

## **TERMS AND CONDITIONS FOR THE INDEX DATA AND CUSTOM INDEX SERVICES**

### **1. AGREEMENT**

The terms of this agreement (this “Agreement”) consist of: (1) these Terms and Conditions for the Index Data and Custom Index Services including all Exhibits annexed hereto (the “Terms and Conditions”); (2) an order schedule making reference to these Terms and Conditions (the “Schedule”) entered into between ICE Data Indices, LLC (“ICE Data”), a Delaware limited liability company, having an office at 100 Church Street, New York, New York, 10007 and the subscriber identified in such Schedule (“Subscriber”). ICE Data and Subscriber each being a “Party” and, collectively, the “Parties”.

### **2. DESCRIPTION OF THE INDEX DATA SERVICES**

ICE Data compiles and publishes extensive sets of indices that measure, respectively, the performance of global non-convertible bond and currency markets (“Bond Index Family”), ESG versions of the Bond Index Family (“ESG Bond Index Family”), the global convertible bond markets (“Convertible Index Family”), the U.S. equity markets (“U.S. Equity Index Family”), futures contracts on underlying commodities (“Commodity Index Family”), fixed income volatility markets (“Volatility Index Family”) and other index families that ICE Data may add from time to time (“Additional Families”). The Bond Index Family, ESG Bond Index Family, Convertible Index Family, Commodity Index Family, U.S. Equity Index Family, Volatility Index Family and Additional Index Families are each individually referred to herein as an “Index Family” and collectively, the “Indices”. Any index within the Indices is referred to herein as an “Index”. In consideration of the fees stated in this Agreement and any applicable Schedule, ICE Data shall provide Subscriber with the “Index Data Services,” which means access to the underlying constituent-related data that makes up an Index (“Constituent Data”) along with real-time and end of day Index values, Index returns and Index statistics (“Top Level Data”) via one (1) or more platforms (“Third Party Platform(s)”) maintained by a licensed third party Index redistributor (“Third Party Platform Provider(s)”) and/or the ICE Index Platform website (“ICE Index Platform”) (each of the ICE Index Platform or Third Party Platform a “Delivery Platform” and together “Delivery Platforms”), as listed in the applicable Schedule. Constituent Data and Top Level Data together comprise the “Index Data”. Subscriber acknowledges that the Index Data may include data, content, information or other services from third parties, including, but not limited to, Third Party Platform Providers, stock exchanges, commodity exchanges, news providers, software developers, co-location facilities, data centers and telecommunications providers (each a “Third Party Supplier” and together “Third Party Suppliers”), including certain data from ICE Data affiliates, including ICE Data Pricing & Reference Data, LLC, ICE Data Derivatives, Inc. and NYSE Group, Inc. Subscriber agrees to be bound by additional terms which may be imposed and updated by Third Party Suppliers from time to time, including, but not limited to, the additional terms set forth in Exhibit A attached hereto, in connection with Subscriber’s use of such Third Party Supplier data. In addition, Subscriber may be required to enter into and maintain direct agreements with the Third Party Suppliers for the receipt of certain data from ICE Data. Where any Third Party Supplier requires Subscriber to enter into an agreement directly with the Third Party Supplier in respect of the data, ICE Data shall not be obligated to provide the Services until it receives confirmation from the relevant Third Party Supplier that Subscriber is duly licensed. In the event of any termination of Subscriber’s agreement with the Third Party Supplier, Subscriber shall notify ICE Data immediately and ICE Data may suspend or terminate access to the relevant

data. Provision of the Index Data Services is conditioned on and subject to Subscriber's agreement to, and compliance with, this Agreement. Subscriber acknowledges and agrees that the terms and conditions in this Agreement are in addition to any terms and conditions and any additional fees that Subscriber may be subject to in order to gain access to a Delivery Platform.

### **3. DESCRIPTION OF THE CUSTOM INDEX SERVICES**

(a) Upon acceptance of a Subscriber request, in addition to the Index Data Services, ICE Data will construct and license to Subscriber, on a non-exclusive basis, one (1) or more custom Indices (each a "Custom Index" and together the "Custom Indices"), as set forth in the applicable Schedule entered into pursuant to this Agreement and in accordance with specifications provided by the Subscriber and agreed with ICE Data therein. The Custom Index and Custom Indices shall be included in the definitions of Indices, Index and Index Data Services, respectively.

(b) Daily Custom Index values and performance for the Custom Indices as well as statistics (comparable to those published for standard Indices) related to the Custom Indices will be compiled by ICE Data in accordance with the rules agreed upon by Subscriber and ICE Data. Unless otherwise agreed in writing, ICE Data shall publish the Custom Indices and the foregoing Custom Index information on one (1) or more of the Delivery Platforms.

### **4. LICENSE GRANT**

(a) Conditioned on, and subject to, compliance with this Agreement (including without limitation the usage restrictions set forth in Sections 10 and 11 below), ICE Data hereby grants to Subscriber, and Subscriber hereby accepts, for the duration of this Agreement, a limited, personal, non-exclusive, non-transferable, non-sublicensable license, to use the Index and the Index Data internally for benchmarking and related risk analysis activities for actively managed portfolios performed solely in connection with the Indices. Subscriber is expressly restricted from any use of the Index Data other than for the purposes permitted herein.

(b) Subscriber's right to use the Index and the Index Data for benchmarking includes the limited right to create a blended benchmark index by combining one (1) or more Indices with one (1) or more third party indices. Subscriber may not (i) create a blended benchmark index based solely on Indices, or (ii) create a custom benchmark index based in whole or in part on Constituent Data or Derived Constituent Data (as defined herein). If Subscriber uses any Index Data to create a blended benchmark index, such blended benchmark index shall be labeled and explained as such so that it is clear that ICE Data has not created the new index. Subscriber acknowledges and agrees that in allowing Subscriber to create a blended benchmark index, ICE Data is not granting any rights to Subscriber to use the intellectual property of any third party to create the blended benchmark index or license the blended benchmark index to third parties or to create financial products whose objective or return is linked in any way to the blended benchmark index. Subscriber shall be solely responsible for securing the rights to use any third party index as part of a blended benchmark index. Subscriber shall be solely responsible for the use of any blended benchmark index.

