

## CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS

The following terms and conditions (the “**CA Terms**”) shall govern all order forms for connectivity, service bureaus and other access services (any such form generally referred to as the “**Order Form**”) between BATS Trading Limited, a company incorporated and registered in England with company number 6547680, whose registered office is 6<sup>th</sup> Floor, 10 Lower Thames Street, London, EC3R 6AF, trading under the name BATS Chi-X Europe (“**BATS**”) and the **Recipient**, as defined in the applicable Order Form (each a “**Party**” and together the “**Parties**”). The CA Terms and the Order Form shall hereafter collectively be referred to as the “**Agreement**”.

BATS is authorised and regulated by the Financial Services Authority (“**FSA**”) to operate a multilateral trading facility (the “**BATS MTF**”). BATS desires to provide Recipient and Recipient desires to receive certain services to access the BATS MTF as indicated on the Order Form.

### 1. SERVICES

- 1.1 BATS shall provide the Recipient with certain services as described in the Order Form (collectively and individually, the “**Services**”).
- 1.2 The Recipient shall comply with the BATS network requirements, if applicable, contained in the Connectivity Manual, available at [http://www.batstrading.co.uk/resources/participant\\_resources/BATS\\_Connectivity\\_Manual\\_Europe.pdf](http://www.batstrading.co.uk/resources/participant_resources/BATS_Connectivity_Manual_Europe.pdf), as updated from time to time.

### 2. FEES

- 2.1 The Recipient agrees to pay BATS fees, charges, and costs for the Services at the rates set out in the Order Form or as otherwise available on the BATS website [www.batstrading.co.uk](http://www.batstrading.co.uk) (the “**Fees**”).
- 2.2 The Fees are payable without deduction or set off by the Recipient and are exclusive of UK

Value Added Tax or any other applicable taxes which the Recipient shall also pay.

- 2.3 BATS reserves the right to charge interest on any amount due to BATS from the date on which payment was due to the date of actual receipt at a rate of 2% above the (overnight) interbank offer rate in London for the relevant currency.
- 2.4 BATS reserves the right to change the Fees by not less than thirty (30) days notice given to the Recipient by means of both a notice posted on BATS’ website and by email. BATS shall have the right to set off any sums due from Recipient to BATS against any sums due from BATS to Recipient.

### 3. LIMITATION OF LIABILITY

- 3.1 BATS SHALL NOT BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY DIRECT LIABILITY LOSS, DAMAGE, COSTS OR EXPENSES OF ANY NATURE WHATSOEVER (“**DIRECT LOSS**”), OR FOR ANY LIABILITY LOSS, DAMAGE, COSTS OR EXPENSES OF ANY NATURE WHATSOEVER OF AN INDIRECT OR CONSEQUENTIAL NATURE (INCLUDING, WITHOUT LIMIT ANY ECONOMIC LOSS, LOSS OF TURNOVER, PROFITS, BUSINESS OR GOODWILL, LOSS OF TRADE, LOSS OF BARGAIN, LOSS OF DATA OR LOSS OF OPPORTUNITY) (“**INDIRECT LOSS**”) (IN EACH CASE INCLUDING WHERE AND REGARDLESS OF WHETHER SUCH DIRECT LOSS OR INDIRECT LOSS WAS FORESEEN OR ADVISED TO BATS AS BEING LIKELY TO OCCUR) UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE USE OF THE SERVICES OR THE RESTRICTION OR NON AVAILABILITY OR FAILURE OF THE SERVICES.

