



ICE DATA SERVICES AND SOFTWARE SERVICES AGREEMENT

This agreement, and the annexes attached hereto and incorporated herein (the "Agreement"), dated as of the earlier of _____ [DATE] _____ or the date of Subscriber's initial access to the Services (the "Effective Date"), is entered into between ICE Data, LP ("ICE") located at 55 East 52nd Street, New York, New York 10055, and the party identified below ("Subscriber"). In consideration of the mutual promises and covenants hereinafter contained, the parties agree as follows:

1. **GRANT.** Subject to the terms of this Agreement, ICE hereby grants Subscriber (as defined below), a non-exclusive, non-transferable, revocable right to permit its Authorized Users (as defined below) to receive the Data Services (as defined below) and utilize the Software Services (as defined below), in such form as they may exist from time to time and as set forth in the applicable Annexes and Product Activation Form(s) (as defined below). The Data Services and the Software Services are collectively referred to herein as the "Services".

For the avoidance of doubt, no rights are conferred on or granted to Subscriber under this Agreement with respect to the ICE Exchanges or the ICE Exchange Services (as defined below), and the provision of the Services by ICE are distinct from and are not considered part of the ICE Exchange Services, which are provided by the respective ICE Exchanges and governed by such ICE Exchange's rules, policies and procedures and the relevant agreements entered into between Subscriber and such ICE Exchange, if any.

2. **DEFINITIONS.** All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement unless the context otherwise requires. Subscriber agrees that the following terms below shall have the meanings given below:

- a) "Affiliate" means any entity directly or indirectly controlling, controlled by or under common control with another entity, where "control" means ownership of more than 50% of the voting stock or other equity interests of an entity, or the right to direct the management of such entity.
- b) "Annex" means a Product Activation Form (as defined below) and any annex, schedule or order form, however it may be titled, agreed or entered into in writing between Subscriber and ICE, which sets forth the business terms, as well as any additional terms and conditions governing a particular Service, and is governed by the terms and conditions of this Agreement.
- c) "Authorized Site(s)" means the Subscriber's location(s) and/or territory set forth in the applicable Product Activation Form where the Authorized Users are located and authorized by ICE to access the Services.
- d) "Authorized User" means an employee of Subscriber authorized by ICE to access the Services.
- e) "Data Services" means all information and content (including, but not limited to, bids, offers, prices, rates and other trading and informative data), and information derived therefrom, distributed or made available to ICE by the ICE Exchanges (as defined below), other ICE Affiliates and/or Third-party Providers (as defined below) and delivered via the Software Services (as defined below).
- f) "ICE Proprietary Data" means all information and content (including, but not limited to, bids, offers, prices, rates and other trading and informative data), and information derived therefrom, that are included in the Data Services and that ICE and/or any ICE Affiliate is the owner of the Intellectual Property Rights (as defined below) therein.
- g) "ICE Exchange" or "ICE Exchanges" means those entities identified in Annex C.



- h) "ICE Exchange Services" means the right to (i) execute transactions on the Exchanges, or (ii) receive any other services offered by the ICE Exchanges, other than the Data Services.
- i) "Intellectual Property Rights" means all intellectual property rights (including, but not limited to, patents, copyrights, trade secrets, database rights, design rights, goodwill and trademark rights), whether registered or not, and including applications for registration thereof, rights in know-how and moral rights.
- j) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other entity.
- k) "Product Activation Form" means the form provided by ICE, executed by Subscriber specifying the specific Data Services and/or Software Services delivered pursuant to this Agreement, and listing the applicable Subscriber, Subscriber Affiliates, Authorized Users, Authorized Sites and Fees.
- l) "Software Services" means certain graphical user interfaces, methods, processes and other related services which (a) enable and enhance the Data Services provided under this Agreement, and (b) provide the ability to receive and enhance the ICE Exchange Services. For purposes hereof, the Software Services include, without limitation, the following services: ICE Connect[®], WebICE[®], ICE Instant Messaging ("ICE IM[™]"), ICE Mobile[®], ICE Options Analytics[®] (as those services may be renamed or rebranded from time to time) and any other market data and analytics interfaces as may be available from ICE from time to time in connection with the Data Services.
- m) "Subscriber" means the entity or entities listed above and any of its Affiliates listed in the applicable Product Activation Form(s).
- n) "Subscriber Administrator" means ICE approved Subscriber employees or third party agents designated by Subscriber as Subscriber's administrator(s) with respect to Subscriber's use of the Services.
- o) "Term" means the Initial Term of this Agreement and any subsequent renewal terms (as set forth in this Agreement).
- p) "Third-party Provider" means a supplier of data (including an exchange), information, software, services or other items that are part of or otherwise used in connection with the Services, which is not an ICE Affiliate.

