



## ICE OTC BROKER AGREEMENT

This agreement ("Agreement") sets out the terms under which ICE U.S. OTC Commodity Markets, LLC ("ICE"), which makes available and operates a trading platform (the "Exchange") which is an electronic over-the-counter exempt commercial market for the order entry and execution ("Execution") of transactions on the Exchange ("Exchange Transactions" or "Transactions") by the Broker (as defined below) acting for and under the authorization of a Participant (as defined in the ICE OTC Participant Agreement, which is posted at <https://www.ice.com/otc-energy/agreements>) as principal in accordance with this Agreement (the "AFP Service" or the "Service"), has agreed to provide the party identified below ("Broker") with access to and use of the Service and the Exchange in connection with the Service, as more fully set out in the Addenda to this Agreement and the Exchange Terms (as defined below). All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement unless the context otherwise requires.

- 1) **ACCESS TO EXCHANGE AND SERVICE.** ICE hereby grants Broker the right to access and use the Exchange in connection with the Service, either directly via ICE's open application program interface or through an interface provided by an ICE-approved independent software vendor, as it may exist from time to time in accordance with the Exchange Terms (as defined below). Broker understands and agrees that the sole service provided under this Agreement is the AFP Service and that Broker shall not be entitled to receive any other services, express or implied, pursuant to this Agreement.
- 2) **TERMS OF ACCESS.** This Agreement, taken together with (i) the Service and Pricing Schedules (the "Schedules") (the current versions of which are posted at <https://www.ice.com/otc-energy/agreements>), (ii) any other Addenda to this Agreement, and (iii) 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 "Exchange Terms" and will govern Broker's access to and use of the Service, the Exchange and all Exchange Transactions. ICE may amend the Exchange Terms at any time by posting amendments on ICE's website at <https://www.ice.com/otc-energy/agreements>, and any such amendments will be prospectively binding on Broker, provided that ICE will provide at least two weeks' prior notice, through electronic or other direct communication with Broker, of any such amendments that are likely to materially and adversely affect Broker or its rights or obligations hereunder. Broker's use of the Service after such notice and 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 Broker to acknowledge and agree to an amendment, such amendment will not become effective until Broker has done so in the manner specified by ICE. For the avoidance of doubt, the Exchange Terms do not apply to or govern Broker's access to and use of the System and the ICE Trading Technology Services
- 3) **BROKER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Broker hereby represents, warrants and covenants as follows:
  - a) Broker acknowledges that the Exchange (and any software related thereto), and all information and content (including price and trading data) distributed or made available thereby or in any way related to Exchange Transactions or the Service (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(a), the exclusive proprietary property of ICE constituting trade secrets. Broker has been granted a limited license to use the Service, Exchange and the Exchange Data solely for the purposes set forth herein and in the attached Addenda and Exchange Terms, and Broker will have no other rights with respect to the Service, Exchange or the Exchange Data. Broker agrees that it will not copy, modify, reverse engineer, reverse assemble or reverse compile any of the Exchange Data distributed or made available by the Service, or the Exchange; that it will not distribute, rent, sell, retransmit, redistribute, release or license 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). Notwithstanding the foregoing, any and all data submitted to the Exchange by Broker in connection with the Service shall, subject to Section 8 hereof, be the non-exclusive property of ICE, Broker and the Participant on behalf of which an order is entered, and each party shall have the right to use, sell, retransmit or redistribute such data in accordance with and subject



to the provisions of Section 8 hereof and the other provisions of the Exchange Terms relating to the use of such data.

