



## DATA CENTER CONNECTION AGREEMENT

This Agreement is made by and between CHICAGO MERCANTILE EXCHANGE INC., a Delaware corporation with its principal place of business at 20 South Wacker Drive, Chicago, Illinois 60606, U.S.A., ("CME") and

\_\_\_\_\_, ("Data Center"), at the following address: \_\_\_\_\_.

This Agreement consists of the following Schedules, as applicable:

Data Center Connection Terms and Conditions	Schedule A
Data Center Access Request and Information Form	Schedule B
Data Center Deletions, Changes, Assignment and Transfers	Schedule C
Data Center Drop Copy Service	Schedule D

**ELIGIBILITY.** An entity is eligible to be a Data Center under this Agreement only if it satisfies both of the following criteria ("Eligibility Criteria"):

- 1) It provides to its customers a direct network connection between itself (or its agent) and a CME System (the "Connection"), through which such customers are permitted to access a CME System for purposes of using the CME System's services; and
- 2) It does not itself use the Connection to use the services of a CME System for its own proprietary or customer accounts and does not act as a Clearing Firm to Customers.

Subject to these Eligibility Criteria and the other terms and conditions of this Agreement, CME will permit the Data Center named above to (i) establish a Connection, and (ii) allow Customers the right to access a CME System via the Connection.

**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 CME, as indicated below.

### DATA CENTER

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

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

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

(Must be an authorized Officer)

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

### CHICAGO MERCANTILE EXCHANGE INC.

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

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

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

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

("Effective Date")

**Contact GAM** For questions, assistance or upon completion, contact [CME Global Account Management](#).

*All personal information provided under this form will be used, distributed, and maintained in accordance with [CME Group's Privacy Policy](#). If completing this form on behalf of another individual, you will ensure that you have the required consent from those individuals to whom the personal information relates, or you satisfy an applicable legal basis for doing so, in compliance with all applicable laws, to enable CME Group to process such personal information.*

**SCHEDULE A**  
**TO DATA CENTER CONNECTION AGREEMENT**  
**DATA CENTER CONNECTION TERMS AND CONDITIONS**

**1. DEFINITIONS.**

- (a) “Clearing Firm” means an entity that, in accordance with CME Rules (or, if applicable, the Rules of a Participating Venue), is authorized to clear trades entered by Customers into the CME Globex Platform, and that is a member in good standing of the CME (or, if applicable, a Participating Venue’s) Clearinghouse.
- (b) “CME Marketing Materials” has the meaning set forth in Section 14(e).
- (c) “CME Rules” means the rules, policies, and procedures of CME, as such rules are established and modified by CME from time to time. The CME Rules are posted at [www.cmegroup.com](http://www.cmegroup.com).
- (d) “CME Trademarks” means the CME trade names, trademarks, service names, brand names or logos used in connection with a CME System, including without limitation, Chicago Mercantile Exchange, CME, Globex and CME’s globe design.
- (e) “Confidential Information” has the meaning set forth in Section 9(a).
- (f) “Connection” has the meaning set forth on the cover page of this Agreement
- (g) “Customer” means any user that accesses a CME System through the Connection. Customers may be individuals, Clearing Firms, customers of Clearing Firms, affiliates of Data Center, customers of Participating Venues or any other entities.
- (h) “Customer Data” means any transactional trading data generated by a Customer or a CME System related to a Customer’s or any other individual’s or entity’s use of a CME System.
- (i) “CME Globex Platform” means the CME Globex electronic trading system, including certain software licensed to CME by CME’s licensors. For purposes of this Agreement, “CME Globex Platform” shall also be deemed to include any modification to the CME Globex Platform or any successor electronic trading platform on which the Products are traded.
- (j) “CME System” means any of the various electronic systems and platforms including, without limitation, the CME Globex Platform, through which CME offers exchange services to its customers, and Participating Venues offer exchange or trading venue services to their customers.
- (k) “Data Center” has the meaning set forth on the cover page of the Agreement.
- (l) “Data Center Fees” means the fees payable by Data Center to CME pursuant to this Agreement, as set forth in the relevant [Fee Schedule](#), and as such fees may be modified from time to time by CME in accordance with Section 4 of this Agreement.
- (m) “Data Center Marketing Materials” has the meaning set forth in Section 14(b).
- (n) “Data Center Trademarks” means Data Center’s trade names, trademarks, service names, brand names or logos.
- (o) “Equipment” means, if applicable, the computer terminals, micro-computers, software programs, communications lines, routers, switches and other user interface devices used as part of the applicable Connection. Equipment provided by CME is “CME Equipment.” Equipment provided by Data Center is “Data Center Equipment.”
- (p) “Installation Date” has the meaning set forth in Section 8(a).
- (q) “Limited Liability Party” has the meaning set forth in Section 12.
- (r) “Participating Venue(s)” means those exchanges or trading venues whose Products may be traded on or through the CME Globex Platform, which includes (a) trading venues or exchanges operated by third parties; and (b) trading venues operated by CME’s affiliates to those affiliates’ customers (including the BrokerTec and EBS businesses). Those affiliates may include BrokerTec Americas LLC, BrokerTec Europe Limited, CME Amsterdam B.V., NEX SEF Limited or EBS Service Company Limited, or other entities, as set out in the Legal and Regulatory Structure Schedules for [EBS](#) and [BrokerTec](#), as amended from time to time. Customers accessing such trading venues operated by CME affiliates do so in accordance with their customer agreements with those affiliates. CME acts as a technology provider to those affiliates and not as operator of those affiliates’ trading venues.
- (s) “Permitted Purpose” has the meaning set forth in Section 2(a).

