

DRAFT 10/24/11  
Rev. 2011-1  
(Release Date [            ], 2011)

**GLOBAL TRADE REPOSITORY FOR COMMODITIES (U.S.) LLC  
OPERATING PROCEDURES**

**1. Introduction**

Global Trade Repository for Commodities (U.S.) LLC (the "Company"), a New York limited liability company, has entered into User Agreements with various institutions that are potential users (each, a "User") of one or more services (each, a "Service") to be provided by the Company. The automated systems or other mechanisms through which the Company provides the Services are referred to herein as the "System".

As used in these Operating Procedures, the term "User" shall also include Third Party Submitters as defined in the Swap Data Repository Appendix to these Operating Procedures, except as provided therein or as the context may otherwise require.

**2. User Information; Non-Repudiation**

- a. The Company will maintain for the benefit of Users a database that (A) assigns to each User a unique alpha-numeric identifier and (B) groups Users into families (each, a "Family") as directed by the Users (through User Agreements or in such other manner as designated by the Company from time to time) that desire to be so grouped. (The Company may use for this purpose a uniform counterparty identifier or similar identifier provided or required by a regulator or provided by a third party acceptable to the Company.) Users may access the System through (i) computer-to-computer links ("Computer-to-Computer Links"), (ii) a secure Web front end (the "Web Front End"), or (iii) other means of access designated by the Company from time to time, in each case supported by or on behalf of the Company for the purpose, among possible others, of effecting electronic submission of records of eligible transactions, all in the manner and subject to the security arrangements established by the Company from time to time, as set forth in the Company's Applicable Publications (described below). The security arrangements established by the Company will include (a) means of determining whether particular records were submitted to the System through Computer-to-Computer Links established with a particular User or its Family or (b) access to the Web Front End by means of digital certificate(s) and password(s), or other secure identifiers, assigned to that User or its Family. Records submitted to the System (as described below) indicating a particular User as the submitting party (through an identifier referred to above) shall be conclusively presumed to have been duly authorized by the User whenever such records are so determined to have been submitted through Computer-to-Computer Links established with that User or its Family, or through access of the Web Front End by means of the digital certificate(s) and password(s), or other secure identifiers,

assigned to that User or its Family. If a User submits a record for another User that is a member of the same Family, the record shall be conclusively presumed to have been made on behalf of such other Family member and to have been duly authorized by such other Family member.

- b. Records submitted to the System (as described below) indicating a particular User as the submitting party (through an identifier referred to above) shall be conclusively presumed to have been duly authorized by the User, or in the case of a Third Party Submitter, the parties to the transaction submitted, whenever such records are so determined to have been submitted through Computer-to-Computer Links established with that User or its Family, or through access of the Web Front End by means of the digital certificate(s) and password(s), or other secure identifiers, assigned to that User or its Family.
- c. If a User submits a record for another User that is a member of the same Family, the record shall be conclusively presumed to have been made on behalf of such other Family member and to have been duly authorized by such other Family member.

The Company may designate certain documents as "Applicable Publications," which may include publications of message formats and messaging processes for Computer-to-Computer Links and of procedures for use of the Web Front End, publications of security arrangements, publications of further specifications for Services or the System and any other publications, forms or notices that the Company deems to be an Applicable Publication. Such Applicable Publications, as well as modifications to these Operating Procedures and other notices from time to time, will be announced to Users through the issuance of important notices (each, an "Important Notice") which will be made available to Users in accordance with the "Notices" section set forth under "Important Legal Information" below.

### 3. How the System Works

The System is intended to provide Users with certain Services, in each case as set forth in more detail in an appendix or supplement to these Operating Procedures.

