



## ICE DATA SERVICES AND SOFTWARE SERVICES AGREEMENT

This ICE Data Services and Software Services Agreement (this “Data Services Agreement” or “DSA”), together with all Product Activation Forms (as defined below) and Annexes (as defined below) entered into by and between a Provider (as defined below) and Subscriber (as defined below), governs Subscriber’s use of and access to the Services (as defined below) provided by such Provider that are identified in this DSA or any such Product Activation Form or Annex. In consideration of the mutual promises and covenants hereinafter contained, the parties agree as follows:

**1. GRANT.** Subject to the terms of this DSA and any applicable Product Activation Form or Annex, the applicable Provider grants Subscriber a non-exclusive, non-transferable, non-sublicensable, revocable right to permit its Authorized Users (as defined below) to receive and access the Data Services (as defined below) made available by such Provider and identified in this DSA or any such Product Activation Form or Annex, and to access and utilize the Software Services (as defined below) that such Provider makes available to Subscriber and are identified in this DSA or any such Product Activation Form or Annex, in each case, in such form as such Data Services and Software Services may exist from time to time. The Data Services and the Software Services are collectively referred to herein as the “Services”.

For the avoidance of doubt, no rights are conferred on or granted to Subscriber under this DSA or any Product Activation Form or Annex with respect to the ICE Exchanges or the ICE Exchange Services (as such terms are defined below). The provision of the Services by a Provider pursuant to any Agreement (as defined below) are distinct from and are not considered part of the ICE Exchange Services, which are provided by the applicable ICE Exchanges, respectively, and governed by the rules, policies and procedures of the applicable ICE Exchanges, respectively, and the relevant agreements entered into between Subscriber and such ICE Exchange, if any.

**2. DEFINITIONS.** All capitalized terms used in this DSA and not otherwise defined herein shall have the meanings ascribed to them in this Section 2 or in the applicable Product Activation Form or Annex.

- a) “Affiliate” means any entity directly or indirectly controlling, controlled by or under common control with another entity, where “control” means ownership of more than 50% of the voting stock or other equity interests of an entity, or the right to direct the management of such entity.
- b) “Agreement” means, collectively, this DSA and all Product Activation Forms, Annexes and EULA entered into between Subscriber and a specified Provider, together with any applicable Additional Agreements and Additional Terms incorporated therein by reference.
- c) “Annex” means any annex, schedule or order form, however it may be titled, attached to this DSA or otherwise agreed or entered into in writing between Subscriber and the applicable Provider, which sets forth the business terms, as well as any additional terms and conditions governing a particular Service, and is governed by this DSA.
- d) “Authorized Site(s)” means Subscriber’s location(s) and/or territory set forth in a Product Activation Form from which the Authorized Users may access the Services identified in such Product Activation Form.
- e) “Authorized Users” means those employees or third party agents of Subscriber listed as either “Authorized Users” or employees of Subscriber working on a Desk (as defined below) in a Product Authorization Form and/or authorized by the applicable Provider to access the Services identified in such Product Activation Form.
- f) “Commencement Date” means, with respect to any Service, the date that Subscriber and the applicable Provider entered into this DSA, the applicable Product Activation Form or the applicable Annex providing for such Service, unless another date is specified as the



“Commencement Date” in any such applicable Product Activation Form or Annex, in which case, such other specified date.

- g) “Data” or “Data Services” means all information and content (including, but not limited to, bids, offers, prices, rates and other trading and informative data, and the compilation, methodology, algorithms, determination, calculations and maintenance of such data), and information derived therefrom, that is obtained and/or generated by the applicable Provider or distributed or made available to such Provider by the Software Services, ICE Exchanges, other Affiliates of such Provider, and/or Third-party Providers (as defined below), and that such Provider makes available to Subscriber (as indicated in this DSA or the applicable Product Activation Form or Annex) via the Software Services.
- h) “Desk” means a specified number of Authorized Users, listed in a Product Activation Form, that all work in the same Subscriber business unit and are dedicated to the same Subscriber business function, as determined by such Provider in its sole discretion.
- i) “ICE Affiliate” means any Affiliate of ICE Data.
- j) “ICE Data” means ICE Data, LP and/or the Provider(s) listed in and/or that have signed the Product Activation Form.
- k) “ICE Exchange” or “ICE Exchanges” means the following entities: ICE Endex; ICE U.S. OTC Commodity Markets, LLC; ICE Futures U.S., Inc.; ICE Futures Europe; ICE NGX, Inc.; ICE Futures Abu Dhabi Limited; ICE Swap Trade, LLC; Creditex, LLC; Creditex Brokerage, LLP; ICE Bonds Securities Corporation; ICE Futures Singapore Pte. Ltd.; ICE NGX. And such other exchanges or trading venues operated by any ICE Affiliate that a Provider may make available from time to time.
- l) “ICE Exchange Services” means the right to (i) facilitate, arrange or execute transactions on the ICE Exchanges or (ii) receive any other services offered by the ICE Exchanges, other than the Services.
- m) “ICE Proprietary Services” means proprietary Software Services that are solely owned by ICE Data or any ICE Affiliates, and the compilation, methodology, determination, calculations and maintenance of the information and content included in the Data Services that are owned by ICE Data or any ICE Affiliate.
- n) “Initial Term” means, with respect to any Service, unless otherwise set forth in the applicable Product Activation Form or Annex, the initial twelve (12) month period of time commencing from the Commencement Date.
- o) “Intellectual Property Rights” means all intellectual property rights (including, but not limited to, patents, copyrights, trade secrets, database rights, design rights, goodwill and trademark rights), whether registered or not, and including applications for registration thereof, rights in know-how and moral rights.
- p) “Person” means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other entity.
- q) “Product Activation Form” means an order form, schedule or other document incorporating this DSA, entered into by and between Subscriber and a Provider, specifying specific Data Services and/or Software Services to be delivered by such Provider to Subscriber and listing, as applicable, Subscriber, the Subscribed Affiliates, the Authorized Users, the Authorized Sites and the fees for such Services.
- r) “Provider” means ICE Data unless an ICE Affiliate is specified as “Provider” in the applicable Product Activation Form (and/or has signed the applicable Product Activation Form) or Annex, in which case, such specified ICE Affiliate.



- s) "Software Services" means certain graphical user interfaces, instant messaging, algorithms, application programming interfaces, workflow engines, methods, processes, analytics and other related services, including, but not limited to, hardware, software, algorithmic technology, Data access, feeds, selected or bulk delivery of Data, hosted solutions, digital asset warehouse, contract programming, consulting, technical assistance and support services, which (a) enable, store and/or enhance the Data Services, and (b) provide the ability to receive and enhance the Data Services and/or the ICE Exchange Services. For purposes hereof, the Software Services include, without limitation, the following services: ICE Quote Select, ICE VOICE, ICE CRED, ICE Connect®, WebICE®, ICE CHAT®, ICE Mobile, QuoteBoard, ICE Data & Analytics, Esignal, Market-Q, ICE Options Analytics, ICE FI Select® (as those services may be renamed or rebranded from time to time) and any other market data and analytics interfaces as may be made available by a Provider from time to time, alone or in connection with the Data Services.
- t) "Subscriber" means the Person that has entered into this DSA with a Provider and shall include any additional Affiliates expressly identified as a "Subscriber" in any applicable Product Activation Form or Annex entered into with such Provider.
- u) "Subscriber Administrator(s)" means, with respect to any Service, Subscriber employees or third party agents designated by Subscriber and approved by the applicable Provider as Subscriber's administrator(s) with respect to Subscriber's use of such Service.
- v) "Term" means, with respect to any Service, the Initial Term of such Service and any subsequent renewal terms as may be set forth in an applicable Product Activation Form or Annex.
- w) "Third-party Provider" means a supplier of data or services (including without limitation an exchange, ICE Exchange or ICE Affiliate), information, software, services or other items that are part of or otherwise used in connection with any Service, other than the applicable Provider of such Service.

