

IntercontinentalExchange

PARTICIPANT AGREEMENT

This Agreement ("Agreement") sets out the terms on which IntercontinentalExchange, Inc. ("ICE"), which owns and operates an electronic system (the "Exchange") for the (i) execution ("Execution") of transactions ("Exchange Transactions" or "Transactions"), (ii) the matching ("Confirmation") of previously executed trades ("Trade Confirmations" or "Trades") with other Participants, and (iii) the use of other services ("Other Services") involving physical commodities and derivative products on such commodities (collectively, the "Products"), has agreed to provide the party identified below ("Participant") with access to the Exchange. For the purposes of this Agreement, Trades submitted by Participant for Confirmation or Other Services may include either or both Exchange Transactions (executed on the Exchange) and Non-Exchange Transactions (executed on other exchanges, systems, or by non-electronic means). Other Services include (i) the matching ("Broker Confirmation") of Trade data with a third party ("Broker") responsible for arranging the Trade, (ii) the acceptance and processing ("Trade Give-Up") of a Non-Exchange Transaction submitted by a Broker on Participant's behalf and with Participant's authorization for the purposes of giving the Non-Exchange Transaction up to a clearing organization, (iii) the submission of data ("Data Submission") for inclusion in market data services, and (iv) the acceptance and processing of Acting for Principal ("AFP") orders (the "AFP Service") (in which the Broker acts for and trades in the name of the Participant principal) for Exchange Transactions submitted by a Broker on Participant's behalf and with Participant's authorization in accordance with this Agreement.

- 1) **ACCESS TO EXCHANGE.** ICE hereby grants Participant a non-exclusive, non-transferable, revocable license to access the Exchange as it may exist from time to time and to utilize any hardware, software, systems and/or communications links furnished by ICE 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 post bids, offers and requests for quotations (and responses to any such requests) for Exchange Transactions in the Products, to enter into Exchange Transactions with other participants, to match and confirm Trades with other participants, and to use the Other Services on the Exchange.
- 2) **TERMS OF ACCESS.** This Agreement, taken together with (i) the Service and Pricing Schedules (the "Schedules") (the current versions of which are attached hereto as Annex A), (ii) any other Annexes to this Agreement (excluding Annex B) (iii) the Transaction Procedures Guide governing Execution, (iv) the Confirmation Procedures and Product Guide governing Confirmation, (v) the Broker Confirmation Procedures Guide governing Broker Confirmation, (vi) the Trade Give-Up Procedures Guide governing Trade Give-Up, (vii) the Market Data Submission Procedures and Product Guides governing Data Submission, and (viii) the AFP Procedures Guide governing the AFP Service (the current version of the above referenced guides are posted on the Exchange website), are collectively referred to herein as the "Terms" and will govern Participant's access to and use of the System and the Exchange and any and all Exchange Transactions, Trade Confirmations, and Other Services utilized by Participant. With the exception of the Confirmation Procedures Guide and the Broker Confirmation Procedures Guide, ICE may amend the Terms at any time by posting amendments on the Exchange, and any such amendments will be prospectively binding on Participant, provided that ICE will provide prior notice of any such amendments on the Exchange and provided further that ICE will provide at least two weeks' prior notice, through electronic or other direct communication with Participant, of any such amendments that are likely to materially and adversely affect Participant or its rights or obligations hereunder. Participant's use of the Exchange after the effective date of any such amendment shall constitute its ratification of and agreement to any such amendment. If ICE elects to require Participant to acknowledge and agree to an amendment, such amendment will not become effective until Participant has done so in the manner specified by ICE. The Confirmation Procedures Guide and the Broker Confirmation Procedures Guide are exempt from this amendment process and must be amended according to the terms stipulated therein.
- 3) **PARTICIPANT'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Participant hereby represents, warrants and covenants as follows:

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- a) Unless and until Participant notifies ICE otherwise, Participant is and will continue to be: (i) 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") to the extent that Participant engages in Execution of Exchange Transactions; and (ii) an "eligible contract participant" as defined in Section 1a(12) of the CEA to the extent that Participant engages in Trade Give-Up. A summary of the CEA definitions of the terms "eligible commercial entity" and "eligible contract participant" 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 will enter into Exchange Transactions solely as principal, and any futures commission merchant with access to the Exchange through a clearing relationship with Participant acknowledges that it is not permitted to execute Exchange Transactions on behalf of Participant.
- c) Participant acknowledges that the Exchange, the System and all information and content (including price and trading data) displayed and distributed thereon or in any way related to Exchange Transactions, Trade Confirmations, or Other Services (such information or content and information derived therefrom being referred to collectively herein as "Exchange Data") are, except as set forth in the final sentence of this Section 3(c), the exclusive proprietary property of ICE constituting trade secrets. Participant has been granted a limited license to use the System, the Exchange, and the Exchange Data solely for the purposes set forth herein and Participant will have no other rights with respect to the System, the Exchange, or the Exchange Data. Without limitation of the foregoing, Participant will access and utilize the System, the Exchange, and the Exchange 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 Exchange, or any Exchange Data to any third party unless such third party is an affiliate of Participant or an ICE approved Authorized Agent as provided in Section 4 below. Participant agrees that it will not copy, modify, reverse engineer, reverse assemble or reverse compile the System or any of the Exchange Data displayed on or issued by the Exchange, that it will not distribute, rent, sell, retransmit, redistribute, release or license the System, any Exchange 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, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the Exchange Data, in any format, to any third party 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, Exchange Data obtained through Participant's access to the System. Notwithstanding the foregoing, it is understood and agreed that any and all data submitted to the Exchange by Participant (including but not limited to bids and offers for Exchange Transactions, Exchange Transactions from Execution, Trades to be matched for Confirmation or Broker Confirmation, and data from Other Services, such as Data Submission) and all information related to Transactions entered into by Participant through the Exchange (or in connection with the AFP Service, by a Broker under the authorization of and on behalf of Participant in accordance with this Agreement) as well as all Trade data submitted to the Exchange by a Broker on Participant's behalf for the purposes of Trade Give-Up, shall be the non-exclusive property of ICE and Participant, and that each party shall have the right to use, sell, retransmit or redistribute such information, subject to the provisions of Section 8 hereof.
- d) 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 Exchange, and the Exchange Data.
- e) Participant acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its accessing and utilizing the Exchange.
- f) Participant acknowledges that ICE may, in its sole discretion, with or without cause or prior notice to Participant, temporarily or permanently cease to operate the Exchange, temporarily or

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permanently cease to make certain Products or Transactions or Other Services or Exchange Data available or suspend, terminate or restrict Participant's access to and utilization of the Exchange. Participant acknowledges that its access to and utilization of the Exchange may be monitored by ICE for its own purposes (including, without limitation, for purposes of monitoring levels of activity in categories of Exchange Transactions, Trade Confirmations, and Other Services and for purposes of maintaining the functional and operational integrity of the System and for purposes of complying with applicable laws and regulations) and not for the benefit of Participant. The Confirmation Procedures Guide and the Broker Confirmation Procedures Guide set forth additional terms and conditions under which ICE may respectively temporarily or permanently suspend each of those Services.

- g) 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. If Participant has authorized its Clearer to enable any Broker to submit Non-Exchange Transactions on the Participant's behalf for the purpose of Broker Confirmation and/or Trade Give-Up or authorized any Broker under the AFP Service to enter or execute orders for Exchange Transactions on its behalf, Participant represents and warrants that such Broker is authorized to act on behalf of Participant in connection with the use of such Services and authorizes and instructs ICE to comply with any instructions submitted by such Broker on behalf of Participant. Participant further represents, warrants, and agrees that, by authorizing and enabling such Broker to act on its behalf through the System, Participant shall be bound by any actions taken by that Broker on behalf of Participant through the System.
- h) Participant agrees to provide ICE with information related to Participant's use of the System and the Exchange that is reasonably requested by ICE, if such information is reasonably necessary in order to enable ICE to assess the identity of persons or entities accessing the System and the Exchange 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 8. Should Participant refuse to provide information, or if the information demonstrates a potential violation of the terms and conditions of this Agreement, then ICE shall have the right, upon five (5) days notice, to conduct an on-site audit during regular business hours of Participant's compliance with this Agreement. ICE may inspect, among other things, any use of the System, the Exchange and the Exchange Data. ICE's right of inspection shall extend only so far as may be necessary to ensure compliance by Participant with the provisions of this Agreement.
- i) Participant acknowledges that the System and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Participant will (1) comply with all legal requirements established under these controls, (2) cooperate fully with ICE in any official or unofficial audit or inspection that relates to these controls and (3) 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 economic sanctions or export control laws of the United States, which would be prohibited under the laws or regulations of the United States, any Person that resides or has a place of business in any such country or territory, or any Person that otherwise appears on any U.S.-government provided list of known or suspected terrorists or terrorist organizations. A "Person" shall mean an individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other entity.
- j) Participant acknowledges that it is aware that ICE makes order flow incentive payments to Brokers in connection with Trade Give-Up processing. The rates presently in effect with respect to such order flow incentive payments as of the date of this Agreement are as set forth on Annex A, and may be amended by ICE in accordance with the terms of this Agreement from time to time. In certain circumstances, ICE may make the continued availability of the order flow

