



Participant Agreement

June 2011

www.theice.com/ccx

CCX Offset Program Participant Agreement

This Agreement (“Agreement”) sets out the terms on which Chicago Climate Exchange Inc. (“CCX”), which operates the CCX Offsets Registry Program (“Program”) and the related CCX Offsets Registry (“Registry”) which provides a facility for the voluntary registration and transfer of greenhouse gas emission offsets, has agreed to provide the party identified below (“Participant”) with access to the Registry.

- 1) **ACCESS TO THE REGISTRY.** The Registry is an electronic database that serves as the official record and system to serialize and track offset projects owned by Program Participants and registered/issued under the terms of the Program. Offsets are recorded and transacted in a unit size equal to one metric ton carbon dioxide equivalent. Offsets in the amount of one hundred metric tons carbon dioxide equivalent shall constitute a Carbon Financial Instrument (“CFI”), which in general is the minimum quantity that can be registered or transferred in the Registry (unless otherwise authorized by CCX in advance). CCX hereby grants Participant a non-exclusive, non-transferable, revocable license to access the Registry as it may exist from time to time and to utilize any hardware, software, and/or systems furnished by CCX to Participant from time to time (collectively, the “System”) in accordance with the Terms (as defined below), solely for the purpose of allowing Participant to electronically access the Registry, maintain a Registry account and use other services provided by CCX from time to time related to the Program. Notwithstanding the foregoing, Participant is responsible for providing and maintaining all communications lines and all equipment and technology necessary for Participant to access the System and the Registry. All costs and expenses associated with Participant’s accessing the System and the Registry shall be borne by Participant.
- 2) **TERMS OF ACCESS.** This Agreement, taken together with (i) the Fee Schedules (the current version of which is attached hereto as Annex A), (ii) any other Annexes to this Agreement; (iii) the CCX Offsets Registry Program Manual; and (iv) the Registry Account Application (the current version of which is attached hereto as Annex C; and (v) CCX Offsets Registry Program Protocols, are collectively referred to herein as the “Terms” and will govern Participant’s access to and use of the System and the Program. CCX may amend the Terms at any time by posting amendments on the Program’s website, and any such amendments will be prospectively binding on Participant, provided that CCX will provide prior notice of any such amendments on the Program’s website and provided further that CCX will provide reasonable prior notice through electronic or other direct communication with Participant of any amendments that are likely to materially and adversely affect Participant or its rights or obligations hereunder. Participant’s use or access to the Registry after the effective date of any such amendment shall constitute its ratification of and agreement to any such amendment.
- 3) **PARTICIPANT’S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Participant hereby represents, warrants and covenants as follows:
 - a) Applicants for participation in the Program are approved at the sole discretion of CCX. In general, participants are expected to be an “eligible commercial entity” as defined in Section 1a(11) of the U.S. Commodity Exchange Act (as amended) (together with relevant Commodity Futures Trading Commission Notices or Regulations, the “CEA”). Unless and until Participant notifies CCX otherwise, Participant is and will continue to be an eligible



commercial entity. A summary of the CEA definitions of the term “eligible commercial entity” is appended hereto as Annex B (Note: Annex B is only a summary and Participant should direct any questions regarding these definitions to its legal advisors).

