

## ELECTRONIC DATA INTERCHANGE TRADING PARTNER AGREEMENT

THIS ELECTRONIC DATA INTERCHANGE TRADING PARTNER AGREEMENT (the "Agreement") is made as of [\*\*\*], 19[\*\*\*], by and between \_\_\_\_\_ Corp. ("\_\_\_\_\_"), a Delaware corporation, with principal offices at \_\_\_\_\_ and [\*\*\*] ("Company"), with principal offices at [\*\*\*].

### RECITALS

\_\_\_\_\_ and Company desire to facilitate purchase and sale transactions ("Transactions") by electronically transmitting and receiving data in agreed formats in substitution for conventional paper-based documents and to assure that such Transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies for the mutual benefit of the parties.

NOW THEREFORE, the parties, intending to be legally bound, agree as follows :

#### Section 1. Prerequisites.

1.1. Documents:Standards. Each party may electronically transmit to or receive from the other data in agreed formats ("Documents"). Any transmission of data which is not a Document shall have no force or effect between the parties unless justifiably relied upon by the receiving party. All documents shall be transmitted in accordance with the standards, ANSI ASC X12 as published by the American National Standards Institute, Accredited Standards Committee X12.

#### 1.2. Third Party Service Providers.

1.2.1. Documents will be transmitted electronically to each party either directly or through any third party service provider ("Provider") with which either party may contract. Either party may modify its election to use, not use or change a Provider upon 30 days prior written notice.

1.2.2. Each party shall be responsible for the costs of any Provider with which it contracts.

1.2.3. Each party shall be liable for the acts or omissions of its Provider while transmitting, receiving, storing or handling Documents, or performing related activities, for such party; provided, that if both the parties use the same Provider to effect the transmission and receipt of a Document, the originating party shall be liable for the acts or omissions of such Provider as to such Document.

1.3. System Operations. Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

1.4. Security Procedures. Each party shall properly use security which such party reasonably believes to be sufficient to ensure that all transmissions of Documents are authorized and to protect its business records and data from improper .

1.5. Signatures. Each party shall adopt as its signature an electronic identification consisting of symbol(s) or code(s) which are to be affixed to or contained in each Documents transmitted by such party ("Signatures"). Each party agrees that any Signature of such party affixed to or contained in any transmitted Document shall be sufficient to verify that such party originated such Document and neither party shall contest the validity or enforceability of the document on this basis. Neither party shall disclose to any unauthorized person the Signatures of the other party.

#### Section 2. Transmissions.

2.1. Proper Receipt. Documents shall not be deemed to have been properly received, and no Document shall give rise to any obligation, until able to the receiving party at such party's receipt computer.

2.2. Verification. Upon proper receipt of any Document, the receiving party shall promptly and properly transmit a functional acknowledgment in return. A functional acknowledgment shall constitute conclusive evidence a Document has been properly received.

2.3. Acceptance. Any such Document which has been properly received shall not give rise to any obligations unless and until the party initially transmitting such Document has properly received in return an acceptance Document.

2.4. Garbled Transmissions. If any transmitted Document is received in an unintelligible or garbled form, the receiving party shall promptly notify the originating party (if identifiable from the received Document) in a reasonable manner. In the absence of such a notice, the originating party's records of the contents of such Document shall control.

### Section 3. Transaction Terms.

#### 3.1. Terms and Conditions.

3.1.1. Prices, any additional charges, payment terms, delivery, and shipping will be set in accordance with the then current written agreement between \_\_\_\_\_ and Company. In the absence of any other written agreement applicable to any Transaction made pursuant to this Agreement, such Transaction (and any related communication) also shall be subject to such additional terms and conditions as may be determined in accordance with applicable law.

3.1.2. If this Agreement is incorporated into another agreement between the parties, in the event of any conflict between the terms of this Agreement and such other agreement, except as otherwise expressly set forth in such other agreement, the terms and conditions of this Agreement shall govern.

3.1.3. Each party will generate Transactions in accordance with the applicable terms and/or laws. In the event that such purchase orders do not comply with the terms and/or laws set as provided above, the receiving party will notify The other party of the discrepancy and Such other party will thereafter either transmit transaction changes or enter the order without the use of EDI. Transactions involving amounts in excess of \$\_[\*\*\*]\_\_\_\_\_ will also be entered without the use of EDI.

3.2. Confidentiality. Except to the extent provided in Section 1.5, by written agreement between the parties, or by applicable law, no information contained in any Document or otherwise exchanged between the parties shall be considered confidential. Nevertheless, the parties shall exercise reasonable care to prevent such information from being misdirected or otherwise disclosed to any other person.

#### 3.3. Validity; Enforceability.

3.3.1. This Agreement has been executed by the parties to evidence their mutual intent to create binding purchase and sale obligations pursuant to the electronic transmission and receipt of Documents specifying certain of the applicable terms.

3.3.2. Any Document properly transmitted pursuant to this Agreement shall be considered, in connection with any Transaction, any other written agreement described in Section 3.1, or this Agreement, to be a "writing" or "in writing"; and any such Document when containing, or to which there is affixed, a Signature ("Signed Documents") shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

3.3.3. The conduct of the parties pursuant to this Agreement, including the use of Signed Documents properly transmitted pursuant to this Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement, any Transaction and any other written agreement described in Section 3.1.

3.3.4. The parties agree not to contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Signed Documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Signed Documents were not originated or maintained in documentary form.

#### Section 4. Miscellaneous.

4.1. Termination. This Agreement shall remain in effect until terminated by either party with not less than thirty (30) days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement prior to the effective date of termination.

4.2. Severability. Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

4.3. Entire Agreement. This Agreement constitutes the complete agreement of the parties relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. No obligation to enter into any Transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

4.4. Assignment. Neither party has the right to assign this Agreement in whole or in part without the prior written consent of the other except that either party may make such an assignment to another corporation wholly-owned by or under common control with it. For purposes hereof, the term "assign" will include, without limitation, a merger, sale of assets or business, or other transfer of control by operation of law or otherwise.

4.5. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, U.S.A., excluding the provisions thereof relating to conflicts of laws.

4.6. Force Majeure. No party shall be liable for any failure to perform its obligations in connection with any Transaction or any Document, where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any Documents.

4.7. Limitation of Damages. Neither party shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the electronic transmission or receipt of any Documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

4.8. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American

Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Each party has caused this Agreement to be properly executed on its behalf as of the date first above written.

\_\_\_\_\_ Corp.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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