



ICE OTC PARTICIPANT AGREEMENT

This agreement (“Agreement”) sets out the terms under which ICE U.S. OTC Commodity Markets, LLC (“ICE”), which makes available and operates one or more unregulated physical OTC markets (individually and collectively, the “Physical OTC Platform” or “Platform”) each of which is an electronic market for the (i) execution (“Execution”) of transactions on the Platform (“Physical OTC Transactions” or “Transactions”), and (ii) provision of other services (“Other Services”, collectively with the Execution of Transactions, the “Platform Services”) involving physical commodities (collectively, the “Products”), has agreed to provide the party identified below (“Participant”) with the Platform Services. Other Services include the acceptance and processing of Acting for Principal (“AFP”) orders (the “AFP Service”) (in which the Broker acts for and trades in the name of the Participant principal) for Transactions submitted by a Broker on Participant’s behalf and with Participant’s authorization in accordance with this Agreement. For the avoidance of doubt, the Platform Services do not include the front-end software (“Software Services”) or OTC market data (“Platform Data”). Those products are offered under a separate agreement and/or terms and conditions by and between ICE [or one or more of its affiliates](#) and Participant (the “ICE Data Services and Software Services Agreement”). All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement unless the context otherwise requires.

- 1) **PLATFORM SERVICES.** ICE hereby grants Participant a non-exclusive, non-transferable, revocable right to receive the Platform Services in accordance with the Terms (as defined below).
- 2) **TERMS.** This Agreement, taken together with (i) the Service and Pricing Schedules (the “Schedules”) (the current versions of which are posted at <https://www.theice.com>), (ii) any other Annexes to this Agreement, ~~(the current versions of which are posted at <https://www.theice.com>)~~, and (iii) the AFP Procedures Guide governing the AFP Service (the current version of ~~the above referenced guides~~ [are which is](#) posted at <https://www.theice.com>) are collectively referred to herein as the “Terms” and will govern Participant’s right to receive the Platform Services and any and all Transactions by Participant. ICE may amend the Terms at any time by posting amendments on ICE’s website at <http://www.theice.com>, and any such amendments will be prospectively binding on Participant, provided that ICE will provide at least two weeks’ prior notice, through electronic or other direct communication with Participant, of any such amendments that are likely to materially and adversely affect Participant or its rights or obligations hereunder. Participant’s receipt of Platform Services after the effective date of any such amendment shall constitute its ratification of and agreement to any such amendment. If ICE elects to require Participant to acknowledge and agree to an amendment, such amendment will not become effective until Participant has done so in the manner specified by ICE. For the avoidance of doubt, the Terms do not apply to or govern Participant’s receipt of the Platform Data or utilization of the Software Services (the terms of which are contained in the ICE Data Services and Software Services Agreement).
- 3) **PARTICIPANT’S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Participant hereby represents, warrants and covenants as follows:
 - a) Participant understands and agrees that any and all data submitted to the Platform by Participant (including but not limited to bids and offers for Transactions, Transactions resulting from Execution, and data from Other Services, such as the submission of data (“Data Submission”) for inclusion in market data services) and all information related to Transactions entered into by Participant through the Platform (or in connection with the AFP Service, by a Broker under the authorization of and on behalf of Participant in accordance with this Agreement), shall be the non-exclusive property of ICE or its affiliates and Participant, and that each party shall have the right to use, sell, retransmit or redistribute such data in accordance with and subject to the provisions of Section 8 hereof.
 - b) Participant will comply with the Terms and any and all laws, rules, regulations or orders applicable to Participant’s receipt [and use](#) of the Platform Services. Participant understands that the Products traded on or through the Platform impose physical settlement obligations and represents [and warrants](#) upon entry into each Transaction that it executes on or through the Platform that it has the capacity to satisfy the physical settlement obligations specified with respect to such Transaction. Participant also understands and acknowledges that it is prohibited from trading ~~swaps~~ [“swaps” and “security-based swaps” \(each as defined in the U.S. Commodity Exchange Act](#)

(the “CEA”) on the Platform and covenants that it will not enter into any Transaction on the Platform that would constitute ~~a swap under laws and regulations applicable to Participant’s trading on or through the Platform~~ such a swap or security-based swap. Participant understands and agrees that Transactions executed through the Platform are intended to constitute spot and forward transactions for purposes of the CEA and represents and warrants that it is eligible to enter into such transactions consistent with the terms of any applicable exemption or interpretation under the CEA applicable to such Transactions. Without limiting the foregoing, Participant represents and warrants that it is an institutional and commercial market participant that regularly makes or takes delivery of the commodities underlying its Transactions in the ordinary course of its business.