### **3. USE AND RESTRICTIONS ON USE.**

- a) Only those entities that are expressly identified in a Product Activation Form or Annex as Subscriber or its Authorized Users are authorized to access and use the Services identified in such Product Activation Form or Annex. Except as expressly permitted in a Product Activation Form or in an Annex, the Services shall be used exclusively for Subscriber's own internal business. Access to and use of the Services shall be limited to the Authorized Site(s) if set forth in a Product Activation Form.
- b) Except as expressly permitted in a Product Activation Form or Annex, Subscriber shall not (i) copy, modify, reverse engineer, reverse assemble or reverse compile or store the Services or any part thereof; (ii) license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise distribute or redistribute the Services or any portion or components thereof in any manner (including, but not limited to, via or as part of any Internet site); (iii) use the Services or any portion thereof for constructing, creating or calculating the value of any index or indexed products; (iv) use the Services as part of Subscriber's intranet or other internal network (it being understood that this clause (iv) shall not prohibit any use of Data Services that is explicitly permitted pursuant to any agreement for ICE Exchange Services to which Subscriber is a party); or (v) create archival or derivative works based on the Services or any portion thereof. Subscriber shall take all precautions that are reasonably necessary to prevent any unauthorized distribution or redistribution of the Services.
- c) Subscriber agrees that it will not disclose or provide access to the Services or any portion thereof to any person, firm or entity other than an Affiliate of Subscriber that is listed in the applicable Product Activation Form (or otherwise expressly authorized by the applicable



Provider in writing) (collectively, the “Subscribed Affiliates”) and Authorized Users. Affiliates of Subscriber that are not listed on the applicable Product Activation Form or otherwise expressly authorized by the applicable Provider in writing are not permitted to access or use the Services or any portion thereof. Subscriber shall ensure the Authorized Users’ and Subscribed Affiliates’ compliance with the terms and conditions of each Agreement, and Subscriber shall remain responsible for such compliance. Subscriber and each Subscribed Affiliate shall be jointly and severally liable to the applicable Provider, its Affiliates and their Third-party Providers for any breaches of the applicable Agreement and for the indemnity obligations set forth below in Section 11(c). For purposes of defining Subscriber’s obligations under each Agreement, any time the term “Subscriber” is used in such Agreement it includes all Subscribed Affiliates and Authorized Users under such Agreement, as appropriate.

- d) Subscriber shall not use the Services, in whole or in part, in any manner that competes with the applicable Provider or any of its Affiliates, including without limitation, any distribution of the Services or derivative works based thereon. Without limiting the foregoing, unless Subscriber enters into a separate license agreement with the applicable Provider, and then only to the extent set forth in such license agreement, Subscriber agrees that it will not (other than for its own internal use in accordance with the applicable Agreement), communicate, redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the Services, in any format, to any third party.

**4. SUBSCRIBER IDs AND PASSWORDS.** A Provider may, in its sole and absolute discretion, issue to Subscriber, through its Authorized Users or Subscriber Administrators, one or more Subscriber IDs and passwords (collectively, the "Passwords") for use exclusively by such Authorized Users or Subscriber Administrators. In no event will Subscriber or its Authorized Users or Subscriber Administrators provide Passwords to any third parties. The initial Subscriber Administrator(s) for any Service are identified on the applicable Product Activation Form, and Subscriber acknowledges and agrees that Subscriber Administrators may designate additional Subscriber Administrators, and such Subscriber Administrators shall be considered by the applicable Provider as having the same authority as the initial Subscriber Administrator(s) identified in the applicable Product Activation Form. Subscriber will promptly notify the applicable Provider in writing, which may be via email, of any changes and/or additions to its Subscriber Administrator(s). Subscriber warrants that Subscriber: (i) will be solely responsible for controlling and monitoring the use of the Passwords; (ii) will provide the Passwords only to its Authorized Users or Subscriber Administrator(s) for the sole purpose of accessing and using the applicable Services; and (iii) will not provide the Passwords to any third party. Subscriber will immediately notify the applicable Provider of any unauthorized disclosure or use of the Passwords or access to the Services or of the need to deactivate any Passwords. Subscriber acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords, including the use of any Services, whether or not such actions were authorized by Subscriber. Subscriber will only use the Passwords to access and use the applicable Services from the Authorized Sites if set forth in a Product Activation Form. The Subscriber Administrator shall be responsible for all communications between the applicable Provider and Subscriber and any notices or other communications sent by the applicable Provider to a Subscriber Administrator shall be binding on Subscriber. In addition, Subscriber acknowledges and agrees that the applicable Provider may rely on any instruction, agreement or authorization communicated by a Subscriber Administrator. Subscriber will promptly inform the applicable Provider in writing if any Subscriber Administrator is no longer authorized to act in the capacity set forth herein. Sharing of Passwords and Subscriber IDs, and simultaneous access via the same Password or Subscriber ID, is prohibited. At any time during the Term of a Service, Subscriber may replace an Authorized User for such Service without charge and upon providing written notice to the applicable Provider prior to such replacement. Additional Authorized Users may be requested by providing the applicable Provider with written notice, which may be in the form of an e-mail, and upon such Provider’s approval, such additional Authorized Users will be granted access to the Services. For the avoidance of doubt, upon renewal of any Agreement the number of Authorized Users



will be the higher of (i) the number of Authorized Users specified in the Product Activation Form; and (ii) the actual number of Authorized Users where additional Authorized Users have been added during the then-current term in accordance with the preceding sentence. Each Provider reserves the right to withhold or withdraw a Password to any Authorized User of such Provider's Service(s) and to deny access to such Service(s) in its sole business judgment.

**5. ALTERATIONS, UPGRADES AND ENHANCEMENTS.** Each Provider reserves the right to alter or modify its Services and any portions or configurations thereof from time to time without notice in order to provide the Services pursuant to this Agreement, enable Provider to meet its legal and regulatory requirements, for product improvement and development purposes, or to facilitate and improve Subscriber's access to and use of the Services. Such alterations and/or modifications may include, without limitation, the use of algorithms or algorithmic technology, addition or withdrawal of features, software, functionality, data, or changes in instructions, documentation or delivery methods. For the purposes set forth herein, Subscriber hereby grants to Provider and its Affiliates a perpetual, non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use data, prices, or activity that Subscriber or its Authorized Users have provided in relation to their use of the Services, provided that Provider or its Affiliates shall not publish any such information except in an anonymized format that has been aggregated with additional information from Provider or other content providers. A Provider may also, in its sole discretion, make available enhancements, upgrades and other improvements to its Services which require additional fees. To the extent Subscriber chooses to receive any such enhancements, upgrades and other improvements to the Services, or any additional Services, Subscriber and the applicable Provider will enter into an additional Product Activation Form and, upon payment of the applicable fees, such enhancements, upgrades and other improvements, or additional Services shall be deemed to be included in the Services made available to Subscriber under the applicable Agreement. All fees associated with such additional/upgraded Services or additional Authorized Users shall be prorated for partial Billing Cycles (as defined in the applicable Product Activation Form), rounded to the nearest month and subsequently billed to Subscriber by the applicable Provider.

