



BROKER-DEALER SUBSCRIBER AGREEMENT

Ballista Trading Software

This Subscriber Agreement (this *Agreement*) is entered into this ____ day of _____, 20__ (the *Effective Date*) by and between Ballista Securities, LLC, a New York limited liability company with an address of 120 Wall St. Suite 2401 New York, NY 10005, operating through its ATS Division (*Ballista/ATS*), and the subscriber (the *Subscriber*), a registered broker-dealer, named on Schedule A hereto.

WHEREAS, Ballista/ATS will make available to Subscriber its electronic automated trading system, Ballista(the Services) and software provided in connection therewith (the *Software*, together with the Services, the *System*) pursuant to which the Subscriber may enter orders for the purchase or sale of exchange-listed options or securities for routing to an exchange to which the System is connected (each, a *Permitted Purpose*); and

WHEREAS, Subscriber desires to obtain a license from Ballista/ATS to use the System subject to and upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ballista/ATS and Subscriber agree as follows:

1. LICENSE GRANT

1.1 Subject to the terms of this Agreement (including the terms set forth in Addendum A), Ballista/ATS hereby grants Subscriber, and Subscriber hereby accepts, a nonexclusive, nontransferable right and license to (a) access and use the System, as hosted or otherwise provided by Ballista, and (b) download, install and use the Software, strictly in accordance with and subject to the specifications, features, and functionality described in the user manuals which are distributed with the System (the *Documentation*) and which describe the operation and functionality of the System solely for its own internal business purposes (the *License*). The License is granted only to the extent necessary to employ the System for its Permitted Purpose. For the purposes of this Agreement, System shall include any Documentation and Software shall include any subsequent modifications, updates and enhancements thereto provided by Ballista/ATS to Subscriber at no additional charge.

1.2 In the event that Subscriber requests and Ballista/ATS agrees to provide additional services and/or software in connection with this Agreement, such services and/or software, including any additional terms and conditions relating thereto, shall be fully described and agreed to by the parties in a separate written amendment to this Agreement. For the purposes of this Agreement, Services shall include any such additional services set forth in a separate written amendment to this Agreement and Software shall include any such additional software set forth in a separate written amendment to this Agreement.

1.3 Except as set forth in Section 3, Subscriber
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shall not permit any person other than a person or persons designated by Subscriber in writing (an *Authorized Trader*) to use the System. To designate Authorized Traders, Subscriber must provide written notice to Ballista/ATS, such notice to include the name of the individual, his or her title or position and contact information. Ballista/ATS will approve or disapprove of the designation within a reasonable period of time, such approval not to be unreasonably withheld or delayed.

1.4 Subscriber will, and will ensure that its Authorized Traders will, in connection with their use of the System, abide by and comply with all applicable provisions of the federal and state commodities and securities laws and regulations and the applicable rules of any self-regulatory organization of which Subscriber (including its clearing agent or prime broker, if applicable) or its Authorized Traders are members.

1.5 Ballista/ATS shall have the right to request removal of any individual from Subscriber's Authorized Trader list, and Subscriber hereby agrees to remove such individuals promptly and suspend said individual's use of the System. Notwithstanding the foregoing, Ballista/ATS shall have the right, in its sole discretion, to take any necessary action to prevent the unauthorized use of the System by any individual.

1.6 Use of the System by Subscriber, and each of its Authorized Traders, requires a valid password (the *Subscriber Password*). Ballista/ATS will assign the Subscriber Passwords to Subscriber upon the Effective Date and to each Authorized Trader upon approval of such person. Unauthorized use of the System is a breach of this Agreement and is a violation of law. Subscriber assumes all responsibility for keeping the Subscriber

Passwords secret. Subscriber further assumes all responsibility and liability for any use of the Subscriber Passwords, except to the extent that liability is due to the negligence of Ballista/ATS. Subscriber shall notify Ballista/ATS immediately upon becoming aware of any abuse or a security breach of the Subscriber Passwords. Subscriber shall immediately notify Ballista/ATS of the removal of any person as an Authorized Trader.

2. LIMITATIONS OF LICENSE

2.1 Nothing contained herein and no use of the System by Subscriber or Subscriber's payment of any Fees (as defined below) shall create or vest in Subscriber any property right of any nature in the System; it being understood and agreed that all intellectual property rights associated with the System are expressly reserved by Ballista/ATS, including all such rights in any and all copies, modifications, enhancements, upgrades, translations and other derivative works that duplicate or are based on the System.