- c) Participant acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its receipt of the Platform Services.
- d) Participant acknowledges that ICE may, in its sole discretion, with or without cause or prior notice to Participant, temporarily or permanently cease to operate the Platform, temporarily or permanently cease to make certain Products or Transactions or Other Services available or suspend, terminate or restrict Participant’s right to receive the Platform Services. Participant acknowledges that its receipt of the Platform Services may be monitored by ICE for its own purposes (including, without limitation, for purposes of monitoring levels of activity in categories of Transactions and Other Services and for purposes of complying with applicable laws and regulations) and not for the benefit of Participant.
- e) Participant has all necessary power and authority to execute and perform this Agreement, and this Agreement is its legal, valid and binding agreement, enforceable against Participant in accordance with its terms. Neither the execution of nor performance under this Agreement by Participant, including the use of the Platform, the entry into any Transaction on or through the Platform by Participant or the receipt of any other Platform Services, violates any law, rule, regulation or order in any jurisdiction, or any agreement, document or instrument, binding on or applicable to Participant or its assets. If Participant has authorized any Broker under the AFP Service to enter or execute orders for Transactions on its behalf, Participant represents and warrants that such Broker is authorized to act on behalf of Participant in connection with the use of such Services and authorizes and instructs ICE to comply with any instructions submitted by such Broker on behalf of Participant. Participant further represents, warrants, and agrees that, by authorizing and enabling such Broker to act on its behalf on the Platform, Participant shall be bound by any actions taken by that Broker on behalf of Participant on the Platform.
- f) Participant agrees to provide ICE with information related to Participant’s receipt of the Platform Services that is reasonably requested by ICE, if such information is reasonably necessary in order to enable ICE to assess the identity of persons or entities receiving the Platform Services through Participant’s Passwords (as defined in Section 4), maintain the integrity of the Platform, or to comply with applicable laws or regulations (including without limitation, tax law or regulations or reporting requirements in any relevant jurisdiction), and such information will be accurate and complete in all material respects and subject to the Confidentiality provisions of Section 8. Should Participant refuse to provide information, or if the information demonstrates a potential violation of the terms and conditions of this Agreement, then ICE shall have the right, upon five (5) days’ notice, to conduct an on-site audit during regular business hours of Participant’s compliance with this Agreement. ICE may inspect, among other things, any receipt of the Platform Services. ICE’s right of inspection shall extend only so far as may be necessary to ensure compliance by Participant with the provisions of this Agreement.
- g) Participant understands and agrees that ICE may, from time to time, rely upon affiliates and contractors to fulfill its rights and obligations under the Agreement. In doing so, access to confidential data is permitted only as necessary, solely for the purposes set forth in the Terms, and only with the affiliate’s or contractor’s agreement to and compliance with ICE’s obligations with respect to Participant data confidentiality under the Terms.
- h) Participant acknowledges and agrees that it will receive and use the Platform Services and enter into any Transaction through the Platform at its own exclusive initiative and on the basis of its own

independent decision and that it has not been solicited, requested, advised or recommended to engage in any receipt or use of the Platform Services or any such Transaction by ICE or any affiliate of ICE. Participant represents and warrants that its receipt and use of the Platform Services, including the execution of Transactions on or through the Platform, will not subject ICE or the Platform to registration or licensing (or similar requirements) in any jurisdiction in which Participant is organized, located or operates.

h) i) Participant acknowledges that the Platform Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations (EAR) ("Export Controls"). In addition, Participant acknowledges that the Platform Services, and Transactions that may be executed by or through the Platform, are subject to the requirements of the U.S. International Emergency Economic Powers Act, the Trading with the Enemy Act and the executive orders and implementing regulations and orders promulgated thereunder, including the U.S. Department of the Treasury's Office of Foreign Assets ~~Controls~~'Control's (OFAC) sanctions programs, ~~including~~ and the Specially Designated Nationals and Blocked Persons List ~~(thereunder~~ ("OFAC Sanctions"), and may be subject to sanctions, blocking measures and other restrictions administered or imposed by other government authorities ("Other Sanctions", and Export Controls, OFAC Sanctions and Other Sanctions collectively, the "Controls"). Participant 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, ~~or any transaction the performance or settlement of which would be prohibited or restricted under the Controls.~~ Participant further represents and warrants that as of the date of this Agreement, (x) neither Participant, Participant'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~~Sanctions or Other Sanctions, and (y) Participant is not 50% or more owned or controlled, directly or indirectly, by any person or entity that is the subject of any OFAC ~~sanctions~~Sanctions or Other Sanctions. For so long as this Agreement is in effect, Participant 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. Notwithstanding anything to the contrary in this Agreement, ICE reserves the right to immediately terminate this Agreement to the extent that Participant's access to or use of the Platform Services would violate the Controls.

