

## TRADING AGREEMENT

This Customer Trading Agreement (the "Agreement") is executed and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ (insert legal entity type) organized under the laws of \_\_\_\_\_ with principal offices located at \_\_\_\_\_ ("Customer") and Lek Securities Corporation, a corporation organized under the laws of the State of Delaware with principal offices located at One Liberty Plaza, 52nd Floor, New York, NY 10006 ("LSC") (each, a "Party," and together, the "Parties.").

The Parties recognize \_\_\_\_\_ to be the "Introducing Broker" for the purpose of this agreement. *(Strike out if not applicable)*

This Agreement shall govern and control Customer's transmission of Orders (as defined below) to LSC or to a Market Center using the ROX System, any component of ROX, any Application Programming Interface (API), any electronic interface using the Financial Information Exchange (FIX) protocol, telephone, electronic mail, Instant Messaging, or any other means of communication.

Customer acknowledges that ROX is the property of ROX Systems Inc., a corporation organized under the laws of the State of Illinois ("RSI") and that RSI is the copyright holder of ROX and that "ROX" and "ROX Systems" are registered trademarks of RSI. LSC represents to Customer that it has obtained the requisite authority from RSI to license ROX to Customer under the terms of this Agreement.

In consideration of the foregoing and the mutual covenants and obligations set forth herein, the Parties hereby agree as follows:

### **1. Definitions**

The following definitions shall apply to this Agreement:

- 1.1. "Applicable Rules" means all applicable laws, rules and regulations, policies and practices of the Securities and Exchange Commission, the Commodity Futures Trading Commission, securities and futures exchanges, clearing houses, alternative trading facilities, and self-regulatory organizations, including any governmental, or quasi governmental body, exchange, regulatory authority with jurisdiction over Customer or LSC, and in the country where an Order is sent for execution. In the event of conflict between the terms of this Agreement and the Applicable Rules, the Applicable Rules shall take precedence (as to the specific point of conflict only) and both Parties may take any action as may be reasonably necessary to comply with Applicable Rules without liability under this Agreement, whether or not such action would otherwise constitute default hereunder.
- 1.2. "Credit Limit" means, for accounts carried on LSC's books, the fixed dollar amount that Customer may not exceed when computing the aggregate market value of all long and short positions, including unfilled Orders (as defined below) in accounts owned by Customer or persons or entities under Customer's control. Unless otherwise specified, the Credit Limit will be set to the Day Trading Buying Power as defined by NYSE Rule 431. For accounts not carried on LSC's books, Credit Limit means the fixed dollar amount that Customer may not exceed when computing the aggregate market value of all long and short positions, including unfilled Orders (as defined below) and buys and sells which have not settled in accounts owned by Customer or persons or entities under Customer's control.
- 1.3. "Market Center" means any Exchange, Electronic Communication Network ("ECN"), Alternative Trading System, or Market Maker, whether located in the United States or

outside the United States. For the purpose of this Agreement, the term Market Center includes LSC.

- 1.4. "Order" means any offer to buy or sell, attempt to cancel an offer to buy or sell, modification of an offer to buy or sell, or other communication concerning an offer to buy or sell, any security, commodity, or other financial instrument transmitted to a Market Center using any one or combination of the following: ROX or any component of ROX, any Application Programming Interface (API), any electronic interface using the Financial Information Exchange (FIX) protocol, telephone, electronic mail, Instant Messaging, or other means of communication.
- 1.5. "Party", "LSC" and "Customer," includes each such party's officers, directors, employees, agents, partners, and affiliates (each a "Related Party"). References to "LSC" therefore also include LSC's affiliate RSI.
- 1.6. "Report" means any communication received from a Market Center using any one or combination of the following: ROX or any component of ROX, any Application Programming Interface (API), any electronic interface using the Financial Information Exchange (FIX) protocol, telephone, electronic mail, Instant Messaging, any third party method of transmitting confirmations of purchases and sales (such as the ID system<sup>®</sup> by Omgeo), or any other means of communication, including postings, notices, or announcements on LSC's website.
- 1.7. "Risk Parameters" (also known as LSC's "House Requirements") means the maximum amount of Customer's theoretical exposure to losses as computed by LSC using mathematical models, the results of which are published periodically on LSC's website at <https://vip3.leksecurities.com/CustomerAccountReports/HouseMargin.aspx>.
- 1.8. "ROX" means the collection of computer programs and the communications network developed or operated by LSC for the purpose of distributing market data and allowing the input of Orders for the routing of the same to a Market Center.
- 1.9. "Secure ID" means the unique identifier or other private codes, password or authentication mechanisms designed to restrict access to ROX to Customer and Customer's authorized personnel.
- 1.10. "Customer" means the entity or person specified in the first paragraph above, any entity or person who transmits an Order to a Market Center with actual or constructive knowledge of these terms and conditions, and any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association, or other entity or person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the same.

