

ICE FUTURES U.S., INC.

and

[NAME OF USER]

ELECTRONIC USER AGREEMENT

THIS AGREEMENT is made the ___ day of _____, 200_,

BETWEEN:

1. **ICE Futures U.S., Inc.**, a Delaware corporation with its principal office located at One North End Avenue, New York, NY 10282-1101 ("ICE Futures U.S."); and

2.

_____ whose principal place of business is at,

_____ the ("User").

WHEREAS

- (A) ICE Futures U.S. is a designated contract market under the Commodity Exchange Act, as amended (the "Act") and as such is regulated by the Commodity Futures Trading Commission ("CFTC").
- (B) ICE Futures U.S. has, in collaboration with IntercontinentalExchange Inc. ("**IntercontinentalExchange**" or "**ICE**") devised, developed and administers a trading platform (the "**Platform**") as defined herein.
- (C) ICE Futures U.S. and IntercontinentalExchange are the owners or licensees, as the case may be, of the software used in the Platform Software, as defined below.
- (D) IntercontinentalExchange has authorized ICE Futures U.S. to sub-license certain of its proprietary materials to NYBOT Users as further herein specified.
- (E) The User wishes to connect and interface with the Platform and ICE Futures U.S. has agreed to grant the User a non-exclusive non-transferable license to use the Platform Software to connect and interface with the Platform, upon the terms and subject to the conditions set out in this Agreement, the Related Agreements, and the ICE Futures U.S. Rules.
- (F) This Agreement is for the purposes of enabling the User to conduct business in relation to certain ICE Futures U.S. Contracts, as defined below, listed on ICE Futures U.S. from time to time.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the parties hereby agree as follows:

1 Definitions and Interpretation

1.1 In this Agreement unless otherwise expressly stated to the contrary:

(a) the following terms shall have the following meanings:

"Affiliate" means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with, either the User or ICE Futures U.S., as the case may be, where "control" means the (i) ownership of, or the power to vote, more than

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| | 50% of the voting stock, shares or interests of an entity or (ii) ability to direct the management or affairs of an entity. |
| "API" | the open application program interface, transport software and additional functionality that facilitates order entry or placement to the Platform; |
| Business Day | shall have the meaning in the ICE Futures U.S. Rules |
| "Certificate of Conformance" | the certificate to be issued by ICE Futures U.S. to the software developer upon successful completion of conformance testing or re-conformance testing in accordance with the applicable development and maintenance agreement; |
| "CFTC" | means the Commodity Futures Trading Commission; |
| Clearing Member | a member of ICE Clear US, Inc. |
| "Compulsory Improvements" | Improvements necessitated by regulatory or significant operational concerns which are mandatory for the User to install; |
| "Confidential Information" | the meaning given in Clause 22; |
| "Customer" | a customer of a Clearing Member who is duly authorized by such Clearing Member to conduct trades (via a Responsible Individual) or permissioned by a Clearing Member to have view-only access; |
| "ICE Interface" | IntercontinentalExchange's proprietary API interface application software known as WebICE; |
| "Improvements" | modifications, improvements or additions to the Platform, the Platform Software or any part or parts thereof as provided by ICE Futures U.S. to the User in accordance with Clause 5; |
| "Intellectual Property Rights" | IntercontinentalExchange's and/or ICE Futures U.S.'s patents (including all renewals, extensions or divisions thereof), copyright, trade marks, know how, design rights, registered designs, domain names, |

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| | database rights and confidential information including any and all similar rights in any jurisdictions; |
| "ISV" | an independent software vendor who has written software applications to facilitate connection to the Platform via the API; |
| "License Fee" | the sum payable by the User in accordance with Part 6 of the Schedule or as otherwise required by ICE Futures U.S. pursuant to the ICE Futures U.S. Rules; |
| "ICE Futures U.S. Contract(s)" | the Cocoa, Coffee "C" [®] , Cotton No. 2 SM , FCOJ, Sugar No. 11 SM and Sugar No. 14 SM Futures Contracts, together with such other Commodity Contracts as ICE Futures U.S. shall make available for trading on the Platform from time to time; |
| "ICE Futures U.S. Rules" | each and all of the Charter, Certificate of Incorporation, By-Laws, rules, resolutions, interpretations, statements of policy, decisions, directives and orders issued by ICE Futures U.S. from time to time; |
| "Order Routing" | the meaning given in Clause 2.3 hereof; |
| "Password" | each and every password, logon code, logon id, mnemonic or individual trading mnemonic or similar means of access or identification issued to a User for one or more of its Responsible Individuals; |
| "Platform" | the trading platform as more particularly described in Part 1 of the Schedule; |
| "Platform Software" | the software used to connect to the Platform as more particularly described in Part 2 of the Schedule. For the avoidance of doubt, Platform Software includes the API but does not include the ICE Interface; |
| "Pricing Data" | data displayed by the Platform on a real time basis specifying the market prices of ICE Futures U.S. Contracts; |
| "Purposes" | the trading of ICE Futures U.S. Contract(s) supported by the Platform and the Platform Software; |
| "Regulatory Authority" | the CFTC or any successor or other body in the United States of America or overseas which has authority to regulate the business, operation and trading activities of ICE Futures U.S., any User, |