3. USE AND RESTRICTIONS ON USE.

- a) Only those entities that are expressly identified in the applicable Product Activation Form(s) as Subscriber shall be authorized hereunder to have access to or to use the Services. Except as expressly permitted in a Product Activation Form or in a different Annex, the Services shall be used exclusively for Subscriber's own internal business. Access to and use of the Services shall be limited to Authorized Users at the Authorized Site(s).
- b) Except as expressly permitted in an Annex, Subscriber shall not (i) copy, modify, reverse engineer, reverse assemble or reverse compile or store the Services or any part thereof; (ii) license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise redistribute the Services or any components thereof in any manner (including, but not limited to, via or as part of any Internet site); (iii) use the Services or any portion thereof for constructing, creating or calculating the value of any index or indexed products; (iv) use the Services as part of Subscriber's intranet or other internal network; or (v) create archival or derivative works based on



the Services or any portion thereof. Subscriber shall take all precautions that are reasonably necessary to prevent any unauthorized distribution or redistribution of the Services.

c) Subscriber agrees that it will not provide access to the Services or any portion thereof to any person, firm or entity other than an Affiliate listed in an applicable Product Activation Form or Authorized User, including, without limitation, any entity that is affiliated with Subscriber and not expressly authorized by ICE. Subscriber shall ensure the Authorized Users' and Affiliates' compliance with the terms and conditions of this Agreement, and Subscriber shall remain responsible for such compliance. Subscriber, and each Affiliate who becomes a Subscriber by virtue of access to or use of the Services, shall be jointly and severally liable to ICE, its Affiliates and their Third-party Providers for any breaches of this Agreement and for the indemnity obligations set forth below in Section 11(b).

d) Subscriber shall not use the Services, in whole or in part in any manner that competes with ICE or any of its Affiliates, including without limitation, any distribution of the Services or derivative works based thereon. Without limiting the foregoing, unless Subscriber enters into a separate license agreement with ICE, Subscriber agrees that it will not, without limitation (other than for its own internal use in accordance with this Agreement), communicate, redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the Services, in any format, to any third party.

4. SUBSCRIBER IDs AND PASSWORDS. ICE may, in its sole and absolute discretion, issue to Subscriber, through its Authorized Users or Subscriber Administrators, one or more Subscriber IDs and passwords (collectively, the "Passwords") for use exclusively by Authorized Users or Subscriber Administrators. In no event will Subscriber, its Authorized Users or Subscriber Administrators provide Passwords to any third parties. The initial Subscriber Administrator(s), are identified on the signature page hereof or on the applicable Product Activation Form, and Subscriber acknowledges and agrees that Subscriber Administrators may designate additional Subscriber Administrators, and such Subscriber Administrators shall be considered by ICE as having the same authority as the initial Subscriber Administrator(s) identified in this Agreement. Subscriber will promptly notify ICE in writing, which may be via email, of any changes and/or additions to its Subscriber Administrator(s). Subscriber warrants that Subscriber: (i) will be solely responsible for controlling and monitoring the use of the Passwords; (ii) will provide the Passwords only to its Authorized Users or Subscriber Administrator for the sole purpose of accessing and using the Services; and (iii) will not provide the Passwords to any third party. Subscriber will immediately notify ICE of any unauthorized disclosure or use of the Passwords or access to the Services or of the need to deactivate any Passwords. Subscriber acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords, including the use of the Services, whether or not such actions were authorized by Subscriber. Subscriber will only use the Passwords to access and use the Services from the Authorized Sites. The Subscriber Administrator shall be responsible for all communications between ICE and Subscriber and any notices or other communications sent by ICE to a Subscriber Administrator shall be binding on Subscriber. Sharing of Passwords and Subscriber IDs, and simultaneous access via the same Password or Subscriber ID is prohibited. ICE reserves the right to withhold or withdraw a Password to any Authorized User of the Service(s) and to deny access to the Service(s) in its sole business judgment.

5. ALTERATIONS, UPGRADES AND ENHANCEMENTS. ICE reserves the right to alter or modify the Services and any portions or configurations thereof from time to time without notice. Such alterations and/or modifications may include, without limitation, addition or withdrawal of features and/or data, or changes in instructions and/or documentation. ICE may also, in its sole discretion, make available enhancements, upgrades and other improvements to the Services which require additional fees. Subscriber may choose to receive same, and upon payment of the applicable fees, such enhancements, upgrades and other improvements shall be deemed to be licensed to Subscriber under this Agreement,



unless a separate agreement has been entered into between ICE and Subscriber with respect to such enhancements, upgrades and other improvements.

6. PROPRIETARY RIGHTS/INJUNCTIVE RELIEF.

a) All Intellectual Property Rights in the Services, including, but not limited to, all information, content, data, symbology, software, products and documentation contained or included therein, are and shall remain the sole and exclusive property of ICE and/or the Third-party Providers. The Services are compiled, prepared, revised, selected and arranged by ICE and their Third-party Providers through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, creativity and financial resources, and the Services constitute the valuable intellectual property of ICE and/or the Third-party Providers. Subscriber shall comply with all reasonable requests made by ICE to protect the rights of ICE, its Affiliates, and their Third-party Providers in the Services.

b) Copying of, use of, access to or distribution of the Services or any information, data or software contained therein in breach of this Agreement is strictly forbidden and shall cause ICE and/or the Third-party Providers irreparable injury that cannot be adequately compensated for by means of monetary damages. Any breach hereof by Subscriber may be enforced by ICE or their Third-party Providers by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other rights and remedies that may be available.

