

## Special Executive Report

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S-4974

August 31, 2009

### Amendments to Exchange User License Agreement for CME ClearPort®

Effective immediately, Chicago Mercantile Exchange Inc. ("CME") has made a series of amendments to the Exchange User License Agreement ("EULA") for CME ClearPort. The changes are in connection with today's decommissioning of CME ClearPort Trading.

The changes are set forth below, with additions underscored and deletions overstruck.

The amended electronic version of the EULA has been posted on the NYMEX website.

Should you have any questions or require any further information, please contact CME ClearPort Customer Support at 1.800.438.8616 or via email at [ClearPort@cmegroup.com](mailto:ClearPort@cmegroup.com).

Click this link [http://www.nymex.com/global\\_regist.aspx](http://www.nymex.com/global_regist.aspx) to reach the Exchange Service Registration Menu and follow the instructions to view the updated EULA.

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Last Updated: ~~42-31 August~~May 2009

## EXCHANGE USER LICENSE AGREEMENT

This agreement and the schedules hereto ("**Agreement**") set out the terms on which Chicago Mercantile Exchange, Inc. ("**Exchange**"), a for-profit Delaware corporation having its principal place of business at 20 South Wacker Drive, Chicago, Illinois, 60606, will provide the user ("**User**") with access to the Web site located at <http://www.cmegroup.com/clearport> or such other addresses or uniform resource locators as may be specified by the Exchange (collectively, the "**Site**") and the services provided therein by the Exchange on its own behalf and on behalf of other exchanges, including the Board of Trade of the City of Chicago, Inc. ("**CBOT**"), the New York Mercantile Exchange Inc. ("**NYMEX**"), the Commodity Exchange, Inc. ("**COMEX**"), and the Dubai Mercantile Exchange Limited ("**DME**") through DME Direct powered by CME ClearPort, (each other exchange, including CBOT, NYMEX, COMEX and DME, is referred to individually herein as a "**Participating Exchange**"). The services provided on the Site include, but are not limited to:

- 1) ~~Electronic trading services for bidding and offering contracts listed for trading by NYMEX ("**CME ClearPort Trading Services**"), as detailed in Schedule A, A-1 (and related appendices), and A-2 (and related appendices), as applicable;~~
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- 2) Exchange clearing of futures positions for Exchange contracts and Participating Exchange contracts arising out of off-exchange transactions ("**Clearing Services**" or "**CME ClearPort Clearing Services**") as detailed in Schedule AB; and

~~23~~) Exchange clearing of over-the-counter derivatives contracts ("**Clearing Services**" or "**CME ClearPort Clearing Services**") as detailed in Schedule ~~BC~~; and  
~~34~~) such other services that the Exchange or Participating Exchanges may offer from time to time ("**Other Services**").

All of the above referenced services shall be collectively referred to herein as "**Services**."

In consideration of the recitals and the mutual covenants and agreements hereinafter set forth, the Exchange and User agree as follows:

1. **General Terms.**

(a) **Schedules.** User acknowledges and agrees that the attached schedules shall only apply in the event that User executes the relevant Schedule and accesses the service referenced therein. By way of example, ~~Schedule A below will only apply to those Users and their User Agents (as defined below) that execute Schedule A and utilize the CME ClearPort Trading Services;~~ Schedule ~~AB-1 below~~ will only apply to those Users and their User Agents (as defined below) that execute Schedule ~~AB-1~~ and utilize the CME ClearPort Clearing Services described therein; ~~Schedule B will only apply to those Users and their User Agents (as defined below) that execute Schedule B and utilize the CME ClearPort Clearing Services described therein, etcn, etc.~~ Collectively, ~~Schedule A, Schedule A-1 (and related appendices, as applicable), Schedule A-2 (and related appendices, as applicable),~~ Schedule ~~BA~~, Schedule ~~BC~~ and any additional Schedules for Other Services that may be added under this Agreement by the Exchange from time to time are referred to herein as "Schedules." Upon execution, the applicable Schedule(s) shall be incorporated into and made a part of this Agreement.

(b) **Conflicting Terms.** By using or accessing the Site and/or Services, User agrees to be legally bound by and to abide by this Agreement, the documents referenced herein including, but not limited to, the Exchange Privacy Policy ("Exchange Privacy Policy"), the Exchange By-laws and Rules ("the Exchange Rules") and any applicable rules, policies and procedures of a Participating Exchange ("the Participating Exchange Rules"), all as amended from time to time, and all applicable Schedules hereto. User agrees that this Agreement and all applicable Schedules, if any, shall supersede any conflicting terms contained in the Exchange Privacy Policy. User also agrees that, with respect to transactions in Exchange contracts, the Exchange Rules and all applicable Schedules shall supersede any conflicting terms contained in this Agreement. User further agrees that, with respect to transactions in Participating Exchange contracts, the Participating Exchange Rules and all applicable Schedules shall supersede any conflicting terms contained in this Agreement, other than Sections 10 and 11 and any provision of any applicable Schedules supplementing or otherwise referring to those Sections. Nothing herein affects the obligation of any User or its User Agent (as defined below) to comply with all applicable Exchange Rules and Participating Exchange Rules. This Agreement, the Exchange Privacy Policy, the Exchange Rules, applicable Participating Exchange Rules and all applicable Schedules hereto shall be collectively referred to herein as the "**Terms**."

(c) **Amendments.** The Terms will govern User's and/or its User Agent's (as defined below) access to and use of the Site, System (as defined below) and Services as discussed below. The Exchange may amend the Terms (but not the Participating Exchange Rules, which only may be amended by the relevant Participating Exchange) at any time by posting amendments on the Site and any such amendments will be prospectively binding on User and/or its User Agent (as defined below); *provided that* the Exchange will provide thirty (30) calendar days prior Notice (as defined below in Section 12 of this Agreement) of any amendments by the Exchange that are likely to materially and adversely affect User or its rights or obligations hereunder. User's and/or its User Agent's (as defined below) continued use of the Site, Service or System (as defined below) after the Notice and the effective date of any such amendment(s) shall constitute the User's ratification of and agreement to any such amendment.