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incentive payment program contingent on Brokers attaining certain volume levels with respect to Trade Give-Ups. Upon written request of Participant, ICE shall make available to Participant information regarding any order flow incentive payments paid by ICE to Participant's Brokers in connection with brokerage services provided to Participant by such Brokers during the three (3) – year period preceding the date of such written request. Additional information regarding ICE's order flow incentive payment program may be found from time to time at <http://www.theice.com>.

- 4) **USER IDs AND PASSWORDS.** ICE, after receiving an executed copy of this Agreement 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 or ICE-approved third party agents designated as its administrator(s) with respect to Participant's use of the System ("Participant User Administrator"), one or more user IDs and passwords (collectively, the "Passwords") for use exclusively by employees or ICE-approved third party agents ("Authorized Agents") of Participant or a Participant affiliate that are properly authorized to access the Exchange on behalf of Participant. In no event will Participant provide ID's or Passwords to any third parties that compete with ICE, including, without limitation, to brokers or to other market intermediaries. The initial Participant User Administrator(s) for Exchange Transactions, if applicable, and for Trade Confirmations and Broker Confirmations, if applicable, are identified, respectively, on the signature page hereof and Participant will notify ICE promptly of any change in its Participant User Administrator(s). Participant will be solely responsible for controlling and monitoring the use of the Passwords, will provide the Passwords only to its Authorized Agents, and will not provide the Passwords to any third party other than an Authorized Agent. Participant will immediately notify ICE of any unauthorized disclosure or use of the Passwords or access to the Exchange or of the need to deactivate any Passwords. Participant acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords (except through the fault or negligence of ICE), including the Execution of Transactions, the Confirmation of Trades, and the use of Other Services, whether or not such actions were authorized. Participant will only use the Passwords to access and use the Exchange from the jurisdictions specified by Participant and accepted by ICE. The Participant User Administrator shall be responsible for all communications between ICE and Participant and any notices or other communications sent to the Participant User Administrator by ICE 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 30 days' written notice to the other, provided that this Agreement shall remain in effect with respect to any Exchange Transactions, Trade Confirmations, Broker Confirmations, Trade Give-Ups, and AFP Service for Exchange Transactions effected prior to such termination and provided that ICE complies with any additional termination requirements governing the Confirmation service as stipulated in the Confirmation Procedures Guide and governing the Broker Confirmation service as stipulated in the Broker Confirmation Procedures Guide. Termination of this Agreement shall terminate all services provided by ICE to Participant including Execution, Confirmation, and Other Services. 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) **EXECUTION OF TRANSACTIONS.**
 - a) Subject to Section 6(e), upon the Execution of a binding Transaction in accordance with the Terms, Participant agrees that: (i) it will be obligated to pay to ICE the commissions due on such Transaction, in accordance with the Schedules as then in effect, regardless of whether the Transaction is performed, settled or otherwise completed by Participant and its counterparty; and (ii) the resulting Transaction will constitute a legally binding obligation of Participant, with respect to its counterparty, to complete the Transaction in accordance with its terms and subject to the terms of any master or other applicable agreements between Participant and its counterparty, provided that ICE shall have no involvement in and no responsibility or liability for any matters related to the Transaction or the completion or documentation of the Transaction subsequent to its Execution through the Exchange, including but not limited to the creditworthiness of any participant, all of which shall be the sole responsibility of Participant and/or its counterparty, as applicable. Participant acknowledges and agrees that the counterparty to any Transaction may

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rely on Participant's agreements hereunder as to the binding nature of such Transaction and agrees that the counterparty may directly enforce Participant's obligations under such Transaction against Participant.