c) Third-party Provider Terms and Conditions. Subscriber agrees and acknowledges that to the extent Subscriber is accessing or using any portion of the Services provided by a Third Party Provider, such Third-party Provider may enforce its rights against Subscriber as an intended third-party beneficiary of this Agreement, even though such Third-party Provider is not a party to this Agreement. Subscriber shall, where applicable, and as required to receive certain portions of the Services, be responsible for obtaining and maintaining written approval from each Third-party Provider whose approval is required for receipt and use of such Service and/or enter into separate agreements with ICE and/or Third-party Providers, as applicable, and Subscriber shall comply with any conditions, restrictions, or limitations imposed therein, including without limitations with the acknowledgments, notices, reporting and audit requirements, which are referred to in this Agreement and the applicable Product Activation Form and constitute an integral part thereof. Failure of Subscriber to comply with the provisions of this Section shall constitute a material breach of this Agreement.

7. FEES.

a) As consideration for the rights granted by ICE under this Agreement, Subscriber shall pay ICE the fees and charges stated in the applicable Product Activation Form(s), in U.S. Dollars (unless otherwise stated therein), plus all applicable value-added, sales, use and similar taxes, within thirty (30) days after the date of ICE's invoice. These fees and charges shall be due and payable by Subscriber to ICE regardless of whether Subscriber exercises the rights granted under this Agreement. Subscriber acknowledges that if applicable, it shall be responsible for all applicable Third-party Provider Fees billed to ICE or directly to Subscriber by the Third-party Providers that result from Subscriber's access to or use of the Services. ICE may increase its fees and charges for any Service at any time after the Initial Term by providing advance written notice to Subscriber as set forth in Section 14.f.

b) Subscriber acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its use and access to the Services. Subscriber will, at its own cost and expense, provide all the equipment, operating platforms, software (including web browser), and connectivity needed to use the Services.



c) ICE may assess a late charge at a rate of one percent (1%) per month on all amounts due and not paid within thirty (30) days of the date of ICE's invoice until the time of payment. Subscriber's failure to pay amounts when due, constitutes a material breach. In addition to all other rights and remedies available to ICE at law or in equity, ICE also may suspend delivery of the Services or any component thereof for as long as any amount remains unpaid after such thirty (30) day period.

8. TERM. This Agreement, will continue in force and effect for as long as the Subscriber is using the Services, unless and until terminated: (i) by either party upon thirty (30) days' written notice to the other, unless stated otherwise in the applicable Product Activation Form; or (ii) for the reasons set forth in Section 9 below. Termination of this Agreement shall automatically terminate any applicable Product Activation Forms.

9. TERMINATION AND SUSPENSION OF SERVICE.

a) Subscriber acknowledges that ICE may, in its sole discretion, with or without cause or prior notice to Subscriber, temporarily or permanently cease to operate the Services, temporarily or permanently cease to make certain Software Services or Data Services available, or suspend, terminate or restrict Subscriber's utilization of the Services, in each case as ICE determines is necessary to protect its intellectual property rights, reputation, compliance with applicable law and regulations or the integrity, operation or functioning of the Services. Subscriber acknowledges that its utilization of the Software Services and Data Services may be monitored by ICE for its own purposes, including, without limitation, for purposes of maintaining the functional and operational integrity and performance of the Software Services and Data Services, and for purposes of complying with applicable laws and regulations.

b) This Agreement may be terminated for the additional reasons set forth below:

i) ICE shall have the right to terminate this Agreement effective immediately in the event of Subscriber's breach of Sections 1., 3., 4., 6., 13., 14.e. or 14.f. of this Agreement.

ii) Either party may terminate this Agreement in the event of a breach thereof which is not cured within ten (10) days of written notice of such breach; provided, however, such termination shall not take effect if the breaching party cures or corrects the breach within such ten (10) day notice period.

iii) Either party may terminate this Agreement upon written notice to the other if the other party is adjudicated as bankrupt or if a petition in bankruptcy is filed by or against the other party or if the other party makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy act or insolvency laws.

iv) Subscriber's right to receive and use those portions of the Services provided by ICE pursuant to licenses granted to ICE by Third-party Providers is subject to automatic termination without liability on the part of ICE if such licenses are terminated for any reason.

c) Effect of Termination. Termination of this Agreement shall terminate the provision of Services by ICE to Subscriber and Subscriber's use of the Services. Upon termination for any reason set forth herein by either party, Subscriber shall (a) cease all use of the Services provided under this Agreement; and (b) expunge such Services and any portion or copies thereof from all of Subscriber's electronic systems except for those records required for the purpose of an audit as set forth in Section 10. below. At ICE's request, Subscriber shall certify to ICE in writing that Subscriber has fully complied with the foregoing expungement requirement.



