and Applications receiving Data, and the timing of reporting.
- (c) Corrections to Reports. Data Recipient shall have a one hundred and twenty (120) day grace period (beginning on the due date of the original report) within which to revise or correct its usage reporting in order to obtain retroactive credits. The Exchange will not provide Data Recipient with back credits for original or revised reporting received after the end of the grace period. Revised reporting could include, but is not limited to, reclassification of Data used or distributed, reporting of usage under alternative pricing structures and correction of errors by Data Recipient. This section does not limit Data Recipient's obligations to the Exchange for under-reporting.

## 9. Audit by the Exchange

- (a) Report. Upon request (such request to be limited to no more than once in any twelve (12) month period unless the Exchange, acting reasonably, has identified an issue relating to the verification or distribution of Data by Data Recipient), Data Recipient shall comply with the Exchange's reasonable procedures and requirements for the verification of all Data used or distributed through the Data Recipient's System.
- (b) Audit Rights of the Exchange. Upon not less than thirty (30) days' advance notice (which notice shall include the scope of such review), unless the Exchange, acting reasonably, has identified an issue relating to the verification or distribution of Data by Data Recipient, from time to time during the term of this Agreement and for a period of twenty four (24) months following the termination of this Agreement (but no more frequently than once in any twelve (12) month period), the Exchange may cause to be reviewed, by its employees and/or a firm of chartered accountants chosen by the Exchange (which firm of chartered accountants may be the accountants or auditors of the Exchange) and acceptable to Data Recipient: (i) Data Recipient's records relating to Data; (ii) Data Recipient's reports and payments relating to Data; and (iii) Data Recipient's System and Data Recipient's Service; provided that any such review shall be subject to the terms of section 11 hereof. Any such audit will be conducted at mutually agreed upon times and will be subject to Data Recipient's standard security procedures.
- (c) Costs of Report or Audit. The costs of any investigation, examination or audit shall be borne by the Exchange unless such investigation, examination or audit reveals an under-payment by Data Recipient of 10% or more or a material breach of the rights or licences granted to Data Recipient hereunder, in which case, Data Recipient shall reimburse the Exchange for its reasonable costs and expenses directly related to conducting such investigation, examination or audit.

**10. Proprietary Rights to Data System and Data.** Data and any and all materials, specifications, or other information directly or indirectly provided under or received in connection with this Agreement constitutes valuable proprietary information and rights of the Exchange, is not within the public domain and is being provided on a non-exclusive basis. Data Recipient expressly acknowledges that, as between the Exchange and Data Recipient, the Exchange has exclusive proprietary rights in and to the Data System and the Data. The Data System and the Data, including without limitation any and all intellectual property rights inherent therein or appurtenant thereto, shall, as between the Exchange and Data Recipient, be and remain the sole and exclusive property of the Exchange. Data Recipient shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance and full enjoyment by the Exchange or its licensees, transferees and assignees of the proprietary rights of the Exchange in Data and the Data System. Data Recipient acknowledges that Third Party Information Providers who provide information, goods and services to the Exchange in connection with the creation of Data have exclusive rights in their respective information and data. In the event of any misappropriation or misuse by Data Recipient or any other person who accesses the Data through Data Recipient, the Exchange and each of its Third Party Information Providers shall have the right to obtain injunctive relief for its respective data or other information. Notwithstanding the foregoing, if Data Recipient is a Member, the parties' respective rights regarding Member's Private Data are governed by the Member Agreement.

## 11. Confidential Information

(a) Confidentiality Obligation. Each party (the "**Receiving Party**") acknowledges that in the course of their dealings and the performance of this Agreement it may obtain confidential information, data or techniques (including know-how, data, patents, copyrights, trade secrets, processes, techniques, programs, designs, formulae, marketing, advertising, financial, commercial, sales or programming materials, equipment configurations, system access codes and passwords, written materials, feed specifications, compositions, drawings, diagrams, computer programs, studies, works in progress, visual demonstrations, ideas, concepts, and other data, whether in written, oral, graphic, electronic or any other form or medium whatsoever) ("**Confidential Information**") from the other party (the "**Disclosing Party**"). A Receiving Party shall take all precautions necessary to safeguard the confidentiality of the Confidential Information of the Disclosing Party, including without limitation: (i) those taken by the Receiving Party to protect its own Confidential Information; and (ii) those which the Disclosing Party may reasonably request from time to time.

