

## CME CLEARING 360 AGREEMENT

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

**WHEREAS**, CME offers clearing services for privately-negotiated trades in various contracts reported through its Clearing 360 Interface; and

**WHEREAS**, Clearing Firm wishes to access the Clearing 360 Interface on behalf of Authorized Users and to provide access to the Clearing 360 Interface to Authorized Users and clear any trades resulting therefrom;

**THEREFORE**, the parties hereby agree as follows:

### 1. DEFINITIONS.

(a) "Authorized User" means any user (including Clearing Firm, Customer, or Submitting Broker) that accesses the Clearing 360 Interface on behalf of Clearing Firm.

(b) "Clearing 360" means the clearing services for privately-negotiated trades in Clearing 360 Products which may be reported via the Clearing 360 Interface.

(c) "Clearing 360 Clearing Firm Authorization Request" means the form attached as Exhibit A to this Agreement (or any successor form published by the CME Clearing House, or any online application made available by the CME Clearing House for this purpose), by which Clearing Firm specifies a Customer for which it wishes to clear trades in Clearing 360 Products reported via the Clearing 360 Interface, and information associated with that customer such as allowable reporting sources, submitting brokers, and customer account numbers.

(d) "Clearing 360 Data" means any market or execution prices, any fills, including indicative fills, individual orders data, volume data, limit order book data, market depth data, customer names or unique customer identifiers, opening capital amounts, discount factors, strikes, product names, customer names, and any aggregate data or databases of such data and any similar data or other information relating to the trading or clearing Clearing 360 Products.

(e) "Clearing 360 Interface" means the electronic system provided by CME by which privately negotiated trades in Clearing 360 Products may be submitted to the CME Clearing House by parties including customers and submitting brokers.

(f) "Clearing 360 Materials" means any database, software, programs, protocols, interfaces, displays and manuals,

including the selection, arrangement, and sequencing of the contents thereof, to which Clearing Firm obtains access in connection with this Agreement or trading activity through the Clearing 360 Interface.

(g) "Clearing 360 Products" means all products for which privately-negotiated trades may be submitted to the CME Clearing House through the Clearing 360 Interface, as determined by CME from time to time.

(h) "Eligible Contract Participant" or "ECP" has the meaning set forth in Section 1a(12) of the Commodity Exchange Act.

(i) "Submitting Broker" means a third-party who is authorized by Clearing Firm to submit privately-negotiated trades in Clearing 360 Products to the CME Clearing House on behalf of a particular customer.

(j) "Rules" means the rules, policies, and procedures of CME, as such rules are established and modified by CME from time to time.

**2. SCOPE OF AGREEMENT.** Subject to the terms and conditions set forth in this Agreement and the Rules, Clearing Firm hereby authorizes Authorized Users to submit privately negotiated trades in Clearing 360 Products through the Clearing 360 Interface to be guaranteed by the CME Clearing House. Clearing Firm must request authorization of Authorized Users by completing a Clearing Firm Authorization Request attached hereto as Exhibit A. If Clearing Firm will access the Clearing 360 Interface directly, CME hereby grants to Clearing Firm and Clearing Firm's Authorized Users a nonexclusive, revocable, nontransferable, nonsublicensable, limited personal license to access the Clearing 360 Interface in accordance with the purpose of this Agreement and the Rules.

**3. TERM OF AGREEMENT.** This Agreement commences on the Effective Date and shall continue in effect until earlier terminated by either party as set forth herein.

**4. MODIFICATION OF AGREEMENT.** CME may modify any of the terms and conditions generally applicable to clearing firms that are set forth in this Agreement, by sending at least 30 days' prior written notice of the modification to Clearing Firm. If Clearing Firm does not consent to the modification, Clearing Firm 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.

**5. FEES.** Clearing Firm agrees to pay all applicable fees in accordance with the Rules.

**6. GENERAL CONDITIONS.** Access to and use of the Clearing 360 Interface is provided on the following terms and conditions:

(a) Access; Compliance With Agreement. Clearing Firm shall not permit use of or access to the Clearing 360 Interface by anyone other than Authorized Users. Clearing Firm shall comply with and shall require Authorized Users to comply with all of the terms and conditions of this Agreement and shall be responsible for any acts, omissions and failures to comply with this Agreement by any Authorized User, to the same extent that Clearing Firm would be liable under this Agreement for its own acts, omissions and failures to comply.