2.2 Subscriber agrees to treat the System as a valuable asset of Ballista/ATS and agrees that such items shall not be used for any purpose other than to assist in the normal use of the System as specified in this Agreement. In particular, but without limiting the generality of the foregoing, Subscriber agrees it will not copy, share, decompose, decompile, disassemble, or attempt in any way to reverse engineer the System or to use the System to develop functionally similar computer software or otherwise attempt to secure the source code for all or any part of the System. Subscriber shall not sell, rent, license, commercially exploit or otherwise use the System for the benefit of any third-party, other than as expressly authorized under this Agreement. Subscriber agrees that it will not permit a third party to do any of the activities described in this Section.

2.3 Subscriber may make copies of the Documentation for internal purposes only. Subscriber shall not remove any copyright, trademark or proprietary rights notice included in or on any Documentation, and shall reproduce all such notices in or on all copies made by Subscriber.

2.4 Subscriber shall adopt measures to ensure that its Authorized Traders will make no disclosures concerning the System or the information contained therein to other persons or legal entities except to the extent that such disclosure may be required for internal corporate, accounting or legal review or as required by law.

3. DIRECT ACCESS

3.1 Upon the Subscriber's execution of Addendum A, the Subscriber may allow other persons and entities not affiliated with the Subscriber (each, a *Sponsored Customer*) to access the System and use the Services under the terms and conditions set forth herein and in Addendum A. In addition, Subscriber agrees not to grant access to the System to any Sponsored Customer until a separate Schedule to the Addendum A with respect to such Sponsored Customer has been fully executed.

4. HARDWARE/EQUIPMENT

4.1 Subscriber shall obtain and adequately maintain all hardware, software or other equipment necessary to use the System (*Subscriber Equipment*). Subscriber shall be solely responsible for the installation, operation, maintenance, use and compatibility of the Subscriber Equipment and Ballista/ATS shall have no responsibility or liability in connection therewith. The Subscriber Equipment shall not interfere with or cause technical problems in relation to the System and shall comply with and meet the specifications, performance standards and requirements provided by Ballista/ATS to Subscriber, as may be revised from time to time by Ballista/ATS. Ballista/ATS makes no representation or warranty regarding the compatibility of any Subscriber Equipment proposed to be used or used in connection with the System.

4.2 Subscriber shall be liable to Ballista/ATS for any and all loss or damage arising, directly or indirectly, in connection with the use by Subscriber of any Subscriber Equipment or which is caused, directly or indirectly, by Subscriber or Subscriber Equipment to the System or to Ballista/ATS or any Ballista/ATS equipment.

4.3 Each party shall be responsible for maintaining, at its own expense, an appropriate Internet network connection reasonably necessary, in accordance with generally accepted standards applicable to the data processing and telecommunications industries, to support the System.

5. TECHNICAL SUPPORT AND MAINTENANCE

5.1 Ballista/ATS will provide the following Subscriber support and System maintenance services:

(a) Telephone technical support during the hours of 7:30 a.m., to 5:30 p.m., EST, Monday through Friday, excluding New York and federal trading holidays.

(b) Installations of modifications, updates, enhancements and releases to the System which Ballista/ATS makes available at no additional cost to its other subscribers; provided, however, that any such update, replacement, revision, enhancement, addition, conversion,

adaptation and modification to the System and the use thereof shall be subject to the terms and conditions of this Agreement.

5.2 Ballista/ATS may periodically conduct routine scheduled maintenance on its systems that interact with the System, during which time Subscriber may be unable to transmit or receive data and Subscriber may be unable to use the System in order to implement any transactions. Ballista/ATS shall endeavor to provide Subscriber with reasonable notice prior to conducting such routine maintenance.

6. SUBSCRIBER RESPONSIBILITIES

Subscriber acknowledges and agrees that:

(a) Subscriber will designate, within ten (10) days after the Effective Date, one Subscriber representative (and one identified alternate) (*Subscriber Representatives*) who will be authorized to request and receive Services on behalf of Subscriber and is authorized to make decisions, approve plans and grant requests on behalf of Subscriber. Subscriber may not change a Subscriber Representative without the prior written consent of Ballista/ATS, such consent not to be unreasonably withheld.