(c) Subscriber is permitted to store the Index Data on its own database or on a hosted server that is restricted to the Subscriber's own internal use, provided that Subscriber shall be responsible for compliance with this Agreement by any third party that provides such hosted server as if the acts or failures to act of such third party are those of Subscriber. Subscriber may not share the Index Data with its contractors without ICE Data's prior written consent.

## 5. AFFILIATE USAGE RIGHTS

(a) Subject to the terms of this Agreement, including without limitation the license granted in Section 4(a), Subscriber's Affiliates (as defined below) may also store, access, and use the Index and the Index Data solely in connection with the asset management business of Subscriber and its Affiliates. With respect to Subscriber, the term "Affiliate" means any entity that is controlling, controlled by or under common control with Subscriber, where the concept of "control" means ownership of the majority of the voting rights in the entity and that the entity is (i) operating under the same brand name as Subscriber, and involved in the asset management business or supporting the asset management business of Subscriber; or (ii) any other entity agreed to in writing by the Parties.

(b) Where this Agreement uses phrases like "Subscriber agrees", "Subscriber acknowledges", "Subscriber represents and warrants", or similar phrases, including where Subscriber is bound by restrictions or limitations (including but not limited to limitations of liability and indemnifications), Subscriber agrees that it has the authority to cause, and will, before their access and use of the Index Data, cause each of its Affiliates to be bound to such restrictions or limitations to the same extent as Subscriber. Subscriber shall be liable to ICE Data for the acts and omissions of its Affiliates. Likewise, Subscriber's Affiliates are not third party beneficiaries of this Agreement and Subscriber alone shall have the right to bring any claim that might otherwise have been brought against ICE Data by it or any of its Affiliates.

## 6. FEES

(a) For the Indices and Index Data Services provided under this Agreement and the applicable Schedule, Subscriber shall pay to ICE Data the fees stated in Sections 6(b) to 6(d) and in the Schedule, as applicable. In addition to such fees, Subscriber shall pay all applicable taxes, exchange fees, Third Party Platform's fee, or amounts equal to all taxes, however designated or levied, based on ICE Data's fees, or otherwise arising out of this Agreement or the applicable Schedule. ICE Data may amend its fees, no more than once during a calendar year, by giving Subscriber no less than ninety (90) days' prior written notice. In the event of an increase in fees (including Third Party Suppliers' fees), Subscriber may terminate the applicable Schedule by giving notice to ICE Data at least thirty (30) days prior to the effective date stated in the notice for the fee increase. Subscriber acknowledges that it shall be responsible for all applicable Third Party Supplier fees that directly result from Subscriber's receipt, access to or use of the Index Data Services, and that such fees are in addition to the fees charged for the Index Data Services and may be billed by the Third Party.

(b) Top Level Data:

- (i) end of day Top Level Data: no charge, and
- (ii) real-time Top Level Data: as listed in the applicable Schedule.

(c) Constituent Data charges: as listed in the applicable Schedule.

(d) Custom Index charges: as listed in the applicable Schedule.

(e) Unless otherwise stated in any applicable Schedule, all payments shall be made quarterly in arrears by Subscriber to ICE Data, as follows (it being acknowledged that Custom

Index development and back history fees are payable at the end of the quarter in which the Custom Index is completed and/or the additional history is delivered, respectively):

- (i) For ACH and wires:
  - Name of Account: ICE Data Indices LLC
  - Account number: 1416602048
  - ABA # for ACH: 071000039
  - ABA # for Wires: 026009593
  
- (ii) For Checks:
  - Lockbox # 008873
  - ICE Data Indices LLC
  - P.O. Box 74008873
  - Chicago, IL 60674-8873
  - USA

(f) All pricing and payments are and shall be in U.S. dollars, unless otherwise stated in this Agreement. Unless otherwise stated in the applicable Schedule, payment terms shall be net thirty (30) days from Subscriber receipt of invoice, which Subscriber shall be permitted to pay via ACH, wires or checks.

(g) If this Agreement or any applicable Schedule is terminated prior to the end of the then-current term all amounts that would otherwise be owing by Subscriber from the termination date and during the remainder of such term, including without limitation any fees set forth herein, shall immediately become due and payable to ICE Data; provided however that the foregoing shall not be applicable in the event that this Agreement or applicable Schedule is terminated (i) by Subscriber for cause; or (ii) by ICE Data without cause.

## **7. AUDIT**

During the term of this Agreement and for a period of twelve (12) months after termination of this Agreement, Subscriber agrees to keep complete and accurate books, records and related documentation concerning the manner of usage and access to the Index Data, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed (“Audit Purpose”). Upon the occurrence of a reasonable suspicion that Subscriber is not in compliance with any of the terms of this Agreement or any applicable Schedule, ICE Data is hereby granted the right, during normal business hours, upon reasonable notice to Subscriber and subject to Subscriber’s reasonable confidentiality and security obligations, to audit and examine Subscriber’s books, records, systems used (which may be satisfied by providing screen shots and/or WebEx demonstrations), and observe operations conducted, in connection with the Audit Purpose. All such audits shall be conducted at ICE Data’s sole expense, unless an audit by ICE Data reveals an underpayment by Subscriber to ICE Data of five percent (5%) or more, in which case Subscriber shall be liable to ICE Data for all reasonable audit expenses incurred by ICE Data.

## **8. TERM**

This Agreement will become effective on the date of execution of the applicable Schedule (the “Commencement Date”) and shall remain in force as long as any Schedule remains in force, unless terminated in accordance with Section 9 of this Agreement. Each Schedule shall remain in

effect for the initial term and renewal terms as defined and set forth in such Schedule, until terminated in accordance with the terms of this Agreement or the applicable Schedule. Termination of this Agreement shall automatically terminate all Schedules.

