

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT**, dated as of December \_\_\_\_, 2012, by and among Southern Trust Company, Inc., a United States Virgin Islands corporation (“**STC**”), Leon Black, as as a Black Family Member (as hereinafter defined) and in his capacity as the Black Family Representative (as hereinafter defined), and the persons and entities executing a signature page hereof as Black Family Members (including Leon Black, each a “**Black Family Member**” and, collectively, the “**Black Family Members**”).

This will confirm and constitute the agreement by and among the Black Family Members and STC regarding the purchase by the Black Family Members from STC, and the sale by STC to the Black Family Members, of a series of financial algorithms to be used solely for the purpose of analyzing, evaluating, and structuring the financial estates of the Black Family Members (the “**Purchased Algorithms**”). With respect to the purchase and sale of the Purchased Algorithms, STC and the Black Family Members hereby agree as follows:

### 1. **Purchase and Sale; Ancillary License; Ownership; Certain Restrictions.**

(a) **Purchase and Sale.** Effective on the date hereof, the Black Family Members hereby purchase and accept from STC, and STC hereby sells, transfers and conveys to the Black Family Members, all right, title and interest of STC in and to the Purchased Algorithms, upon, subject to and in accordance with the provisions of this Agreement; provided, however, that the Purchased Algorithms shall not include the Licensed IP (as hereinafter defined). The Black Family Members hereby acknowledge receipt from STC of the Purchased Algorithms, which have been delivered by STC to the Black Family Members prior to the date hereof.

(b) **Non-Exclusive Ancillary License.** In connection with the purchase and sale of the Purchased Algorithms, the Black Family Members hereby acknowledge receipt from STC of certain Licensed IP. STC hereby grants to the Black Family Members, and the Black Family Members hereby accept from STC, a perpetual, royalty-free, non-exclusive, license to use, in their discretion, in the continental United States, all or any portion of the Licensed IP heretofore and hereafter delivered by STC to the Black Family Members for the limited purpose of creating, implementing and applying the Purchased Algorithms (the “**Licensed Purpose**”), subject to, upon, and in accordance with, the provisions of this Agreement (the “**Ancillary License**”). Any and all software, copyrights, trademarks, trade secrets and other information, consultations and materials previously or hereafter prepared by, for, on behalf of, at the direction of, or under the supervision of STC in connection with the creation of the Purchased Algorithms, excluding, however, those portions thereof that are strictly specific and unique to, and have no applicability other than to, the Purchased Algorithms (said excluded portions are deemed to have been purchased by and sold to the Black Family Members hereunder and are referred to herein as the “**Purchased IP**”), shall be referred to in this Agreement as “**Licensed IP**”. Without in any way limiting the generality of the foregoing, Licensed IP shall include, without limitation (i) all technical data or written material in connection with the Purchased Algorithms, including all designs, plans, illustrations, specifications, flow charts, diagrams, manuals, memoranda, opinions, documentation, trademarks, trade names, service marks, patents and copyrights (if any, whether or not registered), excluding the Purchased IP; (ii) all know-how or techniques in connection with the Purchased Algorithms, excluding the Purchased IP; and (iii) all inventions, structures, formula, algorithms, discoveries, integrations, object codes, source codes, software and future modifications, enhancements or improvements in connection with the Purchased Algorithms, excluding the Purchased IP; including, without limitation, anything described in clauses (i) through (iii) above which any principals, trustees, directors, officers, managers,

employees or agents of any of the Black Family Members may conceive or originate, either on their own or jointly with the assistance of others, which are based on or derived from any part of anything described in clauses (i) through (iii) above previously or hereafter prepared by, for, on behalf of, at the direction of, or under the supervision of, STC in connection with the Purchased Algorithms.

(c) **Ownership by STC.** Each Black Family Member acknowledges that STC has the exclusive proprietary, ownership and (except for the Ancillary License) use rights to all the Licensed IP.

(d) **Certain Restrictions.**

(i) The Black Family Members shall not in any way use, copy or distribute any Licensed IP, or any copies, thereof in violation of any provisions of this Agreement, including without limitation any provisions hereof regarding permitted uses, confidentiality, non-disclosure or other restrictions contained herein.

(ii) The Black Family Members shall keep all the Licensed IP free of any liens, claims or encumbrances of any type, and may not rent, lease, lend, sell, redistribute or sublicense the Licensed IP.

