



OMEGA™ VENDOR AGREEMENT

1. OMEGA ACCESS SERVICE

We, Omega Securities Inc. (“we”, “us”, “our” and like terms), operate an electronic marketplace for trading in Canadian equity securities named Omega ATS™.

We agree to provide you (the “Vendor”, or “you” and like terms) access to our Omega alternative trading system in order to:

- (i) send and receive orders in equity securities (“Omega Orders”); and
- (ii) transmit other Omega market information (*i.e.*, full depth-of-book order information, trade executions or any sub-set of the foregoing);

between Omega and one or more Subscribers (the “Service”). Appendix “A” details our fees charged to you for the Service. You may not transmit Omega Orders or other Omega market information to anyone other than Subscribers (defined below).

2. SUBSCRIBERS

(a) “Subscribers” are customers of yours that have entered into an Omega Subscriber Agreement with us and are thereby eligible to trade securities on Omega. You acknowledge that we have the right, under both our Omega Subscriber Agreement and Canadian provincial securities laws, to restrict or terminate the access of any Subscriber to Omega.

3. CONNECTIVITY

Unless otherwise agreed in writing, 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.

4. DATA

(a) “Omega Trading Data” comprises all publicly available pre-trade order data and post-trade transaction data generated by trading activity on Omega. You shall be entitled to use the Omega Trading Data for internal business purposes only (including transmission to Subscribers). You shall not otherwise retransmit, disseminate, sell, rent, distribute, publish, broadcast, circulate or commercially exploit Omega Trading Data

without our express prior written consent, and you shall comply with any limitations imposed on the use of Omega Trading Data. All Omega Trading Data is protected by copyright and we reserve all intellectual property rights therein.

(b) You shall not alter the Omega Trading Data in a manner that renders it incorrect or misleading.

(c) We and our affiliates may, in our sole discretion, resell, market, license or assign 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 (subject only to our commitment to Subscribers, as set out in the Omega Subscriber Agreement, to maintain their anonymity in connection with their particular Omega orders and trades). Such uses may include order processing, trade matching, providing our clearing agent with clearing and settlement instructions, regulatory reporting, marketing and market data sales.

(d) You are entitled to indicate publicly that you are an Omega Vendor and the order and trading volume routed by you to Omega from time to time.

5. WARRANTIES.

(a) NEITHER WE NOR ANY AFFILIATE OF OURS MAKES ANY WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE SEQUENCE, ACCURACY, COMPLETENESS OR TIMELINESS OF THE SERVICE OR THE OMEGA TRADING DATA. WITHOUT LIMITING THE FOREGOING, ALL EXPRESS OR IMPLIED, DIRECT OR INDIRECT, REPRESENTATIONS, WARRANTIES AND CONDITIONS IN RESPECT OF THE SERVICE OR THE 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 AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

(b) There is no assurance that the Service will meet your technical requirements, be error free, or operate without interruption or delay. You acknowledge that all or portions of our Service may be unavailable from time to time.

6. REPRESENTATIONS AND WARRANTIES OF OMEGA

We represent and warrant to you that:

(a) we are, and for the term of this Agreement will remain, duly registered in each of the provinces of Canada as a dealer carrying on the business of an “alternative trading system” (as defined under National Instrument 21-101 or its successor); and

(b) to the best of our knowledge after due inquiry, use of our Service by you and the use of and trading on Omega by any of your Subscriber customers shall not constitute an infringement of any patent, copyright, trademark, trade secret or other proprietary right.

7. REPRESENTATIONS AND WARRANTIES OF VENDOR

You represent and warrant to us that:

(a) you are registered and/or qualified in those jurisdictions where your business requires such registration and/or qualification;

(b) to the best of your knowledge after due inquiry, your systems and protocols used to transmit Omega Orders to and from Omega shall not constitute an infringement of any patent, copyright, trademark, trade secret or other proprietary right; and

(c) each Omega Order (including, for greater certainty, any instruction or modification relating to an Omega Order) will be transmitted on behalf of a *bona fide* Subscriber whose identity will be readily ascertainable to us by the method of transmission.