Clearing Member, Customer or Responsible Individual;

"Related Agreements" the agreements between the User, on the one hand, and, to the extent applicable, each of (i) ICE Futures U.S. and (ii) the Clearing Organization, on the other hand, obligating the User to comply with ICE Futures U.S. Rules and the Rules of the Clearing Organization;

"Related Documentation" such documents and materials made available to the User by ICE Futures U.S. or IntercontinentalExchange from time to time relating to the operation and use of the Platform or the Platform Software;

"Responsible Individual" an individual registered with ICE Futures U.S. as a Responsible Individual in accordance with the ICE Futures U.S. Rules;

"Trade Capture Data" data generated by the Platform specifying the details of trades by the User (whether on its own behalf or on behalf of any Customer) in ICE Futures U.S. Contracts;

"User Interface" the User's own software (as provided by an ISV or the User) conformed as appropriate by IntercontinentalExchange and used to connect to the API; and

"Voluntary Improvements" Improvements other than Compulsory Improvements; and,

- (b) all other defined words and expressions shall have the meaning given to them in either the ICE Futures U.S. Rules, CFTC Regulations, the User Agreements or within the body of this Agreement as the case may be.

1.2 Interpretation:

- (a) the headings in this Agreement shall not affect the interpretation of this Agreement;
- (b) any words or terms importing the singular shall, where the context permits, include the plural and vice versa;
- (c) any words or terms importing the masculine gender shall include the feminine gender and shall, where the context permits or requires, include a partnership, limited liability company incorporated company or any other association;

- (d) a reference to any statutory provisions shall be construed as references to those provisions as modified or re-enacted from time to time and to any subordinate legislation made under such provisions and shall include references to any repealed statutory provisions which have been so re-enacted (whether with or without modification);
- (e) a reference to:
 - (i) a Clause or Schedule, unless the context otherwise requires, is a reference to a clause or a schedule to this Agreement;
 - (ii) a person includes an individual, partnership, limited liability company or an incorporated company or an association of people.

2 License to use the Platform Software and to access the Platform

- 2.1 Subject to the terms and conditions of this Agreement and the ICE Futures U.S. Rules, ICE Futures U.S. grants the User for the term of this Agreement:
 - (a) a non-exclusive, non-transferable, revocable license to use the Platform Software for the Purposes on its own behalf, and where authorized by ICE Futures U.S. as set out in Part 7 of the Schedule, on behalf of its Customers; and
 - (b) a non-exclusive, non-transferable right to connect and interface with the Platform for the Purposes, utilizing the relevant User Interface or ICE Interface as applicable, in accordance with Part 3 of the Schedule on its own behalf and where authorized by ICE Futures U.S., on behalf of its Customers (provided that the right to interface via the User Interface shall only exist while the relevant User Interface has a valid Certificate of Conformance) in each case for the limited purpose indicated by NYBOT in Part 5 of the Schedule, and in accordance with the terms of Part 5 of the Schedule.
- 2.2 All Passwords shall be issued by or on behalf of ICE Futures U.S. to Responsible Individuals registered with ICE Futures U.S. and their use shall be regulated under the terms of the ICE Futures U.S. Rules.
- 2.3 If a Clearing Member who is a User is authorized by ICE Futures U.S. in Part 7 of the Schedule hereto, Customers may only connect and interface to the Platform through a Responsible Individual ("**Order Routing**") of such Clearing Member. For the avoidance of doubt, any permitted Order Routing shall not release the Clearing Member or the Responsible Individual (as the case may be) from any obligation specified herein or under the ICE Futures U.S. Rules.

3 Proprietary Rights

- 3.1 ICE Futures U.S. warrants to the User that it has (or has been licensed by IntercontinentalExchange or a third party) all necessary rights, consents and permissions to license (or sub-license, as the case may be) use of the Platform Software and access to the Platform to the User under the terms and conditions of this Agreement for the Purposes.
- 3.2 The User hereby agrees that the copyright and all other Intellectual Property Rights of whatever nature in the Platform, Platform Software and Related Documentation (and in all parts thereof) and in all other materials and documentation whatsoever relating to the

Platform as provided to the User by ICE Futures U.S. (the "**Materials**") shall be and shall remain vested in ICE Futures U.S., IntercontinentalExchange, and/or their licensors, as the case may be. It is understood that ICE Futures U.S., by the terms of this clause 3.2, has no intention of acquiring, or acquiring rights to, the related software of the User which shall at all times remain the property of the User. The User undertakes to do all such acts and things and execute all such documents as ICE Futures U.S. may direct the User to do and as may be necessary to establish, protect and maintain the right, title and interest of ICE Futures U.S., IntercontinentalExchange and their licensors, in and to such Intellectual Property Rights.