10. RECORD KEEPING; AUDIT. Subscriber shall at all times during the Term of this Agreement and for not less than a period of twenty-four (24) month period thereafter, maintain complete and accurate records (including applicable data in electronic format) with respect to access to and usage of the Services for the most recent thirty-six (36) months. During the Term and for a twenty-four (24) month period thereafter, ICE shall have the right, during normal business hours and upon reasonable notice to Subscriber, to (a) audit and review relevant portions of those records; and (b) audit the manner of access to and usage of the Services, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed. Subscriber agrees and acknowledges that to the extent Subscriber is accessing or using any portion of the Services provided by a Third-party Provider, such Third-party Provider may require Subscriber to comply with additional record keeping and audit requirements. Subscriber shall, where applicable, and as required to receive certain portions of the Services, comply with such additional record keeping and audit requirements, which are referred to in this Agreement and the applicable Product Activation Form and constitute an integral part thereof. To the extent required by a Third-party Provider, such Third-party Provider shall have the right, during the Term and following termination or expiration of this Agreement, during normal business hours and upon reasonable notice to Subscriber, to (a) audit and review relevant portions of those records; and (b) audit the manner of access to and usage of the Services, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed. ICE's or the Third-party Providers' failure to conduct an audit pursuant to this Section 10 shall not relieve Subscriber from its responsibilities to comply fully with the terms and conditions of this Agreement. Subscriber agrees to permit ICE or its representatives and the Third-party Providers or their representatives to periodically inspect, at Subscriber's Authorized Sites and during reasonable hours and at reasonable intervals, the network on or by which any portion of the Services are accessed for purposes of establishing compliance with the terms of this Agreement. In the event of such an onsite audit undertaken by ICE at Subscriber's Authorized Site, ICE shall liaise with Subscriber to outline an implementation plan to ensure Subscriber's security protocols and mandatory and/or contractual data security obligations are met in relation to the right of inspection and audit. ICE acknowledges that Subscriber can redact all personal information. The costs of any such audit and/or inspection shall be borne by ICE; provided however, if such audit and/or inspection reveal an underpayment to ICE of five percent (5%) or more, Subscriber shall reimburse ICE for its costs and expenses in conducting such audit and/or inspection.

11. NO WARRANTIES; LIMITATION OF LIABILITY; INDEMNITY.

a) SUBSCRIBER ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT ICE MAKES NO WARRANTY WHATSOEVER TO SUBSCRIBER AS TO THE SERVICES, EXPRESS OR IMPLIED, AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AT SUBSCRIBER'S SOLE RISK. ICE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ICE, ITS AFFILIATES, ITS THIRD-PARTY PROVIDERS NOR THEIR RESPECTIVE DIRECTORS, MANAGERS, OFFICERS, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO, SUBSCRIBER FOR (I) THE ACCURACY, ADEQUACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE SERVICES OR (II) DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN. ICE DOES NOT, AND SHALL HAVE NO DUTY OR OBLIGATION TO, VERIFY, MONITOR, CONTROL OR REVIEW ANY INFORMATION AND/OR DATA DISPLAYED VIA THE SERVICES. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT: (1) IT IS SOLELY RESPONSIBLE FOR EVALUATING THE ACCURACY, TIMELINESS, AND COMPLETENESS OF ANY AND ALL INFORMATION AND/OR DATA DELIVERED TO IT VIA SERVICES; AND (2) IT HAS



DETERMINED, BASED ON ITS OWN EVALUATION, THAT THE SERVICES AND THIS AGREEMENT ARE SUITABLE FOR AND SATISFACTORY TO SUBSCRIBER, AND SUBSCRIBER HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION OR WARRANTY MADE BY ICE, ITS AFFILIATES, OR ITS THIRD PARTY PROVIDERS IN MAKING SUCH DETERMINATION.

b) To the fullest extent permitted by law, Subscriber shall indemnify, protect, and hold harmless ICE, its Affiliates and Third-party Providers and each of their respective directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including attorney's fees) resulting from or arising out of any use of the Services by Subscriber or by others using the Passwords in the Subscriber's possession.

c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WHATSOEVER SHALL ICE, ITS AFFILIATES OR ANY OF THEIR THIRD PARTY PROVIDERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, TRADING LOSSES, OR LOST TIME OR GOOD WILL, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

d) NO ACTION OR CLAIM, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE SERVICES OR TO THIS AGREEMENT MAY BE BROUGHT BY SUBSCRIBER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF SUCH ACTION OR CLAIM HAS ACCRUED.

e) Notwithstanding anything to the contrary in Section 11(a), but subject to Section 11(f), in the event that ICE is determined to be liable to Subscriber for any cause, Subscriber expressly agrees that in entering into this Agreement, ICE's aggregate liability, for any damages or losses under all causes of action, will not exceed the greater of: (i) fifty thousand USD (\$50,000); or (ii) fees paid and payable by Subscriber to ICE under this Agreement for the Service in question in the three (3) months such liability is alleged to have arisen. The foregoing limitations shall apply even if the Subscriber's remedies under this Agreement fail of their essential purpose.

