

**ALGORITHM LICENSING AND SERVICE AGREEMENT**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_

BETWEEN:

(1) Direct Trading Institutional, L.P., a Delaware limited partnership, with offices at 8115 Preston Road, Suite 600, Dallas, TX 75225, and/or its broker dealer affiliates, (“Licensor”); and

(2) [ \_\_\_\_\_ ] a  
\_\_\_\_\_ entity with offices at:  
\_\_\_\_\_ (“Licensee”).

WHEREAS, Licensor owns or licenses software programs which enable the users thereof to engage in and utilize Algorithmic Trading;

WHEREAS, Licensee is either (please check one, as applicable):

\_\_\_\_ (i) a licensed broker dealer and desires to engage in Algorithmic Trading using the Software and/or to provide to its brokerage clients access of Algorithmic Trading;

or

\_\_\_\_ (ii) an “Institutional Customer” as defined below; and

WHEREAS, Licensor is willing to license to Licensee the Software to enable Licensee to engage in Algorithm Trading.

NOW, THEREFORE in consideration of the premises and the mutual covenants and representations contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**1. DEFINITIONS**

“Algorithmic Trading” shall mean the implementation of trading strategies through the use of proprietary algorithms embodied in the Software for automated execution of orders to sell or buy securities.

“Authorized Users” shall mean the employees, agents and brokerage clients of Licensee who are authorized by Licensee to use the software and have been provided with passwords for such use.

“Confidential Information” shall mean, with respect to either Licensor or Licensee (i) information concerning the components, capabilities and attributes of the Software or the Algorithmic Trading, which are the confidential property of such party, and (ii) other information related to the business of such party as described in this Agreement or revealed by each party to the other in the course of performing under this Agreement; provided, however, that any information which (i) is or becomes publicly available (other than through unauthorized disclosure by the other party) (ii) is obtained from a source other than the disclosing party which source disclosed such information without breach of any legal or contractual obligation, (iii) is, at the time of disclosure to the other party, already in the possession of, or known to such other party, or (iv) is independently developed by the other party without use of the Confidential Information of the disclosing party, shall not be deemed Confidential Information.

“Customized Programs” shall mean special designed Algorithmic Trading strategies created for Licensee upon special request and in accordance with Section 9 hereof.

“Institutional Customer” shall mean persons for whom Licensor or its broker-dealer affiliates has established a trading account and who has a net worth of \$5,000,000 or assets under management of \$5,000,000.

“Software” shall mean the proprietary software developed and owned or licensed by Licensor which when accessed by Authorized Users using Licensor’s or other proprietary front end trading system or through FIX connectivity can be used to trade in securities using Algorithmic Trading.

## **2. GRANT OF LIMITED LICENSE**

(A) **Grant of License.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee the non-exclusive non-transferable, worldwide right and license (the “License”) to use the Software for the purpose of engaging in Algorithmic Trading.

(B) **Ownership of Intellectual Property.** All intellectual property rights in and to the Software and Algorithmic Trading (including all text, software, graphics, audio, video, icons, software code and trade secrets, as well as the overall organization, design, look, feel and appearance of the Software and any information accessible therefrom) and the right to make any copy, display, translation, compilation or other derivative works thereof belong to the Licensor. The grant of this license to the Licensee hereunder is solely to access the Software for Algorithmic Trading, and shall not under any circumstances constitute a transfer of any copyrights, trademarks, patent rights, trade secrets or any other intellectual property rights of Licensor or any of its licensors to Licensee or any third party hereunder. Licensee agrees that unauthorized copies or disclosure of the Software and other intellectual property of Licensor will cause great damage to Licensor, which damage far exceeds the value of the copies or information involved. Licensee agrees that Licensee and its Authorized Users shall not: (a) sell, lease, license or sublicense the Software or any part thereof; (b) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Software or any part thereof for any reason; (c) provide, disclose, divulge or make available to, or permit use of the Software, or any part thereof, by any third party except as may be set forth herein; (d) copy or reproduce the Software, or any part thereof; (e) interfere with the Software in any way; (f) engage in any other fraudulent, illegal, disruptive, or unauthorized use of the Software; or (g) introduce into or transmit through the Software any virus, worm, clock, counter or other limiting routine, instruction or design. Licensee shall not assign, pledge, encumber, sell or otherwise transfer to any third party its license to use the Software, or any other rights of Licensee under this Agreement. Licensee shall keep its license to use the Software free and clear of any and all liens, levies and encumbrances.