- (t) “Premises” means the location(s) where Data Center has access to a CME System through the Connection, including any back-up facility, as such location(s) are set forth in the Schedule B.
- (u) “Proceedings” has the meaning set forth in Section 23(b).
- (v) “Products” means all financial products, financial instruments, contracts and other listed or over the counter traded items that may be traded by Customers on or through the CME Globex Platform as determined by CME and any Participating Venues from time to time. With respect to CME or a particular Participating Venue, “Products” shall mean only the contracts and other items of CME or provided for trading by such Participating Venue traded on or through the CME Globex Platform.
- (w) “Rules” means the CME Rules and the rules, policies, and procedures of any Participating Venue, as such rules are established and modified from time to time.

## 2. THE CONNECTION.

- (a) Right to Connect. Subject to the terms and conditions of this Agreement, CME hereby grants to Data Center a nonexclusive, non-transferable, revocable, limited right during the Term to establish and use the Connection solely to provide Customers with access to the CME Systems for purposes of using the services offered by CME or Participating Venues through the CME Systems (“Permitted Purpose”). Data Center shall not use the Connection for any purpose other than the Permitted Purpose. Data Center hereby agrees that the only means by which it will establish and provide access to a CME System is through the Connection.
- (b) Modifications. Data Center shall not modify the Connection in any material manner without CME’s prior written consent.

## 3. TERM OF AGREEMENT.

This Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as set forth herein (the “Term”).

## 4. MODIFICATION OF AGREEMENT.

CME may modify any of the terms and conditions generally applicable to Data Centers that are set forth in this Agreement, including any Data Center Fees, by sending at least 30 days’ prior written notice of the modification to Data Center. If Data Center does not consent to the modification, Data Center may terminate this Agreement by sending a written notice of termination to CME within 20 days of receiving notification of the modification. Any such termination will be effective as of the date on which the modification would have taken effect. CME may at any time decrease the Data Center Fees without notice.