f) If a third-party claim or litigation is made or brought against Subscriber alleging that ICE Proprietary Data as provided to Subscriber by ICE infringes upon a copyright, database right, trademark, or U.S. patent, ICE shall indemnify and hold harmless Subscriber against those damages, liabilities, and costs (including reasonable attorneys' fees) that are directly incurred by Subscriber as the result of such third-party claim or litigation, provided, however, that Subscriber's use of the Services is in compliance with the terms and conditions of this Agreement, and subject to the liability limitations and caps set forth herein. ICE shall have the sole authority to defend or settle such claim. ICE will have no obligation under this Section or otherwise for any infringement claim based on or arising out of: (i) any modification to the Services made by someone other than ICE or its authorized agents; (ii) any combination or use of the Services with any other software, hardware, data, or other materials or information not furnished by ICE; and/or (iii) any breach of this Agreement. If the Services become, or ICE believes is likely to become, subject to an infringement claim, ICE may, at its sole option and expense: (x) replace or modify the Services, or any portion thereof, so that they become non-infringing; (y) obtain for Subscriber a license to continue using the infringing part of the Services, or (z) terminate this Agreement as to the infringing part of the Service. The foregoing obligations are conditioned on the Subscriber providing ICE with prompt written notice of the claim for which indemnity is claimed, giving ICE sole control of the defense thereof and any related settlement negotiations, and cooperating and assisting (at ICE's expense) with ICE's efforts to defend or settle the claim. Notwithstanding anything to the contrary herein, ICE's maximum cumulative liability to Subscriber under this Section 11.f. shall not exceed One Million USD (\$1,000,000) in the aggregate, regardless of the number of indemnification claims that may be made hereunder.



In the event third-party claim or litigation is made or brought against Subscriber alleging that a Third-party Provider data or service as provided to Subscriber by ICE infringes such third party Intellectual Property Right, ICE shall indemnify Subscriber to the same extent ICE is indemnified by the Third-party Provider in question, or shall assign to the benefit of Subscriber the indemnification right afforded to ICE, if applicable. The foregoing states ICE's entire liability and Subscriber's sole and exclusive remedies for infringement claims and actions of any kind.

g) THE FOREGOING LIMITATIONS OF ICE'S LIABILITY SHALL NOT APPLY IN RESPECT OF (I) DEATH OR PERSONAL INJURY OF A THIRD PARTY TO THE EXTENT CAUSED BY ICE WILLFUL OR NEGLIGENT ACTS; AND (II) FRAUD OR WILFUL MISCONDUCT.

12. **CONFIDENTIALITY.**

a) Any and all non-public information in any form obtained by either party or its affiliates or their employees arising out of or related to the provision or use of the Services, including but not limited to, trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto, shall be deemed to be confidential and proprietary information. Each party agrees to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees, its Affiliates and their employees or agents on a need to know basis only) and not to use such information for any purpose whatsoever other than as contemplated by this Agreement and to advise each of its employees, affiliates and agents who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential in accordance with this Section 12a).

b) The restrictions in Section 12.a. shall not apply to information which the Receiving Party (as defined below) can demonstrate: (i) is in or becomes part of the public domain other than by disclosure by the Receiving Party in violation of this Agreement; (ii) is known to or obtained by the Receiving Party previously without an obligation of confidentiality; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing party's confidential information; (iv) is required to be disclosed by applicable law or regulation (including without limitation, tax laws or regulations), or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction as set forth in Section 12.c below.

c) In the event that a party receives a subpoena, data request, or order of a court in any private party litigation requesting confidential information of the other party, such party will promptly notify the other party of such requirement or request to the extent it is legally permitted to do so.

d) **Personal Information.** The party receiving confidential information (the "Receiving Party") acknowledges that the party disclosing confidential information (the "Disclosing Party") may be subject to internal policies, laws and regulations that govern and restrict the collection, storage, processing, disclosure or use of any information that identifies or can be used to identify, contact or precisely locate the person or legal entity to whom such information pertains or from which identification or contact information of an individual person or legal entity can be derived ("Personal Information"), including, but not limited to, any Personal Information relating to the Disclosing Party, Disclosing Party's Affiliates and each of their respective customers, suppliers and personnel. ICE's Privacy Policy is located here: <https://www.intercontinentalexchange.com/privacy-policy>. Where the Subscriber is incorporated in any member state of the European Union or Singapore, Subscriber acknowledges and agrees that certain additional terms and conditions set out in ICE's Privacy Policy and other documents ("Additional Terms") in connection with the collection, storage, processing, disclosure, access,



review and/or use of such Personal Information are applicable to this Agreement and shall be incorporated into and form part of the Agreement and, in the event of conflict with any other terms of the Agreement, shall prevail over such terms.

13. OFAC. Subscriber acknowledges that the Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and the requirements of the U.S. Department of the Treasury's Office of Foreign Assets Controls' (OFAC) sanctions programs, including the Specially Designated Nationals List (collectively the "Controls"). Subscriber will: (i) comply with all legal requirements established under the Controls; (ii) cooperate fully with ICE in any official or unofficial audit or inspection that relates to the Controls; and (iii) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to, or otherwise enter into any transaction or engage in any other activities with, any country, territory or Person restricted or targeted by the Controls. Subscriber further represents and warrants that as of the date of this Agreement, (x) neither Subscriber, Subscriber's Affiliates nor any of their respective affiliates, subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any OFAC sanctions, (y) Subscriber is not 50% or more owned or controlled, directly or indirectly, by any person or entity that is the subject of any OFAC sanctions, and (z) to the best of Subscriber's knowledge, no entity or entities own or control either directly or indirectly more than 50% of the Subscriber are the subject of OFAC sanctions. For so long as this Agreement is in effect, Subscriber will notify ICE as soon as is practicable, but in any event no later than forty-eight (48) hours after it determines that any of these circumstances change.