- Transmission of Records from Users to the System. Services may entail submission of one or more records or messages ("Records") by or on behalf of Users to the System, for processing, transmission, generation of reports or for other purposes. The Company may establish record descriptions ("Record Descriptions"), message formats, messaging processes and other specifications from time to time for use in submitting Records to the System. Records improperly formatted or containing data elements not conforming to such descriptions, formats, processes or specifications may be rejected by the Company in its discretion. Publications of Record Descriptions, message formats and messaging processes and specifications will be announced to Users through an Important Notice or Applicable Publications. Each User agrees with the Company to use the System in accordance with the most up-to-date version of such procedures and publications made available by the Company from time to time. The Company may also establish procedures for the backloading of existing Records, and may establish different Record

Descriptions, message formats, messaging processes and other specifications for that purpose.

- **Termination of Use of Services.** Subject to any specific termination procedures set forth in an appendix or supplement for a particular Service, each User may terminate its use of the Services upon at least two New York business days' notice to the Company. (Such termination may or may not be made in connection with any notice of a prospective modification to these Operating Procedures pursuant to paragraph 3 under Important Legal Information below.) Upon termination, all attempted submissions of Records by or on behalf of the terminating User shall not be permitted by the System and the Records of the terminating User shall not be subject to change in status as the result of any such attempted submission of Records. In addition, the terminating User shall be afforded the opportunity to use the Web Front End to search all transactions and, to the extent then permitted by the Web Front End, to "download" all Records found, with accompanying System assigned statuses. (All such Records will also have previously been transmitted to Users having Computer-to-Computer Links.) The terminating User shall not accrue fee obligations from the effective date of the termination onwards, but all other obligations and rights of the terminating User under these Operating Procedures shall survive termination of use of the Services. The Company may continue to maintain and disclose Records relating to the User as provided in these Operating Procedures or as required by Applicable Law after termination of use of the Services.

- **Important Legal Information**

1. **Copyright**

These Global Trade Repository for Commodities (U.S.) LLC Operating Procedures, as amended, supplemented or modified from time to time, and together with any appendix, annex or supplement hereto (these “Operating Procedures”) are copyright © 2011 by Global Trade Repository for Commodities (U.S.) LLC .

This publication (including, without limitation, any text, image, logo compilation code and/or design) is proprietary and protected by copyright, and is exclusive for use by the Company and Users. Each User is granted, only for so long as it is a User, a personal limited, non-exclusive, non-transferable, non-sublicensable and freely revocable license to use this publication solely for its own internal business purposes in connection with access to and use of the System, with the right to make copies as reasonably necessary for such use and the right to download and store this publication on a computer of such User, in each case subject to the terms and conditions set forth herein. When such User ceases being a User, such User shall use its reasonable efforts to promptly return to the Company, or destroy, all copies of this publication then in its possession, including any copies held in any format in any electronic media; provided that such User shall not be obligated to take such action if doing so would be inconsistent with applicable law or such User’s internal record retention policies. Except as authorized by the foregoing, no part of this publication may be printed, stored, reproduced, copied, altered, modified, posted, distributed, transmitted, displayed, published, sold, licensed or used in any form or by any means (other than for the User’s own internal purposes in connection with the User’s use of the System), without the Company’s prior written approval.

2. **Terms of Use**

Users must satisfy themselves that the use of the System and the Services, including the submission and use of Records, will meet the requirements of any law, rule or regulation (“Applicable Law”) to which they are subject. The Company is not making, and hereby expressly disclaims, any representations or warranties as to the status of Records submitted to the System by or on behalf of Users under Applicable Law or any contractual arrangements involving Users, including without limitation as to the enforceability of contracts described in Records.

Each User agrees that it will not (i) claim, solely on the basis of the electronic nature of the System, that any Record is inadmissible in a court of law or other proceeding or (ii) object, solely on the basis of the electronic nature of the System, to the admission of any Record in a court of law or other proceeding.

Each User agrees that it will not assign or otherwise transfer its rights or obligations hereunder or under its User Agreement to any third party without the Company's express written consent, which consent shall not be unreasonably withheld, and any such assignment or transfer without consent shall be null, void and without effect. Each User agrees that the Company may from time to time assign or transfer its rights and/or obligations hereunder or under a User Agreement, in whole or in part, in each case without the consent of any User. The Company will notify Users of any such action pursuant to Section 3 below.