(iii) The Black Family Members shall use the Licensed IP solely in accordance with the Licensed Purpose. The Black Family Members shall obtain STC's prior, written permission before using any Licensed IP for any purpose other than the Licensed Purpose.

(iv) Solely in connection with the Licensed Purpose, the Black Family Members may make copies of Licensed IP in printed or machine-readable form; provided, however, that any and all copies must include any and all copyright or other proprietary notices contained on any original Licensed IP, and the Black Family Members shall maintain, and provide to STC upon demand, complete and accurate records of all copies of any and all Licensed IP made by the Black Family Members.

(v) The Black Family Members shall not modify any Licensed IP without the prior written permission of STC.

(vi) The Black Family Members may not, and agree not to, and not to enable others to, copy (except as expressly permitted by this Agreement), decompile, reverse engineer, disassemble, attempt to derive any source code of, decrypt, modify, or create derivative works of all or any part of the Licensed IP.

(vii) The Black Family Members shall not exploit the Licensed IP in any way whatsoever for any purpose other than the Licensed Purpose.

(viii) The Black Family Members shall not use the Licensed IP in violation of any applicable federal, state and local laws, rules and regulations.

(e) **Exclusion of All other Rights.** Except for the Purchased IP and except as expressly provided herein, the Black Family Members are granted no rights or licenses whatsoever in or to the Licensed IP or other intellectual, proprietary or personal rights of STC in connection with the Purchased Algorithms. STC hereby expressly reserves all rights and licenses not expressly granted in this Agreement. In particular and without limiting the foregoing, nothing in this Agreement will be deemed to convey to the Black Family Members the legal title to any Licensed IP. STC hereby expressly reserves

the right, without any notice to, or permission from, the Black Family Members, to use all or any portion of the Licensed IP in any manner, and/or license, assign, convey, transfer, sell or otherwise alienate any portion of or all the Licensed IP to any third party, whether or not such use by STC or such third party is in any way similar to the Licensed Purpose.

(f) **Survival.** The provisions of Sections 1(c), (d) and (e) shall survive any termination of all or any part of this Agreement or any rights granted to the Black Family Members hereunder.

2. **No Investment Advice.** Each Black Family Member hereby acknowledges and agrees, and STC hereby expressly declares, that in selling the Purchased Algorithms to the Black Family Members and granting the Black Family Members the Ancillary License, STC is neither acting in any way as an “investment advisor”, as such term is defined in and interpreted in accordance with the provisions of the Investment Advisors Act of 1940, as amended, the regulations promulgated thereunder, and the interpretive releases issued in connection therewith, nor holding itself out in any way whatsoever as being engaged in any business which directly or indirectly provides advice, recommendations, publications, writings, reports or analyses regarding any matter or thing which might cause it to be deemed an “investment advisor” as such term is so defined. Each Black Family Member further acknowledges and agrees that none of the Purchased Algorithms, the Purchased IP and the Licensed IP constitutes any advice, recommendations, publications, or writings whatsoever regarding: (a) the value of securities or the advisability of investing in, purchasing, or selling securities, (b) the relative advantages or disadvantages of investing in securities in general as compared to other investments; (c) any other matters relating to any specific securities or securities in general; (d) the selection of investment managers, or investment funds or entities; or (e) the allocation of certain percentages of assets to specific classes of securities, investment funds, or investment managers; or (f) any other activities matters similar to those set forth in clauses (a) through (e) above. Financial information included in any Purchased Algorithms, the Purchased IP or any Licensed IP delivered by STC to the Black Family Members is for general informational purposes only and should not be relied upon as investment advice.

3. **Purchase Price.** The purchase price for the Purchased Algorithms shall be Twenty Three Million Five Hundred Thousand Dollars (\$23,500,000.00) (the “**Purchase Price**”), which STC and the Black Family Members hereby agree has been fully earned and is now payable in full by the Black Family Members, jointly and severally, to STC, upon, and as a result of, the delivery of the Purchased Algorithms by STC to the Black Family Members prior to the date of this Agreement; provided, however, that STC has agreed to accept deferred payment of the Purchase Price by the Black Family Members in accordance with the following:

- (a) Five Million Dollars (\$5,000,000) of the Purchase Price shall be paid by no later than December \_\_, 2012;
- (b) Ten Million Dollars (\$10,000,000) of the Purchase Price shall be paid by no later than February 1, 2013; and
- (c) Eight Million Five Hundred Thousand Dollars (\$8,500,000) of the Purchase Price shall be paid by no later than October 1, 2013.

