



PARTICIPANT 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 Participant**).

WHEREAS

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

IT IS AGREED THAT:

1. SERVICES

- 1.1 Subject to the Participant and each **Named Affiliate** (which expression for the purposes of this Agreement means any entity directly or indirectly owned by the Participant or any direct or indirect holding company of the Participant or any entity over which the Participant or such direct or indirect holding company 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 and in each case detailed (from time to time) in the schedule to this Agreement as agreed, completed and initialled by an authorised signatory of each party) at all times complying with the rules set out in the BATS Rule Book and the requirements set out in the BATS Participant Manual each as amended from time to time (the **Rules**), BATS grants to the Participant and any Named Affiliate the right to access the BATS MTF to (without limit) enter orders on the BATS MTF order books, receive status updates on orders, to amend orders, cancel orders, execute trades against orders on any of the BATS MTF order books and to receive data feeds from the BATS MTF containing (without limit) information relating to price information, unexecuted orders, executed transactions and volume on the BATS MTF and for the provision of such other services as BATS may provide through the BATS MTF (collectively, the **Services**).

- 1.2 BATS reserves the right to modify or change the Services at any time with or (in the case of emergency) without notice to the Participant provided that in the case of emergency notice shall be given as soon as reasonably practicable thereafter. In the event that such change is a material change to the scope or level of performance of the Services (which for the avoidance of doubt includes without limitation any change that would require significant changes to the systems of the Participant,

would materially affect the way the Participant's and any Named Affiliate's order(s) or transaction(s) on the BATS MTF are processed, has significant legal or regulatory implications, or may result in substantial additional financial or administrative costs for the Participant or any Named Affiliate) BATS shall notify and use reasonable efforts to consult with the Participant prior to such change taking effect.

- 1.3 BATS will use all reasonable endeavours to provide the Services in accordance with the Rules, as set out on the BATS website: <http://www.batstrading.co.uk> (the **Website**).
- 1.4 The Participant will (and will procure its Named Affiliates) provide BATS with such information relating to the Participant and any Named Affiliate and the Participant's and any Named Affiliate's use of the BATS MTF as BATS reasonably requires in connection with the provision of the Services.
- 1.5 The Services are provided to the Participant and its Named Affiliates for its and their own use and to no other person. However, the Participant (but not any Named Affiliate) may: (i) (where the Participant has entered into a Sponsored Access Addendum with BATS which has not been terminated) allow a Sponsored Participant to directly access the Services; and/or; (ii) allow its clients and customers access to the Services through facilities provided by the Participant provided that in both cases the Participant shall at all times be liable for such access.
- 1.6 The Participant and each of its Named Affiliates are solely responsible for providing and maintaining all necessary electronic communications with the BATS MTF, including, wiring, computer hardware, software, communication line access, and networking devices to the extent that any of the foregoing has not been provided or supplied to the Participant or any Named Affiliate by BATS.

2. FEES

- 2.1 The Participant agrees to pay BATS fees, charges and costs for the Services (provided to it and each of its Named Affiliates) at the rates set out in the fee schedule posted on the Website as amended (subject to at least two business days prior notice by email to the Participant) by BATS from time to time (the **Fees**).
- 2.2 The Fees are payable without deduction or set off by the Participant and are exclusive of UK Value Added Tax or any other applicable taxes which the Participant 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) inter bank offer rate in London for the relevant currency.

3. DATA

- 3.1 BATS acknowledges that the Participant has exclusive rights in the data transmitted by the Participant and each of its Named Affiliates to the BATS MTF (**Participant**

Data). By using the BATS MTF, the Participant hereby irrevocably agrees (on its own behalf and as agent for each Named Affiliate) that BATS may possess and use Participant Data for any and all legitimate business purposes, including but not limited to the processing of orders, trade reporting, and transmission to third parties in connection with the clearing and settling of transactions executed by the BATS MTF.

- 3.2 BATS may also include the Participant's and any Named Affiliate's de-identified order and execution related data in the BATS market data feed so long as such data is aggregated in a manner that does not directly identify, associate or link the Participant or any Named Affiliate with any order(s) or transaction(s).
- 3.3 Nothing shall restrict or prevent BATS from disclosing Participant Data to any Regulator having jurisdiction over BATS entitled to require and requiring such disclosure provided that, where reasonably practicable, BATS shall notify (to the extent such notification is not prohibited by any applicable law, rule, regulation or Regulator) the Participant in advance of such disclosure where the disclosure requirement by the Regulator relates specifically to the Participant's Participant Data.