3.3 Subject in any event to Clause 7 hereof, ICE Futures U.S. shall indemnify the User from and against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses (together "**Losses**") arising out of or in connection with any claim or action that the use by the User of the Materials for the Purposes under the terms of this Agreement infringes the Intellectual Property Rights of any third party, provided that:

- (a) the User shall promptly notify ICE Futures U.S. in writing of any claim or action of which it has notice;
- (b) the User shall not make any admission as to liability or agree to any settlement of or compromise any claim or action without the prior written consent of ICE Futures U.S. which shall not be unreasonably withheld or delayed;
- (c) ICE Futures U.S. shall, at its own request and expense, be entitled to have the conduct of or settle all negotiations and litigation arising from any claim or action and the User shall, at the request and expense of ICE Futures U.S., give all reasonable assistance in connection with such negotiations and litigation; and
- (d) the User does not transfer the conduct of any such claim or authorize any third party to settle, negotiate or litigate in respect of such claim or does not otherwise invoke any indemnity provision in any third party agreement in respect of such claim (except as may be authorized by ICE Futures U.S.).

3.4 If any part of the Materials is found by a final decision of a court of competent jurisdiction to constitute an infringement of the proprietary rights of a third person, or if ICE Futures U.S. concedes that infringement through a settlement of a claim, ICE Futures U.S. shall, at its sole option and expense, in addition to providing the indemnification described above, either:

- (a) procure for the User the right to use the relevant part of the Materials; or
- (b) modify the relevant part of the Materials so as to render it non-infringing.

3.5 ICE Futures U.S. shall not be liable for the Losses incurred by the User in co-operating with and assisting ICE Futures U.S. in accordance with the terms of Clause 3.3 if ICE Futures U.S. can reasonably demonstrate that the alleged infringement arose from an unauthorized action of the User, unauthorized use of the Materials or unauthorized use of the User's Interface or ICE Interface in conjunction with the Materials, in which case the provisions of Clause 8 shall apply.

4 Obligations of the User

The User hereby agrees:

4.1 that it will not, and shall ensure that its officers, directors, employees, agents, Affiliates and other representatives, (whether or not registered with ICE Futures U.S.) including its Responsible Individuals will not, except in accordance with this Agreement:

- (a) copy, interfere or tamper with, alter, amend or modify the Platform Software or any part or parts thereof except as is necessary to access the Platform in accordance with the provisions of this Agreement;
- (b) reverse compile, reverse engineer or disassemble the Platform Software; nor
- (c) interface with the Platform Software via any medium other than by the ICE Interface or by a User Interface that is subject to a valid Certificate of Conformance,

nor purport to do any of the same or permit or purport to permit any of the same to be done except insofar as such acts are expressly permitted by law;

4.2 to comply fully with restrictions on use of the Platform Software and the Platform for the purpose of viewing or effecting trading on ICE Futures U.S. (as applicable and as specified in the Schedule to this Agreement), and for these purposes to establish and maintain adequate supervisory and security procedures to prevent unauthorized access to and use of the Platform, the Platform Software and the Passwords;

4.3 upon either suspension or termination of the User as a User of ICE Futures U.S., or disconnection of any User Interface pursuant to Clause 5.5 or termination of this Agreement for whatever reason, forthwith to cease use of the Platform and the Platform Software and at ICE Futures U.S.'s request, immediately delete any copies of the Platform Software and deliver up to ICE Futures U.S. the Related Documentation and (where relevant) all copies thereof or any part of any of the same in the possession, or under the control, of the User and the User (by one of its executive officers) shall certify in writing to ICE Futures U.S. that it has complied with this Clause 4.3;

4.4 to refrain, and to procure that its officers, employees, agents and other representatives (whether or not registered with ICE Futures U.S.) including its Responsible Individuals refrain from any act or omission which damages or impairs or may damage or impair the Platform, the Platform Software or any part or parts thereof;

4.5 that it shall (except as provided elsewhere in the Agreement):

- (a) not use or permit the use of the Platform Software for any improper, unauthorized or illegal purpose (including, without limitation, any prohibited transactions, trading practices, improper trading or market manipulation) or do anything that would bring ICE Futures U.S. into disrepute with a Regulatory Authority or any third party;
- (b) use the Platform Software and Materials only in the normal course of the User's business and strictly in accordance with the purposes specified in this Agreement and in accordance with the ICE Futures U.S. Rules;
- (c) subject to Clause 4.5(h), not permit third parties to have access to the Platform or Platform Software except for any purposes permitted under the ICE Futures U.S. Rules or in order to ensure compliance with its obligations hereunder;
- (d) ensure that all of the following:

- (i) Customers (whether or not Members of ICE Futures U.S. or registered with ICE Futures U.S.);
- (ii) officers, employees, agents and other representatives (whether or not registered with ICE Futures U.S.) of the User, including its Responsible Individuals; and
- (iii) officers, employees, agents and other representatives (whether or not registered with ICE Futures U.S.) of Affiliates of the User,

are made aware (to the extent necessary) of the terms of the Agreement and that all relevant rights and obligations are reflected in the User's contractual relationship with such third parties (to the extent appropriate), as if they were parties to this Agreement;