(b) Permitted Disclosure

- (i) A Receiving Party will not disclose, in whole or in part, the Confidential Information of the Disclosing Party to any person, except as specifically authorized under this Agreement. All persons receiving Confidential Information shall: (A) have a need to know such Confidential Information for the purpose of administering this Agreement or the Data Requirements; and (B) either have been informed of the confidential nature of such Confidential Information or be bound by the terms of their employment or engagement to maintain the confidentiality of the Confidential Information.
- (ii) A Receiving Party will have no confidentiality obligation with respect to any portion of the Confidential Information of the Disclosing Party that: (A) the Receiving Party independently developed without reference to the Disclosing Party's Confidential Information; (B) the Receiving Party lawfully obtained from a third party under no obligation of confidentiality; (C) is or becomes available to the public other than as a result of an act or omission of any person bound by an obligation not to disclose such information;

or (D) the Receiving Party is requested or is required to disclose by law, regulation, legal process or direction, request or order of a court of competent jurisdiction or Regulatory Authority. If a Receiving Party is requested or required to disclose any Confidential Information of the Disclosing Party pursuant to clause (D), the Receiving Party shall, to the extent permitted by law, provide the Disclosing Party with prompt written 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 hereof. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is, in the opinion of the Receiving Party's legal counsel, legally compelled or reasonably required by an applicable Regulatory Authority to disclose the Confidential Information of the Disclosing Party, the Receiving Party may disclose such Confidential Information without liability hereunder; provided, however, that the Receiving Party shall disclose only that portion of the Confidential Information which it is compelled to disclose or which legal counsel has advised it is required to disclose.

- (c) Unauthorized Use or Disclosure. Each party, as a Receiving Party, acknowledges that any unauthorized use, disclosure or dissemination of the Confidential Information of the Disclosing Party may cause irreparable damage to the Disclosing Party. If an unauthorized use, disclosure or dissemination occurs, the Receiving Party will promptly notify the Disclosing Party and take, at its expense, all steps necessary to recover the Confidential Information and to prevent its subsequent unauthorized use, disclosure or dissemination, including availing itself of equitable remedies including, in its sole discretion, by way of injunction and specific performance. If the Receiving Party fails to take such steps in a timely and adequate manner, the Disclosing Party may take them at the Receiving Party's expense and the Receiving Party will provide the Disclosing Party with its reasonable co-operation in such actions as the Disclosing Party may request. The foregoing shall be in addition to and without prejudice to any other rights the Disclosing Party may have under this Agreement or at law or in equity in the event of any breach of this section 11.

## 12. Use of Marks

- (a) Use of Exchange Marks. The Exchange hereby grants to Data Recipient a worldwide, revocable, non-transferable, non-exclusive right to use the name of the Exchange and other logos, trademarks or trade names as provided to Data Recipient from time to time by the Exchange (collectively, the "**Exchange Marks**") solely for the purpose of identifying the Exchange as the provider of the Data; provided that Data Recipient does not: (i) modify the Exchange Marks in any manner or use them for any purpose other than as set forth in this section; (ii) engage in any action that adversely affects the good name, good will, image or reputation of the Exchange or the good name, good will, image or reputation associated with the Exchange Marks; nor (iii) fail to use at all times, the appropriate trade or service mark notice as applicable or other such notices as the Exchange may from time to time specify in advance on any item or material bearing the Exchange Marks by posting any change to the Exchange's website and notifying Data Recipient by general email distribution.
- (b) Use of Data Recipient Marks. Data Recipient hereby grants to the Exchange a worldwide, revocable, non-transferable (except to the extent and manner otherwise provided in this Agreement), non-exclusive, right to use the name of Data Recipient and other logos, trademarks or trade names as provided to the Exchange from time to time by Data Recipient (collectively, the "**Data Recipient Marks**") solely for the purpose of identifying Data Recipient as a customer of the Exchange; provided, however, that the Exchange does not: (i) modify the Data Recipient Marks in any manner or use them for any purpose other than as set forth in this section; (ii) engage in any action that adversely affects the good name, good will, image or reputation of Data Recipient or

the good name, good will, image or reputation associated with the Data Recipient Marks; or (iii) fail to use at all times, the appropriate trade or service mark notice as applicable or other such notices as Data Recipient may from time to time specify on any item or material bearing the Data Recipient Marks.

### 13. Indemnification by Data Recipient

- (a) Subject to section 4, Data Recipient and those of its Affiliates who are deemed to be subject to this Agreement shall jointly and severally indemnify, defend and hold harmless the Exchange, its Affiliates, and their respective directors, officers, employees, agents and other representatives (the “**Exchange Indemnified Parties**”) from and against all liabilities, obligations, losses, damages, penalties, costs, and expenses of whatever nature (including reasonable legal and other professional fees and expenses), claims, demands, proceedings, suits, actions, settlements and judgments (collectively, “**Losses and Claims**”) suffered or incurred or compelling participation by any of the Exchange Indemnified Parties arising from or out of or in respect of any third party claim:
- (i) any material non-compliance by Data Recipient, its named Affiliates or Data Recipient’s Service Facilitators with the terms and conditions of this Agreement;
  - (ii) any non-compliance by Data Clients with the terms and conditions of any agreement between the Data Recipient and the Data Client with respect to Data, including Historical Data, or any of the Data Requirements, if Data Recipient has failed to notify the Exchange of such non-compliance within ten (10) days after Data Recipient knows of such non-compliance and the non-compliance has not been remedied; and
  - (iii) any assertion of Losses and Claims against the Exchange Indemnified Parties made by any person who receives the Data, including Historical Data, from Data Recipient but not including Non-authorized Information or Member’s Private Data (or any person relying upon the Data received by such person) who is not permitted or qualified to receive Data under this Agreement, except or where such Losses and Claims arise from the fraud, gross negligence or wilful misconduct of the Exchange.