## 5. DATA CENTER PROVIDING MANAGED NETWORK SERVICES OBLIGATIONS.

- (a) The Data Center will provide a managed network service in accordance with guidelines and standards provided by CME, as may be updated from time to time (“Managed Network Service”).
- (b) Reporting Requirements. Data Center shall notify CME and affected Customer immediately in the event of an issue that prevents or delays network traffic between CME and the Customer.
- (c) Connection Requirements. Data Center agrees:
  - (i) To maintain a resilient and redundant Connection;
  - (ii) To ensure that sufficient bandwidth is allocated to each Customer and at the CME data center locations to prevent oversubscription or dropping or delaying of traffic;
  - (iii) To have appropriate controls in place to ensure separation of Customer traffic; and
  - (iv) Not to deliver any modified or in any way appended traffic to CME or the Customer.
- (d) Business Continuity/Security Measures. Data Center shall conduct an annual disaster recovery test of the Data Center network and, upon request, agrees to provide evidence of such to CME in writing.
- (e) Obligations Upon Termination. Upon termination or suspension of this Agreement by CME as a result of the Data Center’s failure to comply with any of the stipulated requirements, the Data Center shall assign resources to assist with the transition of Customers to an alternative CME appointed Data Center without unreasonable delay.
- (f) Notwithstanding anything to the contrary in Section 15 of this Agreement, the Data Center will not terminate this Agreement for convenience unless or until all Customers are no longer receiving the Managed Network Service.

## 6. FEES, TAXES AND OTHER CHARGES.

- (a) Data Center Fees. Data Center shall pay to CME the Data Center Fees set forth in CME’s then-current Fee Schedule.
- (b) Taxes. Data Center will pay all sales, use, excise, value-added, services, property, withholding, consumption and other taxes or duties in effect during the Term with respect to the Connection and the use thereof, except taxes based on CME’s net income.
- (c) Payment. Data Center Fees commence on the Installation Date. Payment of Data Center Fees is due monthly, within 30 days following the applicable invoice date. Late payments will accrue interest at a rate of 1-1/2% per month, or the highest rate allowed by applicable law, whichever is lower.

## 7. EQUIPMENT LEASING AND MAINTENANCE SERVICES.

- (a) With the exception of software programs, any CME Equipment shall be installed at the Premises by CME or a subcontractor appointed by CME, and shall be maintained only by CME or such subcontractor. Data Center shall cooperate with CME and its appointed subcontractor to permit access to any CME Equipment on reasonable notice for inspection, maintenance, repair, replacement, or removal. The frequency of maintenance services to be provided with respect to any such CME Equipment shall be determined in a commercially reasonable manner by CME. CME may at any time on reasonable notice change CME Equipment for similar equipment as long as there is no material adverse impact to Data Center. Data Center shall not remove CME Equipment from the Premises or, after its installation, move CME Equipment within the Premises, without CME's prior written consent.
- (b) Data Center is financially responsible for any damage to CME Equipment incurred while CME Equipment is on the Premises, unless such damage is caused by some defect in CME Equipment or normal wear and tear. Data Center agrees to treat CME Equipment at all times with the care customarily accorded computer equipment in a business environment.
- (c) CME Equipment at all times remains the personal property of CME, its licensors and/or subcontractors, regardless of the manner in which it is installed on the Premises, and at no time shall Data Center allow CME Equipment to become subject to any liens, claims, or encumbrances.
- (d) Data Center shall not, without the prior written consent of CME, which shall not be unreasonably withheld, make any alteration, addition, or connection to CME Equipment or to a CME System.

## 8. GENERAL CONDITIONS.

The Connection and access to a CME System via the Connection is provided on the following terms and conditions:

- (a) Testing and Certification. Following the installation of the Connection at the Premises, CME and Data Center shall test the Connection against CME's network service acceptance specifications. Data Center shall not, and shall not allow any Customer to, access a CME System using the Connection until CME certifies to Data Center in writing that the Connection has satisfied the network service acceptance specifications ("Installation Date").
- (b) Support. During the Term, Data Center shall maintain a telephone support hot line during a CME System's

hours of operation to address Customer problems related to the Connection.