- (e) notify ICE Futures U.S. and IntercontinentalExchange as soon as practicable of any defect or malfunction in or any problem in accessing or using the Platform or the Platform Software;
- (f) subject to Clauses 4.5(g), 4.5(h), 4.5(i) and 4.7 below, not distribute (or rent, sell, sub-license or timeshare) the Platform, Trade Capture Data and Pricing Data or any details of the method of operation of the Platform Software);
- (g) disseminate Pricing Data or Trade Capture Data only to Affiliate companies of the User who require access to such Pricing Data or Trade Capture Data for non-commercial administrative purposes, internal business purposes, and internal IT maintenance and support, directly relating to the User itself ("Approved Affiliates");
- (h) only allow access to the Platform Software to such of its agents and employees who are responsible for the User's internal IT maintenance and support; and,
- (i) that it shall not use, or permit the use of, the Platform Software, from the ICE Futures U.S. trading floor located on the 7th floor of One North End Avenue, New York, New York, to trade any products of ICE Futures or IntercontinentalExchange that are otherwise available for trading on the Platform, unless specifically authorized to do so by NYBOT;
- (j) that it will be bound by and will comply in all respects with all applicable provisions of law and with the obligations of Members of ICE Futures U.S. pursuant to the ICE Futures U.S. Rules, whether or not such User is a Member.

4.6 make available to the Regulatory Authority with regulatory authority within the jurisdiction in which the User, any Responsible Individual of the User, or Customer, might be incorporated, registered or operating its business, at the request of ICE Futures U.S., such information, including Pricing Data or Trade Capture Data, as such Regulatory Authority may request to be provided by ICE Futures U.S. in respect of its Users;

4.7 Subject always to the provisions of the Related Documentation and the ICE Futures U.S. Rules, the User shall be entitled to disclose:

- (a) information generally and properly available to all Users; and

- (b) where disclosure is required by law, by any court of competent jurisdiction or by any Regulatory Authority (including for these purposes, ICE Futures U.S.) (a “**Legal Disclosure Requirement**”), and where notice of such a Legal Disclosure Requirement is received in advance by a User, then, if permissible, the User must (except in circumstances where the requester is ICE Futures U.S.) give ICE Futures U.S. and IntercontinentalExchange not less than 2 (two) Business Days' notice of the date upon which disclosure will occur under the Legal Disclosure Requirement. If, however, such Legal Disclosure Requirement is not received sufficiently in advance and must be complied with within 2 (two) Business Days of receipt, then, if permissible, the User shall (except in circumstances where the requester is ICE Futures U.S.) confirm to ICE Futures U.S. and IntercontinentalExchange that such disclosure has occurred as soon as practicable after such disclosure has occurred;

4.8 to retain:

- (a) data relating to all transactions conducted via the Platform; and
- (b) an audit trail in respect of such transactions conducted via the Platform,

in accordance with the recommendations and/or requirements of the Regulatory Authority in the jurisdiction in which the User, Responsible Individual or Customer is authorized, registered, or conducts it business, as the case may be;

- 4.9 to notify immediately ICE Futures U.S. if it becomes aware of any unauthorized access to the Platform, the Platform Software or the Passwords or if it becomes aware of any violation of any CFTC Regulation or ICE Futures U.S. Rule, and will use best efforts to ascertain the source of any unauthorized access or use and will co-operate with ICE Futures U.S. to gather more information relating to any potential CFTC Regulation or ICE Futures U.S. Rule violation;
- 4.10 to obtain at its sole expense, or to work with ICE Futures U.S. to obtain any consents that are or may become necessary for the installation or maintenance of any software or connection which is provided for under this Agreement;
- 4.11 to comply with any terms imposed in connection with the consents to be obtained in accordance with Clause 4.10 (subject to prior review), and to reimburse ICE Futures U.S. for any out-of-pocket expenses (including reasonable fees of attorneys or agents) it may incur in obtaining those consents. The User will notify ICE Futures U.S. immediately if any such consent is withdrawn; and
- 4.12 that it shall be fully responsible for all acts and omissions of its Approved Affiliates, officers, employees, agents, Customers and other representatives (whether or not Members of, or registered with, ICE Futures U.S.) including its Responsible Individuals to the same extent as it is for the acts and omissions of itself or of persons directly employed by it.

5 Modifications and Updates to the Platform Software and the User Interface

- 5.1 From time to time ICE Futures U.S. may directly or indirectly provide Improvements to the User as it shall deem fit.
- 5.2 ICE Futures U.S. shall provide the User with reasonable notice of the date by which any Compulsory Improvements must be installed by the User. In the event that the User fails to install Compulsory Improvements by the date notified by ICE Futures U.S., then ICE Futures

U.S. shall be entitled to suspend the User's access to the Platform for a period of six months from the date upon which the Compulsory Improvements should have been installed in accordance with ICE Futures U.S.'s notice. The last date in this six month suspension period shall be known as "the Final Installation Date". It being understood that if the User installs the relevant Compulsory Improvements before the Final Installation Date then such suspension shall cease; further, in the event that the User has not installed the Compulsory Improvements by the Final Installation Date then this Agreement shall be automatically terminated.