- 4) **USER IDs AND PASSWORDS.** ICE may, in its sole and absolute discretion, issue to Participant, through its employees or ICE-approved third party agents designated as its administrator(s) with respect to Participant's receipt of the Platform Services ("Participant User Administrator"), one or more user IDs and passwords (collectively, the "Passwords") for use exclusively by employees or ICE-approved third party agents ("Authorized Agents") of Participant or a Participant affiliate that are properly authorized to receive the Platform Services on behalf of Participant. In no event will Participant provide IDs or Passwords to any third parties. The initial Participant User Administrator(s) for Transactions, if applicable, are identified on the signature page hereof and Participant will notify ICE promptly of any change in its Participant User Administrator(s). Participant will be solely responsible for controlling and monitoring the use of the Passwords, will provide the Passwords only to its Authorized Agents, and will not provide the Passwords to any third party other than an Authorized Agent. Participant will immediately notify ICE of any unauthorized disclosure or use of the Passwords or receipt of the Platform Services or of the need to deactivate any Passwords. Participant acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords (except through the fault or negligence of ICE), including the Execution of Transactions and the receipt of Platform Services, whether or not such actions were authorized. Participant will only use the Passwords from the jurisdictions specified by Participant and accepted by ICE. The Participant User Administrator(s) shall be responsible for all communications between ICE and Participant and any notices or other communications sent to a Participant User Administrator by ICE shall be binding on Participant.

- 5) **TERM.** This Agreement, as amended from time to time, will continue in effect unless and until terminated by either party upon 30 days' written notice to the other, provided that this Agreement shall remain in effect with respect to any Transactions (including Transactions conducted via the AFP Service) effected prior to such termination. Termination of this Agreement shall terminate all services provided by ICE to Participant, including Platform Services. Each party's continuing obligations under this Agreement and the Terms, including, without limitation, those relating to "~~Indemnification~~Limit of Liability; Indemnity" and "Confidentiality", will survive the termination of this Agreement.
- 6) **EXECUTION OF TRANSACTIONS.**
- a) Subject to Section 6(e), upon the Execution of a Transaction in accordance with the Terms, Participant agrees that: (i) it will be obligated to pay to ICE the commissions due on such Transaction, in accordance with the Schedules as then in effect, regardless of whether the Transaction is performed, settled or otherwise completed by Participant and its counterparty; (ii) the resulting Transaction will constitute a legally binding obligation of Participant, with respect to its counterparty, to complete the Transaction in accordance with its terms and subject to the terms of any master or other applicable agreements between Participant and its counterparty; (iii) the counterparty to any Transaction may rely on Participant's agreements hereunder as to the binding nature of such Transaction and agrees that the counterparty may directly enforce Participant's obligations under such Transaction against Participant; and (iv) ICE shall have no involvement in and no responsibility or liability for any matters related to the Transaction or the completion or documentation of the Transaction subsequent to its Execution through the Platform, including but not limited to the creditworthiness of any participant, all of which shall be the sole responsibility of Participant and/or its counterparty, as applicable; and (v) execution of Transactions in ~~physical forward~~ contracts cleared by ICE NGX, Canada Inc. ("ICE NGX"), a subsidiary of Intercontinental Exchange, Inc., are subject to the terms and conditions set forth by ICE NGX and ~~(vi)~~ Participant agrees to be bound by the ICE NGX Contracting Party Agreement (which can be found at <https://www.ngx.com/>) that outlines the Participant's rights, duties and obligations with respect to the formation of any such cleared ~~physical forward natural gas~~ contracts and the clearing process.
- b) Participant agrees that Transactions Executed through the Platform shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be in "writing". Participant will not contest the legally binding nature, validity or enforceability of any Transaction based on the fact that it was entered and ~~Executed~~executed electronically and expressly waives any and all rights it may have to assert any such claim.
- c) All commissions and other charges and fees incurred by Participant hereunder in any calendar month shall be invoiced by ICE to Participant based on the Schedules, as amended from time to time, and as set forth in the Terms. ICE will provide Participant with an invoice which states the amount owed by Participant, including any commissions, other charges or related taxes, which will be due and payable in the currency, timeframe and manner specified in the Schedules or invoices. Late payments will bear interest after the due date at a rate per annum of interest equal to the Prime Rate (as published in the Wall Street Journal) plus 1.5%, to the extent that such rate shall not exceed the maximum rate allowed by applicable law.
- d) Participant shall be liable for all taxes and duties (other than franchise and income taxes owed by ICE) arising out of this Agreement or any Transactions or Platform Services received by Participant, including, without limitation, taxes and duties levied by non-U.S. jurisdictions.
- e) ICE seeks to facilitate trading in its markets in accordance with the principles articulated in the Participant Code of Conduct attached as Annex A- (as it may be amended from time to time, in which case current version of which are posted at <https://www.theice.com>). ICE reserves the right to monitor or review any trading activity in its markets from time to time (but undertakes no obligation to Participant to do so). ICE reserves the right to adjust or cancel any Transaction that ICE has determined to be "off market" or to have resulted from a trading error in accordance with the "ICE OTC Error Trade Policy" established by ICE and amended from time to time. The ICE OTC Error Trade Policy, as amended, is posted at <https://www.theice.com>.



