

## DERIVED DATA LICENSE AGREEMENT

This License Agreement (the “Agreement”), is entered into as of the \_\_\_ day of \_\_\_\_\_, 201\_\_\_ (the “Effective Date”), by and between ICE Data, LLP (“ICE Data”), having an address at 5<sup>th</sup> Floor, Milton Gate, 60 Chiswell Street, London EC1Y 4SA, UK, and having English Registration No. OC304549, and \_\_\_\_\_ (“Licensee”), a \_\_\_\_\_, having offices at \_\_\_\_\_.

A. WHEREAS, ICE Data, alone and through its Affiliates and third party vendors, compiles, maintains, determines and calculates intra-day prices and end of day settlement prices for various futures and options, including but not limited to those listed in Exhibit A, which may be updated from time to time (the “Data”). The Data is calculated according to the proprietary methods of ICE Data and its Affiliates and through the application of methods, creativity and standards of judgment used and developed through the expenditure of considerable work, time and money, and may be modified from time to time based on this same criteria, and all rights, title and interest therein are expressly reserved by ICE Data and its Affiliates. For the avoidance of doubt, the Data as referred to herein includes futures information only, and shall not include over-the-counter data or any other prices, indices or any other data or information compiled or distributed by ICE Data or its Affiliates.

B. WHEREAS, ICE Data and its Affiliates compile, maintain, determine and calculate the Data and causes the Data to be calculated on a time-sensitive basis, such that ICE Data and its Affiliates are the original source of the Data and the Data is proprietary to ICE Data and its Affiliates, kept secret by ICE Data and its Affiliates and not publicly available to third parties without the express permission of ICE Data and its Affiliates.

C. WHEREAS, ICE Data uses in commerce and has rights to use certain trade names, trademarks and service marks, including the designations listed in Exhibit B, attached hereto (such rights for the purposes of this Agreement being hereinafter individually and collectively referred to as the “ICE Marks”). The use of the ICE Marks implies, and/or is likely to cause third parties to infer, an association between the user and ICE Data and/or its Affiliates and the substantial reputation and good will maintained by ICE Data and its Affiliates.

D. WHEREAS, Licensee is a financial institution that desires to use the Data and the ICE Marks in connection with the creation of certain products derived from the Data, including those identified in Exhibit C, which may be updated from time to time by Licensee and defined below (the “Derived Data”), and by making disclosure under applicable laws, rules and regulations in order to indicate that ICE Data is the source of the Data upon which the Derived Data are based.

E. WHEREAS, ICE Data is willing to license the Data and the ICE Marks and otherwise permit Licensee on and subject to the terms of this Agreement to engage in certain specific activities involving the Derived Data as expressly provided herein.

NOW THEREFORE, in consideration of the following covenants and conditions, the parties, intending to be legally bound, hereby agree as follows:

### **Definitions.**

- a. "Affiliate" shall mean and include, with respect to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with the party, where "control" means the (i) ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares or interests of such entity or (ii) ability to direct the management or affairs of an entity, whether by contract or otherwise.
- b. "Change of Control" shall mean, with respect to a party, (i) sale of all, or substantially all, of the Party's assets to another party, or (ii) the transfer of equity ownership of the Party or the merger of the Party with another party (or similar transaction), such that a person or persons which could not elect a majority of the directors of that or otherwise exert control over that Party before such transfer, could elect a majority of the directors or otherwise exert control afterwards, other than a transfer which occurs in connection with an initial public offering of the shares of such Party.
- c. "Confidential Information" shall mean all information of a confidential nature: (i) disclosed (by whatever means, directly or indirectly) by either party to the other, whether before or after this Agreement becomes effective, in relation to the Data, ICE Marks or to any licensed rights under this Agreement, including products, operations, processes, plans, intentions, product information, market opportunities or business affairs of the person making the disclosure, sub-contractors, licensors, licensees, clients or other contacts; or (ii) which relates to the provision or use of the Data or ICE Marks by ICE Data; and further shall include the terms of this Agreement.
- d. "Data" shall have the meaning assigned thereto in the recitals hereof.
- e. "Derived Data" shall be the products listed in Exhibit C and shall mean data created by Licensee, in connection with Licensee's use of the Data as permitted under the terms of Exhibit C, as a result of combining, processing, changing, converting or calculating the Data or any portion thereof with other data where the resultant data (i) does not bear resemblance to the underlying Data; (ii) cannot be readily reverse engineered, disassembled or decompiled such that a third-party may access the Data via the Derived Data; (iii) cannot be used in a manner which could be a source of, or a substitute for Data provided by ICE Data, (iv) cannot be used in whole or in part in a manner which competes with ICE Data or its Affiliates; or (v) cannot be used for constructing, creating or calculating the value of any index or indexed products.
- f. "Derived Data Agreement" means a click-through or written agreement that: (i) restricts the Client's use of the Derived Data in a manner that is consistent with the rights granted to Licensee under this Agreement; (ii) acknowledges ICE Data's or its Affiliates or its third party suppliers', as applicable, have proprietary rights in the Data and are third party beneficiaries of the Derived Data Agreement; (iii) includes provisions substantially similar to those set forth in this Agreement.
- g. "End of Day Settlement Prices" shall mean the prices for cash settlement of the daily expiry price of contracts at the close of each trading day offered by ICE Data for various futures and options, including but not limited to those listed in Exhibit A, which may be updated from time to time.
- h. "ICE Marks" shall have the meaning assigned thereto in the recitals hereof.