5.3 The User shall bear the sole responsibility and expense of making any changes to its User Interface, as the case may be, that result from Improvements.

5.4 ICE Futures U.S. shall only be obliged to support:

- (a) the current version of the Platform Software ("**Supported Version**"); and
- (b) the immediately preceding version of the Supported Version ("**Prior Release**"), (unless it is not commercially practicable for ICE Futures U.S. to continue supporting the Prior Release).

5.5 Notwithstanding that a User's Interface has a valid Certificate of Conformance, ICE Futures U.S. may at any time disconnect any User Interface where the operation of such User Interface is detrimental to the Platform, the Platform Software, Users, IntercontinentalExchange or ICE Futures U.S.

6 Sub-contractors

ICE Futures U.S. shall be entitled to appoint such sub-contractors as it shall deem fit to carry out the whole or any part of its obligations hereunder, it being understood that the appointment of such sub-contractors by ICE Futures U.S. shall not limit ICE Futures U.S.'s obligations under the terms of this Agreement.

7 Liability

7.1 Otherwise than as detailed in this Agreement, ICE Futures U.S. does not guarantee the sequence, timeliness, accuracy or completeness of any of ICE Futures U.S.'s market data, Trade Capture Data or Pricing Data nor guarantee the accuracy, responsiveness or completeness of the Platform, the Platform Software or the Related Documentation.

7.2 THE USER ACKNOWLEDGES THAT THE PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION, ACCESS TO ANY INTERFACE AND ANY ICE FUTURES U.S. SERVICES OR FACILITIES USED TO SUPPORT THEM, ARE PROVIDED "AS IS". EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NYBOT, INTERCONTINENTAL EXCHANGE, AND THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, AND LICENSORS OF NYBOT AND INTERCONTINENTALEXCHANGE (THE "**DISCLAIMING PARTIES**"), MAKE NO, AND HEREBY DISCLAIM ALL, WARRANTIES, CONDITIONS, UNDERTAKINGS, TERMS OR REPRESENTATIONS, EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, IN RELATION TO THE PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION AND ACCESS TO ANY INTERFACE OR ANY PARTS OR PARTS OF THE SAME. THE DISCLAIMING PARTIES SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT (EXCEPT AS

OTHERWISE PROVIDED HEREIN). THE DISCLAIMING PARTIES FURTHER DISCLAIM ALL WARRANTIES, IMPLIED OR OTHERWISE, RELATING TO ANY THIRD PARTY MATERIALS (EXCEPT AS OTHERWISE PROVIDED HEREIN). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NYBOT SHALL CREATE A WARRANTY AND THE USER MAY NOT RELY UPON SUCH INFORMATION OR ADVICE EXCEPT TO THE EXTENT SPECIFIED IN THIS AGREEMENT.

7.3 NONE OF THE DISCLAIMING PARTIES SHALL BE LIABLE IN ANY WAY TO THE USER OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES, , LOSS OF PROFITS, GOODWILL, LOSS OF USE OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THEY WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE , INCLUDING, BUT NOT LIMITED TO :

- (a) ANY FAULTS WITH THE PLATFORM OR PLATFORM SOFTWARE, HOWEVER THOSE FAULTS MAY ARISE;
- (b) THE SUSPENSION, TERMINATION OR INABILITY TO ACCESS OR USE THE PLATFORM OR PLATFORM SOFTWARE OR ANY INACCURACIES OR OMISSIONS IN ANY INFORMATION PROVIDED, HOWEVER SUCH SUSPENSION, TERMINATION, INABILITY TO ACCESS, INACCURACY OR OMISSION MAY ARISE;
- (c) ANY FAILURE OR DELAY SUFFERED BY THE USER OR ANY RESPONSIBLE INDIVIDUAL THAT RECEIVES ACCESS TO THE PLATFORM THROUGH THE USER'S INTERFACE OR THE ICE INTERFACE;
- (d) ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF OR INABILITY TO USE ALL OR ANY PART OF THE PLATFORM OR PLATFORM SOFTWARE;
- (e) ANY LOSSES RESULTING FROM UNAUTHORIZED ACCESS, ALTERATION, OR ANY OTHER MISUSE OF THE PLATFORM SOFTWARE OR THE PLATFORM; OR
- (f) ANY INJURIOUS ACT, DEFAULT, OR OMISSION UNLESS SUCH ACT, DEFAULT OR OMISSION WAS THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE DISCLAIMING PARTY OR PARTIES SOUGHT TO BE HELD LIABLE THEREFOR.

7.4 In no circumstances shall either party nor any of its own officers, directors, employees, agents, or licensors be liable to the other party or any other person or entity for any indirect; incidental; consequential damages or punitive damages; or, damages for loss of profits or goodwill, even if it has been advised of the possibility of these damages and even if the damages are due to the other party's error, omission or negligence.

7.5 Subject in all cases to the foregoing, the maximum aggregate liability of ICE Futures U.S. to the User for any and all claims made by the User in relation to this Agreement in any calendar year shall be ten thousand dollars (\$10,000), however that liability arises, including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.