## **9. TERMINATION**

(a) At any time during the term of this Agreement, either Party may give the other sixty (60) days' prior written notice of termination if a Party believes in good faith that damage or harm is occurring to the reputation or goodwill of that Party by reason of its continued performance hereunder.

(b) ICE Data may, in its sole discretion, temporarily or permanently cease providing the Index Data Services or suspend or terminate this Agreement, or restrict Subscriber's use of or access to the Index Data Services upon notice to Subscriber, unless such prior notice is not possible as a result of applicable legislation or regulation requirements, in which case ICE Data will provide notice to Subscriber as soon as reasonably practicable, in each case and to the extent ICE Data determines is necessary to comply with any applicable law or regulation, or in the event that (i) ICE Data is informed of the final adoption of any legislation or regulation or the issuance of any interpretation that in ICE Data's reasonable judgment materially impairs ICE Data's ability to license and provide the Index Data Services under this Agreement; or (ii) any litigation or regulatory proceeding is commenced and ICE Data reasonably believes that such litigation or proceeding would have a material and adverse effect upon the Index Data or Index Data Services or upon the ability of ICE Data to perform its obligations under this Agreement.

(c) In the case of a material breach of this Agreement by either Party, the other Party may terminate this Agreement by giving thirty (30) days' prior written notice of its intent to terminate, if the material breach is not cured within such thirty (30) days' notice period.

(d) To the extent permitted by applicable laws or regulations, either Party may elect, without prejudice to any other rights or remedies, to terminate this Agreement upon written notice to the other, if a petition in bankruptcy has been filed by or against the other Party or the other Party has made an assignment for the benefit of creditors, or a receiver has been appointed for the other Party or any substantial portion of the other Party's property, or the other Party takes action approving or makes an application for any of the above and any such proceeding is not dismissed within thirty (30) days.

(e) Subscriber shall not have any termination rights except for the termination rights specified or set forth in this Agreement.

(f) Upon termination of the Agreement or the applicable Schedule, the license granted herein will terminate and, except as permitted in Section 9(g), Subscriber shall immediately cease all use of the Index Data Services and purge the Index Data and any copies thereof from its electronic systems except for any copies required to be retained for archival, legal and regulatory purposes or in the event Subscriber enters into a separate agreement with ICE Data for continued use of the Index Data and Index Data Services. Subscriber shall supply a certificate of destruction thereof, upon ICE Data's request.

(g) Notwithstanding the foregoing, after termination of this Agreement, Subscriber is permitted to retain and reference terminated Indices and the pre-termination Index values in connection with the performance of one (1) or more of its funds or portfolios to the extent that (i)

such Indices were previously used as a benchmark for such fund or portfolio under this Agreement, (ii) such usage shall be subject to, and in accordance with, this Agreement, and (iii) ICE Data has the authority to allow such continuing use.

## **10. USAGE RESTRICTIONS**

(a) Except as set forth in Section 11 below, Index Data is only made available to Subscriber for its own internal use and Index Data cannot be redistributed or published in any form to any third party without the prior written consent of ICE Data.

(b) Notwithstanding anything to the contrary elsewhere in the Agreement, Subscriber is permitted to use Constituent Data and Derived Constituent Data solely for the following purposes (unless if otherwise mutually agreed by the Parties in writing):

- (i) Calculating constituent period and factor returns for purposes of performance attribution reporting;
- (ii) Calculating index weights and average characteristics by segment (e.g., rating, sector, issuer, maturity or duration bucket, etc.); and
- (iii) Compiling characteristics (e.g., yield, spread, duration, convexity, etc.) for Index constituents using Subscriber's calculators and models.

For the avoidance of doubt, Subscriber shall not be allowed to create Derived Data (as defined below) based on the Constituent Data ("Derived Constituent Data") except as expressly set forth in this Section 10(b). Subscriber is allowed to create Derived Data based on Top Level Data.

(c) Constituent Data may solely be used in connection and in conjunction with the Indices and may not be used to enhance or validate the Subscriber's own bond or other reference or pricing database. Constituent Data that comprises pricing data may not be used by Subscriber for fund accounting purposes or in connection with valuing securities in the Subscriber's fund/portfolio.

(d) Constituent Data obtained from Third Party Suppliers may not be used as a source for valuing a fund/portfolio unless the Subscriber has entered into a separate agreement with the relevant Third Party Supplier primary pricing source that permits the Subscriber to source the pricing from ICE Data and use it as a source for such valuation.

(e) Subscriber agrees that it shall not use any Indices as a reference index for the purpose of creating, issuing, writing, managing, selling, advising, redeeming, marketing, sponsoring or promoting of any securities or financial products (including but not limited to any exchange-traded fund or other passive index-tracking fund, or any other financial instrument whose objective or return is linked in any way to any Index).

(f) Subscriber shall not electronically extract or scrub any data, content or materials from the ICE Index Platform (including, without limitation, through framing or systematic retrieval to create collections, compilations, databases or directories).

(g) "Derived Data" is defined as data created by Subscriber, in connection with Subscriber's use of the relevant part of the Index Data as permitted under the terms of this Agreement, as a result of combining, processing, changing, converting or calculating the Index

Data or any portion thereof with other data where the resultant data (i) does not bear resemblance to the underlying Index Data, (ii) cannot be readily reverse engineered, disassembled or decompiled such that a third-party may access the Index Data via the Derived Data; (iii) cannot be used in a manner which could be a source of, or a substitute for Index Data provided by ICE Data and (iv) cannot be used in whole or in part in a manner which competes with ICE Data or its affiliates.

#### **11. LIMITED EXTERNAL DISPLAY AND USE OF INDEX DATA**

(a) Subscriber may (i) display the Index Information (as defined below), solely with respect to end of day values, on its websites, (ii) include the Index Information in reports and other informational materials about its funds or portfolios, and (iii) include the Index Information in general market commentary and performance trends, that Subscriber prepares for its customers and prospective customers ((i), (ii), and (iii) of this Section taken collectively, the “Reports”) and (iv) share the Index Information with Subscriber’s auditors and regulators upon their request.

