

BATS EXCHANGE USER AGREEMENT

This User Agreement (this “Agreement”), dated _____, 2007, is between BATS Exchange, Inc., a Delaware corporation, with its principal offices at 4151 North Mulberry Drive, Suite 275, Kansas City, Missouri 64116 (“Exchange”), and the user referenced below (“User”).

Term of the Agreement. This Agreement will continue until terminated pursuant to the terms of this Agreement.

Services. Subject to the terms and conditions of this Agreement, User will have the right to access Exchange to enter orders on Exchange, receive status updates on orders, cancel orders, execute trades against orders on the Exchange limit order book and to receive data feeds from Exchange (“Exchange Data”) containing information regarding User’s open orders, executions and volume on Exchange (collectively, the “Services”). User acknowledges and agrees that nothing in this Agreement constitutes an understanding by Exchange to continue any aspect in its current form. Exchange may from time to time make additions, deletions or modifications to the Services. User acknowledges and agrees that Exchange may temporarily or permanently, unilaterally condition, modify or terminate the right of any individuals or entities to access, receive or use Exchange in accordance with Certificate of Incorporation, Bylaws, Rules and Procedures of Exchange, as amended from time to time (“Exchange Rules”). Exchange reserves the right to modify or change the Services provided Exchange notifies User prior to the effectiveness of the modification and User’s continued use of the Services following the modification will constitute User’s acceptance of the modification.

Compliance. Except as otherwise provided herein, with respect to all orders submitted to the Exchange, it is the sole responsibility of User to ensure compliance, by itself, its customers and its representatives, with all applicable United States federal and state laws, rules, and regulations as well as those of FINRA or any other self regulatory organization of which the User is a member. User represents and warrants that: (i) it will use Exchange only if and when it is duly authorized to use Exchange pursuant to the Exchange Rules; (ii) it agrees to be bound by, and will only use Exchange in compliance with, Exchange Rules; and, (iii) it is and will remain responsible for its use of Exchange and the use of Exchange by any of its employees, customers or agents or, if User is a member of Exchange, by any person which has entered into a sponsorship arrangement with User to use Exchange (a “Sponsored Participant”); (iv) it will maintain and keep current a list of all authorized traders who may obtain access to Exchange on behalf of User and/or any Sponsored Participant(s); and (v) it will familiarize all authorized traders with all of User’s obligations under this Agreement and will assure that they receive appropriate training prior to any use of or access to Exchange.

Monitoring. User acknowledges and agrees that Exchange will monitor the use of Exchange by User for compliance with all applicable laws and regulations, including, without limitation, Exchange Rules. User acknowledges its responsibility to monitor its employees, agents and customers for compliance with Exchange Rules, the rules and regulations of any self-regulatory organizations of which User is a member and all applicable federal and state laws.

Settlement of Transactions. User agrees that it is User’s absolute, unconditional, and unassignable obligation, in connection with each securities transaction effected on Exchange to ensure the timely delivery of the subject securities and/or funds as well as any required remittance of interest, dividend payments and/or other distributions. User will promptly notify Exchange in writing upon becoming aware of any material change in or to User’s clearing arrangements. Exchange retains the right to break any trade without liability to User or any of User’s customers in accordance with the Exchange’s Clearly Erroneous Executions Rule (Exchange Rule 11.13, as amended).

Sponsored Participants. Notwithstanding Exchange’s execution and delivery to User of a copy of this Agreement, if User is a Sponsored Participant, and not a member of Exchange, as a condition to initiating and continuing access to Exchange, (i) User must enter into and maintain customer agreements with one or more sponsoring members of Exchange establishing proper relationship(s) and account(s) through

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which User may trade on Exchange. Such customer agreement(s) must incorporate the sponsorship provisions set forth in Exchange Rules.

Connectivity. User is solely responsible for providing and maintaining all necessary electronic communications with Exchange, including, wiring, computer hardware, software, communication line access, and networking devices.