- b) Participant acknowledges that CCX, the System, the Registry and all information and content (including CFI holders and transfer data) displayed and distributed thereon or in any way related to CFI holdings, CFI transfers or other services under the Program (such information or content and information derived there from being referred to collectively herein as “Program Data”) are the exclusive property of CCX constituting trade secrets. Participant has been granted a limited license to use the System, the Registry and the Program Data solely for the purposes set forth herein and Participant will have no other rights with respect to the System, the Registry or the Program Data. Without limitation of the foregoing, Participant will access and utilize the System, the Registry and the Program Data solely for its own internal business activities in accordance with the Terms. In accordance with the foregoing, Participant will not provide access to the System, the Registry or any Program Data to any third party unless such third party is an affiliate of Participant. Participant agrees that it will not copy, modify, reverse engineer, reverse assemble or reverse compile the System or any of the Program Data displayed on or issued by CCX, that it will not distribute, rent, sell, retransmit, redistribute, release or license the System, any Program Data, or any part thereof to any third party (other than to its affiliates and agents subject to and in accordance with this Agreement). Participant further agrees that it will not, without limitation (other than for its own internal use in accordance with this Agreement), communicate, redistribute, or otherwise furnish Program Data, in any format, to any third party or in constructing or in constructing or calculating the value of any index or indexed products. Participant will use its best efforts to ensure that its partners, officers, directors, employees and agents maintain sole control and possession of, and sole access to, Program Data obtained through Participant’s access to the System and Registry. Notwithstanding the foregoing, it is understood and agreed that any and all data submitted to CCX by Participant (including but not limited to registration of offset projects, Registry transfers and CFI prices) and all information related to Registry transfers entered into by Participant and submitted to CCX, shall be the non-exclusive property of CCX and Participant, and that each party shall have the right to use, sell, retransmit or redistribute such information, subject to the provisions of Section 10 hereof.
- c) Participant will comply with the Terms and any and all laws, rules, regulations or orders applicable to Participant’s access to and use of the System, the Registry and the Program Data.
- d) Participant acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its accessing and utilizing the Registry.
- e) Participant acknowledges that CCX may, in its sole discretion, with or without cause or prior notice to Participant, temporarily or permanently cease to operate the Program and/or the Registry, temporarily or permanently cease to make certain services or Program Data available or suspend, terminate or restrict Participant’s access to and utilization of the Registry.
- f) Participant has all necessary power and authority to execute and perform this Agreement, and this Agreement is its legal, valid and binding agreement, enforceable against Participant



in accordance with its terms. Neither the execution of nor performance under this Agreement by Participant violates any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to Participant.

- g) Participant agrees to provide CCX with information related to Participant's use of the System and the Registry that is reasonably requested by CCX, if such information is reasonably necessary in order to enable CCX to assess the identity of persons or entities accessing the System and the Registry through Participant's Passwords (as defined in Section 4), maintain the integrity of the System, or to comply with applicable laws or regulations, and such information will be accurate and complete in all material respects and subject to the Confidentiality provisions of Section 10).
- 4) **USERS IDs AND PASSWORDS.** CCX, after receiving an executed copy of this Agreement and the Registry Account Application, and completing its review of the information provided in response to this Agreement, may, in its sole and absolute discretion, issue to Participant, through its employees designated as its administrator(s) with respect to Participant's use of the System and Registry ("User Administrator"), one or more user IDs and passwords (collectively, the "Passwords") for use exclusively by employees of Participant or a Participant affiliate that are properly authorized to access the Registry on behalf of Participant. In no event will Participant provide Passwords to any third parties. The initial User Administrator(s) are identified on the Registry Account Application attached hereto and Participant will notify CCX promptly of any change in its User Administrator(s). Participant will be solely responsible for controlling and monitoring the use of the Passwords, will provide the Passwords only to its authorized employees and will not provide the Passwords to any third party. Participant will immediately notify CCX of any unauthorized disclosure or use of the Passwords or access to the Registry or of the need to deactivate any Passwords. Participant acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords (except through the fault or negligence of CCX), whether or not such actions were authorized. Participant will only use the Passwords to access and use the Registry from the jurisdictions specified by Participant and accepted by CCX. The User Administrator shall be responsible for all communications between CCX and Participant and any notices or other communications sent to the User Administrator by CCX shall be binding on Participant.
- 5) **TERM.** This Agreement will commence as of the date hereof and will continue thereafter unless and until terminated by either party upon written notice to the other. Termination of this Agreement shall terminate all services provided by CCX to Participant. Each party's continuing obligations under this Agreement and the Terms, including, without limitation, those relating to "Indemnification" and "Confidentiality", will survive the termination of this Agreement.
- 6) **OFFSET REGISTRATION.** In order for a Participant to register an offset project with the Program for the issuance of CFIs, the Participant must provide CCX with respect to such project: (i) project approval letter, (ii) approved project specific conflict of interest statement, (iii) project implementation document, (iv) verification report, (v) verification statement, (vi) project owner attestation, (vii) project ownership and chain of custody document.
- 7) **REGISTRY TRANSFERS.**