(b) “Index Information” includes:

(i) the Index value;

(ii) the Index performance;

(iii) a general description of the Index; and

(iv) a limited amount of Index information including: non-security specific segments of the Index that it may obtain from ICE Data or derive on its own; and the Index weights for the top ten holdings (or more, if approved in advance by ICE Data via email).

(c) To the extent that the following materials and/or mediums use or refer to ICE Data, the Index, the Index Data or the ICE Data Marks, Subscriber will include the following language, or other substantially similar language agreed to in writing by the Parties (including by email) (the “Disclaimer”) in (i) each prospectus or other offering document for any fund or other public investment product that is benchmarked to an Index, (ii) each contract for investment management services that mention the Indices or portfolio policy guidelines for any separately managed investment portfolio that is benchmarked to an Index, (iii) Subscriber’s website, if any, in a reasonably conspicuous manner, and (iv) any Reports, where it is reasonably feasible to do so:

SOURCE ICE DATA INDICES, LLC (“ICE DATA”), IS USED WITH PERMISSION. ICE® IS A REGISTERED TRADEMARK OF ICE DATA OR ITS AFFILIATES [ *include if applicable* ], AND BOFA® IS A REGISTERED TRADEMARK OF BANK OF AMERICA CORPORATION LICENSED BY BANK OF AMERICA CORPORATION AND ITS AFFILIATES (“BOFA”) AND MAY NOT BE USED WITHOUT BOFA’S PRIOR WRITTEN APPROVAL]. ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS AND/OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, INCLUDING THE INDICES, INDEX DATA AND ANY DATA INCLUDED IN, RELATED TO, OR DERIVED THEREFROM. NEITHER

ICE DATA, ITS AFFILIATES NOR THEIR RESPECTIVE THIRD PARTY SUPPLIERS SHALL BE SUBJECT TO ANY DAMAGES OR LIABILITY WITH RESPECT TO THE ADEQUACY, ACCURACY, TIMELINESS OR COMPLETENESS OF THE INDICES OR THE INDEX DATA OR ANY COMPONENT THEREOF, AND THE INDICES AND INDEX DATA AND ALL COMPONENTS THEREOF ARE PROVIDED ON AN “AS IS” BASIS AND YOUR USE IS AT YOUR OWN RISK. ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS DO NOT SPONSOR, ENDORSE, OR RECOMMEND [INSERT SUBSCRIBER NAME], OR ANY OF ITS PRODUCTS OR SERVICES.

Subscriber will include the following attribution (“Attribution”) in all other documents not mentioned above, or in Reports where it is not feasible to include the Disclaimer, which include Index Data or reference an Index:

Source ICE Data Indices, LLC is used with permission. ICE® is a registered trademark of ICE Data Indices, LLC or its affiliates [*include if applicable*: and BofA® is a registered trademark of Bank of America Corporation licensed by Bank of America Corporation and its affiliates ("BofA"), and may not be used without BofA's prior written approval]. The index data referenced herein is the property of ICE Data Indices, LLC, its affiliates (“ICE Data”) and/or its third party suppliers and, [*include if applicable*; along with the ICE BofA trademarks,] has been licensed for use by [*insert Subscriber name*]. ICE Data and its Third Party Suppliers accept no liability in connection with the use of such index data or marks. See [*prospectus, registration statement, url, etc.*] for a full copy of the Disclaimer.

(d) The Disclaimer and the Attribution may be translated into the local language if required by applicable law, provided that Subscriber clearly states that the English version of the Disclaimer and the Attribution prevails.

(e) Unless explicitly stated in this Section 11 or approved in writing in advance by ICE Data, Subscriber shall not externally display or publish any Index Data or other related information or data.

(f) Except as necessary to identify the Indices or to include the Disclaimer in Subscriber’s Reports and other documents that include Index Data or reference an Index, Subscriber acknowledges and agrees that it has no other rights under this Agreement to use the trademarks or service marks owned or licensed by ICE Data (including its affiliates) (collectively, the “ICE Data Marks”).

(g) Subscriber hereby agrees that its use and description of ICE Data, ICE Data Marks, the Indices and the Index Data will be in accordance with the terms of this Agreement and all applicable laws, rules and regulations.

## **12. OWNERSHIP**

(a) ICE Data and/or its affiliates shall at their own expense and sole discretion exercise their common law and statutory rights against infringement of the Index, Index Data, the ICE Data Marks, copyrights and other proprietary rights insofar as such infringement conflicts with or impairs Subscriber’s rights and privileges hereunder.



(b) Subscriber shall reasonably cooperate with ICE Data and its affiliates in the maintenance of such ICE Data rights and registrations and shall take such actions and execute such instruments as ICE Data or its affiliates may from time to time reasonably request, at ICE Data's expense.

(c) The Indices are selected, coordinated, arranged, and prepared by ICE Data through the application of methods and standards of judgment used and developed through the expenditure of considerable work, time, and money by ICE Data, and Subscriber agrees that it has no proprietary interest therein. Subscriber agrees that ownership of the Index Data, the Indices and the ICE Data Marks shall remain exclusively vested in ICE Data and its affiliates, and their respective Third Party Suppliers. All goodwill, if any, arising from Subscriber's and its Affiliates' use of the ICE Data Marks shall inure solely to ICE Data. All rights not expressly granted to Subscriber are reserved to ICE Data. Subscriber acknowledges that Subscriber does not hereby obtain any ownership of the Indices and the Index Data Services or any part thereof. Subscriber agrees to exercise at least the same degree of care to preserve the confidentiality of the Indices and the Index Data Services (and related documentation) and to maintain the proprietary rights of ICE Data, its affiliates and their respective Third Party Suppliers, that it exercises to protect its own Confidential Information (as defined below) of a similar level of sensitivity, but in no event less than a reasonable level of care.