- i. “Intellectual Property” shall include rights in copyrights, database rights, domain names, trademarks and service marks and all goodwill associated therewith and symbolized thereby, patents, patent applications, inventions, discoveries, concepts, improvements, know-how, trade secrets and design rights, in each case whether registered or unregistered and including all applications and rights to apply for registration, and all similar or equivalent rights.
- j. “Intra Day Prices” shall mean the trading price from time to time of contracts during each trading day, beginning at the open of each trading day and updated throughout the day until the close of the said trading day, offered by ICE Data for various futures and options, including but not limited to those listed in Exhibit A, which may be updated from time to time.
- k. “Marketing Methods and Materials” shall mean all web pages, advertising, sales promotion, marketing, registration statements or other offering materials which are used in connection with the Derived Data, whether internally within Licensee or distributed to or by any third parties, or by any sublicensee, and in all mediums whatsoever, including but not limited to, in printed materials or in electronic form.

## **1. Grant of License.**

1.1 Data - Subject to the terms of this Agreement, ICE Data hereby grants Licensee a limited, worldwide, non-exclusive, non-transferable (except in the case of a permitted assignment of this Agreement as set forth in Section 13), non-sublicensable, license, to use the Data exclusively by Licensee for internal purposes only solely as set forth in Exhibit C. For the avoidance of doubt, Licensee shall have no right to use the Data for purposes of clearing or for the creation, issuance, distribution, marketing and/or maintenance of any index products, including but not limited to IOPVs and ETF NAV calculations, other than futures, without entering into a separate agreement with ICE Data to that effect. ICE Data shall, subject to the obligations of Confidentiality set forth in Section 11, make commercially reasonable efforts to provide to Licensee by electronic delivery over a network to a secure server designated by Licensee, or other secure process as agreed to by the Parties in writing: a) Intra Day Prices, on a streaming basis and at least every fifteen (15) seconds, or other interval as may be agreed to by the parties in writing; and b) End of Day Settlement Prices.

1.2 ICE Marks - Subject to the terms of this Agreement, ICE Data hereby grants Licensee a limited, worldwide, non-exclusive, non-transferable (except in the case of a permitted assignment of this Agreement as set forth in Section 13), non-sublicensable license, to use the ICE Marks solely in the manner specified herein in connection with the creation, marketing and promotion of the Derived Data. Such license of the ICE marks shall be limited to enable Licensee to indicate that ICE Data and/or its Affiliates is the source of the underlying data upon which the Derived Data are based, as may be required by applicable laws, rules, regulations, court orders or this Agreement. ICE Data and its Affiliates retain all ownership rights in and to the ICE Marks and all goodwill associated therewith, and all rights to and benefits from use of the ICE Marks by Licensee shall accrue and inure to ICE Data and its Affiliates. Any rights in the ICE Marks not expressly licensed herein are reserved by ICE Data and its Affiliates. Licensee’s use and display of the ICE Marks shall be in a style and manner that is consistent with ICE Data and its Affiliates’ own use of the ICE Marks and shall in no way consist of any use of the ICE Marks that is derogatory, negative, unlawful, harassing, libelous, invasive of another’s privacy, abusive, threatening, harmful, vulgar, obscene, tortuous, or otherwise objectionable in any manner.