## **2. Limited License**

LSC grants Customer, for the term hereof, and conditioned upon Customer's continued honoring of its representations and warranties herein, a personal, limited, non-exclusive, revocable, non-transferable and non-sublicenseable license to use ROX subject to the terms hereof including, without limitation, the license to route Orders to Market Centers using ROX.

## **3. Term and Termination.**

- 3.1. This Agreement is effective as of the date first written above and will continue in effect until terminated by either Party at any time, with or without cause, upon 30 days prior written notice to the other Party or such shorter notice as may be reasonable under the circumstances. Breach by Customer of any of its warranties is grounds for immediate termination without notice.

- 3.2. LSC has the right to suspend or terminate (at any time, with or without cause or prior notice) all or any part of ROX, or Customer access to ROX, to change the nature, composition or availability of ROX, or to change the limits on the trading that Customer may conduct through ROX. LSC shall use commercially reasonable efforts to notify Customer if it believes that any of the foregoing events are likely to materially impact Customer, but such efforts are not a condition precedent to LSC's exercise of its rights hereunder.

#### **4. Placement of Orders; Settlement Obligations.**

- 4.1. LSC has no obligation to accept all or any part of an Order. LSC has no responsibility to Customer or any third-parties for transmissions that are inaccurate or not received by LSC, and may execute any Order on the terms actually received by LSC. If practicable, LSC shall use commercially reasonable efforts to carry out any instruction received by LSC to cancel, modify or replace an Order.
- 4.2. If there is a conflict between any Report and the actual purchase or sale that LSC actually receives from the Market Center, the terms of the actual purchase or sale that LSC actually receives from the Market Center will prevail. Execution terms as reflected in a Report are subject to adjustment for errors or omissions, including but not limited to, errors or omissions on the part of a Market Center.
- 4.3. Customer shall promptly review all Reports and notify LSC immediately of any errors or omissions. Failure to notify LSC of any such error or omissions before the opening of the Market Center on the next business day shall be deemed binding agreement by Customer to the correctness of any such Report.
- 4.4. Each Party acknowledges and agrees that it is each Party's absolute, unconditional and unassignable obligation, in connection with each purchase or sale, to make and ensure timely delivery of, respectively, the funds and securities or commodities, in good deliverable form, free and clear of any lien, claim, interest or restriction of any sort, as well as any required remittance of interest, dividend payments or other distributions.

#### **5. Representations and Warranties.**

In addition to any representations, warranties and covenants made elsewhere in this Agreement by Customer, Customer represents and warrants the following:

- 5.1. Customer represents and warrants that it will at all times maintain adequate and sufficient procedures and controls over use of its systems, personnel, and access to ROX, to ensure that Customer will at all times comply with this Agreement and all Applicable Rules.
- 5.2. Customer agrees to pay LSC all commissions and other charges due within 30 days of invoice or as agreed upon between Customer and LSC. (The current charges as agreed upon between the parties are set forth in an exhibit attached hereto marked as "Schedule A"). Customer also agrees to pay all invoices for market data or other services provided and invoiced by Market Centers. Failure to object to any such invoice within 30 days is a waiver of any objection. Failure to timely pay invoices is grounds for termination of this Agreement without prior notice. Invoices not paid within 30 days shall accrue interest at the rate of 1-1/2 percent per month.
- 5.3. Customer will not enter or permit any Orders that could violate any Applicable Rule. Customer will ensure that it will not send or permit to be sent any Order that, if executed, would exceed Customer's predetermined Credit Limit, House Requirements, or Risk Parameters.
- 5.4. Customer shall review all records of Orders and Reports promptly to ensure that they were in accordance with Customer's instructions.