- b) Broker will comply with the Exchange Terms and any and all laws, rules, regulations or orders applicable to Broker, including, without limitation, with respect to Broker's access to and use of the Service, the Exchange and the Exchange Data.
  - c) Broker acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its accessing and utilizing the Service and the Exchange.
  - d) Broker acknowledges that ICE may, immediately and without notice, suspend or terminate Broker's access to and utilization of the Service and terminate the Agreement in the event of a breach of the Agreement by Broker. Broker further acknowledges that ICE may, in its sole discretion, temporarily or permanently cease to provide the Service to Broker, but in any event shall comply with the minimum notification requirements agreed upon for the Service in the Exchange Terms. Broker also 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 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 Broker.
  - e) Broker has all necessary power and authority to execute and perform this Agreement, and this Agreement is its legal, valid and binding agreement, enforceable against Broker in accordance with its terms. Neither the execution of nor performance under this Agreement by Broker violates any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to Broker. Broker has full power and authority to act on behalf of its customers (Participants) for whom it will utilize the Service.
  - f) Broker agrees to provide ICE with information related to Broker's use of the Service or the activities of Broker's customers that is reasonably requested by ICE, if such information is reasonably necessary in order to enable ICE to maintain the integrity of the Exchange, 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 Broker refuse to provide information, or if the information demonstrates a potential violation of the terms and conditions of this Agreement or of any customer's Participant Agreement, then ICE shall have the right, at ICE's expense and upon five (5) days' notice, to conduct an on-site audit during regular business hours of Broker's compliance with this Agreement. ICE may inspect, among other things, any use of the Service. ICE's right of inspection shall extend only so far as may be necessary to ensure compliance by Broker with the provisions of this Agreement. Any information gained by ICE as a result of the inspection shall be subject to the Confidentiality provisions of Section 8.
- 4) **USER IDS AND PASSWORDS.** ICE shall issue to Broker, through its employees designated as its administrator(s) with respect to Broker's use of the Service ("Broker User Administrator"), one or more user IDs and passwords (collectively, the "Passwords") for use exclusively by employees ("Authorized Employees") of Broker or a Broker affiliate that are properly authorized to access the Service on behalf of Broker. The initial Broker User Administrator(s) are identified on the signature page hereof and Broker will notify ICE promptly of any change in its Broker User Administrator(s). Broker will be solely responsible for controlling and monitoring the use of the Passwords, will provide the Passwords only to its Authorized Employees, and will not provide the Passwords to any third party. Broker will immediately notify ICE of any unauthorized disclosure or use of the Passwords or access to the Service or of the need to deactivate any Passwords. Broker acknowledges and agrees that it and Participant will be bound by any actions taken through the use of its Passwords (except through the fault or negligence of ICE), including the use of the Service, whether or not such actions were authorized. Broker will only use the Passwords to access and use the Service from the jurisdictions specified by Broker and accepted by ICE. The Broker User Administrator(s) shall be responsible for all communications between ICE and Broker and any notices or other communications sent to the Broker User Administrator by ICE shall be binding on Broker.



- 5) **TERM.** This Agreement, as amended from time to time, will continue in effect 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 the AFP Service for Exchange Transactions effected prior to such termination and provided that ICE complies with any additional termination notification requirements governing the Service in the Exchange Terms. Termination of this Agreement shall terminate the Service provided by ICE to Broker. Each party's continuing obligations under this Agreement and the Exchange Terms, including, without limitation, those relating to "Indemnification" and "Confidentiality", will survive the termination of this Agreement.
- 6) **FEES.**
- a) All fees incurred by Broker hereunder in any calendar month shall be invoiced by ICE to Broker based on the Schedules, as amended from time to time, and as set forth in the Exchange Terms. ICE will provide Broker with an invoice which states the amount owed by Broker, including any fees, other charges or related taxes, which will be due and payable in the currency, timeframe and manner specified in the Schedules or invoices. 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.
  - b) Broker shall be liable for all taxes and duties (other than franchise and income taxes owed by ICE) arising out of this Agreement or the AFP Service utilized by Broker through the Exchange, including, without limitation, taxes and duties levied by non-U.S. jurisdictions.
- 7) **LIMITATION OF LIABILITY; INDEMNITY.**
- a) BROKER ACKNOWLEDGES, UNDERSTANDS AND ACCEPTS THAT ICE MAKES NO WARRANTY WHATSOEVER TO BROKER AS TO THE EXCHANGE OR SERVICE, EXPRESS OR IMPLIED, AND THAT THE EXCHANGE AND SERVICE ARE PROVIDED ON AN "AS IS" BASIS AT BROKER'S SOLE RISK. ICE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ICE NOR ITS DIRECTORS, MANAGERS, OFFICERS, AFFILIATES, SUBSIDIARIES, SHAREHOLDERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY WITH RESPECT TO, AND NO SUCH PARTY SHALL HAVE ANY LIABILITY TO BROKER (i) FOR THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE EXCHANGE OR SERVICE, THE MARKETS OPERATED BY ICE FUTURES EUROPE OR ICE FUTURES U.S., INC. OR THE CLEARING FACILITIES OPERATED BY ICE CLEAR EUROPE, (ii) FOR DELAYS, OMISSIONS OR INTERRUPTIONS THEREIN, OR (iii) FOR ANY ACT OR OMISSION OF ICE FUTURES EUROPE, ICE FUTURES U.S., INC., ICE CLEAR EUROPE LIMITED OR ANY OTHER THIRD PARTY. ICE SHALL HAVE NO DUTY OR OBLIGATION TO VERIFY ANY INFORMATION DISPLAYED VIA THE SERVICE. BROKER ACKNOWLEDGES AND AGREES THAT ICE IS NOT AN ADVISOR OR FIDUCIARY OF BROKER OR ITS CUSTOMERS. WITHOUT LIMITATION OF THE FOREGOING, BROKER ACKNOWLEDGES, AGREES AND ACCEPTS THAT ICE SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR ANY MATTERS RELATED TO BROKER'S RELATIONSHIP OR DEALINGS WITH ITS CUSTOMERS, INCLUDING BUT NOT LIMITED TO THE EXECUTION OF TRANSACTIONS OR THE ACCURACY OF ANY INFORMATION SUBMITTED THROUGH THE SYSTEM IN CONNECTION WITH BROKER'S USE OF THE SERVICE, ALL OF WHICH SHALL BE THE SOLE RESPONSIBILITY OF BROKER.
  - b) Subject to Section 7(c) of this Agreement, Broker 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, or 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 Broker has authorized such access; or (ii) any claim by any customer of Broker involving or relating in any way to the acts or omissions of Broker.