7) **LIMITATION OF LIABILITY; INDEMNITY.**

- a) PARTICIPANT ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT ICE MAKES NO WARRANTY WHATSOEVER TO PARTICIPANT AS TO THE PLATFORM OR PLATFORM SERVICES, EXPRESS OR IMPLIED, AND THAT THE PLATFORM AND PLATFORM SERVICES ARE PROVIDED ON AN “AS IS” BASIS AT PARTICIPANT’S SOLE RISK. ICE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ICE NOR ITS DIRECTORS, MANAGERS, OFFICERS, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO PARTICIPANT (i) FOR THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE PLATFORM OR PLATFORM SERVICES, THE MARKETS OPERATED BY ICE FUTURES EUROPE ~~OR~~, ICE FUTURES U.S., INC. OR ANY OTHER TRADING FACILITY OR THE CLEARING FACILITIES OPERATED BY ICE CLEAR EUROPE, ICE NGX OR ANY OTHER CLEARING ORGANIZATION, (ii) FOR DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, (iii) FOR THE CREDITWORTHINESS OF ANY OTHER PARTICIPANT, (iv) FOR THE ACTS OR OMISSIONS OF ANY BROKER AUTHORIZED BY PARTICIPANT TO UTILIZE SERVICES ON BEHALF OF PARTICIPANT, (v) FOR THE ACTS OR OMISSIONS OF PLATTS WITH REGARD TO THE PLATTS WINDOWS MARKETS; OR (vi) FOR ANY ACT OR OMISSION OF ICE FUTURES EUROPE, ICE FUTURES U.S., INC., ICE CLEAR EUROPE LIMITED, ICE NGX CANADA INC. OR ANY OTHER THIRD PARTY. ICE SHALL HAVE NO DUTY OR OBLIGATION TO VERIFY ANY INFORMATION DISPLAYED ON THE PLATFORM. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE PLATFORM DOES NOT AND SHALL NOT SERVE AS THE PRIMARY BASIS FOR ANY DECISIONS MADE BY PARTICIPANT AND THAT ICE IS NOT AN ADVISOR OR FIDUCIARY OF PARTICIPANT.
- b) Subject to Section 7(c) of this Agreement, Participant shall indemnify, protect, and hold harmless ICE, its 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 (i) any act or omission by any person obtaining access to the Platform through the Passwords (other than through the fault or negligence of ICE), whether or not Participant has authorized such access, and (ii) any act or omission of any Broker acting under authorization and on behalf of Participant in connection with the use of the Platform.
- c) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- d) Notwithstanding the terms of Section 7(a), in the event that ICE is determined to be liable to Participant for any cause, Participant expressly agrees that in entering into this Agreement, ICE’s aggregate liability, for all causes of action, will not exceed the total commissions, fees and other amounts (excluding any applicable taxes or duties) paid to ICE by Participant in the previous six months from the date of the occurrence of the liability.

8) **CONFIDENTIALITY.**

- a) Any and all non-public information in any form obtained by either party or its employees arising out of or related to the provision or use of the Platform, including but not limited to trade secrets, processes, 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 its agents) or to use such information for any purpose whatsoever other than as contemplated by the Terms 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 8.
- b) The restrictions in Section 8(a) shall not apply to information which: (i) is in or becomes part of the public domain other than by disclosure by such party in violation of this Agreement; (ii) is known to or obtained by such party previously without an obligation of confidentiality; (iii) is independently

developed by such party without use of or reference to the other party's confidential information; (iv) is required to be disclosed by applicable law or regulation (including without limitation, tax laws or regulations [or transaction reporting requirements](#)), or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction; (v) is disclosed in connection with any regulatory or self-regulatory request for information; (vi) is submitted by Participant (or in connection with the AFP Service for Transactions, submitted by a Broker on Participant's behalf) and displayed by ICE on the Platform or otherwise distributed or sold by ICE, regarding bids, offers, Transactions, or data from Data Submission in accordance with ~~its~~ICE's standard policies and procedures (provided that such displays and distributed or resold information will not identify Participant or, if applicable, Broker, by name, unless ICE is explicitly directed to do so by Participant and only then for the express purposes set forth in and under conditions agreed to in the Terms) or (vii) is used as the basis for price assessments by ~~Platts, a McGraw-Hill subsidiary,~~[S&P Global Platts or other price reporting agencies](#) in connection with its publication of prices and price indices including without limitation bids, offers, requests for quotation, and Transactions, in non-anonymous Platform markets ("Platts Windows Markets"). Participant specifically acknowledges that, with regard to any activity in Platts Windows Markets: (i) Participant's identity and, if applicable, its Broker's identity, will be displayed publicly on the Platform and (ii) its bids, offers, requests for quotation, and Transactions may be reported to the public, including regulators, by ICE or Platts, and taken into account by Platts in determining publicly reported prices or price indices. For the avoidance of doubt, these non-anonymous Platts Windows Markets are in addition to, and will be clearly differentiated from, anonymous and confidential markets that are also available for trading on the Platform.