(d) **Terms of Payment.** User agrees to pay the Exchange all fees associated with the applicable Service(s) pursuant to the payment instructions contained in this section ("Terms of Payment"). Such fees

shall be calculated according to the section entitled "Fee Schedule" in the applicable Schedule or as may otherwise be posted on the Exchange's website or made publicly available by the Exchange, which is subject to change at any time provided the Exchange sends the Notice to User, subject to Section 1(c). User hereby agrees to be bound by the Fee Schedule that was in effect at the time the applicable Services were rendered. Any volume or incentive discounts applied to the rate established by the appropriate Fee Schedule must be made in writing and signed by a duly authorized representative of the Exchange. Disputes as to any items contained on an invoice shall be reconciled in a mutually agreeable manner. If amounts owed are not paid when due pursuant to the terms detailed herein, such overdue amounts shall bear interest at the monthly interest rate of the lesser of: (i) one and a half percent (1.5%); or (ii) the maximum rate of interest permitted by law on the actual number of days calculated based upon a three hundred sixty (360) day year.

2. **Access to the System.** The Exchange hereby grants User and its User Agents a non-exclusive, non-transferable, revocable license to access the Site, to utilize any Services provided therein, and to utilize any hardware, software, systems and/or communications links as may be furnished by the Exchange from time to time in accordance with the Terms. Such hardware, software, systems and communications links are collectively referred to herein as the "**System**." Additionally, with respect to contracts of a Participating Exchange, User and its User Agents shall be authorized to utilize any Services provided on the Site, and to utilize the System only pursuant to authorization criteria established by such Participating Exchange.

3. **Means of Access to the System and Voluntary User Expenses.** User or its User Agents may obtain access to the System via the Internet or by any other means deemed acceptable by the Exchange in its commercially reasonable discretion. User assumes all risk and bears sole responsibility for establishing such access including, but not limited to, selecting its service provider, paying all applicable costs for establishing such access, and bearing all risk associated with any malfunction thereof.

4. **Registration.** Services are available only to qualified persons and/or entities (*i.e.*, individuals, clearing firms, trading firms, broker firms, etc.) that have registered with the Exchange having: (i) executed this Agreement with any applicable Schedules thereto; (ii) submitted to the Exchange the list substantially in the form attached hereto specifying any User Agents (as defined below); (iii) agreed to the Terms; and (iv) received authorization from any applicable Participating Exchange with respect to the contracts of such Participating Exchange pursuant to Section 2.

The User may register one or more agents to access the Site and/or System on behalf of User (each a "**User Agent**"). User's registration of various User Agents will be subject to the additional terms contained in the applicable Schedule. Please consult the Schedule associated with the applicable Service to determine what types of individuals and/or entities may be registered as User Agents and for specific registration procedures applicable to such Service. The User must identify all of its User Agents at registration and notify the Exchange prior to any change in its User Agents. By registering any such User Agents, User agrees to be bound by and to indemnify and hold the Exchange and any applicable Participating Exchange harmless for any and all actions taken by its User Agents in connection with Services provided under this Agreement.

5. **User IDs and Passwords.** Following registration for Services, the Exchange shall issue to User and/or its User Agents one user ID and password per User and/or its User Agent (collectively, the "**Passwords**") for use exclusively by User and/or its User Agents on behalf of the User for transactions in Exchange contracts as authorized by the Exchange, and for transactions in Participating Exchange contracts as authorized by the applicable Participating Exchange. The issuance of Passwords will be subject to additional terms and conditions contained in the applicable Schedule. As discussed in the Exchange Privacy Policy, all communications to Users and/or its User Agents that take place via e-mail are not secure. As such, Users and/or its User Agents must immediately change any initial Passwords provided by the Exchange. User will be solely responsible for controlling and monitoring the use of the Passwords and will not provide, or permit any other entity or individual to provide, the Passwords to any third party. User will immediately notify the Exchange of: (i) any unauthorized disclosure or use of the Passwords; (ii) any unauthorized access to the Site and/or the System; and (iii) any need to deactivate Passwords as a

result of User's and/or its User Agents' loss or disclosure of Passwords, any unauthorized use of Passwords, or any change in its User Agents. Except as otherwise provided in this Agreement, User and its User Agents acknowledge and agree that they shall be bound by any actions taken through the use of their Passwords, including the execution of Services, whether or not such actions were authorized by User and/or its User Agent. Furthermore, User acknowledges and agrees that any Notices or other communications sent to its User Agents by the Exchange shall be binding on User subject to Section 1(d) of this Agreement.

**6. Representations, Warranties and Covenants.** User and the Exchange (and Participating Exchanges as applicable) hereby represent, warrant and covenant that during the term of this Agreement:

(a) Subject to additional terms contained in the applicable Schedules, if any, User acknowledges and agrees that the Site, System, Services and all information and content (including, without limitation, bids and offers, price and other trade-related data, whether generated by the Exchange, User or User Agents) thereon or in any way related to the Services (collectively, "Exchange Data") are the exclusive proprietary property of the Exchange or a Participating Exchange (and/or their licensors, as applicable). Subject to the Terms, the Exchange (and, where applicable, Participating Exchange) hereby grants to User and its User Agents a limited, revocable, non-exclusive, non-transferable and non-assignable license to use the Site, System, Services and Exchange Data solely for the purposes set forth herein and User will have no other rights with respect to the Site, System, Services, Exchange Data or other proprietary property of the Exchange (and, where applicable, Participating Exchange).

(b) User agrees that it will not in whole or in part copy, modify, reverse engineer, reverse assemble or reverse compile the Site, System or any of the content or information displayed thereon or issued by the Site or System, that it will not distribute, rent, sell, retransmit, redistribute, release or re-license the Site or System or any part thereof to any third party (other than to its affiliates and agents subject to and in accordance with this Agreement).

(c) User represents and warrants that it will not use or permit the use of the content, information and data displayed on or issued by the Site or System including, but not limited to, Exchange Data, for any illegal purpose or for any purpose deemed unacceptable by the Exchange in its sole discretion. User also represents and warrants that it, all of its User Agents, and all of its associated or subsidiary companies are not and, unless otherwise authorized by the Exchange, will not be or become, directly or indirectly, vendors of the content, information or data displayed on or issued by the Site or System including, but not limited to, Exchange Data.

