

## Annex A

### TERMS AND CONDITIONS APPLICABLE TO THE APPLICANT AS AN INFORMATION PROCESSOR FOR EXCHANGE-TRADED SECURITIES OTHER THAN OPTIONS

#### DEFINITIONS AND INTERPRETATION

“**Act**” means *The Securities Act, 1988* (Saskatchewan), as amended from time to time.

“**Affiliated entity**” has the meaning ascribed to it in section 1.3 of NI 21-101.

“**Authority**” means the Financial and Consumer Affairs Authority of Saskatchewan.

“**Consolidated Data Products**” has the meaning ascribed thereto in section 5 of this Annex A.

“**Data Contributors**” means, collectively, the marketplaces and any other party that is required to provide order and trade information to TMX IP under NI 21-101.

“**Data Purchasers**” means, collectively, the subscribers, vendors, and any other party that purchases any Consolidated Data Products offered by TMX IP.

“**Designation Order**” means the designation order issued by the Authority under section 26.1 of the Act to which this Annex A is appended.

“**Exchange-Traded Security**” means an exchange-trading security as defined in section 1.1 of NI 21-101, other than a listed option.

“**Form F5**” means Form 21-101F5 under NI 21-101.

“**IP**” means an information processor as defined in section 1.1 of NI 21-101.

“**IP Governance Committee**” means the governance committee established by TMX IP and approved by the CSA for the purpose of providing TMX IP with oversight and decision-making regarding the scope of service, operational priorities and enhancements (within this scope), bandwidth and capacity planning, and criteria and methods of monitoring performance, in each case, in respect of the Consolidated Data Products.

“**IP Advisory Sub-Committee**” means an ad-hoc sub-committee of the IP Governance Committee, which includes additional representation from at least one data vendor and one market participant from each of a buy and sell side firm, that provide input into certain TMX IP matters, and is advisory in nature.

“**Marketplace**” means any of the following:

1. An exchange,
2. A quotation and trade reporting system,

3. A person or company not included in paragraph 1 or 2 that;
  - i. constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
  - ii. brings together the orders for securities of multiple buyers and sellers, and
  - iii. uses established non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
4. A dealer that executes a trade of an exchange-traded security outside of a marketplace described in paragraph 1, 2 or 3, but does not include an inter-dealer bond broker.

“**NI 21-101**” means National Instrument 21-101 - *Marketplace Operation*.

“**TMX IP**” means TSX acting in its capacity as an IP.

“**TSX**” means TSX Inc.

## **PUBLIC INTEREST RESPONSIBILITIES**

1. TMX IP must conduct its business and operations in a manner that is consistent with the public interest.
2. TMX IP must provide written reports to the Authority, as required by the Authority, describing how it is meeting its regulatory and public interest functions.

## **CHANGES TO FORM F5**

3. As required by section 14.2 of NI 21-101, TMX IP will file with the Authority amendments to the information provided in Form F5. TMX IP must not implement a significant change to the information in the Form F5 without the prior approval of the Authority.<sup>1</sup>

## **GOVERNANCE AND CONFLICTS OF INTEREST**

4. TMX IP will notify the Authority of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee and will provide notice of any changes to those representatives.
5. The Boards of Directors of TMX Group Limited and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities,

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<sup>1</sup> Examples of significant changes are provided in section 16.3 of the Companion Policy to NI 21-101.

bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to TMX IP.

6. TMX IP will maintain and monitor compliance with policies and procedures to separate TSX's marketplace business operations from TMX IP operations and manage inherent conflicts of interest and provide material changes to these policies and procedures to the Authority for review.
7. The technology used by TMX IP will not give the marketplaces affiliated with TMX Group Limited an advantage with respect to their data as compared to other marketplaces.