Payments of the Purchase Price hereunder shall be by wire transfer of immediately available funds in accordance with wire transfer instructions to be provided by STC to the Black Family Representative (as hereinafter defined). Upon the failure of any of the foregoing payments to be made by the date set forth above, the entire unpaid balance of the Purchase Price shall automatically become immediately due and payable by the Black Family Members, jointly and severally, to STC. Interest shall accrue at the rate of 24% per annum, or if such rate is in excess of the maximum rate allowable by law, the maximum rate

allowable by law, and be payable upon STC's demand therefor, on all outstanding balances of installments of the Purchase Price from the date such balances become due and payable hereunder.

4. **Black Family Members Representative.** Each of the Black Family Members hereby designates and appoints Leon Black, and Leon Black hereby accepts such appointment, as the representative of the Black Family Members for purposes of this Agreement (the "**Black Family Representative**"). All notices, communications, requests, permissions, decisions and actions hereunder with, from, by, on behalf of and to, any Black Family Member shall be made by or to Leon Black on behalf of such Black Family Member, and FTC shall not be obligated to give, receive, or respond to any notice, communication, request, permission, decision or action from any Black Family Member, unless the same is made by the Black Family Representative.

5. **No Decisions or Actions by STC; No Representations, Warranties or Guarantees; Disclaimer; Indemnity.**

(a) THE BLACK FAMILY MEMBERS ACKNOWLEDGE AND AGREE THAT STC HAS ABSOLUTELY NO AUTHORITY TO, NOR SHALL IT, BIND ANY OR ALL OF THE BLACK FAMILY MEMBERS, IN CONTRACT OR OTHERWISE, OR MAKE ANY DECISIONS OR TAKE ANY ACTIONS WHATSOEVER ON BEHALF OF ALL OR ANY OF THE BLACK FAMILY MEMBERS UNDER THIS AGREEMENT, AND THAT STC IS NOT SERVING IN ANY FIDUCIARY CAPACITY WHATSOEVER TO, FOR OR ON BEHALF OF ALL OR ANY OF THE BLACK FAMILY MEMBERS.

(b) EACH BLACK FAMILY MEMBER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP IS AT THE SOLE RISK OF THE BLACK FAMILY MEMBERS AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT WITH RESPECT TO THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP LIES SOLELY WITH THE BLACK FAMILY MEMBERS.

(c) THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND STC HEREBY DISCLAIMS ALL WARRANTIES, GUARANTEES AND CONDITIONS WITH RESPECT TO THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(d) EACH BLACK FAMILY MEMBER FURTHER ACKNOWLEDGES AND AGREES THAT: (i) NEITHER STC NOR ANY OFFICER, DIRECTOR, EMPLOYEE NOR AGENT THEREOF HAS MADE OR MAKES ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXCEPT AS MAY BE EXPRESSLY PROVIDED IN THIS AGREEMENT; (ii) EACH BLACK FAMILY MEMBER ASSUMES THE FULL RISK AND RESPONSIBILITY WITH RESPECT TO ANY AND ALL OF THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP PROVIDED BY STC HEREUNDER AND ANY AND ALL ACTIONS TAKEN AND DECISIONS MADE BY OR ON BEHALF OF SUCH BLACK FAMILY MEMBER, OR ITS PRINCIPALS, TRUSTEES, DIRECTORS, OFFICERS, MANAGERS,

EMPLOYEES OR AGENTS, INCLUDING, WITHOUT LIMITATION, LEON BLACK, IN CONNECTION WITH ANY AND ALL OF THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP PROVIDED BY STC HEREUNDER; (iii) STC WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO ANY BLACK FAMILY MEMBER FOR ANY LOSS THAT SUCH BLACK FAMILY MEMBER MAY INCUR AS A RESULT OF ANY DECISIONS OR ACTIONS TAKEN IN CONNECTION WITH THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP PROVIDED BY STC HEREUNDER; AND (iv) STC HEREBY DISCLAIMS ANY AND ALL LIABILITY WHATSOEVER WITH RESPECT TO THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP.