(d) Subject to the applicable Schedule hereto, User represents and warrants that it will not, without the Exchange's prior written consent, directly or indirectly redistribute, or knowingly facilitate redistribution of, all or any portion of the data on the Site or System including, but not limited to Exchange Data, provided, however, that such consent shall not be required for copying, reproduction or re-transmission of information in relation to the Exchange that is generally available to the public free of charge, or any part of the data on the System including, but not limited to Exchange Data, for the administration, regulatory and client reporting purposes of the User or its User Agents, and such client purposes may include the solicitation and entry of orders for trades in the System, including, if applicable, to orders transmitted via the User's internal automated order routing system or providing indicative valuations to User's and/or its User Agent's counterparties. Notwithstanding the foregoing, the User represents and warrants that it and all its User Agents shall only use such data including, but not limited to, Exchange Data, for its and their own internal business purposes and processes, and not for any commercial purposes whatsoever, as discussed in Section 7 ("Intellectual Property").

(e) User represents and warrants that neither it nor its User Agents shall use or permit use of the Site, System or Services except in accordance with the Terms and the provisions of the Exchange Rules and Participating Exchange Rules as applicable.

(f) User represents and warrants that: (i) it has all necessary power and authority to execute and perform this Agreement; (ii) this Agreement is legal, valid, binding and enforceable against User; (iii) neither the execution of, nor performance under, this Agreement by User violates or will violate any law, rule, regulation or order, or any agreement, document or instrument, binding on or applicable to User; and (iv) its access to and use of the Site, System and/or Services will be in accordance with all applicable federal, state, and local laws, regulations, and treaties. User further represents and warrants that all its User Agents identified in the registration process shall read and agree to be bound by the Terms.

(g) User acknowledges that the Exchange may, in its sole and reasonable discretion, with or without cause, temporarily or permanently cease to operate the Site or System, or temporarily or permanently cease to make certain commodity products available (provided, however, that the Exchange will make commercially reasonable efforts to provide prior Notice to User and, if such prior Notice is not provided to the User due to circumstances beyond the Exchange's control, will endeavor to provide such Notice promptly thereafter). User acknowledges that its access to and utilization of the Site, System and Services may be monitored by the Exchange for its own lawful purposes and not for the benefit of User.

(h) User acknowledges that the Exchange does not guarantee continuous, uninterrupted or secure access to the Site, System and Services and acknowledges that transmission of data on any electronic system may be subject to: interruption; interference; blackout; failure; systems or service unavailability or failure; hardware or software malfunction or failure; interception by third parties; unauthorized access; theft; modification or inaccuracy. User further acknowledges that the reliability, availability, performance and other aspects of the Internet are beyond the Exchange's reasonable control.

(i) User and the Exchange agree that this Agreement is not intended to create, nor shall it be interpreted to create, a joint venture, partnership, or any similar relationship between the User and the Exchange and, except as otherwise provided in this Agreement, neither party shall be deemed to be the agent of the other party.

(j) User and the Exchange each represent and warrant that it is duly organized, validly existing, and in good standing under the laws of the state of its organization (if User is an entity) and has all requisite power and authority to enter into and perform its obligations under this Agreement.

(k) User and the Exchange each represent and warrant that neither the execution, delivery or performance of this Agreement by it will conflict with or result in a breach of any provision of its certificate of incorporation or by-laws, partnership agreement, or other organizational or governing documents, as applicable, if User is an entity and will not result in a breach of, or constitute a default under, any term, condition or provision of any agreement, instrument or obligation to which it is a party or by which it is bound and, subject to Section 8 ("Disclaimer of Warranties") below, will not violate or conflict with any permit, judgment, order, statute, rule or regulation applicable to it, including the Commodity Exchange Act.

(l) User understands and agrees that User and its User Agents are prohibited from posting on or transmitting through the Site and/or System any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically, or otherwise objectionable material of any kind, including but not limited to any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law.

(m) The Exchange represents and warrants that it shall not use User's and/or its User Agents' names or identities for marketing or promotional purposes without the prior consent of User and/or its User Agents, other than as necessary in the ordinary course of business of the Exchange.

## **7. Intellectual Property.**

(a) **Exchange Data.** User and its User Agents acknowledge that the Site, System and all Exchange Data, unless and except as otherwise specified, are the exclusive, proprietary property of the Exchange and/or the applicable Participating Exchange and may constitute trade secrets. User and its User Agents will have no rights with respect to the Site, System, Services or Exchange Data other than those expressly set forth in the Terms. Subject to the terms and conditions contained in the applicable Schedule, User and its User Agents agree that they will not (other than for their own internal use in accordance with this Agreement), communicate, redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the Exchange Data, in any format, to any third party or use Exchange Data in constructing or calculating the value of any index or indexed product. User will use its best efforts to ensure that its User Agents, partners, officers, directors, employees and agents maintain sole control and possession of, and sole access to, Exchange Data obtained by User and/or its User Agents.

(b) **Use of Exchange Data.** This Site and the System are protected by domestic and international intellectual property laws including, but not limited to, laws relating to copyrights, patents, trade secrets and trademarks, and (except as expressly provided herein) ALL RIGHTS, INCLUDING WITHOUT LIMITATION ALL GOODWILL ASSOCIATED THEREWITH, THEREUNDER ARE HEREBY RESERVED. Materials from the Site and/or System may not be copied, distributed or transmitted in any way without prior written consent of the Exchange or Participating Exchange, as applicable, as described below (except as provided in Section 6 of this Agreement and an applicable Schedule). All materials on the Site and System are provided and may be used for lawful purposes only. Unless and except as otherwise specified, the Exchange and/or Participating Exchanges, as applicable, reserves complete title and rights for materials downloaded from the Site and/or the System. User may download one copy of any and all materials on the Site for internal, non-commercial use *provided that* it does not modify or alter the materials in any way, or delete or change any copyright, trademark or other proprietary rights or other notice.