(b) Subscriber will provide Ballista/ATS with such access to Subscriber Equipment as may reasonably be required by Ballista/ATS in order for it to perform its duties hereunder. Subscriber will cooperate fully with Ballista/ATS' reasonable requests for information, personnel and time necessary for Ballista/ATS to fulfill its responsibilities hereunder.

(c) Subscriber will provide Ballista/ATS with all information and assistance reasonably required by Ballista/ATS to detect, simulate and correct the failure of the System to operate substantially in accordance with the then current Documentation.

(d) Subscriber is solely responsible for the accuracy and adequacy of any and all data that is input for processing in the System under the terms of this Agreement and for incorporating any suitable verification procedures into its normal procedures. If any data entered into the System is incorrect, incomplete or not in compatible form, Subscriber agrees to rectify the deficiency or terminate this Agreement in accordance with the provisions herein..

(e) Ballista/ATS is not a party to transactions on the System. Subscriber agrees that Ballista/ATS has no responsibility to clear or settle any trade executed by Subscriber through the System.

Ballista/ATS shall have no responsibility or liability whatsoever for any failure of Subscriber or of any of Subscriber's counterparties to complete a transaction or generally in connection with any transaction made by Subscriber through the System, except to the extent that such errors are caused directly by the gross negligence or willful misconduct of Ballista/ATS.

(f) That transactions that are entered through the System may be routed to third party systems, markets or exchanges (each, a *Third Party System*). Subscriber agrees that Ballista/ATS is not responsible for any losses, damages or costs that may result from errors made by any Third Party System in reading, processing or executing such orders, or if any Third Party System otherwise fails to properly execute such orders, except to the extent that such errors are caused directly by the gross negligence or willful misconduct of Ballista/ATS.

(g) All transactions executed through the System shall be confirmed by Subscriber's clearing broker in hard copy format pursuant to Rule 10b-10 under the Securities Exchange Act of 1934, as amended and, in addition, by Ballista/ATS by the transmission through the System of a courtesy electronic trade confirmation message to Subscriber no later than the end of the business day following the day of execution of the transaction. Such confirmations, and any statements of account, shall be deemed accurate, conclusive and binding if Subscriber does not object in writing to such clearing broker within two (2) business days or within thirty (30) business days, respectively, after delivery to Subscriber of said confirmation or statement of account.

(h) The price at which a transaction is executed shall be binding upon the parties notwithstanding an erroneous transaction report relating thereto. A transaction report shall not be binding in the event that an order or transaction has not, in fact, been executed. A transaction in fact executed shall be binding despite any transaction report indicating, erroneously, that a transaction has not been executed.

(i) Ballista/ATS may in its sole discretion terminate or limit transactions in Subscriber's account, decline to accept orders for Subscriber's account and/or require Subscriber to reduce the size or number of transactions in its account; provided that, such actions shall not affect trades previously executed.

7. TRADING RESPONSIBILITIES/SETTLEMENT OBLIGATIONS

7.1 **Sales of Securities** Subscriber agrees to comply with all applicable short sales rules. If Subscriber fails to deliver the security in good deliverable form by the settlement date, Subscriber agrees to indemnify Ballista for

any costs, losses or expenses it may incur or sustain as a result of any claims related to Subscriber's (or Subscriber's prime broker's) failure to settle such transaction.

7.2 Options. With respect to any options related transaction (including a buy or sell order), Subscriber hereby agrees to notify Ballista/ATS whether such option transaction is being used to open a position or close a position.

7.3 Settlement Obligations. In the event that Subscriber (including its clearing agent) indicates its intention to disaffirm any trade (or otherwise indicates its intention not to settle) or fails to settle any transaction, Subscriber acknowledges and agrees that Subscriber shall remain responsible for, and liable for, settling any such transaction (including, without limitation, any amounts incurred by Ballista/ATS pursuant to Section 10.1 hereof).

8. COMMISSIONS/FEES

8.1 Commissions. Subscriber acknowledges that Ballista will charge a per transaction fee for each transaction as set forth on Schedule A (*Commissions*).

8.2 Additional Fees/Commissions. In addition to such Commissions, Subscriber shall be responsible for any and all fees and taxes, if any, which may be imposed by any regulatory authorities and all brokerage commissions, including clearing and settlement charges and exchange-related fees due for each securities related transaction (*Additional Fees*). A list of the types of Additional Fees that Subscriber would be responsible for under this Section 8.2 shall be set forth on Schedule A. For purposes of this Agreement, any reference to *Fees* shall be deemed to include Additional Fees and Commissions unless otherwise explicitly stated.

