

## THE PORTAL ALLIANCE OTC TRADE NEGOTIATION SYSTEM PARTICIPANT AGREEMENT

This PORTAL Alliance OTC Trade Negotiation System Participant Agreement (this "**Agreement**") is made by and between The PORTAL Alliance LLC (the "**Company**"), a Delaware limited liability company whose principal offices are located at One Liberty Plaza, 165 Broadway, New York, NY 10006, and the Recognized QIB/QP signatory hereto (the "**OTC Participant**"). The Company and its subsidiaries and affiliates are collectively referred to herein as "**The PORTAL Alliance**". The Company and the applicable OTC Participant are each individually a "**Party**" and collectively the "**Parties**".

### I. Purpose.

1. The PORTAL Alliance operates a trade negotiation system (the "**OTC System**") to disseminate indicative quotations, enable electronic trade negotiation and provide other services to support trading of securities eligible for resale under Rule 144A ("**Rule 144A**") under the Securities Act of 1933, as amended (the "**Securities Act**") that are included in the platform (the "**PORTAL Alliance Platform**") operated by The PORTAL Alliance to provide indicative quotations and access to issuer information and other services to Recognized QIB/QPs (as defined in the Access Agreement) (such securities, "**PORTAL Alliance Securities**"). This Agreement enables investors that complete the PORTAL Alliance Access Agreement (the "**Access Agreement**") and this Agreement (i) that qualify as PORTAL BD Participants (as defined in the PORTAL Alliance OTC Trade Negotiation System Requirements and Policies) to post indicative quotations on, and negotiate transactions in, PORTAL Alliance Securities on the OTC System and (ii) that are Recognized QIB/QPs to access the OTC System for purposes of viewing indicative quotations, accessing issuer information and contacting PORTAL BD Participants.

### II. Participant Qualification and Authorization.

1. The OTC Participant is applying for designation as an OTC Participant of the type set forth on the signature page hereto and such OTC Participant warrants and represents to The PORTAL Alliance that the OTC Participant has previously submitted, or is submitting with this Agreement, a completed Access Agreement and that the OTC Participant shall update such certification at least once every sixteen (16) months as of the date specified in item (iii) of such Access Agreement or the comparable provision of the Recognized QIB/QP's most recent Update Access Agreement (as such term is defined in the Access Agreement), as the case may be. The OTC Participant shall be authorized to use the OTC System as provided herein and in the OTC System Requirements and Policies (as defined below), consistent with its designation as a Recognized QIB/QP and, if applicable, as a PORTAL BD Participant.
2. If the OTC Participant is applying for designation as a PORTAL BD Participant, it hereby makes the representations and warranties to, and agreements with, The PORTAL Alliance set forth on Schedule A hereto, and as a condition to its continued designation as a PORTAL BD Participant, agrees to recertify such representations and warranties at least once every twelve (12) months by submitting the form of update certification as provided by The PORTAL Alliance from time to time.
3. The OTC Participant agrees to submit, in conjunction with this Agreement, such additional information as The PORTAL Alliance may reasonably request to determine that the OTC Participant is eligible to purchase PORTAL Alliance Securities under Rule 144A and other applicable law and regulations or access and use the OTC System.
4. The OTC Participant acknowledges and agrees that when negotiating the purchase of securities through the OTC System, it will purchase a PORTAL Alliance Security from a seller who is relying on the exemption from Section 5 of the Securities Act provided by Rule 144A.

### III. OTC System Participation Requirements and Policies.

1. The OTC Participant acknowledges and agrees that it shall abide by and be subject to (i) all requirements and policies of the OTC System, as they exist on the date hereof and as they may be adopted or amended from time to time as provided therein (the "**OTC System Requirements and Policies**"), which OTC System Requirements and Policies are hereby incorporated by reference herein and (ii) all applicable statutes and regulations, and will only negotiate principal or agency transactions in PORTAL Alliance Securities on the OTC System in accordance with applicable law and in accordance with Rule 144A under the Securities Act. The OTC Participant acknowledges that it has been provided with a copy of the OTC System Requirements and Policies, additional copies of which (together with any subsequent amendments thereto) are available from the Company. The Parties hereto agree that the OTC System Requirements and Policies have the same force and effect as if set out in full herein, and, unless the context otherwise requires, all references to "this Agreement" include the OTC System Requirements and Policies.

