



BATS VENDOR AGREEMENT

This BATS Vendor Agreement (this “Agreement”), dated _____, 200__, is between BATS Trading, Inc., a Delaware corporation, with its principal offices at 4151 North Mulberry Drive, Suite 275, Kansas City, Missouri 64116 (“BATS”), and _____, a _____ [corporation/limited liability company], with its principal offices at _____ (“Vendor”).

Term of the Agreement. This Agreement will continue until terminated pursuant to the terms of this Agreement.

Subscriber. A “Subscriber” is defined as a customer of Vendor that has entered into a BATS Subscriber Agreement with BATS and that, in BATS’ sole discretion, is eligible to access the BATS ECN (as defined below). Subscribers are required to be broker-dealers registered with the SEC and members of a self-regulatory organization.

Service. BATS agrees to allow Vendor to access BATS’ electronic communications network (“BATS ECN”) to transmit orders in securities (“Orders”) and other market information between the BATS ECN and one or more Subscribers (the “Service”). BATS reserves the right to modify or change the Service at any time. BATS will make a reasonable effort to notify Vendor prior to any modifications. Vendor’s continued use of the Service following the modification will constitute Vendor’s acceptance of the modification.

Representations and Warranties of Vendor. Vendor hereby represents and warrants that it is and for the term of this Agreement will remain, or is not required to be: (1) duly registered with the SEC as a broker-dealer, (2) a member of FINRA and/or an Applicable Exchange; and (3) registered and/or qualified in those states and other jurisdictions where its business requires such registration and/or qualification. Vendor represents and warrants that all Orders will be sent on behalf of a bona fide Subscriber, and that the identity of the Subscriber will be given on each message transmitted by Vendor to BATS.

Representations and Warranties of BATS. BATS hereby represents and warrants that (1) it is and for the term of this Agreement will remain duly registered with the SEC as a broker-dealer, (2) it is a member of FINRA and/or an Applicable Exchange, (3) it is registered and/or qualified in those states and other jurisdictions where its business requires such registration and/or qualification; and (4) it has the authority and all rights and licenses required to enter into this Agreement and to provide the BATS ECN and Service to Vendor.

Compliance. Except as otherwise provided herein, it is the sole responsibility of Vendor to ensure compliance, by itself and its representatives, with all applicable United States federal and state securities laws, rules, and regulations. Vendor will cooperate in connection with any inquiry regarding Vendor’s interaction with the BATS ECN by the SEC, FINRA and/or any applicable self-regulatory organization.

Connectivity. Vendor is solely responsible for providing and maintaining all necessary electronic communications with the BATS ECN, including, wiring, computer hardware, software, communication line access, and networking devices.

Market Data. By using the BATS ECN, Vendor hereby agrees that BATS may use the data transmitted by Vendor to the BATS ECN for any and all legitimate business purposes related to BATS’ operation of the Services, including but not limited to the processing of orders, trade reporting, and the clearing and settling

of transactions executed by the BATS ECN. BATS may also include Subscriber's de-identified order and execution related data in the BATS market data feed. Vendor agrees to allow BATS to share information with any appropriate regulatory or self-regulatory organization.

Retransmission of Market Data. Vendor agrees to use any market data received from BATS only for internal use or use by Subscribers and/or Vendor's customers. Vendor shall insure that all use of market data (1) clearly and prominently identifies the information as originating from BATS, (2) is adequately protected to prevent unauthorized access, and (3) is not altered by Vendor to render it materially incorrect or misleading in any way. Vendor may not convey, retransmit, republish, or rebroadcast any market data to any outside party unless that party is a Subscriber. Vendor is prohibited from releasing the identity of any Subscriber to any other Subscriber or third party.

WARRANTIES. THE SERVICE IS 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 SYSTEM OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO VENDOR AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

There is no guaranty that the Service provided by BATS ECN will meet the Vendor's requirements, be error free, or operate without interruption or delay. Vendor acknowledges that all or portions of the BATS ECN service may be unavailable from time to time. Vendor is NOT required to solely utilize the BATS ECN, and agrees to maintain service with competing market centers and/or broker-dealers sufficient to conduct its business in the event Service is unavailable on the BATS ECN.

LIMITATIONS ON LIABILITIES. Each party agrees that, in the absence of fraud, gross negligence or deliberate misconduct, none of BATS, BATS ECN, Vendor, nor their owners, subsidiaries, affiliates, officers, directors, employees, agents or any related persons and entities, will be liable for any 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 and expenses incurred by BATS or Vendor, by any customer or account of BATS or Vendor, or any third-party, of any nature, or from any cause whatsoever, whether direct, special, incidental, or consequential, arising out of the furnishing, performance, maintenance or use of, or inability to use, the services, equipment, communication lines, software, databases, manuals and any other material furnished by or on behalf of BATS ECN, notwithstanding that BATS, BATS ECN, or Vendor may have been advised of the possibility that damages may or will arise in any given situation. Neither party nor any of its officers, employees and/or agents are employees, officers, agents or persons have the authority or capacity to act for or on behalf of the other party. Neither BATS, BATS ECN, nor their owners, subsidiaries, affiliates, officers, directors, employees, agents, and any related persons and entities will be liable in any way for any inaccuracy, error, or delay in, or omission of the transmission or delivery of the Service.

