



**VENDOR 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 Vendor**).

**WHEREAS**

- (A) BATS is authorised and regulated by the Financial Services Authority (**FSA**) and operates a multilateral trading facility (the **BATS MTF**).
  
- (B) The Vendor wishes to access the BATS MTF for and on behalf of those of its customers (**Participants**) that have entered into an agreement with BATS (which has not been terminated) to access and use the BATS MTF (a **Participant Agreement**).
  
- (C) The Vendor also wishes to receive BATS MTF market data from BATS (**Market Data**) for onward transmission to its customers.

**IT IS AGREED THAT:**

**1. ACCESS TO THE BATS MTF**

1.1 In consideration of the mutual rights and obligations undertaken by the parties, BATS grants to the Vendor and each Affiliate (**Affiliate** means for the purposes of this Agreement any holding company, subsidiary or subsidiary of a holding company of the Vendor detailed in the schedule to this Agreement as agreed, completed and initialled by an authorised signatory of each party from time to time) the right to access the BATS MTF for and on behalf of Participants to (without limit) facilitate the entry of orders on the BATS MTF order books, receive status updates on orders, to amend orders, cancel orders, execute trades against orders of other participants 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 on behalf of Participants and for the provision such other services as BATS may provide to Participants from time to time through the BATS MTF (collectively, the **Services**).

- 1.2 BATS will use reasonable endeavours to provide the Services. However, BATS reserves the right to modify or change the Services at any time upon notice to the Vendor. In the event that such change is a material change to the scope or level of performance of the Services, BATS shall use reasonable efforts to notify the Vendor prior to such change taking effect. BATS shall be available (at the instigation of the Vendor on reasonable prior written notice) at least quarterly to discuss developments to the BATS MTF and the Services.
- 1.3 The Vendor and any Affiliate will provide BATS with any such information relating to the Vendor or any Affiliate and the use by the Vendor or any Affiliate and their customers of the BATS MTF as BATS reasonably requires in connection with the provision of the Services.
- 1.4 For the avoidance of doubt, nothing in this Agreement is intended to grant the Vendor or any Affiliate any right to access the BATS MTF where it is acting as a participant on its own behalf. If the Vendor or any Affiliate wishes to access the BATS MTF as a participant then it must also enter into a Participant Agreement.
- 1.5 The Services are provided to the Vendor and any Affiliate for the purposes set out in clauses 1.1 and 3 and to no other person (or to the Vendor and any Affiliate in any capacity other than as set out in clauses 1.1 and 3.2) and the Vendor agrees that it will take full responsibility for third party use of or access to the Services (including use or access by any Affiliate), except to the extent that liability already attaches to a Participant under the terms of a Participant Agreement.
- 1.6 The Vendor is solely responsible on behalf of itself and any Affiliate for providing and maintaining all necessary electronic communications with the BATS MTF, including, wiring, computer hardware, software, communication line access, and networking devices and for ensuring that its communications with the BATS MTF do not have a materially adverse impact on the integrity of the BATS MTF.

## **2. DATA**

- 2.1 To the extent that the Vendor and any Affiliate has any rights in the data transmitted by the Vendor and any Affiliate to the BATS MTF, the Vendor on behalf of itself and any Affiliate hereby irrevocably agrees that BATS may use such 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.
- 2.2 BATS may also include the Vendor's and any 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 associate or link the Vendor or any Affiliate or individual Participants with any order(s) or transactions(s).

### 3. RETRANSMISSION OF MARKET DATA

3.1 The Vendor on behalf of itself and any Affiliate expressly acknowledges and agrees that in relation to any Market Data received from BATS:

3.1.1 BATS has the exclusive rights in and to Market Data;

3.1.2 Market Data constitutes valuable information and proprietary rights of BATS; and

3.1.3 but for this Agreement, neither the Vendor nor any Affiliate would not have any rights with respect to, or rights to access or receive, any Market Data.

3.2 Subject to clauses 3.4, 3.5 and 3.6, BATS hereby grants to the Vendor and any Affiliate the non-exclusive and non-transferable right to possess or use the Market Data for its own legitimate internal business purposes (including without limit to redistribute or retransmit Market Data to Participants and other customers of the Vendor and any Affiliate) (**Retransmission**) if and only if:

3.2.1 such Retransmission is:

(a) without charge by the Vendor; or

(b) subject to a fee payable to the Vendor or any Affiliate for access to market data generally (including market data collected by the Vendor or any Affiliate from other sources) such that the fee is not payable, in whole, in part or specifically for access to Market Data; or

(c) subject to a fee payable to the Vendor or any Affiliate which is not payable in whole, in part or specifically for access to Market Data but provided that the Vendor or any Affiliate makes it clear that such fee is not attributable to BATS.

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

3.3 BATS retains the right to direct the Vendor and any Affiliate to terminate all or any Retransmission for any reason, in which event BATS shall give the Vendor (on behalf of itself and any Affiliate) written notice and the Vendor shall or shall procure that any Affiliate shall promptly cease all or any such Retransmission.