The contents of these Operating Procedures may be updated periodically, possibly in different formats. The most current version of these Operating Procedures, as well as Important Notices that address the contents of these Operating Procedures and Applicable Publications, will be made available by the Company to Users from time to time in accordance with "Notices" below. The Company will not be responsible for losses, costs or expenses arising from any failure of Users to follow the Company's most current Operating Procedures and/or Applicable Publications. Users may direct inquiries about these Operating Procedures, as well as requests for additional copies, to 55 Water Street, New York, New York, 10041, Attention: General Counsel's Office or to [jwaddle@dtcc.com](mailto:jwaddle@dtcc.com) or to such other email address as the Company shall notify Users from time to time.

Each User waives any claim that it may have against the Company or any other person with respect to a business decision by such other person not to commence using the System or to terminate use of the System.

Each User and the Company agree that the User Agreement and these Operating Procedures are intended to establish a contractual relationship solely such User and the Company and further that there are no intended or unintended third party beneficiaries of the agreements of such User and the Company hereunder.

### 3. Notices

The Company shall provide to Users or prospective Users any disclosure document with respect to the Company's Services and Systems required to be provided under Applicable Law.

The Company will provide 10 New York business days' prior notice to each User of any material modification, amendment or supplement to these Operating Procedures and any Applicable Publication. Any such modification, amendment or supplement shall have been approved by the Board of Directors of the Company, any successor oversight body, or, in either case, its designee(s) (the "Commodities Board"). Any such notice, together with any Important Notice and any other notice from the Company to a User under these Procedures or under any agreement between the Company and a User, shall be sufficiently served on such User if the notice is electronically made available or transmitted to such User by any means normally employed by the Company for the delivery of electronic communications to such User. Alternatively, any such notice shall be sufficiently

served on such User if it is in writing and delivered or mailed to the address most recently provided by such User to the Company in writing as being applicable for such purpose. Any such notice to a User, if made available or transmitted electronically, shall be deemed to have been given, respectively, at the time of availability or transmission. Any such notice to a User, if delivered or mailed in writing, shall be deemed to have been given at the time of receipt. The Company currently intends to transmit all notices from it, or to notify Users of any posting of information, by electronic messaging system (i.e., e-mail) to the address or addresses most recently provided by such User to the Company in writing as being applicable for such purpose. Any notice from a User to the Company, including any notice under any agreement between the Company and the User, shall be sufficiently served on the Company if the notice is in writing and delivered to the Company, care of The Depository Trust & Clearing Corporation, 55 Water Street, New York, New York, 10041, Attention: General Counsel's Office, or to [jwaddle@dtcc.com](mailto:jwaddle@dtcc.com) or to such other email address as the Company shall notify Users from time to time. Any notice to the Company shall be deemed to have been given when received by the Company at the address specified above.

**4. Provision and Use of the Services**

The Company shall retain exclusive control over the Services and the System through which they are provided. The Company shall be entitled, to the extent permitted by Applicable Law, to deny an application to become a User or to terminate a User's use of the Services and the System upon written notice, and the Company may adopt procedures in Applicable Publications specifying in further detail the circumstances and procedures under which such a denial or termination may occur. Each User is solely responsible for any equipment and software necessary for such User to access and use the System. Each User agrees that the System may not be used by any person in any jurisdiction where the Operating Procedures or use of the System would be contrary to any Applicable Law. Each User agrees that its access to and use of the Services and the System, and any activity that such User undertakes in connection therewith will at all times comply with Applicable Law. Each User that is a regulated entity agrees with the Company that such User will be solely responsible for complying with all requirements under Applicable Law with respect to record keeping and the maintenance of its books and records, and the Company makes no representation that the System will satisfy such requirements.

Each User agrees with the Company that such User will pay to the Company such fees and charges for use of the Services as shall be specified from time to time in Appendix A to these Operating Procedures.