These representations and warranties shall be deemed to be made anew by you each time you use the Service.

8. LIMITATIONS OF LIABILITY; INDEMNITY

(a) Subject to subsections (b) and (c) below, we, on the one hand, and you, on the other hand (each being an “Indemnifying Party”), shall defend, indemnify and save the other (together with their or its shareholders, directors, officers, employees, agents, representatives and independent contractors, the “Indemnified Party”) 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 the Indemnified Party as a result of, in respect of, connected with, or arising out of, under, or pursuant to any failure by the Indemnifying Party to perform or fulfill any of its obligations under this

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Agreement, or any incorrectness in, or any breach of, any representation or warranty given by the Indemnifying Party contained in this Agreement.

(b) IN NO CIRCUMSTANCES WILL AN INDEMNIFYING PARTY BE LIABLE TO AN INDEMNIFIED PARTY 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 SERVICE, THE OMEGA TRADING DATA, THE TRANSMISSION OF OMEGA ORDERS FROM AND TO SUBSCRIBERS OR ARISING OUT OF ANY FAILURE, BREACH, NEGLIGENCE OR DEFAULT BY IT UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES COULD HAVE BEEN FORESEEN OR PREVENTED.

(c) We shall not 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 be liable for your Damages up to (but in no event in excess of, in the aggregate) the greater of (a) the amount of annual payments received from you, and (b) \$25,000.

9. CONFIDENTIALITY

(a) **Scope of Confidentiality.** For the purposes of this Agreement, the term “Confidential Information” shall mean information about the disclosing party’s 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 prior to receiving such information from the disclosing party or develops independently without reference to the Confidential Information received from the disclosing party. For greater certainty, the terms of this Agreement shall constitute our Confidential Information.

(b) **Non-Disclosure.** 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 (or, with respect to information provided by you regarding Subscribers, as provided in and for the purposes of the Omega Subscriber 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) **Permitted Disclosures.** 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 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) in the event of a legal dispute between the parties; and (v) as expressly provided for elsewhere in this Agreement (or, with respect to information provided by you regarding Subscribers, as provided in and for the purposes of the Omega Subscriber Agreement).

10. TERM AND TERMINATION

(a) The term of this Agreement shall be indefinite, provided that it may be terminated by either us or you at any time and for any reason upon 30 days’ prior written notice, in each case without prejudice to obligations arising prior to termination and subject to any provisions that survive termination.

(b) 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.

(c) In addition, we may immediately suspend or terminate the Service to you if we reasonably conclude that: (i) you have breached a material term of this Agreement (including without limitation the provisions of subsections 4(a) or (b) or section 9); or (ii) your system is not secure or is not able to reliably identify the Subscriber responsible for each Omega Order message sent to Omega.

(d) Upon termination, you will continue to be obligated to pay fees incurred up to and including the date of termination and to accept transactions already effected on behalf of Subscribers by Omega.

(e) Sections 4(a), (b) and (c), 5, 6, 7, 8, 9 and 10(d) shall survive termination of this Agreement.

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11. AMENDMENTS

We may make any amendments to this Agreement by 30 days’ prior written notice to you. Your continued use of the Service (whether by continuing to transmit Omega Orders or any other Omega Trading Data) following such effective date shall constitute acceptance of the amendment.

12. MISCELLANEOUS

(a) **Definitions.** In this Agreement, “Business Day” means a trading day as recognized by CDS Clearing and Depository Services Inc.; and “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Agreement (including, for greater certainty, the attached Appendix), and not to any particular Section 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 or us the partner 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: operations@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 all the

requirements contained in this Agreement. We may assign and transfer all of our rights and responsibilities as operator of the Omega marketplace (including this Agreement) to any other person duly registered and qualified to operate a marketplace in Canada upon providing 30 days' prior written notice to you, 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 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.

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

VENDOR [please print full corporate name]:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address: _____

Attention: _____

Telephone: _____

Facsimile: _____

E-mail: _____

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

OMEGA SECURITIES INC.

By: _____

Name: _____

Title: _____

APPENDIX “A”

FEE SCHEDULE