- c) In the event that ICE receives a subpoena, data request, or order of court in any private-party litigation requesting confidential information of Participant, ICE will promptly notify Participant of such requirement or request to the extent it is legally permitted to do so. ICE will make reasonable commercial efforts to cooperate with Participant to enable Participant to narrow the scope of the required or requested disclosures or to seek a protective order or other similar relief. If requested by Participant, ICE will formally request that any governmental entity treat the information provided as confidential, to the extent it is not already treated as such, pursuant to the U.S. Freedom of Information Act or pursuant to an equivalent or comparable law or regulation, if applicable.
- 9) **NOTICES.** All notices delivered with respect to this Agreement shall be in writing and either (i) hand delivered or forwarded by registered or certified mail; or (ii) sent via email, in either case to the relevant address provided by a party for such purpose.
- 10) **NO THIRD-PARTY BENEFICIARY.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement or imposing any obligations on ICE or Participant to persons not a party to this Agreement other than (i) the right of a counterparty (Participant) to a Transaction under Section 6(a) [and 6\(b\)](#) of this Agreement, or (ii) the right of another party (Broker) with regard to a Transaction under the terms of the AFP Procedures Guide.
- 11) **FORCE MAJEURE.** Neither ICE nor Participant 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.
- 12) **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.
- 13) **ASSIGNMENT.** This Agreement may not be assigned by either party without the other party's express prior written consent; provided, however, that (A) Participant may assign this Agreement [in whole but not in part](#) to any entity (i) controlling, controlled by, or under common control with such party, or (ii) which succeeds to all or substantially all of the assets and business of such party, provided that, in the case of any such assignment by Participant, the assignee agrees in writing to assume the assignor's obligations under, and to be bound by the provisions of, this Agreement (as it may be amended from time to time), and (B) ICE may assign all or part of its rights and obligations under this Agreement to

any entity (i) controlling, controlled by, or under common control with ICE, or (ii) 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 13, 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. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns in accordance with its terms.

- 14) **GOVERNING LAW.** Unless otherwise specified in an annex, this Agreement is deemed entered into in New York, New York and [this Agreement and all matters arising out of or relating hereto](#) shall be governed [by](#) and construed in all respects ~~by~~[in accordance with](#) the laws of the State of New York, without giving effect to principles of conflict of law.
- 15) **DISPUTE RESOLUTION.** Unless otherwise specified in an annex, any dispute, claim or controversy between the parties relating to this Agreement shall be resolved through binding arbitration conducted in accordance with the [Commercial](#) Arbitration Rules of the American Arbitration Association. Any such arbitration shall be conducted in New York, New York or at such other location as may be agreed to by the parties and the arbitrators. For the avoidance of doubt, this arbitration clause only applies to ICE and the Participant and does not apply to any disputes arising between participants on the Platform or any other disputes between parties other than ICE and the Participant. Notwithstanding the foregoing, each party acknowledges that a breach of this Agreement may cause the other party irreparable injury and damage and therefore may be enjoined through injunctive proceedings in addition to any other rights and remedies which may be available to such other party at law or in equity, and each party hereby consents to the jurisdiction of any federal or state courts located in New York, New York with respect to any such action. The parties expressly waive their right to trial by jury in any such action.
- ~~16) **ADDITIONAL TERMS FOR EU PARTICIPANTS.** Where the Participant or one of more of its affiliates is incorporated in any member state of the European Economic Area, the additional terms available at <https://www.theice.com/publicdocs/AdditionalTerms-EUSubscribers.pdf> (the "Additional Terms") shall be incorporated into and form part of the Agreement under which ICE provides the Services to Participant, and, in the event of conflict with any other terms of the Agreement, these Additional Terms shall prevail.~~
- 16) **ADDITIONAL TERMS FOR UK AND EEA PARTICIPANTS.** [Where the Participant is incorporated or located in the United Kingdom, the Participant represents, warrants and acknowledges as follows \(in addition to the other representations, warranties and acknowledgments set forth herein\): \(i\) ICE is not established in the United Kingdom and is not regulated or licensed as an authorized or exempt person or otherwise under the Financial Services and Markets Act 2000; \(ii\) none of the requirements or protections of the United Kingdom financial services regulatory regime, Financial Services Compensation Scheme or Financial Ombudsman Scheme applies in respect of the Participant's relationship with ICE; and \(iii\) the Participant is one of the following: \(A\) a person who has professional experience in matters relating to investments falling within Article 19\(5\) of the Financial Services and Markets Act 2000 \(Financial Promotion\) Order 2005 \(as amended, the "Order"\), \(B\) a person falling within Article 49\(2\)\(a\) to \(d\) of the Order \("high net worth companies, unincorporated associations etc."\) of the Order, or \(C\) a person to whom an invitation or inducement to engage in investment activity \(within the meaning of section 21 of the Financial Services and Markets Act 2000\) in connection with the provision of services by ICE may otherwise lawfully be communicated or caused to be communicated.](#)