#### **IV. License to Use; Use of OTC Participant's Data.**

1. The PORTAL Alliance grants to the OTC Participant a non-exclusive, non-assignable, non-transferable, worldwide license to use the OTC System during the term of this Agreement: (i) in the case of all OTC Participants, to view indicative quotations on, and contact PORTAL BD Participants with respect to, PORTAL Alliance Securities for which that OTC Participant is then authorized and (ii) in the case of PORTAL BD Participants only, in addition to the acts in clause (i) above, to post indicative quotations on, and negotiate transactions in, PORTAL Alliance Securities in which an OTC Participant is then authorized to transact.

#### **V. Term and Termination.**

1. This Agreement shall be effective as of the date set forth on the signature page hereto (the "Effective Date") and, unless this Agreement is otherwise terminated, shall continue in full force and effect until a Party elects to terminate this Agreement by providing the other Party with at least thirty (30) days' prior written notice of its intention to terminate. Upon termination of this Agreement, the OTC Participant shall cease all use of the OTC System authorized by this Agreement. The right of termination set forth in this Section V.1 is in addition to any other remedy at law or in equity that is available with respect to a breach by the other Party.
2. Notwithstanding the foregoing, The PORTAL Alliance may suspend the OTC Participant's access to the OTC System:
  - i. at any time if more than sixteen (16) months have elapsed from the most recent date set forth in item (iii) of the Access Agreement or the comparable provision of the most recent Update Access Agreement, as the case may be;
  - ii. immediately, if the OTC Participant's access to the PORTAL Alliance Platform has been suspended or terminated under the Access Agreement;
  - iii. immediately, in the event that the representations and warranties of the OTC Participant on Schedule A, if applicable, are no longer true and accurate or more than twelve (12) months have elapsed since the recertification of such representations and warranties; or any representation, warranty or certification made by the OTC Participant in this Agreement or in any other document furnished by the OTC Participant is, as of the time made or furnished, false or misleading; or The PORTAL Alliance, in its sole discretion, determines that any failure on the part of the OTC Participant to comply with this Agreement has or is likely to have an adverse impact on the operation or performance of the OTC System or the system on which it operates; or
  - iv. upon not less than fifteen (15) days' prior written notice, in the event of any other breach of this Agreement by the OTC Participant or in the event that any representation, warranty or certification made by the OTC Participant in any other document furnished by the OTC Participant becomes untrue or inaccurate and such breach or other representation, warranty or certification is not made true or accurate within the notice period.

#### **VI. Arbitration.**

1. All claims, disputes, controversies, and other matters in question between the Parties to this Agreement and the Parties' employees, directors, agents and associated persons arising out of, or relating to this Agreement, or to the breach hereof, shall be settled by final binding arbitration in accordance with the PORTAL Alliance Recognized QIB/QP Requirements and Policies (the "**PORTAL Alliance Requirements**").

#### **VII. Governing Law.**

1. This Agreement shall be deemed to have been made in the United States, State of New York, and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of New York, without reference to principles of conflicts of laws thereof that would require application of the laws of a different jurisdiction. For all matters not subject to the arbitration provisions set forth in the PORTAL Alliance Requirements, the OTC Participant hereby consents to submit to the jurisdiction of the federal and state courts in the Borough of Manhattan in The City of New York in connection with any action or proceeding instituted relating to this Agreement, and waives, to the fullest extent it may effectively do so, any defense based on inconvenient forum, improper venue or lack of jurisdiction to the maintenance of any such action or proceeding.

#### **VIII. Authorization.**

1. The OTC Participant and the individual(s) executing this Agreement for the OTC Participant represent that such individuals are duly authorized by all necessary and appropriate corporate or other action to execute this Agreement on behalf of the OTC Participant.