(c) **Trademarks.** ClearPort, NYMEX, New York Mercantile Exchange, miNY, New York Mercantile Exchange are trademarks owned by the New York Mercantile Exchange, Inc. CME, Chicago Mercantile Exchange, Clearing360, E-mini, Globex, Span, Clearing 21 are trademarks owned by Chicago Mercantile Exchange Inc. CBOT and Chicago Board of Trade are trademarks owned by Board of Trade of the City of Chicago, Inc. COMEX is a trademark owned by the Commodity Exchange, Inc. Other trademarks referred to, containing or displayed on the Site or the System are the property of their respective owners, including without limitation, Dubai Mercantile Exchange Limited, DME Direct, and DME, which are trademarks of the Dubai Mercantile Exchange Limited. Nothing in this Agreement or displayed on or contained in this Site or the System or elsewhere, should be construed as granting, expressly, by implication, estoppel or otherwise, any license or right to use any trademark or service mark without the express written permission of the owner of such mark. The marks may not be used in connection with any product or service that is not the Exchange's or Participating Exchange's, as applicable, in any manner that is likely to cause confusion (as to the source or sponsorship of any product or service or otherwise), or in any manner that disparages or discredits the Exchange or a Participating Exchange. All trademarks, logos, service marks, trade dress, slogans, copyrighted designs or other brand features, including hyperlinks to the Site, may be used only as explicitly licensed by the Exchange or Participating Exchange, as applicable, and only under the terms and conditions and for the purposes described in any such license.

**8. Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS AGREEMENT, The Site, SYSTEM AND SERVICES ARE provided on an "as is," "as available" basis without warranties of any kind and There are no express or implied warranties or representations provided by the Exchange, ANY PARTICIPATING EXCHANGE and/or THEIR subsidiaries and affiliates and including vendors, independent contractors and subcontractors relating to the site, System, services, third party services or facilities used to support same, including but not limited to warranties of merchantability and warranties of fitness for a particular purpose or use OR NON-INFRINGEMENT; furthermore, the Exchange cannot and does not guarantee or make any representation or warranty, either express or implied, as to the validity, sequence, timeliness, completeness, accuracy or continued

availability of any information or data made available on or through the site, System or services including, but not limited to exchange data.

**9. Term, Termination and Summary Denial of Access to the System.**

(a) This Agreement will commence as of the earlier date that the User or its User Agent agrees to this Agreement at registration, and, with respect to Exchange contracts, will continue thereafter unless and until terminated without cause by: (i) the Exchange upon thirty (30) calendar days prior written Notice to User; or (ii) by User, upon thirty (30) calendar days prior written Notice to the Exchange, and in the case of termination with cause, by: (i) the Exchange upon seven (7) calendar days prior written Notice to User; or (ii) by User, upon seven (7) calendar days prior written Notice to the Exchange; *provided that* this Agreement shall remain in effect with respect to any Transactions effected prior to such termination. With respect to a Participating Exchange's contracts this Agreement will continue until terminated by the relevant Participating Exchange pursuant to its Participating Exchange Rules; *provided that* this Agreement shall remain in effect with respect to any Transactions effected prior to such termination. The provisions of Section 1 ("General Terms"), Section 6 ("Representations, Warranties and Covenants"), Section 7 ("Intellectual Property"), Section 8 ("Disclaimer of Warranties"), Section 10 ("Limitation of Liability"), and Section 11 ("Indemnification"), and Section 23 ("Confidentiality") of this Agreement shall survive the termination of this Agreement.

(b) Notwithstanding the above, the Exchange in all instances (including without limitation any actions taken by the Exchange or any Participating Exchange pursuant to any Exchange Rules or Participating Exchange Rules providing procedures for summary denial of access to the Site, System or Services) may in its sole discretion, or upon direction of the relevant Participating Exchange, suspend, terminate or restrict at any time User's or its User Agent's access to and utilization of the Site, System or Services in order to protect the integrity or operation of the Site, System or Services and/or to protect the Exchange, its markets, any Participating Exchange or other Users.

(c) Upon termination for any reason, all outstanding fees for Services rendered shall become immediately due and payable.

**10. Limitation of Liability.**

(a) EXCEPT AS PROVIDED IN SUBSECTION (b) BELOW AND EXCEPT WHEN THERE HAS BEEN A FINDING OF WILLFUL OR WANTON MISCONDUCT, NONE OF CME GROUP INC. NOR ITS AFFILIATES NOR THEIR OFFICERS, DIRECTORS, MEMBERS OR EMPLOYEES; NOR THE EXCHANGE OR ANY PARTICIPATING EXCHANGE, THEIR AFFILIATES, THEIR SUBSIDIARIES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, PARTNERS, AGENTS, DESIGNEES, VENDORS, INFORMATION PROVIDERS, INDEPENDENT CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO ANY PERSON FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING FROM:

(i) ANY FAILURE OR MALFUNCTION, INCLUDING ANY INABILITY TO ENTER OR CANCEL **ORDERS TRANSACTIONS** IN WHOLE OR IN PART ON THE SITE, SYSTEM, SERVICES, OR FACILITIES USED TO SUPPORT SAME, OR

(ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE SITE, SYSTEM, SERVICES, EXCHANGE DATA OR OTHER INFORMATION MADE AVAILABLE ON THE SITE OR SYSTEM, OR FACILITIES USED TO SUPPORT THE SITE OR SYSTEM. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), STRICT LIABILITY OR OTHERWISE.



(b) THE SOLE LIABILITY OF THE EXCHANGE, ANY PARTICIPATING EXCHANGE, THEIR AFFILIATES, THEIR SUBSIDIARIES, AND/OR ANY OF THEIR RESPECTIVE SUCCESSORS OR ASSIGNS AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, PARTNERS, AGENTS AND DESIGNEES TO THE USER AND/OR ITS USER AGENT FOR DIRECT LOSS OR DAMAGE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), STRICT LIABILITY OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH SITE, SYSTEM, SERVICES OR TERMS SHALL BE THE LIABILITY OF THE EXCHANGE FOR THE NEGLIGENT ACTION OF ITS EMPLOYEES IN:

~~(i) CANCELING ORDERS RESTING IN THE SYSTEM;~~

(ii) TERMINATING A USER'S AND/OR USER AGENT'S PRIVILEGES AND DENYING THAT USER AND/OR ITS USER AGENT FROM ENGAGING IN FURTHER ~~TRADING-TRANSACTIONING~~ ON THE SITE OR SYSTEM, IN WHICH CASE ONLY THOSE ~~ORDERS-TRANSACTIONS~~ THAT WERE ~~ENTERED-RESTING~~ IN THE SYSTEM AT THE TIME OF TERMINATION MAY BE THE BASIS FOR AN ALLOWABLE CLAIM;