- 7.6 Each Party shall notify the other of any claim arising under or in connection with this Agreement within one (1) calendar month of the date on which it becomes aware of the specific act, fact, circumstance or event which gave rise to the claim. Neither party shall have any liability to the other for any such claim notified after such one (1) month period.

8 The User's Indemnification

The User agrees to indemnify, protect and hold harmless the Disclaiming Parties for any and all losses, damages, expenses and costs, including reasonable legal fees, arising from a claim, suit or other proceeding made or instituted by any Regulatory Authority, person or entity arising from:

- (a) unauthorized access to, or use of the Platform or the Platform Software; or
- (b) unauthorized access to or use of the User's Interface or the ICE Interface to access the Platform, or any use of the User's Interface or the ICE Interface, or unauthorized access to or use of the Materials, that causes damage to the Platform, the Platform Software, any other User, User or ICE Futures U.S.; or
- (c) any breach of Clause 4.8 which gives rise to liability due to inaccurate or incomplete disclosure; or
- (d) any unauthorized use of the Materials.

9 Term and Termination

- 9.1 This Agreement shall take effect when signed by both parties and shall be for a period of one (1) calendar year and shall be renewed automatically upon the expiry of that period and each calendar year thereafter unless terminated in accordance with this Agreement.

- 9.2 A party shall have the right to terminate this Agreement forthwith by giving written notice to the other party if the other party makes any arrangement or composition with its creditors or if a bankruptcy petition is presented or if a receiving order is made against it or if, being a company, an order is made or a resolution is passed for the winding-up of the other party or an order is made for the appointment of an administrator to manage the other party's affairs, business and property, or if a receiver is appointed in respect of any of the other party's assets or undertaking, or if circumstances arise which entitle the Court or a creditor to appoint an administrative receiver, receiver or manager or which entitle the Court to make a winding-up order, or if the other party takes or suffers any similar or analogous action in consequence of debt in any part of the world.

- 9.3 (a) ICE Futures U.S. may terminate this Agreement at any time upon the occurrence of any of the events specified in subsections (i) through (vii) of this clause 9.3. Such action shall in all events be without liability to ICE Futures U.S. as a consequence thereof. ICE Futures U.S.'s right to take such action pursuant to subsections (i) and (ii) shall take effect thirty (30) days from notice by ICE Futures U.S. that the event listed in such subsection has occurred, unless the User cures such breach within such notice period. ICE Futures U.S. ICE Futures U.S.'s right to take such action pursuant to subsections (iii) through (ix) shall be immediate and without prior notice by ICE Futures U.S. Pursuant to this clause 9.3, ICE Futures U.S. may terminate this Agreement or suspend access to the Platform if:

- (i) any fees or other amounts due to ICE Futures U.S. hereunder or otherwise pursuant to the ICE Futures U.S. Rules are past due;
- (ii) User breaches any material obligation of this Agreement;
- (iii) such termination is required by applicable law or regulation or Court order;
- (iv) such termination is provided by the ICE Futures U.S. Rules or by order of any applicable ICE Futures U.S. committee;
- (v) death of the User;
- (vi) if the User is a Clearing Member, termination of the User's status as a Clearing Member in accordance with the ICE Futures U.S. Rules and/or the rules of ICE Clear US, Inc.;
- (vii) if the User is not a Clearing Member, termination of User's clearing relationship with a Clearing Member or other termination of User's ability to clear transactions through a Clearing Member;
- (viii) if the User is a Floor Broker, termination of the floor trading privileges of such Floor Broker in accordance with the ICE Futures U.S. Rules; and
- (ix) pursuant to the provisions of clauses 5.2 and 12.2, respectively, of this Agreement.

9.4 The User may terminate this Agreement on giving thirty (30) days' written notice to ICE Futures U.S.

10 Consequences of Termination

Any termination of this Agreement shall be without prejudice to the accrued rights of the parties as at the date of such termination, and to the continuation in force of all provisions of this Agreement expressed to survive such termination, including, but not limited to, Clauses 3, 4, 7, 8, 20 and 22.

11 Suspension of Access to Platform

The User accepts and acknowledges that ICE Futures U.S. shall have the right, whether in accordance with the rights reserved to ICE Futures U.S. under the terms of the ICE Futures U.S. Rules or in accordance with its contractual rights under this Agreement, to immediately discontinue access by a User (including any Responsible Individuals and Customers trading through such User) to the Platform until further notice.

12 Amendments

12.1 ICE Futures U.S. may in its sole discretion amend any provision of this Agreement by notice to the User, where failure to do so will or would be likely to give rise to a breach of the rules and regulations of an applicable Regulatory Authority by ICE Futures U.S. The User expressly acknowledges and agrees that this provision is a condition of the Agreement and is

necessary to ensure that regulatory compliance is maintained by ICE Futures U.S. at all times.