(d) ICE Data reserves the right in its sole discretion, at any time, without prior notice, and in accordance with ICE Data's published policies to (i) make adjustments to the composition or calculation method of any Index; (ii) cease to publish certain Index Data for one (1) or more of the Indices, or (iii) discontinue any Index or the dissemination of any or all of its Indices.

(e) Subscriber agrees that any ideas, suggestions or specifications that are provided by or through Subscriber may be freely used by ICE Data in the creation or improvement of any index or in its index-related business. Such use by ICE Data does not grant to Subscriber any right, title or interest in any index or in its index-related business. Subscriber shall otherwise be free to use its ideas, suggestions and specifications.

(f) Subscriber shall not take any action to register any ICE Data Marks, including the name(s) of the Indices. Subscriber further agrees never to challenge, contest or question the validity of the ICE Data Marks or any related trademark registrations. Subscriber agrees not to create a composition mark with, or use confusingly similar marks or trade dress to, the ICE Data Marks, or dilute the distinctiveness of any ICE Data Marks. Subscriber recognizes the great value of the goodwill associated with the ICE Data Marks and will not disparage or degrade the value of the ICE Data Marks.

### **13. INDEMNIFICATION; DISCLAIMER; LIMITATION OF LIABILITY**

(a) Subject to Section 13(b) below, Subscriber shall defend, indemnify and hold harmless ICE Data, its affiliates and their respective Third Party Suppliers against all third party claims, actions, proceedings, suits, and threats of the same ("Claim(s)") against ICE Data or a Third Party Supplier (each a "Source"), and pay all damages, losses, liabilities, costs, reasonable attorneys' fees, and expenses which ICE Data, its affiliates or their respective Third Party Suppliers suffer or become obligated to pay a third person, arising out of or related to:

- (i) breach of this Agreement by Subscriber and/or its Affiliate(s); or

- (ii) use of the Indices, Index Data, Index Information or Index Data Services by Subscriber and/or its Affiliate(s), except for a third party claim that the Index Data violates or infringes any trademark, copyright, license, U.S. patent, or other proprietary right of any third party, provided that Subscriber and/or its Affiliate(s) is in compliance with the terms of this Agreement.

(b) The Subscriber's indemnity obligations in Section 13(a) above shall not apply to the extent that any Claim(s) against a Source is directly attributable to that Source's fraud, gross negligence or willful misconduct.

(c) Subject to the limitations of liability set forth in this Section 13, if a Claim is made or brought against Subscriber alleging that ICE Data's proprietary data that forms part of Top Level Data ("ICE Data IP") infringes upon a copyright, database right, trademark, or U.S. patent, ICE Data shall indemnify and hold harmless Subscriber against those damages, liabilities, and costs (including reasonable attorneys' fees) that are directly incurred by Subscriber as the result of such Claim. ICE Data shall have no obligation to indemnify the Subscriber with respect to any Claim to the extent liability under the Claim arises out of: (i) modifications to the ICE Data IP not made by ICE Data; (ii) combination of ICE Data IP with data, programs, products or services not provided by ICE Data (iii) use of the ICE Data IP other than as set forth in this Agreement; or (iv) the specifications provided by the Subscriber to ICE Data for a Custom Index(ices).

(d) **Procedures.** A Party seeking indemnity under this Section 13 shall (i) to the extent legally permitted, promptly notify the indemnifying Party of the Claim; (ii) provide the indemnifying Party sole conduct and control of all legal proceedings in connection with the Claim or the settlement or other compromise thereof; and (iii) give the indemnifying Party all reasonable assistance with the Claim as requested by such Party, at the indemnifying Party's expense. The indemnifying Party shall not, without the prior written consent of the other Party, agree to any judgment or enter into any settlement or other compromise of the Claim that adversely affects the interests of the other Party, provided that the indemnifying Party may, without the prior consent of the other Party, agree to settle a Claim for a specified monetary amount to the person(s) who initiated the Claim if, unless otherwise agreed by the Parties, the settlement provides for a full release and no admission of liability as to the other Party, and the settlement imposes no restrictions under any of the terms of this Agreement.

(e) ICE Data represents and warrants that ICE Data and/or its affiliates own or have rights to the Indices and the ICE Data Marks and that the license to use the Indices and the ICE Data Marks granted to Subscriber herein shall not infringe any trademark, copyright or other proprietary right of any third party.

(f) ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH REGARD TO THE INDICES, THE INDEX DATA, THE INDEX INFORMATION, AND ANY DATA INCLUDED THEREOF. THE INDICES, THE INDEX DATA AND THE INDEX INFORMATION AND ALL COMPONENTS THEREOF ARE PROVIDED ON AN "AS IS" BASIS AND SUBSCRIBER'S USE IS AT SUBSCRIBER'S OWN RISK.

(g) ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS SHALL NOT BE SUBJECT TO ANY DAMAGES OR LIABILITY WITH RESPECT TO THE ADEQUACY, ACCURACY, CORRECTNESS, TIMELINESS OR COMPLETENESS, RELIABILITY OR OTHERWISE OF THE INDICES OR THE INDEX INFORMATION. ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS, DO NOT WARRANT THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE INDICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

(h) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 13(G), IN THE EVENT THAT ICE DATA, ITS AFFILIATES AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS ARE DETERMINED TO BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SUBSCRIBER EXPRESSLY AGREES THAT ICE DATA'S, ITS AFFILIATES' AND THEIR RESPECTIVE THIRD PARTY SUPPLIERS' AGGREGATE LIABILITY FOR ALL CLAIMS, DAMAGES OR LOSSES UNDER ALL CAUSES OF ACTION, WILL NOT EXCEED THE FEES ACTUALLY PAID BY SUBSCRIBER TO ICE DATA FOR THE USE OF THE INDICES FOR A PERIOD WHICH SHALL NOT EXCEED TWELVE (12) MONTHS. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO THE EXTENT THAT THE LIABILITY IN QUESTION IS DIRECTLY ATTRIBUTABLE TO ICE DATA'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(i) IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND IN CASE OF ICE DATA ITS THIRD PARTY SUPPLIERS AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

(j) Sections 13(f), 13(g), 13(h) and 13(i) are meant to be independent of each other and a failure of essential purpose of one shall not affect the enforceability of the others.

