

## PIERS Data License Agreement

**1. PIERS Product(s) and Services:** This PIERS Data License Agreement sets forth the terms and conditions upon which JOC Group, Inc., whose principal place of business is located at 2 Penn Plaza East, 12<sup>th</sup> Floor, Newark, NJ, 07105, acting through its Port Import Export Reporting Service division (“PIERS”), will make available to California Energy Commission (“Client”), whose principal place of business is located at: 1516 9<sup>th</sup> Street, MS 41, Sacramento, California, certain PIERS product(s) and services as identified in Attachment (Licensing Details).

**2. Authorized Users and Redistribution Users:** (a) Authorized Users: Client may grant direct access to PIERS Product(s) to such number of employees of Client (“Authorized Users”) as set forth in Attachment (Licensing Details) Section 2 (Products).

(b) Redistribution Users: Authorized Users may share information or data provided by PIERS Product(s) to such number of, employees of Client, or independent contractors or consultants of Client, as set forth in Attachment (Licensing Details) Section 2 (Products), who work solely for Client at Client’s place of business (collectively, “Redistribution Users”). Redistribution Users shall not have direct access to PIERS Products.

**3. Term:** If Client is making a one-time data purchase, the applicable data will be made available between the Access Period Start Date and Access Period End Date set forth in Attachment (Licensing Details) Section 1 (Access Period).

**4. Payment of Fee and Taxes:** PIERS will issue invoices in U.S. dollars to Client for the fee(s) set forth in Attachment (Licensing Details) Section 4 (Fees & Invoicing), and for all applicable taxes which may be levied or assessed based on Client’s payment for, or use of, Licensed Information, and any other amounts that may be due and payable under this Agreement. Client shall pay each invoice within thirty (30) days of the date of the invoice. PIERS MAY, IN ITS SOLE DISCRETION, TERMINATE THIS AGREEMENT FOR CLIENT’S FAILURE TO PAY ANY INVOICE WHEN DUE, AND SUBSCRIPTION CLIENTS SHALL BE LIABLE FOR THE BALANCE OF ALL FEES DUE DURING THE TERM. All payments are non-refundable. If Client is exempt from certain taxes, Client shall provide PIERS with a certificate of exemption or comparable document issued by the applicable taxing authority at the time of executing this Agreement. Client shall notify PIERS of any dispute in writing within thirty (30) days of the invoice date and will pay the undisputed portion of all invoiced amounts within thirty (30) days of the invoice date. Client will receive a credit memo subsequent to a dispute resolution if the parties resolve the dispute in favor of Client. Client acknowledges that PIERS will not re-issue, revise or prepare a custom invoice unless specifically stated in Attachment (Licensing Details) Section 4 (Fees & Invoicing).

**5. Disclaimer of Warranties:** Client expressly acknowledges that Licensed Information and associated data are derived from third-party sources, such as ship manifests and other documents submitted to the United States Customs Service by shippers, freight forwarders, and consignees, over which PIERS has no

control, and that PIERS has not made, and does not make, any representations whatsoever as to the accuracy, completeness, reliability, or timeliness of Licensed Information. PIERS, accordingly, makes no warranties with respect to Licensed Information or associated software, and DISCLAIMS ALL WARRANTIES (EXPRESS OR IMPLIED, INCLUDING CONDITIONS OR WARRANTIES IMPLIED BY STATUTE OR OTHERWISE) WITH RESPECT TO LICENSED INFORMATION, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR OTHERWISE.

**6. Limitation of Liability** NEITHER IHS NOR THE CLIENT WILL BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE, SPECIAL, OR OTHER INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY, INCLUDING: (a) ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUE, SAVINGS, OR BUSINESS; (b) LOSS OF DATA OR INFORMATION; (c) LOSS OF GOOD WILL, REPUTATION, OR SIMILAR LOSSES; OR (d) BUSINESS INTERRUPTIONS ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY USE OF OR INABILITY TO USE PRODUCTS, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES. Except for a parties indemnification obligations under Section 7, the maximum liability of a party to the other Party for all claims under this Agreement, in warranty, contract, tort, or otherwise, will not exceed: in the case of Products, the Fees paid by Client in the prior 12 months for the defective Products that are the subject of the claim. To the greatest extent allowed by California law, the limitations of liability in this Section 6. will not apply to the liability of either Party for: (a) damages related to death or personal injury arising out of the gross negligence or willful misconduct of the other Party; (b) any damages or liability incurred as a result of fraud or fraudulent misrepresentation of the other Party; or (c) to claims or loss(es) based upon breaches of a Party’s License/Authorized Use or intellectual property rights by the other Party.