Each User that has, or has an affiliate that has, a daily money settlement account at The Depository Trust Company ("DTC") hereby agrees on behalf of itself or such affiliate that all such fees and charges shall be paid on a monthly basis through such a daily money settlement account in such manner as determined by the Company from time to time. The Company may from time to time make

alternate forms of payment available to each such User. If a User does not have, or does not have an affiliate that has, a daily money settlement account at DTC, the Company shall specify alternate forms of payment to such User. Such an alternate form of payment may include, for a User that has, or has an affiliate that has, a money settlement account at another subsidiary of The Depository Trust & Clearing Corporation, a payment through such money settlement account.

Without limiting any other provisions of the Operating Procedures, to the extent that a User, or in the case of a User that is a Third Party Submitter, a party to the transaction submitted is located within the United States, or is otherwise subject to the jurisdiction of the United States, User certifies the following in connection with Records submitted by it or on its behalf:

User (or, in the case of a User that is a Third Party Submitter, the party to the transaction) is a U.S. person as defined by applicable regulations administered and enforced by OFAC. User agrees that it (or such party to the transaction) is thereby subject to such regulations and User agrees that it has implemented a program reasonably designed to comply with such regulations. As part of its OFAC compliance program, User also certifies that it has screened and will continue to periodically screen against the most recent version of OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations and Specially Designated Narcotics Traffickers (collectively referred to as the "SDN List") the name and address of any party and/or any counterparty to a transaction for which it submits a Record or a Record is submitted on its behalf;

**5. Access to the System and Security**

Each User agrees with the Company to abide by all security procedures specified by the Company to the User in the Applicable Publications and will take reasonable steps to maintain the confidentiality and integrity of such security procedures. Each User will not knowingly or negligently introduce or permit the introduction of any computer viruses, worms, Trojan horses or other harmful codes into the System. Each User agrees with the Company that such User is responsible for preventing unauthorized access to the System. The Company shall comply with its security procedures specified by it in the Applicable Publications.

**6. Representation and Warranties**

By using the System and the Services, each User represents and warrants on a continuing basis that (a) it has the power and authority to enter into and perform its obligations under these Operating Procedures and its User Agreement, (b) these Operating Procedures and its User Agreement constitute valid, binding and enforceable obligations of such User, (c) such User's access to and use of the System and the Services does not and will not violate any Applicable Law and (d)

access to the System will be limited to authorized personnel who will be using the System within the scope of their employment and solely for such User's or its Family's business purposes. The Company represents and warrants on a continuing basis that (a) it has the power and authority to enter into and perform its obligations under these Operating Procedures and (b) these Operating Procedures constitute valid, binding and enforceable obligations of the Company.

**7. Compliance with Applicable Law**

Each User agrees with the Company that the Company and its affiliates may take or refrain from taking any action (including, without limitation, the disclosure of any information, including Confidential Information (as defined below), relating to such User or such User's use of the System and the Services) that the Company or its affiliates consider necessary or appropriate to comply with Applicable Law or with any subpoena, order or request of any court, governmental, regulatory, self-regulatory, market or other relevant authority, agency or organization, or to enable the Company and its affiliates to continue to provide the Services and the System to the Users. Neither the Company nor its affiliates, nor any of their respective officers, directors, employees or other representatives, will be liable to any User or any other person, including without limitation, any members, participants or users of a Third Party Submitter, as a result of taking or refraining from taking any such action.

Without limiting the other provisions of the Operating Procedures, each User acknowledges and agrees that one or more competent governmental authorities may have access to the Company's books and records and that the Company and its operations and premises may be subject to examination and/or inspection by competent governmental authorities, in each case in accordance with Applicable Law. Each User acknowledges and agrees that the Company shall have no responsibility or liability to such User with respect to such access, examination or inspection by such a governmental authority.