#### **14. CONFIDENTIALITY**

(a) During the term of this Agreement, each of the Parties may obtain or be given access to certain confidential or proprietary data, records, materials, information and trade secrets relating to the other Party's business operations, strategic plans and other confidential matters including without limitation, the data and information comprising the Indices, Index Data Services, details of products, prices, technical specifications, other trade secrets (whether oral, written or in any other form) of ICE Data, together with any information derived from such information and analyses, compilations, studies and other material prepared by the receiving Party, which contain or otherwise reflect or are generated from such information (collectively the "Confidential Information"). Such Confidential Information, including the terms of this Agreement, is of a highly sensitive nature, representing special, valuable and unique commercial assets, and its disclosure and/or unauthorized or improper use would be materially damaging. Each Party and its affiliates and their respective officers, directors, employees, consultants and agents ("Personnel") will hold in strict confidence and trust all such Confidential Information of the other Party. Each Party will

not, directly or indirectly, disclose any of the Confidential Information or make it available to any third party or use it for its benefit or the benefit of any third party, except as provided in this Agreement, or unless specific written authorization is received from the Party whose Confidential Information is involved. Each Party agrees not to make copies of any such Confidential Information except as permitted under Section 14(b) below. Each Party will not disclose the Confidential Information to any of its Personnel, except those with a need to know for the purpose of performing the obligations under this Agreement and only to the extent required. Neither Party shall have any obligations under this Section 14(a) with respect to any information that: (a) is already known by the Party receiving Confidential Information (the “Receiving Party”) at the time of disclosure, free of restriction; (b) is or becomes publicly known by the Receiving Party without breach of this Agreement or any other agreement; (c) is rightfully received from a third party without restriction or breach of this Agreement or any other agreement; (d) is independently developed by the Receiving Party without use of any Confidential Information of the Party disclosing Confidential Information (the “Disclosing Party”); or (e) is required to be disclosed to any governmental agency or is required by any subpoena or summons, order or judicial process; provided that, unless prohibited by applicable law or regulations, if the Receiving Party is required to make such disclosure they shall notify the Disclosing Party immediately of any such subpoena, summons, order or judicial process and will reasonably avail themselves of all legally available confidentiality procedures to limit the scope, nature and extent of required disclosure and impose confidentiality obligations as permitted by law or regulation upon those to whom any Confidential Information is disclosed.

(b) Except as permitted in Section 9(g), upon termination of this Agreement, each Party, at the request of the other Party, will promptly return to the other or destroy all Confidential Information provided under or in connection with this Agreement, including all copies, portions and summaries thereof. Notwithstanding the foregoing sentence, a Party may retain one (1) copy (or as reasonably practicable) of each item of Confidential Information for purposes of identifying and establishing its rights and obligations under this Agreement, for archival, automatic backup processes or audit purposes and/or to the extent required by applicable law; provided, however, that in either case all such Confidential Information retained by either Party will (i) be retained solely for the purposes stated in this Subsection 14(b) and (ii) remain subject to the provisions of this Section 14 for so long as it is so retained.

(c) The Receiving Party acknowledges that the Disclosing Party may be subject to internal policies, laws and regulations that govern and restrict the collection, storage, processing, disclosure or use of any information that identifies or can be used to identify, contact or precisely locate the person or legal entity to whom such information pertains or from which identification or contact information of an individual person or legal entity can be derived (“Personal Information”), including, but not limited to, any Personal Information relating to the Disclosing Party, Disclosing Party’s affiliates and each of their respective customers, suppliers and personnel. ICE Data’s Privacy Policy is located here: <https://www.intercontinentalexchange.com/privacy-policy>. Where the Subscriber is subject to data protection laws and regulations of the European Union (“EU”), the European Economic Area (“EEA”) and/or any Member State thereof (including the United Kingdom in the event that the United Kingdom is no longer a part of the EU or EEA), Switzerland and/or Singapore, Subscriber acknowledges and agrees that certain additional terms and conditions set out in ICE Data’s Privacy Policy and other documents in connection with the collection, storage, processing, disclosure, access, review and/or use of such Personal Information are applicable to this Agreement. Where Subscriber provides Personal Information to ICE Data for purposes of providing the Services

("Subscriber's Personal Information"), ICE Data shall act as a service provider with respect to such Subscriber's Personal Information. ICE Data shall process Subscriber's Personal Information consistent with ICE Data's Privacy Policy and unless Subscriber provides prior written approval, ICE Data shall not collect, retain, use, disclose, or sell Subscriber's Personal Information for any purpose other than performing the Services pursuant to this Agreement, enabling ICE Data to meet its legal and regulatory requirements, marketing ICE Data's products and services, or product improvement and development. Specifically with respect to Subscriber or one of more of its Affiliates which provide Personal Information to ICE Data that is subject to European Data Protection Laws (as defined in the Additional Terms), the Additional Terms located here [https://www.theice.com/publicdocs/Additional\\_Terms\\_EU\\_Subscribers.pdf](https://www.theice.com/publicdocs/Additional_Terms_EU_Subscribers.pdf) shall be incorporated into and form part of this Agreement and, in the event of conflict with any other terms of this Agreement, shall prevail over such terms.

## **15. EAR/OFAC/ANTI-SOCIAL FORCES**

(a) Subscriber acknowledges that the Indices and the Index Data Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations (EAR) and the requirements of the U.S. Department of the Treasury's Office of Foreign Assets Controls' (OFAC) sanctions programs, including the Specially Designated Nationals List (collectively the "Controls"). Subscriber will: (i) comply with all legal requirements established under the Controls; (ii) cooperate fully with ICE Data and its affiliates 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, entity or person restricted or targeted by the Controls. For the purpose of this Section 15, Subscriber's Affiliate means any entity that is controlling, controlled by or under common control with Subscriber where the concept of "control" means ownership of the majority of the voting rights in the entity. Subscriber further represents and warrants that as of the date of this Agreement, (x) neither Subscriber, Subscriber's Affiliates nor any of their respective Affiliates, subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any OFAC sanctions, and (y) Subscriber is not fifty percent (50%) or more owned or controlled, directly or indirectly, by any person or entity that is the subject of any OFAC sanctions. For so long as this Agreement is in effect, Subscriber will notify ICE Data as soon as is practicable, but in any event no later than two (2) business days after it determines that any of these circumstances change. Notwithstanding anything to the contrary in this Agreement, ICE Data reserves the right to immediately terminate this Agreement to the extent that Subscriber's access to or use of the Index Data Services would violate the Controls.