3.4 The Vendor agrees to procure that all internal use of Market Data by itself and any Affiliate and agrees to use all reasonable endeavours to ensure that all use by any other third party to whom the Vendor or any Affiliate has retransmitted Market Data:

3.4.1 clearly and prominently identifies the information as originating from BATS;

- 3.4.2 is protected to prevent unauthorised access; and
  - 3.4.3 is not altered by the Vendor and any Affiliate or user to make it materially incorrect or misleading in any way.
- 3.5 The Vendor shall remain entirely responsible for Retransmission by itself and any Affiliate and without prejudice to any other provisions of this Agreement, the Vendor acknowledges and agrees that BATS shall have no liability in relation to such Retransmission.
- 3.6 BATS provides the Services to the Vendor and any Affiliate and permits Retransmission subject to the terms of this Agreement (**Retransmission Rights**) with no charge or fee. BATS reserves the right to impose a charge or fee for all or any of the Services and the Retransmission Rights provided that it gives the Vendor at least 90 days prior written notice.

#### **4. INTERRUPTION OF SERVICES**

- 4.1 BATS will take all reasonable steps to provide and maintain the reliability of BATS MTF. However, the Vendor acknowledges on behalf of itself and any Affiliate that access to the Services 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' control.
- 4.2 Without prejudice to BATS' other rights and remedies hereunder, if BATS determines that the Vendor or any Affiliate acts in any way which materially impacts on the integrity of the BATS MTF, BATS shall have the right to suspend or restrict the access to the Services by the Vendor and/or any Affiliate for so long as BATS determines or to terminate the access to the Services by the Vendor and/or any Affiliate in order to protect the integrity of the BATS MTF.

#### **5. WARRANTIES**

- 5.1 THE SERVICES ARE 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 VENDOR AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.
- 5.2 The Vendor represents, undertakes and warrants on a continuing basis on behalf of itself and any Affiliates that each order or message transmitted by the Vendor or any

Affiliate to BATS will be sent on behalf of a bona fide Participant and will contain the correct identity of the relevant Participant and has not been manipulated, manually or otherwise, except with the prior express written consent of the Participant. The Vendor (on behalf of itself and any Affiliate) will take responsibility for each order or message received from a Participant from the moment that the Participant inputs it into the system of the Vendor or any Affiliate until the point at which it arrives at BATS.

- 5.3 BATS and the Vendor on behalf of itself and any Affiliate represents, undertakes and warrants on a continuing basis that it (and in the case of the Vendor including any Affiliates) will comply with all applicable laws, rules and regulations including without limitation the rules and guidance of the FSA (**FSA Rules**) and will cooperate fully with any inquiry regarding the interaction by the Vendor or any Affiliate with the BATS MTF by the FSA or any other applicable regulatory body or authority.

## 6. LIMITATION OF LIABILITY

- 6.1 Subject to clause 6.2, neither party shall be liable to the other party under or in connection with this Agreement in contract, tort, negligence, breach of statutory duty or otherwise for:

6.1.1 any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other party of an indirect or consequential nature; and

6.1.2 without limitation, any economic loss or loss of turnover, profits, business or goodwill, loss of trade, loss of bargain, loss of data or loss of opportunity whether of a direct or indirect or consequential nature;

in each case including where such loss, damage, costs or expenses of any nature was foreseen or advised to the other party as likely to occur.

- 6.2 Nothing in this Agreement excludes or restricts either party's liability in respect of:

6.2.1 any breach under the regulatory system (as defined in the FSA Rules);  
or

6.2.2 fraud, wilful misconduct; or

6.2.3 death or personal injury caused by its negligence; or

6.2.4 any other liability that cannot lawfully be excluded.

- 6.3 It is the Vendor'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 Services.

- 6.4 Each party acknowledges and agrees that the exclusion and restriction of liability set out in this clause 6 is reasonable.

## 7. CONFIDENTIALITY

7.1 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 and for the avoidance of doubt does not include any information which is already in the public domain (unless it is in the public domain due to a breach of this Agreement by 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.

7.2 Clause 7.1 does not prohibit disclosure of Confidential Information to:

7.2.1 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 themselves agreed to treat the Confidential Information confidentially;

7.2.2 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 competent jurisdiction); and

7.2.3 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.

## 8. INDEMNIFICATION

8.1 BATS agrees to indemnify and hold harmless the Vendor, its owners, subsidiaries, affiliates, officers, directors and employees from and against all and any direct claims, demands, proceedings, suits, actions and liabilities arising out of any third party claim that the Vendor's use (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 a **Vendor 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 Vendor: (i) notifying BATS promptly in writing of any Vendor Claim; and (ii) granting BATS exclusive control of the defence and/or settlement of any such Vendor Claim. The Vendor shall furnish BATS with information in the Vendor's possession or control for such defence and/or settlement as reasonably requested by BATS and the Vendor will not compromise or admit any such Vendor Claim and/or make any payments with respect to such Vendor Claim without the prior written consent of

BATS. The Vendor shall cooperate with, and provide such assistance to BATS in the defence of such Vendor Claim as reasonably requested by BATS and BATS shall pay the Vendor's reasonable costs and expenses relating to such cooperation and assistance.