[Where the Participant is incorporated or located in any member state of the European Economic Area, the Participant represents, warrants and acknowledges as follows \(in addition to any other representations, warranties and acknowledgments set forth herein\): \(i\) the Participant would qualify as either an "eligible counterparty" or "professional client" within the meaning of Section I of Annex II to Directive 2014/65/EU \("MiFID II"\) \(known as a "per se" professional clients\); \(ii\) the Platform Services are not marketed or solicited in the European Economic Area and accordingly such Platform Services are only available to persons who have, of their own exclusive initiative, approached ICE seeking](#)



access to the Platform Services; (iii) the Participant's relationship with ICE has arisen only as a result of the Participant's own exclusive initiative and the Platform Services were not marketed, promoted or advertised to the Participant by ICE or any of its affiliates in any way; and (iv) ICE is not licensed or regulated under European Union laws or under the laws of any member state of the European Economic Area, either as an investment firm, credit institution, trading venue or otherwise and that accordingly none of the requirements or protections of the EU financial services regulatory regime nor any investor compensation scheme applies respect of the Participant's relationship with ICE.

- 17) **HEADINGS.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.
- 18) **SEVERABILITY AND ENTIRE AGREEMENT.** 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. This Agreement and the Terms supersede all negotiations, agreements and understandings among the parties with respect to the subject matter hereof and constitute the entire agreement between the parties with respect thereto.
- 19) **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.



Date: _____, 20__

ICE U.S. OTC Commodity Markets, LLC

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

Full Legal Name of Participant (Company Name)

Address: _____

Signature: _____

Name: Trabue Bland

Title: Senior Vice President

Signature: _____

Name: _____

Title: _____

Note: Participant must also provide the information requested on the following pages.

ICE Markets to which Participant requests trading rights:

- Natural Gas Liquids (Physical)
- Environmental Products (Physical)
- North American Natural Gas (Physical)
- North American Power (Physical)
- Crude Oil and Refined Products (Physical)
- Other: _____

Participant User Administrator:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____





ANNEX A – PARTICIPANT CODE OF CONDUCT

PREAMBLE

This Code of ~~Ethics~~ Conduct and ~~Sound~~ Trading Practices (this “Code”) defines and reaffirms the ~~values, best practices and~~ principles ~~and internal controls~~ that Participant must follow in receiving the Platform Services.

Participant acknowledges that its trading and other activity on the Platform may be subject to applicable legal and regulatory requirements, including prohibitions on fraud, market manipulation, wash trading and other trading misconduct, even though the Platform or Transactions may not otherwise be subject to regulation.

The Code is intended to complement ~~the internal principles~~ these applicable legal and regulatory requirements, as well as internal policies and practices of Participant, and to guide Participant as it engages in use of the Platform (including for Execution of Transactions and Data Submission ~~in order to receive) and receipt of~~ the Platform Services. Compliance with the Code allows Participant to assure ICE, legislators, regulators, the public and other market participants that its business activities on the Platform are, and will continue to be, conducted with integrity. In addition, Participant gives assurance that unlawful and unethical trading practices are not tolerated, that public disclosures of trading information are accurate, and that it will abide by these ~~ethical~~ standards and maintain sound trading practices.

In addition to penalties arising from any violations of applicable law, Participant acknowledges that violations of this Code ~~can incur penalties including, but not limited to,~~ may result in temporary or permanent loss of rights to receive the Platform Services, among other actions.

I. ETHICAL CONDUCT STANDARDS

A. Core Value: Integrity

~~Conducting trading~~ Trading activities should be conducted with integrity ~~is the essence of ethical conduct.~~ Integrity means conducting these activities in an honorable and principled manner consistent with ~~the ethical~~ applicable legal requirements and the standards and sound trading practices set forth herein.