- 5.5. Customer's Secure ID will not be altered, disabled, or circumvented. If the Secure ID has been lost, stolen or compromised, Customer will notify LSC to request immediate cancellation of the Secure ID, and Customer will remain liable for any orders entered through the Secure ID.
- 5.6. Customer shall not permit any unauthorized person to access ROX and shall not permit its Customers to access ROX directly without the express written consent from LSC.
- 5.7. Customer represents and warrants that it shall notify LSC immediately upon learning of any violation or potential violation of any of these or any other obligation in this Agreement.
- 5.8. Customer agrees that its representations, warranties and covenants in this Agreement shall be deemed repeated and reaffirmed upon each access or use of ROX.

## **6. Limitation of Warranties.**

- 6.1. ROX IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, TITLE, OR THE CORRECTNESS, QUALITY, ACCURACY, SECURITY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, PRICING OR CONTINUED AVAILABILITY OF ROX OR ANY PART OF ROX. THERE IS NO GUARANTY THAT SUCH SERVICES PROVIDED BY LSC WILL MEET USER REQUIREMENTS, BE ERROR-FREE, OR OPERATE WITHOUT INTERRUPTION. EXCEPT AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT, LSC SHALL HAVE NO DUTY OR OBLIGATION TO MAINTAIN ROX, OR ANY PART OF ROX, OR TO SUPPLY ANY CORRECTIONS, UPDATES OR RELEASES CONCERNING ROX, OR TO VERIFY, CORRECT, COMPLETE OR UPDATE ANY INFORMATION DISPLAYED ON ROX.

## **7. Limitation of Liability.**

- 7.1. LSC AND INTRODUCING BROKER SHALL HAVE NO LIABILITY, CONTINGENT OR OTHERWISE, TO CUSTOMER OR TO THIRD PARTIES, CONCERNING THE CORRECTNESS, QUALITY, ACCURACY, SECURITY, COMPLETENESS, RELIABILITY, PERFORMANCE, TIMELINESS, PRICING OR CONTINUED AVAILABILITY OF ROX, OR ANY PORTION THEREOF, DELAYS OR OMISSIONS OF ROX, THE FAILURE OF ANY CONNECTION OR COMMUNICATION SERVICE TO PROVIDE OR MAINTAIN CUSTOMER ACCESS TO ROX, ANY INTERRUPTION IN OR DISRUPTION OF CUSTOMER ACCESS, OR ANY ERRONEOUS COMMUNICATIONS BETWEEN LSC AND CUSTOMER.
- 7.2. LSC AND INTRODUCING BROKER ARE NOT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, LOSS OF PROFIT, LOSS OF USE, LOSS OF COST OR OTHER SAVINGS OR LOSS OF GOODWILL OR REPUTATION) WHICH CUSTOMER MAY INCUR OR EXPERIENCE AS A RESULT OF CUSTOMER HAVING ENTERED INTO THIS AGREEMENT OR RELYING ON ROX OR ANY INFORMATION PROVIDED TO CUSTOMER IN CONNECTION THEREWITH (INCLUDING, DESCRIPTIONS OF APPLICABLE RULES), EVEN IF LSC OR INTRODUCING BROKER KNEW OR SHOULD KNOW OF THE POSSIBILITY OF THOSE DAMAGES. LSC IS NOT RESPONSIBLE FOR INFORMING CUSTOMER OF ANY DIFFICULTIES LSC OR OTHER THIRD PARTIES EXPERIENCE CONCERNING USE OF ROX FOR LSC'S ACCOUNTS OR OTHER ACCOUNTS OR TO TAKE ANY ACTION IN CONNECTION WITH THOSE DIFFICULTIES. LSC AND INTRODUCING BROKER ALSO HAVE NO DUTY OR OBLIGATION TO VERIFY, CORRECT, COMPLETE OR UPDATE ANY INFORMATION DISPLAYED IN ROX. CUSTOMER IS SOLELY

RESPONSIBLE FOR ANY LOSSES, DAMAGES OR COSTS RESULTING FROM CUSTOMER RELIANCE ON ANY DATA OR INFORMATION THAT LSC MAY PROVIDE IN CONNECTION WITH ROX. NOTWITHSTANDING THE FOREGOING, THE FOREGOING LIMITS OF LIABILITY AND RESPONSIBILITY SHALL NOT APPLY TO THE EXTENT THAT ACTIONS OR OMISSIONS ON LSC'S OR INTRODUCING BROKER'S PART CONSTITUTE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. ORDERS THAT CUSTOMER ENTERS THROUGH ROX MAY BE ROUTED TO THIRD PARTY SYSTEMS. LSC AND INTRODUCING BROKER ARE 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.

