

Archipelago™ Agreement
Archipelago Trading Services, Inc.
OTCBB Agreement

This AGREEMENT (the “Agreement”) is executed and entered into this ____ day of _____, 20__ (“Effective Date”) by and among Archipelago Securities, L.L.C. (“Archipelago”), an Illinois limited liability company, with its principal office located at 100 S. Wacker Drive, Suite 1720, Chicago, Illinois 60606, Archipelago Trading Services, Inc. (“ATS”), a Florida corporation with offices at 220 E. Central Parkway, 3rd Floor, Altamonte Springs, FL 32701 and _____, a _____ corporation/limited liability company, with its principal offices located at _____ (“Broker-Dealer”).

- 1. Definitions.** For purposes of this Agreement, “ATS” refers to a registered broker-dealer that operates and provides trading access to its over-the-counter bulletin board technology platform (“OTCBB Platform”) registered under Regulation ATS of the Securities Exchange Act of 1934. “ArcaEx” refers to the electronic securities communications and trading facility operated by Archipelago Exchange L.L.C., and “PCXE” refers to PCX Equities, Inc. a wholly owned subsidiary of the Pacific Exchange, Inc. (“PCXE”).
- 2. Parties.** Archipelago and ATS are wholly-owned subsidiaries of Archipelago Holdings, L.L.C., an affiliated entity of ArcaEx. Broker-Dealer is a registered broker-dealer subject to all rules and regulations of the NASD and the SEC.
- 3. Agreement to Provide Service; Compliance with Applicable Requirements; Broker-Dealer Warranty.** Until such time as this Agreement is either terminated or canceled in accordance with its terms, Archipelago and ATS agrees to provide to Broker-Dealer, on the terms and conditions set forth herein, the services, software, and equipment (collectively referred to as the “System”), as described and defined in this Agreement or in the Applicable Requirements, as defined below, which Broker-Dealer requests and for which Broker-Dealer is eligible under Applicable Requirements. “Applicable Requirements” shall mean (a) the rules and regulations, interpretations, decisions, opinions, orders, and other requirements of the SEC; (b) the rules and regulations of the NASD and its affiliates; (c) the NASD’s and its affiliates’ decisions, interpretations, notices to members, operation procedures, specifications and requirements; (d) the certificate of incorporation bylaws, rules and procedures of the PCXE (“PCXE Rules”); (e) the constitution, by-laws, rules, regulations, policies and customs of all national securities exchanges to which orders may be routed or on which orders may be executed hereunder, the constitution, by-laws, rules, regulations, policies and customs of the clearing agencies through which transactions hereunder are cleared and settled and the rules, regulations and policies of the Board of Governors of the Federal Reserve System, all other applicable laws, statutes, rules, regulations, orders, decisions, interpretations, opinions, and other requirements, whether promulgated by the United States or any other applicable jurisdiction (including those that relate to intellectual property and the use and protection thereof); and (e) the successors, as they may exist at the time, of the components of Applicable Requirements. Broker-Dealer represents and warrants that during the term of this Agreement it will only use the System in compliance with this Agreement and with Applicable Requirements.

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4. **Term of Agreement.** The initial term of this Agreement shall commence on the Effective Date and shall continue until the last day of that month which is one month after the month in which the Effective Date falls. **THEREAFTER, THE TERM OF THIS AGREEMENT WILL BE AUTOMATICALLY EXTENDED FOR ONE MONTH TERMS FROM MONTH TO MONTH, UNLESS TERMINATED BY EITHER PARTY PURSUANT TO SECTIONS 22, 23, OR 24 HEREIN.**

5. **Provision of the System and Related Technology.**

5.1 Archipelago shall provide Broker-Dealer with the ability, through the System, to review, submit and execute orders on ArcaEx, other exchanges and market centers. ATS shall provide Broker-Dealer with the ability, through the System, to review, submit and execute orders on the OTCBB Platform. Such ArcaEx orders will be matched with other orders or forwarded to other electronic communications networks (“ECNs”), to market makers in Nasdaq securities or to other automated exchange interfaces. Such OTCBB Platform orders will be matched with other orders, forwarded to market makers in OTCBB securities or to other automated exchange interfaces. Such other orders will be matched with orders and/or executed on other exchanges and market centers.