(iii) FAILING TO TERMINATE A USER'S OR USER AGENT'S PRIVILEGES PURSUANT TO AN EXCHANGE CLEARING MEMBER'S INSTRUCTIONS, IN WHICH CASE THOSE ~~ORDERS-TRANSACTIONS~~ THAT WERE ENTERED ~~OR MATCHED~~ AFTER THE INSTRUCTION WAS RECEIVED BY CME CLEARPORT CUSTOMER SUPPORT BUT BEFORE THE EXCHANGE HAS HAD A REASONABLE PERIOD OF TIME TO ACT UPON SUCH INSTRUCTION SHALL NOT FORM THE BASIS FOR AN ALLOWABLE CLAIM; AND

~~(iv)~~ CAUSING USER IDENTIFICATIONS AND PASSWORDS TO BE ISSUED TO UNAUTHORIZED PERSONS,  
AND SUCH LIABILITY SHALL BE LIMITED TO:

~~a.(i)~~ \$10,000 FOR ANY SINGLE CLAIM;

~~b.(ii)~~ \$100,000 FOR ALL CLAIMS ARISING OUT OF THE NEGLIGENT ACTIONS OR FAILURES TO ACT OF ALL EXCHANGE AND PARTICIPATING EXCHANGE EMPLOYEES ON A SINGLE DAY FOR ALL USERS AND/OR THEIR USER AGENTS ON THAT DAY.  
FOR THE PURPOSE OF THIS AGREEMENT, A SINGLE CLAIM SHALL MEAN A LOSS RESULTING FROM ALL ACTIONS OR FAILURE TO ACT AS DESCRIBED ABOVE THAT WERE PERFORMED NEGLIGENTLY BY ALL EXCHANGE AND PARTICIPATING EXCHANGE EMPLOYEES WITH RESPECT TO THE AGGREGATE OF ~~ORDERS AND/OR~~ TRANSACTIONS ENTERED THROUGH THE SITE OR SYSTEM FOR A SINGLE CUSTOMER. IF THE NUMBER OF ALLOWED CLAIMS ARISING OUT OF THE NEGLIGENT ACTIONS OR FAILURES TO ACT OF ALL EXCHANGE AND PARTICIPATING EXCHANGE EMPLOYEES ON A SINGLE DAY CANNOT BE FULLY SATISFIED BECAUSE OF THE ABOVE LIMITATIONS, ALL SUCH CLAIMS SHALL BE LIMITED TO A PRO RATA SHARE OF THE MAXIMUM PER DAY AMOUNT.

11. **Indemnification.** The User and/or its User Agent shall indemnify, protect and hold harmless CME Group Inc. and its affiliates and the Exchange and any Participating Exchange and/or their subsidiaries and affiliates and their respective officers, members, directors, employees, agents, designees, vendors, information providers, independent contractors and subcontractors from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs and expenses (including reasonable attorney's fees) ("Losses") resulting from or arising out of any act or omission by any person obtaining access to the Site, System, Service(s) or Exchange Data through the Passwords (other than through the negligence of the Exchange, as provided in Section 10(b)(~~iii~~)) whether or not User has authorized such access.

12. **Notices.** Except as otherwise provided in this Agreement, all notices (the "Notices") delivered with respect to this Agreement shall be in writing and either: (i) hand delivered or forwarded by registered or



certified mail; (ii) transmitted by facsimile; or (iii) sent via electronic mail, in either case to the relevant address, e-mail address or facsimile number provided via registration with the Exchange, except that User may notify the Exchange in writing in accordance with the provisions of this clause of additional persons and/or departments for receipt of notice by electronic mail or facsimile transmission or such other address as otherwise required by Exchange Rules. Service of any such Notice shall be deemed to have been made upon the earlier of actual receipt or in the case of first class mail on the third business day after mailing, in the case of facsimile or email transmission when confirmation has been generated that the Notice was delivered to the recipient.

13. **No Third Party Beneficiary.** Except as specifically provided for in Section 1(b) ("Conflicting Terms"), Section 2 ("Access to System"), Section 4 ("Registration"), Section 6 ("Representations and Warranties"), Section 7 ("Intellectual Property"), Section 8 ("Disclaimer of Warranties"), Section 9 ("Term, Termination and Summary Denial of Access to the System"), Section 10 ("Limitation of Liability") and Section 11 ("Indemnification"), and as provided for in any applicable Schedules, 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 the Exchange or any Participating Exchange to persons not a party to this Agreement.

14. **Force Majeure.** The Exchange shall not 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, terrorism, strikes, fires, other catastrophes, power or telecommunications failure or any other cause beyond its reasonable control.

15. **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.

16. **Assignment.** This Agreement may not be assigned by User or the Exchange without the other party's express prior written consent; provided, *however*, that User or the Exchange may assign this Agreement to an entity: (i) 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 User, the assignee agrees in writing to assume the assignor's obligations hereunder, to make the representations, warranties and covenants set forth in Section 6 ("Representations, Warranties and Covenants") hereof and otherwise to be bound by the provisions of, this Agreement (as it may be amended from time to time). This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns in accordance with its terms.

17. **Venue and Governing Law.** Except as set forth below, each party hereby consents to the jurisdiction of any federal or state court located in Chicago, Illinois with respect to any action arising from this Agreement and agree that this Agreement 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. With respect to any action arising from this Agreement involving transactions in the DME's contracts by a User that is not a citizen of, or is not incorporated or domiciled in, or does not maintain any physical presence in the United States, the parties hereby consent to the jurisdiction of the courts of England. No action arising out of any claimed breach of this Agreement or transactions under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

18. **Designation of Agent for Service of Process.** If User is not a resident of the United States, User hereby designates the Exchange for the purposes of accepting delivery and service of any communication issued by or on behalf of the Commodity Futures Trading Commission ("CFTC") to User and the Exchange shall transmit same to User in a manner which is reasonable under the circumstances or in a manner specified by the CFTC. Such designation shall remain in effect unless and until User provides the Exchange with an effective written agency agreement for this purpose with a person domiciled in the United States and the agreement is provided to the CFTC by the Exchange. Nothing

herein shall affect the right of the Exchange or any Participating Exchange to serve legal process in any other manner permitted by law.

19. **Headings.** The headings in this Agreement are intended for convenience of reference, are not substantive and shall not be used to interpret or construe any of the provisions contained in this Agreement. When used in this Agreement, the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

20. **Severability.** If any provision of this Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

21. **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.

22. **Whole Agreement.** This Agreement, as amended from time to time according to its terms, shall constitute the entire agreement between User and the Exchange respecting the Services described herein, and shall supersede all prior agreements, arrangements, representations or promises, whether oral or written, as to its subject matter.