4. RETRANSMISSION OF MARKET DATA

- 4.1 The Participant (on its own behalf and as agent for each **Affiliate** (which expression means any entity directly or indirectly owned by the Participant or any direct or indirect holding company of the Participant or any entity over which the Participant or such direct or indirect holding company 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, including Named Affiliates)) expressly acknowledges and agrees that in relation to any market data received from BATS (**Market Data**):
 - 4.1.1 BATS has the exclusive rights in and to Market Data;
 - 4.1.2 Market Data constitutes valuable confidential information and proprietary rights of BATS; and
 - 4.1.3 but for this Agreement, the Participant and any Affiliate would not have any rights with respect to, or rights to access or receive, any Market Data.
- 4.2 Subject to clause 4.5, BATS hereby grants to the Participant and each Affiliate (without charge) a non-exclusive and non-transferable right to possess or use the Market Data for its own legitimate internal business purposes (including without limit notifying the Participant's and Affiliate's clients (if any) of details of transactions executed on the BATS MTF on behalf of such clients).

4.3 Subject to clauses 4.4 and 4.5, BATS hereby grants to the Participant and each Affiliate (without charge) the non-exclusive and non-transferable right to redistribute or retransmit Market Data to third parties (**Retransmission**) if and only if:

4.3.1 such Retransmission is either:

- (a) without charge by the Participant and its Affiliates; or
- (b) subject to a fee payable to the Participant or any Affiliate for access to market data generally (including market data collected by the Participant or such Affiliate from other sources) such that the fee is not payable, in whole, in part or specifically for access to Market Data; and

4.3.2 the Market Data is clearly attributed as originating from BATS.

4.4 BATS retains the right to direct the Participant and any Affiliate to terminate any rights to Retransmission for any reason, in which event BATS shall notify the Participant and the Participant shall promptly cease (or procure any Affiliate shall promptly cease) the Retransmission.

4.5 The Participant agrees to procure that all internal use of Market Data (and agrees to procure that all internal use of Market Data by each of its Affiliates) and further agrees that it (and shall procure that each of its Affiliates) shall use all reasonable endeavours to ensure that all use by any third party to whom the Participant or any Affiliate has retransmitted Market Data:

4.5.1 shall clearly and prominently identify the information as originating from BATS (to the extent technically practicable);

4.5.2 is protected to prevent unauthorised access; and

4.5.3 is not altered by the Participant, any Affiliate or user to make it materially incorrect or misleading in any way.

5. INTERRUPTION OF SERVICES

5.1 BATS will take all reasonable steps to provide and maintain the BATS MTF. However, the Participant acknowledges on its own behalf and as agent for each of its Named Affiliates that access to the Services may from time to time be unavailable, delayed, limited or slowed due to, without limit, 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' control.

5.2 In the event that BATS reasonably believes the Central Counterparty (or if more than one any one of them) is unable or unwilling to settle transactions executed on

the BATS MTF, BATS will make commercially reasonable efforts to assist Participants to settle such transactions subject always to BATS' compliance with the FSA Rules and its legal and contractual obligations to Participants and any directions issued by the FSA.

- 5.3 Without prejudice to its other rights and remedies hereunder, should the Participant or any Named Affiliate breach any provision of this Agreement or the Rules, or act in any way, which materially impacts on the integrity of the BATS MTF, BATS shall have the right to suspend or restrict the Participant's or any Named Affiliate's access to the Services for so long as the Participant or Named Affiliate remains in breach or until the Participant or Named Affiliate has remedied such breach to BATS' reasonable satisfaction or to terminate the Participant's or any Named Affiliate's access to the Services.

6. CLEARLY ERRONEOUS TRADE POLICY

- 6.1 The Participant has (and has procured that each of its Named Affiliates has) read and agrees to the BATS MTF clearly erroneous trade policy (as set out in the Rules).

7. WARRANTIES

- 7.1 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 7.2), 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 PARTICIPANT AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

- 7.2 BATS represents and warrants to the Participant on a continuing basis that:

- 7.2.1 it has full authority to enter into this Agreement;
- 7.2.2 it will comply with all applicable laws, rules and regulations; and
- 7.2.3 it has all rights and licences required to enter into this Agreement and perform its obligations under this Agreement.