(b) Anti-Social Forces. No Subscriber organized or doing business in Japan shall be a part of Anti-Social Forces as defined below:

(i) "Anti-Social Forces" means:

1. an organized crime group, a member of an organized crime group, a related company or association of an organized crime group, and any other equivalent person of above; or
2. a person who themselves or through the use of third parties conducts a demand with violence, an unreasonable demand beyond its legal entitlement, use of intimidating words or actions, damages the credit

or obstructs the business of the other party by spreading false rumors or by the use of fraudulent, or any other equivalent actions of above.

- (ii) Each party to this Agreement represents and warrants that it does not fall under any of the following items and covenants that it shall not fall under any of the following items:
  - 1. It has a relationship where Anti-Social Forces are considered to be controlling its management.
  - 2. It has a relationship where Anti-Social Forces are considered to be substantially involved in its management.
  - 3. It has a relationship where it is considered to be using Anti-Social Forces in an improper manner (e.g., for the purpose of pursuing illicit profits for itself or a third party or for the purpose of causing damage to a third party).
  - 4. It has a relationship where it is considered to be involved with Anti-Social Forces (e.g., providing funds or the like or furnishing benefits).
  - 5. Its officer or a person substantially involved in its management has a relationship with Anti-Social Forces that should be the subject of social criticism.
- (iii) In the event of a breach of the preceding paragraph by a party, each party shall have the right to suspend its transactions with the breaching party or terminate this Agreement immediately by a written notice without any cure period and claim for damages incurred arising out of such breach, and all obligations of the breaching party shall become due and payable immediately. The non-breaching party shall not be held liable for any damages incurred by the breaching party as a result of such suspension or termination.

## **16. GENERAL PROVISIONS**

(a) ICE Data agrees not to use or make any public reference, whether written or oral, to Subscriber or its Affiliates by name or use of trade mark without the prior consent of Subscriber and/or the relevant Affiliates.

(b) The headings used in this Agreement are inserted only for convenience of reference. Such headings shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement, nor shall headings otherwise be given any legal effect.

(c) Words importing the singular number only shall include the plural and vice versa, and words importing persons shall include firms and corporations and vice versa.

(d) This Agreement does not create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have any power to obligate or bind the other Party in any manner.

(e) ICE Data may amend this Agreement at any time, through electronic or other direct communication with Subscriber, and any such amendments will be prospectively binding on Subscriber effective ninety (90) days from the date of such notice, except where shorter notice is required for ICE Data to comply with any applicable law or regulation. Subscriber's use of any portion of the Index Data Services after the effective date of any such amendment shall constitute Subscriber's ratification of, and agreement to, any such amendment. In the event that Subscriber objects to such amendment, then Subscriber shall be entitled to terminate this Agreement by providing a prior written notice to ICE Data at least thirty (30) days prior to the effective date stated in the notice for such amendment.

(f) This Agreement, together with any schedules and exhibits, constitutes the entire agreement between the Parties hereto with respect to its subject matter. This Agreement supersedes all previous agreements between the Parties with respect to the subject matter of this Agreement. Each of the Parties acknowledges that in entering into this Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as referred to in this Agreement).

(g) This Agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument.

(h) This Agreement shall bind and inure to the benefit of each Party's successors and permitted assigns. Neither Party may assign any of its rights or obligations under this Agreement (by operation of law or otherwise) without the prior written consent of the other Party, except that ICE Data may assign this Agreement to an affiliate or successor-in-interest without obtaining consent.

(i) Subscriber acknowledges and agrees that: (i) this Agreement is an arm's-length agreement between Subscriber and ICE Data; (ii) Subscriber is capable of evaluating and understanding the construction, purpose and use of the Index; (iii) ICE Data, in connection with the Index Data Services, any Index or any Index Data, is not acting as Subscriber's financial advisor, agent or fiduciary; (iv) ICE Data is not assuming any obligation to Subscriber with respect to any Index or Index Data; (v) ICE Data is not providing any opinion on any Index; (vi) ICE Data and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Subscriber and its customers and it has no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (vii) ICE Data has not provided any legal, accounting, regulatory or tax advice with respect to any Index or Index Data.

(j) Subscriber agrees that any Third Party Supplier of any portion of the Indices or the Index Data Services may enforce its rights against Subscriber as an intended third-party beneficiary of this Agreement, even though such Third Party Supplier is not a party to this Agreement. Subscriber shall, where applicable, and as required to receive certain portions of the Indices or the Index Data Services, enter into separate agreements with ICE Data, its affiliates and/or Third Party Suppliers, and Subscriber's failure to comply with the provisions of this Section 16(j) shall constitute a material breach of this Agreement.

(k) Neither ICE Data nor Subscriber shall bear responsibility or liability for any losses arising out of any delay in or interruptions of their respective performance of their obligations under this Agreement due to any act of God, act of governmental authority, act of the public enemy or due to war, the outbreak of hostilities, riot, fire, flood, civil commotion, insurrection, labor difficulty (including, without limitation, any strike, or other work stoppage or slow down), severe

or adverse weather conditions, communications line failure, or other similar cause beyond the reasonable control of the Party so affected.

(l) Sections 6 (in respect of any outstanding fees), 7, 9(g), 12, 13, 14 and 16 shall survive the expiration or termination of this Agreement.

(m) Parties shall comply with applicable laws and regulations.