- b) Participant agrees that Transactions Executed through the Exchange shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be in "writing". Participant will not contest the legally binding nature, validity or enforceability of any Transaction Executed through the Exchange based on the fact that it was entered and Executed electronically and expressly waives any and all rights it may have to assert any such claim.
 - c) All commissions and other charges and fees incurred by Participant hereunder in any calendar month shall be invoiced by ICE to Participant based on the Schedules, as amended from time to time and as set forth in the Terms. ICE will provide Participant with an invoice which states the amount owed by Participant, including any commissions, other charges or related taxes, which will be due and payable in the currency, timeframe, and manner specified in the Schedules. Late payments will bear interest after the due date at a rate per annum of interest equal to the Prime Rate (as published in the Wall Street Journal) plus 1.5%, to the extent that such rate shall not exceed the maximum rate allowed by applicable law.
 - d) Participant shall be liable for all taxes and duties (other than franchise and income taxes owed by ICE) arising out of this Agreement or any Exchange Transactions, Trade Confirmations, or Other Services utilized by Participant through the Exchange, including, without limitation, taxes and duties levied by non-U.S. jurisdictions.
 - e) ICE operates the Exchange as an Exempt Commercial Market as defined in the CEA and is subject to obligations regarding the reporting of trade and price information to regulators and to the marketplace. In addition, ICE seeks to facilitate trading in its markets in accordance with the principles articulated in the Participant Code of Conduct attached as Annex H. ICE therefore reserves the right to adjust or cancel any transaction that ICE has determined to be "off market" or to have resulted from a trading error in accordance with the "ICE Error Trade Policy" established by ICE and amended from time to time. The ICE Error Trade Policy, as amended, will be posted on the Exchange website.
 - f) Participant acknowledges that excessive levels of message traffic sent to the Exchange by Participant can negatively impact System performance, and acknowledges that ICE reserves the right to, if necessary, suspend Participant's access to the Exchange pursuant to this Section 6(f) and/or charge Participant a fee for excessive System messaging in accordance with the "ICE OTC Volume Ratio Policy" as established by ICE and as amended from time to time. The OTC Volume Ratio Policy will be posted on the Exchange website.
 - g) Participant acknowledges and agrees that Trade Give-Up transactions are not entered into on the Exchange and are not entered into in reliance on Section 2(h)(3) of the CEA.
- 7) **LIMITATION OF LIABILITY; INDEMNITY.**
- a) PARTICIPANT ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT ICE MAKES NO WARRANTY WHATSOEVER TO PARTICIPANT AS TO THE SYSTEM, THE EXCHANGE, OR ANY OTHER SERVICES, EXPRESS OR IMPLIED, AND THAT THE SYSTEM, EXCHANGE, AND ANY OTHER SERVICES ARE PROVIDED ON AN "AS IS" BASIS AT PARTICIPANT'S SOLE RISK. ICE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ICE NOR ITS 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 EXCHANGE, OR ANY OTHER SERVICES (ii) FOR DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, (iii) FOR THE CREDITWORTHINESS OF ANY OTHER PARTICIPANT, OR (iv) FOR THE ACTS OR OMISSIONS OF ANY BROKER AUTHORIZED

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WITHIN THE SYSTEM BY PARTICIPANT TO UTILIZE THE SERVICES ON BEHALF OF PARTICIPANT. ICE SHALL HAVE NO DUTY OR OBLIGATION TO VERIFY ANY INFORMATION DISPLAYED ON THE EXCHANGE. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE EXCHANGE DOES NOT AND SHALL NOT SERVE AS THE PRIMARY BASIS FOR ANY DECISIONS MADE BY PARTICIPANT AND THAT ICE IS NOT AN ADVISOR OR FIDUCIARY OF PARTICIPANT.