## **CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS**

- 3.2 SUBJECT TO 3.1 AND 3.3, BATS' ENTIRE LIABILITY HOWSOEVER ARISING AND WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, INDEMNITY OR OTHERWISE TO THE RECIPIENT AND/OR ANY OTHER PERSON IN RESPECT OF ANY CLAIMS OR LOSSES OF ANY NATURE, ARISING DIRECTLY OR INDIRECTLY, FROM THE AGREEMENT SHALL BE LIMITED IN RESPECT OF ALL INCIDENTS OR SERIES OF INCIDENTS OCCURRING IN ANY ONE CALENDAR YEAR, TO THE NET FEES PAID IN THE TWELVE (12) MONTHS PRIOR TO THE CLAIM ARISING.
- 3.3 Nothing in this Agreement excludes or restricts BATS' liability in respect of:
- 3.3.1 a breach by BATS of any duty or liability it may have under the regulatory system (as defined in the rules and guidance of the FSA from time to time);
  - 3.3.2 fraud, willful misconduct;
  - 3.3.3 death or personal injury cause by its negligence;
  - 3.3.4 any Direct Loss or Indirect Loss sustained by the Recipient as a result of a breach by BATS under clause 8; or
  - 3.3.5 any other liability that cannot lawfully be excluded.
- 3.4 The Recipient hereby acknowledges and agrees that it shall bring any claim arising under or relating to the Agreement within six (6) months from the date of the claim arising, or, if later, within six (6) months from the date the Recipient first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring.
- 4. WARRANTIES**
- 4.1 THE SERVICES ARE PROVIDED 'AS IS', WITHOUT WARRANTIES, EXPRESS OR IMPLIED (EXCEPT AS EXPRESSLY STATED HEREIN AND FOR THE AVOIDANCE OF DOUBT SUBJECT TO CLAUSE 4.2), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ACCURACY, TIMELINESS OR COMPLETENESS OF THE SERVICE, 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 SERVICES OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO RECIPIENT AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES IS WITH THE RECIPIENT AND THERE IS NO GUARANTEE THAT THE SERVICES WILL MEET THE RECIPIENT'S REQUIREMENTS, BE ERROR FREE, OR OPERATE WITHOUT INTERRUPTION.
- 4.2 BATS represents and warrants to the Recipient on a continuing basis that:
- 4.2.1 it has full authority to enter into this Agreement;
  - 4.2.2 it will comply with all applicable laws, rules, and regulations; and
  - 4.2.3 it has all rights and licenses required to enter into this Agreement and perform its obligations under this Agreement.



## CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS

- 4.3 The Recipient represents and warrants to BATS on a continuing basis that:
- 4.3.1 it has full authority to enter into this Agreement;
  - 4.3.2 it will comply with all applicable laws, rules and regulations; and
  - 4.3.3 it has all rights and licenses required to enter into this Agreement and perform its obligations under this Agreement.
- 5. INDEMNIFICATION**
- 5.1 Recipient agrees to indemnify and hold harmless BATS, its owners, subsidiaries, affiliates, officers, directors and employees (together, the “**Indemnified Parties**”) from and against all and any direct or indirect claim, demand, proceeding, suit, action and any direct liability (each a “**Claim**”) and all damages and reasonable expenses and costs (including any reasonable legal fees) incurred by the Indemnified Parties which arise out of access to the BATS MTF by the Recipient or third parties authorised by the Recipient or any breach by Recipient of any of the terms of this Agreement, except to the extent that any such claim arises as a direct result of fraud or willful misconduct by BATS.
- 6. TERM AND TERMINATION, INTERRUPTION OF SERVICES**
- 6.1 This Agreement shall become effective on the date it is accepted by BATS by execution of the Order Form (the “**Effective Date**”) and shall be effective until and unless terminated: (i) by not less than thirty (30) days written notice given by one party to the other; or (ii) as otherwise specified in this Agreement.
- 6.2 In the event that BATS is to cease trading, BATS will issue a general notice via BATS’ website and by email to the Recipient and this Agreement will terminate at the time and date specified in such notice.
- 6.3 BATS may immediately suspend or terminate the Services or any portion thereof upon:**
- 6.3.1 breach of any material term of this Agreement by Recipient where Recipient fails to remedy such breach to BATS’ reasonable satisfaction;
  - 6.3.2 any voluntary or involuntary filing by or against Recipient under any bankruptcy, reorganisation, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect;
  - 6.3.3. Recipient is engaged in activities that BATS reasonably determines to be detrimental to the business of BATS; or
  - 6.3.4 Recipient, in BATS’ sole discretion, poses a credit risk to BATS.
- 6.4 BATS, in its reasonable discretion, may choose to discontinue the distribution of any market data feed it provides, or to change the nature or distribution format of such market data feed at any time.
- 6.5 In the event BATS suspends, discontinues or terminates the Services or any portion thereof, BATS shall notify the Recipient.
- 6.6 The provisions in clauses 3, 4.1, 5, 6.6, 7, 8, 10, 12.7, 12.8, and 12.11 of this Agreement shall survive the termination of this Agreement.
- 7. DATA PROVISION**
- 7.1 If the Recipient receives BATS Multicast feed (“**Feed**”), the Recipient shall not commercially exploit the Feed, unless (i) the Recipient has



## CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS

executed a data recipient agreement with BATS or (ii) as otherwise agreed with BATS.

