

DEVELOPMENT AND TESTING AGREEMENT

THIS DEVELOPMENT AND TESTING AGREEMENT (“**AGREEMENT**”) IS MADE BY AND BETWEEN ONECHICAGO, LLC (“**ONECHICAGO**,” “**ONE**,” OR THE “**EXCHANGE**”), A DELAWARE LIMITED LIABILITY COMPANY WITH ITS PRINCIPAL PLACE OF BUSINESS AT 311 SOUTH WACKER DRIVE, SUITE 1700, CHICAGO, ILLINOIS 60606, U.S.A., AND

Company

WITH ITS PRINCIPAL PLACE OF BUSINESS AT:

Address

City, State

Zip Code

1. INTRODUCTION AND NATURE OF AGREEMENT

OneChicago maintains and operates a Certification Environment that allows OneChicago users, such as Company, to develop and test Customer Interfaces to connect to one or more OneChicago Interfaces. This Agreement governs the relationship between OneChicago and Company with respect to Company’s development and testing of a Customer Interface. By accepting this Agreement, Company represents and warrants that it has all necessary power and authority to execute this legally binding agreement and perform its obligations hereunder. If Company does not agree to all of the terms and conditions of this Agreement, Company is not permitted to access or use the Certification Environment. Nothing in this Agreement shall be construed to contravene or supersede any applicable statute, law, regulation, court order, or any such regulatory directive.

2. DEFINITIONS AND INTERPRETATIONS

- (a) “Certification Environment” shall mean the electronic environment provided to Company by OneChicago in order to allow Company to develop and test a Customer Interface to a OneChicago Interface.
- (b) “Customer” shall mean a customer of Company who is authorized to use the Customer Interface to access a OneChicago Interface.
- (c) “Customer Interface” shall mean the systems interface software or the front-end interface software created by either Company or a third party that allows Company or Company’s Customers to interact with a OneChicago Interface.
- (d) “Direct Connection” shall mean a physical connectivity solution permitting Company to connect directly to the Certification Environment from leased space within the same data center or by delivering a circuit to a designated patch panel.
- (e) “Market Data” shall mean information relating to OneChicago Contracts, which may include, but is not limited to, opening and closing prices, high-low prices, settlement prices, bid and ask prices, last sale prices, and contract volume.
- (f) “OneChicago Connection Method” shall mean the manner in which Company accesses the Certification Environment. The OneChicago Connection Method shall either be a Direct Connection or Virtual Private Network Connection, as those terms are defined in this section.
- (g) “OneChicago Interface” shall mean an electronic interface or system owned and operated by OneChicago.

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- (h) "OneChicago Trademarks" shall mean the OneChicago trademarks, service marks, or logos used in connection with any of the OneChicago Interfaces.
- (i) "Rules" shall mean means the rules of the Exchange and any interpretation, stated policy, or instrument corresponding thereto, in each case as adopted or amended from time to time by the Exchange. Any term capitalized but not defined in this Agreement shall have the meaning ascribed to it in the OneChicago Rulebook.
- (j) "Virtual Private Network Connection" or "VPN Connection" shall mean an encrypted and secure site-to-site virtual private network tunnel over the Internet.

3. DEVELOPMENT AND TESTING OF INTERFACE

A. ACCESS BY COMPANY TO ONECHICAGO CERTIFICATION ENVIRONMENT

Subject to the terms and conditions of this Agreement, OneChicago grants Company a revocable, non-exclusive, non-transferable right to access the Certification Environment during the term of this Agreement for the sole purpose of developing and testing its Customer Interface. The purpose of such Customer Interface must be to permit Company or Company's Customers to interact with a OneChicago Interface.

B. DEVELOPMENT PROCEDURES

Company is responsible, at its own expense, for designing, developing, and maintaining its Customer Interface. Access by Company to the Certification Environment shall only be provided via a OneChicago Connection Method. OneChicago will provide Company with IP addresses and user accounts for Company's use and access to the Certification Environment during the development and testing of its Customer Interface. OneChicago will use commercially reasonable efforts to support Company's development of the Customer Interface by making OneChicago technology staff reasonably available during OneChicago's regular business hours to answer questions and provide other reasonable assistance via electronic mail. Notwithstanding the foregoing, OneChicago will not be responsible for training Company or Company employees on the use of the Certification Environment, and will not provide continuous support for any Company accessing the Certification Environment.