- 7.3 The Participant represents and warrants to BATS on a continuing basis that:

- 7.3.1 it has full authority to enter into this Agreement;
- 7.3.2 it will (and will procure each of its Affiliates will) comply with all applicable laws, rules and regulations; and

7.3.3 it has (and each of its Affiliates exercising their rights pursuant to clause 4 have) all rights and licences required to enter into this Agreement and perform its obligations under this Agreement.

8. INTELLECTUAL PROPERTY RIGHT INDEMNITY

8.1 BATS agrees to indemnify and hold harmless the Participant, each Affiliate and each of their respective owners, officers, directors and employees from and against all and any direct claims, demands, proceedings, suits, actions and liabilities whether arising in contract, tort, negligence, breach of statutory duty or otherwise in connection with or arising out of any third party claim that the use by the Participant and/or any of its Affiliates (in accordance with the terms of this Agreement) of the BATS MTF or the Services infringes any third party copyright, patent, trademark, trade secret or other intellectual property right (each an **IP Claim**) and all damages and reasonable expenses and costs (including any reasonable legal fees) relating thereto. The indemnity in this clause is conditional upon the Participant or the Participant on behalf of any Affiliate: (i) notifying BATS promptly in writing of any IP Claim; and (ii) granting BATS exclusive control of the defence and/or settlement of any such IP Claim provided always that BATS shall not agree to the settlement of any IP Claim unless or until it has sufficient financial resources to pay in full any amount to be paid in settlement. Subject to applicable law and regulation, the Participant shall (and shall procure that each Affiliate shall) furnish BATS with information in the possession or control of the Participant and any Affiliate for such defence and/or settlement as reasonably requested by BATS provided that any such information provided by the Participant or any Affiliate is only used for the purposes of such defence and/or settlement and thereafter to the extent possible will be destroyed promptly by BATS and the Participant will not (and will procure that any Affiliate will not) compromise or admit any such IP Claim and/or make any payments with respect to such IP Claim without the prior written consent of BATS. The Participant shall cooperate (and shall procure that each Affiliate shall cooperate) with, and provide such assistance to BATS in the defence of such IP Claim as reasonably requested by BATS and BATS shall pay the Participant's and any Affiliate's reasonable costs and expenses relating to such cooperation and assistance.

9. LIMITATION OF LIABILITY

9.1 Subject to clauses 8.1 and 9.2, 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.

- 9.2 Nothing in this Agreement excludes or restricts BATS' liability in respect of:
- 9.2.1 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);
 - 9.2.2 fraud, wilful misconduct;
 - 9.2.3 death or personal injury caused by its negligence;
 - 9.2.4 any Direct Loss or Indirect Loss sustained by the Participant, any Affiliate or any person claiming through the Participant or any Affiliate as a result of a breach by BATS under clause 10;
 - 9.2.5 the indemnity granted by BATS pursuant to clause 8; or
 - 9.2.6 any other liability that cannot lawfully be excluded.
- 9.3 The Participant acknowledges and agrees on its own behalf and on behalf of any Affiliate or any person claiming through the Participant or any Affiliate that the exclusion of liability set out in this clause is reasonable.

10. CONFIDENTIALITY

- 10.1 For the purposes of this Agreement and subject to clause 10.3, **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 (and in the case of the Participant will procure that each Affiliate will) treat as confidential all Confidential Information obtained under this Agreement. Neither party will (and in the case of the Participant it will procure each Affiliate will not), 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.
- 10.2 Clause 10.1 does not prohibit disclosure of Confidential Information to:
- 10.2.1 the receiving party's 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 have themselves agreed to treat the Confidential Information confidentially;
 - 10.2.2 the receiving party's auditors and professional advisors and any person having a statutory or regulatory right to request and receive that

information (including the FSA and any other regulator of competent jurisdiction); and

10.2.3 without prejudice to clauses 10.2.1 and 10.2.2, any other person pursuant to a court order or a request by the FSA or any other regulatory body having appropriate authority, provided that the disclosing party has first been given a reasonable opportunity to contest such disclosure (unless the court, the FSA or other regulatory body or person having appropriate authority has ordered or instructed the receiving party not to disclose that such order or request has been made).