- a) CCX will affect the transfer of CFI's from the Registry account of one participant in the Program to the Registry account of another participant in the Program upon the written instructions of both parties to such transfer. The form of written transfer instructions shall be prescribed by CCX.
- b) Under the terms of the Program, the Registry will contain information regarding registered offset projects and CFIs issued. Participant acknowledges and agrees that CCX will not provide any matching services to Participant whereby transfers of CFIs are arranged between Participant and any other potential buyer or seller of CFIs. Participant may enter into agreements with other Program participants to transfer CFIs, however, CCX will act as a buyer or seller of CFIs, or hold title to any offset project registered in the Program. If Participant does enter into a transaction with another Program participant, CCX does not guarantee and shall not be responsible for any obligation arising out of such transaction and shall not be responsible to ensure that such transaction is consummated.
- c) Any disputes that may arise between Participant and another Program participant or a third party related to the Program or the Registry, shall be addressed solely between Participant and such other party and CCX shall have no role or responsibility to mediate or resolve such dispute, and shall have no liability to Participant or such other party in connection with such dispute.
- 8) **FEES.** Participant acknowledges and agrees that CCX has sole discretion to set, and may modify the amounts of any fees, dues, or other charges to be levied on participants in the Program. All charges and fees incurred by Participant for participation in the Program shall be invoiced by CCX to Participant based on the Fee Schedule attached hereto as Annex A, as amended from time to time as set forth in the Terms. All payment of fees, dues and other charges shall be made within the time frame specified on the invoice. CCX reserves the right to charge interest on late payments at a rate per annum equal to the Prime Rate (as published by the Wall Street Journal) plus 1.5%, to the extent that such rate shall not exceed the maximum rate allowed by applicable law. Participant shall be liable for all taxes and duties (other than franchise and income taxes owned by CCX) arising out of this Agreement or any transfer or sale of Participant's Registry holdings, including, without limitation, taxes and duties levied by non-U.S. jurisdictions.
- 9) **LIMITATION OF LIABILITY; INDEMNITY.**
- a) PARTICIPANT ACNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT CCX MAKES NO WARRANTY WHATSOEVER TO PARTICIPANT AS TO THE SYSTEM, THE REGISTRY, OR ANY OTHER SERVICES, EXPRESS OR IMPLIED, AND THAT THE SYSTEM, THE REGISTRY AND ANY OTHER SERVICES ARE PROVIDED ON AN "AS IS" BASIS AT PARTICIPANT'S SOLE RISK. CCX EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER CCX NOR ITS MANAGERS, OFFICERS, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO PARTICIPANT (i) FOR THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE SYSTEM, THE REGISTRY, OR ANY OTHER SERVICES (ii) FOR DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, (iii) FOR THE



CREDITWORTHINESS OR ANY OTHER PARTICIPANT; OR (iv) FOR THE MARKETABILITY OR MARKET VALUE OF ANY CFIs. PARTICIPANT ACKNOWLEDGES AND AGREES THAT CCX DOES NOT SERVE AS THE PRIMARY BASIS FOR ANY DECISIONS MADE BY PARTICIPANT AND THAT CCX IS NOT AN ADVISOR OR FIDUCIARY OF PARTICIPANT.

- b) Subject to Section 9(c) of this Agreement, Participant shall indemnify, protect and hold harmless CCX, its directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including attorneys' fees) resulting from or arising out of any act or omission by any person obtaining access to the Registry through the Passwords (other than through the fault or negligence of CCX), whether or not Participant has authorized such access.
- c) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- d) Notwithstanding the terms of Section 9(a), in the event that CCX is determined to be liable to Participant for any cause, Participant expressly agrees that in entering into this Agreement, CCX's aggregate liability, for all causes of action, will not exceed the total fees and other amounts (excluding any applicable taxes and duties) paid to CCX by Participant in the previous six months from the date of the occurrence of the liability.

10) **CONFIDENTIALITY.**

- a) Any and all non-public information in any form obtained by either party or its employees arising out of or related to the provision or use of the System or the Registry, including but not limited to trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto and Program Data, shall be deemed to be confidential and proprietary information. Each party agrees to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees, its affiliates and their employees and agents) or to use such information for any purpose whatsoever other than as contemplated by the Terms and to advise each of its employees, affiliates and agents who may be exposed to such proprietary and confidential information or their obligations to keep such information confidential in accordance with this Section 10.
- b) The restrictions in Section 10(a) shall not apply to information which: (i) is in or becomes part of the public domain other than by disclosure by such party in violation of this Agreement; (ii) is known to or obtained by such party previously without an obligation of confidentiality; (iii) is independently developed by such party outside of this Agreement; (iv) is required to be disclosed by applicable law or regulation, or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction; (v) is disclosed in connection with any regulatory or self-regulatory request for information; or (vi) is submitted by Participant and displayed by CCX on the Registry or otherwise distributed or sold by CCX, regarding Registry holdings, transfers or Program Data in accordance with its standard policies and procedures.



