

Ω OMEGA ATS

OMEGA ATS™ SUBSCRIBER AGREEMENT

1. OMEGA SUBSCRIBER ACCESS

(a) We, Omega Securities Inc. (“we”, “us”, “our” and like terms), operate an electronic marketplace for trading in listed Canadian equity securities named Omega ATS™ (“Omega”). We agree to provide you (the “Client”, or “you” and like terms) with access to Omega in accordance with the terms of this agreement (including all Omega documents referred to below, the “Agreement”).

(b) You, and not we, are responsible for providing and maintaining all necessary electronic communications with Omega, including, wiring, computer hardware, software, communication line access, and networking devices. Please refer to the *Omega Interface Specifications* (available on our website - currently, www.omegaats.com) for how to connect to us. Regardless of whether you use a proprietary execution management system or order-routing system or that of a third-party vendor (an “EMS”), you are solely responsible for all orders submitted to us through such EMS and you agree to accept and honour all orders submitted by such means, whether or not the orders are in error.

2. NATURE OF TRADING ON OUR MARKETPLACE

(a) All orders input by you and all other subscribers on Omega interact according to our matching methods, which are embedded into our system. The *Omega Subscriber Manual*, which describes these matching methods, is available on our website.

(b) All orders input by you and all other subscribers on Omega are firm orders. Once your buy or sell order matches another subscriber’s sell or buy order on Omega in accordance with our matching methods, then you and the other subscriber have a legally binding obligation to buy and sell the shares at the price and quantity agreed. Following the moment of trade execution, you and your subscriber counterparty (and, if applicable, your respective Clearing Parties (see Section 3 below)) may not modify any trade details (including, without limitation, details regarding symbol, price and quantity traded).

(c) All Omega trades are executed directly between subscribers. We do not act as counterparty (whether as agent or as principal) to any Omega trades and we do not guarantee settlement.

(d) Although we are registered as a dealer under securities legislation, we are a marketplace and therefore do not ensure best execution. In operating Omega, we will not provide advice with respect to, or recommend, trades in particular securities. We are not responsible for determining whether any trade you may execute on Omega is suitable for you or any accounts on whose behalf you may be acting. By signing this Agreement, you acknowledge the disclosures in this subsection 2(d).

3. SETTLEMENT PROCEDURES

(a) You must settle all of your Omega trades either by: (i) self-clearing as a participant of CDS Clearing and Depository Services Inc. (including its successors and assigns, “CDS”) in respect of equity securities; or (ii) maintaining a clearing and settlement arrangement with a carrying broker, custodian or other institution (a “Clearing Party”) that is a CDS participant in respect of equity securities. You will notify us from time to time, through our approved form, as to your settlement arrangements.

(b) You acknowledge and agree that all Omega trades will be submitted to CDS in accordance with the requirements for exchange trades in the manner required by CDS from time to time (the “CDS Exchange Trade Procedures”). You and, if applicable, your Clearing Party are irrevocably authorized and directed to clear and settle all trades on Omega by way of the CDS Exchange Trade Procedures upon receipt of notification from us as to your execution of a trade on Omega, and you irrevocably authorize us to report such trade by way of the CDS Exchange Trade Procedures.

(c) This Section 3 shall survive any termination of this Agreement, including any temporary or permanent revocation of access to Omega.

4. CLIENT OBLIGATIONS

(a) As required under *National Instrument 23-101 – Trading Rules* (“NI 23-101”), we have retained the Investment Industry Regulatory Association of Canada (“IROC”) to set the requirements governing Omega and its subscribers, which are those provisions of the Universal Market Integrity Rules, together with all UMIR Policies, Rules Notices, Guidance Notices, Marketplace Notices and other UMIR-related Notices

issued by IROC from time to time (collectively, “UMIR”) as are applicable to “Participants”. You (i) agree that you will conduct your trading activities on Omega in compliance with UMIR and NI 23-101, (ii) acknowledge that IROC will monitor your conduct in respect of Omega and enforce UMIR and the other requirements set under NI 23-101, and (iii) agree to comply with all orders or directions made by IROC in its capacity as a regulation services provider, including orders excluding you from trading on any Canadian marketplace.

(b) You will not trade on, or otherwise use, Omega in contravention of any applicable laws in Canada, or any applicable rules, regulations, policies, orders or interpretive notices (such as found in UMIR and NI 23-101) of the securities regulatory authorities in Canada and IROC (collectively, the “Regulatory Requirements”). The Regulatory Requirements are subject to change from time to time. We encourage you to speak to your advisers for appropriate legal guidance.