8.3 Late Payment. Subscriber will pay all balances due within thirty (30) days of the due date, as will be designated on the invoice that Subscriber will receive from Ballista/ATS. Any amount not paid within such period shall bear interest at the lesser of (a) the rate of one and one-half percent (1 1/2%) per month; or (b) the highest rate permitted by applicable law, (the Late Fee). The Late Fee will be charged for each month or partial month in which the Subscriber has any outstanding balance. In the event that Ballista/ATS employs counsel or a collection agency to collect any debit balance that Subscriber owes, Subscriber agrees to pay the costs of collection, including but not limited to attorneys' fees, court costs, and expenses incurred by Ballista/ATS in connection with its efforts to collect monies owed to it.

9. WARRANTIES

9.1 Each of Subscriber and Ballista/ATS represent A/73196558.4

and warrant that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was formed or incorporated; (b) it has full power and authority to enter into and perform its obligations hereunder; and (c) this Agreement has been duly authorized, executed and delivered on its behalf by persons empowered to do so.

9.2 Subscriber represents and warrants each time that an order is entered into the System that:

(a) it is a registered broker-dealer under section 15 of the Securities Exchange Act of 1934 (the Exchange Act) and it is in compliance with all applicable statutes, ordinances, orders, judgments, decrees and rules and regulations promulgated by any federal, state, municipal or other governmental authority which apply to it, including without limitation, the Securities Act of 1933, the Exchange Act, Investment Advisers Act of 1940, and all regulations promulgated there under and the rules and regulations promulgated by the New York Stock Exchange (*NYSE*) and/or the Financial Industry Regulatory Authority (*FINRA*);

(b) it agrees to transmit orders, communication and transactions and to utilize the System solely in accordance with the procedures set out in the Documentation, as each may be amended from time to time, and solely in conformity with applicable law and regulation including, without limitation, the rules and regulations of the NYSE and the American Stock Exchange (AMEX), CBOE, ISE, FINRA and the federal securities laws and rules;

(c) it shall make its own independent trading and order routing decisions;

(d) all orders shall conform to the size, monetary and other transactional limitations and restrictions set by Ballista/ATS, by Subscriber's clearing agent or carrying firm or by the NYSE, AMEX or other exchange, as appropriate;

(e) the performance of its duties under this Agreement will not violate any other agreement restriction;

(f) its use of the System will comply with all applicable laws, rules and regulations and with the policies and practices of securities and futures exchanges and clearing houses, alternative trading facilities, and self-regulatory organizations, and the policies and procedures applicable to the System and this Agreement and any other agreement between Subscriber and Ballista/ATS, as may be amended from time to time, including rules regarding short sales under U.S. securities laws (e.g., Securities and Exchange Commission Rule 10a-1);

(g) it will provide Ballista/ATS with all terms and conditions relevant to any transaction executed through the System in accordance with applicable law;

(h) if it uses the System to effect transactions in securities that it or its affiliates issued or, if it is a broker-dealer, investment manager or investment adviser and is acting on behalf of a customer, in securities which the customer or the customer's affiliate issued, such transactions will comply with applicable laws and regulations regarding transactions in securities by issuers and affiliates;

(i) no transaction executed through the System will be on behalf of a plan subject to the Employee Retirement Income Security Act of 1974 or any similar statute; and

(j) if it is executing this Agreement on behalf of a customer whose account is managed by Subscriber, it has full authority to (1) execute this Agreement and any transactions through the System on behalf of each customer, (2) bind such customer to arbitration, and (3) to disclose such financial information of customer as Ballista/ATS deems necessary.

Subscriber further represents and warrants that it shall promptly notify Ballista/ATS in the event that any of the foregoing shall cease to be true at any time during the Term. Subscriber will make and keep all books and records with respect to their respective functions and responsibilities as required by the rules of the U.S. Securities and Exchange Commission (*SEC*) and the self-regulatory organizations of which they have membership.