- (c) Audit Rights. Data Center shall provide CME (and its external auditors) with access, during Data Center's regular business hours and upon reasonable notice, to Data Center's facilities, personnel and records to verify Data Center's compliance with the terms and conditions of this Agreement and, with a Clearing Firm's prior written consent, such Clearing Firm's compliance with the Rules. Data Center shall reasonably cooperate with CME or its designee in conducting any such audit.
- (d) Applicable Consents. Data Center warrants and covenants that it has obtained, or, prior to the installation of any Connection, will have obtained, and will maintain throughout the term of this Agreement, any and all consents and registrations required (i) to authorize Data Center to provide electronic access to a CME System to Customers; (ii) to connect to a CME System at the Premises; and (iii) to enable Data Center to pay all Data Center Fees and other charges payable to CME pursuant to this Agreement. Examples of entities from which consent may be required include, without limitation, banking and telecommunications authorities, governmental and self-regulatory bodies and other third parties such as landlords. Data Center agrees to comply with any terms imposed by any such entity and to notify CME immediately if any consent required to be obtained pursuant to this Section 8(d) is withdrawn. Data Center further represents and warrants that it shall comply, and shall require all Customers to comply, with all applicable laws pertaining to the use of the Connection and a CME System and all transactions in connection therewith. Data Center further represents and warrants that it will not itself use the Connection to enter trades on or through the CME Globex Platform for its own proprietary or Customer accounts and that it will not act as a Clearing Firm to Customers.
- (e) Security. Data Center shall establish and maintain appropriate security methods, procedures and infrastructure to prevent (i) unauthorized access to the Connection or a CME System via the Connection, and (ii) the destruction, loss, alteration, theft or unauthorized access of Confidential Information in the possession or control of Data Center.
- (f) No Contravening Contract. Data Center warrants and covenants that this Agreement does not now and will not hereafter contravene or breach any contract or agreement, written or oral, in existence on the date hereof or which may come into existence hereafter to which Data Center is or may become a party or by which it is or may hereafter be bound.
- (g) Data Center-Provided Items. Data Center shall provide at its own cost all items required in connection with the

Connection (other than any CME Equipment or other materials supplied by CME) including, but not limited to, any necessary electrical outlets, equipment, inside wiring, cabling, telecommunications hubs, and power.

- (h) Interface Development; Software Provided by CME. If Data Center will be developing its own interface to a CME System, Data Center must execute and deliver to CME the CME Developer Agreement. Any computer software and related documentation provided by CME to Data Center is subject to additional terms and conditions, which are posted by CME at the secure access site for such software or otherwise made available to Data Center by CME.
- (i) Indemnification to CME. Data Center hereby agrees that it shall indemnify and hold harmless CME and its affiliates and their officers, directors, employees, agents, contractors and suppliers from and against any and all losses, damages, reasonable costs and expenses (including reasonable attorneys' fees) arising out of or related to any act or omission of Data Center in violation of this Agreement or Data Center's agreement with a Customer. CME will promptly notify Data Center of any claim, action, suit or demand that may trigger Data Center's obligations under this Section 8(i). Data Center shall control the defense and settlement of any claim, action, suit or demand for which Data Center is required to indemnify CME under this Section 8(i) but will not enter into any settlement without CME's prior written consent, which shall not be unreasonably withheld.
- (j) Audit Trail & Risk Administration - Trading Activity. If applicable, upon request, Data Center shall provide a Clearing Firm with reasonable access to audit trail data associated with such Clearing Firm's and its customers' trading activity. Data Center further shall provide, at the request of a Clearing Firm, the ability to remotely access the appropriate software modules and servers in Data Center's control to set, monitor and control user and trading access and risk parameters associated with trading activity for which the Clearing Firm is responsible.

## **9. CONFIDENTIAL INFORMATION.**

- (a) As used herein, "Confidential Information" means (i) Customer Data and (ii) the CME database, software, programs, protocols, interfaces, displays and manuals, including the selection, arrangement, and sequencing thereof, to which Data Center may gain access pursuant to this Agreement. Data Center acknowledges that Confidential Information constitutes trade secrets, proprietary to CME, the Participating Venues, and their licensors, as to which copyright, database rights and patent rights may also exist. Data Center agrees that, as between Data Center and CME, all copies and expressions of Confidential Information are the exclusive property of CME. Data Center agrees to utilize

Confidential Information solely for purposes of providing access to a CME System to Customers via the Connection and to otherwise protect Confidential Information from disclosure using the same care as Data Center uses with its own similar information that it does not wish to disclose (but in no event less than a reasonable degree of care).