C. CUSTOMER INTERFACE TECHNICAL REQUIREMENTS

The Customer Interface is required to meet all technical requirements provided to Company by OneChicago. OneChicago will use commercially reasonable efforts to provide Company with at least thirty (30) calendar days' notice prior to any change in OneChicago's technical requirements for the Customer Interface. Company is responsible for making any and all required changes to its Customer Interface in order to comply with updated technical requirements that may be published by OneChicago from time to time. Furthermore, Company shall use reasonable care in ensuring that its Customer Interface and services provided by Company are in compliance with applicable laws and regulatory requirements.

D. CUSTOMER INTERFACE CREDIT AND RISK CONTROLS

Company shall use commercially reasonable efforts to ensure that the Customer Interface shall support functionality necessary to implement the Customer Interface Credit and Risk Controls specified in **Exhibit A** (as amended from time to time). OneChicago will use commercially reasonable efforts to provide Company with at least ninety (90) calendar days' prior notice of any changes to Exhibit A that materially impact any of the Customer Interface Credit and Risk Controls.

E. ONECHICAGO CHANGES IMPACTING CUSTOMER INTERFACE

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OneChicago may change, modify, enhance, or replace the Certification Environment or other related systems in such a manner that impacts the Customer Interface. OneChicago shall use commercially reasonable efforts to provide Company with prior notice of such changes in order for Company to have sufficient time to update and test the Customer Interface. OneChicago will use commercially reasonable efforts to ensure that such notice is provided no less than thirty (30) calendar days in advance of any such changes, modifications, enhancements, or replacements to the OneChicago Interface. Company shall bear the expense of making any required changes to its Customer Interface pursuant to this section 3.E.

F. DEDICATED TESTING SESSIONS

In order to request a Dedicated Testing Session within OneChicago’s Certification Environment, Company must submit a written request to OneChicago in the form and manner as may be specified by OneChicago from time to time. For purposes of this section, “Dedicated Testing Session” shall mean a testing session in which Company has reserved a block of time within the Certification Environment during which Company is the sole party permitted to connect to the Certification Environment. OneChicago will otherwise use commercially reasonable efforts to provide regular general access to its Certification Environment in accordance with a schedule published by OneChicago, and as may be amended by OneChicago from time to time.

4. CERTIFICATION TESTING

A. INITIAL TESTING

Company must successfully complete all tests required by OneChicago on the version of the Customer Interface that Company plans to use to access a OneChicago Interface before using such Customer Interface in a production environment. OneChicago will manage the Customer Interface testing and shall be the sole determiner as to whether a Customer Interface will be approved for use in a production environment. Neither Company nor Company’s Customers shall access a OneChicago Interface using the Customer Interface before all required certification tests have been successfully completed. OneChicago shall use reasonable efforts in scheduling certification testing for Company’s Customer Interface.

B. RECERTIFICATION

If Company makes any revision or modification to a previously certified Customer Interface either based on changes to the specifications of a OneChicago Interface, or to add new functionality or modify existing functionality to the Customer Interface, Company shall conduct a certification test of such updated version in accordance with the foregoing section 4.A. Any updated version certified pursuant to this section shall itself be considered a Customer Interface.

5. OWNERSHIP OF CERTIFICATION ENVIRONMENT AND CUSTOMER INTERFACE

OneChicago is the sole and exclusive owner of all right title, and interest in and to the Certification Environment, OneChicago Interfaces, Market Data, OneChicago Trademarks, and any other materials or information provided to Company by OneChicago (collectively, “OneChicago Property”). No right, title, or interest in or to the OneChicago Property is transferred to Company, and Company shall not make any claim of any ownership in the patents, copyrights, or other intellectual property or proprietary rights in the OneChicago Property. Despite the foregoing, OneChicago hereby acknowledges and agrees that, other than any OneChicago Property incorporated in Company’s Customer Interface, as between OneChicago and Company, all right, title, and interest in and to the Company’s Customer Interface and Company’s name, logo, and trademarks shall inure to and become the exclusive property of Company.

6. MARKETING OF THE CUSTOMER INTERFACE

A. GRANT OF LICENSE

OneChicago grants to Company, a non-exclusive, non-transferable, revocable license (without the right to grant sublicenses) during the term of this Agreement to use the OneChicago Trademarks solely in connection with marketing its Customer Interface. While engaging in the marketing of the Customer Interface, Company shall use commercially reasonable efforts to ensure high standards of accuracy in any advertising, promotional, or informational materials that includes any OneChicago Trademarks.