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

10.3.1 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;

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

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

11. INDEMNIFICATION

11.1 Subject to clause 11.5, the Participant agrees to indemnify and hold harmless BATS, its owners, subsidiaries, officers, directors, employees and **BATS Affiliates** (which expression means any entity directly or indirectly owned by BATS or any direct or indirect holding company of BATS or any entity over which BATS or such direct or indirect holding company 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), (together, the **Indemnified Parties**) from and against all and any direct 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 result directly from any Retransmission by the Participant or any Affiliate. The indemnity in this clause is conditional upon:

11.1.1 the Indemnified Party (or BATS on behalf of such Indemnified Party) promptly notifying the Participant in writing of the receipt of any Claim; and

11.1.2 where such Claim relates to the Retransmission solely by the Participant or any of its Affiliates to a single third party which does not receive Market Data from any other source BATS granting the Participant exclusive control of the defence and/or settlement of any such Claim, for the avoidance of doubt in all other circumstances the Participant and any Affiliate shall grant BATS exclusive control of the defence and/or settlement of any such Claim; and

- 11.1.3 provided always that the Participant shall not agree to the settlement of any Claim unless or until it has sufficient financial resources to pay in full any amount to be paid in settlement, and neither party shall settle any Claim (a) without the Participant's prior written approval if such settlement is controlled by BATS and requires the Participant to take any action, refrain from taking any action, admit any liability or make any financial contribution as part of such settlement or (b) without BATS' prior written approval if such settlement is controlled by the Participant and requires BATS to take any action, refrain from taking any action or admit any liability;
- 11.2 Each of BATS and the Participant (as the case may be) shall:
- 11.2.1 subject to applicable law and regulation furnish the other with information in their possession or control for such defence and/or settlement of any Claim as reasonably requested by the Participant or BATS provided that any such information is only used for the purpose of such defence and/or settlement and will be destroyed to the extent possible promptly thereafter;
- 11.2.2 co-operate with the other, and provide such assistance to the other in the defence of such Claim as reasonably requested by the other.
- 11.3 Should the Participant have exclusive control of the defence and/or settlement of any Claim the Participant shall pay BATS' reasonable costs and expenses relating to any such cooperation and assistance given to the Participant.
- 11.4 Should BATS have exclusive control of the defence and/or settlement of any Claim BATS shall keep the Participant informed of the progress of the defence and/or settlement and to consult with the Participant in relation to the conduct of the defence and/or settlement of any Claim and give due and careful consideration to any representations made by the Participant in relation to the conduct of the defence and/or settlement of any Claim.
- 11.5 The indemnification in clause 11.1 shall not apply to any Claim to the extent that it arises from or directly in connection with:
- 11.5.1 any 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); or
- 11.5.2 any fraud, wilful misconduct of any Indemnified Party; or
- 11.5.3 any IP Claim (as defined in clause 8.1).

12. TERM AND TERMINATION

- 12.1 The provision of the Services shall commence on the date notified to the Participant pursuant to the Rules (and in the case of each of its Named Affiliates the date notified to that Named Affiliate) and, subject to earlier termination in accordance with the terms of this Agreement or the Rules, shall continue until this Agreement is terminated, any parts of the Services are terminated or in the case of the Participant the Services to any Named Affiliate are terminated in each case by not less than 30 days written notice given by one party to the other.
- 12.2 In the event that BATS is to cease trading, BATS will issue a general notice via the Website and by email to the Participant and this Agreement will terminate at the time and on the date specified in such notice.
- 12.3 The provisions in clauses 3, 4, 7.1, 8, 9, 10, 11, 12.3, 14, 15, 17.6, 17.9, 17.13 and 17.14 of this Agreement shall survive the termination of this Agreement.

13. CONSEQUENCES OF TERMINATION

- 13.1 Upon termination of this Agreement, all rights of the Participant and each Affiliate to access the BATS MTF and the Services and (where applicable) to retransmit Market Data to third parties shall immediately cease.
- 13.2 The Participant's and any Named Affiliate's obligations under the Rules (which for the avoidance of doubt may be amended or extended from time to time) relating to the retention of records relating to Orders submitted by the Participant (as set out in the Rules) and the settlement of transactions executed on the BATS MTF by the Participant (as set out in Rules) shall remain in full force and effect and shall survive the termination of this Agreement for a period of one year.