14. GENERAL PROVISIONS.

a) **Notices.** Except for the notices posted by ICE in accordance with Section 14.e. below, all other notices delivered with respect to this Agreement shall be in writing and either (i) hand delivered or forwarded by registered or certified mail, return receipt requested; or (ii) sent via email, in either case to the relevant address provided by a party for such purpose.

b) **Publicity.** Subscriber permits ICE to publicly mention Subscriber as a client of ICE on ICE's web site and/or marketing materials.

c) **Force Majeure.** Except for Subscriber's payment obligations, neither ICE nor Subscriber shall be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, power failure or any other cause beyond its reasonable control.

d) **Waiver.** No waiver by either party of any default by the other in the performance of any provisions of this Agreement shall operate as a waiver of any continuing or future default, whether of a like or different character.

e) **Assignment; Change of Control.** Subscriber shall not assign or transfer this Agreement without the prior written consent of ICE, and any attempted assignment or transfer shall be null and void and shall constitute a material breach of this Agreement. In addition to and notwithstanding the foregoing, if the ownership of Subscriber at any time shall pass out of the majority control of its then-current owners by sale of stock or assets, merger or otherwise during the Term, Subscriber shall notify ICE in writing of such change of control event no later than thirty (30) days following the effective date of any such event. ICE shall then have the right to terminate this Agreement by providing a written notice to Subscriber within sixty (60) days following the receipt of such notice of change of control, if in ICE's reasonable opinion the new owner of Subscriber: (i) is a competitor of ICE; or (ii) presents a substantial risk to ICE's reputation, intellectual property rights, or ability to collect payment hereunder. If ICE elects not



exercise the foregoing termination right, any successor-in-interest to the Agreement as a result of the change of control shall assume all rights and obligations of Subscriber under the Agreement and shall be responsible for adhering to the terms thereof. ICE may assign all or part of its rights and obligations under this Agreement to any of its Affiliates or to any entity which succeeds to all or substantially all of the assets and business of ICE, provided that, in the case of any such assignment by ICE, the assignee agrees in writing to assume the obligations under, and to be bound by the provisions of, this Agreement that have been assigned. On the effective date of any valid assignment pursuant to this Section 14, the assignor shall be released from all obligations and liabilities arising under this Agreement or, in case of a partial assignment by ICE, from all obligations and liabilities arising from the parts of this Agreement that have been assigned.

f) **Entire Agreement; Modification or Amendment.** This Agreement, taken together with (i) the applicable Product Activation Form(s), if any, (ii) applicable Additional Terms, if any, and (iii) any Annexes to this Agreement, represents the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, representations, discussions, understandings or writings between the parties with respect to its subject matter. ICE may amend this Agreement at any time by posting amendments on ICE's website at <http://www.theice.com>, and any such amendments, including fee increases, will be prospectively binding on Subscriber effective ten (10) days from the date of such posting. Notwithstanding the foregoing, ICE will provide thirty (30) days' prior notice, through electronic or other direct communication with Subscriber, of any such amendments that are likely to materially and adversely affect Subscriber or its rights or obligations hereunder. Subscriber's use of the Services after the effective date of any such amendment shall constitute Subscriber's ratification of, and agreement to, any such amendment. If ICE elects to require Subscriber to acknowledge and agree to an amendment, such amendment will not become effective until Subscriber has done so in the manner specified by ICE.

g) **Compliance with Law.** Subscriber will comply with any and all laws, rules, regulations or orders applicable to Subscriber's receipt of and use of the Services.

h) **Authority and Binding Effect.** The parties represent and warrant that they have all necessary power and authority to execute and perform this Agreement, and this Agreement is a legal, valid and binding agreement, enforceable against each party in accordance with its terms.

i) **Survival.** Sections: 3(d), 6, 7(c), 9(c), 10, 11, 12, and 14 shall survive any termination of this Agreement.

j) **Governing Law.** Unless otherwise specified in an Annex, this Agreement is deemed entered into in New York, New York and shall be governed and construed in all respects by the laws of the State of New York, without giving effect to principles of conflict of law. The parties hereto and their successors and assigns irrevocably consent to the exclusive jurisdiction of any courts located in the State of New York for the resolution of any disputes arising from or related to this Agreement

k) **Headings.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.

l) **Severability.** If any provision of this Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

m) **Independent Contractors.** Subscriber and ICE are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. Neither party is an agent or representative of the other or is authorized to make any warranties or assume or create any other obligations on behalf of the other.



n) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the parties hereto.

IN WITNESS WHEREOF, the parties hereto, each acting under due and proper authority, have executed this Agreement as of the Effective Date. The parties agree that execution of this Agreement via an electronic signature process shall constitute valid execution hereof.