5.2 Broker-Dealer may access ArcaEx in the following manner either: (i) via the Internet using its own Internet Service Provider; (ii) through a third party private network; or (iii) via a dedicated line. Broker-Dealer may access the OTCBB Platform through a third party private network or via a dedicated line. Upon mutual agreement of the parties, Archipelago agrees to install or cause to be installed certain equipment and related circuits to access ArcaEx and the OTCBB Platform for the benefit of Broker-Dealer with execution of **Schedule A** to this Agreement. Unless otherwise agreed by the parties, Broker-Dealer shall be solely responsible for all costs and other expenses related to establishing and maintaining such connections. Broker-Dealer acknowledges and agrees that all such installations are being done solely at Broker-Dealer’s election and request, and that Broker-Dealer shall be liable for all use and/or misuse of the equipment and related circuits.

5.3 Upon mutual agreement of the parties, Archipelago may install at Broker-Dealer’s offices Archipelago software required to utilize ArcaEx, the OTCBB Platform or other exchange and execution venues, subject to all of the terms and conditions of this Agreement. Broker-Dealer acknowledges it will reasonably maintain all such software on its premises in good working order free of physical harm.

6. **Best Execution.** Broker-Dealer understands, acknowledges and agrees that ArcaEx and the OTCBB Platform are passive order-routing systems and accept only orders directed to ArcaEx or other specified market centers. Broker-Dealer further understands, acknowledges and agrees that Archipelago and ATS will not make any independent best execution determination, as that term is customarily applied and as those duties are customarily recognized under the Securities Exchange Act of 1934, as amended (“Exchange Act”) and the Investment Advisers Act of 1940, as amended and/or any other federal and state law, rule or regulation that govern such duty. Pursuant to Rule 11Ac1-5 promulgated under the Exchange Act, Archipelago and ATS expects that ArcaEx will make available statistical information regarding the quality of executions received on ArcaEx. Broker-Dealer understands, acknowledges and agrees that it is not relying upon

Archipelago to review this data in complying with Broker-Dealer's duty of best execution with respect to orders placed on Archipelago and ATS or routed to ArcaEx.

- 7. Compliance with Archipelago's Requirements.** Broker-Dealer may allow certain entities that are customers of Broker-Dealer (each, an "Authorized Party" and collectively "Authorized Parties") to utilize the System through Broker-Dealer's terminals, software applications, and/or user identification number in accordance with the terms hereof. Notwithstanding the foregoing, Archipelago and ATS shall retain the right to revoke this section 7 at any time and in Archipelago's and ATS's sole discretion. Broker-Dealer hereby agrees to be bound by the provisions of this Agreement, including but not limited to section 11 hereunder, with respect to orders placed in and transactions effected through the System by Authorized Parties as if said activity was that of Broker-Dealer.
- 8. Change in the System and Related Technology.** Broker-Dealer acknowledges and agrees that nothing in this Agreement constitutes an undertaking by Archipelago and ATS to provide the System in the present form or under the current specifications, requirements, with the current software interfaces, or to continue to use existing communications facilities. Archipelago and ATS, respectively, in their sole and absolute discretion, or at the discretion of a third party service provider, including, but not limited to, Nasdaq, regulatory bodies, or Archipelago's and ATS's software or communications providers, may from time to time make additions to, deletions from, or modifications to, the System and to the communications facilities that Archipelago and ATS may utilize. Archipelago and ATS shall make reasonable efforts to notify Broker-Dealer of material changes to the System or to such communications facilities at least thirty (30) days prior to any such change, unless a malfunction or a force majeure event necessitates modifications on an accelerated basis or an emergency precludes such advance notice or a shorter time period is required pursuant to an order of a court, arbitrator or a regulatory agency. Receipt or use of the System and/or Routing Services after any change shall constitute Broker-Dealer's acceptance of the System and/or Routing Services as changed.
- 9. Payment for the System.** Broker-Dealer will pay Archipelago and ATS for use of the System, the ArcaEx and the OTCBB Platform, and the Routing Services the charges set forth in **Schedule B** attached hereto and incorporated herein, as applicable. Broker-Dealer will commence payments pursuant to the terms set forth in this Agreement and **Schedule B**. Payment shall be due within ten (10) business days from the invoice date. Such charges may be changed by Archipelago and ATS effective at any time after the initial one month term of this Agreement, upon thirty (30) days prior written notice to the Broker-Dealer. Broker-Dealer may arrange for third party billing, however, Broker-Dealer shall be fully responsible for all payments due under this Agreement regardless of designation of a third party payor. Broker-Dealer agrees to pay all third party charges, such as sales taxes, which are Broker-Dealer's legal responsibility to pay.
- 10. Broker-Dealer to Monitor Personnel.** Broker-Dealer acknowledges its responsibility to monitor its employees or agents (collectively "Personnel") to ensure that, in connection with its use of the System, the ArcaEx and the OTCBB Platform, all Personnel abide by and fully comply with all applicable provisions of the Applicable Requirements and with all other federal and state laws, including the rules and regulations of any self-regulatory