14. DISPUTE RESOLUTION

- 14.1 Without prejudice to either party's right to seek injunctive relief or right to bring a debt action against the other party, if a dispute arises between the parties, the parties agree to address it in the following order:
- 14.1.1 they agree to negotiate in good faith to resolve such a dispute;
 - 14.1.2 such a dispute will first be referred to each party's management representatives (**Management**);
 - 14.1.3 if the dispute cannot be resolved within a maximum of ten (10) business days after it has been so referred to Management, the dispute will be referred to each party's senior management (**Senior Management**);
 - 14.1.4 if the dispute cannot be resolved within a maximum of ten (10) business days after it has been so referred to Senior Management, or in any event if the dispute has not been resolved within a maximum of twenty (20)

business days after the dispute first arose the dispute may be referred, with the agreement of both parties, to mediation in accordance with the Centre for Effective Dispute Resolution's (**CEDR**) then current Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing after the expiry of the period above (**ADR Notice**) to the other party and to CEDR requesting a mediation. The mediation will start not later than 30 days after the date of the ADR Notice unless otherwise agreed by the parties.

15. DATA PROTECTION

- 15.1 Both parties shall (and in the case of the Participant shall procure each of its Named Affiliates shall) ensure that their employees and agents observe the requirements of the Data Protection Act 1998 and any amendments or revisions thereto and all subordinate legislation in the performance of their obligations under this Agreement and shall comply with any request made or direction given by the other which is directly due to the requirements of such Act.

16. NOTICES

- 16.1 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.
- 16.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:
- 16.2.1 at the time the same is left at the address of or handed to a duly authorised representative of the party to be served;
 - 16.2.2 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;
 - 16.2.3 in the case of a fax or email transmission at the time of transmission if the sender has proof of transmission.
- 16.3 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.

- 16.4 In addition to the other provisions of this clause 16, BATS may give general notices regarding the Services (meaning those that are not specific to the Participant) by posting such notices on the Website and sending them as a standard email to all BATS MTF participants. Any such notice shall be deemed to be given to and received by the Participant on the day not being a Saturday, Sunday or public holiday in England following the posting on the Website and electronic transmission of the notice.
- 16.5 It is the Participant's responsibility to ensure that BATS is at all times in possession of up-to-date contact details for the Participant, including the general email address(es) of the Participant and those of any relevant employee(s).

17. GENERAL

17.1 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.

17.2 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.

17.3 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.

17.4 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.

17.5 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.

17.6 Conflict of agreements

In the event of any conflict between the provisions of this Agreement, the BATS Rule Book and the BATS Participant Manual, the following order of precedence shall apply:

- (1) the BATS Rule Book;
- (2) this Agreement;
- (3) the BATS Participant Manual.

For the avoidance of doubt, BATS will not unilaterally amend the BATS Rule Book in order to materially amend the indemnities and limitations of liability in this Agreement.

17.7 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.

17.8 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:

- 17.8.1 restrict, limit or prevent BATS exercising any right or remedy that BATS may have against any Affiliate;
- 17.8.2 give any Affiliate any rights against BATS which it would not have otherwise had had it not been referred to in this Agreement.

17.9 Non disclosure and publicity

The parties to this Agreement shall not (and in the case of the Participant shall procure each of its Affiliates and in the case of BATS shall procure that each of its BATS Affiliates shall not), without the prior written consent (including email) of the other party, in each instance:

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

- 17.9.2 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
- 17.9.3 represent, directly or indirectly, that any product or any service provided by either party has been approved or endorsed by the other party.

17.10 Amendments

- 17.10.1 Any amendment to this Agreement shall be in writing and executed by or on behalf of the parties.
- 17.10.2 BATS agrees and undertakes that it will only amend the BATS Rule Book if such amendments are consistent with Prin 2.1 of the Principles Sourcebook of the FSA Handbook and to extent reasonably necessary to protect the interests of BATS and Participants or to comply with its obligations to the requirements of any Regulator.

17.11 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.

17.12 Interpretation

Unless the context requires otherwise, terms defined in the Rules shall have the same meaning in this Agreement.

17.13 Governing law

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

17.14 Jurisdiction

- 17.14.1 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**).
- 17.14.2 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.

- 17.14.3 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.
- 17.14.4 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.

PARTICIPANT:

BATS TRADING LIMITED:

Signature:

Signature:

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Schedule

NAMED AFFILIATES

This schedule is binding only if has been completed by the parties and the completed schedule has been initialled by an authorised signatory of each party