(c) You agree that all orders to sell securities that you submit to Omega shall involve freely tradable securities that are not subject to prospectus requirements, “hold periods”, or similar statutory or contractual resale restrictions, and are not “when issued” or similar contingent securities. You agree not to sell any securities on Omega from a “control block” position unless you have been exempted from, or otherwise comply with, all applicable Regulatory Requirements.

(d) You acknowledge that short-selling on Omega is subject to certain Regulatory Requirements. You also acknowledge that you and, if applicable, your Clearing Party are responsible for covering your short obligations on Omega.

(e) You acknowledge and agree that all orders submitted by you to Omega shall be subject to the Omega-specific policies and procedures described in Appendix “A” or otherwise published on our website from time to time.

(f) Good delivery shall be required of all securities traded by you.

(g) You authorize the EMS vendor (or, if applicable, your own proprietary EMS) designated by you to (subject to the terms of this Agreement including without limitation Section 2) transmit, enter, modify and cancel orders on Omega on your behalf. In the event you wish to terminate your use of Omega, it is your and not our responsibility to ensure your designated EMS ceases to transmit orders to Omega on your behalf.

(h) You shall supply us with all information concerning you required under this Agreement or pursuant to applicable Regulatory Requirements that we notify you of. You understand that we may report such information to such regulatory authorities as we determine, acting reasonably, to be necessary.

(i) You shall supply us with the information required on our Omega *Subscriber Information Form*. The information in your completed form may be changed from time to time upon written notice to us.

5. RESTRICTION OR TERMINATION OF TRADING ACCESS

Notwithstanding anything to the contrary provided in this Agreement, we, acting reasonably, may limit (including without limitation by imposing credit or unsettled transactions limits or by establishing a maximum transaction size) or terminate your access to Omega if you breach any provision of this Agreement (or for credit-related or other *bona fide* reasons) upon notice to you. If terminated, you will not be permitted to enter orders into Omega, and we shall have no further obligation or liability to you except as otherwise expressly provided in this Agreement. For greater certainty, if your access to Omega has been terminated, your rights to and/or responsibilities for any executed but unsettled trades, other pre-termination obligations, and any provisions stated herein to survive termination shall remain unaffected.

6. DATA

(a) Pre-trade order data and post-trade transaction data generated by subscriber trading activity on Omega (collectively, “Omega Trading Data”) may be obtained on a real time basis through the services of the information processors and/or information vendors listed on our website. In addition to any terms or conditions separately agreed with such third party or with us, you acknowledge and agree that your receipt and use of Omega Trading Data shall be subject to the terms and conditions of this Section 6.

(b) You shall be entitled to use the Omega Trading Data for internal business purposes only. Subject to subsection (e) below, you shall not retransmit, disseminate, sell, rent, distribute, publish, broadcast, circulate or commercially exploit Omega Trading Data except as expressly permitted by our terms of use (as may be communicated in writing directly by us or by any Omega information processor or information vendor from whom you subscribe for Omega Trading Data). You and your affiliates may disseminate Omega Trading Data to your and your

affiliates' clients (whether through your own trading application or otherwise) as part of your broker-dealer and/or advisory business, provided (i) no additional fee is charged by you or your affiliates specifically for such data, (ii) you and your affiliates inform clients that they may use such data only for their own internal business purposes, or the manner by which you or your affiliates disseminate such data makes it reasonable to assume such is the case, and (iii) to your and your affiliates' knowledge, clients are not, in turn, disseminating Omega Trading Data for a fee or enabling any other party to commercially exploit dissemination of Omega Trading Data. All Omega Trading Data is protected by copyright and, subject to subsection (e) below, we reserve all intellectual property rights therein.

(c) NEITHER WE NOR ANY AFFILIATE MAKES ANY WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE SEQUENCE, ACCURACY, COMPLETENESS OR TIMELINESS OF OMEGA TRADING DATA. WITHOUT LIMITING THE FOREGOING, ALL EXPRESS OR IMPLIED, DIRECT OR INDIRECT, REPRESENTATIONS, WARRANTIES AND CONDITIONS IN RESPECT OF OMEGA TRADING DATA ARISING OR IMPLIED BY STATUTE, COMMON LAW, CUSTOM, USAGE OF TRADE, COURSE OF PERFORMANCE, COURSE OF DEALING OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES OR CONDITIONS OF MERCHANTABILITY QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