7. CONFIDENTIALITY

A. RECEIPT OF CONFIDENTIAL INFORMATION

Any recipient of information in connection with this Agreement that should reasonably have been understood by recipient to be confidential shall use the same care and discretion to avoid disclosure of such confidential information as recipient uses with its own similar information that it does not wish to disclose (but in no event less than a reasonable degree of care). Recipient will use the confidential information only in connection with the performance of its obligations under this Agreement or the full enjoyment of its rights hereunder. Recipient will not disclose the confidential information except to its employees, agents, or contractors who have a need to know such confidential information in connection with the performance of its obligations or the full enjoyment of its rights under this Agreement. Recipient is liable for any unauthorized use or disclosure of confidential information by any of its employees, agents, or contractors.

B. REASONABLE DISCLOSURE OF CONFIDENTIAL INFORMATION

If a recipient of confidential information is required by law to disclose any such confidential information in connection with any legal or regulatory proceeding, then such recipient may disclose such information; provided, however, that recipient will notify the owner of the confidential information a reasonable time prior to disclosure, will allow owner a reasonable opportunity to seek appropriate protective measures prior to disclosure, and will disclose the minimum amount of such confidential information required by law

C. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

Upon the termination of this Agreement, all confidential information will be promptly, at the direction of the owner of such confidential information, returned to the owner or destroyed.

8. TERM AND TERMINATION OF AGREEMENT

This Agreement shall be effective as of the Effective Date below and shall continue in effect until it is terminated pursuant to this section 8.

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A. TERMINATION FOR MATERIAL BREACH

If either party materially breaches any material provision of this Agreement and fails to completely cure that breach within thirty (30) calendar days after receiving written notice of such, the non-breaching party may terminate this Agreement upon the conclusion of the opportunity for the breaching party to cure such breach.

B. IMMEDIATE TERMINATION OR SUSPENSION

- (i) OneChicago may terminate or suspend this Agreement immediately if Company accesses or uses the Certification Environment or a OneChicago Interface in a manner that materially adversely affects or damages the reputation of OneChicago, the Certification Environment, or any OneChicago Interface.
- (ii) OneChicago or Company may terminate or suspend this Agreement immediately if: (1) the other party ceases doing business as a going concern, or (2) the other party files any petition under any federal or state insolvency law, becomes insolvent, has an involuntary petition in bankruptcy filed against it or has a receiver appointed for it or its property.
- (iii) OneChicago or Company may terminate this Agreement immediately if necessary to comply with any applicable law, federal or state regulation, or any court order.

C. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement, for any reason or no reason at all, by giving ninety (90) calendar days' prior written notice to the other party.

9. COMPANY WARRANTY, LIMITATION OF LIABILITY, AND COMPANY INDEMNIFICATION

A. COMPANY WARRANTY

Company warrants that it shall use commercially reasonable efforts to prevent incorporation of any harmful or malicious code into its Customer Interface. The foregoing restriction shall include, for example, code that would enable Company or its Customers to erase, destroy, corrupt, damage, or modify in an unauthorized manner any OneChicago system. Company further warrants that it shall use commercially reasonable efforts to prevent its Customer Interface from (1) bypassing any OneChicago Interface security measure, (2) using the Certification Environment in a manner that adversely impacts OneChicago or any other company, (3) or access or permit others to access the Certification Environment without OneChicago's prior written consent.

B. LIMITATION OF LIABILITY

OneChicago Rule 422 concerning liability and warranties (including, without limitation, any successor rule thereto) is incorporated herein by reference and applies with the same force and effect as if it was reproduced in its entirety in this agreement. Rule 422 sets out the entire liability of the Exchange to Company. All other liability of the Exchange under or in connection with this agreement is excluded, except to the extent that it is not permitted to be excluded by applicable law.