**6. PROPRIETARY RIGHTS/INJUNCTIVE RELIEF.**

- a) All Intellectual Property Rights in the Services and any derivative works thereof, are and shall remain the sole and exclusive property of the applicable Provider (or its Affiliates, as applicable) and/or the Third-party Providers. The Services are compiled, prepared, revised, selected and arranged by the applicable Provider or its Affiliates and their Third-party Providers through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, creativity and financial resources, and the Services constitute the valuable intellectual property of the applicable Provider, its Affiliates and/or the Third-party Providers. Subscriber shall comply with all reasonable requests made by the applicable Provider to protect the rights of such Provider, its Affiliates, and their Third-party Providers in the Services. Subject to the limited rights expressly granted hereunder, each Provider reserves all rights, title and interest in and to its Services, including all related Intellectual Property Rights. No rights are granted to Subscriber under any Agreement other than as expressly set forth in such Agreement.
- b) Copying of, use of, access to or distribution of the Services or any information, data or software contained therein in breach of the applicable Agreement is strictly forbidden and shall cause the applicable Provider and/or the Third-party Providers irreparable injury that cannot be adequately compensated for by means of monetary damages. Any breach of an Agreement by Subscriber may be enforced by the applicable Provider, its Affiliates or their Third-party Providers by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other rights and remedies that may be available.
- c) Third-party Provider Terms and Conditions. Subscriber agrees and acknowledges that to the extent Subscriber is accessing or using any portion of the Services provided by a Third-





party Provider, such Third-party Provider may enforce its rights against Subscriber as an intended third-party beneficiary of the applicable Agreement, even though such Third-party Provider is not a party to such Agreement. Subscriber shall, where applicable, and as required to receive certain portions of the Services, be responsible for obtaining and maintaining written approval from each Third-party Provider whose approval is required for receipt and use of such Service and/or enter into separate agreements with the applicable Provider and/or Third-party Providers, as applicable, including, but not limited to those agreements located here: [www.theice.com/icedata/thirdparty](http://www.theice.com/icedata/thirdparty) ("Additional Agreements"). Subscriber shall comply with any conditions, restrictions, or limitations imposed in the Additional Agreements, which are incorporated by reference into this DSA as if set forth in their entirety herein and form an integral part of this DSA, including without limitation with the acknowledgments, notices, reporting and audit requirements set forth therein. Failure of Subscriber to comply with the provisions of this Section shall constitute a material breach of the applicable Agreement. Subscriber further acknowledges and agrees that Provider may provide the entity name of Subscriber to a Third-party Provider that is providing any portion of the Services used by Subscriber, as required, upon request by such Third-party Provider.

## 7. **FEES.**

- a) As consideration for the rights granted by the applicable Provider under any Agreement, Subscriber shall pay such Provider the fees and charges stated in the applicable Product Activation Form or invoice, in U.S. Dollars (unless otherwise stated therein), plus all applicable value-added, sales, use and similar taxes, within thirty (30) days after the date of such Provider's invoice, unless otherwise stated in such Product Activation Form. Subscriber is liable for all taxes and duties applicable to the Services, including, without limitation, taxes and duties levied by non-U.S. jurisdictions. A Provider's invoice shall be deemed to be correct and binding upon Subscriber if written notice of any disputed charges is not received by the applicable Provider within thirty (30) days of the date of such invoice. These fees and charges shall be due and payable by Subscriber to the applicable Provider regardless of whether Subscriber exercises the rights granted under the applicable Agreement. Subscriber acknowledges that, if applicable, it shall be responsible for any and all applicable Third-party Provider fees, whether or not such fees are billed to the applicable Provider or directly to Subscriber by the Third-party Providers, that result from Subscriber's access to or use of the Services. A Provider may increase its fees and charges for any Service at any time after the Initial Term of such Service by providing advance written notice to Subscriber as set forth in Section 14(e). All fees are non-refundable.
- b) Services may be subject to administrative fees charged by the applicable Provider in connection with the Services. Subscriber acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its use and access to the Services. Subscriber will, at its own cost and expense, provide all the equipment, operating platforms, software (including web browser), and connectivity needed to access and use the Services.
- c) Each Provider may assess a late charge at a rate of one percent (1%) per month on all amounts due and not paid within thirty (30) days of the date of such Provider's invoice until the time of payment. Subscriber's failure to pay amounts when due constitutes a material breach of the applicable Agreement. In addition to all other rights and remedies available to each Provider at law or in equity, such Provider also may suspend delivery of its Services or any component thereof for as long as any amount remains unpaid after such thirty (30) day period.



8. **TERM.** Each Agreement will continue in force and effect for as long as Subscriber is receiving the applicable Services, unless and until terminated: (i) by either party to such Agreement in accordance with the terms of the applicable Product Activation Form (except that, only in circumstances where there are no such terms specified in an applicable Product Activation Form, either party to such Agreement may terminate upon ninety (90) days' prior written notice to the other); or (ii) for the reasons set forth in Section 9 below.

9. **TERMINATION AND SUSPENSION OF SERVICE.**

- a) **Suspension of Services.** Subscriber acknowledges that the applicable Provider may, in its sole discretion, with or without cause or prior notice to Subscriber, temporarily or permanently cease to operate the Services, temporarily or permanently cease to make certain Services available, or suspend, terminate or restrict Subscriber's use of or access to the Services, in each case as and to the extent such Provider determines is necessary to protect its Intellectual Property Rights, reputation, or the integrity, operation or functioning of the Services, or as necessary to comply with applicable law or regulation. Provider will use commercially reasonable efforts to give prior notice to Subscriber of any such cessation to the extent Provider determines such notice would not threaten its Intellectual Property Rights, reputation, or the integrity, operation or functioning of the Services, and would not conflict with applicable law or regulation. Subscriber acknowledges that its utilization of the Services may be monitored by the applicable Provider for the Provider's own purposes, including, without limitation, for purposes of: (i) maintaining the functional and operational integrity and performance of the Services; (ii) developing, improving, and operating current and future Services; (iii) complying with applicable laws and regulations; and (iv) to monitor compliance with the terms of the applicable Agreement.
- b) **Termination.** Each Agreement may be terminated for the additional reasons set forth below:
- i) The applicable Provider shall have the right to terminate an Agreement effective immediately in the event of Subscriber's breach of Section 3, 4, 6, 12, 13, 14(d) or 14(f) of this DSA.
  - ii) Either party may terminate an Agreement in the event of a breach thereof which is not cured within ten (10) days of written notice of such breach; provided, however, such termination shall not take effect if the breaching party cures or corrects the breach within such ten (10) day notice period.
  - iii) Either party may terminate an Agreement upon written notice to the other if the other party is adjudicated as bankrupt or if a petition in bankruptcy is filed by or against the other party or if the other party makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy act or insolvency laws.
  - iv) Subscriber's right to receive and use those portions of the Services provided by a Provider pursuant to licenses granted to such Provider by Third-party Providers is subject to automatic termination without liability on the part of such Provider if such licenses are terminated for any reason.
  - v) The applicable Provider shall have the right to terminate in the event of a change of control event as set forth in Section 14(d).
- c) **Effect of Termination.** Termination of an Agreement shall terminate the provision of the Services under such Agreement by the applicable Provider to Subscriber and Subscriber's use of and all access to such Services. Upon termination of an Agreement for any reason set forth herein by either party, Subscriber shall (a) cease all use of and access to the Services provided under such Agreement and (b) expunge such Services and any portion