- c) In the event CCX receives a subpoena, data request, or order of court in any private-party litigation requesting confidential information of Participant, CCX will promptly notify Participant of such requirement or request to the extent it is legally permitted to do so. CCX shall make reasonable commercial efforts to cooperate with Participant to enable Participant to narrow the scope of the required or requested disclosures or to seek a protective order or other similar relief. If requested by Participant, CCX will formally request that any governmental entity treat the information provided as confidential, to the extent it is not already treated as such, pursuant to the U.S. Freedom of Information Act or pursuant to an equivalent or comparable law or regulation, if applicable.
- d) Any access to Program Data provided by CCX to a corporate affiliate, whether pursuant to a license or otherwise, shall be allowed solely for the purposes set forth in the Terms and only with the affiliate's agreement to and compliance with CCX's obligations with respect to Program Data under the Terms, except to the extent otherwise agreed directly between Participant and such affiliate.
- 11) **NOTICES.** All notices delivered with respect to this Agreement shall be in writing and either (i) hand delivered or sent by regular mail; or (ii) sent via electronic mail, in either case to the relevant address provided by a party for such purposes.
- 12) **NO THIRD PARTY BENEFICIARY.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement or imposing any obligations on CCX or Participant to persons not a party to this Agreement.
- 13) **FORCE MAJEURE.** Neither CCX nor Participant shall be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, power failure or any other cause beyond its reasonable control.
- 14) **WAIVER.** No waiver by either party of any default by the other party in the performance of any provisions of this Agreement shall operate as a waiver of any continuing or future default, whether of a like or different character.
- 15) **ASSIGNMENT.** This Agreement may not be assigned by either party without the other party's express written consent; provided, however, that either party may assign this Agreement to any entity (i) controlling, controlled by, or under common control with such party, or (ii) which succeeds to all or substantially all of the assets and business of such party, provided, that, in the case of any such assignment by Participant, the assignee agrees in writing to assume the assignor's obligations under, and to be bound by the provisions of, this Agreement and the Terms (as may be amended from time to time). This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns in accordance with its terms.
- 16) **GOVERNING LAW.** This Agreement is deemed entered into in Chicago, Illinois and shall be governed and construed in all respects by the laws of the State of Illinois, without giving effect to principles of conflict of law.



- 17) **DISPUTE RESOLUTION.** Any dispute, claim or controversy between the parties relating to this Agreement shall be resolved through binding arbitration conducted in accordance with the Arbitration Rules of the American Arbitration Association. Any such arbitration shall be conducted in Chicago, Illinois or at such other location as may be agreed by the parties and the arbitrators. For the avoidance of doubt, this arbitration clause only applies to CCX and Participant and does not apply to any disputes arising between participants of the Program or any other disputes between parties other than CCX and Participant. Notwithstanding the foregoing, each party acknowledges that a breach of this Agreement may cause the other party irreparable injury and damage and therefore may be enjoined through injunctive proceedings in addition to any other rights and remedies which may be available to such other party at law or in equity, and each party hereby consents to the jurisdiction of any federal or state courts located in Chicago, Illinois with respect to such action. The parties expressly waive their right to trial by jury in any such action.
- 18) **HEADINGS.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.
- 19) **SEVERABILITY.** If any provision in this Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.
- 20) **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement binding on the parties hereto.



Chicago Climate Exchange, Inc.	
By	
Name	
Title	
Date	

Participant:	
By	
Name	
Title	
Date	



ANNEX A: CCX OFFSETS REGISTRY PROGRAM FEE SCHEDULE

Transaction Fees

(quoted per metric ton)

Registry Transfers	\$0.05 per side
Donation of CFIs	\$0.05 per side
Offset Fees	
• Registration	\$0.10
• Deregistration	\$0.20
Voluntary Retirement	\$0.05

Other Fees

Registry Account Holder Fee	\$2,500 per year
Additional Registry Accounts (1)	\$500 per year
Certificate	\$25 per certificate

Notes

(1) There is no limit to the number of additional Registry Accounts a Registry Account Holder may have.

All fees must be paid in full to Chicago Climate Exchange (CCX) before any transfer, issuance, deregistration, or retirement will be made. All fees are subject to change by CCX. CCX will notify Participants of all fee changes via CCX advisories which will be posted on the website: www.theice.com/ccx

As of April 21, 2011



ANNEX B: ELIGIBLE COMMERCIAL ENTITY

In order to participate in the CCX Offsets Registry Program (the “Program”), Participants in general must be “eligible commercial entities” (“ECEs”) under the Commodity Exchange Act, acting for their own account as principal, OR must be U.S. floor brokers or U.S. floor traders, acting for their own account as principal, who meet certain requirements specified under orders issued by the CFTC.