The indemnification provided in this section shall include, without limitation, the investigative and administrative costs and expenses of the Exchange Indemnified Parties relating to the detection of any material non-compliance by Data Recipient referred to in clause (i) above or any material non-compliance by Data Clients referred to in clause (ii) above, provided, however, that such costs and expenses are not excessive as compared to the injury the Exchange Indemnified Parties could suffer as a result of any such non-compliance.

- (b) Data Recipient shall indemnify, defend and hold harmless the Exchange Indemnified Parties from any and all Losses and Claims imposed on, incurred by or asserted against the Exchange Indemnified Parties as a result of: (i) any assertion by a third party that Data Recipient’s Service infringes any patent, trade mark, service mark, trade secret or copyright or violates any other intellectual property right; or (ii) any defense of or participation by the Exchange Indemnified Parties in any action, suit, arbitration or judicial, investigative or administrative proceeding involving any Losses and Claims described in this section 13(b).

**14. Indemnification by the Exchange.** The Exchange shall indemnify and hold harmless Data Recipient, its Affiliates and their respective directors, officers, employees, agents and other representatives (the “**Data Recipient Indemnified Parties**”) from any and all Losses and Claims imposed on, incurred by or asserted against Data Recipient as a result of: (i) fraud, gross negligence or wilful misconduct by the Exchange; (ii) a material breach of this Agreement; (iii) any assertion by any person that the Data infringes or misappropriates any copyright, patent, trademark or trade secret or copyright or other intellectual property right of a third party; or (iv) any defense or participation by the Data Recipient Indemnified Parties in any action, suit, arbitration, or judicial, investigative or administrative proceeding involving any Losses and Claims described in this section 14. For any claim under section 14(iii), the Exchange will assume the defense of such claim.

#### **15. Indemnification Procedure**

- (a) Notice. A person entitled to and seeking indemnification pursuant to the terms of this Agreement (the “**Indemnified Party**”) shall promptly give notice to the party or parties, as applicable, responsible for indemnifying the Indemnified Party (the “**Indemnifying Party**”) of any claim for indemnification pursuant to section 13 or 14, as applicable (an “**Indemnification Claim**”). Such notice shall specify whether the Indemnification Claim arises as a result of a claim by a person against the Indemnified Party (a “**Third Party Claim**”).
- (b) Procedure for Indemnification – Third Party Claims. The Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the negotiation, settlement or defence of such Third Party Claim and, in such event, the Indemnifying Party shall reimburse the Indemnified Party for all of the Indemnified Party’s out-of-pocket expenses incurred as a result of such participation or assumption. If the Indemnifying Party elects to assume such control, the Indemnified Party shall cooperate with the Indemnifying Party, and shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim at its own expense, and shall have the right to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Indemnifying Party and the Indemnified Party shall be retained by the Indemnifying Party. If the Indemnifying Party, having elected to assume such control, thereafter fails to defend any such Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim.
- (c) General Indemnification Rules. The obligations of the Parties in respect of indemnification shall include the following:
- (i) neither Party shall negotiate, settle or compromise any non-monetary element of any Third Party Claim except with the prior written consent of the other Party (which consent shall not be unreasonably withheld);
  - (ii) the obligations of an Indemnifying Party to indemnify an Indemnified Party in respect of Indemnification Claims are subject to the Indemnified Party not permitting any right of appeal in respect of any Third Party Claim to terminate without giving the Indemnifying Party notice and an opportunity to contest such Third Party Claim;

- (iii) the Indemnified Party and the Indemnifying Party shall cooperate with each other with respect to Third Party Claims and shall keep each other advised with respect thereto. (including supplying copies of all relevant documentation promptly as it becomes available); and
- (iv) the Indemnifying Party shall not settle any Third Party Claim or conduct any related legal or administrative proceeding in a manner which would, in the reasonable opinion of the Indemnified Party, have a material adverse impact on the Indemnified Party.

**16. DISCLAIMER OF WARRANTY.** THE DATA AND ANY AND ALL INFORMATION AND MATERIALS RELATED TO THE DATA, INCLUDING BUT NOT LIMITED TO THE DATA SYSTEM AND DATA SPECIFICATIONS, ARE PROVIDED “AS-IS”, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND OF ANY OTHER WARRANTY OR OBLIGATION WITH RESPECT TO THE DATA OR THE DATA SYSTEM OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO DATA RECIPIENT AND ALL OTHER SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. THERE IS NO GUARANTEE THAT THE DATA OR THE DATA SYSTEM WILL MEET DATA RECIPIENT’S REQUIREMENTS, BE COMPLETE, ACCURATE, SEQUENTIAL, ERROR-FREE OR OPERATE WITHOUT DELAY OR INTERRUPTION. THE EXCHANGE GIVES NO WARRANTIES OF ANY KIND AS TO THE FITNESS, CAPACITY OR CONDUCT OF ANY OTHER PERSON HAVING ACCESS TO THE DATA OR THE DATA SYSTEM.