(b) Compliance With Rules. Transactions that take place through the Clearing 360 Interface are subject to the Rules. Clearing Firm shall comply with and hereby agrees to be subject to, and obtain an agreement from each other Authorized User that it will comply with and be subject to, the Rules when using Clearing 360, and Clearing Firm shall be responsible to CME for any failures to comply with Rules by any Authorized User, to the same extent that Clearing Firm would be liable under this Agreement for its own failures to comply. In the event of a conflict between the provisions of this Agreement and the provisions in the Rules, the Rules shall govern.

(c) Eligible Contract Participants. Clearing Firm warrants and covenants on the date of this Agreement and at all times during the term of this Agreement, that Clearing Firm is an ECP, and that each other Authorized User which may be using the Clearing 360 Interface for Clearing 360 Products which require such User to be an ECP, is an ECP. Clearing Firm shall not authorize or enable any Authorized User to use the Clearing 360 Interface for any Clearing 360 Product which requires such User to be an ECP, unless that Authorized User is an ECP. Clearing Firm shall notify CME immediately if Clearing Firm or any other Authorized User which is an ECP ceases to be an ECP and will immediately cause any use of the Clearing 360 interface by the affected entity for such products which require users to be ECP's, to cease.

(d) Compliance With Law. Clearing Firm warrants and covenants that it shall comply, and shall require all other Authorized Users to comply, at all times during the term of this Agreement, with all applicable laws, orders, and regulations pertaining to the use of Clearing 360, Clearing 360 Materials, Clearing 360 Data, Interfaces, and all transactions in connection therewith.

(e) CME Modifications. Clearing Firm acknowledges and agrees that CME may modify, suspend, or terminate Clearing 360, Clearing 360 Data, Clearing 360 Materials, CME-provided Interfaces, or other service formerly supplied at any time. CME shall provide Clearing Firm with prior notice of such modification, suspension, or termination if practicable; otherwise, CME shall provide Clearing Firm with notice as soon as practicable after such modification or termination.

(f) Confidentiality.

(i) Clearing Firm acknowledges that the Clearing 360 Materials constitute trade secrets, proprietary to CME and its licensors, as to which copyright, database rights and patent rights of CME and its licensors may also exist. Clearing Firm agrees to keep the Clearing 360 Materials confidential, using the same standard of care it uses to keep its own Confidential Information private, but no less than a reasonable standard of care, and not use the Clearing 360 Materials for any purpose other than the performance of its obligations or the exercise of its rights under this Agreement, or compliance with any applicable law or regulation. Clearing Firm agrees that, as between Clearing Firm and CME, all copies and expressions of such Clearing 360 Materials, trade secrets, works, processes, and methods are the exclusive property of CME. All Clearing 360 Materials in the possession, custody, or control of Clearing Firm on the date of termination of this Agreement shall immediately be returned to CME (or at CME's option, destroyed and such destruction certified in writing), except for any such information retained for required legal or regulatory purposes. The foregoing shall not apply to materials that are publicly available, come into the possession of Clearing Firm other than as a result of breach of this Agreement, or required to be produced by any legal or regulatory authority.

(ii) CME agrees that the information provided to CME by Clearing Firm pursuant to the Clearing Firm Authorization Request is confidential information ("Confidential Information") and CME agrees that it shall keep in confidence the Confidential Information using the same standard of care it uses to keep its own Confidential Information private, but no less than a reasonable standard of care, and not use that Confidential Information for any purpose other than the performance of its obligations or the exercise of its rights under this Agreement, or compliance with any applicable order, law or regulation. The foregoing shall not apply to information that is publicly available, comes into the possession of CME other than as a result of breach of this Agreement, or required to be produced by any legal or regulatory authority.