- 12.2 ICE Futures U.S. may further amend the provisions of this Agreement by notice sent in accordance with Clause 16 to the listed recipient, who shall be referred to as the “Notice Recipient”. The amendment to this Agreement contained within the notice sent to the Notice Recipient shall be effective one (1) month subsequent to receipt of the notice by the Notice Recipient (“the Amendment Effective Date”), unless the Notice Recipient raises a substantive objection to the amendment before the Amendment Effective Date. If a substantive objection is raised by the Notice Recipient prior to the Amendment Effective Date, then ICE Futures U.S. shall have the discretion to suspend the User’s access to the Platform from the Amendment Effective Date until such time that the User has confirmed its acceptance of the relevant amendment in writing to ICE Futures U.S. In the event that the User has not signified its acceptance of the amendment in writing to ICE Futures U.S. by the date six (6) months subsequent to the Amendment Effective Date, then ICE Futures U.S. reserves the right to terminate this Agreement on one (1) month’s notice to the User.

13 Waiver

The failure of a party hereto to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

14 Assignment

- 14.1 The User may not assign this Agreement without the prior written consent of ICE Futures U.S.
- 14.2 ICE Futures U.S. may assign or transfer its rights, obligations and duties under this Agreement, without prior notice and in its absolute discretion, to any entity:
- (a) controlling, controlled by, or under common control with ICE Futures U.S.; or
 - (b) which succeeds to all or substantially all of the assets and business of ICE Futures U.S.

ICE Futures U.S. may otherwise assign or transfer its rights, obligations and duties under this Agreement following no less than one (1) month prior written notice to the User of its intention to do so.

15 Severability

If, at any time, any provision of this Agreement, or any portion thereof, is or becomes 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.

16 Notices

All notices or communications to be delivered under or with respect to this Agreement shall be delivered to all parties and be in writing and either be:

- (a) hand delivered or forwarded by registered mail; or
- (b) sent via electronic mail, in either case to the address set out in Part 4 of the Schedule.

Notices shall be deemed to have been served at 9 am in New York on the Business Day following the date of sending where the notice is sent by hand or electronic mail, or 9 am in New York on the third Business Day following the date of sending where the notice is sent by registered mail.

Notices served on a User shall be deemed effective on any Customer, Responsible Individual or Approved Affiliate of such User.

17 Remedies Not Exclusive

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the ICE Futures U.S. Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

18 Third Party Rights

IntercontinentalExchange shall be a third party beneficiary of this Agreement, thereby entitled to receive the rights of ICE Futures U.S. and enforce the provisions of this Agreement against the User or any other Person, to the same extent as if ICE had been a signatory to this Agreement, in the courts and under the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof. Notwithstanding the foregoing, nothing in this Agreement will impose directly upon ICE any of the obligations of ICE Futures U.S. set forth herein.

19 Regulatory Requirements

19.1 It shall not be the responsibility of ICE Futures U.S. to inform Users of regulatory requirements including without limitation, all regulatory, audit trail, record keeping and record retention requirements to which they may be subject (in any jurisdiction) and no such inference or interpretation shall be drawn from the terms and conditions of this Agreement. The User shall assume all responsibility for keeping itself fully informed of all such ICE Futures U.S. Rules, rules, requirements, policies and laws.

19.2 In particular, the User acknowledges that portions of the Platform Software and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. The User will:

- (a) comply with all legal requirements established under these controls;
- (b) co-operate fully with ICE Futures U.S. in any official or unofficial audit or inspection that relates to these controls; and
- (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to the countries of Cuba, Iran, Iraq, Libya, Sudan, Syria, or Afghanistan (“**Prohibited Countries**”) (as such list of Prohibited Countries may be amended from time to time in accordance with the Office of Foreign Asset Control Restrictions published by the US Department of Treasury), or any national thereof or to any country or national thereof that is embargoed by Executive Order.

The User represents and warrants that it will not use the Platform Software in any such country nor will it permit any national of any such country to use the Platform Software for any purpose at any time.

20 Governing Law and Jurisdiction

20.1 This Agreement is deemed entered into, and shall be governed by and construed in accordance with, the laws of the State of New York without giving effect to principles of conflicts of laws thereof, and the Federal laws of the United States of America.. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is hereby disclaimed.

20.2 User consents and agrees, and hereby submits to the general and exclusive jurisdiction of the Federal and State courts in New York, New York and agrees to commence any action, suit or proceeding in the Supreme Court of the State of New York, New York County , or in the United States District Court for the Southern District of New York and waives any objection to venue in any such jurisdiction in the event any action, suit or proceeding is commenced in such courts under or with respect to any matters in connection with this Agreement. Nothing contained in this clause 20.2 shall limit the right of ICE Futures U.S. to commence any action, suit or proceeding against a non-US User in any other court of competent jurisdiction in which such non-US User is located..

THE PARTIES HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY.

21 Force Majeure

Other than an obligation of payment under the terms of this Agreement and without prejudice to ICE Futures U.S.'s rights under the terms of the ICE Futures U.S. Rules, a party is not liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, war, acts of terrorism, armed conflict, labor strikes or disputes, transportation unavailability, stoppages or slowdowns, provided that the affected party gives prompt notice to the other of the nature of the event and its estimated duration and resumes performance as soon as possible after the event.