1.3 Distribution of Derived Data – Licensee shall be permitted to provide the Derived Data to Licensee’s clients (“Clients”), for the sole purpose stated in Exhibit C provided that ICE Data provides its written consent to such purpose and further provided that each Client must enter into a Derived Data Agreement with Licensee prior to receipt of any Derived Data. Upon a written request from ICE Data, Licensee shall provide ICE Data with a list of its Clients as well as additional details pertaining to the use of the Derived Data. Notwithstanding anything to the contrary contained herein, ICE Data reserves the right to refuse to grant access and/or revoke access previously granted to the Derived Data or any part thereof, from any Client, based on competition considerations and/or in the event ICE Data determines in good faith that the Client is exceeding the scope of its license or is otherwise misusing the Derived Data.

## **2. Term and Termination.**

2.1 The term of this Agreement shall be for one (1) year (the “Term”), and shall be automatically renewable for successive one (1) year periods (the “Renewal Term”). Notwithstanding the foregoing, Licensee shall have the ability to terminate this Agreement during any Renewal Term, by providing ninety (90) days written notice to ICE Data of such termination; and ICE Data shall have the ability to terminate this Agreement during any Renewal Term, by providing thirty (30) days written notice to Licensee of such termination;.

2.2 ICE Data shall have the ability to terminate this Agreement at any time by providing sixty (60) days written notice to Licensee of such termination.

2.3 Either party may elect, without prejudice to any other rights or remedies, to terminate this Agreement immediately upon written notice, if the other party has materially breached this Agreement or any term herein, and fails to cure such breach within five (5) business days of receipt of such notice.

2.4 ICE Data may, without prejudice to any other rights or remedies, terminate this Agreement and the licenses granted herein, if a petition in bankruptcy has been filed by the Licensee (upon 60 days written notice to Licensee with an opportunity to cure within the stated period if a petition has been filed against the Licensee), or the Licensee has made an assignment for the benefit of creditors, or a receiver has been appointed for the Licensee or any substantial portion of Licensee’s property, or the Licensee’s or its officers or directors takes action approving or makes an application for any of the above.

2.5 ICE Data may elect, without prejudice to any other rights or remedies, to terminate this Agreement, immediately upon written notice, in the event that Licensee undertakes a transaction that would result in a Change of Control with respect to Licensee. Licensee shall provide notice to ICE Data in writing of its execution of any agreement confirming its intention to undertake a transaction that would result in a Change of Control with respect to Licensee. At any time within thirty (30) days from receipt of such a notice from Licensee, or ICE Data otherwise learns of such intentions or a Change of Control, ICE Data may terminate this Agreement by giving Licensee notice in writing of its election to terminate. The termination of this Agreement shall be effective no sooner than thirty (30) days after the service of such notice but no later than three (3) months after the service of such notice.

2.6 Upon termination of this Agreement for any reason, the licenses granted to Licensee herein shall immediately cease. Upon termination of this Agreement, Licensee shall immediately cease using the Data and ICE Marks in connection with any Derived Data and will promptly delete or destroy all copies it may have of the Data, except to the extent Licensee is required to retain portions of the Data for regulatory compliance purposes. Upon ICE Data’s request, Licensee shall produce written certification that the Data has been purged from

Licensee's computer systems, and copies or portions thereof destroyed. Licensee shall also remove any reference of the ICE Marks, including but not limited to from all published or electronic materials and its websites.

2.7 Licensee shall have the ability to terminate this Agreement upon not less than 15 calendar days written notice to ICE Data, if ICE Data has increased the Fee Schedule set forth in Exhibit D pursuant to Clause 3.1 and Licensee does not accept such changes; and such termination shall be effective on the date the fee increase was to be implemented.

### **3. Fees and Audit Rights.**

3.1 On a quarterly basis, for the use of the ICE Data and ICE Marks, Licensee shall pay license fees to ICE Data in accordance with the Fee Schedule set forth in Exhibit D hereto. ICE Data may increase its fees and charges for the Data at any time by providing a thirty (30) days' advance written notice to Licensee.

3.2 Payment of the license fees shall be made by Licensee on a quarterly basis, such that they are received by ICE Data within thirty (30) days of ICE Data's issuance of an invoice. Payment of the license fees shall be made by wire delivery, or otherwise as specified in writing by ICE Data from time to time. Licensee fees shall be exclusive of any other fees and costs, including but not limited to any applicable taxes, fees, transfer costs or VAT, which shall be the sole responsibility of Licensee.