#### **17. LIMITATION ON LIABILITIES**

- (a) LIMITATION ON LIABILITY. IN THE ABSENCE OF FRAUD, GROSS NEGLIGENCE OR WILFUL MISCONDUCT OR A CLAIM ARISING OUT OF THE PARTIES’ INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER:
  - (i) NONE OF THE PARTIES OR THEIR AFFILIATES, NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR OTHER REPRESENTATIVES WILL BE LIABLE FOR ANY INDIRECT LOSS OR CLAIM, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF OPPORTUNITY, LOSS OF USE, TRADING LOSSES, LOSS OF OTHER COSTS OR SAVINGS, NOR FOR ANY DAMAGES SUFFERED, OR COST OR EXPENSE INCURRED BY THE OTHER PARTY, A DATA CLIENT OR ANY OTHER PERSON, OF ANY NATURE OR FROM ANY CAUSE WHATSOEVER, WHETHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL, ARISING OUT OF THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF THE DATA, THE DATA SYSTEM, DATA RECIPIENT’S SYSTEM, DATA RECIPIENT’S SERVICE, EQUIPMENT, COMMUNICATION LINES, SOFTWARE, DATABASES, MANUALS OR ANY OTHER MATERIAL FURNISHED BY OR ON BEHALF OF THE EXCHANGE, OR CAUSED BY OR BASED UPON ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF THE DATA, NOTWITHSTANDING THAT ANY SUCH PERSON MAY HAVE BEEN ADVISED OF THE POSSIBILITY THAT DAMAGES MAY OR WILL ARISE IN ANY GIVEN SITUATION.

- (ii) EACH PARTY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT AND ITS OBLIGATIONS HEREUNDER SHALL NOT EXCEED, AT THE OTHER PARTY'S OPTION, A CREDIT OR A REFUND IN AN AMOUNT EQUAL TO THE LESSER OF: (I) ACTUAL DAMAGES SUFFERED AS A DIRECT RESULT OF THE OTHER PARTY'S ACT OR OMISSION; AND (II) THE AVERAGE MONTHLY AMOUNT CHARGED TO THE DATA RECIPIENT AND COLLECTED BY THE EXCHANGE, CALCULATED OVER THE TWELVE (12) MONTHS PRECEDING THE DATE THAT THE FIRST CAUSE OF ACTION AROSE, INCLUDING A CAUSE OF ACTION THAT IS CONTINUING.
- (b) Third Party Information Providers' Limitation of Liability. The Exchange's Third Party Information Providers shall not be liable to Data Recipient or any other person for any loss or damage, whether direct or indirect, special, punitive, consequential or incidental, relating to inaccurate or incomplete Data or other data or information, or any unavailability, delay, interruption, error or omission in the furnishing thereof, even if the Third Party Information Providers have been advised of the possibility of such damages.

## 18. Term and Termination

- (a) Term. This Agreement shall take effect on the earlier of: (i) the date of this Agreement; and (ii) the date the Data is first provided to Data Recipient (but not earlier than March 1, 2015), and shall continue in effect until terminated in accordance with its terms.
- (b) Termination. This Agreement may be terminated:
  - (i) by the Exchange upon at least ninety (90) days' advance notice to Data Recipient, with termination to be effective at the end of a calendar month;
  - (ii) by Data Recipient upon at least thirty (30) days' advance notice to the Exchange, with termination to be effective at the end of a calendar month;
  - (iii) in the event of a material breach of this Agreement, by the party not in breach upon not less than thirty (30) days' advance notice to the breaching party unless, if the breach is capable of being cured, the breach is cured within the notice period;
  - (iv) by the Exchange upon not less than thirty (30) days' advance notice to Data Recipient, if any representation, warranty or certification made by Data Recipient in this Agreement or in any other document furnished by Data Recipient was materially untrue or inaccurate at the time made and is not made true or accurate within such thirty (30) day notice period;
  - (v) by either party immediately upon notice to the other party, in the event that either party becomes insolvent, makes an assignment for the benefit of creditors, admits its inability to or is not able to pay its debts as they become due, files or has filed against it any petition under any provision of applicable bankruptcy laws, or an application for the appointment of a receiver, trustee or custodian of the assets or the business of either party is made, or any action or proceeding is taken or proposed to be taken to liquidate, wind-up or dissolve either party;



- (vi) by the Exchange immediately upon notice, if for legal or regulatory reasons Data Recipient is not permitted or not able to receive, or the Exchange is materially prevented or prohibited from disseminating, Data or any part thereof; or
  - (vii) by the Exchange immediately, if the Exchange, acting reasonably, determines that any failure on the part of Data Recipient to comply with this Agreement has or is likely to have an adverse impact on the operation or performance of the Data System, Data or market or likely to cause disproportionate harm to the Exchange's interests should termination be delayed.
- (c) Survival. Sections 2(d) and (e), 8 to 11 inclusive, 13 to 17 inclusive and this 18(c) shall survive the termination of this Agreement.