**IX. Additional Provisions.**

1. The OTC System constitutes a part of the PORTAL Alliance Platform, and the Parties acknowledge and agree that, except to the extent inconsistent herewith, the terms and conditions of the Access Agreement executed by the OTC Participant and the related PORTAL Alliance Requirements shall govern the OTC Participant's use of the OTC System to post indicative quotations, engage in trade negotiations using the OTC System and engage in the other activities authorized under this Agreement. The OTC Participant's initial Authorized Users (as defined in the PORTAL Alliance Requirements) of the OTC System are designated on Annex A hereto.

**X. Force Majeure.**

1. Notwithstanding any other term or provision of this Agreement, neither The PORTAL Alliance (including, for purposes of this Section X, its third party information and software providers) nor the OTC Participant shall be obligated to perform or observe its obligations undertaken in this Agreement (except for obligations to make payments hereunder and regulatory obligations) if prevented or hindered from doing so by any circumstances beyond its control.

**XI. Subsequent Parties; Limited Relationship.**

1. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective permitted successors or assigns. The OTC Participant shall not assign this Agreement (including by operation of law) without the prior written consent of the Company, such consent not to be unreasonably withheld. Nothing in this Agreement, express or implied, is intended to or shall: (a) confer on any individual or entity other than the Parties hereto, or their respective permitted successors or assigns, any rights or remedies under or by reason of this Agreement; (b) constitute the Parties hereto partners or participants in a joint venture; or (c) appoint one Party the agent of the other.
2. Notwithstanding the foregoing, if the OTC Participant changes its name, address or taxpayer identification number, or some other event occurs which results in an entity with a different name, address or taxpayer identification number assuming the obligations of the OTC Participant hereunder, the OTC Participant or such other entity shall promptly re-execute a form of this Agreement with such updated information and provide it to the Company, and shall take such other or additional steps as reasonably directed by the Company.

**XII. Amendment; Waiver; Severability.**

1. The OTC Participant may not alter any terms and conditions of this Agreement, and no modification to this Agreement proposed by the OTC Participant will be binding, unless in writing and manually signed by an authorized representative of each Party hereto. This Agreement may also be amended (a) in any manner that does not adversely affect in any material respect the OTC Participant, by the Company without the consent of any person, upon the 30<sup>th</sup> day after notice to the OTC Participant of such proposed amendment or (b) as the Company deems necessary, desirable or appropriate to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any U.S. federal or state or non-U.S. agency or judicial authority (including any applicable domestic or foreign industry self-regulatory organization of competent jurisdiction) or contained in any applicable U.S. federal or state or non-U.S. statute, without the consent of any person, upon the 30<sup>th</sup> day after notice to the OTC Participant of such proposed amendment or such shorter period as may be required.
2. No failure on the part of The PORTAL Alliance or the OTC Participant to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.
3. If any of the provisions of this Agreement, or application thereof to any individual, entity or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to individuals, entities, or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**XIII. Survival of Provisions.**

1. Sections VI-VII and XIII of this Agreement, and, with respect to this Agreement, Section IX of the OTC System Requirements and Policies, Sections II.2 and III of the Access Agreement and Sections VII and X of the PORTAL Alliance Requirements, shall survive any termination of this Agreement.

**XIV. Entire Agreement.**

1. Notwithstanding Section IX of the Access Agreement, this Agreement, together with the Access Agreement, the PORTAL Alliance Requirements and the OTC System Requirements and Policies, as each such document may be added to, deleted from, or amended from time to time, constitute the entire agreement between the Parties with respect to the

subject matter hereof, and supersede all prior negotiations, communications, writings and understandings. In the event of any conflict between the provisions of this Agreement, the Access Agreement, the PORTAL Alliance Requirements and the OTC System Requirements and Policies, the order of preference shall be the OTC System Requirements and Policies, this Agreement, the PORTAL Alliance Requirements and then the Access Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, if and where applicable. The use of the singular in this Agreement shall include the plural, and vice versa. References to agreements (including this Agreement) and other contractual instruments include subsequent amendments, assignments and other modifications thereto, but only to the extent such amendments, assignments or other modifications are permitted thereunder. Section headings are included for convenience only and are not to be used to construe or interpret this Agreement. All references contained herein to sections or subsections shall refer to the sections or subsections of this Agreement, unless specific reference is made to the sections or subsections of another document.