- 7.3. EXCEPT WITH RESPECT TO DAMAGES RESULTING FROM LSC'S OR INTRODUCING BROKER'S INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, OR BREACH OF § 9.2 OF THIS AGREEMENT, LSC AND INTRODUCING BROKER SHALL HAVE NO LIABILITY ARISING OUT OF ANY CLAIM (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING FROM OR RELATING TO THIS AGREEMENT, ROX, OR ANY ORDER, THAT EXCEEDS THE AMOUNT OF THE ACTUAL COMMISSIONS PAID TO LSC OR INTRODUCING BROKER FOR THE ORDER GIVING RISE TO SUCH LEGAL CLAIM.

## **8. Assumption of Risk.**

In addition to other limitations and assumptions of risk in this agreement, Customer assumes the following risks and will not seek to hold LSC or Introducing Broker responsible for any of these risks:

- 8.1. Volatile Market Conditions. Stock, foreign exchange, commodities and prices of other financial instruments may change dramatically in a volatile market, and rapid changes may prevent the matching of orders and sales fast enough to prevent or minimize losses. Such losses may be substantial, particularly in the case of shorts and/or margin transactions. Customer assumes the risk for all such risks and losses.
- 8.2. Bad Decisions. LSC provides no tax, legal or investment advice of any kind. Customer agrees that it is not relying upon any advice by LSC, and that all Orders decisions are based solely upon Customer's own evaluation of the wisdom of each such Order. Customer assumes the risk of loss for bad decisions.
- 8.3. Communications Failure. Customer bears the risk of any and all communications failure, hardware failure, or software failure, and any erroneous data transmission or delays resulting from any such failure.
- 8.4. Cancellation Failure. Customer bears the risk that a cancellation request of an Order may not be honored, and acknowledges and agrees that it is rarely possible to cancel a market order. Customer assumes the risk of any failed cancellation request.
- 8.5. Selection of Market Center. If Customer does not specify a Market Center for routing of its Order, LSC will use its discretion, consistent with applicable regulatory requirements and best-execution principles, to select a Market Center. Customer agrees that LSC shall have no liability for its selection. Customer assumes the risk that a better execution might have been obtained at a different Market Center.

## **9. Indemnification.**

- 9.1. Customer shall defend, indemnify and hold LSC and Introducing Broker harmless for any and all losses, costs, and expenses, including attorney's fees, costs of experts and accounting fees that they may incur by reason of any allegation by a third party of a breach of Customer's representations or warranties set forth in this Agreement, or any allegation by a third party of a failure by Customer to properly perform any obligation set forth in this Agreement, and any allegation by a third party of a failure

by Customer to abide by Applicable Rules. Such losses, costs and expenses shall also include (i) any sums paid in settlement of any claim, and (ii) any sums expended in defending against or settling any action or proceeding. Customer's obligation hereunder will survive any termination of this agreement. LSC shall have the right to select its own counsel, at Customer's expense, and the right to enter into a settlement of any claim, so long as LSC reasonably believes, in its sole discretion, that the settlement is justified under the facts and circumstances known to LSC at the time of such settlement. Customer shall pay LSC's and Introducing Broker's defense costs as they are incurred and, if requested by LSC, post security for any such defense costs and costs of settlement.

- 9.2. LSC will indemnify, defend and hold harmless Customer from and against any Losses resulting from or arising out of a claim that ROX or any portion thereof infringes any United States patent, copyright, trademark, trade secret or other proprietary right, except, in each case, to the extent such Losses result from or are related to Customer's gross negligence, or intentional misconduct; provided that if any third party asserts an infringement claim contemplated herein, LSC may, at LSC's sole election, (i) defend against such claim; (ii) modify ROX or any portion thereof to avoid such claim; (iii) obtain a license from such third party to permit Customer to continue to use ROX; or (iv) terminate this Agreement.