(e) WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, EACH BLACK FAMILY MEMBER FURTHER ACKNOWLEDGES AND AGREES THAT AT ANY GIVEN TIME AND FROM TIME TO TIME SOME OR ALL OF THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP MAY BE MORE BENEFICIAL OR FAVORABLE TO CERTAIN BLACK FAMILY MEMBERS, INCLUDING, WITHOUT LIMITATION, LEON BLACK, AS COMPARED TO OTHER BLACK FAMILY MEMBERS, AND MORE DETRIMENTAL AND UNFAVORABLE TO SUCH OTHER BLACK FAMILY MEMBERS, AND THAT STC HEREBY FULLY DISCLAIMS ANY AND ALL LIABILITY FOR, AND EACH BLACK FAMILY MEMBER HEREBY AGREES TO HOLD STC HARMLESS AGAINST AND FROM, ANY AND ALL CLAIMS, LIABILITY, DAMAGES, COSTS FEES AND EXPENSES AS A RESULT THEREOF.

(f) STC DOES NOT WARRANT AGAINST INTERFERENCE WITH THE USE AND ENJOYMENT OF THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP, THAT THE FUNCTIONS CONTAINED IN, OR PERFORMED OR PROVIDED BY, THE PURCHASED ALGORITHMS, THE PURCHASED IP OR THE LICENSED IP WILL MEET THE REQUIREMENTS OF THE BLACK FAMILY MEMBERS, THAT THE PURCHASED ALGORITHMS, THE PURCHASED IP OR THE LICENSED IP WILL BE ERROR-FREE, OR THAT ANY DEFECTS IN THE PURCHASED ALGORITHMS, THE PURCHASED IP OR THE LICENSED IP WILL BE CORRECTED.

(g) IN NO EVENT SHALL STC BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA OR INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THE BLACK FAMILY MEMBERS' USE OR INABILITY TO USE THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF STC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(h) CERTAIN LICENSED IP MAY INCLUDE OR MAKE AVAILABLE CONTENT, DATA, INFORMATION, APPLICATIONS OR MATERIALS FROM THIRD PARTIES ("**THIRD PARTY MATERIALS**"). EACH BLACK FAMILY MEMBER ACKNOWLEDGES AND AGREES THAT STC IS NOT RESPONSIBLE FOR EXAMINING OR EVALUATING THE CONTENT, ACCURACY, COMPLETENESS, TIMELINESS, VALIDITY, COPYRIGHT COMPLIANCE, LEGALITY, DECENCY, QUALITY OR ANY OTHER ASPECT OF SUCH THIRD PARTY MATERIALS. STC, ITS OFFICERS, DIRECTORS, AFFILIATES AND SUBSIDIARIES DO NOT WARRANT OR ENDORSE AND DO NOT ASSUME AND WILL NOT HAVE ANY

LIABILITY OR RESPONSIBILITY TO THE BLACK FAMILY MEMBERS OR ANY OTHER PERSON FOR ANY THIRD PARTY SERVICES, OR THIRD PARTY MATERIALS, OR FOR ANY OTHER MATERIALS, PRODUCTS, OR SERVICES OF THIRD PARTIES. THIRD PARTY MATERIALS ARE PROVIDED SOLELY AS A CONVENIENCE TO THE BLACK FAMILY MEMBERS.

(i) EACH BLACK FAMILY MEMBER ACKNOWLEDGES AND AGREES THAT THE LICENSED IP CONTAINS PROPRIETARY CONTENT, INFORMATION AND MATERIAL THAT IS OWNED BY STC AND THIRD PARTIES, AND IS PROTECTED BY APPLICABLE INTELLECTUAL PROPERTY AND OTHER LAWS, INCLUDING BUT NOT LIMITED TO COPYRIGHT AND TRADE SECRET LAWS, AND THAT THE BLACK FAMILY MEMBERS WILL NOT USE SUCH PROPRIETARY CONTENT, INFORMATION OR MATERIALS IN ANY WAY WHATSOEVER EXCEPT FOR THE LICENSED PURPOSE OR IN ANY MANNER THAT VIOLATES OR IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT OR THAT INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR STC.

(j) THE BLACK FAMILY MEMBERS JOINTLY, AND EACH OF THEM SEVERALLY, HEREBY AGREE TO INDEMNIFY AND HOLD STC HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, DAMAGES, COSTS, FEES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS FEES AND DISBURSEMENTS) ARISING OUT OF, RELATING TO OR CONNECTED WITH THE USE OF THE PURCHASED ALGORITHMS, THE PURCHASED IP AND THE LICENSED IP BY THE BLACK FAMILY MEMBERS.

(k) **Survival.** The provisions of this Section 5 shall survive any termination of all or any part of this Agreement or any rights granted to the Black Family Members hereunder.