(d) We and our affiliates may, in our sole discretion, resell, distribute, market or license any or all Omega Trading Data to any other person, or otherwise use any or all such data as we or our affiliates see fit; provided, however, that neither we nor our affiliates shall identify you in connection with any Omega Trading Data (except (i) if you utilize Omega functionality that provides order and/or trade attribution to you, (ii) for reporting to CDS for clearing and settlement purposes, (iii) as required pursuant to applicable Regulatory Requirements, (iv) for dispute resolution purposes with you, (v) to legal or accounting advisers on a confidential basis, or (vi) as otherwise expressly set forth in this Agreement); nor (except as contemplated in (i) through (vi) above) shall we or our affiliates resell, distribute, market or license Omega Trading Data from which your identity may reasonably be inferred.

(e) You shall be entitled to indicate publicly that you are an Omega subscriber and the proportion of your trading volume on Omega from time to time, and shall

otherwise be entitled to use your own (and only your own) order and trade data arising from your use of Omega (for greater certainty including volume and pricing information) as you see fit.

7. **INSOLVENCY, REGULATORY AND OTHER MATERIAL EVENTS**

(a) An "Insolvency/Regulatory/Material Event" occurs in respect of you when: (a) you become or are deemed to be insolvent or an insolvent person within the meaning of applicable bankruptcy or insolvency laws, (b) you make an assignment for the general benefit of creditors or make an assignment in bankruptcy or file a proposal under applicable bankruptcy or insolvency laws, (c) a petition in bankruptcy is filed against you and the petition is not dismissed, stayed or withdrawn within one month after the filing of the petition, or if a receiving order in bankruptcy is made against you, (d) any proceedings shall be commenced or steps taken by or against you for any relief under any applicable bankruptcy or insolvency laws (collectively, "Insolvency Legislation"), or for the appointment of a custodian, receiver, receiver and manager or any other official with similar powers with respect to your assets and liabilities, (e) you commit or threaten to commit any act of bankruptcy, (f) you cease or threaten to cease to carry on business, (g) you take steps or steps are taken by anyone to wind-up or terminate your corporate or other existence, (h) your property or any part thereof is seized or otherwise attached by your creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied or enforced against you and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of 30 days or such period as would permit the property or any part thereof to be sold thereunder, (i) there occurs a material change in your business or affairs or there is a suit or other proceeding brought against you which in each case, either individually or in combination, is reasonably likely to result in your inability to complete and satisfy your obligations under this Agreement, and/or (j) if any proceeding is reasonably likely to be commenced or steps are taken by or against you by any stock exchange, securities commission, regulatory or self-regulatory organization, financial regulator, or contingency organization or fund having jurisdiction over you, which proceedings relate to the appointment of a receiver, receiver and manager, monitor, auditor to supervise and/or regulate or any other like matter.

(b) You shall notify us promptly (or you may refrain from engaging in transactions on Omega should you decide not to communicate any such changes to us

for reasons of confidentiality where such changes are being kept confidential generally) of an Insolvency/Regulatory/Material Event.

(c) Upon the occurrence of an Insolvency/Regulatory/Material Event, we may terminate this Agreement, in which event your rights to and/or responsibilities for any executed but unsettled trades, other pre-termination obligations, and any provisions stated herein to survive termination shall remain unaffected.

(d) You agree that if you commence any proceeding under any Insolvency Legislation, you will not seek to stay any right of ours to terminate this Agreement or prevent us or any counterparty to an Omega trade from recovering damages for losses incurred, including but not limited to the setting-off of losses against amounts owing. This Agreement and each transaction entered into on Omega is intended to be an "eligible financial contract" or similar contract within the meaning of the *Companies' Creditors Arrangement Act* (Canada) and other Insolvency Legislation using this or similar terms, for the purposes of ensuring that we, or Omega counterparties with whom you have unsettled trades, can utilize the remedy of set-off of mutual unsettled obligations outstanding in respect of your activities on Omega. This subsection 7(d) shall survive any termination of this Agreement.

8. SETTLEMENT OF DISPUTES

(a) In the event of any dispute arising between you and us which has not been resolved, such dispute shall at the request of you or us be submitted to the decision of three arbitrators, who shall be qualified and independent of the parties to the dispute, selected as hereinafter provided, and the decision of the majority of such arbitrators shall be final and binding on all parties. In addition, the electronic records of Omega will govern in the event that facts relating to any of your orders or transactions executed through Omega are disputed, unless there is clear proof of an error in such electronic records of orders or transactions. The procedure for the nomination of arbitrators shall be as follows:

- i. The party requesting the arbitration shall deliver to the other party a written memorandum, stating in a summary way the matter in dispute and the redress the party claims, and naming an arbitrator.
- ii. The other party shall, within five Business Days after receipt of such memorandum, file with the other a written memorandum containing its

statement of the matter in dispute, and naming an arbitrator.