9.3 Ballista/ATS represents and warrants that it is: (a) registered as a broker-dealer pursuant to section 15 of the Exchange Act; (b) a member in good standing of FINRA; (f) is licensed to do business in each state in which such registration is required; (g) has all requisite authority to enter into, and perform the Services contemplated by, this Agreement, whether arising under federal or state law or regulation or the applicable rules of any self-regulatory organization. Ballista/ATS further represents and warrants that it shall promptly notify Subscriber in the event that any of the foregoing shall cease to be true at any time during the Term. Ballista/ATS represents and warrants that: (i) during the Term, the System shall substantially conform to and perform substantially in accordance with the Documentation; and (ii) it is the owner of the System or that it has the right to grant Subscriber the right to use the System hereunder. Ballista/ATS makes no representation or warranty that the System, any part of the System, updates to or operation of the System will be uninterrupted or error-free.

10. DISCLAIMER AND LIMITATION OF LIABILITY

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10.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BALLISTA SECURITIES, LLC, ITS AFFILIATES, AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND/OR LICENSORS (COLLECTIVELY *BALLISTA PARTIES*) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES CONCERNING THE SYSTEM AND BALLISTA/ATS' PERFORMANCE HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SYSTEM IS BEING PROVIDED ON AN "AS IS" BASIS AT EACH SUBSCRIBER'S SOLE RISK. NONE OF THE BALLISTA PARTIES MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY WILL HAVE ANY LIABILITY TO ANY SUBSCRIBER FOR, THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE SYSTEM FOR DELAYS, MALFUNCTIONS, OMISSIONS OR INTERRUPTIONS THEREIN OR THE CREDITWORTHINESS OF ANY OTHER SUBSCRIBER. BALLISTA/ATS WILL HAVE NO DUTY OR OBLIGATION TO VERIFY ANY INFORMATION DISPLAYED ON OR THROUGH THE SYSTEM OR OTHERWISE. NOTHING IN THIS AGREEMENT CONSTITUTES OR SHOULD BE CONSTRUED TO BE A WAIVER OF ANY OF BALLISTA/ATS'S RIGHTS AND/OR OBLIGATIONS WITH RESPECT TO THE SERVICES HEREUNDER, INCLUDING BUT NOT LIMITED TO THOSE RIGHTS AND OBLIGATIONS UNDER THE EXCHANGE ACT, THE RULES OF THE SEC THEREUNDER, AND APPLICABLE STATE SECURITIES LAW. SOME STATES DO NOT ALLOW AN EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO SUBSCRIBER.

10.2 THE BALLISTA PARTIES' LIABILITY TO SUBSCRIBER FOR ANY LOSSES OR DAMAGES IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE LIMITED TO THOSE ACTUAL AND DIRECT DAMAGES WHICH ARE REASONABLY INCURRED BY SUBSCRIBER AND SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER DURING THE PRECEDING TWELVE (12) MONTHS. NONE OF THE BALLISTA PARTIES WILL BE LIABLE FOR ANY LOSSES, DAMAGES, COSTS, EXPENSES OR CLAIMS, INCLUDING WITHOUT LIMITATION SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY PARTY, ANY LOSS OF PROFITS, LOSS OF BUSINESS, INTERRUPTION OF BUSINESS OR THIRD PARTIES DAMAGES ARISING FROM OR IN CONNECTION WITH THE SYSTEM OR THIS

AGREEMENT INCLUDING BUT NOT LIMITED TO ANY FAILURE OR MALFUNCTION OF THE SYSTEM; ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE SYSTEM; OR (C) ANY ACTION TAKEN OR OMITTED TO BE TAKEN IN RESPECT TO THE BUSINESS OF BALLISTA/ATS, EXCEPT, IN EACH CASE, AND WITH RESPECT TO BALLISTA/ATS, TO THE EXTENT THAT SUCH LOSSES ARE ATTRIBUTABLE TO THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR CRIMINAL ACTS OF BALLISTA/ATS.

11. INDEMNIFICATION

11.1 Subscriber agrees to defend, indemnify and hold the Ballista Parties harmless from any and all liabilities, judgments, suits, proceedings, claims, damages, costs and expenses, including legal costs of regulatory inquiries and defenses and reasonable attorneys' fees, related to or arising from: (a) any breach of this Agreement by Subscriber or Subscriber's Authorized Trader; (b) the use or misuse of the System by Subscriber or its Authorized Traders; (c) acts or omissions of Subscriber, Subscriber's employees or agents in connection with the installation, maintenance, presence, use or removal of Subscriber Equipment not provided by Ballista/ATS in connection with the System; or (d) claims arising from or relating to the failure of Subscriber, for any reason, to clear or settle any transaction effected on the System.