(iii) The parties acknowledge that a breach of the confidentiality provisions of this Agreement will result in serious and irreparable harm for which there is no adequate

remedy at law. In the event of any breach of the confidentiality provisions of this Agreement, the non-breaching party shall be entitled to seek temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

(h) Software Provided by CME. Any computer software and related documentation provided by CME to Clearing Firm 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 Clearing Firm by CME.

(i) Clearing 360 Data. CME grants to Clearing Firm, subject to the terms and conditions of the Agreement, a limited, non-exclusive, non-transferable, revocable license to receive Clearing 360 Data and provide Clearing 360 Data to Authorized Users. Clearing Firm agrees, and will cause all other Authorized Users to agree, not to use Clearing 360 Data for any purpose other than submitting privately-negotiated trades in Clearing 360 Products for a valid, active and capitalized account, or engaging in risk management, operational, or supervisory activities with respect to the use of Clearing 360. Clearing Firm acknowledges and agrees, and shall cause all other Authorized Users to acknowledge and agree, that CME has exclusive and valuable property rights in and to Clearing 360 Data, that Clearing 360 Data constitute valuable confidential information, trade secrets and proprietary rights of CME, not within the public domain, that Clearing 360 Data shall remain valuable confidential information, trade secrets and proprietary rights to CME (at least until CME places or authorizes placement of Clearing 360 Data in the public domain), and that, but for this Agreement, Clearing Firm and other Authorized Users would have no rights or access to Clearing 360 Data. Clearing Firm must adopt and enforce policies reasonably designed to safeguard Clearing 360 Data from unauthorized access by any person not permitted under this Agreement to receive Clearing 360 Data from Clearing Firm. Clearing Firm acknowledges and agrees that disclosure of any Clearing 360 Data in violation of this Agreement, or any breach or threatened breach of any other covenants or agreements contained herein, would cause irreparable injury to CME for which money damages alone would be an inadequate remedy.

(j) Indemnification to CME. Clearing Firm hereby agrees that it shall indemnify and hold harmless CME, its affiliates, officers, directors, employees, agents, contractors and suppliers from any losses, damages, reasonable costs and expenses incurred by CME in defending against a claim, action, suit, or demand (including reasonable attorneys' fees) arising out of or in connection with any breach of or any inaccuracy in any representation or warranty made by Clearing Firm in this Agreement. CME will promptly notify Clearing Firm of any claim, action, suit or demand that may trigger Clearing Firm's obligations under this Section 7(k).

**7. DISCLAIMER.** CLEARING FIRM UNDERSTANDS AND AGREES THAT CME IS NOT DIRECTLY OR INDIRECTLY A PARTY TO ANY TRADE OR TRANSACTION UNTIL SUCH TRADE OR TRANSACTION IS ACCEPTED BY THE CME CLEARING HOUSE IN ACCORDANCE WITH THE RULES. CLEARING FIRM FURTHER UNDERSTANDS AND AGREES THAT THE LIABILITY OF CME WITH RESPECT TO TRANSACTIONS REPORTED THROUGH THE CLEARING 360 INTERFACE IS SUBJECT TO AND LIMITED BY THE RULES. CME DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES (INCLUDING ANY WARRANTIES WITH RESPECT TO THE PERFORMANCE OF OR CONNECTION TO THE INTERFACE, THE AVAILABILITY OF BACK-OFFICE SYSTEMS CAPABILITIES, OR ANY SERVICES PERFORMED BY OR ON BEHALF OF CME PURSUANT TO THIS AGREEMENT), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

#### **8. LIMITED WARRANTY AND LIMITATION OF LIABILITY.**

The Rules concerning liability and warranties (including without limitation the Rules that incorporate by reference Rules 578 and 579 of the rules of Chicago Mercantile Exchange Inc.) are incorporated herein by this reference and apply with the same force and effect as if they were reproduced in their entirety in this Agreement. Those Rules set out the entire liability of CME to Clearing Firm and other Authorized Users. All other liability of CME under or in connection with this Agreement is excluded, except to the extent that it is not permitted to be excluded by applicable law.