B. Ethical Conduct Standards

On the Platform, Participant will:

1. Conduct its business in accordance with all applicable laws, regulations, tariffs and rules, and in good faith, and with a commitment to honest dealing.
2. Not engage in fraudulent or manipulative behavior.
3. Honor the terms and conditions of this Agreement.
4. Engage only in Transactions with legitimate business purposes, such as managing business risk or that otherwise have economic substance. In no event will Participant engage in any Transactions intended to boost revenues or volumes artificially, or intended to manipulate market prices.
5. Not collude with other market participants to affect or manipulate the price or supply of any commodity, allocate territories, customers or products, or otherwise unlawfully restrain competition.



6. ~~Adopt, adhere to, and enforce~~ Ensure that any internal risk management and other policies and ~~structures that~~ procedures are designed to ~~ensure that trading activities are conducted in accordance~~ be consistent with this Code.

II. SOUND TRADING PRACTICES

A. Core Value: Adherence to Sound Trading Practices and Principles

Commodity markets reflect the constantly changing dynamics of supply and demand. Efficient business operations in such an environment demand practices that can manage risk and discover market prices. Such practices must be consistent with applicable law and the ~~guiding Ethical~~ Standards of this Code.

B. Sound Trading Practices Standards

Participant will act in accordance with ~~these~~ the following standards of sound trading practices with regard to its receipt of Platform Services, in addition to any other requirements of applicable law:

1. No fraudulent activity. Participant will not engage in any fraudulent or deceptive practice in its receipt of the Platform Services.
2. No manipulative activity. Participant will not manipulate, or attempt to manipulate, the price or market for any commodity or product in connection with its receipt of the Platform Services.
- ~~4.3.~~ No "wash" trades. Participant will not arrange and execute simultaneous offsetting buy and sell trades, i.e. with the same counterparty and price, commodity, location and quantity terms, with an intent to artificially affect reported revenues, trading volumes, or prices.
4. No misrepresentative trading. No trading will be conducted for the purpose of misrepresenting the financial condition of the organization.

III. INFORMATION DISCLOSURE AND DOCUMENTATION

A. Core Value: Candid and Complete Disclosure

Markets depend on trust in the accuracy of market information provided by Participant and in the transparency of market behavior of all market participants.

Participant acknowledges and agrees that under the circumstances described in the Agreement, ICE may disclose or report information concerning Transactions on the Platform (including Transactions of Participant) to governmental authorities and/or other third parties.

B. Information Disclosure and Documentation Standards

With regard to its Platform activity, Participant will:

1. Provide Transaction information to regulators in compliance with all applicable rules and requirements and continue to cooperate with regulators as reasonably necessary to assist in their understanding of the markets.
2. Ensure that any information disclosed to ICE is accurate and consistent.
3. ~~Maintain and adhere to internal procedures designed to ensure~~ Ensure that all Transactions are properly documented in a timely fashion and that no Transactions are concealed or misrepresented when providing market information to ICE or any of its affiliates.



4. Promptly notify ICE of any material change (to a Transaction executed on the Platform) mutually agreed to by Participant and counterparty after execution, but prior to confirmation, including, but not limited to changes in price, quantity, grade, delivery location, reference index, delivery or settlement timeframes, or payment terms.
5. Promptly notify ICE of any Transaction cancellation or reversing trade with the same counterparty for the explicit purpose of effecting cancellation (an equal, but opposite offsetting trade), mutually agreed to by Participant and counterparty of a Transaction executed or Trade confirmed on the Platform.
6. Maintain documentation on all Transactions ~~for an appropriate period of time~~ as and to the extent required under applicable laws and regulations.

~~IV. COMPLIANCE~~

~~A. Core Value: Comprehensive Corporate Compliance~~

~~Each Participant will have a compliance program commensurate with the size and scope of its Platform Services received and designed to ensure appropriate, timely and ongoing review of trading practices and compliance with this Code.~~

~~B. Compliance Standards~~

~~Participant will:~~

- ~~1. Provide for proper training of personnel on the provisions of this Code.~~
- ~~2. Maintain internal policies and procedures to promote compliance with this Code.~~

IV. Promptly ~~NOTICE OF VIOLATION~~

- ~~3.1. Participant will promptly~~ disclose to ICE the details of any violations of this Code involving Participant's receipt of Platform Services or provision of market information to ICE or any of its affiliates.
- ~~4. Provide an environment that encourages employees within the trading organization to engage in safe and confidential discussions and to disclose to senior management any trading practices that might violate this Code.~~
- ~~5. Establish clear lines of accountability for the company's trading practices, including provisions relating to the responsibilities of corporate officers, with appropriate oversight by the Board of Directors or other senior corporate management committee.~~



ANNEX B—VIEW ONLY ACCESS

This Annex B (this “Annex”) to the ICE OTC Participant Agreement (as amended from time in accordance with its terms, the “Agreement”) sets out the terms under which ICE U.S. OTC Commodity Markets, LLC (“ICE”) will make available access on a view-only basis to one or more unregulated physical OTC markets operated by ICE for transactions involving physical commodities.