## 19. Notices

- (a) Excluding notices of general application that the Exchange shall distribute by email distribution and post on the Website, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered to the addressee: (i) in person; (ii) by registered or certified mail; (iii) by courier service; or (iii) by confirmed facsimile or other electronic form that is accessible by the addressee so as to be usable for subsequent reference and capable of being retained by the addressee.
- (b) Any notice or communication to Data Recipient shall be sent to its last known address shown in the Exchange's records. Data Recipient shall be responsible for providing and maintaining an electronic email address for receipt of notice by email notifications.
- (c) Any notice or communication to the Exchange shall be sent to:

Neo Exchange Inc.  
155 University Avenue, Suite 400  
Toronto, Ontario M5H 3B7  
Attention: Chief Legal Officer  
Fax: (416) 603-1529  
Email: Legal@neostockexchange.com

- (d) A notice or communication required or permitted to be given under this Agreement shall be effective: (i) at the time the delivery is made if the notice or communication is delivered personally, by courier service or by facsimile; (ii) seven days after the day the notice or communication is deposited in the mail if the notice or communication is sent by registered or certified mail; or (iii) upon receipt by a party from its internet service provider or computer server indicating that the electronic communication was received.

Despite the foregoing, if any such effective day is not a Business Day, the notice or communication is not effective until the next Business Day.

- (e) If a receiving party cannot see or print all or any portion of any notice or communication, it is the receiving party's obligation to contact the sending party.

(f) The Exchange or Data Recipient may, from time to time, change its contact information by notice to the other given in accordance with the provisions of this section.

(g) The Exchange and Data Recipient consent to delivery and receipt by electronic means of all notices and other communications required or permitted to be given under this Agreement for purposes of administering this Agreement.

**20. Waivers.** A waiver of any provision of this Agreement by either party will not be effective unless in writing and signed by the waiving party and then such waiver shall be limited to the circumstances set forth in such written waiver. No failure or delay of a party in exercising any right, power or remedy shall operate as a waiver nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**21. Force Majeure.** Neither party will be liable for delay or failure to perform its obligations under this Agreement caused by an event that is beyond the party's control.

**22. Severability.** Each provision of this Agreement is intended to be severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, such provision of this Agreement shall be severed and the illegality, invalidity or unenforceability of that provision will not affect: (i) the legality, validity or enforceability of the remaining provisions of this Agreement; or (ii) the legality, validity or enforceability of that provision in any other jurisdiction.

**23. Assignment.** Except in relation to an Affiliate, in which case Data Recipient may assign all or any part of its rights and obligations hereunder upon prior notice to the Exchange, Data Recipient may not assign (including by operation of law) this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the Exchange (which consent shall not be unreasonably withheld). The Exchange may assign the Agreement and all or any part of its rights and obligations hereunder upon advance notice to Data Recipient.

**24. Persons Bound; Third Party Beneficiaries.** This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns. Except as otherwise provided in this Agreement, nothing in this Agreement is intended to confer upon any person other than the parties hereto any rights, obligations or remedies hereunder.

**25. Governing Law.** This Agreement and all other documents contemplated by or delivered in connection with this Agreement, including the Additional Agreements, shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (without regard to conflicts of law principles that would impose the laws of another jurisdiction). The parties unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

**26. Amendments.** Except as otherwise provided in this Agreement, the Exchange may amend any term or condition not subject to a specified notice period, subject to receipt of all required approvals, including those of applicable securities regulatory authorities, amend any term or condition of this Agreement on thirty (30) days' advance notice to Data Recipient (which notice may be provided by way of a general email notice and posted to the Website). If any such amendment is not acceptable to Data Recipient, Data Recipient may terminate this Agreement in accordance with section 18(b)(ii). Any use of the Data or access or use of the Data System by Data Recipient after the expiration of the notice period shall be deemed acceptance by Data Recipient of the amendment. Data Recipient may not alter any provision of this Agreement, and no modification to this Agreement proposed by Data Recipient

will be effective or binding on the Exchange, unless in writing and signed by an authorized representative of the Exchange such acceptance not to be unreasonably withheld. The Exchange confirms that the terms offered to Data Recipient under this Agreement are no less favourable than any terms currently agreed to or that will be agreed to by the Exchange with any other data recipient.

- 27. Calculation of Time Periods.** Where a time period is expressed to begin on or end at, on or with a specified day, or to continue to or until a specified day, the time period includes that day. Where a time period is expressed to begin after or to be from a specified day, the time period does not include that day. Where anything is to be done within a time period expressed after, from or before a specified day, the time period does not include that day. If the last day of a time period is not a Business Day, the time period shall end on the next Business Day.
- 28. Relationship of Parties.** Nothing in this Agreement, express or implied, is intended to or shall constitute the parties hereto partners or joint venturers or appoint one party the agent of the other party.
- 29. Entire Agreement.** This Agreement, together with the Data Order Form, the Data Recipient's System Description, the Data Requirements and the Additional Agreements, constitutes the entire agreement between the Exchange and Data Recipient with respect to the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof.
- 30. Language.** The parties confirm that it is their wish that this Agreement be written in the English language only. *Les parties confirment leur volonté que la présente convention soit rédigée en anglais seulement.*
- 31. Counterparts, etc.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument and may be delivered by facsimile or email transmission of a Portable Document Format (PDF) file.