- iii. A copy of all memoranda so filed shall be forwarded to the two arbitrators named, and they shall proceed promptly and if at all possible within ten Business Days after receipt of such memoranda to nominate a third arbitrator.
- iv. If any party fails to name an arbitrator or if the two arbitrators fail to name a third arbitrator, then either party may apply to the Ontario courts to name an arbitrator.

(b) The three arbitrators shall forthwith give written notice to the parties of the time and place of their first sitting, which shall be held promptly and if at all possible within ten Business Days after the appointment of the third arbitrator, and shall require them to be present and to produce any records, books, documents or papers respecting the matter at issue, and at such time and place, or at any other time and place to which they shall give written notice to the parties, the arbitrators shall hear the parties, shall make such inquiries and receive such evidence as they may deem necessary, and shall decide the subject matter in dispute and fix the costs of the arbitration and shall make their award and forward the same in writing to all the parties concerned. The arbitrators shall be instructed that time is of the essence and requested to make their judgment as soon as possible and if at all possible within ten Business Days of the completion of the hearing.

(c) The *Arbitration Act, 1991* (Ontario) shall apply to the arbitration. The arbitration shall take place in Toronto, Ontario, shall be governed in all respects by the substantive law of Ontario (and the federal laws of Canada applicable therein), and shall be kept confidential (both to its existence and all proceedings and documents related thereto) except as required by applicable law (including disclosure and reporting obligations attendant on public companies) or self-regulatory organization requirements or for enforcement purposes.

(d) Any dispute may at our option be carried on simultaneously and as part of the same proceeding with the counterparty to the Omega trade in order to reduce the risk of inconsistent judgements and/or decisions. In such event, such counterparty shall be entitled to select the second arbitrator provided that it does so within the time periods allotted, failing which we may do so, and in such case all time periods shall

be extended by five Business Days, and all parties thereto shall be obliged to provide a written memorandum. Even if we are not a party to any dispute, we shall be entitled, but not required, to be present and state our position.

(e) The award shall bear interest from the date of the award at 12% per annum payable and calculated monthly, and shall bear pre-award interest as determined by the arbitrators.

(f) The award may be enforced in court.

(g) The award of such arbitration shall be final and not subject to review or appeal, and shall be binding upon all parties concerned. This Section 8 shall survive any termination of this Agreement.

(h) This Section 8 shall be the exclusive remedy under this Agreement, but without prejudice to any other rights or remedies expressly provided for in this Agreement.

9. REPRESENTATIONS AND WARRANTIES OF OMEGA

We represent and warrant to you as follows, and acknowledge that you are relying upon such representations and warranties in entering into this Agreement with us:

(a) *Due Organization.* We are duly amalgamated, validly existing and in good standing under the laws of the jurisdiction of our formation and have all necessary corporate power and authority to carry on our business as currently conducted.

(b) *Due Authorization, etc.* We have the necessary corporate power and authority to execute this Agreement and to perform our obligations hereunder. The execution of this Agreement by us and the performance by us of our obligations hereunder has been duly authorized by all necessary corporate action on our part. Such execution and performance does not require any action or consent of, any registration with, or notification to, any person, or any action or consent under any laws to which we are subject, other than under applicable securities laws and rules of applicable self-regulatory organizations, which have been obtained.

(c) *Enforceability.* This Agreement constitutes a legal, valid and binding obligation of ours enforceable against us in accordance with its terms, subject to general equitable principles and laws of general application affecting creditors' rights.

(d) *No Conflict.* The execution of this Agreement, the consummation of the transactions contemplated herein, the performance by us of our obligations hereunder and the compliance by us with this Agreement does not violate, contravene or breach, or constitute a default under, our organizational documents or violate, contravene or breach any laws to which we are subject, including the laws of any securities regulatory authority or other regulatory or self-regulatory organizations.

(e) *Non-Infringement.* To our knowledge, none of the execution of this Agreement by us or the performance by us of our obligations under this Agreement infringes, or constitutes an infringement or misappropriation of, any intellectual property rights of any third party in any material respect.

