
CME-CLEARED OVER-THE-COUNTER DERIVATIVES ADDENDUM

dated as of _____, between

_____ (the "OTC Clearing Member") and

_____ (the "Customer").

The following terms and conditions (the "CME-Cleared OTC Addendum") will supplement the futures customer agreement between OTC Clearing Member and Customer identified in the Schedule hereto (the "Agreement") with respect to Transactions (as defined herein).

Accordingly, the parties agree as follows:-

1. INTERPRETATION.

(a) **Applicable Law.** This CME-Cleared OTC Addendum, the Agreement, the Account and all Transactions and agreements in respect of the Account will be subject to Applicable Law.

(b) **Definitions.** The terms defined in Section 6 of this CME-Cleared OTC Addendum and elsewhere herein will have the meanings specified for the purpose of this CME-Cleared OTC Addendum.¹

(c) **Inconsistency.**

(i) In the event of any inconsistency between the provisions of this CME-Cleared OTC Addendum and the provisions of the Agreement, the provisions of this CME-Cleared OTC Addendum will prevail with respect to Transactions.

(ii) In the event of any inconsistency between the provisions of the Schedule to this CME-Cleared OTC Addendum and the other provisions of this CME-Cleared OTC Addendum, the provisions of the Schedule will prevail.

(iii) Subject to Section 1(c)(i) of this CME-Cleared OTC Addendum, each Transaction will be deemed to be a [Contract]² for all purposes of the Agreement.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS.³

At the time of entering into this CME-Cleared OTC Addendum and again upon each date on which an OTC Transaction is submitted to and accepted for clearance and settlement as a Transaction in accordance with this CME-Cleared OTC Addendum:-

(a) **OTC Clearing Member Representations, Warranties and Covenants.** OTC Clearing Member represents, warrants and covenants to Customer that:-

(i) **Due Authorization.** OTC Clearing Member is a CME Clearing Member and an OTC Clearing Member (as such terms are defined in the CME Rules). OTC Clearing Member is duly registered as a Futures Commission Merchant under the CEA.

(ii) **No Violation.** OTC Clearing Member is not subject to any order, judgment, or decree of any court of competent jurisdiction preventing OTC Clearing Member from engaging in or continuing to engage in clearance

¹ Consider whether any of the Definitions specified herein are redundant or conflict with any terms otherwise defined in the relevant futures customer agreement.

² Insert the appropriate term used to describe futures contracts in the relevant futures customer agreement.

³ The Addendum does not include basic representations, warranties and covenants as they are likely to appear in the relevant futures customer agreement.

and settlement of OTC Transactions as a CME Clearing Member or OTC Clearing Member (as such terms are defined in the CME Rules).

(iii) **Qualifications.** OTC Clearing Member is not suspended or expelled from membership in the CME or disqualified with respect to membership or participation in any U.S. futures self-regulatory organization.

(b) **Customer Representations, Warranties and Covenants.** In addition to the representations, warranties and covenants made by Customer in the Agreement, Customer represents, warrants and covenants to OTC Clearing Member that:-

(i) **Eligible Contract Participant.** Customer is and, for so long as Customer maintains any open Transactions, shall be an "eligible contract participant" as defined under Section 1a(12) of the CEA.

(ii) **Due Authorization.** Prior to submitting an OTC Transaction for clearance and settlement through Customer's Account with OTC Clearing Member, Customer will have entered into all necessary agreements to enter into such OTC Transactions, either in the OTC market or on or subject to the rules or trading protocols of the relevant Trading Platform, and obtained any approval, authorization, license or permit required by Applicable Law to perform its obligations attendant to this CME-Cleared OTC Addendum. Customer will ensure that any such agreement, approval, authorization, license or permit remains valid and in force at any time Customer enters into any OTC Transactions or maintains any open Transactions.

(iii) **CME Rules.** Customer understands and is familiar with the rules, regulations and procedures of the CME and each Trading Platform that Customer uses in connection with the OTC Transactions including, but not limited to, any applicable restrictions involving the types of OTC Transactions that may be submitted to the CME for clearance and settlement.

(iv) **Absence of Certain Events.** No Event of Default with respect to Customer has occurred and is continuing and no such event or circumstance would occur as a result of Customer entering into or performing its obligations under this CME-Cleared OTC Addendum.

(v) **Relationship Between the Parties.** Customer is acting for its own account, and has made its own independent decisions to enter into the OTC Transactions and submit such OTC Transactions for clearance and settlement through Customer's Account with OTC Clearing Member, based upon its own judgment and upon advice from such advisers as it has deemed necessary, as to whether such action is appropriate or proper. It is not relying on any communication (written or oral) of OTC Clearing Member as investment advice or as a recommendation to enter into and clear the OTC Transactions. Customer is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of entering into and submitting the OTC Transactions for clearance and settlement in accordance with this CME-Cleared OTC Addendum, including, but not limited to, the risk that the regulation of cleared OTC Transactions may differ from the regulation applicable to the execution and clearance of futures contracts, and such cleared OTC Transactions may not be afforded the same legal and regulatory treatment as may be afforded the execution and clearance of futures contracts. OTC Clearing Member is not acting as a fiduciary for or an adviser to Customer in respect of the Transactions.