7.2 The Recipient may permission access only to Authorised Third Parties as defined in the Order Form. If Recipient becomes aware that any Authorised Third Party distributes or intends to distribute the Feed, Recipient shall inform BATS immediately and instruct such Authorised Third Party to contact BATS in respect of the same.

7.3 The Recipient shall put in place and maintain permissioning systems to ensure that Feed is used by the Authorised Third Parties in an environment under the control of Recipient (the “**Permissioning Systems**”). Recipient shall provide BATS with a detailed description of the Permissioning Systems, to be approved by BATS.

7.4 BATS may from time to time either temporarily or permanently restrict, suspend, prevent access to or cease to provide the Feed, if in BATS’s reasonable opinion: (a) Recipient is or is likely to be in breach of the provisions 7.1, 7.2 or 7.3 above; (b) regulatory implications require such an action; (c) system maintenance, stability or development work is required; and/or (d) Recipient is posing a risk to BATS.

### 8. CONFIDENTIALITY

8.1 For the purposes of this Agreement and subject to clause 8.3, “**Confidential Information**” means information that is designated as confidential or which by its nature is clearly confidential or which the receiving party knows or should reasonably know is confidential. Confidential Information includes (but is not limited to) any information concerning the technology, technical processes, data, procedures, business affairs and finance of the relevant party. Each party will treat as confidential all Confidential Information obtained

under this Agreement. Neither party will, except as expressly provided in this Agreement, without the prior written consent of the other, disclose Confidential Information to any person or use the same except for the purposes of this Agreement.

8.2 Clause 8.1 does not prohibit disclosure of Confidential Information to:

8.2.1 the receiving party’s own employees (including those of its Affiliates, its agents and permitted sub-contractors) and officers, who need to know it provided that these employees are first made aware of the confidential nature of the Confidential Information and the receiving party’s obligations in relation to it and themselves agreed to treat the Confidential Information confidentially. For the purposes of this Agreement, “**Affiliate**” means any entity directly or indirectly owned by a party to this Agreement or any direct or indirect holding company of either party or any entity over which either party, or a direct or indirect holding company of such party, has power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities, by agreement or otherwise;

8.2.2 the receiving party’s auditors and professional advisors and any person having a statutory or regulatory right to request and receive that information (including any regulator of a competent jurisdiction; and

8.2.3 any person pursuant to a court order or a request by the FSA or any other regulatory body having appropriate authority, provided that the disclosing

## **CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS**

party has first been given a reasonable opportunity to contest such disclosure (unless the court, FSA or other regulatory body having appropriate authority has ordered or instructed the receiving party not to disclose that such order or request has been made).

8.3 For the avoidance of doubt, for the purposes of this Agreement the term Confidential Information shall not include information that:

8.3.1 is or becomes available to the public other than as a result of disclosure directly or indirectly by the receiving party in violation of this Agreement;

8.3.2 was demonstrably available to or known by the receiving party on a non-confidential basis prior to disclosure by the disclosing party; or

7.3.3 the parties agree in writing is not confidential or may be disclosed.

### **9. NO LEASE**

9.1 This Agreement is a services agreement and is not intended to and will not constitute a lease of or tenancy or other interest in BATS premises, BATS equipment, or any other real or personal property.

### **10. INSURANCE AND AUDIT**

10.1 During the term of this Agreement, Recipient agrees that it will maintain insurance at levels which are adequate to cover the risk associated with the business carried out by the Recipient and in any case no less than those required by applicable law.