or copies thereof from all of Subscriber's electronic systems, except to the extent Subscriber is otherwise required by applicable law or regulatory document retention obligations provided no commercial or productive use can be made of the Services, or pursuant to Section 10 below to retain such records. At a Provider's request, Subscriber shall certify to such Provider in writing that Subscriber has fully complied with the foregoing expungement requirement.

- d) Other Agreements. For the avoidance of doubt, termination of one Agreement shall not terminate any other Agreement (or any Services under any such other Agreement) that is not independently terminated by either party (or both parties) to such other Agreement.

**10. RECORD KEEPING; AUDIT.** Subscriber shall at all times during the Term of any Service and for not less than a period of twenty-four (24) months thereafter, maintain complete and accurate records (including applicable data in electronic format) with respect to payment of fees, and access to and usage of such Service for the most recent thirty-six (36) months. During the Term of any Service and for a twenty-four (24) month period thereafter, the applicable Provider shall have the right, during normal business hours and upon reasonable notice to Subscriber, to (a) audit and review relevant portions of those records; and (b) audit the manner of access to and usage of such Service, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed. Subscriber agrees and acknowledges that to the extent Subscriber is accessing or using any portion of any Service provided by a Third-party Provider, such Third-party Provider may require Subscriber to comply with additional record keeping and audit requirements. Subscriber shall, where applicable, and as required to receive certain portions of the Services, comply with such additional record keeping and audit requirements, which are referred to in the applicable Product Activation Form or Annex and constitute an integral part of the applicable Agreement. To the extent required by a Third-party Provider, such Third-party Provider shall have the right, during the Term of a Service and following termination or expiration of the applicable Agreement, during normal business hours and upon reasonable notice to Subscriber, to (a) audit and review relevant portions of those records; and (b) audit the manner of access to and usage of such Service under such Agreement, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed. The applicable Provider's or Third-party Provider's failure to conduct an audit pursuant to this Section 10 shall not relieve Subscriber from its responsibilities to comply fully with the terms and conditions of the applicable Agreement. Subscriber agrees to permit the applicable Provider or its representatives and the Third-party Providers or their representatives to periodically inspect, at Subscriber's sites, and during reasonable hours and at reasonable intervals, the network on or by which any portion of the Services are accessed for purposes of evaluating compliance with the terms of the applicable Agreement. In the event of such an onsite audit undertaken by the applicable Provider at Subscriber's site, such Provider shall liaise with Subscriber to outline an implementation plan to ensure Subscriber's security protocols and mandatory and/or contractual data security obligations are met in relation to the right of inspection and audit. Notwithstanding the foregoing, Provider may share the information obtained as part of the audit, with its Third-party Providers and their agents where required. Each Provider acknowledges that Subscriber can redact all personal information for purposes of any audit or inspection under this Section 10. The costs of any such audit and/or inspection shall be borne by the applicable Provider; provided, however, if such audit and/or inspection reveal (i) an underpayment to such Provider of five percent (5%) or more and/or (ii) material variance in the access and/or use of the Services from the license grant as specified in this Agreement, Subscriber shall reimburse such Provider for its reasonable costs and expenses in conducting such audit and/or inspection.

**11. NO WARRANTIES; LIMITATION OF LIABILITY; INDEMNITY.**

- a) SUBSCRIBER ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT EACH PROVIDER AND ITS AFFILIATES AND THIRD-PARTY PROVIDERS MAKE NO WARRANTY WHATSOEVER TO SUBSCRIBER AS TO THE SERVICES, EXPRESS OR





IMPLIED, AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AT SUBSCRIBER'S SOLE RISK. EACH PROVIDER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO PROVIDER OR ITS AFFILIATES, ITS THIRD-PARTY PROVIDERS OR THEIR RESPECTIVE DIRECTORS, MANAGERS, OFFICERS, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO SUBSCRIBER FOR (I) THE ACCURACY, ADEQUACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE SERVICES OR (II) DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN. THE PROVIDERS DO NOT, AND SHALL HAVE NO DUTY OR OBLIGATION TO, VERIFY, MONITOR, CONTROL OR REVIEW ANY INFORMATION AND/OR DATA DISPLAYED VIA THE SERVICES. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT: (1) IT IS SOLELY RESPONSIBLE FOR EVALUATING THE ACCURACY, TIMELINESS, AND COMPLETENESS OF ANY AND ALL INFORMATION AND/OR DATA DELIVERED TO IT VIA SERVICES; AND (2) IT HAS DETERMINED, BASED ON ITS OWN EVALUATION, THAT THE SERVICES AND EACH AGREEMENT ARE SUITABLE FOR AND SATISFACTORY TO SUBSCRIBER, AND SUBSCRIBER HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION OR WARRANTY MADE BY ANY PROVIDER OR ANY PROVIDER'S AFFILIATES OR THIRD-PARTY PROVIDERS IN MAKING SUCH DETERMINATION.

- b) SUBSCRIBER ACKNOWLEDGES AND AGREES THAT NEITHER THE SERVICES NOR ANY OF THE INFORMATION OBTAINED BY OR THROUGH THE SERVICES ARE INTENDED TO SUPPLY INVESTMENT, FINANCIAL, TAX OR LEGAL ADVICE. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT IT WILL CONSULT ITS OWN INVESTMENT, FINANCIAL, TAX, AND LEGAL ADVISORS TO THE EXTENT IT REQUIRES ANY SUCH ADVICE. A REFERENCE TO A PARTICULAR INVESTMENT OR SECURITY, A CREDIT RATING, OR ANY OBSERVATION CONCERNING A SECURITY OR INVESTMENT PROVIDED IN THE SERVICES IS NOT A RECOMMENDATION TO BUY, SELL OR HOLD SUCH INVESTMENT OR SECURITY OR TO MAKE ANY OTHER INVESTMENT DECISIONS. THE PROVIDERS OFFER NO ADVICE REGARDING THE NATURE, POTENTIAL VALUE, OR SUITABILITY OF ANY PARTICULAR SECURITY, TRANSACTION, INVESTMENT OR INVESTMENT STRATEGY. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE USE OF THE SERVICES AND INFORMATION, AND ANY DECISIONS MADE IN RELIANCE UPON THE SERVICES AND INFORMATION, ARE MADE AT SUBSCRIBER'S OWN RISK. SUBSCRIBER FURTHER ACKNOWLEDGES AND AGREES THAT NEITHER THE SERVICES NOR ANY INFORMATION OBTAINED BY OR THROUGH THE SERVICES CONSTITUTES AN OFFER TO PURCHASE OR A SOLICITATION OF AN OFFER TO SELL SECURITIES.
- c) To the fullest extent permitted by law, Subscriber shall indemnify, protect, and hold harmless the applicable Provider and its Affiliates and Third-party Providers and each of their respective 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 use of or access to the Services by Subscriber or by others using the Passwords in Subscriber's possession.
- d) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY AGREEMENT, IN NO EVENT WHATSOEVER SHALL A PROVIDER, ITS AFFILIATES OR ANY OF THEIR THIRD-PARTY PROVIDERS BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOSS OF PROFITS, TRADING LOSSES, OR LOST TIME OR GOOD WILL, LOSS OF USE, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO



THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- e) NO ACTION OR CLAIM, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE SERVICES OR TO ANY AGREEMENT MAY BE BROUGHT BY SUBSCRIBER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF SUCH ACTION OR CLAIM HAS ACCRUED.
- f) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 11(h), IN THE EVENT THAT A PROVIDER IS DETERMINED TO BE LIABLE TO SUBSCRIBER FOR ANY CAUSE ARISING OUT OF OR RELATED TO ANY AGREEMENT, SUBSCRIBER EXPRESSLY AGREES THAT IN ENTERING INTO SUCH AGREEMENT, SUCH PROVIDER'S AGGREGATE LIABILITY, FOR ANY CLAIMS, DAMAGES OR LOSSES UNDER ALL CAUSES OF ACTION, WILL NOT EXCEED THE GREATER OF: (I) FIFTY THOUSAND USD (\$50,000); OR (II) THE FEES PAID AND PAYABLE BY SUBSCRIBER TO SUCH PROVIDER UNDER SUCH AGREEMENT FOR THE SERVICE IN QUESTION IN THE THREE (3) MONTH PERIOD PRIOR TO THE DATE SUCH CLAIM AROSE, LESS ALL PAYMENTS MADE OF OTHER CLAIMS SUBJECT TO THIS LIMITATION UNDER SUCH AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF SUBSCRIBER'S REMEDIES UNDER SUCH AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
- g) THE LIMITATIONS OF A PROVIDER'S LIABILITY SET FORTH IN SECTIONS 11(d) THROUGH 11(f) SHALL NOT APPLY IN RESPECT OF (I) DEATH OR PERSONAL INJURY OF A THIRD PARTY TO THE EXTENT CAUSED BY SUCH PROVIDER'S WILLFUL OR NEGLIGENT ACTS; OR (II) SUCH PROVIDER'S FRAUD OR WILLFUL MISCONDUCT.
- h) If a third party brings a claim or other legal action against Subscriber alleging that ICE Proprietary Services, as and in the manner provided to Subscriber by the applicable Provider, infringes upon a copyright, trademark, or U.S. patent of such third party ("Covered Claim"), such Provider shall defend Subscriber, at such Provider's expense, from such Covered Claim, and will pay all amounts payable to third parties in connection with any settlement or compromise of a Covered Claim approved by such Provider, and pay all damages awarded to third parties relating to a Covered Claim, including court costs and attorneys' fees awarded. The foregoing obligations of the applicable Provider are conditioned upon and shall remain subject to Subscriber: (i) providing such Provider with prompt written notice of any Covered Claim, with such Provider's obligation to defend and indemnify Subscriber with respect to a Covered Claim being reduced only to the extent that a delay by Subscriber in notifying such Provider of the Claim adversely affects such Provider's ability to defend, compromise, settle or appeal such Claim; (ii) giving such Provider sole control of the defense of the Covered Claim and any related settlement negotiations; and (iii) cooperating and assisting (as reasonably requested by such Provider and at such Provider's expense) with such Provider's efforts to defend or settle the Covered Claim. In the event that a third-party claim or other legal action is made or brought against Subscriber alleging that a Third-party Provider data or service as provided to Subscriber by a Provider infringes such third party Intellectual Property Right, such Provider shall indemnify Subscriber to the same extent such Provider is indemnified by the Third-party Provider in question, or shall assign to the benefit of Subscriber the indemnification right afforded to such Provider, if applicable. A Provider will have no obligation under this Section or otherwise for any infringement or misappropriation claim based on or arising out of: (i) any modification of the Services made by someone other than such Provider or its authorized agents; (ii) any combination or use of the Services with any other software, hardware, data, or other materials or information not furnished by such Provider; and/or (iii) any failure of Subscriber, or others acting under Subscriber's authority or control, to



comply with Subscriber's obligations under the applicable Agreement. If the Services become, or the applicable Provider believes are likely to become, subject to an infringement claim, such Provider may, at its sole option and expense: (x) replace or modify the Services, or any portion thereof, so that they become non-infringing; (y) obtain for Subscriber the right to continue using the infringing part of the Services, or (z) terminate the applicable Agreement as to the infringing part of the Service. The foregoing states each Provider's entire liability and Subscriber's sole and exclusive remedies for infringement or misappropriation claims and actions of any kind. Notwithstanding anything to the contrary herein, a Provider's maximum cumulative liability to Subscriber under this Section 11(h) shall not exceed One Million USD (\$1,000,000) in the aggregate, regardless of the number of indemnification claims that may be made hereunder.

## 12. CONFIDENTIALITY.

- a) Any and all non-public information in any form obtained by either party to an Agreement or such party's Affiliates or its or their respective employees arising out of or related to the provision or use of the Services, including but not limited to, the Services, trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto, shall be deemed to be confidential and proprietary information ("Confidential Information"). The Services are the Confidential Information of the applicable Provider. Each party agrees to hold such Confidential information in strict confidence and not to disclose such Confidential Information to third parties (other than to its employees, its Affiliates and its and their respective employees or agents on a need to know basis only) and not to use such Confidential Information for any purpose whatsoever other than as contemplated by the applicable Agreement and to advise each of its employees, Affiliates and agents who may be exposed to such Confidential Information of their obligations to keep such Confidential Information confidential in accordance with this Section 12(a), except that Subscriber expressly permits each Provider to disclose Subscriber's identity as a client of such Provider on such Provider's web site and/or in other materials.
- b) The restrictions in Section 12(a) shall not apply to Confidential Information which the Receiving Party (as defined below) can demonstrate: (i) is in or becomes part of the public domain other than by disclosure by the Receiving Party in violation of the applicable Agreement; (ii) is known to or obtained by the Receiving Party previously without an obligation of confidentiality; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (iv) is required to be disclosed by applicable law or regulation (including without limitation, tax laws or regulations), or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction as set forth in Section 12(c) below, provided that Subscriber discloses only that portion of the Confidential Information that is required to be disclosed by applicable law or regulation, subpoena, or order of a court or regulatory, self-regulatory or legislative body.
- c) In the event that a party receives a subpoena, data request, or order of a court in any private party litigation requesting Confidential Information of the other party, such party will promptly notify the other party of such requirement or request to the extent it is legally permitted to do so.
- d) Upon termination or expiration of the applicable Agreement, the Receiving Party will return to the Disclosing Party, or securely destroy, all copies of Confidential Information already in the Receiving Party's possession or within its control. Upon the Disclosing Party's request, an officer of the Receiving Party will certify in writing to the Disclosing Party that all Confidential Information has been so destroyed.
- e) **Personal Information.** Any party to an Agreement receiving Confidential Information (the "Receiving Party") acknowledges that the other party to such Agreement disclosing