- (b) Prohibited Uses. Data Center will not:
  - (i) use or permit the use of Customer Data for any illegal purpose; or
  - (ii) access, use, distribute, sell, license, display, transmit or alter any Customer Data via the Connection, except as expressly permitted in this Agreement.
- (c) Exceptions to Confidential Treatment.
  - (i) If, in the reasonable opinion of its legal counsel, Data Center is required by law to disclose any Confidential Information in connection with any legal or regulatory proceeding, then Data Center may disclose such information; provided, however, that Data Center will notify CME a reasonable time prior to disclosure to permit CME a reasonable opportunity to seek appropriate protective measures prior to disclosure, and will disclose the minimum amount of such Confidential Information required by law.
  - (ii) Data Center may access, use, display and transmit a specific Customer's Customer Data with the express written consent of such specific Customer for the sole purpose of troubleshooting or performance analysis by Data Center. This information may not be made public or disclosed to any third party other than such Customer unless approved by Customer. Data Center will incorporate specific language into its customer agreements acknowledging that Customer provides consent to share such Customer Data as needed from time to time in the ordinary course of its business operations.
- (d) Return or Destruction. Upon termination of this Agreement, all Confidential Information will be promptly destroyed (and such destruction certified in writing) or, at the direction of CME, returned to CME. However, upon written notice to CME, Data Center shall be permitted to retain copies of Confidential Information if and to the extent necessary to comply with applicable legal or regulatory requirements.

## **10. CME DISCLAIMER OF WARRANTIES.**

CME DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-

INFRINGEMENT, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO THE CONNECTION OR THE CME SYSTEMS. WITHOUT LIMITING THE FOREGOING, CME DOES NOT GUARANTEE THAT DATA CENTER'S OR CUSTOMERS' USE OF THE CONNECTION OR THE CME SYSTEMS SHALL BE ERROR FREE OR UNINTERRUPTED.

**11. DISCLAIMER OF LIABILITY.**

SUBJECT TO SECTION 12 AND EXCEPT FOR DIRECT DAMAGES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL OR WANTON BREACH OF THIS AGREEMENT BY CME, ITS OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS, CONSULTANTS OR LICENSORS ("CME PARTIES"), NONE OF THE CME PARTIES OR PARTICIPATING VENUES SHALL BE LIABLE IN ANY WAY TO DATA CENTER, CUSTOMERS OR ANY OTHER PERSON OR ENTITY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS AND LOSS OF USE) INCURRED BY DATA CENTER, ANY CUSTOMER OR ANY THIRD PARTY ARISING FROM: (I) THE USE OF THE CONNECTION OR THE CME SYSTEMS; (II) THE SUSPENSION, TERMINATION OR INABILITY TO USE OR ACCESS THE CONNECTION OR THE CME SYSTEMS, OR ANY INACCURACIES OR OMISSIONS IN ANY INFORMATION PROVIDED, HOWEVER SUCH SUSPENSIONS, TERMINATIONS, MALFUNCTIONS, INACCURACIES OR OMISSIONS MAY ARISE; OR (III) ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF, OR INABILITY TO USE, ALL OR ANY PART OF THE CONNECTION OR THE CME SYSTEMS.

**12. INDIRECT DAMAGES.**

EXCEPT FOR DATA CENTER'S OBLIGATIONS SET FORTH IN SECTION 8(j), IN NO CIRCUMSTANCES SHALL EITHER PARTY (EACH A "LIMITED LIABILITY PARTY") BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF THE LIMITED LIABILITY PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF AND EVEN IF DUE TO THE LIMITED LIABILITY PARTY'S ERROR, OMISSION, OR NEGLIGENCE.