**6. Assistance to Attorneys.** STC is selling the Purchased Algorithms and granting the Ancillary License hereunder in connection with and subject to that certain letter dated \_\_\_\_\_, 2012 (the "**McCaffrey Letter**") from Carlyn McCaffrey, Esquire ("**McCaffrey**"), of the law firm of McDermott, Will and Emery (the "**Law Firm**"), to STC, which, among other things, provides that: (a) the Law Firm has been retained by the Black Family Members to provide certain legal representation; (b) STC has sold the Black Family Members the Purchased Algorithms and granted the Ancillary License hereunder under the direction of the Law Firm and McCaffrey; (c) the Purchased Algorithms and Licensed IP are of a character and quality that are related to McCaffrey's and the Law Firm's services as attorneys to the Black Family Members; (d) the Purchased Algorithms and Licensed IP are being provided for the purpose of assisting McCaffrey and the Law Firm in their representation of the Black Family Members; and (e) the Purchased Algorithms and Licensed IP and all communications, information, records or documents in any way related to the financial estates of Black Family Members coming into the possession of or created by STC are subject to the confidentiality and non-disclosure provisions contained in the said letter. All communications between STC and the Black Family Members, and/or between STC and McCaffrey and/or the Law Firm, shall be confidential, and shall be made for the purpose of performing this Agreement and assisting McCaffrey and the Law Firm in their representation of the Black Family Members.

**7. Other Activities of STC.** Each Black Family Member understands and agrees that STC sells and intends to provide to persons and entities other than the Black Family Members algorithms, intellectual property and services similar to the Purchased Algorithms, the Purchased IP, the Licensed IP and any ancillary services it may provide in connection therewith, and that STC's sale hereunder of the

Purchased Algorithms and grant hereunder of the Ancillary License shall in no way be deemed to preclude STC from selling other similar algorithms to other persons and entities or granting to other persons and entities other non-exclusive licenses to use the Licensed IP for any purposes whatsoever, including purposes similar to the Licensed Purpose.

8. **Termination.** All rights of the Black Family Members granted under this Agreement will terminate automatically or otherwise cease to be effective without notice from STC if the Black Family Members fail to comply with any of the provisions of this Agreement, including, without limitation, payment of the Purchase Price as provided in Section 3 hereof. Upon the termination of such rights, the Black Family Members shall cease all use of any and all Licensed IP and destroy all copies, full or partial, thereof.

9. **Representations and Warranties.**

(a) Representations and Warranties of STC. STC hereby represents and warrants to the Black Family Members that:

(i) Execution and Delivery. This Agreement has been duly executed and delivered by STC and constitutes the legal, valid and binding obligation of STC enforceable against STC in accordance with its terms, subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

(ii) Consents; No Conflicts, Etc. Neither the execution and delivery of this Agreement, the consummation by STC of the transactions contemplated herein nor compliance by STC with any of the provisions hereof will (with or without the giving of notice or the passage of time) (A) violate any order, writ, injunction or decree applicable to STC, or (B) conflict with, violate, result in a breach of or constitute a default under (without regard to requirements of notice, lapse of time, or elections of other persons, or any combination thereof), any instrument or agreement to which STC is a party.

(b) Representations and Warranties of the Black Family Members. The Black Family Members, jointly and severally, hereby represent and warrant to STC that:

(i) Execution and Delivery. This Agreement has been duly executed and delivered by each Black Family Member and constitutes the legal, valid and binding obligation of such Black Family Member enforceable against such Black Family Member in accordance with its terms, subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

(ii) Consents; No Conflicts, Etc. Neither the execution and delivery of this Agreement, the consummation by the Black Family Members of the transactions contemplated herein nor compliance by the Black Family Members with any of the provisions hereof will (with or without the giving of notice or the passage of time) (A) violate any order, writ, injunction or decree applicable to any Black Family Member, or (B) conflict with, violate, result in a breach of or constitute a default under (without regard to requirements of notice, lapse of time, or elections of other persons, or any combination thereof), any instrument or agreement to which any Black Family Member is a party.