(C) **Sublicense.** Except as permitted by Section 10 hereof, unless otherwise agreed to in writing by the Licensor this Agreement does not include the right to sublicense the Software or to use the Software to provide timeshare services, service bureau services, outsourcing services or consulting services, or for any unlawful purpose. Licensee shall be responsible and liable to Licensor and any third party for any use, or access of the Software or through use of Licensee's access granted under this Agreement by any person or entity who is not a party to or covered by this Agreement, including, without limitation, any direct or indirect use or access, whether authorized or unauthorized by Licensee and its Authorized Users

## **3. FEES; PRICING**

Fees, pricing and payment terms are set forth in Exhibit A hereto.

#### **4. TERM AND TERMINATION**

(A) This License shall be for a minimum term of one year from the date first set forth above and shall automatically renew annually for one year terms until and unless terminated by either party hereto in accordance with the terms hereof.

(B) (i) The license granted hereunder, this Agreement and any other rights granted hereunder may be terminated, if Licensee breaches any material term or covenant including payment of this Agreement, and such breach shall not have been cured within five (5) days of due date in the case of a default in any payment due hereunder and twenty (20) days after written notice thereof shall have been given to the party in breach in the case of any non monetary breach.

(ii) The license granted hereunder, this Agreement and any other rights granted hereunder may be terminated, if (a) a petition of bankruptcy shall be filed by or against either party (provided that any such petition filed against either party is not dismissed or otherwise disposed of within ninety (90) days of filing); (b) either party shall be adjudged insolvent or bankrupt by any court; (c) a trustee or a receiver of any property of either party shall be appointed in any suit or proceeding by or against such party; (d) either party shall make an assignment for the benefit of creditors or shall take the benefit of any bankruptcy or insolvency act; or (e) the other party shall liquidate its business for any cause whatsoever, provided, however, that a sale of all or substantially all of the business or assets of, or ownership interests in, the other party shall not in itself be deemed a liquidation of such party.

(iii) The license granted hereunder, this Agreement and any other rights granted hereunder may be terminated by Licensor, on 30 days' prior written notice to Licensee in the event that Licensor ceases to license the Software.

(iv) The right to terminate this Agreement pursuant to this Section 4(B) shall be in addition to any other forms of legal and equitable relief available to the party exercising such right hereunder.

(C) Upon termination of this Agreement, Licensee and its Authorized Users shall cease all use of the Software and the Algorithmic Trading using the Software, and, shall destroy all stored Software, or deliver to Licensor any and all copies of magnetic tapes or other machine-readable material containing the Software (or any of them), including copies of CD-ROMs or other tangible media used in Licensee's or Authorized Users business containing the Software (or any of them); provided, however, that either party hereto may retain such material as is required for federal or state regulatory purposes.

#### **5. ACCESS TO SOFTWARE AND TO LICENSOR TRADING SYSTEM;**

(A) **Access.** Licensee may, at its option, access the Software through Licensor's front-end trading system, through other available, authorized front ends or through direct FIX connectivity. Algorithmic Trading orders are controlled by customer-specified trading parameters. As such, standard tags for these parameters do not exist in the FIX protocol. These parameters will therefore be communicated to the Software using sets of custom tags. In addition, some algorithms may send back to the customer strategy-specific trading information – for example, a benchmark Vwap price – for which standard tags do not exist. This information will also be communicated using custom tags. Licensor shall add new tags from time to time to support new algorithms and refinement of existing algorithms.

Licensor offers its direct-market-access service to its FIX connectivity customers to trade, and the use of FIX to route orders to specific market venues. Licensor will provide to Licensee a FIX specification upon request.

(B) **Licensee Responsibilities; Applicable Law and Registration.** Licensor will issue to Licensee an individual logon identifier and password for purposes of using the Software and Licensor hereby grants Licensee access to the Software. Licensee shall be solely responsible for distributing the logon identifier and password to its Authorized Users. Licensee and each Authorized User shall: (a) be responsible for the security and/or use of his/her/its logon identifier and password; (b) not disclose such logon identifier and password to any other person or entity; (c) not permit any other person or entity to use such logon identifier and/or password; (d) ensure that Licensee and all Authorized Users abide by and comply with this Agreement and all applicable provisions of federal and state laws, including securities laws, and rules and regulations of all trading exchanges and regulatory agencies applicable to or having jurisdiction over Licensee and/or Licensor. Licensee shall be solely responsible for advising each Authorized User of his/her/its obligations under this Agreement and of the license restrictions and indemnities set forth in this Agreement; and for each Authorized User's use of his/her/its logon identifier or password. Upon Licensee's reasonable request, Licensee will arrange additional or alternative passwords for Authorized Users.