(f) *Regulatory Consents.* We have all necessary regulatory consents, permits and licences required by law or the rules of applicable regulatory or self-regulatory organizations to grant you access to Omega in the manner contemplated in this Agreement.

The above representations and warranties shall survive any termination of this Agreement.

10. REPRESENTATIONS AND WARRANTIES OF CLIENT

You represent and warrant to us as follows and acknowledge that we are relying upon such representations in entering into this Agreement with you:

(a) *Regulatory Status.* You are a member in good standing of IIROC, and you are registered as a dealer with at least one Canadian provincial securities regulatory authority.

(b) *Settlement Capability.* You either (i) are a CDS participant in respect of equity securities, or (ii) have a clearing arrangement with a Clearing Party that is a CDS participant in respect of equity securities, as required under Section 3 above.

(c) *Due Organization.* You are duly organized, validly existing and in good standing under the laws of your jurisdiction of organization and have the necessary corporate or other power and authority to carry on your business as currently conducted.

(d) *Due Authorization, etc.* You have the necessary corporate or other power and authority to execute this Agreement and to perform your obligations hereunder. The execution of this

Agreement by you and the performance by you of your obligations under this Agreement has been duly authorized by all necessary corporate or other action on your part. Such execution and performance by you does not require any action or consent of, any registration with, or notification to, any person, or any action or consent under any laws to which you are subject.

(e) *Title to Securities.* You will at the time of settlement have, or be able to cause to be delivered, good and valid title to the securities that are subject to sale transactions by you on Omega, free and clear of all mortgages, charges, pledges, security interests, adverse interests, encumbrances, claims or demands whatsoever, and all such securities shall, at the time of sale, be freely tradable under applicable securities law requirements.

(f) *Enforceability.* This Agreement constitutes a legal, valid and binding obligation of yours enforceable against you in accordance with its terms, subject to general equitable principles and laws of general application affecting creditors' rights

(g) *Client Accounts Bound to Same Extent.* Whenever you trade on Omega on behalf of a client account, you will have full authority to do so and to legally bind the client account holder to any of your obligations and limitations under this Agreement arising from your Omega activities undertaken on behalf of such account.

(h) *No Conflict.* The execution of this Agreement, the consummation of the transactions contemplated herein, the performance by you of your obligations hereunder and the compliance by you with this Agreement do not violate, contravene or breach, or constitute a default under, your organizational documents and do not violate, contravene or breach any laws to which you are subject, including the laws of any securities regulatory authority or other regulatory or self-regulatory organizations.

(i) *Residence.* You are a resident of the jurisdiction set out on the execution page of this Agreement (or as amended by notice in writing from you to us from time to time).

These representations and warranties shall be deemed to be made anew by you each time you enter orders on Omega. **You also agree to immediately notify us of any change to your regulatory status or settlement capability described in subsections 10(a) and (b) above** and of any other material representation above ceasing to be true and accurate at any time. The above

representations and warranties shall survive any termination of this Agreement.

11. LIMITATIONS OF LIABILITY; INDEMNITY

(a) We shall defend, indemnify and save you harmless of and from any loss, liability, claim, damage or expense (whether or not involving a third-party claim), including reasonable legal fees and disbursements (collectively, "**Damages**"), suffered by, imposed upon or asserted against you as a result of, in respect of, connected with, or arising out of, under, or pursuant to any failure by us to perform or fulfill any of our obligations under this Agreement, or any incorrectness in, or any breach of, any representation or warranty given by us contained in this Agreement.

(b) You shall defend, indemnify and save us harmless of and from any Damages suffered by, imposed upon or asserted against us as a result of, in respect of, connected with, or arising out of, under, or pursuant to any failure by you to perform or fulfill any of your obligations under this Agreement or any incorrectness in, or breach of, any representation or warranty given by you contained in this Agreement.

(c) Neither we nor any of our Indemnified Parties (defined below) will in any event be liable for any Damages whatsoever arising to you (including, if applicable, any client accounts traded by you) from: (a) their good faith compliance with applicable Regulatory Requirements; (b) the tax, accounting, legal or other consequences of any Omega transaction effected by you; or (c) the suitability or unsuitability of any Omega transaction effected by you.

(d) Neither we nor any of our Indemnified Parties shall be liable for any Damages arising from any failure of Omega hardware or software except if and to the extent that such is caused by our gross negligence or wilful misconduct, for which we will, subject to subsection 1(b), be liable for up to (but in no event in excess of, in the aggregate) the net amount paid by you to us under this Agreement for the 12 calendar months immediately preceding the date of the failure in question.