To assist Participants in making the necessary determinations and representations called for by this Agreement, a summary of the relevant definitions and exemptions is provided below. **Please note that the definitions below are only summaries of the relevant definitions or exemptions. Participants or prospective participants should review the definitions and terms carefully and consult their counsel with respect to any questions regarding their status as an eligible participant in the Program.**

As used below, the term “**Engaged in Commercial Activity Related to Commodity**” means that, with respect to a particular commodity, the Participant must:

- a) Have a demonstrable ability (directly or through separate contractual arrangements) to make or take delivery of the commodity; or
- b) Incur risks (in addition to price risk) related to the commodity; or
- c) Be a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, entities referred to in (a) or (b) above, involving transactions in the commodity or related derivatives.

Banks, Insurance Companies, Broker Dealers, Futures Commission Merchants; Employee Benefits Plans

- ECE Requirements – must either:
 - be “**Engaged in Commercial Activity Related to Commodity**” (see definition above):
OR
 - (1) regularly enter into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity and (2) be part of a group with aggregate total assets > \$100 million

Collective Investment Vehicles (such as commodity pools, mutual funds, hedge funds, etc.)

- ECE Requirement – must either:
 - be “**Engaged in Commercial Activity Related to Commodity**” (see definition above):
OR
 - (1) regularly enter into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity and (2) EITHER be
 - (a) One of a group of funds with aggregate total assets > \$1 billion under common management, OR
 - (b) One of a group of funds with aggregate total assets > \$100 million under common management and the fund at issue is limited to accredited investors with \$2 million in assets, qualified eligible participants or qualified purchasers



Governmental Entities

- ECE Requirements – must be “**Engaged in Commercial Activity Related to Commodity**” (see definition above).

Natural Persons

- A “Natural Person” cannot be an ECE other than as provided below with respect to U.S. Floor Brokers and Floor Traders

U.S. Floor Brokers and Floor Traders

- ECE Requirements – Must be an individual, or an entity which is controlled and managed by individuals, who satisfy ALL of the following:
 1. be registered with the CFTC as a floor broker or floor trader;
 2. be a member or, or have trading privileges on, a designated contract market;
 3. be acting in proprietary capacity; AND
 4. have a part of its business acting as floor broker or floor trader on a designated contract market’s open outcry market or perform a similar function in a designated contract market’s electronic market.



ANNEX C: CCX OFFSETS REGISTRY PROGRAM REGISTRY ACCOUNT APPLICATION

- 1. Applicant's Full Legal Name:**
- 2. Business Description:**
- 3. FEIN (entities)/Social Security Number (individuals):**
- 4. Address:**
City, State, Zip Code:
- 5. Primary Contact:**
Title:
E-Mail Address:
Phone Number:
- 6. Website:**
- 7. Type of organization (check one):**
 Corporation organized under the laws of:
 Limited Liability Company organized under the laws of:
 Limited Partnership organized under the laws of:
 General Partnership organized under the laws of:
 Other (please specify):
- 8. Financial and Banking Information (complete below or attach separately):**
Applicant's Fiscal Year End:
- 9. Banking Information (for settlement of CCX transactions)**
Bank Name:
Address:
City, State, Zip Code:
Primary Contact (Name):
Phone Number:
Account Number:
ABA Routing #:

Please note that it is CCX's policy not to accept wires/checks from or to send wires/checks to an account other than that in the name of the Participant. No exceptions will be made to this policy. Only Participants that wish to avail themselves to CCX payment services need to provide banking information.



Authorized User Form

The individual listed below agrees to be bound and abide by the Terms of the CCX Offsets Registry Program.

Name	
Address	
City, State, Zip	
Phone Number	
Email	
Security Question (choose one)	Answer
What is your favorite sports team?	
What is your library card number?	
Who was your favorite teacher?	
What is your favorite vacation destination?	
What is your favorite movie?	
Signature	
Date	
Confirmed by User Administrator	
Signature	
Name	
Date	
Participant	

All CCX Offsets Program Participants are obligated to notify CCX of any addition, deletion or other change of formal contact or other people authorized to use the CCX Registry. CCX Registry Access gives all users view only access to activity statements, transaction history, and Registry holdings.