By executing a copy of this Annex, the undersigned Participant (the “View-Only Participant”) and ICE agree as follows:

- 1) **DEFINED TERMS.** All capitalized terms used in this Annex shall have the meanings ascribed to them in the Agreement unless the context otherwise requires.
- 2) **VIEW-ONLY ACCESS.** Notwithstanding anything to the contrary in the Agreement, the View-Only Participant shall not be entitled to use the Platform or receive Platform Services for Execution of any Transactions or Other Services involving the submission or acceptance of orders by or on behalf of the View-Only Participant pursuant to the Agreement. Such View-Only Participant shall be permitted to use the Platform and receive Platform Services pursuant to the Agreement solely for purposes of viewing bids, offers or other orders submitted by or on behalf of other Participants for Transactions on the Platform and reports of Transactions executed on the Platform by other Participants (in each case to the extent such information is generally made available to Participants under the Agreement and subject to any limitations on the use or disclosure of such information under the Agreement).
- 3) **APPLICATION OF AGREEMENT.** Except as provided in Section 2 above, the View-Only Participant shall be bound by, subject to and entitled to the benefit of all other terms and conditions of the Agreement applicable to Participants generally.
- 4) **REPRESENTATION.** The View-Only Participant represents, warrants and covenants that it has all necessary power and authority to execute and perform this Annex, and this Annex is its legal, valid and binding agreement, enforceable against it in accordance with its terms. Neither the execution of nor performance under this Annex by the View-Only Participant, including the use of the Platform or Platform Services, violates any law, rule, regulation or order in any jurisdiction, or any agreement, document or instrument, binding on or applicable to the View-Only Participant or its assets.
- 5) **TERM.** This Annex, as amended from time to time, will continue in effect unless and until terminated by either party upon 30 days’ written notice to the other. Termination of this Annex shall terminate all services provided by ICE to the View-Only Participant, including Platform Services. Each party’s continuing obligations under the Agreement and the Terms, including, without limitation, those relating to “Limitation of Liability; Indemnity” and “Confidentiality” thereunder, will survive the termination of this Annex.
- 6) **ASSIGNMENT.** This Annex may not be assigned by either party without the other party’s express prior written consent; provided, however, that (A) the View-Only Participant may assign this Annex in whole but not in part to any entity (i) controlling, controlled by, or under common control with such party, or (ii) which succeeds to all or substantially all of the assets and business of such party, provided that, in the case of any such assignment by View-Only Participant, the assignee agrees in writing to assume the assignor’s obligations under, and to be bound by the provisions of, this Annex (as it may be amended from time to time), and (B) ICE may assign all or part of its rights and obligations under this Annex to any entity (i) controlling, controlled by, or under common control with ICE, or (ii) 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 Annex that have been assigned. On the effective date of any valid assignment pursuant to this Section, the assignor shall be released from all obligations and liabilities arising under this Annex or, in case of a partial assignment by ICE, from all obligations and liabilities arising from the parts of this Annex that have been assigned. This Annex shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns in accordance with its terms.



- 7) **GOVERNING LAW.** This Annex is deemed entered into in New York, New York and this Annex and all matters arising out of or relating hereto shall be governed by and construed in all respects in accordance with the laws of the State of New York, without giving effect to principles of conflict of law.
- 8) **DISPUTE RESOLUTION.** Any dispute, claim or controversy between the parties relating to this Annex shall be resolved through binding arbitration conducted in accordance with the Arbitration Rules of the American Arbitration Association. Any such arbitration shall be conducted in New York, New York or at such other location as may be agreed to by the parties and the arbitrators. For the avoidance of doubt, this arbitration clause only applies to ICE and the View-Only Participant and does not apply to disputes between parties other than ICE and the View-Only Participant. Notwithstanding the foregoing, each party acknowledges that a breach of this Annex may cause the other party irreparable injury and damage and therefore may be enjoined through injunctive proceedings in addition to any other rights and remedies which may be available to such other party at law or in equity, and each party hereby consents to the jurisdiction of any federal or state courts located in New York, New York with respect to any such action. The parties expressly waive their right to trial by jury in any such action.
- 9) **HEADINGS.** The headings in this Annex are intended for convenience of reference and shall not affect its interpretation.
- 10) **COUNTERPARTS.** This Annex 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.



Date: _____, 20_____

ICE U.S. OTC Commodity Markets, LLC

5660 New Northside Drive, 3rd Floor

Full Legal Name of View-Only Participant
(Company Name)

Atlanta, Georgia 30328, USA

Address:

Signature: _____

Signature: _____

Name: Trabue Bland

Name: _____

Title: Senior Vice President

Title: _____

Note: Participant must also provide the information requested on the following pages.

View-Only Participant User Administrator:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____