- c) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED BY THE OTHER PARTY, 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 Broker for any cause, Broker expressly agrees that in entering into this Agreement, ICE's aggregate liability, for all causes of action, shall not exceed the sum total of all fees paid to ICE by Broker during the six (6) month period preceding the action.

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 Service, including but not limited to trade secrets, processes, 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 the extent permitted by the Exchange Terms, to its employees, its affiliates and their employees or its agents) or to use such information for any purpose whatsoever other than as contemplated and permitted by the Exchange 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
  - b) Confidential information shall not include information which is: (i) in or becomes part of the public domain other than by disclosure by such party in violation of this Agreement; (ii) known to or obtained by such party previously without an obligation of confidentiality; (iii) independently developed by such party without use of or reference to the other party's confidential information; (iv) 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) disclosed in connection with any regulatory or self-regulatory request for information; (vi) submitted by Broker that is displayed by ICE on the Exchange or otherwise distributed or sold by ICE, regarding Exchange Transactions in accordance with its standard policies and procedures, provided that such displays will not identify Broker or its customer(s) (Participant(s)) 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 Participant Agreement; or (vii) used as the basis for price assessments by Platts, a McGraw-Hill subsidiary, in connection with its publication of prices and price indices including without limitation bids, offers, requests for quotation, and transactions in non-anonymous crude oil and refined product markets ("Platts Windows Markets"). Broker specifically acknowledges that, with regard to any activity in Platts Windows Markets: (i) Participant's and Broker's identity, will be displayed publicly on the Exchange and (ii) its bids, offers, requests for quotation, and transactions may be reported to the public, including regulators, by ICE or Platts.
  - c) In the event that ICE is required to disclose confidential information subject to Section 8(b)(iv), ICE shall request that the recipient treat the information provided as confidential pursuant to the U.S. Freedom of Information Act for a U.S.-based recipient, or pursuant to an equivalent or comparable law or regulation, if applicable, of the foreign jurisdiction in which the recipient is based.
- 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 Broker to persons not a party to this Agreement.
- 11) **FORCE MAJEURE.** Neither ICE nor Broker 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 (A) Broker 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 Broker, 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); and (B) ICE may assign all or part of its rights and obligations under this Agreement to any entity (i) controlling, controlled by, or under common control with ICE, or (ii) which succeeds to all or substantially all of the assets and business of ICE, provided that, in the case of any such assignment by ICE, the assignee agrees in writing to assume the obligations under, and to be bound by the provisions of, this Agreement that have been assigned. On the effective date of any valid assignment pursuant to this Section 13, the assignor shall be released from all obligations and liabilities arising under this Agreement or, in case of a partial assignment by ICE, from all obligations and liabilities arising from the parts of this Agreement that have been assigned. 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.
- 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 Broker and does not apply to any disputes arising between a Broker and its customer (Participant) or any other disputes between parties other than ICE and the Broker. 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 AND ENTIRE AGREEMENT.** 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. This Agreement and the Exchange Terms supersede all negotiations, agreements and understandings among the parties with respect to the subject matter hereof and constitute the entire agreement between the parties with respect thereto.
- 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.
- 19) **NO AGENCY.** Broker is not, and shall not represent or hold itself out as, the agent of ICE and nothing in this Agreement shall be deemed to establish any relationship of agency, joint venture or partnership of any kind between ICE and Broker.