3.3 Licensee agrees to keep complete and accurate books, records and related documentation concerning the use and distribution of the Data. ICE Data and/or its Affiliates are hereby granted the right to (i) audit and examine, upon reasonable notice, Licensee's books, records and any and all computer equipment, devices, components, transmission equipment and software used by Licensee in connection with the accessing, delivery, transmission, reception, retrieval or use by Licensee of the Data as well as to ensure that the license fees calculated or stated as payable to ICE Data are complete and accurate. All such audits shall take place during normal business hours and shall be conducted at ICE Data's sole expense, unless Licensee has underreported the license fees due ICE Data under this Agreement by more than Five percent (5%), Licensee shall reimburse ICE Data for the reasonable costs of such audit.

### **4. Disclaimer of Warranties.**

LICENSEE ACKNOWLEDGES AND AGREES THAT THE FOLLOWING DISCLAIMERS ARE APPLICABLE TO LICENSEE AND ITS CLIENTS AND/OR ANY OTHER ENTITIES WHO HAVE ACCESS TO DATA OR DERIVED DATA, AND SHALL ENSURE THAT SUBSTANTIALLY SIMILAR LANGUAGE SHALL BE INCLUDED IN ANY MARKETING MATERIALS, CONTRACTS, OR ANY OTHER DOCUMENTATION ACCOMPANYING THE DERIVED DATA.

THE DATA IS PROVIDED "AS IS" AND ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS HEREBY EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES OF EVERY KIND, EXPRESS AND/OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT, AS TO THE DATA, INCLUDING THE INFORMATION, CONTENT, DATA, DERIVED DATA OR PRODUCTS CONTAINED THEREIN OR THE RESULTS OBTAINED OR DERIVED THEREFROM BY THEIR USE, AND AS TO THE

PERFORMANCE THEREOF. NEITHER ICE DATA, ITS AFFILIATES NOR THEIR RESPECTIVE THIRD PARTY SUPPLIERS GUARANTEE THE ADEQUACY, ACCURACY, TIMELINESS OR COMPLETENESS OF THE DATA OR ANY COMPONENT THEREOF.

ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS SHALL NOT BE SUBJECT TO ANY DAMAGES OR LIABILITY FOR ANY ERRORS, OMISSIONS, INTERRUPTIONS, MALFUNCTIONS OR DELAYS IN THE DATA. FURTHER, ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS SHALL NOT BE LIABLE FOR ANY CLAIMS AGAINST LICENSEE BY THIRD PARTIES.

## **5. Certain Limitations; Reservation of Rights and Properties; Protection of ICE Marks and Data.**

5.1 This Agreement effects the grant of a limited license and not the sale of any rights in the Data or the ICE Marks. This license does not apply to any Data other than that specifically licensed herein by ICE Data. This license does not apply to any information, marks or other products or services provided by ICE Data or its Affiliates. All rights not expressly granted herein are reserved by ICE Data.

5.2 The use of the ICE Marks and Data by Licensee inures to the benefit of ICE Data and its Affiliates, and the Licensee and its Affiliates shall adhere, at their own expense, to any regulatory requirements in connection with the use of the Data and the Derived Data that are required by the jurisdiction in which the Derived Data is being offered or used.

5.3 a reference to Derived Data shall also state that underlying Data in the Derived Data is sourced by ICE Data, LLP and its Affiliates and the ICE Marks shall include the appropriate trademark symbol (“®” or “™”).

5.4 Nothing shall obligate ICE Data to undertake an action or settlement, or refrain from an action or settlement, with respect to any particular potential, threatened, or actual infringement or misappropriation of rights, or any other potential violation of rights in the ICE Marks or the Data. Licensee has no right to undertake an action or settlement, or to contact or otherwise engage in any dialog or correspondence whatsoever with any third party, either directly or indirectly, with respect to any particular potential, threatened, or actual infringement or misappropriation of rights, or any other potential violation of rights in the ICE Marks or the Data.

## **6. Acknowledgments.**

6.1 Licensee agrees that the Data is a product of the selection, coordination, arrangement, and editing of ICE Data and its Affiliates and that such efforts involve the considerable expenditure by ICE Data and its Affiliates of time, effort, creativity, money and judgment. As between the parties, Licensee recognizes that ICE Data and its Affiliates are the rightful owners of the Data, its components and methods of calculation, and the ICE Marks, together with all rights, titles and interests therein, including but not limited to all Intellectual Property rights and other proprietary rights; and that all such rights, titles and interests in and to the Data, and any of its components and methods of calculation, and the ICE Marks, are valid,

subsisting and enforceable. No license is granted to Licensee to calculate, or otherwise replicate the Data.