10. **Non-Disclosure; Trade Secrets.**

(a) The Black Family Members shall strictly comply with the provisions contained in Sections 1(d) and 11 hereof. Without limiting the generality of the foregoing, without the prior written permission of STC, the Black Family Members will not disclose or permit access to, all or any part of the Licensed IP to any person or entity (a "Third Party"), other than the respective principals, trustees, directors, officers, managers, employees, accountants, attorneys and professional advisors of the Black Family Members, McCaffrey, and the Law Firm (hereinafter referred to as "**Permitted Black Family Recipients**"), unless such Black Family Member seeking to so disclose or permit such access first discloses the identity of such Third Party to STC, second receives STC's written approval of such Third Party, and third causes such Third Party to execute a written confidentiality agreement in favor of STC which contains all the provisions set forth in Section 11 of this Agreement. The Black Family Members shall deliver to STC an executed, original version of each such confidentiality agreement executed by a Third Party within three (3) days after such Third Party executes the same.

(b) Each Black Family Member acknowledges that: (i) other than the Purchased IP, all information, know-how and data which the Black Family Members acquire from STC concerning the software, programming, application, development, technical specifications or use of the Licensed IP, as well as the other items (excluding the Purchased IP) concerning the Licensed IP (other than those which are in the public domain), are highly confidential and constitute trade secrets of STC within the meaning of the Uniform Trade Secrets Act (the "**Trade Secrets**"); (ii) STC has a proprietary interest in, has invested substantial amounts of money to develop and will continue to invest substantial amounts of money to maintain the Trade Secrets; (iii) STC has implemented procedures to maintain the confidentiality of the Trade Secrets; (iv) STC's competitors would obtain unfair economic and competitive advantages if the Trade Secrets were divulged; (v) STC would suffer irreparable and continuing injury if the Trade Secrets were disclosed; and (vi) the Trade Secrets form an integral part of STC's business. Each Black Family Member agrees that the inclusion of STC's copyright notice on any Licensed IP in no way diminishes or alters the trade secret status of such Licensed IP, said copyright notice serving the sole purpose of identifying STC's copyright in the underlying material.

#### 11. **Confidentiality of Trade Secrets.**

(a) Due to the importance and sensitivity of the Trade Secrets, each Black Family Member agrees that the Black Family Members shall: (i) not directly or indirectly sell, alienate, transfer, assign, disclose or divulge Trade Secrets to any person or entity, nor permit any Permitted Black Family Recipients or any Third Party to do so, without STC's prior, written permission; (ii) not permit any Third Party to operate, maintain or have access to the Licensed IP so that such Third Party could receive access to Trade Secrets, except for those Third Parties who execute confidentiality agreements in accordance with Section 10(a) above ("**Permitted Third Parties**"); (iii) keep all records, documents and information which the Black Family Members receive or create that includes, makes reference to or otherwise concerns the Licensed IP segregated in a retention area designated solely for the Licensed IP and restricted in access to the Black Family Members, the Black Family Representative, and those of the Permitted Black Family Recipients and the Permitted Third Parties with a specific need to know or use the Licensed IP; (iv) provide written notice of the location of such retention area to STC; (v) provide copies of such records, documents and information to STC upon STC's request, and/or allow STC to examine the such records, documents and information at such retention area and to copy or make abstracts of such records, upon STC's providing five (5) days advance notice of its intention to do so; (vi) not change the location of such retention area without obtaining STC's prior, written permission; and (vii) not directly or indirectly use Trade Secrets or any information relating to Trade Secrets in or for the benefit of any individual, business, profession, trust, association, partnership, corporation, limited liability company,

joint venture or other endeavor, other than the Black Family Members and other than specifically for the Licensed Purpose.

(b) The Black Family Members shall notify STC of any information which comes to the attention of any Black Family Member which does or might indicate that there has been any loss of confidentiality concerning Trade Secrets. In such event, the Black Family Members shall take all steps within the power of the Black Family Members to limit the spread of such information in violation of this Agreement, including, but not limited to, taking whatever legal action is necessary to terminate such spread. STC, in its sole discretion, shall have the right to take over and assume control of any such litigation, by providing the Black Family Members with written notice of its decision to do so, and the Black Family Members shall cooperate fully with STC in such litigation.

(c) Each Black Family Member covenants that none of the Black Family Members shall, directly or indirectly, claim, attack, compromise, file suit against or commit, or permit, assist or enable the commission of, any action which could impair any of STC's rights, titles or interests in the Licensed IP.