Market Data. User hereby grants to Exchange a non-exclusive, non-assignable, non-transferable, worldwide, irrevocable license to receive and use information and data that User or User's agent enters into the Exchange ("User's Data") for the following purposes: within Exchange Data for performing self-regulatory functions; for internal commercial purposes (i.e., purposes that do not include disclosing, publishing, or distributing outside of the Exchange); and for use within Exchange market data products (i.e., products that include disclosure, publication, or distribution to third parties), provided that fees for any such market data product are filed with the Securities and Exchange Commission ("SEC") in accordance with the requirements of Section 19 of the Securities Exchange Act of 1934, as amended (the "Act"). User represents and warrants that, with respect to such information and data (i) User owns or has sufficient rights in and to such information and data to authorize Exchange and User to use such information and data and to perform all obligations under this Agreement with respect thereto, (ii) use or delivery of such information by User or Exchange will not violate the proprietary rights (including, without limitation, any privacy rights) of any party, and (iii) use or delivery of the information by User or Exchange will not violate any applicable law or regulation.

Restrictions on Use; Security. User may not sell, lease, furnish or otherwise permit or provide access to Exchange or any information or data made available therein to any other entity or to any individual that is not User's employee, customer, agent or Sponsored Participant. User accepts full responsibility for its employees', customers', agents' and Sponsored Participants' use of Exchange, which use must comply with Exchange Rules and the User's obligations under this Agreement. User will take reasonable security precautions to prevent unauthorized use of or access to Exchange, including unauthorized entry of information into Exchange, or the information and data made available therein. Without limiting the generality of the foregoing, User shall insure that all internal use of Exchange Data (1) clearly and prominently identifies the information as originating from Exchange where applicable, (2) is adequately protected to prevent unauthorized access, and (3) is not altered by User to make it materially incorrect or misleading in any way. User understands and agrees that User is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized traders, and for the trading and other consequences thereof. User may not convey, retransmit, republish or rebroadcast any Exchange Data to any outside party unless it signs and complies with a separate Exchange Data Vendor Agreement.

Confidentiality of User. Exchange will not disclose the identity of User to any of its other members or to any third parties in connection with orders entered or executed by User on Exchange, except as required by a court or regulatory or self regulatory authority with jurisdiction over Exchange or User, or to facilitate the clearance and settlement of a trade, or with written permission from User.

Clearly Erroneous Trade Policy. User has read and agrees to the terms stipulated in Exchange Rule 11.13 (Clearly Erroneous Executions), as Exchange may amend from time to time.

Corporate Names; Proprietary Rights. User acknowledges and agrees that Exchange has proprietary rights in Exchange's trade names, trademarks, service marks, copyrights, logos, patents and other proprietary marks (collectively, the "Exchange Marks") and certain names, whether registered or unregistered, including, but not limited to, BATS Exchange, Inc., and User shall not use the Exchange Marks or names in any way that would infringe Exchange's proprietary rights.

Fees. By signing this Agreement, User agrees to make timely payment of all system usage fees, as may be set forth in Exchange Rules or posted on Exchange's web site, as well as any applicable late fees for

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the failure to make payment within the required time period. Fees are payable within 30 days of the invoice date. User will be solely responsible for any and all telecommunications costs and all other expenses incurred in linking to, and maintaining its link to, Exchange. Failure to make payments within 30 days from the invoice date may result in suspension or termination of Services. User agrees to pay Exchange a late charge in the amount of 1% per month on all past due amounts that are not the subject of a legitimate and bona fide dispute. Exchange reserves the right to change fee schedule with 48 hours prior notice to User (delivered via e-mail and posted to the Exchange web site). The provisions of this section will survive the termination of this Agreement.

WARRANTIES. THE SERVICES ARE PROVIDED AS-IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ANY IMPLIED WARRANTY ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND OF ANY OTHER WARRANTY OR OBLIGATION WITH RESPECT TO THE SYSTEM OR ANY SOFTWARE OR OTHER MATERIALS MADE AVAILABLE TO USER AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE IS WITH THE USER AND THERE IS NO GUARANTY THAT THE SERVICES PROVIDED BY EXCHANGE WILL MEET THE USER'S REQUIREMENTS, BE ERROR FREE, OR OPERATE WITHOUT INTERRUPTION. EXCHANGE GIVES NO WARRANTIES OF ANY KIND AS TO THE FITNESS, CAPACITY, OR CONDUCT OF ANY OTHER PERSON HAVING ACCESS TO EXCHANGE AND SHALL NOT BE HELD LIABLE TO OR THROUGH USER OR OTHERWISE FOR ANY USE OR ABUSE WHATSOEVER OF EXCHANGE BY ANOTHER PERSON HAVING ACCESS TO EXCHANGE, INCLUDING, WITHOUT LIMITATION, ANY FAILURE TO CONCLUDE TRANSACTIONS OR OBSERVE APPLICABLE MARKET REGULATIONS OR CONVENTIONS OR TO PAY REQUISITE TAXES OR OTHER CHARGES ON ANY TRANSACTIONS OR TO OTHERWISE ACT LAWFULLY.