22 Confidentiality

22.1 In Clause 22, "**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the "**Disclosing Party**") to another party (the "**Receiving Party**") whether before or after the date of this Agreement including, without limitation, the Platform Software, Related Documentation, Materials and all information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs and information distributed, used, disseminated or accessed under the terms of Clause 2.

22.2 During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:

- (a) may not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;

- (b) may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clauses 22.3 and 22.4; and
 - (c) shall make every effort to prevent the unauthorized use or disclosure of Confidential Information.
- 22.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its officers, employees, agents, representatives and sub-contractors, or to any court of law or Regulatory Authority, (a "**Recipient**") to the extent that disclosure is:
- (a) necessary for the purposes of this Agreement or the ICE Futures U.S. Rules; or
 - (b) required by a court of law; or
 - (c) required to ensure compliance by the Receiving Party with its regulatory obligations or as requested by its Regulatory Authority as applicable.
- 22.4 The Receiving Party shall ensure that any Recipient (other than a court of law or Regulatory Authority) is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 22.5 Clauses 22.2 to 22.4 do not apply to Confidential Information which:
- (a) is at the date of this Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or Recipient's breach of this Agreement; or
 - (b) can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party.

23 Data Protection

Both parties shall observe relevant statutory data protection obligations as applicable to them in relation to relevant data that they receive in connection with this Agreement.

24. Further Assurance

The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

25. Counterparts

This Agreement may be executed in counterparts by the Parties, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. A complete set of counterparts shall be lodged with each Party.

EXECUTED by the parties and made effective on the date executed by ICE Futures U.S., Inc.

ICE Futures U.S., Inc.

By: _____
Signature

Title: _____

Date

a duly authorized representative of
THE USER

[_____]

By: _____
Signature

Title: _____

Date

SCHEDULE

Part 1: The Platform

That part of the combination of software, operating software, hardware, communication equipment and data owned by, licensed to, or in the possession of ICE Futures U.S. as updated, varied and modified from time to time, which makes up the Platform for the trading of ICE Futures U.S. Contracts by Users of the Exchange comprising, inter alia, the systems and facilities for the execution and processing of ICE Futures U.S. Contracts and for the reporting, surveillance and control of transactions made through such systems and facilities.

Part 2: The Platform Software

The software supplied by ICE Futures U.S. to the User in order to access the Platform in order to facilitate viewing of and/or trading in ICE Futures U.S. Contracts on the Platform as the case may be, comprising a graphical user interface and/or API and/or such other elements as may be notified as necessary for such purpose as ICE Futures U.S. may determine from time to time. For the avoidance of doubt, the Platform Software does not include the User Interface.

Part 3: Connectivity

The means by which the User shall access the Platform are the following:

- (a) internet; or
- (b) a telecommunications link provided by a third party under direct contract with the User; or
- (c) by such other means as ICE Futures U.S. may allow under the ICE Futures U.S. Rules from time to time.

Part 4: Addresses for Notices

In the event of any notice being required to be sent to a party under the terms of this Agreement, then such notice shall be addressed as follows:

If to ICE Futures U.S., Inc.:

| | |
|------------|--|
| Name: | Helene Recco, Managing Director, Member Services |
| Address | ICE Futures U.S., World Financial Center, One North End Avenue, New York, NY 10282-1101 |
| Telephone: | (212) 748-4164 |
| Fax No: | (212) 748-4088 |
| Email: | helene.recco@theice.com |

With a Copy to::

Name: Mark Fabian, Vice President, Market Regulation

Address: ICE Futures U.S., World Financial Center, One North End Avenue,
New York, NY 10282-1101

Telephone No.: 212-748-4010

Fax No.: 212-748-4220

Email: mark.fabian@theice.com

If to the User:

Name:

Address:

Telephone no:

Facsimile no:
e-mail:

In the event of a party's notice details changing, then it shall be the responsibility of such party to confirm details of such changes to the other party.

Part 5: Trade or View Only Options [To be deleted by ICE Futures U.S. as appropriate]

(a) **Trade:**

The license granted pursuant to Clause 2 is granted to enable the Responsible Individuals of the User to effect trading on the Platform in accordance with this Agreement, the User Statement and the ICE Futures U.S. Rules.

(b) **View only:**

The license granted pursuant to Clause 2 is granted solely to enable the User to view data published by ICE Futures U.S. on the Platform in accordance with this Agreement, the User Statement and the ICE Futures U.S. Rules and does not entitle the User to effect trading on the Platform. If the User has initially selected the view only option, but subsequently requires a license to effect trading on the Platform, the User must give ICE Futures U.S. written notice, signed by an appropriately authorized individual. Within 7 (seven) days of receipt of such request, ICE Futures U.S. shall enable the User's Responsible Individuals to effect trades on the Platform PROVIDED that the User has complied with all ICE Futures U.S. requirements, which will include the ICE Futures U.S. Rules.

Part 6: License Fee In consideration of the rights granted under this Agreement, the User shall pay ICE Futures U.S. a License Fee of \$1.00 upon execution of the Agreement.

Part 7: Order Routing Options

Yes/No [To be deleted by ICE Futures U.S. as appropriate]