- b) Subject to Section 7(c) of this Agreement, Participant shall indemnify, protect, and hold harmless ICE, its directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including attorney's fees) resulting from or arising out of (i) any act or omission by any person obtaining access to the Exchange through the Passwords (other than through the fault or negligence of ICE), whether or not Participant has authorized such access, and (ii) any act or omission of any Broker acting under authorization and on behalf of Participant in connection with the use of the Services.
 - 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 7(a), in the event that ICE is determined to be liable to Participant for any cause, Participant expressly agrees that in entering into this Agreement, ICE's aggregate liability, for all causes of action, will not exceed the total commissions, fees, and other amounts (excluding any applicable taxes or duties) paid to ICE by Participant in the previous six months from the date of the occurrence of the liability.
- 8) **CONFIDENTIALITY.**
- a) Any and all non-public information in any form obtained by either party or its employees arising out of or related to the provision or use of the System or the Exchange, including but not limited to trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto and Exchange 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 or its agents) or to use such information for any purpose whatsoever other than as contemplated by the Terms and to advise each of its employees, affiliates and agents who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential in accordance with this Section 8.
 - b) The restrictions in Section 8(a) shall not apply to information which: (i) is in or becomes part of the public domain other than by disclosure by such party in violation of this Agreement; (ii) is known to or obtained by such party previously without an obligation of confidentiality; (iii) is independently developed by such party 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; (vi) is submitted by Participant (or in connection with the AFP Service for Exchange Transactions, submitted by a Broker on Participant's behalf) and displayed by ICE on the Exchange or otherwise distributed or sold by ICE, regarding bids, offers, Exchange Transactions, Trade Confirmations, Broker Confirmations, Trade Give-Ups, or data from Data Submission in accordance with its standard policies and procedures (provided that such displays and distributed or resold information will not identify Participant or, if applicable, Broker, by name, unless ICE is explicitly directed to do so by Participant and only then for the express purposes set forth in and under conditions agreed to in the Terms); or (vii) any and all information, including without limitation bids, offers, requests for quotation, and Transactions, in non-anonymous crude oil and refined product markets ("Platts Windows Markets") used as the basis for price assessments by Platts, a McGraw-Hill subsidiary, in connection with its publication of prices and price indices. Participant specifically acknowledges that, with regard to any activity in Platts Windows Markets: (i) Participant's identity and, if applicable, its Broker's identity, will be displayed publicly on the Exchange and (ii) its bids,

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offers, requests for quotation, and Transactions may be reported to the public, including regulators, by ICE or Platts, and taken into account by Platts in determining publicly reported prices or price indices. For the avoidance of doubt, these non-anonymous Platts Windows Markets are in addition to, and will be clearly differentiated from, anonymous and confidential crude oil and refined product markets that are also available for trading on the Exchange.

- c) In the event that ICE receives a subpoena, data request, or order of court in any private-party litigation requesting confidential information of Participant, ICE will promptly notify Participant of such requirement or request to the extent it is legally permitted to do so. ICE will make reasonable commercial efforts to cooperate with Participant to enable Participant to narrow the scope of the required or requested disclosures or to seek a protective order or other similar relief. If requested by Participant, ICE will formally request that any governmental entity treat the information provided as confidential, to the extent it is not already treated as such, pursuant to the U.S. Freedom of Information Act or pursuant to an equivalent or comparable law or regulation, if applicable.
 - d) Any access to Exchange Data provided by ICE 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 ICE's obligations with respect to Exchange Data under the Terms, except to the extent otherwise agreed directly between Participant and such affiliate.
- 9) **NOTICES.** All notices delivered with respect to this Agreement shall be in writing and either (i) hand delivered or forwarded by registered or certified mail; or (ii) sent via electronic mail, in either case to the relevant address provided by a party for such purpose.
 - 10) **NO THIRD PARTY BENEFICIARY.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement or imposing any obligations on ICE or Participant to persons not a party to this Agreement other than (i) the right of a counterparty (Participant) to a Transaction under Section 6(a) of this Agreement, (ii) the right of another counterparty (Participant) with regard to a Confirmation under the terms of the Confirmation Procedures Guide, (iii) the right of another party (Broker) with regard to a Broker Confirmation under the terms of the Broker Confirmation Procedures Guide, (iv) the right of another party (Broker) with regard to a Trade Give-Up under the terms of the Trade Give-Up Procedures Guide, or (v) the right of another party (Broker) with regard to an Exchange Transaction under the terms of the AFP Procedures Guide.
 - 11) **FORCE MAJEURE.** Neither ICE nor Participant shall be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, power failure or any other cause beyond its reasonable control.
 - 12) **WAIVER.** No waiver by either party of any default by the other in the performance of any provisions of this Agreement shall operate as a waiver of any continuing or future default, whether of a like or different character.
 - 13) **ASSIGNMENT.** This Agreement may not be assigned by either party without the other party's express prior written consent; provided, however, that 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 (as it 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.
 - 14) **GOVERNING LAW.** Unless otherwise specified in an annex, this 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.