NO LIABILITY FOR TRADES. USER UNDERSTANDS AND AGREES THAT (I) EXCHANGE IS NOT DIRECTLY OR INDIRECTLY A PARTY TO OR A PARTICIPANT IN ANY TRADE OR TRANSACTION ENTERED INTO OR OTHERWISE CONDUCTED THROUGH EXCHANGE, AND (II) EXCHANGE IS NOT LIABLE IN ANY MANNER TO ANY PERSON (INCLUDING WITHOUT LIMITATION USER AND ANY PERSON FOR WHOM USER IS AUTHORIZED TO TRADE OR ACT) FOR THE FAILURE OF ANY PERSON ENTERING INTO A TRADE OR TRANSACTION BY MEANS OF EXCHANGE TO PERFORM SUCH PERSON'S SETTLEMENT OR OTHER OBLIGATIONS UNDER SUCH TRADE OR TRANSACTION. NEITHER EXCHANGE, NOR ANY OF ITS AGENTS, AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY LOSSES, DAMAGES, OR OTHER CLAIMS, ARISING OUT OF EXCHANGE OR ITS USE. ANY LOSSES, DAMAGES, OR OTHER CLAIMS, RELATED TO A FAILURE OF EXCHANGE TO DELIVER, DISPLAY, TRANSMIT, EXECUTE, COMPARE, SUBMIT FOR CLEARANCE AND SETTLEMENT, OR OTHERWISE PROCESS AN ORDER, MESSAGE, OR OTHER DATA ENTERED INTO, OR CREATED BY, EXCHANGE WILL BE ABSORBED BY THE USER THAT ENTERED THE ORDER, MESSAGE OR OTHER DATA INTO EXCHANGE. IF THIS SECTION IS DEEMED TO CONFLICT WITH ANY OTHER SECTION OF THIS AGREEMENT, THIS SECTION WILL SUPERSEDE SUCH OTHER SECTION.

NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL EXCHANGE OR ITS AGENTS, AFFILIATES OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE, CLAIM OR EXPENSE, INCLUDING WITHOUT LIMITATION ANY DIRECT, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON USER'S CLAIMS OR THE CLAIMS OF ITS CUSTOMERS, EMPLOYEES OR AGENTS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF EXCHANGE, INTERRUPTION IN

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USE OR AVAILABILITY OF EXCHANGE, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

Indemnification by User. User agrees to indemnify and hold harmless Exchange, its owners, subsidiaries, affiliates, officers, directors, employees, agents, any related persons and entities, and each member or third person on the contra side of any executed trade, from and against all expenses and costs and damages (including any reasonable legal fees and expenses), direct, consequential, and/or incidental in nature, claims, demands, proceedings, suits, and actions, and all liabilities resulting from, in connection with, or arising out of any failure by User, for any reason, fraudulent, negligent or otherwise, to comply with its obligations under this agreement and for any loss or claim which may arise from a claim that one or more trades or orders in securities placed by User with Exchange were in violation of any state or federal securities law or Exchange Rules.

Termination. User or Exchange may terminate this Agreement or any part of the Services upon 30 days written notice to the other party. In addition, Exchange may suspend or terminate the Services to User immediately if it determines, in Exchange's sole determination, that: (1) User has breached any material term of this Agreement; (2) User is engaged in activities that Exchange determines to be detrimental to Exchange or its members; (3) User poses a credit risk to Exchange; (4) User is retransmitting or republishing Exchange Data without the prior approval of Exchange; (5) User has violated any Exchange Rules; or (6) User ceases to be a member in good standing with Exchange. Upon the termination of this Agreement for any reason, all rights granted to User hereunder will cease. The following provisions will survive the termination or expiration of this Agreement for any reason: Exchange Data, Restrictions on Use; Confidentiality of User; Corporate Names; Proprietary Rights, Fees, Warranties, No Liability for Trades, No Consequential Damages, Indemnifications by User, Termination, Arbitration and Miscellaneous. In no event will termination of this Agreement relieve User of any obligations incurred through its use of Exchange.