- 8.2 The Vendor agrees to indemnify and hold harmless BATS, its owners, subsidiaries, affiliates, 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 Retransmission by the Vendor or any Affiliate of Market Data (each a **BATS Claim**) and all damages and reasonable expenses and costs (including any reasonable legal fees) relating thereto. The indemnity in this clause is conditional upon BATS: (i) notifying the Vendor promptly in writing of any BATS Claim; and (ii) granting the Vendor exclusive control of the defence and/or settlement of any such BATS Claim provided always that the Vendor shall not agree to the settlement of any BATS Claim unless or until it has sufficient financial resources to pay in full any amount to be paid in settlement. BATS shall furnish the Vendor with information in BATS' possession or control for such defence and/or settlement as reasonably requested by the Vendor and BATS will not compromise or admit any such BATS Claim and/or make any payments with respect to such BATS Claim without the prior written consent of the Vendor. BATS shall cooperate with, and provide such assistance to the Vendor in the defence of such BATS Claim as reasonably requested by the Vendor and the Vendor shall pay BATS' reasonable costs and expenses relating to such cooperation and assistance.

## **9. TERM AND TERMINATION**

- 9.1 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 this Agreement is terminated on not less than 30 days written notice given by one party to the other.
- 9.2 In the event that BATS is to cease trading, BATS will issue a general notice via the BATS website and by email to the Vendor and this Agreement will terminate at the time and on the date specified in such notice.
- 9.3 The provisions of clauses 2, 3, 5, 6, 7 and 8 shall survive the termination of this Agreement.

## **10. CONSEQUENCES OF TERMINATION**

- 10.1 Upon termination of this Agreement, all rights of the Vendor or any Affiliate to access the BATS MTF and the Services and to retransmit Market Data to Participants shall immediately cease.

## 11. DISPUTE RESOLUTION

11.1 Subject to clause 4.2, 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:

- 11.1.1 they agree to negotiate in good faith to resolve such a dispute;
- 11.1.2 such a dispute will first be referred to each party's management representatives (**Management**);
- 11.1.3 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 board of directors (or its equivalent if any) (**Senior Management**);
- 11.1.4 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.

## 12. DATA PROTECTION

Both parties 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.

## 13. AFFILIATES

13.1 Provided always that the Vendor shall remain entirely responsible to BATS for the acts and omissions of itself and its Affiliates in connection with this Agreement and subject to clause 15.7, any Affiliate (if any) of the Vendor is entitled to exercise the rights of the Vendor set out in this Agreement to use the Services or the Retransmission Rights on behalf of itself, or the Vendor subject to the terms of this Agreement. The Vendor shall procure that its Affiliates shall comply with the terms of this Agreement. Without prejudice to BATS' other rights and remedies under this Agreement, BATS reserves the right at its discretion to suspend, restrict or terminate all or any Affiliates' Retransmission Rights or rights to access to the Services.

Nothing in this Agreement prevents or restricts BATS' right to make a claim, demand, proceeding, suit or action against any Affiliate for a breach by any such Affiliate of the terms of this Agreement. Any notices served by BATS on the Vendor under this Agreement shall be deemed to have been served on all Affiliates.

## **14. NOTICES**

- 14.1 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.
- 14.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:
- 14.2.1 at the time the same is left at the address of or handed to a representative of the party to be served;
  - 14.2.2 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;
  - 14.2.3 in the case of a fax or email transmission, at the time of transmission if the sender has proof of transmission.
- 14.3 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.
- 14.4 In addition to the other provisions of this clause 13, BATS may give general notices regarding the Services (meaning those that are not specific to Vendor) by posting such notices on the BATS website and sending them as a standard email to all BATS MTF Vendors. Any such notice shall be deemed to be given to and received by the Vendor on the day following the posting and electronic transmission of the notice.
- 14.5 It is each party's responsibility to ensure that the other party is at all times in possession of its up-to-date contact details, including the general email address(es) and those of any relevant employee(s).

## **15. GENERAL**

### **15.1 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.

### **15.2 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.

### **15.3 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.

### **15.4 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.

### **15.5 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.

### **15.6 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.

## 15.7 **Third parties**

The parties to this Agreement expressly agree that a person (including for the avoidance of doubt any Affiliate) 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.

## 15.8 **Amendments**

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

## 15.9 **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 to the occurrence of such an event.

## 15.10 **Governing law**

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

## 15.11 **Jurisdiction**

15.11.1 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).

15.11.2 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.

15.11.3 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.

15.11.4 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.

**VENDOR**

**BATS TRADING LIMITED:**

Signature:

Signature:

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **Schedule**

### **Affiliates**

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