



MARKET DATA AGREEMENT dated _____ **20**__

BETWEEN

- (1) **BATS TRADING LIMITED**, incorporated and registered in England with company number 6547680, whose business address is at Ground Floor, 25 Cophall Avenue, London, EC2R 7BP (**BATS**)
- (2) _____, incorporated and registered in _____ with company number _____, whose registered office is _____ (the **Recipient**).

WHEREAS

BATS is authorised and regulated by the Financial Services Authority (**FSA**) and operates a multilateral trading facility (the **BATS MTF**).

The Recipient wishes to receive market data generated by the BATS MTF (**Market Data**).

IT IS AGREED THAT:

1. SERVICES

- 1.1 Subject to the Recipient agreeing to be bound by the terms of this Agreement, BATS hereby grants to the Recipient the right to connect to or access the BATS MTF to receive the Market Data.
- 1.2 BATS reserves the right to suspend, discontinue, modify or change the nature or transmission format of the Market Data at any time at its sole discretion.
- 1.3 The Market Data is provided to the Recipient for it and to no other person and the Recipient agrees that it will take full responsibility for third party use of or access to the Market Data.
- 1.4 The Recipient is solely responsible for providing, maintaining and configuring all necessary electronic communications with the BATS MTF, including, wiring, computer hardware, software, communication line access and networking devices.

2. RETRANSMISSION OF MARKET DATA

- 2.1 The Recipient expressly acknowledges and agrees that in relation to any Market Data received from BATS:
- 2.1.1 BATS has the exclusive rights in and to Market Data;

- 2.1.2 Market Data constitutes valuable confidential information and proprietary rights of BATS; and
 - 2.1.3 but for this Agreement, the Recipient would not have any rights with respect to, or rights to access or receive, any Market Data.
- 2.2 Subject to clause 2.4, BATS hereby grants to the Recipient the non-exclusive and non-transferable right to possess or use the Market Data for its own legitimate internal business purposes and to redistribute or retransmit Market Data to third parties (Retransmission) if and only if:
- 2.2.1 such Retransmission is either:
 - (a) without charge by the Recipient; or
 - (b) subject to a fee payable to the Recipient for access to market data generally (including market data collected by the Recipient from other sources) such that the fee is not payable, in whole, in part or specifically for access to Market Data; and
 - 2.2.2 the Market Data is clearly attributed as originating from BATS.
 - 2.2.3 the Market Data is not altered by the Recipient to make it materially incorrect or misleading in any way.
- 2.3 BATS retains the right to direct the Recipient to terminate any Retransmission for any reason, in which event BATS shall notify the Recipient and the Recipient shall promptly cease any Retransmission.
- 2.4 The Recipient shall remain entirely responsible for Retransmission and without prejudice to any other provisions of this Agreement, the Recipient acknowledges and agrees that BATS shall have no liability in relation to such Retransmission.

3. INTERRUPTION OF MARKET DATA

- 3.1 BATS will take reasonable steps to provide Market Data. However, the Recipient acknowledges that access to the Market Data may from time to time be unavailable, delayed, limited or slowed due to, without limitation, hardware failure, software failure, interruption of power supplies, maintenance governmental or regulatory restrictions, exchange rulings, court or tribunal orders or other human intervention; or any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond BATS's control.

4. WARRANTIES

- 4.1 THE MARKET DATA IS PROVIDED 'AS IS', WITHOUT WARRANTIES, EXPRESS OR IMPLIED (EXCEPT AS EXPRESSLY STATED HEREIN), 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 BATS MTF OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO THE RECIPIENT AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

5. LIMITATION OF LIABILITY

- 5.1 Subject to clause 5.3 BATS shall not be liable to the Recipient or any person claiming through the Recipient for any cost, loss, liability or expense under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise.
- 5.2 Subject to clause 5.3 but without prejudice to clause 5.1, BATS shall not be liable to the Recipient in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Recipient of an indirect or consequential nature nor for any economic loss or loss of turnover, profits, business or goodwill, loss of trade, loss of bargain, loss of data or loss of opportunity, in each case whether such damage was foreseen or advised to BATS as likely to occur.
- 5.3 Nothing in this Agreement excludes or restricts BATS' liability in respect of:
- 5.3.1 a breach by BATS of any duty or liability it may have to the Recipient under the regulatory system (as defined in the rules and guidance of the Financial Services Authority from time to time); or
 - 5.3.2 fraud, wilful misconduct; or
 - 5.3.3 death or personal injury caused by its negligence; or
 - 5.3.4 any other liability that cannot lawfully be excluded.
- 5.4 It is the Recipient's responsibility to ensure that it maintains adequate insurance to cover any damages, losses, costs or expenses it might suffer in the event of any failure or unavailability of the Market Data.
- 5.5 The Recipient acknowledges and agrees that the exclusion of liability set out in this clause 5 is reasonable taking into account the limited nature of the parties' responsibilities under this Agreement.

6. CONFIDENTIALITY

- 6.1 For the purposes of this Agreement, **Confidential Information** means information that is designated as confidential or which by its nature is clearly confidential and 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 from the other 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.