23. **Confidentiality.**

(a) For an overview of the Exchange's treatment of user information not specifically related to the Services, see the Exchange Privacy Policy. Any and all non-public information in any form obtained by the Exchange, User, or their respective employees and/or agents, including but not limited to User Agents (each a "Party"), from the other Party arising out of or related to the provision or use of the Site, System or Service including, but not limited to, trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto and Exchange Data, shall be deemed to be confidential and proprietary information. Each Party agrees to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees, its affiliates their employees or its agents) or to use such information for any purpose whatsoever other than as contemplated by this Agreement 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 outside of this Agreement; or (iv) data and information submitted by User and/or its User Agents that is displayed by the Exchange on the Site and/or System or otherwise distributed or sold by the Exchange or any Participating Exchange, regarding Services, bids, offers, transactions or clearing in accordance with its standard policies and procedures, *provided that* such displays will not identify User by name.

(c) Notwithstanding the foregoing, User may disclose confidential information if and to the extent 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, *provided that* User provides the Exchange with prompt Notice of such requirement, subpoena or order (together with copies thereof), minimizes such disclosure to the confidential information specifically required to be disclosed, and the persons or entities entitled to receive same pursuant to such law, regulation, subpoena or order, and not make such disclosure until the Exchange has had a reasonable opportunity to resist such disclosure and/or to seek confidential treatment of the confidential information unless User is ordered to do otherwise.

**SCHEDULE BA: CME ClearPort Clearing Services for  
Futures Positions Arising Out of Off-Exchange Transactions**

This Schedule BA sets out the specific terms and conditions on which the Exchange will provide the User with CME ClearPort Clearing Services for Exchange clearing of futures positions for Exchange contracts and Participating Exchange contracts arising out of off-exchange transactions. All capitalized terms used herein shall have the same meaning set forth in the Agreement.

1. **General Terms.** User agrees that this Schedule BA supplements and shall supersede any conflicting terms contained in the Agreement and **Exchange Privacy Policy**. User further agrees that this Schedule BA shall be superseded by any conflicting terms contained in the Exchange Rules and any applicable Participating Exchange Rules.

2. **Clearing Services.**

(a) Clearing Services for certain types of products involve receiving off-exchange transactions and replacing them with Exchange or Participating Exchange cleared standardized regulated futures or options contracts (referred to herein as "Transactions"). Clearing services are also provided for "block trades" in Exchange or Participating Exchange contracts that are submitted for clearing (also referred to herein as "Transactions"). Currently, the trade entry web interface available via the CME ClearPort Clearing menu is designed to accept trades from Users or brokers, who must be registered with the Exchange and authorized by a Clearing Member of the Exchange or relevant Participating Exchange to submit trades to clear through specific accounts set up by the Clearing Member.

(b) In addition, the Exchange will operate a CME ClearPort Facilitation Desk for Users to submit trades to the Exchange for clearing off-exchange transactions. Both parties to each such off-exchange transaction must consent to clear the transaction and provide the Facilitation Desk with the appropriate account information, which is supplied by each such party's Clearing Member. Those Users interested in submitting such off-exchange transactions to the Exchange for clearing may contact the Exchange Facilitation Desk via telephone at 1-866-246-9639 during the hours when CME ClearPort Clearing Services are available. Questions or inquiries can be sent via email to [clearport@cmegroup.com](mailto:clearport@cmegroup.com).

(c) By submitting the terms of a trade to the Exchange for clearing, User agrees to exchange its swaps or physical transactions, as applicable, executed with its counterparty off-exchange and constituting CPC User Transaction Data (as defined in Section 9 below), for a standardized Exchange or Participating Exchange futures contract via, as applicable, the Exchange's or Participating Exchange's (i) exchange of futures for swaps procedure, (ii) exchange of futures for physicals procedure, (iii) exchange of OTC options for regulated options, or (iv) substitution of futures contracts for eligible OTC instruments. User understands that the standardized Exchange or Participating Exchange futures contract may be listed at the Exchange or Participating Exchange only for purposes of clearing. User also understands that after the CPC User Transaction Data (as defined in Section 9 below) is submitted to the Exchange, it becomes Exchange Data. In connection with the trade being submitted, User agrees to accept and to be bound by all applicable Exchange Rules and Participating Exchange Rules, which may be updated from time to time. For example, User should be aware of the following provisions in the Exchange, CBOT and NYMEX Rulebooks: (i) Chapter 6 contains rules governing procedures for exchanges of futures for physicals and exchanges of futures for swaps; (ii) Chapter 4 contains a rule establishing summary procedures for denial of access; and (iii) Chapter 8 contains rules governing off-exchange clearing procedures, position limits

and position accountability, and reporting levels. Furthermore, Chapter 5 of the Exchange Rulebook contains a rule governing procedures for substitutions of futures for eligible OTC instruments.

3. **Registration and User Agents.** User may register for CME ClearPort Clearing Services online as described on the Site. Contact CME ClearPort Customer Support via telephone at 1-800-438-8616 or via email at [clearport@cmegroup.com](mailto:clearport@cmegroup.com) with any questions. The User may register one or more of its User Agents to access the Site and/or System on behalf of User for the purposes of utilizing CME ClearPort Clearing Services. Such User Agents may be individuals or entities. All broker firms using or accessing any area of this Site must register only as Users. Such firms may designate their own brokers as User Agents. By contrast, neither a broker firm nor anyone else serving as a broker may be listed as a User Agent. See Section 4 ("Registration") of the Agreement for additional terms relating to registration and User Agents.

4. **User IDs and Passwords.** Following registration for CME ClearPort Clearing Services, the Exchange shall issue to User and its User Agents one or more Password(s) for use exclusively by User and/or its User Agents.

5. **Terms of Payment.** In addition to the Terms of Payment contained in the Agreement, User of the CME ClearPort Clearing Services agrees to the additional payment terms as follows:

**Clearing Services.** On or about the fifth (5th) day of each month, the Exchange will send an invoice for billable Services from the prior month to the User or the User's Clearing Member.

6. **Fee Schedule.** Until further notice from the Exchange, there shall be no monthly subscription charge and no Exchange transaction fee to the User. However, the User will remain responsible for Exchange clearing fees for executed transactions, which will be collected by the User's Clearing Member on behalf of the Exchange.