Licensor reserves the right to deny or revoke access to the Software if Licensor believes (at Licensor's discretion) that Licensee and/or its Authorized Users are in breach of this Agreement or are otherwise engaged in unlawful use of the Software. Licensee shall include in its agreements with its Authorized Users terms that: (x) advise Authorized Users of the restrictions set forth in this Agreement; (y) disclaim any and all liability of Licensor with respect to any Authorized User and (z) require the Authorized User to abide by the rules and regulations set forth in any execution agreement entered into by Licensee and Licensor.

(C) **Change in Software Access.** Licensor, in its sole discretion or at the discretion of a third party, including but not limited to, Licensor's third party communications and/or software providers and licensors or regulatory authorities, may from time to time make additions to, deletions from, or modifications to, the Software. Licensor shall make reasonable efforts to notify Licensee of changes in the Software, (other than minor changes) prior to any such change(s), unless a malfunction necessitates modifications on an accelerated basis or an emergency precludes such advance notice or a shorter time period is required pursuant to an order or other action of a court, arbitrator or regulatory authority. Access to or use of the Software after any change in the Software shall constitute acceptance of the Software as modified. Licensee acknowledges and agrees that nothing in this Agreement constitutes an undertaking by Licensor to provide access to Software in the present form or under the current specification or requirements, with the current software interface or to continue to use existing communications providers.

(D) **Equipment Requirements.** Licensee shall be responsible for providing all equipment, connection and telecommunications requirements for accessing the Software.

## 6. COVENANTS OF LICENSEE

(A) Licensee represents and warrants that it has the power and authority to enter the License Agreement and make the covenants provided for herein.

(B) Licensee certifies, represents and warrants that Licensee shall use any and all the Software received pursuant to this Agreement solely for the purpose of, and solely to the extent necessary

for using Algorithmic Trading based on the Software for its proprietary use and use by its clients. Licensee shall not use the Software for any other purpose.

(C) Licensee agrees that Licensor may from time to time make changes to the format, organization or content of the Software.

(D) Licensee acknowledges and agrees it is not acquiring under this Agreement any proprietary interest in the Software

(E) Licensee represents and warrants that it is an entity organized and with characteristics as described in the Recitals of Page 1 of this Agreement, is validly existing and in good standing under the laws of the state of its formation and applicable governing regulatory bodies.

(F) Licensee acknowledges that (i) it is solely responsible for all investment decisions made in connection with its use of the Software and (ii) Licensor shall have no duty to inquire as to the authority, propriety, suitability, or accuracy of Licensor's use of the Software.

(G) Licensee represents, warrants and covenants to Licensor that: (i) its use of the Software and, if Licensor uses the Software for execution of orders in securities that, such transactions, will comply with all applicable laws, rules and regulations and with the policies and practices of securities exchanges and clearing houses, alternative trading facilities and self-regulatory organizations, as may be amended from time to time (including, without limitation, laws and rules regarding short sales under U.S. securities laws (e.g., U.S. Securities and Exchange Commission Rule 10a-1 and Regulation SHO.)

## 7. COVENANTS OF LICENSOR

(A) Licensor represents and warrants that it has the power and authority to enter this Agreement and make the covenants provided for herein.

(B) Licensor represents and warrants that it is an entity organized and with characteristics as described in the Recitals of Page 1 of this Agreement, is validly existing and in good standing under the laws of the state of its formation and applicable governing regulatory bodies.

## 8. SUPPORT AND MAINTENANCE; SOFTWARE USERS ALLIANCE

(A) **Proprietary and Third Party Vendor Software** If Licensee uses a proprietary Software or third party vendor Software (each a "**Sub-Software**") to interface via a Licensor interface ("**Interface**") to the Software, Licensor shall not be liable for any and all losses, damages or claims arising out of any delay, malfunction or error due to Licensee's use of such Sub-Software.