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

Date: _____, 20__

IntercontinentalExchange, Inc.

2100 River Edge Parkway, 5th Floor

Atlanta, Georgia 30328, USA

Full Legal Name of Participant

Address: _____

Signature: _____

Name: Charles A. Vice

Title: President

Signature: _____

Name:

Title: _____

Note: To gain Execution access to any of these markets on the ICE electronic trading platform, or to participate in Trade Give-Up activities, Participant must also provide the information requested on the following pages.

ICE Markets to which Participant requests trading access:

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

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PARTICIPANT QUALIFICATION FOR EXECUTION OR TRADE GIVE-UP ACCESS ON THE EXCHANGE

In order to be eligible for Execution (i.e. trading) access on the ICE electronic trading platform, you must either (1) be an eligible contract participant ("ECP") **AND** an eligible commercial entity ("ECE"), as these terms are defined in the U.S. Commodity Exchange Act ("CEA") and as described in Annex B to this Agreement, or (2) qualify under CFTC orders expanding the definition of ECE for U.S. floor brokers and floor traders, or U.K. based members of ICE Futures, as described in Annex B to this Agreement. In order to be eligible to participate in Trade Give-Up activities on the ICE electronic trading platform, you need only be an ECP.

EXECUTION (TRADING) ACCESS

PLEASE INDICATE BELOW THE CATEGORY OF ECP AND ECE IN WHICH YOU ARE INCLUDED, BASED ON THE DESCRIPTIONS IN ANNEX B. ALTERNATIVELY, PLEASE INDICATE BELOW THE CATEGORY OF U.S. FLOOR BROKER/U.S. FLOOR TRADER OR ICE FUTURES MEMBER IN WHICH YOU ARE INCLUDED, BASED ON THE DESCRIPTIONS IN ANNEX B.

ALTERNATIVE 1 -- PARTICIPANT IS AN ECP AND AN ECE (IN ORDER TO QUALIFY UNDER THIS CRITERION, YOU MUST CHECK THE BOX BELOW AND SPECIFY THE CATEGORY OF ECP AND ECE FOR WHICH THE PARTICIPANT QUALIFIES).

<input type="checkbox"/>	<p>Participant represents that it is an Eligible Contract Participant (ECP) and Eligible Commercial Entity (ECE) as defined in the CEA and described in Annex B to the Agreement</p> <p><i>Category of ECP and ECE (from Annex B) for which Participant qualifies (Ex: Bank, Collective Investment Vehicle, etc.)</i></p> <hr/> <p>Is the Participant Engaged in Commercial Activity Related to Commodity? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is the Participant part of a group with aggregate total assets > \$100 million? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the Participant is a "Collective Investment Vehicle" that is not Engaged in Commercial Activity Related to Commodity, the Participant must satisfy one of the below financial ECE criteria. (Please check the box below for the criteria that is satisfied. This is only applicable to CIVs):</p> <ul style="list-style-type: none">- One of a group of funds with aggregate total assets > \$1 billion under common management <input type="checkbox"/>- 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 <input type="checkbox"/>
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ALTERNATIVE 2 – U.S. FLOOR BROKER, U.S. FLOOR TRADER OR U.K. BASED MEMBER OF ICE FUTURES (IN ORDER TO QUALIFY UNDER THIS CRITERION, YOU MUST CHECK THE SPACE PROVIDED BELOW AND INDICATE THE CATEGORY IN WHICH YOU ARE INCLUDED).