**13. LIMITATION OF LIABILITY.**

IN NO EVENT SHALL CME'S AGGREGATE LIABILITY HEREUNDER FROM ANY AND ALL CAUSES WHATSOEVER EXCEED THE FEES PAID TO CME BY DATA CENTER AS OF THE INITIAL EVENT GIVING RISE TO THE APPLICABLE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY.

**14. MARKETING.**

- (a) License to CME Trademarks. Subject to the terms and conditions of this Agreement, CME grants to Data Center, a non-exclusive, non-transferable, revocable license (without the right to grant sublicenses) during the Term to use the CME Trademarks solely in connection with marketing the Connection, or as otherwise agreed to by the parties.
- (b) Restrictions on Use of CME Trademarks. Data Center will use commercially reasonable efforts to ensure high standards of accuracy in any advertising, brochure, or promotional or informational materials that include 1 or more of the CME Trademarks (collectively, the "Data Center Marketing Materials"). During the Term, Data Center shall not use any mark in connection with the Connection or any other electronic trading system or product that is confusingly similar to any of the CME Trademarks in existence prior to the date of Data Center's first use.
- (c) Data Center Marketing Materials. Data Center shall include the following statement in all Data Center Marketing Materials: "[*Insert CME Trademarks*] are registered trademarks of Chicago Mercantile Exchange Inc. Chicago Mercantile Exchange assumes no liability in connection with the use of [*insert the name of Data Center*]'s services by any person or entity." Data Center shall submit any Data Center Marketing Materials and any press releases referring to CME or the Connection to CME's Marketing Department for approval at least 15 business days prior to the initial distribution of such Marketing Materials or press releases. During such 15 business day period, CME may require Data Center to make reasonable changes or additions to the Marketing Materials or press releases that CME believes are appropriate to protect CME and the CME Trademarks. Data Center will not distribute any Marketing or press releases until it has (i) made any changes required by CME and (ii) obtained CME's prior written approval. If CME does not provide Data Center with any requested changes or additions within the 15-business day period, CME's approval shall be deemed given.
- (d) License to Data Center Trademarks. Subject to the terms and conditions of this Agreement, Data Center grants to CME, a non-exclusive, non-transferable, revocable license

(without the right to grant sublicenses) during the term of this Agreement to use Data Center Trademarks solely in connection with marketing the CME Systems, or as otherwise agreed to by the parties.

- (e) Restrictions on Use of Data Center Trademarks. CME will use commercially reasonable efforts to ensure high standards of accuracy in any advertising, brochure or promotional or informational materials that include one (1) or more of the Data Center Trademarks (collectively, the “CME Marketing Materials”). During the Term, CME shall not use any mark in connection with the CME Systems or any other electronic trading system or product that is confusingly similar to any of the Data Center Trademarks in existence prior to the date of CME’s first use.
- (f) CME Marketing Materials. CME shall include the following statement in all CME Marketing Materials: “[*Insert Data Center Trademarks*] are registered trademarks of [*insert Data Center name*]. [*Insert Data Center name*] assumes no liability in connection with the use of CME’s services by any person or entity.” CME shall submit any CME Marketing Materials and any press releases referring to Data Center or the Data Center Trademarks to Data Center’s marketing department for approval at least 15 business days prior to the initial distribution of such CME Marketing Materials or press releases. During such 15 business day period, Data Center may require CME to make reasonable changes or additions to the CME Marketing Materials or press releases that Data Center believes are appropriate to protect Data Center and the Data Center Trademarks by providing CME with a detailed description of such changes and additions. CME will not distribute any CME Marketing Materials or press releases until it has (i) made any changes required by Data Center, and (ii) obtained Data Center’s prior written approval. If Data Center does not provide CME with any requested changes or additions within the 15-business day period, Data Center’s approval shall be deemed given.