11.2 Subject to the limits set forth in Section 10.2, Ballista/ATS agrees to defend, indemnify and hold Subscriber, its directors, officers, employees, agents, subcontractors and licensors harmless from any and all liabilities, judgments, suits, proceedings, claims, damages, costs and expenses, including reasonable legal costs of regulatory inquiries and defenses and reasonable attorneys' fees, directly related to or arising from third party claims related to: (a) any breach of this Agreement by Ballista or Ballista's directors, officers, employees, agents, subcontractors and licensors; or (b) infringement or breach of any intellectual property right by Ballista in connection with the System or the Services.

12. CONFIDENTIAL INFORMATION

12.1 Confidential Information shall mean all non-public information that is disclosed to either party (the *Receiving Party*) or its representatives by the other party (the *Delivering Party*) that is clearly identified as proprietary or confidential, or which given its nature and the circumstances surrounding its disclosure should reasonably be construed to be confidential. Confidential
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Information shall include (but is not limited to) the System, information concerning business methods, business plans, portfolio holdings, customer and vendor information, methodologies, internal policies and procedures, pricing terms, and test results (including the results of any evaluation of the System or of a pre-production release thereof) code, inventions, analyses, and any business, technical, and financial information.

12.2 Confidential Information of each party will be used by the other party solely in connection its obligations and rights granted hereunder. All Confidential Information will be received and held in strict confidence by the Receiving Party. Each party acknowledges that it will not obtain any rights of any sort in or to the Confidential Information of the other party as a result of such disclosure and that any such rights must be the subject of separate written agreement(s).

12.3 Each party will restrict disclosure of the other party's Confidential Information to those of its employees to whom it is necessary to disclose such Confidential Information in connection with the purposes permitted under this Agreement. The Receiving Party shall use the highest commercially reasonable degree of care to limit access to the Confidential Information of the Delivering Party, including ensuring that its employees and contractors with access to such Confidential Information have agreed in writing not to disclose the Confidential Information except as permitted herein. Each of the parties shall bear the responsibility for any breach of confidentiality by its respective employees and third party contractors.

12.4 Confidential Information shall not include the following: (a) any information that the Receiving Party can show by documentary evidence was in its possession prior to the disclosure to it hereunder; or (b) any information that comes into the possession of the Receiving Party, its agents or employees from another party who is under no obligation to the Delivering Party to maintain confidentiality of such information; or (c) any information that becomes generally known other than through the fault of the Receiving Party, or its employees or agents; or (d) any particular portion of the Confidential Information which was developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information of the Delivering Party. The burden of proving these exceptions to the provisions of this Agreement resides with the Receiving Party. It is understood that in the event a portion or aspect of Confidential Information becomes generally known, only that portion or aspect shall not be governed by this Agreement and that all other aspects of such Confidential Information shall remain subject to the provisions of this Agreement.

12.5 In the event the Receiving Party receives a subpoena,

or other validly-issued administrative or judicial process, requesting that Confidential Information of the Delivering Party be disclosed, it will promptly notify the Delivering Party of such receipt. The Receiving Party receiving such request will thereafter be entitled to comply with such subpoena or other process, only to the extent required by law.

12.6 Either Delivering Party may at any time notify the Receiving Party that such Receiving Party must return to the Delivering Party the Delivering Party's Confidential Information. Each party hereby agrees to, within ten (10) business days of such notification: (a) return all documents and tangible items it or its employees or agents have received or created pursuant to this Agreement pertaining, referring or relating to the other party's Confidential Information; and (b) return or certify (in a writing attested to by a duly authorized officer of such party) destruction of all copies, summaries, modifications or adaptations that such party or its employees or agents have made from the materials provided by the Delivering Party.

13. TERM; TERMINATION

13.1 This Agreement shall be effective upon the Effective Date and shall continue in effect for one (1) year from the Effective Date (the *Initial Period*). Thereafter, this Agreement shall automatically renew for successive ninety (90) day periods (each a *Renewal Period*), upon the same terms and conditions, unless and until terminated pursuant to the provisions set forth below. For purposes of this Agreement, *Term* shall mean the Initial Period and each Renewal Period.