ICE Data, LP

By: ICE Data Management, LLC its general partner _____

Full Legal Name of Subscriber

5660 New Northside Drive, 3rd Floor
Atlanta, Georgia 30328, USA

Address: _____

Signature: _____

Name: Lynn C. Martin

Title: President

Signature: _____

Name: _____

Title: _____

Subscriber Administrator for the Software Services and Data Services:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____



ANNEX A – ICE INSTANT MESSAGING TERMS AND CONDITIONS

Where the Subscriber utilizes ICE Instant Messaging (“ICE IM”) the following terms in this Annex A shall be incorporated into and form part of the Agreement and, in the event of conflict with any other terms of the Agreement, shall prevail over such terms.

1. Functionality. ICE IM is an instant messaging service and software made available by ICE for use by the financial and derivatives industry and physical commodities markets industry. ICE IM integrates with other instant messaging services.
2. Fees. ICE may charge Subscriber for certain ICE IM services, and at the request of Subscriber, a Product Activation Form with a schedule of the relevant charges and/or fees will be provided by ICE.
3. Regulatory and Other Matters. All transactions negotiated or conducted utilizing ICE IM will be settled directly between Subscriber and the relevant counterparty in accordance with any separate agreements between Subscriber and such counterparty. ICE IM is not (i) a multilateral trade execution facility and does not function as a trading facility within the meaning of Section 1a (33) of the Commodity Exchange Act (“CEA”), (ii) a broker-dealer, exchange or alternative trading system for purposes of the Securities Exchange Act of 1934, as amended, or (iii) any entity or person in any jurisdiction outside of the United States of America having qualifications similar to the qualifications referenced in Sections 3(i) and (ii) of this Annex.
4. Subscriber’s Agreements and Covenants.
 - a) Subscriber shall not utilize ICE IM for the trading, sale, purchase, disposition or promotion of securities (as defined in Section 2(1) of the Securities Act of 1933, as amended), or exchange-traded options or futures (“contracts of sale of a commodity for future delivery”, as regulated by the Commodity Futures Trading Commission under the CEA), and Subscriber agrees not to participate in any securities or exchange-traded options or futures transaction using ICE IM. Notwithstanding the foregoing, ICE IM may be utilized by Subscriber to negotiate off-exchange trades of futures, subject to Subscriber’s compliance with applicable law and the rules of any applicable exchanges and clearing houses.
 - b) Subscriber shall not utilize ICE IM to post or distribute any content that contains explicit or graphic descriptions or accounts of sexual acts or that is threatening, abusive, harassing, defamatory, libelous, deceptive, racist, fraudulent, invasive of another person’s privacy, tortious or that contains unsubstantiated rumors or intentional misrepresentations. Subscriber shall not post or distribute any content via ICE IM unless Subscriber owns such content or otherwise has obtained the right to post or distribute such content. Subscriber shall not transmit junk mail, chain letters spam or unsolicited mailings via ICE IM and shall not use ICE IM to transmit instructions regarding illegal activities.
 - c) Subscriber acknowledges and agrees that ICE does not monitor the content posted or distributed via ICE IM, and Subscriber is solely responsible for verifying the accuracy of all third-party content posted or distributed via ICE IM.
 - d) If Subscriber becomes aware of any violation of these ICE IM terms and conditions by a third party, Subscriber shall notify ICE.



- e) Subscriber acknowledges and agrees that it is responsible for any content it, its Affiliates or their respective Authorized Users post or distribute via ICE IM and any consequences that arise out of the posting or distribution of such content. ICE IS NOT RESPONSIBLE FOR THE CONSEQUENCES OF POSTING OR DISTRIBUTING ANY PERSONAL OR OTHER INFORMATION VIA ICE IM.
 - f) Subscriber further acknowledges and agrees that each of its Authorized Users will be required to enter into an end user license agreement with ICE (the "EULA"), as a condition to its access to and use of ICE IM and ICE Connect. The EULA shall be in addition to, and shall not derogate from the provisions of this Agreement and of Subscriber liabilities hereunder, including for any action by or content posted or distributed by an Authorized User.
5. Conflict with YellowJacket, Inc. Agreement. Solely with respect to Subscriber's use of ICE IM and not with respect to Subscriber's use of any other part of the Software Services and Data Services, if and to the extent Subscriber has entered into a separate agreement with ICE's affiliate YellowJacket, Inc. relating to Subscriber's use of ICE IM and the terms of such agreement conflict with the terms of this Agreement, the terms of such other agreement between Subscriber and YellowJacket, Inc. shall control with respect to Subscriber's use of ICE IM.



ANNEX B – ICE OPTIONS ANALYTICS TERMS AND CONDITIONS

Where the Subscriber utilizes ICE Options Analytics the following terms in this Annex B shall be incorporated into and form part of the Agreement and, in the event of conflict with any other terms of the Agreement, shall prevail over such terms.