## 15. TERMINATION.

- (a) Termination for Convenience. Either CME or Data Center may terminate this Agreement in its sole discretion upon 90 days’ prior written notice to the other party, provided that if Data Center terminates this Agreement pursuant to this Section 15(a) within the commitment period outlined in the applicable Fee Schedule following the Installation Date, Data Center shall pay to CME, upon termination of this Agreement, the Data Center Fees that would have been due for the remainder of that commitment period and any disconnection fees that CME incurs as a result of such termination.
- (b) Termination by CME. CME and/or its designee may terminate this Agreement at any time upon the

occurrence of any of the events specified in subsections (i) through

(viii) of this Section 15(b). Such action shall in all events be without liability to CME as a consequence thereof. CME’s right to take such action pursuant to subsections (i) and (ii) shall take effect 30 days from notice by CME that the event listed in the relevant subsection has occurred, unless Data Center cures such breach within such notice period. CME’s right to take such action pursuant to subsections (iii) and (iv) shall take effect 15 days from notice by CME that the event listed in the relevant subsection has occurred. CME’s right to take such action pursuant to subsections (v) – (viii) shall be immediate and without prior notice by CME. Pursuant to the above provisions, CME may terminate this Agreement or suspend access to the Connection, or require a Data Center to suspend or terminate a specific Customer’s access to the Connection, if:

- i) any Data Center Fees due hereunder are past due;
  - ii) Data Center breaches any material obligation of this Agreement;
  - iii) CME ceases to offer the Connection in the Country(ies) in which the Premises are located;
  - iv) any equipment or software used by Data Center to access a CME System is no longer approved by CME for Data Center’s use;
  - v) Data Center files a petition under the Federal Bankruptcy Act or any insolvency law, becomes insolvent or has an involuntary petition for bankruptcy filed against it;
  - vi) Data Center ceases doing business as a going concern;
  - vii) such suspension or termination is necessary, in the sole discretion of CME, to comply with (a) any applicable law, regulation or court order, (b) the Rules, (c) CME security requirements, (d) the requirements of any Participating Venue, or (e) any other agreement, legal proceeding, or settlement to which CME, or any of its affiliates, is a party or which may affect CME or any of its affiliates;
  - viii) if any action of Data Center or a Customer, in CME’s sole discretion, may have an adverse effect on, or damage the reputation of, CME or the CME Systems.
- (c) Termination by Data Center. Data Center may terminate this Agreement immediately upon written notice if CME breaches any material obligation of this Agreement and CME fails to remedy such breach within 30 days following written notice specifying the breach.
- (d) Consequences of Termination. Upon termination or

suspension of this Agreement for any reason, Data Center shall immediately cease use of any CME Equipment, the Connection and the CME Trademarks, shall ensure that all Customers immediately cease use of the Connection, and shall give CME or its appointed contractor access to CME Equipment for purposes of its removal from the Premises and shall otherwise cooperate in promptly returning all property of CME. CME shall have the right to notify Customers of such termination or suspension to ensure no unnecessary interruption in service.

#### **16. SURVIVAL FOLLOWING TERMINATION.**

The provisions of Sections 6, 7, 8(c), 8(i), 9-13, 15(d), and 16-26 as well as all other disclaimers and indemnities in favor of CME and the Participating Venues shall survive the termination of this Agreement.

#### **17. WAIVER OF COMPLIANCE.**

Any failure of Data Center, on the one hand, or CME, on the other, to comply with any obligation herein may be expressly waived in writing by the other party to this Agreement, but such waiver or failure to insist upon strict compliance with such obligation shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

#### **18. NOTICES.**

Except as otherwise expressly provided in this Agreement, all notices and other communications required or permitted hereunder shall be in writing and shall be delivered by email (to [legalnotices@cmegroup.com](mailto:legalnotices@cmegroup.com) and [GAM@cmegroup.com](mailto:GAM@cmegroup.com) if addressed to CME), hand or mailed via certified or registered mail with postage pre-paid, to the address of Data Center or CME first set forth above, or to such other person or address as Data Center or CME shall give notice pursuant to this section. Notices will be deemed duly received, if sent by email at the time of transmission, or if sent by a nationally recognized expressed courier company, the earlier of actual receipt by either party or two (2) business days after receipt by courier, or if via registered mail, two (2) business days after posting.