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organizations of which Broker-Dealer or its Personnel are members, and Broker-Dealer shall be solely responsible for such supervision and for any violation thereof by Personnel. Broker-Dealer also acknowledges and agrees that all instructions issued by it or by any of the Personnel pursuant to this Agreement, including instructions or orders entered through the System, may be relied upon by Archipelago and ATS as being duly authorized, valid and binding, without any duty or obligation of Archipelago or ATS to investigate the accuracy or correctness of the instructions, or the authenticity or authority thereby exercised.

11. Settlement Obligations. Broker-Dealer agrees that it is Broker-Dealer's absolute, unconditional and unassignable obligation, in connection with: (i) each trade executed through any terminal linked to the System used by Broker-Dealer or an Authorized Party or any user identification number allocated or assigned to Broker-Dealer, and (ii) any orders placed with Archipelago's and ATS's help desk by Broker-Dealer's Personnel or an Authorized Party's employees, to make and ensure timely delivery of the subject securities and/or other distributions as well as any required remittance of interest, dividend payments and/or other distributions. Broker-Dealer shall honor this settlement obligation whether or not: (a) such executed trade was made as a principal, or for a third party account as a broker, agent, trustee or other representative; (b) any such third party account honors its obligations to deliver in a timely manner securities and/or funds, or to remit in a timely manner interest, dividends, or other distributions to Broker-Dealer; (c) said trade was executed by an employee or an Authorized Party or was authorized by Broker-Dealer; and (d) Broker-Dealer wishes to challenge or raise defenses of any nature whatsoever to such transaction. Without limiting the foregoing obligation, in the event that Broker-Dealer does not receive timely delivery of securities and/or funds from a third party account, or in the event that Broker-Dealer becomes aware that a third party for whom Broker-Dealer is acting becomes unwilling or unable to settle any transaction, Broker-Dealer shall provide Archipelago and ATS immediate notice thereof, including without limitation, the name and address of the third party. In addition, it is expressly understood and agreed that each other party on the contra side of the transaction shall be and hereby is deemed to be a third party beneficiary of Broker-Dealer's obligations as described herein. If Broker-Dealer breaches its obligations herein, or otherwise challenges any executed trade effected through the System, Archipelago and ATS, as applicable, may, in its sole discretion, promptly disclose to the party on the contra side of the transaction, the name of Broker-Dealer, as well as such supporting documentation pertaining to the transaction as is available to Archipelago and ATS. Archipelago and ATS, as applicable, in their sole discretion, may also inform other customers of such default or challenge, and of the identity of the third party involved in the default. Neither Archipelago nor ATS shall have liability to Broker-Dealer in connection with such notification.

12. Buy-Ins, Cancellations and Liquidations of Orders. Archipelago and ATS, as applicable, are authorized in the event that Broker-Dealer becomes insolvent or is the subject of a proceeding commenced under the U.S. Bankruptcy Code, or whenever either Archipelago or ATS, in their respective sole discretion (which discretion shall not be exercised unreasonably), deems it necessary for its protection, without notice to Broker-Dealer, to limit Broker-Dealer's activity or cancel or liquidate any or all outstanding transactions entered, routed or submitted through the System by Broker-Dealer or the

Personnel. Broker-Dealer acknowledges that in the event any good delivery is refused, Archipelago and ATS may be compelled to cancel or liquidate the transactions and Broker-Dealer will be liable to either Archipelago or ATS and any of its affiliates for any loss, expense or cost associated therewith, and agrees to promptly reimburse Archipelago and ATS and any of its affiliates for any such loss, expense or costs resulting from such buy-ins, cancellations or liquidations of orders.