Date: \_\_\_\_\_, 20\_\_

**ICE U.S. OTC Commodity Markets, LLC**

5660 New Northside Dr. NW, 3rd Floor  
Atlanta, Georgia 30328, USA

Signature: \_\_\_\_\_

Name: Trabue Bland

Title: Senior Vice President

**Broker**

(Company Name): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Broker User Administrator for the Service:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_



**ADDENDUM A – (INTENTIONALLY LEFT BLANK)**



## **ADDENDUM B – ADDITIONAL TERMS FOR EU BROKERS**

Where the Broker is incorporated in any member state of the European Union, the following terms shall be incorporated into and form part of the Agreement and, in the event of conflict with any other terms of the Agreement, shall prevail over such terms.

### **I. DATA PROTECTION**

- A ICE shall be entitled to Process any Personal Data provided to it by Broker for the purpose of exercising any rights ICE has under this Agreement, including Processing required to comply with ICE's legal and regulatory obligations. ICE shall have a right to use Personal Data for the purposes of providing access and use of the Exchange (including training and support), administering and improving the Exchange, marketing of ICE products and/or services and to meet legal and regulatory requirements.
- B ICE agrees that it will:
  - (1) keep all Personal Data confidential only insofar as this is required under this Agreement;
  - (2) ensure that access to Personal Data shall only be provided to those of its employees, affiliates or service providers who need access to such data for the performance of their duties for the purposes set out in clause A. ICE will ensure that any such transfers of Personal Data to third party service providers will be subject to contractual requirements to safeguard Personal Data equivalent to those set out in this clause B;
  - (3) take adequate technical and organizational security measures to safeguard Personal Data against unauthorized access, destruction, disclosure, transfer or other improper use;
  - (4) provide access to Broker to the Personal Data which have been provided by Broker, to enable Broker to provide relevant Data Subjects with access to such Personal Data. ICE shall refer relevant Data Subjects requesting access to their Personal Data to Broker and shall also, at the request of Broker, amend, correct, delete or add to Personal Data that have been supplied by Broker to ensure that such Personal Data are accurate and complete;
  - (5) as soon as reasonably practicable cease processing any Personal Data where it received notice from Broker that consent to Processing has been revoked by a Data Subject;
  - (6) promptly notify Broker of any accidental or unauthorized access, destruction, disclosure, transfer or other improper use of Personal Data that have been supplied by Broker, after ICE becomes aware of any such access, destruction, disclosure, transfer or other improper use, or of any complaints by individuals or third parties that involve or pertain to such Personal Data;
  - (7) co-operate with Broker in responding to any inquiry, complaint or claim from a Supervisory Authority or any Data Subject relating to the Processing of Personal Data provided by Broker;
  - (8) comply with all reasonable instructions of Broker to ensure ICE's compliance with its obligations under this clause B; and



(9) make reasonable periodic inquiries into its compliance with its obligations under this clause B.

C To the extent that ICE is a Processor in respect of such Personal Data, ICE shall Process such Personal Data provided to it by Broker in accordance with any reasonable instructions of Broker, which instructions shall permit the Processing of such Personal Data for the purposes set out in clause A.

D In relation to all Personal Data provided by it to ICE, Broker shall ensure that:

(1) where consent is required, all relevant Data Subjects have consented to their Personal Data being disclosed to ICE for Processing in accordance with this Agreement, including any onward transfer to a jurisdiction outside the European Economic Area by either ICE or any relevant third party;

(2) the disclosure of Personal Data by Broker to ICE will be in each case and in all respects lawful;

(3) notice of the disclosure of their Personal Data to ICE for Processing in accordance with this Agreement will be provided to all relevant Data Subjects prior to any such disclosure;

(4) Broker complies with, and represents and warrants that it has complied with, the Data Protection Directive (as implemented in the relevant member state) and all applicable data protection legislation and regulations (the "**Data Protection Laws**") in relation to the use of the Exchange and access to the Exchange by Broker and its Authorized Employees;

(5) it shall not, by any act or omission, put ICE or any of its affiliates or subsidiaries in breach of any of the Data Protection Laws;

(6) it has informed its Authorized Agents that ICE may process their Personal Data for the purposes set forth in clause I.A of this Addendum B, and if requested by ICE, provide evidence that it has informed its Authorized Agents of such fact; and

(7) it shall do and execute, or arrange to be done and executed, each act, document and thing necessary or desirable in order to comply with this clause D.