7. **Additional Representations and Warranties.** In addition to the representations, warranties and covenants contained in the Agreement, the User further represents and warrants the following:

(a) User agrees that it will only use and permit use of the Site and System for soliciting and entering orders for itself and for persons for whom User is authorized to act, such as customers of the User, for trades in the System.

(b) User represents and warrants that neither User nor any of its User Agents are subject to any trading prohibition by any governmental authority or self-regulatory organization, whether under the Commodity Exchange Act as amended, or otherwise, which would apply to any transaction on the System. Furthermore, User represents and warrants that User and its User Agents shall comply with the Exchange Rules, applicable Participating Exchange Rules and any and all local, state, national and other jurisdiction's laws, rules, regulations or orders applicable to User's access to and use of the Site, System and Services, and shall not use the System in any jurisdiction in which to do so would be illegal or otherwise prohibited.

8. **Execution of Transactions.**

(a) User agrees that it will be obligated to pay the clearing and other transactional fees due on any Transaction submitted to the Site or System, as established from time to time by the Exchange in the applicable Fee Schedule. User also agrees to pay the fees specified, if any, in the applicable Fee Schedule as then in effect.

(b) User agrees that Transactions submitted to the Site or System shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be "in writing." User will not contest the legally binding nature, validity or enforceability of any Transaction

submitted to the Site or System based on the fact that it was entered and executed electronically and expressly waives any and all rights it may have to assert any such claim.

(c) User agrees that it will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or System based upon any claim that the Transaction was unlawful under applicable law and expressly waives any and all rights it may have to assert any such claim.

**9. Intellectual Property.** Notwithstanding the provisions of Section 7 ("Intellectual Property") in the Agreement, the parties hereby agree that any bids, offers or other transaction information that User and/or its User Agents generate and provide to the Exchange in connection with the submission of transactions for Clearing Services ("CPC User Transaction Data") shall be treated as the non-exclusive property of each party (and any applicable Participating Exchange) and each party (and applicable Participating Exchange) shall have the right to use, sell, retransmit and/or redistribute such CPC User Transaction Data. User and its User Agents further understand and agree that from time to time, the Exchange may request the participation of User and/or its User Agents in determining daily settlement prices for products and instruments for which the Exchange provides Clearing Services. Such participation may include the voluntary submission to the Exchange of various price data other than CPC User Transaction Data, such as the submission of forward price curves for particular products ("User Price Curve Data"). Any and all User Price Curve Data shall remain the exclusive property of the User and User shall retain the right to use, sell, retransmit or redistribute such data. User hereby grants the Exchange the right to use such User Price Curve Data, *provided that* the Exchange shall not report or otherwise distribute specific assessment prices in connection with such data.

User hereby acknowledges that it has read, agrees to and shall be bound by all of the terms and conditions contained in this Schedule **AB**.

#### **SCHEDULE **BC**: CME ClearPort Clearing Services for Cleared OTC Derivatives**

This Schedule **CB** sets out the specific terms and conditions on which the Exchange will provide the User with the CME ClearPort Clearing Services for over-the-counter derivatives contracts that the Exchange Clearing House has designated as eligible for clearing ("**Cleared OTC Derivatives**"). All capitalized terms used herein shall have the same meaning set forth in the Agreement.

**1. General Terms.** User agrees that this Schedule **CB** supplements and shall supersede any conflicting terms contained in the Agreement and **Exchange Privacy Policy**. User further agrees that this Schedule C shall be superseded by any conflicting terms contained in the Exchange Rules and applicable Participating Exchange Rules.

#### **2. Clearing Services.**

(a) Clearing Services for Cleared OTC Derivatives involve receiving off-exchange derivatives transactions that are cleared as OTC derivatives in accordance with Chapter 8-F of the Exchange Rulebook (referred to herein as "**Transactions**"). Currently, the trade entry web interface available via the CME ClearPort Clearing menu is designed to accept trades from Users and brokers, who must be registered with the Exchange and authorized by a Clearing Member of the Exchange or relevant Participating Exchange to submit trades to clear through specific accounts set up by the Clearing Member.

(b) In addition, the Exchange will operate a CME ClearPort Facilitation Desk for Users to submit off-exchange derivatives transactions to the Exchange for clearing. Both parties to each such off-exchange derivatives transaction must consent to clear the transaction and provide the Facilitation Desk with the appropriate account information, which is supplied by each such party's Clearing Member. Those Users interested in submitting such off-exchange transactions to the Exchange for clearing may contact the Exchange Facilitation Desk via telephone at 1-866-246-9639 during the hours when CME ClearPort

Clearing Services are available. Questions or inquiries can be sent via email to [clearport@cmegroup.com](mailto:clearport@cmegroup.com).

(c) Upon acceptance of a transaction involving a Cleared OTC Derivative for Clearing by the Exchange in accordance with Exchange Rules, such transaction shall be automatically novated and give rise to a transaction on the terms confirmed by the Exchange. Except as provided otherwise in Exchange Rules, any transaction involving a Cleared OTC Derivative that is submitted to the Exchange for Clearing that is not accepted for clearing will be void from inception and no party thereto shall have any obligation to any other party. User understands that after the CPC User Transaction Data (as defined in Section 9 below) is submitted to the Exchange, it becomes Exchange Data. In connection with off-exchange derivatives transactions being submitted for clearing, User agrees to accept and to be bound by all applicable Exchange Rules and Participating Exchange Rules, which may be amended from time to time.

3. **Registration and User Agents.** User may register for CME ClearPort Clearing Services online as described on the Site. Contact CME ClearPort Customer Support via telephone at 1-800-438-8616 or via email at [clearport@cmegroup.com](mailto:clearport@cmegroup.com) with any questions. The User may register one or more of its User Agents to access the Site and/or System on behalf of User for the purposes of utilizing CME ClearPort Clearing Services. Such User Agents may be individuals or entities. All broker firms using or accessing any area of this Site must register only as Users. Such firms may designate their own brokers as User Agents. By contrast, neither a broker firm nor anyone else serving as a broker may be listed as a User Agent. See Section 4 ("Registration") of the Agreement for additional terms relating to registration and User Agents.

4. **User IDs and Passwords.** Following registration for CME ClearPort Clearing Services, the Exchange shall issue to User and its User Agents one or more Password(s) for use exclusively by User and/or its User Agents.