**8. Confidential Information and Use of Data**

- a. The Company and each User agrees that each will treat as confidential (both during and after the termination of a User's access to the System) all Confidential Information. "Confidential Information" shall mean (i) with respect to the Company, transaction data specified in Records received by the Company and any data, reports, summaries or payment amounts which may be produced as a result of processing such transaction data, and (ii) with respect to any User, the technical specifications of the System (to the extent not publicly disclosed by the Company).
- b. Except as otherwise expressly provided herein, neither the Company nor a User will transfer or disclose Confidential Information to any third party (other than any member of the User's Family, a counterparty to the relevant transaction

described in such Confidential Information or, in the case of a User that is a Third Party Submitter, a party to the relevant transaction described in such Confidential Information) or use such Confidential Information except as expressly contemplated under these Operating Procedures and the Applicable Publications or, in the case of the Company, as reasonably deemed necessary by the Company to provide the Services or the System in connection with the operation of such service and in any case consistent with Applicable Law. In addition, the Company shall consent to the disclosure of Confidential Information to vendors or agents of the User as needed to permit such vendors or agents to assist the User in its use of the System or the Services, provided that such vendors or agents execute a non-disclosure agreement satisfactory to the Company. Confidential Information will not include (1) in the case of Confidential Information maintained by the Company, Confidential Information relating to a User that such User, or in the case of a User that is a Third Party Submitter, Confidential Information relating to a party to the transaction submitted that such party, has requested in writing that the Company release, and that the Company has agreed, on conditions determined by the Company in its discretion (including, without limitation, obtaining consent from other affected Users or from the parties to the transaction itself), to release, (2) information that is, or becomes, known to the public other than through a breach by a User or the Company of these Operating Procedures, (3) information that is rightfully received by a User or the Company from a third party entitled to disclose it, or (4) information that is independently developed by a User or the Company without reference to such party's Confidential Information. In addition, a User may disclose Confidential Information to the extent required by Applicable Law, including, without limitation, as required by subpoena, order or request of any court, governmental, regulatory, self-regulatory, market or other relevant authority, agency or organization, but such disclosure shall be only to the extent and only for so long as necessary to comply with such Applicable Law.

- c. Notwithstanding the foregoing, nothing herein shall prevent the Company or its affiliates from releasing or disclosing data to others provided that such data (i) shall be in a form that does not reveal, directly or indirectly, proprietary or confidential, financial, operational or trading data of a particular User or inappropriately arranged groups of Users (including, but not limited to, Users or groups of Users designated by size, market share, degree of use of the Service, or other similar indicator that may indicate the identity of the User or User group) or, in the case of a Third Party Submitter, parties to the transactions submitted, or (ii) shall consist of a compilation of aggregated anonymous historical data (except the Company shall have the right to disclose to a Third Party Submitter data relating to transactions submitted by such Third Party Submitter), subject to Applicable Law. Notwithstanding anything else contained in this Section 8, but subject to any specific provisions set forth in an Appendix to the Operating Procedures for a particular Service, the Company may (1) publicly disclose, and/or disclose to regulators, information relating to aggregate positions and transaction activity and other aggregate data, including information relating to position and transaction

activity and other data of broad categories of Users (or, in the case of a User that is a Third Party Submitter, members, participants or users thereof) so long as such categories of Users (or such members, participants or users) are sufficiently populous so that individual Users' (or such members' participants' or users') positions and transaction activity and other data cannot be determined; and (2) publicly disclose, and/or disclose to regulators, anonymous data based on aggregates, such as averages, means, etc.

- d. Notwithstanding anything to the contrary herein, any sale or commercialization by the Company of data shall be subject to the Company's Commercialization of Data Policy as in effect from time to time and Applicable Law.
- e. Subject to Applicable Law, each User will supply the Company with all information that reasonably is requested by the Company concerning such User and related to such User's use of the System or the Services or that is reasonably and in good faith deemed by the Company to be necessary in connection with the Company's obligations under Applicable Law. Each User acknowledges and agrees that the Company and its affiliates on behalf of the Company may monitor and record (x) such User's use of the System or the Services and (y) telephone conversations with such User concerning the System or the Services.