6.2 Licensee agrees that it shall not, directly or indirectly, do or cause to be done any act which may in any way jeopardize or adversely affect the validity or enforceability of, or otherwise infringe or misappropriate, any rights, titles and interests of ICE Data in and to the Data, its components and methods of calculation, the ICE Marks or any Intellectual Property in respect thereof, including any trademark registrations.

6.3 Licensee further agrees that it will not oppose or contest any application by ICE Data and/or any of its Affiliates to register the ICE Marks, or any application directed to any rights subsisting in the Data, its components and methods of calculation, in the United States or elsewhere, or any application for extension of such rights.

6.4 No rights are granted to Licensee with respect to the Data, its components and methods of calculation, the ICE Marks or any Intellectual Property rights in respect thereof, other than those expressly set forth in this Agreement. Except as otherwise specifically provided herein, ICE Data reserves all rights to the Data, its components and methods of calculation and the ICE Marks, that are not expressly licensed hereunder, and this Agreement shall not be construed to transfer to Licensee, any right to, or interest in, the Data, its components and methods of calculation, the ICE Marks or any Intellectual Property rights in respect thereof or any other property right pertaining thereto.

6.5 Licensee agrees that any and all goodwill associated with and identified by the ICE Marks is part of the ICE Marks and shall inure directly and exclusively to and for the benefit of ICE Data and its Affiliates and is the property of ICE Data and its Affiliates. No monetary amount or value whatsoever shall, upon the expiration or earlier termination of this Agreement, be assigned or designated as attributable in any way to any goodwill associated with Licensee's activities as a licensee of the ICE Marks pursuant to this Agreement. Licensee shall not, during the Term, any Renewal Term, or at any time thereafter, dilute or attempt to dilute, directly or indirectly, the value of the goodwill attaching to the ICE Marks, or counsel, procure or assist anyone else to do the same.

6.6 Licensee shall not, directly or indirectly (a) use or register in the United States or in any other country any trademark (i) substantially similar to or confusing with any of the ICE Marks or (ii) for purposes of, or with the result of, diluting the ICE Marks, or (b) adopt, use, display, apply, advertise or register any corporate name, trade name, trademark, trade dress, domain name, universal resource locator (URL) or color scheme which is the same as or confusingly similar to the ICE Marks.

6.7 Licensee expressly agrees that Licensee shall not, nor permit others to, copy, alter, modify, or adapt the Data, including without limitation, to translate, deconstruct, disassemble, decompile, reverse engineer or otherwise reduce the Data or any part or component thereof, whether to human readable form or otherwise, or to prepare derivative works based on the Data, except as expressly permitted in Exhibit C. Licensee shall not incorporate the Data into any other products, systems or programs owned or operated by Licensee or any of its Affiliates, except for the Derived Data, without the express written permission of ICE Data.

6.8 Upon the request of ICE Data, Licensee shall provide samples of the Marketing Methods and Materials and grant ICE Data access to Licensee's operations related to the Derived Data, in order to allow ICE Data to independently monitor the quality control for Licensee's usage of the Data and ICE Marks. Licensee's usage of the ICE Marks shall conform to ICE

Data's trademark usage and notification policies as communicated to Licensee in writing from time to time.

6.9 Licensee acknowledges the proprietary rights of ICE Data in the Data and ICE Marks, and acknowledges that, but for this Agreement, Licensee would not have the right to use the Data or ICE Marks.

## **7. Representations, Warranties and Indemnification.**

7.1 Licensee represents and warrants that it has or will obtain all necessary rights to create and use the Derived Data and to promote the same, other than the rights obtained by Licensee from ICE Data under this Agreement. Licensee represents and warrants that Derived Data shall be used in accordance with all applicable legal requirements in all material respects and without violation of any third party Intellectual Property rights. Licensee shall assume full responsibility for enforcing the terms and conditions of this Agreement upon its Clients. Licensee will defend, indemnify, and hold harmless ICE Data and its Affiliates, and its and their respective officers, directors, employees and agents against any and all claims, demands, actions, suits, proceedings or damages (including the reasonable costs of defense inclusive of attorneys' fees) arising from or relating to the Data and Derived Data, any acts or omissions of Licensee and/or its Clients, or in connection with this Agreement (including the Exhibits hereto, each of which is hereby incorporated herein and made a part hereof).