5. **Terms of Payment.** In addition to the Terms of Payment contained in the Agreement, User of the CME ClearPort Clearing Services agrees to the additional payment terms as follows:

**Clearing Services.** On or about the fifth (5th) day of each month, the Exchange will send an invoice for billable Services from the prior month to the User or the User's Clearing Member.

6. **Fee Schedule.** Until further notice from the Exchange, there shall be no monthly subscription charge and no Exchange transaction fee to the User. However, the User will remain responsible for Exchange clearing fees for Transactions, which will be collected by the User's Clearing Member on behalf of the Exchange.

7. **User Representations, Warranties and Acknowledgements.** In addition to the representations, warranties and covenants contained in the Agreement, the User further represents and warrants the following:

(a) User represents and warrants that it will only use and permit use of the Site and System for soliciting and entering orders for itself and for persons for whom User is authorized to act, such as customers of the User, for trades in the System.

(b) User represents and warrants that neither User nor any of its User Agents are subject to any trading prohibition by any governmental authority or self-regulatory organization, whether under the Commodity Exchange Act as amended, or otherwise, which would apply to any transaction on the System. Furthermore, User represents and warrants that User and its User Agents shall comply with the Exchange Rules, applicable Participating Exchange Rules and any and all local, state, national and other jurisdiction's laws, rules, regulations or orders applicable to User's access to and use of the Site, System and Services, and shall not use the System in any jurisdiction in which to do so would be illegal or otherwise prohibited.

(c) User represents and warrants that it is now, and will remain during the term of this Agreement, an eligible contract participant within the meaning of section 1(a)(12)(A), (B)(ii) or (C) of the Commodity Exchange Act. If User submits for clearing any OTC agricultural swap transactions, User further represents and warrants that it is now, and will remain during the term of this Agreement, an eligible swap participant within the meaning of CFTC Regulation 35.1(b)(2) in connection with such transactions.

(d) User acknowledges that any definition of "futures contracts" or "contracts" or other similarly defined term contained in the account agreement that User entered into with Clearing Firm or any carrying firm which, directly or indirectly, User uses to access Cleared OTC Derivatives shall include Cleared OTC Derivatives. Any definition of "exchanges" or "contract markets" or other similarly defined term contained in such account agreement shall include any platform on which Cleared OTC Derivatives are traded. If User's account is carried by another firm which, directly or indirectly, clears on an omnibus basis through Clearing Firm, User agrees that any definition of "futures contracts", "contracts", or other similarly defined term contained in the account agreement it entered into with its carrying firm shall include Cleared OTC Derivatives. Any definition of "exchanges", "contract markets" or other similarly defined term contained in such account agreements shall include any platform on which Cleared OTC Derivatives are traded.

(e) User acknowledges that, provided that User is not an affiliate of Clearing Firm, all collateral, credit support and other property relating to User positions in Cleared OTC Derivatives shall be segregated from the Clearing Firm's proprietary account and shall be held either: (i) in an account maintained in accordance with CFTC Regulation 30.7 ("**30.7 Account**") and commingled with collateral, credit support and other property of other customers of the same Clearing Firm held in the 30.7 Account; or (ii) if the CFTC or any successor agency has issued an order pursuant to which the Clearing Firm may commingle customer funds used to margin specific Cleared OTC Derivatives with other funds held in customer segregated accounts maintained in accordance with section 4d(a)(2) of the Commodity Exchange Act, then all collateral, credit support and other property related to Customer positions in those specific Cleared OTC Derivatives will be held in a customer segregated account.

## **8. Transactions.**

(a) User agrees that it will be obligated to pay the clearing and other transactional fees due on any Transaction submitted to the Site or System, as established from time to time by the Exchange in the applicable Fee Schedule. User also agrees to pay the fees specified, if any, in the applicable Fee Schedule as then in effect.

(b) User agrees that Transactions submitted to the Site or System shall be deemed to be "in writing" and to have been "signed" for all purposes and that any record of any such Transaction will be deemed to be "in writing." User will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or System based on the fact that it was entered and executed electronically and expressly waives any and all rights it may have to assert any such claim.

(c) User agrees that it will not contest the legally binding nature, validity or enforceability of any Transaction submitted to the Site or System based upon any claim that the Transaction was unlawful under applicable law and expressly waives any and all rights it may have to assert any such claim.

**9. Intellectual Property.** Notwithstanding the provisions of Section 7 ("Intellectual Property") in the Agreement, the parties hereby agree that any transaction information that User and/or its User Agents generate and provide to the Exchange in connection with the submission of Transactions for Clearing Services ("CPC User Transaction Data") shall be treated as the non-exclusive property of each party (and any applicable Participating Exchange) and each party (and applicable Participating Exchange) shall have the right to use, sell, retransmit and/or redistribute such CPC User Transaction Data. User and its User Agents further understand and agree that from time to time, the Exchange may request the participation of User and/or its User Agents in determining daily settlement prices for products and instruments for which the Exchange provides Clearing Services. Such participation may include the voluntary submission to the Exchange of various price data other than CPC User Transaction Data, such as the submission of forward price curves for particular products ("User Price Curve Data"). Any and all



User Price Curve Data shall remain the exclusive property of the User and User shall retain the right to use, sell, retransmit or redistribute such data. User hereby grants the Exchange the right to use such User Price Curve Data, *provided that* the Exchange shall not report or otherwise distribute specific assessment prices in connection with such data.

User hereby acknowledges that it has read, agrees to and shall be bound by all of the terms and conditions contained in this Schedule ~~GB~~.

User hereby acknowledges that it has read, agrees to and shall be bound by all of the terms and conditions contained in this Agreement, each executed Schedule and the Exchange Rules and the Rules of any Participating Exchange in whose contracts I may bid and/or offer or submit for clearing.

- ☐ I have read and agree to the Exchange User License Agreement.
- ☐ I have read and agree to the Exchange Privacy Policy.
- ☐ I have read and agree to the Exchange Rules and the rules of any Participating Exchange in whose contracts I may bid and/or offer or submit for clearing.

By checking the above boxes and clicking "I Accept" below, User hereby acknowledges that it has read, agrees to and shall be bound by all of the terms and conditions contained in the above referenced documents.

**I Accept,**  
**and wish to proceed to user registration.**