- 13. Short Sale Transactions.** Broker-Dealer represents that, in giving or transmitting an order to sell any security through the System, Broker-Dealer or its customer owns the security and agrees to deliver it to Archipelago or ATS, as applicable, or its settlement agent by the applicable settlement date. Where Broker-Dealer or its customer does not own the security, Broker-Dealer represents and warrants that for each transaction that would constitute a short sale (a) Broker-Dealer has located the security for purposes of borrowing the security in order to meet Broker-Dealer's settlement obligation; (b) the location of the security is one of Broker-Dealer's prime brokers or settlement agent or other acceptable location; and (c) the security is in good deliverable form. Unless a transaction is exempt from short sale restrictions, Broker-Dealer agrees that neither it nor any other party acting on its behalf will effect a short sale or enter an order that if executed would constitute a short sale without entering into the System the designated electronic indicator that such sale is or would be a short sale and a locate has been performed. If Broker-Dealer is not a member of the NASD, Broker-Dealer and all parties acting on its behalf shall provide all appropriate assistance to Archipelago and/or ATS in order for Archipelago and ATS, as applicable, to comply with all applicable rules and regulations to locate securities to be delivered to settle and clear any such short sale. Broker-Dealer agrees that Archipelago and ATS may, but are not required under this Agreement, take action to prevent the execution and/or clearance and settlement of any order or transaction that would violate either Rule 10a-1 under the Securities Exchange Act of 1934, as amended, or the NASD's short sale rule or otherwise involve a violation of Applicable Requirements.
- 14. Finality and Transmittal of Reports, Statements and Notices.** Confirmations of orders and statements of Broker-Dealer's account(s) will be conclusive if Broker-Dealer does not object thereto in writing within five (5) and ten (10) business days, respectively, after transmittal to Broker-Dealer by mail or otherwise. Notice or other communications, including confirmations and account statements, delivered, mailed or transmitted to Broker-Dealer at the address, telephone number or e-mail address (in the case of electronic notice) specified by Broker-Dealer will, until Archipelago and ATS, as applicable, has received notice in writing of a different address, telephone number or e-mail address, be deemed to have been personally delivered to and received by Broker-Dealer, and Broker-Dealer agrees to waive all claims resulting from any failure to receive such communications.
- 15. Integrity of Service.** Broker-Dealer agrees not to format, display, or alter the information or data received through and from the System in violation of Applicable Requirements or Archipelago's and ATS's specifications and requirements. Broker-Dealer represents that it will not interfere with or adversely affect any Archipelago and ATS provided equipment or software, or any of the component parts or processes of the System.

16. Grant of License. During the term of this Agreement, Broker-Dealer is granted a personal, non-exclusive, non-transferable license to access and use the System to the extent necessary for the purposes for which it was designed, specifically, to receive Archipelago's and ATS's electronic limit order book and to communicate the orders of the Broker-Dealer for execution by Archipelago and ATS, as applicable, through the ArcaEx and the OTCBB Platform.

16.1 Broker-Dealer may not sell, lease, furnish, or otherwise permit or provide access to the System to any other entity or to any individual that is not Broker-Dealer's Personnel or Authorized Party. Broker-Dealer shall not furnish or otherwise permit or provide access to the System from any place other than its primary place of business or other Archipelago and ATS authorized locations. Broker-Dealer shall comply with all reasonable security specifications or requirements of Archipelago's and ATS's in order to prevent the System from being improperly used or accessed or the information and data from being improperly taken from any of Broker-Dealer's places of business.

16.2 Broker-Dealer may not convey, retransmit, republish or rebroadcast any information that it receives or obtains through the System without the prior written consent of Archipelago and ATS.

16.3 As consideration for receiving authorization to use the System and to enable Archipelago and ATS to regulate the system, Broker-Dealer does hereby deliver, transfer, and convey to Archipelago and ATS all right, title, and interest, including without limitation, all rights of copyright, in the information and data entered into the System. The delivery of such information and data into the System shall be conclusively deemed to affect the transfer of all such right, title, and interest to such information and data to Archipelago and ATS without further action by Broker-Dealer or Archipelago and ATS. Broker-Dealer shall not, by act or omission, diminish or impair in any manner the acquisition, maintenance, and full enjoyment by Archipelago and ATS, its licensees, transferees and assignees, of the proprietary rights of Archipelago and ATS in the information and data in the System. Notwithstanding the foregoing, nothing herein shall affect the Broker-Dealer's intellectual property rights in the information and data inputted by Broker-Dealer outside of the System.