(e) **IN NO CIRCUMSTANCES WILL WE OR YOU OR ANY OF OUR OR YOUR INDEMNIFIED PARTIES BE LIABLE TO ANY OTHER OF THEM FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF OPPORTUNITY AND LOSS OF USE) RESULTING FROM OR ARISING OUT OF THE PROVISION OF**

ACCESS TO OMEGA OR ARISING OUT OF ANY FAILURE, BREACH, NEGLIGENCE, GROSS NEGLIGENCE OR DEFAULT BY IT, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED.

(f) We will act as trustee in holding the rights under this Section 11 for our Indemnified Parties, and you will act as trustee in holding the rights under this Section 11 for your Indemnified Parties (and not for the purpose of purporting to impose obligations on such third parties). For the purposes of this Section 11, "Indemnified Parties" means the relevant party's shareholders, directors, officers, employees, partners, agents and representatives.

(g) The provisions of this Section 11 shall survive any termination of this Agreement.

12. CONFIDENTIALITY

(a) For the purposes of this Agreement, the term "Confidential Information" shall mean information about the disclosing party's (or any of its clients') business activities that is proprietary and confidential, which will include all business, financial, technical and other information of a party marked or designated as "confidential" or "proprietary," or information which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential. Confidential Information will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iii) the receiving party knew on a non-confidential basis prior to receiving such information from the disclosing party or develops independently without reference to the Confidential Information received from the disclosing party.

(b) We and you each agree: (i) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other, except as provided in and for the purposes of this Agreement; and (ii) except as provided in this Agreement, that it will take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control.

(c) Notwithstanding the foregoing, we and you may disclose Confidential Information: (i) to the extent required by a court of competent jurisdiction or other governmental, securities regulatory authority or other regulatory or self-regulatory organization, or otherwise as required by law (including disclosure and reporting obligations attendant on public companies) or for

compliance with a regulatory or self-regulatory requirements; (ii) to its legal counsel or accountants as necessary in the ordinary course of its business; (iii) on a "need-to-know" basis under an obligation of confidentiality to its banks and other financing sources and their advisors; (iv) as provided for in this Agreement in the event of a dispute; (v) to third parties as required to execute, clear and settle Omega trades; and (vi) as expressly provided for elsewhere in this Agreement.

(d) For greater certainty, the terms of this form of Agreement (including any documents posted on the Omega website) shall not constitute our Confidential Information, although we reserve all copyright and other intellectual property rights in such works.

(e) This Section 12 shall survive any termination of the Agreement.

13. COMMISSIONS AND REBATES

(a) You agree to pay us, Omega, the liquidity-taker commission(s), and we agree to pay you, the Client, the liquidity-provider rebate(s), detailed on our website. Our commission and rebate rates are subject to change from time to time upon no less than 5 Business Days' notice provided through our website. You shall be obliged to pay any applicable taxes on such commissions (excluding, for greater certainty, taxes on our capital or income).

(b) You agree to reimburse us for all IIROC market surveillance fees levied on Omega that are directly attributable to your Omega trading activity.

(c) This Section 13 (including our published commission and rebate rates, as may be amended) shall survive any termination of this Agreement.

14. TERM AND TERMINATION

The term of this Agreement shall be indefinite, provided that it may be terminated by you or us at any time and for any reason upon 30 days' prior written notice, or as otherwise expressly provided in this Agreement, in which case your rights to and/or responsibilities for any executed but unsettled trades, other pre-termination obligations, and any provisions stated herein to survive termination shall remain unaffected. We may also terminate this Agreement or suspend the operation of Omega if the marketplace is unable to continue to operate due to third party actions or we conclude that Omega's system integrity has been compromised.

15. AMENDMENTS

(a) Excluding the subject matter contained in Sections 7 through 12 and 14 through 16 inclusive (which Sections may be amended only upon your and our mutual agreement), we may make amendments to this Agreement by 30 days' prior notice to you (or such earlier notice period as provided in subsection 15(b) below) in which case any transaction entered into on or subsequent to the effective date of the amendment as set out in the notice shall constitute acceptance by you of the change as of such effective date. In addition, we may make amendments to this Agreement at any time by providing notice of such amendments to you if the amendment is required in order to conform with applicable Regulatory Requirements or reasonably required by us as a result of changes therein or in the interpretation or application thereof, in which case any transaction entered into on or subsequent to the effective date of the amendment as set out in the notice shall constitute acceptance by you of the change as of the effective date set out in the notice. All material amendments made by us to the terms contained in this form of Agreement shall be made simultaneously to all Omega subscribers.