Indemnification by Vendor. Vendor agrees to indemnify and hold harmless BATS, BATS ECN, their owners, subsidiaries, affiliates, officers, directors, employees, agents, any related persons and entities, and each subscriber or third person on the contra side of any executed trade, from and against all expenses and costs and damages (including any reasonable legal fees and expenses), direct, consequential, and/or incidental in nature, claims, demands, proceedings, suits, and actions, and all liabilities resulting from, in connection with, or arising out of any failure by Vendor to comply with its obligations under this Agreement or that arise from Vendor's acts that involve fraud, gross negligence or willful misconduct and for any loss or claim which may arise from a claim that one or more Orders transmitted by Vendor to the BATS ECN were in violation of any state or federal securities law or regulation of FINRA and/or any exchange.

Indemnification by BATS. BATS agrees to indemnify and hold harmless Vendor and their owners, subsidiaries, affiliates, officers, directors, employees, and agents from and against all expenses and costs and damages (including any reasonable legal fees and expenses), direct, consequential, and/or incidental in

nature, claims, demands, proceedings, suits, and actions, and all liabilities resulting from, and in connection with, or arising out of any third party claim that the BATS ECN or Services, or Vendor's use thereof, infringes any copyright, patent, trademark, trade secret or other intellectual property right.

Termination. Vendor or BATS may terminate this Agreement or any part of the Service upon 30 days written notice to the other party. In addition, BATS may immediately suspend or terminate the Service to Vendor if it determines that, in BATS sole determination: (1) Vendor has breached any material term of this Agreement ; (2) Vendor is engaged in activities that BATS reasonably determines to be detrimental to the BATS ECN or its Subscribers; (3) Vendor's system is not secure or is not able to reliably identify the Subscriber responsible for each message sent to BATS; or (4) Vendor is retransmitting, republishing or rebroadcasting BATS market data without the prior approval of BATS or fails to adequately identify Orders and/or executions as originating from the BATS ECN. Upon termination, Vendor agrees to return all BATS ECN software and equipment to BATS. Vendor will continue to be obligated to pay charges incurred up to and including the date of termination and to accept transactions already effected on behalf of Subscribers by BATS.

Assignment. Vendor's license to use the Service during the term of this Agreement is personal, nonexclusive and nontransferable. Neither this Agreement nor any part hereof may be assigned (whether by operation of law or otherwise) by Vendor without the prior written consent of BATS and any such assignment will be void, except in the event of the sale of all or substantially all of the assets of Vendor as a result of a merger, acquisition, or otherwise. BATS may assign this Agreement without the prior written consent of Vendor.

Force Majeure. Neither party to this Agreement will be liable for delay or failure to perform its obligations hereunder (other than a failure to pay amounts when due) caused by an event that is beyond the party's control; provided, however, that such party will not have contributed in any way to such event.

Severability. Each provision of this Agreement will be deemed to be effective and valid under applicable law, but if any provision of this Agreement is determined to be invalid, void, or unenforceable under any law, rule, administrative order or judicial decision, that determination will not affect the validity of the remaining provisions of this Agreement.

Jurisdiction and Process. Any legal action, suit or proceeding between BATS and Vendor relating to this Agreement shall take place in the state and federal courts of the State of New York. Vendor consents to the service of process by the mailing of copies of such court filing by certified mail to the address of BATS or Vendor as it appears on the books and records of BATS, such service to be effective ten days after mailing. Vendor agrees that any legal action, suit or proceeding arising out of, or relating to, this Agreement may be brought in such courts, and waives, and agrees not to assert, as a defense in any such action, suit or proceeding: (i) that it is not personally subject to the jurisdiction of such courts, (ii) that such action, suit or proceeding may not be brought or is not maintainable in such courts, (iii) that this Agreement may not be enforced in or by such courts, or (iv) that the venue of any such action, suit or proceeding is inconvenient or improper. Final judgment against any party in any action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of indebtedness arising from such judgment. Each party hereby waives irrevocably any immunity to which it might otherwise be entitled in any action at law, suit in equity or any other proceeding arising out of or based on this Agreement or any transaction in connection herewith.

Waiver of Jury Trial and Punitive Damages. Each party hereby waives a trial by jury in any action arising out of or relating to this Agreement or any transaction in connection therewith. Furthermore, neither BATS nor Vendor will attempt to obtain an award of punitive damages against the other in connection with this Agreement.

Choice of Laws. This Agreement will be deemed to have been made in the State of New York and will be construed, and the rights and liabilities of the parties determined, in accordance with the laws of the State of New York.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.

Vendor: _____

BATS Trading, Inc.

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

[Optional] Vendor hereby gives written permission for BATS to use the name of Vendor given below, and if supplied below, a web link to the Vendor's web site, in a list of Vendors in its promotional materials as well as inclusion on BATS' web site.

Vendor Signature: _____

Vendor Name: _____

Vendor Web Site: _____