17. Indemnity. Broker-Dealer shall indemnify and hold harmless Archipelago and ATS, its employees, associated persons, directors, and agents, its subsidiaries and affiliates and any related persons or entities, third party vendors, such as software, hardware, data, and communications providers, and each other Broker-Dealer on the contra side of any transaction effected through the System, from and against any and all, direct, consequential, and/or incidental in nature, liabilities, obligations, damages, deficiencies, losses, claims, and expenses, including reasonable attorneys' fees and other expenses, incurred in the investigation and defense of claims and actions resulting from or arising out of:

17.1 any misrepresentation, breach of representation or warranty or non-fulfillment of any covenant or agreement on the part of Broker-Dealer or Personnel under the terms of this Agreement; and

17.2 the infringement (or alleged infringement) in whole or in part by Broker-Dealer or Personnel, of any intellectual property right or other property or proprietary rights of Archipelago and ATS and/or any third party.

This section 17 shall survive termination of this Agreement for any reason.

- 18. Proprietary Information.** Broker-Dealer acknowledges that the System, including the software and protocols, provided by Archipelago and ATS are trade secrets proprietary and unique to Archipelago and ATS, and that copyright and patent rights of Archipelago and ATS may also exist. Broker-Dealer acknowledges and agrees that Archipelago's and ATS's third party vendors, including, but not limited to software, hardware, data, and communications providers, have exclusive proprietary rights in their respective information and data. Broker-Dealer, on behalf of itself and Personnel, agrees to keep such information confidential, and to utilize this information solely for its own business activities. Broker-Dealer further agrees to take or cause to be taken all reasonably necessary precautions to maintain the secrecy and confidentiality of such proprietary information, and shall neither disclose the same to any customers of the Broker-Dealer nor to any other person or entity.

This section 18 shall survive termination of this Agreement for any reason.

- 19. Confidentiality.** Broker-Dealer shall keep confidential the information related to the System, both oral and written, that is given to Broker-Dealer by Archipelago and ATS. Archipelago and ATS shall not disclose the identity of a customer to other customers or to third parties, in connection with any transactions executed or any messages sent or received by Broker-Dealer through Archipelago and ATS, and the OTCBB Platform, except that Archipelago and ATS may make such disclosure:
- 19.1.** to facilitate the settlement of transactions involving securities executed between two customers in accordance with the terms specified in section 12 of this Agreement;
 - 19.2.** pursuant to authorization by the Broker-Dealer in writing;
 - 19.3.** in the context of a published list of Archipelago and ATS customers; or
 - 19.4.** pursuant to an order or subpoena of a court or regulatory body having jurisdiction over Archipelago and ATS or ArcaEx where required by law or regulation to be made available to any regulatory body having appropriate authority.

Upon termination of this Agreement, Broker-Dealer shall destroy or return to Archipelago and ATS, as applicable, the confidential information in any tangible form whatsoever and all copies thereof.

This section 19 shall survive termination of this Agreement for any reason.

- 20. Archipelago and ATS Warranties.** Archipelago and ATS shall endeavor to offer the System in good faith and diligently perform the terms of the Agreement.

21. Liability of Archipelago and ATS.

21.1. Broker-Dealer, Archipelago and ATS agree that Archipelago and ATS, its employees, directors, and agents, its subsidiaries and affiliates, any related or affiliated persons and entities, and third party vendors, such as software, hardware, data, and communications providers, shall not be liable for any loss of profits (anticipated or

otherwise), loss of use, trading losses, loss of other costs or savings, loss by reason of shutdown in operation or for increased expenses of operation, or any other damages suffered, or cost and expenses incurred by Broker-Dealer, by any customer or account of Broker-Dealer's, or any third party, of any nature, or from any cause whatsoever, whether direct, special, incidental, or consequential, arising out of the furnishing, performance, maintenance, or use of, or inability to use, the System, Routing Services, equipment, communications lines, software, databases, manuals and any other services and materials furnished by or on behalf of Archipelago and ATS, notwithstanding that Archipelago and ATS have been advised of the possibility that damages may or will arise. Broker-Dealer, its officers, employees, and agents are not employees, agents, brokers, or partners acting for or on behalf of Archipelago or ATS.