(n) All notices and other communications given or made pursuant hereto shall be in writing and shall be delivered personally or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier or email. Any such notice shall be deemed given when so delivered personally, or, if mailed, five (5) days after the date of deposit in the mail, or, if sent by overnight courier, on the next business day following deposit with such courier or, if sent via email, on the day the transmission was sent, to the Parties at the addresses stated in the applicable Schedule.

(o) No breach, default, or threatened breach of this Agreement by either Party will relieve such Party or the other Party of its obligations or liabilities under this Agreement with respect to the protection of the property or proprietary nature of any property which is the subject of this Agreement.

(p) No waiver by either Party of a breach or a default under this Agreement shall be deemed a waiver by such Party of a subsequent breach or default of a like or similar nature, and resort by either Party to any remedy shall not be construed as a waiver by such Party of its right to resort to any other remedies.

(q) This Agreement shall be governed by and construed in accordance with New York law, without regard to its conflict of law provisions. Any of the appropriate courts in the State of New York ("Court"), shall have exclusive jurisdiction of any action arising out of or relating to this Agreement, and each of the Parties irrevocably agrees to waive any objection to the venue of any such suit or proceeding in either Court, or to in personam jurisdiction, provided that service is effective.



## **EXHIBIT A - SUBSCRIBER OBLIGATIONS TO THIRD PARTY SUPPLIERS**

### 1. ICE Data Pricing & Reference Data, LLC.

Subscriber's use of data provided by ICE Data's affiliate, ICE Data Pricing & Reference Data, LLC ("PRD") is subject to the following terms and conditions, in addition to and with precedence over any other applicable provisions of the Agreement:

(a) In the event that Subscriber at any time receives data from PRD containing evaluations, rather than market quotations, for certain securities or certain other data related to such securities, the following provisions will apply: (i) Evaluated securities are typically complicated financial instruments. There are many methodologies (including computer-based analytical modeling and individual security evaluations) available to generate approximations of the market value of such securities, and there is significant professional disagreement about which is best. No evaluation method, including those used by PRD, may consistently generate approximations that correspond to actual "traded" prices of the instruments; (ii) PRD's methodologies used to provide the pricing portion of certain data may rely on evaluations; however, Subscriber acknowledges that there may be errors or defects in PRD's software, databases, or methodologies that may cause resultant evaluations to be inappropriate for use in certain applications; and (iii) Subscriber assumes all responsibility for edit checking, external verification of evaluations, and ultimately the appropriateness of use by Subscriber of evaluations and other Constituent Data provided by ICE Data, regardless of any efforts made by PRD in this respect.

(b) Subscriber acknowledges that the data provided by PRD is intended for use as an aid to institutional investors, registered brokers or professionals of similar sophistication in making informed judgments concerning securities.

(c) Subscriber accepts responsibility for, and acknowledges it exercises its own independent judgment in, its selection of any evaluations available via ICE Data, its selection of the use or intended use of such, and any results obtained. Nothing contained herein shall be deemed to be a waiver of any rights existing under applicable law for the protection of investors.

(d) PRD is a registered investment adviser. Pursuant to the provisions of the Investment Advisers Act of 1940, PRD offers to supply Subscriber with Part II of PRD Pricing and Reference Data's Securities and Exchange Commission Form ADV upon written request of Subscriber to:

ICE Data Pricing & Reference Data, LLC Attn: Compliance Department  
100 Church Street, 11<sup>th</sup> Floor  
New York, NY 10007

### 2. CUSIP Global Services.

(a) Subscriber agrees and acknowledges that the CUSIP Database and the information contained therein is and shall remain valuable intellectual property owned by, or licensed to, CUSIP Global Services ("CGS") and the American Bankers Association ("ABA"), and that no proprietary rights are being transferred to Subscriber in such materials or in any of the information contained therein. Any use by Subscriber outside of the clearing and settlement of transactions requires a license from CGS, along with an associated fee based on usage. Subscriber agrees that

misappropriation or misuse of such materials will cause serious damage to CGS and ABA, and that in such event money damages may not constitute sufficient compensation to CGS and ABA; consequently, Subscriber agrees that in the event of any misappropriation or misuse, CGS and ABA shall have the right to obtain injunctive relief in addition to any other legal or financial remedies to which CGS and ABA may be entitled.

(b) Subscriber agrees that Subscriber shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal clearing and settlement of security transactions. Subscriber further agrees that the use of CUSIP numbers and descriptions is not intended to create or maintain, and does not serve the purpose of the creation or maintenance of, a master file or database of CUSIP descriptions or numbers for itself or any third party recipient of such service and is not intended to create and does not serve in any way as a substitute for the CUSIP MASTER TAPE, PRINT, DB, INTERNET, ELECTRONIC, CD-ROM Services and/or any other future services developed by the CGS.

(c) NEITHER CGS, ABA NOR ANY OF THEIR AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN THE CUSIP DATABASE. ALL SUCH MATERIALS ARE PROVIDED TO SUBSCRIBER ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE NOR WITH RESPECT TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF SUCH MATERIALS. NEITHER CGS, ABA NOR THEIR AFFILIATES SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY ERRORS OR OMISSIONS NOR SHALL THEY BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF CGS, ABA OR ANY OF THEIR AFFILIATES PURSUANT TO ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE FEE PAID BY SUBSCRIBER FOR ACCESS TO SUCH MATERIALS IN THE MONTH IN WHICH SUCH CAUSE OF ACTION IS ALLEGED TO HAVE ARISEN. FURTHERMORE, CGS AND ABA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DELAYS OR FAILURES DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.

(d) Subscriber agrees that the foregoing terms and conditions shall survive any termination of its right of access to the materials identified above.

### 3. Chicago Mercantile Exchange Inc.

Subscriber's use of any data provided by Chicago Mercantile Exchange Inc. is subject to the following terms and conditions:

The market data is the property of Chicago Mercantile Exchange Inc. or its licensors as applicable. All rights reserved, or otherwise licensed by Chicago Mercantile Exchange Inc.