C. COMPANY INDEMNIFICATION

Company shall indemnify, defend, and hold OneChicago and its officers, directors, and employees harmless from and against, any and all costs (including reasonable attorneys' fees), losses, damages, expenses, liabilities, and penalties directly arising from, or in connection with, a claim, suit, demand, or other proceeding based upon or related to any act

or omission of Company in violation of this Agreement. OneChicago will promptly notify Company of any threatened or actual claim covered by this indemnification and will reasonably cooperate and assist Company in connection therewith, and will allow Company full control of the defense on OneChicago's behalf. This indemnity shall not apply in respect of costs, losses, damages, expenses, liabilities and penalties resulting from the gross negligence, fraud, or willful misconduct of OneChicago.

10. EQUITABLE REMEDIES

Company acknowledges and agrees that the violation of Company's obligations under this Agreement may cause irreparable harm to OneChicago and any OneChicago systems, which harm may not be compensable solely by monetary damages, and that, therefore, in the event of an actual or threatened breach by the Company of any section, OneChicago may be entitled to injunctive and other equitable relief. Any such equitable relief granted shall be without prejudice to any other rights and remedies as OneChicago may have under this Agreement.

11. GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois, without giving effect to its conflict of laws principles, and the Federal laws of the United States of America. Company consents and agrees, and hereby submits, to the general and exclusive jurisdiction of the Federal and State courts in Chicago, Illinois, agrees to commence actions, suits, and proceedings only in such courts, and waives any objection to venue in any such jurisdiction in the event any action, suit, or proceeding is commenced in such courts under or with respect to any matters in connection with this Agreement.

12. NOTICES

Any notice required or permitted to be given in connection with this Agreement will be deemed to be delivered and received (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a nationally recognized overnight carrier, specifying next business day delivery, with written verification of receipt; (c) five days after being sent by certified or registered mail, postage prepaid with return receipt requested, or (d) on the next business day if sent by e-mail during normal business hours of recipient and, if to Company, addressed to Company at the following address:

Company E-mail:

or if to OneChicago at:

OneChicago, LLC

311 South Wacker Drive, Suite 1700

Chicago, Illinois 60606

Attention: Legal Department

operations@onechicago.com

Or to such other address OneChicago may specify in writing to Customer from time to time.

13. ASSIGNMENT

Company shall not assign or transfer or purport to assign or transfer this Agreement or any part of it or the benefit or burden thereof. Any purported assignment in contravention of this section shall be void. OneChicago may, without prior written consent of the Company, assign or transfer this Agreement or its rights and obligations hereunder to any of its affiliates in connection with the merger or acquisition of OneChicago or the sale of all or substantially all of its assets. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, and permitted assigns.

14. NO THIRD PARTY BENEFICIARIES

No provision of this Agreement is intended, expressly, or by implication, to purport to confer a benefit or right of action upon a third party.

15. HEADINGS

The headings in this Agreement are provided for convenience and reference only and have no legal effect on the Agreement's construction or interpretation and in no way define, limit, construe, or describe the scope or extent of such section.

16. NO WAIVER

No failure on the part of OneChicago or the Company to exercise, and no delay on either part in exercising, any right or remedy under this Agreement will operate as a waiver thereof or of any requirement, nor will any single or partial exercise of any right or remedy preclude any other or further or future exercise thereof or the exercise of any other right or remedy.

17. FORCE MAJEURE

Any delay in or failure of performance by either party under this Agreement will not be considered a breach and will be excused to the extent such delay in or failure is caused by any event beyond the reasonable control of such breaching party, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, strikes or other labor disputes, fires, interruptions in telecommunications or Internet or network provider services, acts or omissions of a third party hardware or software supplier or a third party communications provider, power outages and governmental restrictions.

18. SEVERABILITY

If any part of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such part shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other parts hereof shall remain in full force and effect.

19. SURVIVAL

The provisions of Sections 5, 7, and 9 shall survive termination of this Agreement.

20. ENTIRE AGREEMENT

This Agreement together with any Exhibit(s) contains the entire agreement between the Company and OneChicago regarding the subject matter hereof and supersedes all prior agreements, understandings, and negotiations between Company and OneChicago. This Agreement may be amended only by a writing executed by both of the parties hereto.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement, which is effective as of the date this Agreement is accepted and executed by OneChicago, as indicated below.

COMPANY SIGNATURE

Name _____
Title _____
Signature _____
Date _____

ONECHICAGO SIGNATURE

Name _____
Title _____
Signature _____
Effective Date _____

Please return completed documentation to: operations@onechicago.com

EXHIBIT A

CUSTOMER INTERFACE CREDIT AND RISK CONTROLS

(Reserved)