**IN WITNESS WHEREOF, the OTC Participant has caused this Agreement to be executed by a duly authorized officer. The Effective Date of this Agreement shall be the date the OTC Participant executes this Agreement as set forth below.**

<b>Recognized QIB/QP Legal Name:</b>	<b>Address</b>	<b>Tax ID No./EIN</b>
<b>Principal Contact Name:</b>	<b>Principal Contact Telephone</b>	<b>Principal Contact E-mail:</b>
<b>Indicate type of OTC Participant Below:</b>		
<input type="checkbox"/>	PORTAL BD Participant	
<input type="checkbox"/>	Recognized QIB/QP	

**Authorized Signatory:**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 \_\_\_\_\_

**The PORTAL Alliance LLC**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

## SCHEDULE A

### Representations and Warranties of PORTAL BD Participants

In connection with the OTC Participant's application to be a PORTAL BD Participant, the OTC Participant hereby represents and warrants to The PORTAL Alliance as of the date hereof as follows:

1. it is duly registered, licensed and/or qualified as a broker-dealer under Section 15 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and under any Applicable Law (as defined below) pursuant to which it is required to be so registered, licensed and/or qualified and all such registrations, licenses and qualifications are in full force and effect and will continue to be in full force and effect for so long as it is a PORTAL BD Participant.
2. during the past three years (or for such lesser period of time as it has been in existence) it has conducted its operations in compliance with Applicable Law, except for any such violations of Applicable Law that, individually or in the aggregate, would not have a material adverse effect on its ability (i) to conduct its business as currently or proposed to be conducted, or (ii) to serve as a PORTAL BD Participant, and it agrees to continue to so conduct its operations for so long as it is a PORTAL BD Participant.
3. it is a member in good standing of FINRA (as defined below) (and any other SRO (as defined below) of which it is a member), and it is a member in every SRO in which its membership is required by Applicable Law to conduct its business as currently or proposed to be conducted or that is otherwise required for it to be a PORTAL BD Participant, and it will continue to be such a member for so long as it is a PORTAL BD Participant.
4. it satisfies the minimum net capital requirements and complies with all other capital requirements of the Exchange Act and each SRO of which it is a member and of the Applicable Law of any jurisdiction in which it conducts business.
5. to the extent that it would materially limit, restrict or otherwise adversely impact its ability to be a PORTAL BD Participant, it is not nor are any of its "associated persons" (as defined in the Exchange Act), (i) subject to any cease and desist, injunction, writ, judgment, censure, disciplinary action, decree, directive or other order or determination issued by, (ii) a party to any written agreement, commitment letter, stipulation, memorandum of understanding or other undertaking issued by or entered into with, or (iii) a recipient of any supervisory, disciplinary or other letter from, any Governmental Authority (as defined below), nor are any such actions, to its knowledge, contemplated or threatened.
6. it has adopted and maintains a written anti-money laundering program and a written customer identification program in compliance with Applicable Law and has complied with the terms of such programs, in each case, in all material respects.

By engaging in any activity as a PORTAL BD Participant, the OTC Participant shall be deemed to acknowledge and agree that all of its representations and warranties contained herein are true and correct on and as of the date of such activity. So long as the OTC Participant is a PORTAL BD Participant, it shall execute and deliver to The PORTAL Alliance an updated certification of the foregoing representations and warranties at least once every 12 months from the date of the last certification.

#### Definitions:

"**Applicable Law**" – means any law, statute, regulation, rule, injunction, ordinance, decree, or written policy and interpretive statements of any Governmental Authority.

"**Governmental Authority**" – means any U.S. or foreign, federal, state, provincial or local governmental, regulatory or administrative authority, agency or commission of competent jurisdiction; any court, tribunal, or judicial or arbitral body of competent jurisdiction; the U.S. Securities and Exchange Commission; any applicable domestic or foreign industry self-regulatory organization ("**SRO**") of competent jurisdiction, including without limitation, the Financial Industry Regulatory Authority ("**FINRA**"), which term shall be deemed to refer to and include its predecessor organizations, the National Association of Securities Dealers, Inc. and the regulation, arbitration and enforcement functions of the New York Stock Exchange, Inc.); and any instrumentality of any of the foregoing.