7.2 Upon receipt of a notice of a claim, demand, action, suit, or proceeding, ICE Data shall: (a) promptly give notice thereof to the Licensee; (b) to the extent commercially reasonable, ICE Data shall cooperate fully with the Licensee in the defense thereof at Licensee's sole cost and expense (such cooperation does not require and is without waiver by either party of attorney/client, work product, or other privilege); and (c) the Licensee shall have control of the defense and all related settlement negotiations, provided, however, that (i) Licensee will keep ICE Data informed in writing and provide ICE Data with an opportunity to advise and comment on substantive matters, in sufficient time prior to any deadline dates, and Licensee shall in good faith consider and incorporate all advice and comments provided by ICE Data, and (ii) the Licensee shall not settle any claim, demand, action, suit or proceeding involving relief other than the payment of money without the consent of the ICE Data. A failure of ICE Data to comply with the foregoing shall not vitiate the Licensee's defense and indemnification obligations. The indemnification provisions set forth herein are not intended to, and shall not, create any rights or causes of action on behalf of any third parties. Nothing in this Agreement prevents ICE Data from retaining its own counsel within its sole discretion to represent solely its interests; provided that the fees associated with such counsel are the sole responsibility of ICE Data.

7.3 In addition, and without limiting any and all limitations of liability and disclaimers contained herein, ICE Data shall not be liable or responsible in any way for any damages, liability, losses or costs: (a) arising from reliance on any Data; (b) resulting from any delays, inaccuracies, errors or omissions in the Data or in the transmission thereof; (c) resulting from any threats or claims asserted by any third parties that Licensee's use of the Data is in violation of any of such third party's rights or rights of any other person or entity, including but not limited to misappropriation or infringement of any Intellectual Property rights; or (d) incurred as a result of the non-performance, interruption or termination for any reason whatsoever of access to the Data.

## **8. Limitation of Liability.**

THE TOTAL AMOUNT OF ICE DATA'S AND ITS AFFILIATES' LIABILITY FOR CLAIMS OR LOSSES BASED UPON, ARISING OUT OF, RESULTING FROM OR IN ANY



WAY CONNECTED WITH THIS AGREEMENT OR BREACH OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, WARRANTY, OR OTHERWISE, SHALL IN NO CASE EXCEED, IN THE AGGREGATE, FIVE HUNDRED THOUSAND DOLLARS (\$500,000). THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT LIABILITY UNDER THIS AGREEMENT. LICENSEE AND ICE DATA UNDERSTAND AND AGREE THAT THIS LIMITATION REFLECTS A NEGOTIATED AND REASONABLE ALLOCATION OF RISK.

**9. Consequential Damages.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY OTHER PERSON OR ENTITY FOR ANY LOST PROFITS, ANTICIPATED PROFITS, LOSS BY REASON OF SHUTDOWN IN OPERATION OR INCREASED EXPENSES OF OPERATION, LOSS OF GOODWILL, OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. Force Majeure.**

Notwithstanding any other term or condition of this Agreement, neither ICE Data nor Licensee shall be obligated to perform or observe its obligations undertaken in this Agreement if prevented or hindered from doing so by any circumstances beyond its reasonable control, including, without limitation, acts of God, perils of the sea and air, fire, flood, drought, war, explosion, sabotage, terrorism, embargo, civil commotion, acts of any governmental body, supplier delays, communications, or power failure, equipment or software malfunction, and labor disputes.

**11. Confidentiality.**

11.1 Each party shall treat as confidential and shall not disclose or transmit to any third party, other than an officer, director or employee of the party who needs to know such information in order for the party to enter into this Agreement or fulfill its obligations hereunder or, in the case of Licensee, offer the Derived Data to its Clients, any documentation or other written materials that are marked as confidential and proprietary by the providing party. All information regarding the Data, its components and methods of calculation, no matter the form provided, including without limitation, written, electronic or orally conveyed information, including but not limited to the Intra Day Prices and the End of Day Prices, is considered proprietary and Confidential Information of ICE Data. In fulfilling its confidentiality obligations, each party shall use a commercially reasonable standard of care, at least the same standard of care, which it uses to protect its own similar confidential or proprietary information. The specific terms of this Agreement shall be treated as Confidential Information. Confidential Information shall not include (i) any information that is or becomes generally available to the public or to the receiving party hereunder from sources other than the providing party (provided that the receiving party is aware of the source of such information and such source is not known to the receiving party to be subject to a confidentiality agreement with regard to such information), (ii) any information that is independently developed by the receiving party without use of or reference to information from the providing party or (iii) any information already available to or in the possession of the receiving party prior to delivery by the forwarding party, free of a confidentiality obligation. Notwithstanding the foregoing, either party may reveal Confidential Information to any regulatory agency or court of competent jurisdiction if such information to be disclosed is (a) approved in writing by the other party for such disclosure or (b) required by law, regulatory agency or court order to be disclosed by a party, provided, if permitted by law, that prior written notice of such required disclosure is given to the other party,