Confidential Information (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, the Disclosing Party’s Affiliates and each of their respective customers, suppliers and personnel. ICE’s Privacy Policy is located here: <https://www.intercontinentalexchange.com/privacy-policy>. Where Subscriber is subject to the data protection laws and regulations of the European Union (“EU”), the European Economic Area (“EEA”) and/or any Member State thereof, the United Kingdom, Switzerland and/or Singapore, Subscriber acknowledges and agrees that certain additional terms and conditions set out in ICE’s Privacy Policy and other documents in connection with the collection, storage, processing, disclosure, access, review and/or use of such Personal Information may apply. Specifically with respect to Subscribers or one or more of its Affiliates which provide Personal Information to Provider that is subject to Data Protection Laws (as defined in the Additional Terms), the Additional Terms located here: <https://www.ice.com/Data-Protection-Terms> shall be incorporated into and form part of such Agreement and, in the event of conflict with any other terms of such Agreement, shall prevail over such terms.

**13. EAR/OFAC/ANTI-SOCIAL.**

- a) EAR/OFAC. Subscriber acknowledges that the 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”). With respect to the Services and related technical information, documents and materials provided to Subscriber pursuant to the applicable Agreement, Subscriber will: (i) comply with all legal requirements established under the Controls; (ii) cooperate fully with the applicable Provider in any official or unofficial audit or inspection that relates to the Controls; and (iii) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to, or otherwise enter into any transaction or engage in any other activities with, any country, territory or Person restricted or targeted by the Controls unless such export, re-export, diversion, transfer, transaction, or activity is authorized under the Controls. Subscriber further represents and warrants that as of the effective date of any Agreement, (i) none of Subscriber, Subscriber’s Affiliates or 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 (ii) Subscriber is not 50% or more owned or controlled, directly or indirectly, by any person or entity that is the subject of any OFAC sanctions. Subscriber will notify the applicable Provider as soon as is practicable, but in any event no later than forty-eight (48) hours, after it determines that any of these circumstances, as they relate to the Services, change. Notwithstanding anything to the contrary in this Agreement, the applicable Provider reserves the right to immediately terminate this Agreement to the extent that Subscriber’s access to or use of the 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:
  - (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.
- c) 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.

#### 14. **GENERAL PROVISIONS.**

- a) **Notices.** Except for notices regarding amendments implemented by the applicable Provider in accordance with Section 14(e) below, all notices delivered with respect to an Agreement shall be in writing and sent via email as follows:
  - (i) to Subscriber, to the applicable Subscriber Administrator;
  - (ii) to the applicable Provider, unless otherwise notified to Subscriber in writing, via the updated DSA or in an applicable Product Activation Form from time to time:
    - (x) to [sales-tradingsolutions-apac@theice.com](mailto:sales-tradingsolutions-apac@theice.com) where the Services are provided in Asia Pac;
    - to [Sales-TradingSolutions-EMEA@TheIce.com](mailto:Sales-TradingSolutions-EMEA@TheIce.com) where the Services are provided in EMEA;
    - to [Sales-TradingSolutions-Americas@TheIce.com](mailto:Sales-TradingSolutions-Americas@TheIce.com) where the Services are provided in all other jurisdictions, including the US;
    - to [iceaccounts@ice.com](mailto:iceaccounts@ice.com) for ICE Exchange Services;
  - (y) for all notices, a copy to [Legal-FIData-ConnectivityandDesktop@ice.com](mailto:Legal-FIData-ConnectivityandDesktop@ice.com).
- b) **Force Majeure.** Except for Subscriber's payment obligations, neither the applicable Provider nor Subscriber shall be deemed to be in default of any provision of an Agreement or be liable for any delay, failure in performance, or interruption of service, in each case, resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, cyber-attack, power failure or any other cause beyond its reasonable control.





- c) Waiver. Failure by any party to exercise any right or remedy under the Agreement will not signify acceptance of the event giving rise to such right or remedy nor will it constitute a waiver of such right or remedy.
- d) Assignment; Change of Control. Subscriber shall not assign or transfer an Agreement without the prior written consent of the applicable Provider, and any attempted assignment or transfer shall be null and void and shall constitute a material breach of such Agreement. In addition to and notwithstanding the foregoing, if the ownership of Subscriber at any time shall pass out of the majority control of its then-current owners by sale of stock or assets, merger or otherwise during the Term, Subscriber shall notify each Provider in writing of such change of control event no later than thirty (30) days following the effective date of any such event. Each Provider shall then have the right to terminate its Agreement by providing a written notice to Subscriber within sixty (60) days following the receipt of such notice of change of control, if in such Provider's reasonable opinion the new owner of Subscriber: (i) is a competitor of such Provider; or (ii) presents a substantial risk to such Provider's reputation, Intellectual Property Rights, or ability to collect payment hereunder. If a Provider elects not to exercise the foregoing termination right, any successor-in-interest to the applicable Agreement as a result of the change of control shall assume all rights and obligations of Subscriber under such Agreement and shall be responsible for adhering to the terms thereof. The applicable Provider may assign all or part of its rights and obligations under an Agreement to any of its Affiliates or to any entity which succeeds to all or substantially all of the assets and business of such Provider, provided that, in the case of any such assignment by such Provider, the assignee agrees in writing to assume the obligations under, and to be bound by the provisions of, such Agreement that have been assigned. On the effective date of any valid assignment pursuant to this Section 14(d), the assignor shall be released from all obligations and liabilities arising under the applicable Agreement or, in case of a partial assignment by the applicable Provider, from all obligations and liabilities arising from the parts of such Agreement that have been assigned.
- e) Entire Agreement; Modification or Amendment. This DSA, taken together with (i) each Product Activation Form, (ii) applicable Additional Terms, if any, (iii) applicable Additional Agreements, if any, (iv) any applicable Annexes, and (v) any EULA, if any, in each case, entered into with a specified Provider, represents the entire agreement between Subscriber and such Provider with respect to the subject matter thereof and supersedes all previous agreements, representations, discussions, understandings or writings between such parties with respect to such subject matter. In the event of a conflict or inconsistency between the terms of this DSA and the terms of any Product Activation Form or Annex, this DSA shall prevail unless such Product Activation Form or Annex expressly provides otherwise. The Providers may amend this DSA at any time by posting amendments on the Providers' website at [www.ice.com](http://www.ice.com) or sending email notice to the applicable Subscriber Administrator(s), and any such amendments, including fee increases (subject to Section 7(a)), will be prospectively binding on Subscriber effective ten (10) days from the date of such posting. Notwithstanding the foregoing, with respect to any such amendments that are likely to materially and adversely affect Subscriber or its rights or obligations under an Agreement, (i) the applicable Provider will provide thirty (30) days' prior notice, by email to the Subscriber Administrator or by other direct communication with Subscriber and (ii) Subscriber, within thirty (30) days from the date of the notification of such amendment, provide the applicable Provider with no more than three (3) months' written notice of Subscriber's termination of the applicable Agreement. In the absence of any Subscriber notice of termination, Subscriber's use of the applicable Services after the effective date of any such amendment shall constitute Subscriber's ratification of, and agreement to, any such amendment. If a Provider elects to require Subscriber to acknowledge and agree to an amendment, such amendment will not become effective until Subscriber has done so in the manner specified by such Provider.