<input type="checkbox"/>	<p>Participant represents that it is a U.S. Floor Broker/U.S. Floor Trader/U.K. Based Member of ICE Futures as defined in the CEA and described in Annex B to the Agreement</p> <p><i>Category Under Which Participant Qualifies (Ex: U.S. Floor Trader; U.S. Floor Broker, U.K. Based Member of ICE Futures.)</i> _____</p> <p>In addition, please check the following boxes that apply to the Participant (all must be checked "Yes" to satisfy the ECE requirements):</p> <p>- Will the Participant be acting in a proprietary capacity? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>- Is part of the Participant's business acting as floor broker or floor trader on a designated contract market's open outcry market or performing a similar function in a designated contract market's electronic market (for a U.K. Based Member of ICE Futures, does the Participant meet and satisfy the current qualifying standards of a 'Professional Client' pursuant to COBS 3.5 of the UK Financial Services Authority ('FSA') Rules)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
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TRADE GIVE-UP ACCESS ONLY

PLEASE INDICATE BELOW THE CATEGORY OF ECP BASED ON THE DESCRIPTIONS IN ANNEX B.

<input type="checkbox"/>	<p>Eligible Contract Participant (ECP) as defined in the CEA and described in Annex B to the Agreement</p> <p><i>If you are an ECP only and are only utilizing the trade give up feature, please check the box at left and specify the Category of ECP (from Annex B) in which you are included (Ex: Bank, Collective Investment Vehicle, etc.)</i> _____</p>
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OTHER REQUIRED INFORMATION (EXECUTION & TRADE GIVE-UP) (Specify applicable categories)

<input type="checkbox"/>	<p>Listed or owned (51% or more) by a company that is listed on the following stock exchange:</p> <hr/> <hr/> <p><i>(Please identify name of parent company, if applicable.)</i></p>
<input type="checkbox"/>	Privately owned.
<input type="checkbox"/>	a Federal, state, or local authority.
<input type="checkbox"/>	<p>Registered with and/or regulated by one or more of the following agencies:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Canada - Alberta Securities Commission <input type="checkbox"/> Canada – British Columbia Securities Commission <input type="checkbox"/> Canada - Manitoba Securities Commission <input type="checkbox"/> Canada – Nova Scotia Securities Commission <input type="checkbox"/> Canada - Ontario Securities Commission <input type="checkbox"/> Canada - Quebec Securities Commission <input type="checkbox"/> Canada - Saskatchewan Securities Commission <input type="checkbox"/> Finland – Financial Supervisory Authority (FIN-FSA) <input type="checkbox"/> France – Autorité des Marché Financiers (AMF) <input type="checkbox"/> France – Comité des Etablissements de Crédit et des Entreprises <input type="checkbox"/> France – Commission Bancaire <input type="checkbox"/> France – Banque de France <input type="checkbox"/> Germany – Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) <input type="checkbox"/> Italy - Commissione Nazionale per le Società e la Borsa (CONSOB) <input type="checkbox"/> Netherlands – Netherlands Authority For the Financial Markets (AFM) <input type="checkbox"/> Norway - The Banking, Insurance and Securities Commission (Kredit Tilsynet) <input type="checkbox"/> Singapore - Monetary Authority of Singapore (MAS) <input type="checkbox"/> Sweden - The Swedish Financial Supervisory Authority (Finansinspektionen) <input type="checkbox"/> Switzerland – Swiss Financial Market Supervisory Authority (FINMA) <input type="checkbox"/> U.K. Financial Services Authority (FSA) <input type="checkbox"/> U.S. - Commodity Futures Trading Commission (CFTC via National Futures Authority - NFA) <input type="checkbox"/> U.S. – Federal Reserve (Office of the Controller of the Currency) <input type="checkbox"/> U.S. - Financial Industry Regulatory Authority (FINRA)

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Participant User Administrator for Transaction Execution:

(Required to gain access to the ICE electronic trading platform)

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Participant User Administrator for Trade Confirmation:

(Required to gain access to the eConfirm electronic confirmation system)

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Participant Designated Representatives for Market Mark Data Submission:

(Required to participate in the MPV Monthly Mark-to-Market Service)

First Representative:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Second Representative:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____