(B) **Technical Support.** Licensor shall provide by telephone or online, either directly or through a third party, technical support during regular New York trading hours, Monday through Friday, excluding exchange trading holidays. Licensee shall designate employees who are familiar with Licensee's computer software, network and hardware to serve as the approved points of contact for

obtaining technical support from Licensor. Licensor shall not be obligated to provide support to any person not on the list of and designated employees. Licensee may change its support contacts upon written notice to an authorized officer of the Company. On-site support or other Licensee-specific support may be provided to Licensee on a time-and-materials basis pursuant to a separate written agreement between Licensee and Licensor.

## **9. SPECIAL PROJECTS**

Licensor will upon request of Licensee consider a special project involving adaptation of the Software to an Algorithmic Trading strategy not otherwise provided by the Software. If the Licensor agrees to develop such strategy, the cost of such services, the use rights thereof, and the ownership thereof, shall be set forth in a separate development written agreement entered by Licensor and Licensee in connection therewith.

## **10. PRIVATE LABEL RIGHTS**

Licensee shall have the right, upon Licensor prior written consent, to provide access for its Authorized Users to the Software to create a “private label” of the Software for use by its Authorized Users in a manner that eliminates all identification of Licensor to establish such a private label product. Such private labelling may be made only with respect to algorithms. If Licensee establishes such private labelling Licensee shall remain fully liable under this License for performance of all covenants to be performed hereunder by Licensee including, but not limited to, the payments of fees and commissions pursuant to Section 4 hereof, which arise by reason of use of the Software or securities trading by Licensee by any Authorized User, and for protection of all proprietary rights of Licensor in accordance with the terms hereof, including, any acts of Licensee’s Authorized User. Licensor shall not be responsible for any claims made by Licensee orally or in writing to its Authorized Users with respect to performance of the Software, and shall hold Licensee harmless from all such claims.

## **11. INDEMNIFICATION**

(A) Subject to the limitations of liability set forth, Licensor shall, at its sole cost and expense, indemnify and hold Licensee harmless from and against any claims or action brought against Licensee that may result by reason of infringement, or claim of infringement, of any United States patent, copyright, or other proprietary rights of any third party based upon the use of the Software by Licensee pursuant to this License, provided Licensee notifies Licensor promptly and in writing of such claim or action; and provided, further, that Licensor shall not indemnify Licensee to the extent that Licensee is responsible, directly or indirectly, for such infringement or claim of infringement. Licensee may participate, at its own cost, in the defence or settlement of any such claim defended by Licensor pursuant to this Section, provided, however, that full control of the investigation, trial or compromise of the matter shall remain exclusively with Licensor. Licensor, at its sole option may, in case of any claimed infringement resolve such claims by: (i) obtaining any necessary license; (ii) modify the Software; (iii) obtain substituted software; or (iv) discontinue this License.

(B) Licensee shall, at its sole cost and expense, indemnify and hold Licensor, harmless from and against any claims or actions that may result by reason of the use of the Software, by it and/or its Authorized Users, provided that Licensor notifies Licensee promptly and in writing of such claim or action and provided, further, that Licensee shall not indemnify Licensor to the extent that Licensor is responsible, directly or indirectly, for such infringement or claim of infringement. Licensor may participate, at its own cost, in the defence or settlement of such claim defended by Licensee pursuant to this Section 11(B); provided, however, that full control of the investigation, trial or compromise of the matter shall remain exclusively with Licensee provided that the Licensee will not agree to any settlement

in any such claim or action that; (i) obligates the Licensor without the Licensor's consent or (ii) admits any fault or liability on the part of the Licensor.

(C) In the event that any Software furnished under this Agreement becomes the subject of a claim for infringement, Licensor, in its sole discretion, may authorize the continued use of, replace, remove or modify such Software to render it non-infringing.

## **12. LIMITATIONS OF LIABILITY**

(A) **DISCLAIMER OF LIABILITY AND WARRANTY. EXCEPT AS SET FORTH IN SECTION 7 OF THIS LICENSE, THE SOFTWARE IS PROVIDED "AS IS" AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO ACCURACY, FUNCTIONALITY, PERFORMANCE OR MERCHANTABILITY. LICENSOR AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT AS SET FORTH IN SECTION 7 OF THIS AGREEMENT, LICENSOR, ITS AFFILIATES AND THE SOFTWARE SOURCES MAKE NO REPRESENTATION, WARRANTY OR COVENANT CONCERNING THE ACCURACY, COMPLETENESS, SEQUENCE, TIMELINESS OR AVAILABILITY OF THE SOFTWARE, , OR ANY OTHER INFORMATION OR THE LIKELIHOOD OF PROFITABLE TRADING USING THE SOFTWARE,.**