(d) If any of the Black Family Members, any Black Family Recipients, or any Permitted Third Parties breach any provisions contained in this Section 11, the Black Family Members (in the case of breaches by any Black Family Members or any Permitted Black Family Recipients) and/or the breaching Permitted Third Parties shall pay STC's actual, direct, indirect and consequential damages which arise from or are associated with such breach. In determining the damages identified in this Agreement, the parties considered: (i) the value, type and quality of the Trade Secrets; (ii) the substantial amount of time, effort and cost which STC invested to develop and will continue to invest to maintain the Trade Secrets; and (iii) the confidential and unique nature of the Trade Secrets. In addition to the aforesaid money damages, if STC prevails in any action or claim based upon a breach of this Section 11 by any of the Black Family Members, any of the Permitted Black Family Recipients or any of the Permitted Third Parties, the Black Family Members (in the case of breaches by any Black Family Members or any Permitted Black Family Recipients) and/or the breaching Permitted Third Parties shall pay STC's reasonable attorneys' fees, court costs and investigation costs which arise from or are associated with such breaches or STC's attempts to enforce any provisions of this Section 11. Each Black Family Member and each Permitted Third Party agrees that the aforesaid stipulated damages solely constitute a component of STC's monetary damages, and are not to the exclusion of any other damages STC may suffer.

(e) Each Black Family Member and each of the Permitted Third Parties acknowledges and agrees that if any of the Black Family Members, any of the Permitted Black Family Recipients or any Permitted Third Parties breach any provisions contained in this Section 11, it shall cause damage of an irreparable and continuing nature to STC, for which money damages will not provide adequate relief. Therefore, in addition to any money damages to which STC is entitled, STC also is entitled to obtain injunctive relief (including, but not limited to, immediate entry of a temporary restraining order) to prohibit the continuing breach of the applicable provisions. STC shall have the right to obtain such relief without having to prove any damages or post any bond.

(f) The obligations of each and all of the Black Family Members and each and all of the Permitted Third Parties under this Section 11, shall survive the termination of the Ancillary License, this Agreement or any of this Agreement's provisions, for any reason.

12. **Confidentiality of Black Family Information.** All information, work papers, records, or

other documents pertaining to the Black Family Members that come into the possession of or are created for, by, on behalf of, or at the direction of STC in connection with the purchase and sale of the Purchased Algorithms, regardless of their nature and the source from which they emanate, shall be confidential and held by STC subject to the confidentiality and non-disclosure provisions contained in the McCaffrey Letter.

13. **Notices.** All notices, requests, permissions or other communications which any party hereto may be required or desire to give to any other party hereto under this Agreement must be in writing and sent by (a) first class U.S. certified or registered mail, return receipt requested, with postage prepaid, (b) telecopy, facsimile or email (with a copy sent by first class U.S. certified or registered mail, return receipt requested, with postage prepaid), or (c) express mail or courier (for either same day or next Business Day delivery). A notice or other communication sent in compliance with the provisions of this Section 13 shall be deemed given and received on (x) the third (3rd) Business Day following the date it is deposited in the U.S. mail, (y) the date of confirmed dispatch if sent by facsimile, telecopy or email (provided that a copy thereof is sent by mail the same day in the manner provided in clause (b) above), or (z) the date it is delivered to the other party's address if sent by express mail or courier. The addresses for the parties hereto are as follows:

All notices, requests, permissions and other communications to STC shall be addressed to such party at the following address:

Southern Trust Company, Inc.  
6100 Red Hook Quarter, B3  
St. Thomas, USVI 00802  
Facsimile No.: (340) 775-2528  
email: [dkiesq@aol.com](mailto:dkiesq@aol.com)  
Attention: Mr. Jeffrey E. Epstein, President

with a copy to (which shall not constitute notice to Seller):

Darren K. Indyke, Esq.  
Darren K. Indyke, PLLC  
575 Lexington Avenue, 4<sup>th</sup> Floor  
New York, NY 10022  
Facsimile No.: (646) 350-0378  
email: [dkiesq@aol.com](mailto:dkiesq@aol.com)

All notices, requests, permissions and other communications to any of the Black Family Members shall be addressed to such party at the following address:

Apollo Management  
9 West 57<sup>th</sup> Street, 43<sup>rd</sup> Floor  
New York, NY 10019  
Facsimile No.: (212) 515-3261  
email: [black@apollolp.com](mailto:black@apollolp.com)

Attention: Mr. Leon Black, Black Family Representative

Any party hereto may designate another addressee or change its address for notices and other communications hereunder by a notice given to the other parties hereto in the manner provided in this Section 13.