- f) Compliance with Law. The applicable Provider and Subscriber will comply with any and all laws, rules, regulations or orders applicable to Subscriber's receipt of and use of the Services.
- g) Authority and Binding Effect. The parties to each Agreement represent and warrant that they have all necessary power and authority to execute and perform such Agreement, and such Agreement is a legal, valid and binding agreement, enforceable against each party in accordance with its terms.
- h) Survival. Sections 3(d), 5, 6, 7(a), 7(c), 9(c), 10, 11, 12, and 14 of this DSA; Section 4(e) of Annex A of this DSA; and Section 4 of Annex B of this DSA shall survive any termination of any Agreement. It is further acknowledged and agreed that if Subscriber continues to receive the applicable Services after the expiration or other termination of an Agreement, including during a renewal negotiation, Subscriber's continued access to and use of such Services shall remain subject to the terms and conditions of the applicable Agreement. For the avoidance of doubt, the preceding acknowledgement in no way serves to grant Subscriber an extension to its license under the applicable Agreement or any post-termination rights to use the Services.
- i) Governing Law. Unless otherwise specified in a Product Activation Form or Annex, each Agreement is deemed entered into in New York, New York and shall be governed and construed in all respects by the laws of the State of New York, without giving effect to principles of conflict of law. The parties to each Agreement and their successors and assigns irrevocably consent to the exclusive jurisdiction of any courts located in the State of New York for the resolution of any disputes arising from or related to such Agreement.
- j) Headings. The headings in this DSA are intended for convenience of reference and shall not affect its interpretation.
- k) Severability. If any provision of an Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of such Agreement shall not in any way be affected or impaired thereby.
- l) Independent Contractors. Subscriber and each Provider are independent contractors, and nothing in any Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties thereto. Neither party to any Agreement is an agent or representative of the other or is authorized to make any warranties or assume or create any other obligations on behalf of the other.
- m) Counterparts. Any Product Activation Form may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall (together with this DSA and any applicable Annexes, Additional Terms, Additional Agreements, and EULA) constitute one agreement binding on the parties thereto.



## ANNEX A – ICE CHAT INSTANT MESSAGING TERMS AND CONDITIONS

Where Subscriber utilizes the ICE Chat service described in paragraph 1 (“ICE CHAT”) the following terms in this Annex A shall be incorporated into and form part of the applicable Agreement and, in the event of conflict with any other terms of such Agreement, shall prevail over such terms. Reference to “ICE IM” or “ICE Instant Messaging” in a Product Activation Form shall mean ICE CHAT.

1. Functionality. ICE CHAT is an instant messaging service and software made available by Provider for use by the financial and derivatives industry and physical commodities markets industry participants. ICE CHAT integrates with other instant messaging services.
2. Fees. Provider may charge Subscriber for certain ICE CHAT services, which will be set forth in a Product Activation Form with a schedule of the relevant charges and/or fees.
3. Regulatory and Other Matters.
  - a) All transactions negotiated or facilitated utilizing ICE CHAT will be settled directly between Subscriber and the relevant counterparty in accordance with any separate agreements between Subscriber and such counterparty.
  - b) ICE CHAT is not (i) a trading facility and does not function as a trading facility within the meaning of Section 1a of the Commodity Exchange Act (“CEA”), (ii) a broker-dealer, exchange or alternative trading system for purposes of the Securities Exchange Act of 1934, as amended, or (iii) an entity or person in any jurisdiction outside of the United States of America having qualifications similar to the qualifications referenced in Sections 3(i) and (ii) of this Annex.
  - c) ICE CHAT is not (i) a trading venue, multilateral system or systematic internaliser within the meaning of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018, (ii) arranging deals in investments within the meaning of article 25 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544, (iii) a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000, (iv) a trading venue, multilateral system or systematic internaliser, or carrying on the reception and transmission of orders in relation to one or more financial instruments, within the meaning of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, or (v) otherwise carrying on a regulated activity in contravention of the general prohibition under section 19 of the Financial Services and Markets Act 2000.
4. Subscriber’s Agreements and Covenants.
  - a) Subscriber shall not utilize ICE CHAT for the trading, sale, purchase, disposition or promotion of securities (as defined in Section 2 of the Securities Act of 1933, as amended), or swaps or exchange-traded options or futures (“contracts of sale of a commodity for future delivery”, as regulated by the Commodity Futures Trading Commission under the CEA), and Subscriber agrees not to participate in any securities or exchange-traded options or futures transactions using ICE CHAT. Notwithstanding the foregoing, the ICE CHAT environment may be utilized by Subscriber to negotiate off-exchange trades of options, futures, forwards or spots, which may be submitted for registration as a trade on an exchange (subject to Subscriber and the Provider’s compliance with applicable law). Where a trade is so submitted for registration on an exchange, the Subscriber shall be bound by and comply with the rules of any applicable



exchange and clearing house, which in the case of an ICE Exchange shall include the rules, regulations or procedures of that ICE Exchange and its clearing house.

- b) Subscriber shall not utilize ICE CHAT to post or distribute any content that contains explicit or graphic descriptions or accounts of sexual acts or that is threatening, abusive, harassing, defamatory, libelous, deceptive, racist, fraudulent, invasive of another person's privacy, tortious or that contains unsubstantiated rumors or intentional misrepresentations. Subscriber shall not post or distribute any content via ICE CHAT unless Subscriber owns such content or otherwise has obtained the right to post or distribute such content. Subscriber shall not transmit junk mail, chain letters spam or unsolicited mailings via ICE CHAT and shall not use ICE CHAT to transmit instructions regarding illegal activities.
- c) Subscriber acknowledges and agrees that it is solely responsible for all communications and interactions sent by Subscriber or its Authorized Users as well as for verifying the accuracy and compliance of all Subscriber generated content and of all third-party content posted or distributed via ICE CHAT. Subscriber acknowledges and agrees that Provider has the right to record and analyze all ICE CHAT communications for security purposes, for investigating and addressing compliance with this Agreement, for legal compliance, and for purposes of providing, improving, developing, and enhancing current and future Services.
- d) If Subscriber becomes aware of any violation of these ICE CHAT terms and conditions, Subscriber shall notify Provider.
- e) Subscriber acknowledges and agrees that it is responsible for any content it, its Affiliates or their respective Authorized Users post or distribute via ICE CHAT and any consequences that arise out of the posting or distribution of such content. NEITHER PROVIDER NOR ANY OF ITS AFFILIATES ARE RESPONSIBLE FOR THE CONSEQUENCES OF POSTING OR DISTRIBUTING ANY PERSONAL OR OTHER INFORMATION VIA ICE CHAT.
- f) Subscriber further acknowledges and agrees that each of its Authorized Users will be required to enter into an end user license agreement with Provider (the "EULA"), as a condition to its access to and use of ICE CHAT and ICE Connect. The EULA shall be in addition to, and shall not derogate from the provisions of the applicable Agreement and of Subscriber liabilities thereunder, including for any action by or content posted or distributed by an Authorized User.