except that prior written notice shall not be required to be provided prior to disclosure to a regulator having jurisdiction over the receiving party, and provided further that the providing party shall cooperate with the other party to limit the extent of such disclosure. With the exception of Confidential Information regarding the Data, its components and methods of calculation, which shall survive termination or expiration of this agreement without any period restriction, the provisions of this Section 11.1 shall survive termination or expiration of this Agreement for a period of two (2) years from disclosure by either party to the other of the last item of such Confidential Information.

11.2 If and to the extent that Licensee demonstrates to ICE Data that Data provided by ICE Data hereunder must be submitted by or for Licensee to a governmental regulatory agency, any commodity or security self-regulatory organization or to the Intermarket Surveillance Group (“ISG”), for compliance or surveillance purposes, ICE Data will make the relevant Data available to such agency or group. Licensee will assist and cooperate with ICE Data to limit the scope of such disclosure to the extent permissible and to impose and comply with all protective or similar orders and confidentiality protections that may be available in the circumstances.

11.3 Given the nature of the Confidential Information and the terms and conditions of this Agreement and the damage that would result upon unauthorized disclosure or use, the parties agree that monetary damages alone would not be a sufficient remedy for the breach or threatened breach of this Section 11. In addition to all other rights and remedies, a party will be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this Section 11 without showing actual monetary damages in connection therewith, and without requiring a bond to be posted.

## **12. Survival.**

Sections 3-17 (for the period stated in Section 11.1), and 19-22 of this Agreement shall survive and continue to bind the parties after the cancellation, termination, or rescission of this Agreement.

## **13. Restrictions on Assignment.**

Licensee shall not assign, transfer, sublicense, or delegate this Agreement or any right or obligation hereunder, whether directly or by operation of law, without ICE Data’s prior written consent. Licensee acknowledges and agrees that in the event of a permitted assignment pursuant to this Section 13, Licensee remains responsible for all of its obligations so assigned, and shall take steps to ensure that the party to whom Licensee assigns shall comply with all terms of this Agreement, including by entering into a written agreement with such party. Any attempted assignment, transfer, sublicense, or delegation by Licensee without required written consent shall be void. Otherwise, this Agreement shall bind and benefit the parties and their respective permitted successors and assigns. For avoidance of doubt, this Agreement or any right or obligation hereunder may be assigned, transferred, sublicensed or delegated by ICE Data.

## **14. Relationship of the Parties.**

Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto, or their respective permitted successors or assigns, any rights or remedies under or by reason of this Agreement. The parties are independent contractors under this Agreement and nothing herein or in their performance hereunder shall constitute either of the parties as a partner or participant in a joint venture, or as an agent of the other party.

## **15. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, communications, writings, and understandings.

**16. Governing Law and Jurisdiction.**

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of New York, without reference to its principles of conflicts of laws. Any action, suit or proceeding with respect to any matter arising out of or related to this Agreement shall be commenced in the United States District Court for the Southern District of New York in the County of New York located in Manhattan, or, if no federal jurisdiction exists, then in the Supreme Court of the State of New York, New York County located in Manhattan. Each party hereby agrees to submit to the jurisdiction of such courts and to waive any objections based on venue in any such action, suit or proceeding.

**17. Notices.**

All notices and other communications under this Agreement shall be given in writing and shall be deemed to have been duly given upon actual receipt by the parties if sent by certified mail, return receipt requested (as of the date of signature or of first refusal of the return receipt), messenger or next day delivery. All such notices shall be directed to the respective addresses stated below or to such other address as any party hereto shall hereafter specify by written notice to the other party:

to ICE DATA.: ICE Data LLP  
5<sup>th</sup> Floor, Milton Gate,  
60 Chiswell Street,  
London EC1Y 4SA,  
UK  
Attn: Kate Hancock

to Licensee:

**18. Amendment.**

Except as otherwise provided herein, no provision of this Agreement may be amended, modified, or waived, unless by an instrument in writing executed by a duly authorized officer of the party against whom enforcement of such amendment, modification, or waiver is sought. Without limiting the foregoing, none of the following shall be construed to amend or modify this Agreement: (i) terms and conditions which are displayed or conveyed electronically or are associated with, or are responded to by the operation of a mouse or other pointing device, typing on a keyboard, "virtual" actions, an automated computer program, the removal of shrink-wrap, the opening of a package, the loading or use of software or other goods or services, or any other action other than such a handwritten signature as described in the previous sentence; or (ii) payment by Licensee or its Affiliates of any fees or other consideration to ICE Data or use of the Data or ICE Marks.