*[INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]*

**NEO EXCHANGE INC.**  
**DATA VENDOR AGREEMENT**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized officers as of the date set out below.

\_\_\_\_\_  
Legal Name of Data Recipient (please print)

By: \_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name of Signatory (please print)

\_\_\_\_\_  
Title (please print)

For any Data Recipient requiring a second signature:

By: \_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name of Signatory (please print)

\_\_\_\_\_  
Title (please print)

**NEO EXCHANGE INC.**

By: \_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name of Signatory (please print)

\_\_\_\_\_  
Title (please print)

\_\_\_\_\_  
Date

**EXHIBIT A**

**DATA ORDER FORM**

**PART I – CUSTOMER INFORMATION**

<b>GENERAL</b>			
Legal Name of Customer			
<input type="checkbox"/> Dealer <input type="checkbox"/> Buy-Side Firm <input type="checkbox"/> Market Data Vendor <input type="checkbox"/> Other, please specify:			
Address of Head Office			
Phone No.		Fax No.	
Principal Business Activities			
<b>AUTHORIZED REPRESENTATIVE(S)</b> (Senior Officer, Director or Partner)			
Primary Contact Name and Title		Secondary Contact Name and Title	
Email		Email	
Phone No.		Phone No.	
<b>LEGAL CONTACTS</b>			
Primary Contact Name and Title		Secondary Contact Name and Title	
Email		Email	
Phone No.		Phone No.	
<b>TECHNICAL / SERVICE DESK CONTACTS</b>			
Primary Contact Name and Title		Secondary Contact Name and Title	
Email		Email	
(Trading Hours) Phone No.	(Non-Trading Hours) Phone No.	(Trading Hours) Phone No.	(Non-Trading Hours) Phone No.
<b>BILLING CONTACTS</b>			
Primary Contact Name and Title		Secondary Contact Name and Title	
Email		Email	
Phone No.		Phone No.	

**PART II – DATA INFORMATION**

DATA DISTRIBUTION	
<b>Internal Distribution</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>External Distribution</b> <input type="checkbox"/> YES <input type="checkbox"/> NO

DATA USAGE	
<b>Display Usage (Individual Users)</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>Non-Display Usage (Applications)</b> <input type="checkbox"/> YES <input type="checkbox"/> NO

DATA SOURCE	
<input type="checkbox"/> Directly from Exchange* <input type="checkbox"/> TMX Information Processor <input type="checkbox"/> Connectivity Provider, please specify:	
<input type="checkbox"/> Other, please specify:	
<small>* requires a separate connectivity services agreement</small>	

**PART III - COMMENTS**

Please use the box below to add any comments, questions or requests for additional information.

CUSTOMER AUTHORIZATION	
Signature	Date
Name and Title	

**EXHIBIT B**  
**DATA RECIPIENT'S SYSTEM DESCRIPTION**

**EXHIBIT C**  
**LIST OF AFFILIATES<sup>1</sup>**

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<sup>1</sup> Please include the full legal name and mailing address for each Affiliate, along with a contact name, email address and telephone number.



## EXHIBIT D

### DATA CLIENT AGREEMENT – MINIMUM TERMS

Unless specifically excepted in the Agreement, the agreement between Data Recipient and Data Client must contain provisions for the benefit of the Exchange substantially similar to the provisions set out below.

#### Terms and Conditions

1. **Use of Data.** Subject to the provisions of a Member Agreement between the Data Recipient and the Exchange, if applicable, Data Client may not sell, lease, furnish, publish, distribute or otherwise permit or provide access to Data to any other person or to any other office or place. Data Client will not engage in any illegal use or permit any other person to use Data, or any part thereof, for any illegal purpose or in violation of any applicable law, rule or regulation. Data Client shall not present Data in any manner that adversely affects its accuracy or integrity or that renders it misleading. Data Client shall take reasonable security precautions to prevent unauthorized persons from gaining access to or using Data.
2. **Proprietary Data.** Data Client acknowledges and agrees that the Exchange has proprietary rights to Data that originate on or derive from markets regulated or operated by the Exchange and compilation or other rights to Data gathered from other sources. Data Client further acknowledges and agrees that the Exchange's Third Party Information Providers have exclusive proprietary rights to their respective information. In the event of any misappropriation or misuse by Data Client or any other person who accesses the Data through Data Client, the Exchange and each of its Third Party Information Providers shall have the right to obtain injunctive relief for its respective data or other information. Data Client will attribute the source of Data as appropriate under all the circumstances.
3. **System.** Data Client acknowledges that the Exchange may, in its sole discretion and from time to time, make modifications to its system or to Data. Such modifications may require corresponding changes to be made to Data Recipient's Service and to Data Client's systems. Changes or Data Recipient's or Data Client's failure to make timely changes may sever, delay or otherwise affect Data Client's access to or use of Data. Data Client acknowledges that none of the Exchange or any of its Affiliates shall be responsible for any such effects and that none of the Exchange or any of its Affiliates endorses or approves Data Recipient, Data Recipient's Service or equipment utilized by Data Recipient or Data Client.
4. **Record Retention**
  - (a) Maintenance of Records. Data Client shall maintain complete and accurate records in accordance with standard industry practice relating to the receipt and usage of Data and such other information relating to the service provided by the Data Recipient as the Data Recipient may from time to time request.
  - (b) Reporting. Data Client shall comply with the requirements of the Data Recipient as to reporting on Data used or distributed as set forth in the agreement between the Data Client and the Data Recipient, including reporting on individual users and applications receiving Data, and the timing of reporting.
5. **Audit Rights.** Data Client shall comply with Data Recipient's reasonable procedures and requirements for the verification of all Data used by the Data Client or distributed through the Data Client's systems.