(B) **LICENSEE AND ITS AUTHORIZED USERS ASSUME ALL LIABILITIES AND RISKS ASSOCIATED WITH THE USE OF THE SOFTWARE, AND ACCEPT FULL RESPONSIBILITY FOR ANY INVESTMENT DECISIONS OR TRANSACTIONS MADE BY LICENSEE AND/OR ITS AUTHORIZED USERS USING THE SOFTWARE. NO SALES PERSONNEL, EMPLOYEES, AGENTS OR REPRESENTATIVES OF LICENSOR, ITS AFFILIATES OR ANY THIRD PARTY ARE AUTHORIZED TO MAKE ANY REPRESENTATION, WARRANTY OR COVENANT ON BEHALF OF LICENSOR. ACCORDINGLY, ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES AND SHOULD NOT BE RELIED UPON AND ARE NOT PART OF THIS AGREEMENT. NEITHER LICENSOR NOR ANY OF ITS AFFILIATES REPRESENT OR WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. LICENSEE EXPRESSLY AGREES THAT USE OF THE SOFTWARE, IS AT LICENSEE'S AND ITS AUTHORIZED USERS SOLE RISK AND THAT LICENSOR AND ITS AFFILIATES SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTION OF SERVICES, ERRORS OR DELAYS INCLUDING BUT NOT LIMITED TO INTERRUPTIONS, ERRORS OR DELAYS THAT ARE CAUSED BY ANY TRANSMISSION OR DELIVERY OF THE SOFTWARE.**

(C) **LIMITATION OF LIABILITY. IN NO EVENT WILL LICENSOR OR ITS AFFILIATES BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, TRADING LOSSES OR LOSS OF OTHER COSTS OR SAVINGS), RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT WHETHER SUCH DAMAGES OR LOSSES ARE THOSE OF LICENSEE OR AUTHORIZED USER OR ANY THIRD PARTY. REGARDLESS OF CAUSE OR FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN, UNFORESEEN OR FORESEEABLE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LICENSOR'S**

**SOLE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE WITH RESPECT TO ANY CLAIM, SUIT OR PROCEEDING BROUGHT AGAINST LICENSEE ALLEGING THAT THE SOFTWARE OR LICENSEE'S USE OF THE SOFTWARE CONSTITUTES A MISAPPROPRIATION OF, OR INFRINGEMENT UPON, ANY UNITED STATES OF AMERICA PATENT OR COPYRIGHT OF A THIRD PARTY, THE REMEDIES STATED IN SECTION 11.**

(D) Notwithstanding the foregoing, in the event the terms of this section, or any part thereof, shall be held invalid and unenforceable by a court of competent jurisdiction, Licensor's total liability under the terms of this License shall not exceed an amount equal to any licensee fee (but not commissions or brokerage fees) paid by Licensee to Company for the one (1) calendar month in which such damages first accrued. This section shall not relieve Licensor from liability for damages that arise out of Licensor's indemnification obligations under paragraph 11 or in the event of a breach by Licensor of its confidentiality obligations under Paragraph 13. This section shall survive any termination or expiration and non-renewal of this Agreement.

**13. CONFIDENTIALITY**

(A) Each party shall preserve the Confidential Information of or pertaining to the other party and shall not, without first obtaining the other party's written consent, disclose to any person or organization other than pursuant to the request of any regulatory or self-regulatory agency or if compelled by a court or administrator with jurisdiction over such party, so long as the receiving party, if permissible, gives prompt and, prior notice of such required disclosure to the disclosing party, or use for its own benefit, any such Confidential Information of or pertaining to such other party, both during the term of this Agreement and thereafter.

(B) Licensee and each Authorized User shall keep confidential and shall not disclose the Software or, in whole or in part, or any information concerning Algorithmic Trading to any third party. Moreover, Licensee and each Authorized User shall ensure that any and all of its employees or Authorized Users who receive the Software, comply with the obligations of confidentiality and use restrictions set forth in this Agreement. Title to the Software shall at all times vest exclusively in Licensor and no rights to the Software, other than those explicitly set forth above, are granted to Licensor.