21.2. THE SYSTEM, ROUTING SERVICES, EQUIPMENT, COMMUNICATIONS LINES, SOFTWARE, DATABASES, MANUALS, AND OTHER MATERIALS OR SERVICES FURNISHED BY OR ON BEHALF OF ARCHIPELAGO AND ATS ARE PROVIDED "AS IS", WITHOUT WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, BY ARCHIPELAGO AND ATS, ITS SUBSIDIARIES AND AFFILIATES, AND ANY RELATED OR AFFILIATED PERSONS OR ENTITIES. The entire risk as to the quality and performance of the System, Routing Services, equipment, communication lines, software, databases, manuals, and other materials or services furnished by or on behalf of Archipelago and ATS is with Broker-Dealer. Archipelago and ATS makes no representation or warranty that the System, Routing Services, equipment, communication lines, software, databases, manuals and other materials or services furnished by or on behalf of Archipelago and ATS will meet Broker-Dealer's requirements, be error free, or operate without interruption or failure, and Archipelago and ATS expressly disclaims all warranties of any kind, express, implied or statutory (including without limitation, use, timeliness, truthfulness, sequence, completeness, accuracy, freedom from interruption, and any implied warranties arising from trade usage, course of dealing, or course of performance).

21.3. Broker-Dealer accepts full liability for any loss of profits, trading losses, loss of use, loss of other costs or savings, or damage suffered or costs incurred by Broker-Dealer, account of Broker-Dealer's, or any third party, of any nature or from any cause whatsoever, whether direct, special, incidental, or consequential, arising out of the furnishing, performance, maintenance, or use of, or inability to use, the System, Routing Services, equipment, communications lines, software, databases, manuals and any other materials or services furnished by or on behalf of Archipelago and ATS, notwithstanding that Archipelago and ATS have been advised of the possibility that damages of that sort may or will arise. Broker-Dealer accepts full liability for any investment decisions or stock transactions made by Broker-Dealer on behalf of Broker-Dealer or account of Broker-Dealer's using the System, Routing Services, equipment, communications lines, software, databases, manuals, and other materials or services furnished by or on behalf of Archipelago and ATS, notwithstanding that Archipelago and ATS has been advised of the possibility that damages may or will arise.

21.4. Broker-Dealer, Archipelago and ATS understand and agree that the pricing for use of the System and Routing Services reasonably reflects the allocation of risk and limitation of liability set forth in this section.

21.5. If the foregoing disclaimers and waiver of liability shall be deemed invalid or ineffective, Archipelago, ATS, their subsidiaries and affiliates, and any related or affiliated persons or entities shall not be liable in any and all events beyond the amount of five hundred dollars (\$500.00).

This section 21 shall survive termination of this Agreement for any reason.

22. Termination by Either Party Without Cause. Archipelago and ATS or Broker-Dealer may terminate this Agreement in its sole discretion only upon thirty (30) days prior written notice to the other party. In no event shall termination by either party relieve the other party of obligations already incurred.

23. Termination by Archipelago and ATS “for Cause”. Archipelago and ATS may terminate this Agreement at any time, without any liability of Archipelago and ATS as a consequence thereof, where:

23.1. Broker-Dealer has made or furnished any false or misleading representations or certifications in connection with this Agreement;

23.2. Broker-Dealer has breached any material obligation that must be performed pursuant to this Agreement;

23.3. Broker-Dealer has violated or Archipelago and ATS reasonably believes Broker-Dealer is about to violate any applicable law or regulation in connection with its use of the ArcaEx and ATS OTCBB Platform, as applicable;

23.4. Upon thirty (30) days written notice, Broker-Dealer has failed to pay debts within two (2) months of the date due or has consistently failed to pay debts on a timely basis (six (6) late payments will be considered consistent); or

23.5. Archipelago and ATS is notified by Broker-Dealer, the SEC or the NASD or any other regulatory body that Broker-Dealer is no longer a member in good standing. Broker-Dealer shall notify Archipelago and ATS in writing immediately of any request from any regulatory body, whether in dispute or otherwise, to cease any or all securities business or of any current investigations conducted by any regulatory body or agency into Broker-Dealer’s securities business.