13.2 Either party may terminate this Agreement upon written notice to the other party.

13.3 In the event a law or regulatory action prohibits, substantially impairs or makes impractical the provision of the System under this Agreement, as determined by Ballista/ATS, Ballista/ATS may, at its option and without liability, terminate this Agreement or modify the System or the terms and conditions of this Agreement in order to conform to such action (a *Regulatory Modification*). To the extent practical, in Ballista/ATS's sole estimation, Ballista/ATS will provide Subscriber with thirty (30) days prior written notice of any such Regulatory Modification. Use by Subscriber of the System after implementation of any Regulatory Modification shall constitute acceptance of such change(s).

13.4 Upon the termination of this Agreement, (a) the License granted hereunder will be terminated; (b) Subscriber will pay to Ballista/ATS all Fees due through the termination date; and (c) Subscriber shall promptly destroy the Software in its possession and/or under its control and upon request shall provide Ballista/ATS A/73196558.4

with certification under oath that all such copies have been destroyed and that all use of the System has ceased. The termination of this Agreement shall not relieve Subscriber of its obligation to pay all Fees accrued and owing up to and including the date of termination or otherwise payable pursuant to Sections 7 and 8 above, nor shall it preclude Ballista/ATS from pursuing any other remedies available to it, at law or in equity. Sections 8, 10, 11, 12 and 15 will survive the termination of this Agreement.

14. APPLICABLE LAW AND REGULATION

All orders entered into the System and all transactions executed for Subscriber's account shall be subject to the laws, rules, and regulations of the SEC, FINRA, applicable laws, rules and regulations of any federal, state or self-regulatory organization, and the constitution, rules, regulations and customs of the exchanges, markets and clearing agencies where transactions are executed, cleared or settled.

15. GENERAL

15.1 Entire Agreement; Amendment. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes any and all prior oral and written agreements, understandings and quotations relating thereto. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties.

15.2 Governing Law. This Agreement will be governed by and construed and enforced in accordance with the substantive law of the State of New York, without regard to conflict of laws principles. Any and all claims arising hereunder shall be subject to arbitration in accordance with Section 15.15 herein. The System and all transactions executed thereby shall be subject to the laws, rules and regulations of the SEC.

15.3 Headings. The headings in this Agreement are for convenience only and do not affect the meaning of this Agreement.

15.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced only to the extent that it is not in violation of such law or is not otherwise unenforceable and all other provisions of this Agreement will remain in full force and effect.

15.5 Remedies Cumulative; Waiver. The enumeration herein of specific remedies shall not be exclusive of any other remedies. Any delay or failure by any party to this Agreement to exercise any right, power, remedy

or privilege herein contained, or now or hereafter existing under any applicable statute or law, shall not be construed to be a waiver of such right, power, remedy or privilege or to limit the exercise of such right, power, remedy or privilege. No single, partial or other exercise of any such right, power, remedy or privilege shall preclude the further exercise thereof or the exercise of any other right, power remedy or privilege.

15.6 Force Majeure. Neither party shall be liable for delay or failure in performance hereunder due to causes beyond its control, including acts of God, fires, strikes, acts of war or intervention by any governmental authority, and each party shall take steps to minimize any such delay.

15.7 Notices. All notices, requests, demands and other communications hereunder will be in writing and will be deemed to have been duly given if personally delivered, sent by overnight courier with package tracing capability, or, if mailed, when mailed by United States first-class, certified or registered mail, postage prepaid, to the other party at its address set forth herein (or at such other address as may be given in writing by either party to the other); if to Ballista/ATS, to the attention of Ballista Securities, LLC's Chief Executive Officer; and if to Subscriber, Subscriber's President (or equivalent thereto).

15.8 Electronic Documents. Subscriber consents to the delivery of confirmations, any other required or optional communication or agreement under any applicable law or regulation and any agreements or changes in the terms and conditions on the System, by e-mail, Web site or other electronic means, subject to compliance with any applicable laws, rules or regulations. Any such documents that are delivered to Subscriber electronically are deemed to be "in writing." If Subscriber's signature or acknowledgment is required or requested with respect to any such document and any Authorized Trader "clicks" in the appropriate space, or takes such other action as may be indicated on the System, Subscriber will be deemed to have signed or acknowledged the document to the same extent and with the same effect as if Subscriber had signed the document manually. Subscriber acknowledges its understanding that Subscriber has the right to withdraw its consent to the electronic delivery and signature of documents at any time by providing prior written notice. However, if Subscriber revokes its consent, Subscriber's access to the System may be restricted or terminated.