(C) Notwithstanding the foregoing, Licensor may disclose information to its affiliates and third parties to the extent necessary to effectuate the purpose of this Agreement provided that such firms maintain an obligation of confidentiality with respect to Licensee's Confidential Information. In addition, notwithstanding the foregoing, Licensee will supply Licensor in a timely manner with all information Licensor may reasonably request in writing concerning Licensee and Licensee's use of the Software, and Licensor may report such information to regulatory or self-regulatory authorities as Licensor determines in its sole discretion to be necessary.

**14. NOTICE OF STATEMENTS AND REPORTS**

Unless otherwise provided herein, all notices and other materials required under the terms and provisions hereof shall be in writing, either delivered by hand, by overnight delivery or by telex, telecopier, telegram, or confirmed e mail and any such notice shall be effective when received at the address specified below:

If to Licensor: Attn: Bill Cronin, Managing Director, Direct Trading Institutional, L.P., 8115 Preston Road, Suite 600, Dallas, TX 75225.

With, in the event of notices of dispute or default, a required copy to:

Attn: Legal Department, Knight Capital Group, Inc., 545 Washington Blvd., Jersey City, NJ 07310

If to Licensee: [\_\_\_\_\_]

or at such other address as such party may designate from time to time by notice duly given in accordance with the terms of this Section 14.

## **15. ASSIGNMENT**

(A) This Agreement and the license granted herein may not be assigned or otherwise transferred or sublicensed without the prior written consent of Licensor. Licensor may freely transfer or assign some or all of its rights and responsibilities under this Agreement. In the event Licensor transfer or assigns all of its rights and responsibilities, this Agreement shall be transferred and assigned by Licensor along with such rights and responsibilities, and the receiving party shall be bound by the provisions hereof.

(B) In the event that consent to assignment of this Agreement is required by the terms hereof and such consent is not provided, the only relief available to Licensor shall be to terminate this Agreement without notice.

## **16. PUBLICITY.**

Licensor shall have the right to announce by appropriate press release its license to Licensee of the Software. Licensee shall have the reasonable right to review such press release before it is distributed.

## **17. MODIFICATION**

No modification, amendment or waiver of any of the provisions herein contained, or any future representation, promise, or condition in connection with the subject matter hereof, shall be binding upon Licensor or Licensee unless made in writing and signed on either party's behalf by a duly authorized officer. This Agreement supersedes any and all prior agreements between the parties with respect to the subject matter hereof and all of such prior agreements shall henceforth be null and void and of no further force and effect whatsoever.

## **18. ENFORCEABILITY**

It is the desire and intent of each of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in any jurisdiction in which enforcement is sought. Accordingly, in the event that any particular section, subsection or portion of this Agreement shall be adjudicated to be invalid or unenforceable but only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made and not with respect to the operation of this Agreement in any other jurisdiction, no other subsection or portion hereof shall be affected thereby and all other parts hereof shall survive both in that jurisdiction and in all other

jurisdictions. If the scope of any restriction contained in this Agreement is too broad to permit enforcement of the restriction to its fullest extent, then the restriction shall be enforced to the maximum extent permitted by law, and Licensee agrees that the scope may be judicially modified in any proceeding brought to enforce the restriction.

## **19. CONSTRUCTION**

(A) This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, supersedes any prior agreements whether written or oral. The failure of either party to require the performance of any breached term under this Agreement, shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.

(B) Licensee and Licensor have each participated in the drafting of this Agreement after consulting with counsel. Accordingly, neither Licensor nor Licensee shall maintain that the language of this Agreement should be construed against the other party solely by virtue of such other party's putative role as the drafter of this Agreement.

## **20. HEADINGS**

The descriptive headings of the various Sections of this Agreement are for convenience only and shall not affect the meaning or construction of any provisions hereof.

## **21. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the Federal courts and New York State courts in the City of New York shall have exclusive jurisdiction over all disputes arising hereunder or in connection with the subject matter hereof.

## **22. SURVIVAL**

The provisions of Section 5, 11, 12 and 13 of this Agreement shall survive the termination hereof.

## **23. RELATIONSHIP OF PARTIES**

Neither party is an agent, representative, or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon either party.

## **24. FORCE MAJEURE**

Neither party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, strikes, labor disputes, and governmental demands or requirements.

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**IN WITNESS WHEREOF**, the undersigned parties have duly executed this Agreement as of the date first above written.

Direct Trading Institutional, L.P., together with  
its broker-dealer affiliates

[LICENSOR]

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

2008-02-14

[\_\_\_\_\_]

[LICENSEE]

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

**EXHIBIT A**

**Pricing**