**9. Limitation of Liability and Disclaimer**

The Company will have no responsibility or liability for a Record submitted by any User that is improperly formatted or contains data elements not conforming to the applicable Record Description. While the Company may inform a User of such improper formatted or nonconforming data elements, the Company shall have no obligation to inform any User of such problems and the Company's failure to so inform a User shall in no way signify that the Record was properly formatted and is conforming. The Company shall have no responsibility for ensuring that any Record submitted conforms in form and substance to the applicable Record Description.

The Company will have no responsibility or liability for the completeness or accuracy of any transaction data it receives from or on behalf of any User or provides to any regulator or publishes or for the successful completion of any transaction covered by any Record. The Company in no event guarantees that any party to a transaction covered by any Record will fulfill its obligations to the other party or parties to such transaction.

The Services and the System are provided "as is." The Company and its affiliates do not make any representation or warranty, express or implied, as to the Services, the System or any other matter. Each User hereby waives any implied warranty or similar protection under any Applicable Law that may be claimed to apply to the Services or the System. The Company does not warrant that any method of accessing the System is secure and will have no liability in connection with a User's method of accessing the System.

The Company will not be liable to any User, or in the case of a User that is a Third Party Submitter, any member, participant or user of such Third Party Submitter, for any loss or damage of any kind directly or indirectly arising out of or related to such User's participation in the Services or the System, including, without limitation, any loss or damage arising out of or related to any failure of information available on or through the System to be free of error and up to date, failure of the System to be free of viruses or similar defects or failure of the Company to maintain uninterrupted service or access or to adhere to its security procedures, except, in each case, to the extent that such loss or damage results from the Company's negligence or willful misconduct; provided, however, that if such loss or damage does not arise from the Company's gross negligence or willful misconduct (i.e., arises from simple negligence), the liability of the Company to any User shall be limited to an amount equal to the highest fees paid by the User to the Company during any one complete calendar month in the immediately preceding 12-calendar month period (the "Fee Limit"). Each User agrees to, and shall, defend and indemnify each of the Company and each of its employees, officers, directors, shareholders, agents and professional advisors (each, an "Indemnified Person") from and against all reasonable losses, liabilities, damages, judgments, settlements, fines, costs and expenses (including, without limitation, court costs, reasonable attorneys' fees and disbursements and the expenses of enforcing this provision) (collectively, "Losses") that such Indemnified Person may incur directly arising out of or directly relating to the acts or omissions of such User's participation or failure to participate (for itself or on behalf of others) in the Services or the System, any unauthorized access to the System through such User's interface with the System or any other matter directly relating to such User that is not the responsibility of the Company hereunder, except in each case to the extent that such Losses arise out of or relate to the Company's negligence or willful misconduct; provided, however, that to the extent such Losses result from the Company's simple negligence (as opposed to gross negligence or willful misconduct), such limitation on the User's indemnity obligation shall be no greater than the amount of the Fee Limit.

In no event shall the Company be liable for any indirect, consequential, special, exemplary, incidental, or punitive damages.

**10. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial**

(a) These Operating Procedures shall be governed by and construed in accordance with the law of the State of New York without giving effect to the conflict of law principles thereof (other than Section 5-1401 of the New York General Obligations Law).

(b) EACH OF THE COMPANY AND EACH USER IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, FOR THE PURPOSE OF ANY ACTION,

SUIT OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR ARISING OUT OF OR RELATING IN ANY WAY TO THESE OPERATING PROCEDURES AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH ACTION, SUIT OR PROCEEDING, THAT SUCH COURT DOES NOT HAVE ANY JURISDICTION OVER SUCH PARTY.

(c) EACH OF THE COMPANY AND EACH USER HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE OPERATING PROCEDURES.

**11. Signatures**

The Company may, at its option, in lieu of relying on an original signature, rely on a signature as if it were (and the signature shall be considered and have the same effect as) a valid and binding original signature in the following circumstances:

If such signature is transmitted, recorded or stored by any electronic, optical, or similar means (including but not limited to telecopy, imaging, xeroxing, electronic mail, electronic data interchange, telegram, or telex).