## ANNEX B – ICE OPTIONS ANALYTICS TERMS AND CONDITIONS

Where Subscriber utilizes ICE Options Analytics the following terms in this Annex B shall be incorporated into and form part of the applicable Agreement and, in the event of conflict with any other terms of such Agreement, shall prevail over such terms.

1. ICE Options Analytics Functionality and Description. ICE Options Analytics, which may be referred to as “ICE IOA”, is an options pricing and risk management system that integrates with other Software Services, such as WebICE and ICE CHAT, to provide option valuations for price quotes on the electronic screen or by individual contacts over instant messenger. For the purposes of this Annex B, ICE Options Analytics includes all associated computer software, media and printed materials, to include any online or electronic documentation, provided by Provider, as well as any information relating to Subscriber’s transactions and position details imported into ICE Options Analytics by Subscriber or a third party on Subscriber’s behalf.
2. Fees. Provider may charge Subscriber for certain ICE Options Analytics services, and at the request of Subscriber, a Product Activation Form with a schedule of the relevant charges and/or fees will be provided by Provider.
3. Third-Party Software Developer. Subject to Provider’s prior written consent, Subscriber may engage the services of a third-party software developer or other service provider (“TSP”) in order to develop an interface product (the “Interface Product”) for the purpose of integrating ICE Options Analytics with Subscriber’s internal systems (the “Integration Work”). A TSP working on Subscriber’s behalf may be provided with the use of ICE Options Analytics for the sole purpose of performing the Integration Work as necessary to develop the Interface Product, provided that prior to the commencement of any Integration Work, Subscriber shall inform the TSP and the TSP shall agree in writing, of which both Subscriber and Provider are named beneficiaries, that (i) all elements of ICE Options Analytics shall be treated as “Confidential Information” pursuant to terms substantially similar to those of Section 12 of the DSA; (ii) the TSP shall use ICE Options Analytics only as necessary to perform the Integration Work; and (iii) the TSP shall have no right to use ICE Options Analytics, the Integration Work, or any components thereof for any purpose other than in connection with developing the Interface Product. To the extent that Subscriber shall use a TSP to develop the Interface Product, Subscriber agrees that it shall remain entirely responsible for the acts and omissions of the TSP, as if such acts or omissions were Subscriber’s own. Subscriber further agrees that Provider shall not be liable to Subscriber for any failures of ICE Options Analytics or the Interface Product caused, in whole or in part, by any Integration Work performed by the TSP.
4. DISCLAIMER. ICE OPTIONS ANALYTICS IS INTENDED AS AN AID FOR DETERMINING VALUES ON VARIOUS FINANCIAL INSTRUMENTS, INCLUDING BUT NOT LIMITED TO, FUTURES, SWAPS, OPTIONS AND OTHER DERIVATIVES (COLLECTIVELY, THE “INSTRUMENTS”) AND FOR REPORTING VARIOUS RISKS ASSOCIATED WITH TRADING SUCH INSTRUMENTS. SUBSCRIBER UNDERSTANDS AND ACKNOWLEDGES THAT SUCH ACTIVITIES ARE INHERENTLY RISKY, AND THAT ICE OPTIONS ANALYTICS MAY CONTAIN OR PRODUCE ERRORS THAT COULD MISREPRESENT RISK EVALUATIONS OR INSTRUMENT VALUATIONS. IN NO EVENT SHALL PROVIDER OR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES RESULTING FROM ANY TRADING OR RELATED ACTIVITY.
5. Conflict with ICE Options Analytics LLC Agreement. Solely with respect to Subscriber’s use of ICE Options Analytics and not with respect to Subscriber’s use of any other Services, if and to the extent Subscriber has entered into a separate agreement with Provider’s affiliate ICE Options Analytics LLC relating to Subscriber’s use of ICE Options Analytics and the terms of such agreement conflict with the terms of the applicable Agreement, the terms of such other agreement between Subscriber and ICE Options Analytics LLC shall control with respect to Subscriber’s use of ICE Options Analytics.





## ANNEX C – DESKTOP DATA TERMS

Where Subscriber utilizes the Data Publisher (as defined below) to transfer Data outside of the Software Services the following terms in this Annex C shall be incorporated into and form part of the applicable Agreement and, in the event of conflict with any other terms of such Agreement, shall prevail over such terms.

1. Functionality and Description. These Desktop Data Terms relate to certain interfaces (each a “Data Publisher”) that are created by Provider for the express purpose of the transfer of an Insubstantial Amount (as defined below) of Data, from the Services to other applications to be accessed by a single Authorized User only. The Data Publisher and the Desktop Data (as defined below) shall be deemed to be a part of the Services under the Agreement. Any capitalized terms not otherwise defined in these Desktop Data Terms shall have the meanings ascribed to them in the Agreement.

Subject to these Desktop Data Terms, Provider hereby grants Subscriber the right to permit Authorized Users to transfer Data from the Data Publisher to certain applications, including, but not limited to, Microsoft Excel<sup>1</sup>, Python, VBA, R, or Matlab (collectively, the “Desktop Applications”). Any Data transferred from the Data Publisher to the Desktop Applications and any data calculated using such Data, shall be deemed to be “Desktop Data”.

2. Subscriber Agreements and Covenants. Subscriber acknowledges and agrees that Subscriber is solely responsible for:
  - (a) ensuring that the Desktop Data may only be accessed, manipulated, viewed or stored on a Desktop (as defined hereafter) and only by the same individual Authorized User that transferred such Desktop Data (including, without limitation, storing Desktop Data on a device other than the Desktop or sharing Desktop Data internally or externally with any other individuals, whether Authorized Users or not). A “Desktop” shall mean a device for which Provider may request a unique user I.D., typically a personal computer, and an associated display or displays, designed for and strictly utilized for the non-concurrent viewing or use by a single Authorized User only;
  - (b) ensuring that the Desktop Data is not used in any application that is (i) designed to share data with other individuals, e.g. trading, risk or portfolio management systems or (ii) a non-display application, e.g. any automated algorithmic trading application or feed; and
  - (c) complying with all applicable terms of Third-party Providers with respect to the Desktop Data, including without limitation any and all applicable Third-party Provider fees, whether or not such fees are billed to the applicable Provider or directly to Subscriber by the Third-party Providers, that result from Subscriber’s access to or use of the Desktop Data. Prior to allowing any Authorized User to access Desktop Data, Subscriber and Subscriber Administrator must ensure that such access is permitted by and conforms with the applicable Third-party Provider terms. Subscriber shall comply with any further conditions, restrictions, or limitations imposed in such Third-party Provider terms with respect to Subscriber’s use of the Desktop Data regardless of whether Subscriber has been enabled by Provider for access to the Desktop Data of a Third-party Provider. These additional terms may include, but are not limited to, limits or prohibitions with respect to Subscriber’s right to (i) derive or create data from the Desktop Data or modify the Desktop Data; (ii) access more than a de minimis amount of the Desktop Data; (iii) access the Desktop Data in a non-display manner, including in certain semi-automated and fully automated manners; (iv) use the Desktop Data in a third party or proprietary application, including Desktop Applications, or (v) permit the Desktop Data to be accessed by professional Authorized Users.

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<sup>1</sup> Microsoft Excel is a registered trademark of Microsoft Corporation or its affiliates in the United States and/or other countries.



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