#### **10. Confidentiality.**

- 10.1. Each Party shall keep confidential all competitively sensitive and/or proprietary information, knowledge and data exchanged pursuant to this Agreement relating to, or concerned with, the other Party's and the other's Party's affiliated companies' property, systems, operations, sales, customers, business and affairs (collectively, "Confidential Information"), and shall not, at any time, use such information, knowledge or data other than for the purpose of performing rights or obligations hereunder, or disclose or divulge any Confidential Information to any person, firm, or corporation other than its officers, directors and employees (collectively, "Employees") and agents who need to know such Confidential Information and only if such Employees and agents are subject to an obligation to keep such information confidential.
- 10.2. Confidential Information does not include information which is or becomes: (i) part of the public domain (other than by disclosure by a Party in violation of this Agreement); (ii) within the custody or control of a receiving Party without any confidentiality obligation associated therewith; (iii) disclosed to a receiving Party by a third party who is legally entitled to make such disclosure; or (iv) independently developed by the receiving Party without reference to the other Party's Confidential Information.
- 10.3. Confidential Information also does not include any information that LSC or Introducing Broker is obligated to disclose in the ordinary course to any governmental agency, self-regulatory organization, or regulatory authority.

#### **11. No Promotion.**

Without the prior written consent of the other Party, neither Party will use the name of the other Party or any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation of the other Party or its affiliates in the provision of brokerage services to its customers, in its systems, advertising, publicity, or otherwise.

#### **12. Governing Law and Forum / Injunctive Relief.**

- 12.1. Trades executed using the ROX System<sup>®</sup> shall be subject to the laws of the State of New York and the exclusive jurisdiction of the courts and arbitration forums located in New York County, New York. If any proceeding arising from, relating to, or concerning trades executed on the ROX System<sup>®</sup> is brought in any forum other than

the courts or arbitration forums located in New York County, New York, the parties agree that that proceeding will be transferred to the courts or arbitration forums located in New York County, New York.

12.2. In the event of conflict between the terms of this Agreement and the Applicable Rules, the Applicable Rules shall take precedence and both Parties may take any action as may be reasonably necessary to comply with Applicable Rules without liability under this Agreement, whether or not such action would otherwise constitute default hereunder.

12.3. Each Party acknowledges that actual or threatened breaches of the sections titled Limited License, Settlement Obligations, Representations and Warranties, Indemnification, Confidentiality, and No Promotion will cause the other irreparable injury and damage. Therefore, injunctive relief may be sought in addition to any other rights and remedies that may be available to the Party at law or in equity. The Parties agree that a Party may seek injunctive relief in the courts and arbitration forums where the Party maintains its principal place of business.

**13. Entire Agreement.**

This Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all other oral or written communications between the Parties concerning this subject matter.

**14. Amendment.**

Except as otherwise set forth herein, this Agreement may be modified only by a subsequent writing signed by both Parties.

**15. Assignment.**

Neither Party may assign the Agreement without the other Party's prior written consent. However, LSC may assign this Agreement to any entity (i) controlling, controlled by, or under common control with LSC, or (ii) which succeeds to all or substantially all of LSC's assets and business.

**16. Severability.**

If any provision of this Agreement (or any portion thereof) is invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement will not be affected or impaired.

**17. Notices.**

Except as otherwise provided herein, all notices will be in writing and hand delivered or forwarded by registered or certified mail or facsimile to the Parties listed below. Customer consents to the delivery of confirmations, any other required or optional communication and any agreements or changes in the terms and conditions of this Agreement or on ROX, by electronic mail, LSC's website, or other electronic means, subject to compliance with any applicable laws, rules or regulations.

<p><b>If Notice to Customer:</b></p> <p>_____</p> <p>(Legal Name)</p> <p>_____</p> <p>(Street Address)</p> <p>_____</p> <p>(City, State, Postal Code, Country)</p> <p>Phone: _____</p> <p>Fax: _____</p> <p>E-mail: _____</p>	<p><b>If Notice to LSC:</b></p> <p>LEK SECURITIES CORPORATION  One Liberty Plaza, 52nd Floor  New York, NY 10006</p> <p>Phone : (212) 509-2300</p> <p>Fax (212) 509-3540</p> <p>E-mail : SamL@LekSecurities.com</p>
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**18. Disclaimer of Partnership and Agency.**

Nothing in this Agreement shall be construed to create a joint venture, agency or partnership between the Parties.

**19. Authority.**

The persons executing this Agreement on behalf of the Parties represent and warrant that they have authority to bind the Party for whom they are signing.

**20. Survival.**

The sections titled Assumption of Risk, Indemnification, Confidentiality, No Promotion, Severability and Notice shall survive any termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date stated above.

LEK SECURITIES CORPORATION

\_\_\_\_\_  
(Print Legal Entity Name)

\_\_\_\_\_  
(Signature)

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(Signature)

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(Print Name)

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