(b) The following terms may be changed by us subject to the following notice periods:

- i. the commission and rebate rates and related payment method – five (5) Business Days prior; and
- ii. the *Omega Subscriber Manual*, *Omega's Clearly Erroneous Policy*, *Omega's Policy on Direct Market Access for Subscribers' Clients*, the *Omega Interface Specifications* and any other technical document published by us on the Omega website in respect of connecting to and trading on Omega – ten (10) Business Days prior;

provided however that any change to the documents referred to in (b) ii. necessitated by a direction of IIROC or any other applicable securities regulatory authority may be implemented on such shorter notice period as determined by such authority.

16. MISCELLANEOUS

(a) **Definitions.** In this Agreement, "Business Day" means a trading day as recognized by CDS; and "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Agreement (including, for greater certainty, the attached Appendices), and not to any particular Section, subsection or other portion thereof.

(b) **Governing Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of laws principles.

(c) **Language.** The parties confirm their express wish that this Agreement, as well as all other documents related to it, including notices, shall be drawn up in the English language only, and declare themselves satisfied therewith. *Les parties aux présentes confirment leur volonté expresse de voir la présente convention de même que tous les documents, y compris tous avis, s'y rattachant, rédigés en langue anglaise seulement et s'en déclarent satisfaits.* If you are a resident of or subject to the laws of Quebec, the parties agree that this Agreement and any other contract entered into in connection with it shall be effective only upon its execution by us outside of Quebec and that, accordingly, all such agreements shall be deemed to be entered into outside of Quebec.

(d) **No Partnership.** Nothing contained in this Agreement shall make or constitute you and us as partners of the other. Neither we nor you shall owe any fiduciary duties to the other.

(e) **Notices.** Any notice, direction or other communication (collectively, "Notice") given regarding the matters contemplated by this Agreement shall be in writing and shall be given by personal delivery or by facsimile, or by confirmed e-mail transmission, addressed as follows:

- i. to us at:

103 Richmond Street East
Suite 101
Toronto, Ontario M5C 1N9

Attention: President
Facsimile: (416) 368-5278
e-mail: compliance@omegaats.com

- ii. to you at the mailing address, facsimile and e-mail address set out on the execution page of this Agreement.

Except as provided herein, any Notice shall be validly and effectively given (i) if personally delivered, on the date and time of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise as of 9:00 a.m. (local time in the place of receipt) on the next Business Day, or (ii) if transmitted

by facsimile, as of the time of transmission if the confirmation of transmission by the originating facsimile records a time between 9:00 a.m. and 5:00 p.m. (local time in the place of receipt) on a Business Day, and otherwise as of 9:00 a.m. (local time in the place of receipt) on the next Business Day, or (iii) if sent by e-mail transmission, as of the time when a delivery receipt is generated by the addressee's e-mail server if the delivery receipt records a time between 9:00 a.m. and 5:00 p.m. (local time in the place of receipt) on a Business Day, and otherwise as of 9:00 a.m. (local time in the place of receipt) on the next Business Day. You and we may change our address for service from time to time by providing a Notice in accordance with the foregoing, and any subsequent Notice shall be sent to such person at its changed address. Any element of a person's address that is not specifically changed in a Notice shall be deemed not to be changed.

(f) **Counterparts.** This Agreement may be executed in any number of counterparts (including by way of facsimile), and all such counterparts taken together shall be deemed to constitute one and the same instrument.

(g) **No Waiver.** No failure on the part of you or us to exercise, and no delay by you or us in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right by you or us preclude any other or further exercise of the right or the exercise of any other right.

(h) **Successors and Assigns.** This Agreement shall be binding upon and enure to the benefit of you and us and your and our respective successors and permitted assigns. You may not assign or transfer this Agreement or any of your rights hereunder, whether directly or indirectly, to any other person without first obtaining our written consent, which consent shall not be unreasonably withheld or delayed if such assignee complies with the access requirements and subscriber obligations otherwise contained in, or incorporated by reference into, this Agreement. We may assign and transfer all of our rights and responsibilities as operator of the Omega marketplace (including this Agreement and all other Omega subscriber agreements) to any other person duly registered and qualified to operate a marketplace in Canada upon providing 30 days' prior written notice to you and all other subscribers, whereupon in such event we shall be released from all subsequent obligations arising under this Agreement, which shall be the responsibility of the successor marketplace operator.