E For the purposes of clauses A, B, C, D and E only:

(1) the terms "**Processor**", "**Process(ing)**" and "**Personal Data**" each have the meaning given to such terms in the Data Protection Directive;

(2) the term "**Data Subject(s)**" shall mean an individual who is the subject of Personal Data;

(3) the term "**Supervisory Authority**" shall mean the data protection authority in the applicable European state; and

(4) the term "**Data Protection Directive**" shall mean Directive 95/46 EC and includes any relevant implementing measure in each relevant European state.



## II. GOVERNING LAW

- A. The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed in all respects by, and construed in accordance with the laws of England.

## III. ARBITRATION

- A. Any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with this Agreement, including any dispute as to the existence, construction, validity, interpretation, enforceability, termination or breach of this Agreement ("**Dispute**") shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("**LCIA**")'s rules ("**LCIA Rules**"), which LCIA Rules are deemed to be incorporated into this Clause III. In the event of a conflict between any provision of the LCIA Rules and this Clause III, this Clause III shall prevail. Any provision of the LCIA Rules relating to the nationality of an arbitrator shall to that extent not apply. For purposes of this Clause III, the term "**Other Broker**" means a person other than ICE that is party to an ICE Broker Agreement in the same or substantially the same form as this Agreement. For the avoidance of doubt, this Clause III shall not apply to: (i) any dispute between the Broker and ICE Futures Europe, ICE Futures U.S., Inc., ICE Clear Europe Limited or any other exchange or clearing house, which dispute shall instead be governed by and in accordance with the rules of such exchange or clearing house; and (ii) any dispute solely between the Broker and any Other Broker relating to a Transaction, which dispute shall be governed by the terms of such Transaction..
- B. The seat of arbitration will be London and the language of the arbitration proceedings shall be English.
- C. The tribunal will be comprised of three arbitrators appointed by the LCIA. The LCIA shall appoint one of the arbitrators to act as the chairman of the tribunal. The Tribunal members will be persons considered by the LCIA in its discretion to have experience with respect to the subject matter of the dispute. Tribunal members shall not be current or former employees or directors of the Broker, current or former employees or directors of any Other Broker, current or former employees of ICE, or any person or persons with a material interest or conflict of interest in the outcome of the Dispute.
- D. The award of the arbitral tribunal will be final and binding on ICE and the Broker from the day it is made. Judgment upon the award may be entered or the award enforced through any other procedure in any court of competent jurisdiction.
- E. The provisions of this Clause III may not be varied by the Broker save where it and ICE agree in express written terms.
- F. If the Broker has now or hereafter has a right to claim sovereign immunity from suit or sovereign immunity from enforcement for itself or any of its assets, it shall be deemed to have waived any such immunity to the fullest extent permitted by any applicable national, federal, supranational, state, regional, provincial, local or other statute, law, ordinance, regulation, rule, code, guidance, order, published practice or concession, judgment or decision of a governmental authority. Such waiver shall apply in respect of any immunity from:
1. any proceedings commenced pursuant to this Clause III;
  2. any judicial, administrative or other proceedings to aid an arbitration commenced pursuant to this Clause III; and



- 3. any effort to confirm, enforce or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from any judicial or administrative proceedings commenced pursuant to this Clause III.
  - H. The rights and obligations of the Broker under this Agreement are of a commercial and not a governmental nature.
  - I. Broker shall not raise or in any way whatsoever assert a defence of sovereign immunity in relation to any claim or enforcement proceedings arising from a Dispute under this Agreement.
- IV. THIRD PARTY RIGHTS
- A. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the Third Parties Act.

The parties to this Agreement do not require the consent of any Third Party to terminate, rescind or vary this Agreement at any time.