#### **19. HEADINGS.**

The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

#### **20. ENTIRE AGREEMENT.**

This Agreement, together with any Schedules pertaining hereto, as such may be amended from time to time pursuant hereto, shall constitute the entire agreement between CME and Data Center respecting any Connection, and shall supersede all prior agreements, arrangements, representations or promises, whether oral or written, as to its subject matter. Except as set forth in Section 4, this Agreement may be amended only by a writing executed by both of the parties hereto. A facsimile copy of the signed

Agreement shall be deemed as binding as the original document.

#### **21. ASSIGNMENT.**

This Agreement may not be assigned or transferred by Data Center to any other person and any purported assignment or transfer is void and unenforceable. CME in its discretion may assign this Agreement in whole or in part at any time to any affiliate of CME. In such event Data Center agrees that it will look only to such assignee and not to CME for the performance of any assigned obligations hereunder.

#### **22. NO THIRD PARTY BENEFICIARIES.**

Except where expressly stated in this Agreement, each party hereto agrees that there are no third party beneficiaries of this Agreement, including, without limitation, the Customers. Participating Venues may enforce the terms of this Agreement as if they were named as CME therein.

#### **23. GOVERNING LAW; CONSENT TO JURISDICTION.**

- (a) Governing Law. This Agreement shall be governed by the laws of the State of Illinois, and the Federal laws of the United States of America.
- (b) Jurisdiction. Data Center 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 (“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. Nothing contained in this Section shall limit the right of CME to commence Proceedings against a non-US Data Center in any other court of competent jurisdiction in which such non-US Data Center is located. Nor shall the commencement of Proceedings by CME in one or more jurisdictions preclude the taking of Proceedings by CME in any other jurisdiction with respect to a non-US Data Center whether concurrently or not, to the extent permitted by the law of that other jurisdiction. Notwithstanding CME’s commencement of Proceedings in a jurisdiction other than the Federal and State courts in Chicago, Illinois, this Agreement shall at all time continue to be governed by, and construed in accordance with, the laws of the State of Illinois and the Federal laws of the United States of America. No action arising out of any claimed breach of this Agreement or transactions under this Agreement may be brought by either party more than 2 years after the cause of action has accrued.
- (c) The General Data Protection Regulation (“GDPR”) (Regulation (EU) 2016/679). To enable CME to perform under the Agreement, Data Center will need to provide personal data to CME. All data provided by Data Center will be kept secure and confidential and will only be used for the purpose of (1) processing and implementing the



Agreement, and (2) complying with the rules and regulations of the Commodity Futures Trading Commission governing the trading of derivatives (futures and options on futures) unless Data Center consents to CME using it for another purpose. Such use may involve the transfer of this data outside the European Economic area. In storing and processing Data Center's data for purposes of the Agreement, CME will comply with the provisions of GDPR. For more information please see CME's Privacy Policy, which may be found at [www.cmegroup.com](http://www.cmegroup.com).

**24. USE OF NAME.**

Neither CME nor Data Center shall use the name of the other for advertising or publicity purposes without the prior written consent of the other.

**25. FORCE MAJEURE.**

Neither party will be liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or disputes, transportation unavailability, stoppages or slowdowns, provided that the affected party gives prompt notice to the other of the nature of the event and its estimated duration and resumes performance as soon as possible after the event ends.

**26. SEVERABILITY.**

Each part of this Agreement is a distinct undertaking. In the event any part of this Agreement shall be determined to be unlawful or otherwise unenforceable, that part shall be deemed severed from this Agreement and of no effect; every other part of this Agreement not so severed shall remain in full force and effect. The parties expressly authorize a court of competent jurisdiction to modify any term of this Agreement to the extent necessary to comply with existing law and to enforce this Agreement as so modified.