6.2 Clause 6.1 does not prohibit disclosure of Confidential Information to:

6.2.1 the receiving party's and its affiliates' own employees (including its agents and permitted sub-contractors) 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;

6.2.2 the receiving party's and its affiliates' auditors and professional advisors and any person having a statutory or regulatory right to request and receive that information; and

6.2.3 any person pursuant to a court order or a request by a regulatory body having appropriate authority, provided that the disclosing party has first been given a reasonable opportunity to contest such disclosure.

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

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

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

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

7. INDEMNIFICATION

7.1 The Recipient agrees to indemnify and hold harmless BATS, its owners, subsidiaries, affiliates, officers, directors and employees from and against all and any claim, demand, proceeding, suit, and action, and all liabilities, expenses and costs and damages (including any legal fees and expenses) resulting directly and indirectly from, in connection with, or arising out of any Retransmission by the Recipient, and for any failure by the Recipient to comply with its obligations under this Agreement.

8. TERM AND TERMINATION

8.1 This Agreement shall commence on the date of its signature by the parties and, subject to earlier termination in accordance with its terms, shall continue until:

8.1.1 it is terminated upon 24 hours' written notice given by BATS to the Recipient; or

8.1.2 it is terminated on not less than 30 days' written notice given by the Recipient to BATS.

8.2 The provisions of Clauses 2, 4, 5, 6, 7, 11.9 and 11.10 of this Agreement shall survive the termination of this Agreement.

9. CONSEQUENCES OF TERMINATION

9.1 Upon termination of this Agreement, all rights of the Recipient to access the BATS MTF and to retransmit the Market Data to third parties shall immediately cease.

10. NOTICES

10.1 Any notice or other document required to be given under this Agreement or any communication between the parties with respect to any of the provisions of this Agreement shall be in writing in English and be deemed duly given if left at or sent by pre-paid registered or recorded delivery post to the address of the party receiving such notice as set out at the head of the Agreement or to such address, fax number or email address as notified between the parties for the purpose of this clause.

10.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:

10.2.1 at the time the same is left at the address of or handed to a representative of the party to be served;

10.2.2 by post on the day not being a Saturday, Sunday or public holiday in England 2 days following the date of posting if the parties are in the same country or 10 days following the date of posting if the parties are in different countries;

10.2.3 in the case of a fax or email transmission at the time of transmission if the sender has proof of transmission.

10.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of transmission was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

10.4 In addition to the other provisions of this clause 10, BATS may give general notices (meaning those that are not specific to the Recipient) by posting such notices on the

Website and sending them as a standard email to all Market Data recipients. Any such notice shall be deemed to be given to and received by the Recipient on the day following the posting and electronic transmission of the notice.

- 10.5 It is the Recipient's responsibility to ensure that BATS is at all times in possession of up-to-date contact details for the Recipient, including the general email address(es) of the Recipient and those of any relevant employee(s).

11. GENERAL

11.1 Assignment and sub-contracting

This Agreement is personal to the parties, and neither party may, save as expressly provided herein, without the prior written consent of the other party, assign, sub-license, sub-contract, transfer or charge this Agreement or any part of it.

11.2 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.

11.3 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.

11.4 Counterparts

This Agreement 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.

11.5 Entire agreement

This Agreement and the documents referred to herein constitute the entire agreement and understanding between the parties with respect to the subject matter hereof 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 Agreement.

11.6 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.

11.7 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.

11.8 Amendments

Any amendment to this Agreement shall be in writing and executed by or on behalf of the parties to this Agreement.

11.9 Governing law

This Agreement shall be governed by and construed in accordance with English law.

11.10 Jurisdiction

11.10.1 The parties to this Agreement irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and determine any proceedings and to settle any dispute which may arise out of or in connection with the Agreement (respectively **Proceedings** and a **Dispute**).

11.10.2 Nothing in this Agreement shall limit the right of the parties to bring proceedings against each other in other jurisdictions to the extent permitted by applicable law, concurrently or otherwise in more than one jurisdiction to protect or recover property, or maintain and preserve rights of action.

11.10.3 The parties to this Agreement each irrevocably waive any objection which they may have now or in the future to the courts of England being nominated as the forum to hear and determine any Proceedings or settle any Dispute and agrees not to claim that the courts of England are not a convenient or appropriate forum.

11.10.4 The parties to this Agreement each irrevocably consent to service of process or any other documents in connection with proceedings in any court by personal service, delivery at any address specified in this Agreement or any other usual address, mail or in any other manner permitted by English law, permitted by the law of the place of service or permitted by the law of the jurisdiction where proceedings are instituted.

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

RECIPIENT:

BATS TRADING LIMITED:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Send notices to (if other than address above): Send notices to (if other than address above):

Attention: Notices Europe
BATS Trading Limited
Ground Floor, 25 Copthall Avenue
London, EC2R 7BP, UK
Tel: +44 (0) 20 7012 8900
Fax: +44 (0) 20 7012 8965
E-mail: NoticesEurope@batstrading.com

with copy to:

with copy to:

Attention: Compliance Department
BATS Trading Limited
Ground Floor, 25 Copthall Avenue
London, EC2R 7BP, UK
Tel: +44 (0) 20 7012 8900
Fax: +44 (0) 20 7012 8965
E-mail: ComplianceEurope@batstrading.com