**7. Indemnity:** Except as otherwise specifically set forth in writing between the parties, PIERS will indemnify, defend, and hold harmless Client for any damages (and related attorney’s fees) awarded by a court in favor of any third party alleging that Products infringe or misappropriate any third party intellectual property rights, including any patent, copyright, trademark, or trade secret, in the country(s) of Client’s locations as licensed under an Order Form (“Infringement Claim”). **7.1** PIERS will have no liability under this Section for any Infringement Claim arising from: (a) failure to use Products s in accordance with the Agreement, (b) the modification of a Product not specifically authorized in writing by PIERS; (c) the combination of a Product with any third party software, equipment, or information not specified in the documentation; (d) the use of a version of a Product other than the then-current version, if the infringement would have been avoided by use of the then-current version; or (e) compliance with designs, plans, or specifications furnished by or on behalf of the Client. **7.2** If Products are held or are believed



by PIERS to infringe, PIERS may choose, at its sole expense, (a) to modify the Products so that they are non-infringing; (b) to replace the Products with non-infringing Products that are functionally equivalent; (c) to obtain a license for Client to continue to use the Products; or if none of (a), (b), or (c) is commercially reasonable, then (d) to terminate the Customized Data Delivery order for the infringing Products and refund Fees paid for such infringing Product(s); in case of provision of subscription Products, prorated from the date of the Infringement Claim. This Section states the entire liability of PIERS and Client’s sole and exclusive remedy for any infringement of third party proprietary rights of any kind. **7.3 Indemnification Procedure.** The indemnification obligations of PIERS under this Section are contingent upon the Client providing to the PIERS: (a) prompt written notice of the alleged claim; (b) sole control of the defense or settlement of the alleged claim; and (c) reasonable cooperation and assistance, at PIERS’s expense. If the Client chooses to be represented by counsel, it will be at the Client’s sole cost and expense.

**8. Injunctive Relief:** Client acknowledges that any unauthorized use, disclosure, or transfer of Licensed Information may diminish substantially the value of such Licensed Information and cause PIERS irreparable harm. Accordingly, Client agrees that PIERS shall be entitled to seek injunctive or other equitable relief, without any requirement to post an injunction or surety bond, in addition to all available legal remedies, arising from or related to any breach of the obligations of Client or its Authorized Users or Redistribution Users of the provisions of Sections 3 (License) and 6 (Termination, Destruction of Licensed Information) of this Agreement.

**9. Force Majeure:** PIERS shall not be deemed to be in default for any delay or failure in performance or interruption of the delivery of Licensed Information resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, or governmental restrictions.

**10. Miscellaneous:** This Agreement constitutes the entire and complete understanding of the parties and supersedes all prior communications, representations, understandings, and agreements, whether oral or written, by or between the parties. This Agreement may only be amended or modified by written instrument executed by both parties. The parties consent and agree that the construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of California, without regard to principles of conflict of laws, and that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Client may not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of PIERS. PIERS reserves the right, at its sole discretion, to assign this Agreement or any of its rights and delegate any of its duties hereunder, in whole or in part. This Agreement may be signed in counterparts.

This Contract has been duly signed by Client and PIERS on the respective dates indicated below.

**CLIENT**

**The PIERS division of JOC Group, Inc.**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: Robert P. Oglesby

Name: Richard E. Hanft

Title: Executive Director

Title: Vice President – Strategic Accounts

Date: \_\_\_\_\_

Date: January 30, 2015

## Attachment (Licensing Details)

### 1. Data Period

DATA PERIOD START DATE	DATA PERIOD END DATE
January 1, 2015	December 31, 2015

### 2. Products

	PRODUCT DETAILS	NUMBER OF LICENSES	SUB-TOTAL LICENSE FEES
<b>WEB-BASED SOFTWARE SUBSCRIPTIONS</b>			
PIERS iPIERS®/ MyPIERS®			
<b>RESEARCH REPORT SUBSCRIPTIONS</b>			
JOC Container Shipping Outlook			
<b>CUSTOMIZED DATA DELIVERY</b>			
Customized iPIERS data file		X	
<b>SUMMARY TOTAL</b>			

### 3. Data & Delivery Format

Customized Data Delivery orders can be fulfilled via the options specified in the DATA FORMAT and DELIVERY FORMAT tables.

#### DATA FORMAT

Comma Separated Value (CSV)	
MS Excel (.xlsx)	X
Portable Document Format (PDF)	

#### DELIVERY FORMAT

Email	X
File Transfer Protocol (FTP)	X

### 4. Fees & Invoicing

Invoice Frequency:  One-Time in Full       Invoice Monthly       Invoice Quarterly

Amount per Invoice:

Invoice Address:

Method of Payment:  Check     Credit Card

Credit Card Type:	
Credit Card Number:	
Expiration Date:	
Approval Code:	

Name as it appears on credit card: \_\_\_\_\_

Zip Code (of credit card billing address): \_\_\_\_\_

Credit CARDHOLDER'S Signature: \_\_\_\_\_

#### Special Instructions:

This is a twelve (12) month subscription renewal covering the updated list of Petroleum Products, along with the enhanced / amended data file layout as per existing subscription agreement currently in place. This subscription renewal covers the 2015 data