6. **DISCLAIMER OF WARRANTY.** THE DATA AND ANY AND ALL INFORMATION AND MATERIALS RELATED TO THE DATA, INCLUDING BUT NOT LIMITED TO THE DATA SYSTEM AND DATA SPECIFICATIONS, ARE PROVIDED “AS-IS”, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND OF ANY OTHER WARRANTY OR OBLIGATION WITH RESPECT TO THE DATA OR THE DATA SYSTEM OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO DATA CLIENT AND ALL OTHER SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. THERE IS NO GUARANTEE THAT THE DATA OR THE DATA SYSTEM WILL MEET DATA CLIENT’S REQUIREMENTS, BE COMPLETE, ACCURATE, SEQUENTIAL, ERROR-FREE OR OPERATE WITHOUT DELAY OR INTERRUPTION. NEO EXCHANGE INC. IS A THIRD PARTY BENEFICIARY OF THIS AGREEMENT AND IT GIVES NO WARRANTIES OF ANY KIND AS TO THE FITNESS, CAPACITY OR CONDUCT OF ANY OTHER PERSON HAVING ACCESS TO THE DATA OR THE DATA SYSTEM.
7. **LIMITATION ON LIABILITIES.** IN THE ABSENCE OF FRAUD, GROSS NEGLIGENCE OR WILFUL MISCONDUCT OR A CLAIM ARISING OUT OF THE NEO EXCHANGE INC.’S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS SET OUT IN THE DATA AGREEMENT BETWEEN NEO EXCHANGE INC. AND THE DATA RECIPIENT (“**DATA AGREEMENT**”):
- (a) NONE OF NEO EXCHANGE INC. (THE “**EXCHANGE**”) OR ITS AFFILIATES, NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR OTHER REPRESENTATIVES WILL BE LIABLE INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF OPPORTUNITY, LOSS OF USE, TRADING LOSSES, LOSS OF OTHER COSTS OR SAVINGS, NOR FOR ANY DAMAGES SUFFERED, OR COST OR EXPENSE INCURRED BY DATA CLIENT OR ANY OTHER PERSON, OF ANY NATURE OR FROM ANY CAUSE WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL, ARISING OUT OF THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF THE DATA, THE DATA SYSTEM, EQUIPMENT, COMMUNICATION LINES, SOFTWARE, DATABASES, MANUALS OR ANY OTHER MATERIAL FURNISHED BY OR ON BEHALF OF THE EXCHANGE, OR CAUSED BY OR BASED UPON ANY UNAVAILABILITY, INTERRUPTION, DELAY, INCOMPLETENESS OR INACCURACY OF THE DATA, NOTWITHSTANDING THAT THE EXCHANGE MAY HAVE BEEN ADVISED OF THE POSSIBILITY THAT DAMAGES MAY OR WILL ARISE IN ANY GIVEN SITUATION;
- (b) THE EXCHANGE’S AGGREGATE LIABILITY ARISING FROM OR RELATED TO DATA PROVIDED TO DATA CLIENT, INCLUDING ITS INDEMNIFICATION OBLIGATIONS BELOW, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AVERAGE MONTHLY AMOUNT PAID ON BEHALF OF THE DATA CLIENT TO THE EXCHANGE CALCULATED OVER THE TWELVE (12) MONTHS PRECEDING THE DATE THAT THE FIRST CAUSE OF ACTION AROSE, INCLUDING A CAUSE OF ACTION THAT IS CONTINUING.
- (c) **Third Party Information Providers’ Limitation of Liability.** Third Party Information Providers shall not be liable to Data Client or any other person for any loss or damage, whether direct or indirect, special, punitive, consequential or incidental, relating to inaccurate or incomplete Data or other data or information, or any unavailability, delay, interruption, error or omission in the

furnishing thereof, even if the Third Party Information providers have been advised of the possibility of such damages.