## **IP PRODUCTS**

8. Unless TMX IP obtains prior Authority approval, it may only distribute the following products (together, the Consolidated Data Products):
  - (a) The Consolidated Data Feed (**CDF**);
  - (b) The Canadian Best Bid and Offer (**CBBO**);
  - (c) The Consolidated Best Bid and Offer for Protected Only Markets (**CBBOP**);
  - (d) The Consolidated Last Sale (**CLS**);
  - (e) The Consolidated Depth of Book (**CDB**); and
  - (f) The Consolidated Depth of Book for Protected Only Markets (**CDBP**).
9. Unless TMX IP obtains prior Authority approval, it must distribute all Consolidated Data Products.
10. TMX IP will review the Consolidated Data Products and consider any new products or changes to the Consolidated Data Products that may be reasonably required by amendments to securities legislation that may be adopted by the Authority during the term of the Designation Order.
11. TMX IP may bundle each data product comprising the Consolidated Data Products for sale to Data Purchasers but must also make each data product available as a separate permissible feed.
12. If TSX or any of its affiliated entities intend to create and distribute products using the data provided to TMX IP under Part 7 of NI 21-101 through its commercial distribution channels and not through TMX IP:

- (a) The data required to be provided to TMX IP by Data Contributors, other than data from the marketplaces that are affiliates of TSX, must not be used without the permission of the Data Contributors; and
  - (b) Any additional product must be made available for purchase separately from, and not bundled with, the Consolidated Data Products or any other products approved under paragraph 8.
13. TSX, in its capacity as TMX IP, will not provide any of its affiliated entities with the data provided by the Data Contributors, other than the data from the marketplaces that are affiliates of TSX, without the permission of the Data Contributors.
14. TMX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an IP under NI 21-101, provided that TMX IP may perform normal course recycle, batch and maintenance operations. TMX IP will provide customer support between the hours of 7:30 – 17:30 Toronto time and 24/7 technical support.

#### **AGREEMENTS WITH DATA CONTRIBUTORS**

15. TMX IP will ensure that Data Contributors are given access to TMX IP on fair and reasonable terms.
16. The standard agreements and contracts to be entered into between TMX IP and Data Contributors in connection with TMX IP services will be provided to the Authority for review and approval prior to their execution.
17. Proposed material changes to agreements or contracts between TMX IP and Data Contributors will be provided to the Authority for review and approval.

#### **FEES, FEE STRUCTURE AND REVENUE SHARING**

18. TMX IP will make available, on its website, the fee schedule for TMX IP Consolidated Data Products.
19. If any adjustments or modifications are proposed to fees, fee structure, or the fee/revenue sharing model relating to the services of TMX IP, TMX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.
20. TMX IP will report annually, in writing, to the Authority whether it has fully recovered its costs (including cost of capital and cost to meet the requirements under subsections 14.4(2), (4), and (5) of NI 21-101) associated with offering TMX IP services and will review and

report on whether the profit margin received from TMX IP services is in line with industry standards.

21. If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of TMX IP, TMX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. TMX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to TMX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to the Authority within 30 days of the IP Governance Committee having received the analysis and recommendations.
22. TMX IP will conduct reviews of the “pass-through” fee model, as requested by the Authority (the **Review Initiation Date**). Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. TMX IP will ask the IP Governance Committee to review the report and provide its views, in writing, to TMX IP. The report and the views of the IP Governance Committee will be provided to the Authority within 90 days of the Review Initiation Date.

## **NON-EXCLUSIVITY**

23. TMX IP acknowledges that the designation as an IP does not grant TMX IP any exclusive right to consolidating and disseminating order and trade data. TMX IP will not seek exclusivity through the terms of any contract relating to the Consolidated Data Products, or involving the data underlying the Consolidated Data Products, with a Data Contributor or Data Purchaser.

## **SELF-ASSESSMENT**

24. TMX IP will conduct the annual independent system review referred to in section 14.5 of NI 21-101 and provide the report of such review to the Authority in accordance with the timelines set out in subsection 14.5(d) of NI 21-101.
25. TMX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4) and (5) of NI 21-101 and with its performance with respect to the terms and conditions of the Designation Order. The report of such self-assessment will be provided to the IP Governance Committee promptly upon its completion. TMX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to the Authority no later than 90 days after the end of TMX IP’s fiscal year.

## **FINANCIAL VIABILITY**

26. TMX Group Limited will provide TMX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

## **NOTICE**

27. TMX IP must provide the Authority with at least one year's notice should it determine not to continue to act as an IP.