15.9 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided that Subscriber may not assign this Agreement or any rights or obligations hereunder without A/73196558.4

the prior written consent of Ballista/ATS, which consent shall not be unreasonably withheld. Any such assignment shall only be effective if such successor shall expressly assume Subscriber's obligations under this Agreement and shall agree to be subject to all of the terms and conditions of this Agreement. Any assignment in contravention of this Section will be void.

15.10 Audit. Ballista/ATS shall have the right, upon reasonable prior written notice, to verify Subscriber's compliance with this Agreement. Subscriber shall make its facilities, equipment and all applicable books and records available for such inspection during normal business hours at Subscriber's principal place of business. Any such audit shall be at the expense of Ballista/ATS, unless such audit discloses an underpayment by the Subscriber for the audited period in excess of five percent (5%), in which case Subscriber shall reimburse Ballista/ATS for such expenses. If the audit discloses any underpayment by Subscriber, Subscriber shall promptly make payment to Ballista/ATS of such underpayment, together with interest.

15.11 Independent Contractors. Ballista/ATS will perform all services under this Agreement as an independent contractor and not as an agent, employee, partner, or joint venturer of or with Subscriber.

15.12 Third Party Beneficiaries. No person or entity not a party hereto will be deemed to be a third party beneficiary of this Agreement or any provision hereof.

15.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by both parties.

15.14 Use of trademarks. Neither party shall use any trademark or trade name of the other party, including any trademarks used by the other party in connection with the System, or any derivative thereof, without the prior written consent of the other party. Under no circumstances may a party use any trademark or trade name of the other party, including any trademarks used by the other party in connection with the System, or any derivative thereof, in any fraudulent or misleading manner, including without limitation in connection with the promotion or sale of any futures contract, option thereon or security.

15.15 Arbitration Agreement. The following arbitration agreement should be read in conjunction with these disclosures:

- (a) ARBITRATION IS FINAL AND BINDING ON THE PARTIES;**
- (b) THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL;**
- (c) PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDING;**
- (d) THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDING OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED; AND**
- (e) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.**

THIS AGREEMENT ANY AND ALL CONTROVERSIES, DISPUTES OR CLAIMS BETWEEN THE UNDERSIGNED AND YOU OR YOUR AGENTS, REPRESENTATIVES, EMPLOYEES, DIRECTORS, OFFICERS OR CONTROL PERSONS, ARISING OUT OF, IN CONNECTION WITH, FROM OR WITH RESPECT TO (a) ANY PROVISIONS OF OR THE VALIDITY OF THIS AGREEMENT OR ANY RELATED AGREEMENTS, (b) THE RELATIONSHIP OF THE PARTIES HERETO, OR (c) ANY CONTROVERSY ARISING OUT OF YOUR BUSINESS OR THE UNDERSIGNED'S ACCOUNTS SHALL BE SETTLED BY ARBITRATION CONDUCTED PURSUANT TO THE CODE OF ARBITRATION PROCEDURE OF FINRA DISPUTE RESOLUTION, INC. ARBITRATION MUST BE COMMENCED BY SERVICE OF A WRITTEN DEMAND FOR ARBITRATION OR A WRITTEN NOTICE OF INTENTION TO ARBITRATE. IF YOU ARE A PARTY TO SUCH ARBITRATION, TO THE EXTENT PERMITTED BY THE RULES OF THE APPLICABLE ARBITRATION TRIBUNAL, THE ARBITRATION SHALL BE CONDUCTED IN NEW YORK, NEW YORK. THE DECISION AND AWARD OF THE ARBITRATORS(S) SHALL BE CONCLUSIVE AND BINDING UPON ALL PARTIES, AND ANY JUDGMENT UPON ANY AWARD RENDERED MAY BE ENTERED IN A COURT HAVING JURISDICTION THEREOF, AND NEITHER PARTY SHALL OPPOSE SUCH ENTRY.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is de-certified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

[Signature page follows.]



December 2009 Version

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement as of the Effective Date.

BALLISTA SECURITIES, LLC

By: _____

Mark Monahan, CEO, Ballista Securities, LLC

SUBSCRIBER

By: _____

Name: _____

Title _____