#### **9. TERMINATION.**

(a) CME may suspend access to the Clearing 360 Interface or terminate this Agreement at any time if:

- i) any fees due to CME are past due;
- ii) Clearing Firm breaches any material obligation or representation in this Agreement;
- iii) CME ceases to offer Clearing 360 in the country(ies) in which Clearing Firm's offices are located;
- iv) Clearing Firm files a petition under the Federal Bankruptcy Act or any insolvency law, becomes insolvent or has an involuntary petition for bankruptcy filed against it;

- v) Such termination or suspension is required by applicable law or regulation or court order;
- vi) Clearing Firm ceases doing business as a going concern;
- vii) Such termination or suspension is provided by the Rules or by order of any applicable CME committee;
- viii) Clearing Firm fails to maintain its status as a member in good standing of CME's Clearing House; or
- ix) Clearing Firm's eligibility to trade on CME or clear resulting trades is revoked or suspended by the CME Clearing House.

CME's right to suspend or terminate 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 Clearing Firm cures such breach within such notice period; pursuant to subsection (iii) shall take effect 15 days from notice by CME that the event listed in the relevant subsection has occurred; and pursuant to subsections (iv) – (ix) shall take effect immediately, without prior notice by CME.

(b) Clearing Firm 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.

(c) Either party may terminate this Agreement in its sole discretion upon 90 days' prior written notice to the other party.

**10. SURVIVAL FOLLOWING TERMINATION.** The provisions of Sections 5, 6(g)-(k), and 7-18 as well as all other disclaimers and indemnities in favor of CME shall survive the termination of this Agreement. Upon termination of this Agreement, Clearing Firm shall cooperate in promptly terminating access to and use of the Clearing 360 Interface by all Authorized Users.

**11. WAIVER OF COMPLIANCE.** Any failure of Clearing Firm, on the one hand, or CME, on the other, to comply with any obligation herein may only be 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.

**12. NOTICES.** All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if and when delivered by hand or mailed, certified or registered mail postage pre-paid, to the address of Clearing Firm or CME first set forth above, or to such other person or address as Clearing Firm or CME shall give notice pursuant to this Section 12.

**13. 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.

**14. ENTIRE AGREEMENT.** This Agreement, as amended from time to time pursuant hereto, shall constitute the entire agreement between CME and Clearing Firm respecting use of the Clearing 360 Interface, 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, which shall not be in an electronic form. A facsimile copy of the signed Agreement shall be deemed as binding as the original document.

**15. ASSIGNMENT.** This Agreement may not be assigned or transferred by Clearing Firm to any other person without CME's prior written consent and any purported assignment or transfer without such consent 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 Clearing Firm agrees that it will look only to such assignee and not to CME for the performance of any assigned obligations hereunder.

**16. NO THIRD PARTY BENEFICIARIES.** Each party hereto agrees that there are no third party beneficiaries of this Agreement, including, without limitation, Authorized Users other than Clearing Firm.

## **17. GOVERNING LAW; 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. Clearing Firm 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 customer in any other court of competent jurisdiction in which such non-US customer 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 customer 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) UK Data Protection Act 1998. To enable CME to perform under the Agreement, Clearing Firm will need to provide personal data to CME. Such data may belong to Clearing Firm or other Authorized Users and, in either case, Clearing Firm is responsible for obtaining the appropriate consent prior to providing such information to CME. All such data provided by Clearing Firm 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 CFTC governing the trading of derivatives (futures and options on futures) unless Clearing Firm 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 for purposes of the Agreement, CME will comply with the provisions of the Data Protection Act 1998, including the data protection principles set out in the Act.

**18. USE OF NAME.** Neither CME nor Clearing Firm shall use the name of the other for advertising or publicity purposes without the prior written consent of the other.

**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.

**CLEARING FIRM**

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

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

Title: \_\_\_\_\_  
(Must be an authorized Officer)

Date: \_\_\_\_\_, 200\_\_

**CHICAGO MERCANTILE EXCHANGE INC.**

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

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

Title: \_\_\_\_\_  
(Must be an authorized Officer)

Date: \_\_\_\_\_, 200\_\_  
("Effective Date")