1. ICE Options Analytics Functionality and Description. ICE Options Analytics is an options pricing and risk management system that integrates with other ICE provided Software Services, such as WebICE and ICE IM, to provide option valuations for price quotes on the electronic screen or by individual contacts over instant messenger. For the purposes of this Annex B, ICE Options Analytics includes all associated computer software, media and printed materials, to include any online or electronic documentation, provided by ICE, as well as any information relating to Subscriber's transactions and position details imported into ICE Options Analytics by Subscriber or a third party on Subscriber's behalf.
2. Fees. ICE may charge Subscriber for certain ICE Options Analytics services, and at the request of Subscriber, a Product Activation Form with a schedule of the relevant charges and/or fees will be provided by ICE.
3. Subject to ICE's prior written consent, Subscriber may engage the services of a third-party software developer or other service provider ("TSP") in order to develop an interface product (the "Interface Product") for the purpose of integrating ICE Options Analytics to Subscriber's internal systems (the "Integration Work"). A TSP working on the Subscriber's behalf may be provided with the use of ICE Options Analytics for the sole purpose of performing the Integration Work as necessary to develop the Interface Product, provided that prior to the commencement of any Integration Work, Subscriber shall inform the TSP and the TSP shall agree in writing, of which both Subscriber and ICE are named beneficiaries, that (i) all elements of ICE Options Analytics shall be treated as "**Confidential Information**" pursuant to terms substantially similar to those of Section 12 of this Agreement; (ii) the TSP shall use ICE Options Analytics only as necessary to perform the Integration Work; and (iii) the TSP shall have no right to use ICE Options Analytics, the Integration Work, or any components thereof for any purpose other than in connection with developing the Interface Product. To the extent that Subscriber shall use a TSP to develop the Interface Product, Subscriber agrees that it shall remain entirely responsible for the acts and omissions of the TSP, as if such acts or omissions were Subscriber's own. Subscriber further agrees that ICE shall not be liable to Subscriber for any failures of ICE Options Analytics or the Interface Product caused, in whole or in part, by any Integration Work performed by the TSP.
4. Subscriber expressly understand, acknowledges and agrees that Subscriber's use of any and all information or data created, modified, transformed, produced or output by ICE Options Analytics and/or the proprietary algorithms ("Data Outputs") shall be restricted solely to Subscriber's internal business use, and Subscriber shall not provide any Data Outputs or permit use thereof by any third party or as input to any Competing Product (as defined below) for further distribution, publication, copying, analysis, data reduction or other processing. Subscriber understands and agrees that the selection, arrangement and organization of the Data Outputs are proprietary works of ICE, are protected by various patent and copyright laws and are expressly subject to the restrictions of the Agreement. Subscriber understands and agrees that the foregoing limitations equally apply to any Data Outputs that are exported to other software programs (e.g., Microsoft Excel) via the built-in features of ICE Options Analytics and further modified, rearranged, analyzed, transformed or processed therein. Subscriber understands, acknowledges and agrees that a "Competing Product" is a product whose principal purpose is to perform substantially the



same or similar functions as ICE Options Analytics, or which is intended to replace any component of ICE Options Analytics, regardless of whether such product infringes upon the patent, copyright, trade secrets or other proprietary rights in ICE Options Analytics. Subscriber agrees that the restrictions of this section relating to Data Outputs are fair and reasonable and acknowledge that a breach of the terms of this section will give rise to irreparable injury to ICE that cannot be adequately compensated for in money damages. Accordingly, Subscriber agrees that ICE shall be entitled to injunctive relief against any breach or threatened breach of this section in addition to any other legal remedies that may be available to ICE.

5. ICE OPTIONS ANALYTICS IS INTENDED AS AN AID FOR DETERMINING VALUES ON VARIOUS FINANCIAL INSTRUMENTS, INCLUDING BUT NOT LIMITED TO, FUTURES, SWAPS, OPTIONS AND OTHER DERIVATIVES (COLLECTIVELY, THE "INSTRUMENTS") AND FOR REPORTING VARIOUS RISKS ASSOCIATED WITH TRADING SUCH INSTRUMENTS. SUBSCRIBER UNDERSTANDS AND ACKNOWLEDGES THAT SUCH ACTIVITIES ARE INHERENTLY RISKY, AND THAT ICE OPTIONS ANALYTICS MAY CONTAIN OR PRODUCE ERRORS THAT COULD MISREPRESENT RISK EVALUATIONS OR INSTRUMENT VALUATIONS. IN NO EVENT SHALL ICE OR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES RESULTING FROM ANY TRADING OR RELATED ACTIVITY.
6. Conflict with ICE Options Analytics LLC Agreement. Solely with respect to Subscriber's use of ICE Options Analytics and not with respect to Subscriber's use of any other part of the Software Services and Data Services, if and to the extent Subscriber has entered into a separate agreement with ICE's affiliate ICE Options Analytics LLC relating to Subscriber's use of ICE Options Analytics and the terms of such agreement conflict with the terms of this Agreement, the terms of such other agreement between Subscriber and ICE Options Analytics LLC shall control with respect to Subscriber's use of ICE Options Analytics.



ANNEX C ICE EXCHANGES

- (1) ICE Endex
- (2) ICE U.S. OTC Commodity Markets, LLC
- (3) ICE Futures U.S., Inc.
- (4) ICE Futures Europe
- (5) ICE Futures Canada, Inc.
- (6) ICE Swap Trade, LLC
- (7) Creditex, LLC
- (8) Creditex Brokerage, LLP
- (9) Creditex Securities Corporation
- (10) ICE Futures Singapore Pte. Ltd.
- (11) such other exchanges or trading venues that ICE may make available from time to time