Acknowledgement of SRO Obligations. User acknowledges: (a) that Exchange is registered with the Securities and Exchange Commission as a national securities exchange pursuant to Section 6 of the Act; (b) that Exchange has a statutory obligation to protect investors and the public interest, and to ensure that quotation information supplied to investors and the public is fair and informative, and not discriminatory, fictitious or misleading; (c) that Section 19(g)(1) of the Act mandates that Exchange, as a self-regulatory organization, comply with the Act; (d) that Exchange has jurisdiction over its members to enforce compliance with the Act as well as the rules, regulations and interpretations of Exchange. Accordingly, User agrees that Exchange, when required to do so in fulfillment of its statutory obligations, may, temporarily or permanently, unilaterally condition, modify or terminate the right of any or all individuals or entities, including User, to receive or use the Services. Exchange shall undertake reasonable efforts to notify User of any such condition, modification or termination, and User shall promptly comply with any requirement that may be contained in such notice within such period of time as may be determined in good faith by Exchange to be necessary and consistent with its statutory obligations. Any individual or entity that receives such a notice shall have available to it such procedural protections as are provided to it by the Act and the applicable rules thereunder.

Assignment. User's license to use the Services during the term of this Agreement is personal, nonexclusive and nontransferable. User shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without Exchange's prior approval, which will not be unreasonably withheld. Exchange may assign or transfer this Agreement *or any* of its rights or obligations hereunder to a related or unrelated party upon notice to User.

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Force Majeure. Neither party to this Agreement will be liable for delay or failure to perform its obligations hereunder (other than a failure to pay amounts when due) caused by an event that is beyond the party’s control; provided, however, that such party will not have contributed in any way to such event.

Severability. Each provision of this Agreement will be deemed to be effective and valid under applicable law, but if any provision of this Agreement is determined to be invalid, void, or unenforceable under any law, rule, administrative order or judicial decision, that determination will not affect the validity of the remaining provisions of this Agreement.

Arbitration. In connection with the following agreement to arbitrate, User understands that: (1) arbitration is final and binding on the parties; (2) the parties are waiving their right to seek remedies in court, including the right to jury trial; (3) pre-arbitration discovery is generally more limited than and different from court proceedings; (4) the arbitrators’ award is not required to include factual findings or legal reasoning, and any party’s right to appeal or seek modification of rulings by the arbitrators is strictly limited; and (5) the panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry. Subject to the preceding disclosures, User agrees that any controversy arising out of or relating to User and Exchange will be resolved and settled by arbitration under the auspices of **FINRA Dispute Resolution conducted in New York, New York**. Judgment upon arbitration may be entered in any court, state or federal, having jurisdiction; provided, however, that nothing herein will prevent Exchange from seeking interim injunctive relief in any court of competent jurisdiction.

Miscellaneous. All notices or approvals required or permitted under this Agreement must be given in writing to Exchange at address specified above or to User at its last reported principal office address. Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by the other party. This Agreement will bind each party’s successors-in-interest. This Agreement will be governed by and interpreted in accordance with the internal laws of the **State of New York, USA**. Both parties submit to the nonexclusive jurisdiction of the state and federal courts in and for **New York, USA** for the resolution of any dispute arising under this Agreement. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement. No action arising out of any claimed breach of this Agreement may be brought by either party more than one (1) year after the cause of action arose. This Agreement, together with the applicable Exchange Rules, constitutes the complete and entire statement of all conditions and representations of the agreement between Exchange and User with respect to its subject matter and supersedes all prior writings or understandings.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.

User: _____

BATS Exchange, Inc.

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Select type of User:

Exchange Member

Sponsored Participant

If Sponsored Participant, name of Sponsoring Member: _____