## 8. Indemnification

- (a) Data Client shall indemnify and hold harmless the Exchange, its affiliates, and their respective directors, officers, employees and other representatives (the “**Exchange Indemnified Parties**”) as third party beneficiaries of this agreement from any and all losses and claims imposed on, incurred by or asserted as a result of or relating to:
  - (i) any non-compliance by Data Client with the terms and conditions hereof; and
  - (ii) any third party actions related to Data Client’s receipt and use of Data, whether authorized or unauthorized under this agreement.
- (b) Data Client shall indemnify and hold harmless the Exchange Indemnified Parties and the Data Recipient and, to the extent applicable, the Exchange shall indemnify and hold harmless Data Client and its directors, officers, employees, agents and other representatives, (and in every case, the Data Recipient or the Exchange, as applicable, shall be permitted to solely defend and settle) against any losses or claims arising from, involving or relating to a claim of infringement or other violation of any intellectual property right by the indemnifying party; provided, that: (i) the indemnified party gives prompt notice to the indemnifying party of the losses or claims; and (ii) the indemnified party reasonably co-operates in the defense of the losses or claims.

## 9. Confidential Information

- (a) Confidentiality Obligation. Each party (the “**Receiving Party**”) acknowledges that in the course of their dealings and the performance of this Agreement it may obtain confidential information, data or techniques (including know-how, data, patents, copyrights, trade secrets, processes, techniques, programs, designs, formulae, marketing, advertising, financial, commercial, sales or programming materials, equipment configurations, system access codes and passwords, written materials, feed specifications, compositions, drawings, diagrams, computer programs, studies, works in progress, visual demonstrations, ideas, concepts, and other data, whether in written, oral, graphic, electronic or any other form or medium whatsoever) (“**Confidential Information**”) from the other party (the “**Disclosing Party**”). A Receiving Party shall take all precautions necessary to safeguard the confidentiality of the Confidential Information of the Disclosing Party, including without limitation: (i) those taken by the Receiving Party to protect its own Confidential Information; and (ii) those which the Disclosing Party may reasonably request from time to time.
- (b) Permitted Disclosure
  - (i) A Receiving Party will not disclose, in whole or in part, the Confidential Information of the Disclosing Party to any person, except as specifically authorized under this Agreement. All persons receiving Confidential Information shall: (A) have a need to know such Confidential Information for the purpose of administering this Agreement or the Data Requirements; and (B) have been informed of the confidential nature of such Confidential Information or be bound by the terms of their employment or engagement to maintain the confidentiality of the Confidential Information.
  - (ii) A Receiving Party will have no confidentiality obligation with respect to any portion of the Confidential Information of the Disclosing Party that: (A) the Receiving Party

independently developed without reference to the Disclosing Party's Confidential Information; (B) the Receiving Party lawfully obtained from a third party under no obligation of confidentiality; (C) is or becomes available to the public other than as a result of an act or omission of any person bound by an obligation not to disclose such information; or (D) the Receiving Party is requested or is required to disclose by law, regulation, legal process or direction, request or order of a court of competent jurisdiction or other governmental, regulatory or self-regulatory authority ("**Regulatory Authority**"). If a Receiving Party is requested or required to disclose any Confidential Information of the Disclosing Party pursuant to clause (D), the Receiving Party shall, to the extent permitted by law, provide the Disclosing Party with prompt written 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 hereof. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is, in the opinion of the Receiving Party's legal counsel, legally compelled or reasonably required by an applicable Regulatory Authority to disclose the Confidential Information of the Disclosing Party, the Receiving Party may disclose such Confidential Information without liability hereunder; provided, however, that the Receiving Party shall disclose only that portion of the Confidential Information which it is compelled to disclose or which legal counsel has advised it is required to disclose.

- (c) Unauthorized Use or Disclosure. Each party, as a Receiving Party, acknowledges that any unauthorized use, disclosure or dissemination of the Confidential Information of the Disclosing Party may cause irreparable damage to the Disclosing Party and the Exchange. If an unauthorized use, disclosure or dissemination occurs, the Receiving Party will promptly notify the Disclosing Party and take, at its expense, all steps necessary to recover the Confidential Information and to prevent its subsequent unauthorized use, disclosure or dissemination, including availing itself of equitable remedies including, in its sole discretion, by way of injunction and specific performance. If the Receiving Party fails to take such steps in a timely and adequate manner, the Disclosing Party may take them at the Receiving Party's expense and the Receiving Party will provide the Disclosing Party with its reasonable co-operation in such actions as the Disclosing Party may request. The foregoing shall be in addition to and without prejudice to any other rights the Disclosing Party may have under this Agreement or at law or in equity in the event of any breach of this section.

10. **Termination**. Data Client acknowledges that the Exchange, when required to do so in fulfillment of statutory obligations, may by notice to Data Recipient unilaterally limit or terminate the right of any or all persons to receive or use Data, or any part thereof, and that Data Recipient will immediately comply with any such notice and will terminate or limit distribution or furnishing of Data to Data Client and confirm such compliance by notice to the Exchange. In the event of any material breach of this agreement by Data Client, the discovery of any misrepresentation or inaccurate statement by Data Client or where directed by any regulatory authority, this agreement may be terminated on not less than five (5) business days' written notice to Data Client provided by either the Exchange, if applicable, or Data Recipient.
11. **Conflicts**. If there is any conflict or inconsistency between these terms and conditions and the terms of any other agreement that Data Client may have with Data Recipient, these terms and conditions shall prevail as between the Exchange and Data Client.