10.2 BATS shall have the right at any time during normal business hours, upon reasonable notice, to inspect the Recipient's equipment used in

connection with the Services and/or (if applicable) the use of the Feed or any part of it, to ensure that compliance with this Agreement. The Recipient shall maintain all records as necessary to audit the Data, for three (3) years after creation, and shall make them available to BATS on request for inspection and audit purposes.

### **11. DISPUTE RESOLUTION**

11.1 The parties agree that without prejudice to their right to take proceedings as set out in clause 13.11, if a dispute arises between the parties, it will first be referred to BATS management and Recipient management.

### **12. NOTICES**

12.1 With respect to notices concerning the administration of the Services (including but not limited to notices given under clause 2.4 to adjust the Fees) BATS may give notices to the Recipient both by means of posting notices on its website and by email. Except as otherwise expressly provided, any other notice which either party is required or authorised by this Agreement to give or make to the other shall be given or made either by post or hand delivery addressed to the other at their last known business address. Notice shall be deemed for the purposes of this Agreement to have been given or made in the case of hand delivery at the time of delivery or if by post 48 hours after posting (excluding Saturdays, Sundays, and public holidays in England).

### **13. GENERAL**

#### **13.1 Assignment and sub-contracting**

The Recipient may not transfer, novate or assign this Agreement or any of its rights or obligations hereunder to a third party without the prior

## **CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS**

written consent of BATS, such consent not to be unreasonably withheld or delayed. BATS may novate, transfer or assign all or any of its rights and/or obligations under this Agreement and will provide notice to the Participant

### **13.2 Relationship of parties**

Nothing in this Agreement shall be deemed to constitute a partnership between the parties, nor constitute either party the agent of the other party.

### **13.3 Severability**

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

### **13.4 Counterparts**

The Order Form may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

### **13.5 Entire agreement**

This Agreement and the documents referred to herein constitute the entire agreement and understanding between the parties with respect to the Services and supersedes any prior agreement, understanding or arrangement

between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this document.

### **13.6 Third parties**

The parties to this Agreement expressly agree that a person who is not a party to this Agreement shall not have the right to enforce any term or terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise save that nothing in this Agreement shall:

13.6.1 restrict, limit or prevent BATS from exercising any right or remedy that BATS may have against any affiliate;

13.6.2 give any affiliate any rights against BATS which it would not have otherwise had had it not been referred to in this Agreement.

### **13.7 Non disclosure and publicity**

The parties to this Agreement shall not, without the prior written consent (including email) of the other party, in each instance:

13.7.1 use in advertising, publicity or otherwise the name of the other party or any affiliate, or any director, partner or employee; or

13.7.2 use any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the other party or any affiliate; or

13.7.3 represent, directly or indirectly, that any product or any service provided by



## CONNECTIVITY, SERVICE BUREAUS AND OTHER ACCESS SERVICES STANDARD TERMS AND CONDITIONS

either party has been approved or endorsed by the other party; or

13.7.4 disclose any fees or payments associated with the Agreement not available on BATS' website to any third party.

### 13.8 Amendments

BATS reserves the right, at its discretion, to make changes to these CA Terms. BATS will give the Recipient five (5) business day's prior notice before such changes are effective. If BATS makes a material amendment to the terms of the Terms and Conditions, BATS shall provide at least twenty (20) business days' written notice of the same and if the amendment is to the Recipient's material detriment, the Recipient shall be entitled to terminate the Agreement effective from the date on which the amendment is to be implemented, by the provision of at least ten (10) business days' written notice (or as much notice as reasonably possible in the circumstances if provided with less than ten (10) business days' notice by BATS) provided that it has first given BATS a reasonable opportunity to revert to the previous BATS terms and/or amend the terms to the Recipient's satisfaction. The Order Form may be amended only in writing by authorised representatives of both parties.

### 13.9 Force Majeure

Neither party to this Agreement shall be liable for its respective obligations under this Agreement (other than failure to pay amounts when due) caused by an event that is manifestly beyond such party's control; provided that such party shall not have contributed in any way (whether by act or omission) to the occurrence of such an event.

### 13.10 Governing law

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

### 13.11 Waivers

Failure of any party to enforce or exercise, at any time or for any period, any term of this Agreement, does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.