(i) **Severability.** If any provision of this Agreement shall be deemed by any arbitrator, court or regulator of

competent jurisdiction to be invalid or void, the remaining provisions shall remain in full force and effect.

(j) **Force Majeure.** Neither you nor we shall be responsible to the other (including, in our case, to any client of yours or to any other person for whom you are authorized or purport to act) for non-performance or delay in performance occasioned by any causes beyond our respective control including, without limitation, acts of civil or military authorities, strikes, lockouts, embargoes, insurrections, acts of God, acts or orders of government, war, terrorist acts, or a change in applicable laws, rules, policies, regulations or regulatory or self-regulatory requirements or the enforcement thereof. In any such event, notwithstanding anything to the contrary contained herein and without limiting any other rights, we shall be entitled to terminate and unwind any or all then unsettled transactions, without any liability therefor whatsoever.

(k) **Further Assurances.** You and we agree to co-operate with and assist the other party and take such action as may be reasonably requested by the other party to implement and carry into effect this Agreement to its full extent.

(l) **Currency.** Unless otherwise expressly specified, all amounts referred to herein shall be denominated in Canadian dollars.

(m) **Time of Essence.** Time shall be of the essence.

(n) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, in respect of the subject matter described in this document.

(o) **No Third Party Rights.** Except as expressly otherwise provided herein, no one but the parties shall be entitled to any rights under this Agreement.

(p) **Statutory References.** All references to laws, rules, regulations, policies, orders, interpretive notices or other regulatory or self-regulatory instruments shall include references to them as they may be amended or replaced from time to time.

DATED at _____, _____ this _____ day of _____, 20____.

CLIENT [please print full corporate name]:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address of Client: _____

Attention: _____

Province of
Residence: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Dated at Toronto, Ontario this _____ day of _____, 20____.

OMEGA SECURITIES INC.

By: _____

Name: _____

Title: _____

APPENDIX “A”

OMEGA-SPECIFIC POLICIES AND PROCEDURES

All orders input into, and trades executed on, Omega are subject to the following:

- (a) Any “corporate action” by or in respect of any issuer of any security traded on Omega, including, but not limited to, any sub-division, consolidation, mandatory conversion or exchange for other securities or cash, merger, formal tender offer, bankruptcy event or rights offering, will be treated by Omega for trading purposes as per the treatment by the principal Canadian stock exchange.
- (b) All advantages and entitlements to receive dividends or any other distributions made or right given to holders of record of the security are as determined by the principal Canadian stock exchange.
- (c) If the applicable securities regulatory authority or the Investment Industry Regulatory Organization of Canada (“IIROC”) has determined that there is not a fair market price for the security in question, or has otherwise “unwound” certain transactions in the security on the principal Canadian stock exchange, then at its discretion: (a) any or all transactions in such security on Omega during the applicable period may be set aside, or (b) any or all transactions in such security on Omega during the applicable period may remain valid, or (c) any or all transactions in such security on Omega during the applicable period may be deemed to have occurred at the price, if any, determined to be a fair settlement price by the principal Canadian stock exchange or the regulatory or self-regulatory authority.
- (d) If a security is listed and posted for trading on more than one Canadian stock exchange, we, the applicable securities regulatory authority or IIROC shall determine which exchange is the “principal exchange”.
- (e) Omega will not facilitate trading in securities that are subject to:
 - i. cease trade orders issued by applicable Canadian securities regulators, for the duration of the order;
 - ii. trading halts or other suspensions effected by IIROC, for the duration of the halt or suspension; and
 - iii. de-listing from a Canadian stock exchange (unless the issuer of such security remains listed, and the security remains posted for trading, on another Canadian stock exchange).
- (f) In our capacity as a regulated marketplace and for reasons of marketplace integrity, we retain discretion, acting reasonably, to “freeze” and/or reject any or all live orders on the system.
- (g) All Omega trades are subject to *Omega’s Clearly Erroneous Policy*, as published on our website and in force on the date of the trade.
- (h) All dealer-sponsored (*i.e.*, direct market access) arrangements that enable your clients to transmit orders to Omega must comply with *Omega’s Policy on Direct Market Access for Subscribers’ Clients*, as published on our website and in force on the date of order entry.
- (i) All Omega orders interact according to the matching methods described in the *Omega Subscriber Manual*, as published on our website and in force on the date of order entry.