14. **Independent Contractors.** The relationship of the parties hereto shall be that of independent contractors, and no partnership, joint venture or agency relationship shall be deemed to be created hereunder.

15. **Severability.** If any of the covenants, terms, conditions or provisions of this Agreement are held invalid for any reason, such invalidity shall not affect the other covenants, terms, conditions and provisions hereof which can be given effect without the invalid covenant, term, condition or provision, as the covenants, terms conditions and provisions of this Agreement are intended to be and shall be deemed severable.

16. **Applicable Law and Jurisdiction.**

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the United States Virgin Islands, applicable to contracts executed and to be fully performed therein, without giving effect to its principles of conflicts of law.

(b) Each party hereto irrevocably and unconditionally submits to the exclusive jurisdiction of any court sitting in the United States Virgin Islands over any suit, action or proceeding arising out of or relating to this Agreement. Each party hereto agrees that service of any process, summons, notice or document by registered mail or certified mail addressed to such party hereto shall be effective service of process for any action, suit or proceeding brought in any such court. Each party hereto irrevocably and unconditionally waives any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each party hereto agrees that a final, non-appealable judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon such party and may be enforced in any other courts to whose jurisdiction such party is or may be subject, by suit upon judgment.

17. **Captions.** The titles used in this Agreement are for convenience only and are not to be considered in construing the intent or meaning of the terms of this Agreement.

18. **Binding Effect and Non-Assignability.** This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. Except as expressly provided herein, including, without limitation, Section 1(e) hereof, no party hereto may assign this Agreement or any right granted hereunder or delegate any duty or obligation provided for herein without the prior consent of the other party hereto.

19. **Entire Agreement.** This Agreement, together with the McCaffrey Letter, contains the entire agreement of the parties hereto concerning the subject matter hereof and thereof, and supersedes any and all prior agreements, representations, warranties, covenants, terms and conditions among the parties hereto concerning the subject matter hereof and thereof, which prior agreements, representations, warranties, covenants, terms and conditions are hereby canceled. This Agreement may only be changed, modified or amended by an agreement in writing, signed by STC and the Black Family Representative. Each Black Family Member hereby authorizes the Black Family Representative, at any time and from time to time, to execute on such Black Family Member's behalf any and all such written changes,

modifications and amendments to this Agreement as the Black Family Representative, in his discretion, deems necessary or advisable.

20. **Counterparts; Delivery.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by delivery of a facsimile copy of an executed signature page or counterpart hereof or by e-mailing a PDF version of a signed signature page or counterpart hereof, and each shall have the same force and effect as the delivery of an originally executed signature page or counterpart hereof.

21. **Waiver.** Any waiver of any provision hereof must be in writing and shall be effective only in the specific instance and for the specific purpose for which such waiver is given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Any written waiver of any provision hereof signed by the Black Family Representative shall be effective as against all the Black Family Members.

22. **Costs of Litigation.** In any action or proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive, and the non-prevailing parties shall pay, the prevailing party's costs and expenses of such action or proceeding, including, but not limited to, the costs of investigation and the reasonable attorneys fees and disbursements paid or incurred by the prevailing party in respect of such action or proceeding. The prevailing party shall be entitled to an award of such costs and expenses in addition to any and all other relief granted or awarded to the prevailing party in such action or proceeding.

23. **Construction.** This Agreement shall be deemed to have been prepared, and negotiations shall be deemed to have occurred in connection with such preparation, pursuant to the joint efforts of the parties to this Agreement. This Agreement therefore shall be construed simply and fairly and not strictly for or against any party to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**SOUTHERN TRUST COMPANY, INC.**

By: \_\_\_\_\_  
**Jeffrey E. Epstein**  
**President**

\_\_\_\_\_  
**LEON BLACK, as a Black Family Member and  
in his capacity as the Black Family Representative**

**[OTHER BLACK FAMILY MEMBERS' SIGNATURES ON THE FOLLOWING PAGES]**

**PURCHASE AND SALE AGREEMENT  
DATED AS OF DECEMBER \_\_\_, 2012**

**BLACK FAMILY MEMBERS SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the undersigned Black Family Member has caused this Agreement to be duly executed as of the day and year first above written

**Name of Black Family Member:**

\_\_\_\_\_

**Address:** \_\_\_\_\_

**Name of Signatory:** \_\_\_\_\_

**Title of Signatory:** \_\_\_\_\_

**Signature:** \_\_\_\_\_