**19. Waiver.**

No failure on the part of ICE Data or Licensee to exercise, no delay in exercising, and no course of dealing with respect to any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.

**20. Severability.**

If any of the provisions of this Agreement, or application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which they are held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**21. Headings and References; Mutually Prepared.**

The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. This Agreement was equally prepared by both parties, and this Agreement shall be interpreted on that basis.

**22. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. Each of the persons signing this Agreement affirms that he or she is duly authorized to do so and thereby binds the indicated entity.

**LICENSEE**

**ICE DATA LLP**

BY \_\_\_\_\_

BY \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### ICE Data Futures

Canola  
Barley  
Durum Wheat  
Milling Wheat  
CER  
EUAA  
Heating Oil  
Middle East Sour Crude  
NYH (RBOB) Gasoline  
WTI Crude  
Brent Crude  
Low Sulphur Gasoil  
UK Natural Gas  
UK Natural Gas (EUR/MWh)  
UK Base Electricity (Gregorian)  
UK Peak Electricity (Gregorian)  
EUA  
FTSE 100 Declared Dividend Index\*  
FTSE 100 Dividend Index - RDSA Withholding\*  
FTSE 100 Index\*  
FTSE 250 Index\*  
Long Gilt  
Long BTP  
Long Bund  
Long Spanish Government Bond  
Long Swiss Confederation Bond  
Medium BTP  
Medium Bund (Bobl)  
Medium Gilt  
Medium Spanish Government Bond  
Medium Swiss Confederation Bond  
Short BTP  
Short Bund (Schatz)  
Short Gilt  
Short Spanish Government Bond  
Ultra Long Bund  
Ultra Long Gilt  
Three Month Sterling (Short Sterling)  
Eurodollar  
One Month Eonia Index  
Three Month Euribor  
Three Month Euro Swiss Franc (Euroswiss)  
Euro Cocoa  
London Cocoa  
Robusta Coffee  
UK Feed Wheat  
White Sugar  
Belgian Power Baseload

Dutch Power Baseload  
Dutch Power Peakload  
German Power Base Load  
German Power Peak Load  
Italian Power Base Load  
Italian Power Peak Load  
Belgian ZTP Gas  
Dutch TTF Gas  
German GASPOOL Gas  
German NCG Gas  
Italian PSV Natural Gas  
Mini Brent Crude (100 BBL)  
Mini Low Sulphur Gasoil (10mt)  
Mini Offshore Renminbi  
Mini Onshore Renminbi  
Kilo Gold  
Cocoa  
Coffee "C"  
Cotton No. 2  
World Cotton  
FCOJ-A  
US Corn  
US Soybean  
US Soybean Meal  
US Soybean Oil  
US Wheat  
US Dollar Index  
100oz Gold  
5000oz Silver  
Mini-Gold  
Mini-Silver  
Sugar No. 11  
Sugar No. 16

\*Contracts require an additional third party licence

## **EXHIBIT B - ICE Marks**

INTERCONTINENTALEXCHANGE

ICE

ICE DATA

ICE FUTURES

ICE FUTURES CANADA

ICE FUTURES EUROPE

ICE FUTURES U.S.

BWAVE

COFFEE "C"

COTTON NO2

SUGAR NO.11

U.S. DOLLAR INDEX

USDX

WAVE

DRAFT

## EXHIBIT C - Derived Data and Permitted Scope of Use

### Description of Derived Data

[To be determined]

### Permitted Scope of Use

Licensee shall provide the Derived Data to its Clients for the sole purpose of \_\_\_\_\_.

DRAFT



## EXHIBIT D - Fee Schedule

Type of contract	ICE Annual Licence Fee (USD)	Summary
Spreadbet / CFD	\$50,000 per year Invoiced quarterly	Spreadbet and CFD license include all products on the Exhibit A

**Creation of Index, NAV and IOPV is prohibited under Derived Data License Agreement and requires Data and Trademark License Agreement**

Source for receiving Exchange Pricing Data: .....

Signed for and on behalf of.....

Name: .....

Signed: .....

Date: .....

This schedule is only valid if signed and dated by ICE Data

Name: .....

Signed: .....

Date: .....