In no event shall termination by Archipelago or ATS relieve Broker-Dealer of obligations already incurred.

24. Termination by Broker-Dealer “for Cause”. Broker-Dealer may terminate this Agreement at any time, without any liability of Broker-Dealer as a consequence thereof, where:

24.1. any statute, rule, regulation, or order by any governmental authority will impose materially adverse obligations upon Broker-Dealer because of its use of the ArcaEx and ATS OTCBB Platform, as applicable;

24.2. Upon thirty (30) days prior written notice;

24.2.1. where Archipelago and/or ATS has unilaterally changed the charges to be paid by Broker-Dealer pursuant to section 10 hereof; or

24.2.2. where Archipelago and/or ATS has breached any material obligation which must be performed pursuant to this Agreement, unless such breach is corrected within a reasonable period.

In no event shall termination by Broker-Dealer relieve Broker-Dealer of obligations already incurred.

25. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if and when delivered by hand or mailed, certified or registered mail return receipt requested with postage prepaid, to the address of Broker-Dealer or Archipelago and ATS set forth below, or to such other person or address as Broker-Dealer or Archipelago and ATS shall furnish in writing:

If to Archipelago:

Archipelago Securities, L.L.C.

President
100 S. Wacker Drive
Suite 2000
Chicago, IL 60606

Telephone: 312-960-1696

Fax: 312-960-1369

If to ATS:

Archipelago Trading Services, Inc.

President
100 S. Wacker Drive
Suite 2000
Chicago, IL 60606

Telephone: 312-960-1696

Fax: 312-960-1369

If to Broker-Dealer:

Company Name: _____

Contact Name: _____

Title: _____

Street: _____

City, State,

Zip: _____

Telephone: _____

Fax: _____

26. Force Majeure. Notwithstanding any other term or condition of the Agreement, neither Archipelago and ATS and their third party providers, including, but not limited to, software, hardware, communications and data providers, nor Broker-Dealer, shall be obligated to perform or observe their obligations undertaken in the Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstances found to be beyond their control and without the gross negligence or willful misconduct on the part of either party. Such causes may include, without limitation, acts of God, acts of government in its sovereign or contractual capacity, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or

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software malfunctions. The time for performance of any act delayed by such events may be postponed for a period of time equal to the delay.

27. Predispute Arbitration.

27.1. ARBITRATION IS FINAL AND BINDING ON THE PARTIES.

27.2. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.

27.3. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.

27.4. THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.

27.5. THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.

27.6. 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 decertified; or (iii) the Broker-Dealer 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. All claims, disputes, controversies, and other matters in question between the parties to this Agreement and the parties' employees, and other agents, arising out of, or relating to this Agreement, or to the breach hereof, shall be settled by final binding arbitration. The arbitration proceeding shall be held in the City of Chicago, State of Illinois, unless otherwise agreed by the parties. In no event shall such claim, dispute, controversy, or other matter in question be made later than one (1) year after the claim, dispute, controversy or other matter in question has arisen (unless the claim, dispute, controversy or other matter in question is related to the collection of past due payments).

28. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

29. Amendment. Except as otherwise provided herein, no provision of this Agreement and any schedules or attachments which are a part hereof, may be amended, modified or waived unless by an instrument in writing executed on behalf of each of the parties by their respective duly authorized officers.

30. Entire Agreement. This Agreement and attached **Schedules A** and **B**, as amended from time to time by Archipelago and ATS and signed by both parties, shall constitute the entire agreement between Archipelago, ATS and Broker-Dealer, and shall supersede all prior agreements, arrangements, representations or promises, whether oral or written.

- 31. **Assignment.** This Agreement may not be assigned or transferred by Broker-Dealer to any other person or entity without the prior written consent of Archipelago and ATS. Archipelago and ATS may assign this Agreement without the prior consent of Broker-Dealer.
- 32. **Governing Law.** The laws of the State of Illinois shall govern this Agreement.
- 33. **Severability.** If any provision of this Agreement shall be held invalid, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this Agreement on the Effective Date.

THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE IN SECTION 27 HEREIN.

BROKER-DEALER

ARCHIPELAGO SECURITIES, L.L.C.

By: _____

By: _____

Print Name

Print Name

Title

Title

ATS, INC.

By: _____

Print Name

Title