3. GIVE-UP TRANSACTIONS.

Customer agrees that absent a separate written agreement with Customer with respect to give-up transactions, OTC Clearing Member shall not be obligated to accept any OTC Transaction given up by an executing broker, whether or not such executing broker is an affiliate of OTC Clearing Member, for clearing.

4. TERMINATION OF AGREEMENT.

(a) *Optional Termination.*⁴

(i) Either party may give notice to the other party with respect to the transfer or termination of open Transactions governed by this CME-Cleared OTC Addendum as follows:-

- (1) by Customer: on any Business Day upon written notice to OTC Clearing Member; or
- (2) by OTC Clearing Member: on any Business Day upon prior written notice to Customer in accordance with the notice period specified in the Schedule;

in each case such notice will be sent by electronic mail, with a copy delivered by any other means permitted in accordance with the Agreement; and will specify the effective date of such transfer or termination (the "**Termination Date**"); *provided, however*, that such Termination Date shall not be earlier than (A) with respect to a notice provided by Customer to OTC Clearing Member, the effective date of such notice or (B) with respect to a notice provided by OTC Clearing Member to Customer, the last Business Day of the agreed notice period.

(ii) Except as provided below, with respect to a transfer or termination of open Transactions in accordance with Section 4(a)(i) of this CME-Cleared OTC Addendum, such transfer or termination shall not affect any OTC Transaction accepted for clearing on or prior to the Termination Date and shall not relieve either party of any obligations in connection with any debit or credit balance or other liability or obligation involving an OTC Transaction accepted for clearing on or prior to the Termination Date.

(iii) In the event of an optional termination:-

- (1) With respect to a notice for transfer or termination provided by Customer to OTC Clearing Member, as soon as is reasonably practicable, Customer will either:
 - (A) terminate such open Transactions by entering into offsetting Transactions; or
 - (B) instruct OTC Clearing Member to transfer such open Transactions to another OTC Clearing Member (as defined in the CME Rules), as Customer may instruct.
- (2) With respect to a notice for transfer or termination provided by OTC Clearing Member to Customer, on or before the Termination Date, Customer will either:
 - (A) terminate such open Transactions by entering into offsetting Transactions; or
 - (B) instruct OTC Clearing Member to transfer such open Transactions to another OTC Clearing Member (as defined in the CME Rules), as Customer may instruct;

and, with respect to a notice for transfer or termination provided by OTC Clearing Member to Customer, the failure to complete such transfer or termination, as applicable, on or before the Termination Date is deemed to constitute a breach, by Customer, of a material agreement of the parties.

⁴ The Optional Termination terms are intended to address the transfer or termination of Transactions governed by the CME-Cleared OTC Addendum. The transfer or termination of any futures positions is intended to be addressed by the terms of the relevant futures customer agreement.

(iv) In the event of a transfer, OTC Clearing Member will, in good faith and in a commercially reasonable manner, within such period for transfer specified in the Schedule:-

(1) transfer to such other OTC Clearing Member all open Transactions, if any, then held for the Account; and

(2) transfer to Customer or to such other OTC Clearing Member, as Customer may instruct, all cash, securities and other property recorded in the Account by OTC Clearing Member with respect to such Transactions, whereupon this CME-Cleared OTC Addendum will terminate, subject to Customer's satisfaction of its obligations under the Agreement and to Section 4(a)(v) below.

(v) In the event of a transfer or termination, as applicable, each party will satisfy all of its liabilities to the other party under this CME-Cleared OTC Addendum in respect of such Transactions so transferred or terminated.

(b) ***Termination for Cause.***

(i) If at any time an Event of Default with respect to Customer has occurred and is continuing,⁵ OTC Clearing Member may designate a day not earlier than the effective date of such Event of Default as the "**Liquidation Date**" with respect to all open Transactions. On or as soon as reasonably practicable following the designation of a Liquidation Date, OTC Clearing Member will, on behalf of Customer, and acting in good faith and in a commercially reasonable manner:-

(1) terminate all open Transactions by entering into offsetting Transactions; ***provided, however,*** that in the event such offsetting Transactions cannot be executed or would not (in the reasonable belief of the OTC Clearing Member) produce a commercially reasonable result, OTC Clearing Member may, acting in good faith and in a commercially reasonable manner, enter into transactions that temporarily hedge the economic risk, including, but not limited to, price and credit risk, with respect to such open Transactions (the "**Temporary Hedging Transactions**"), and terminate any such Temporary Hedging Transactions and enter into offsetting Transactions as soon as commercially reasonable to effect the termination of such open Transactions; and

(2) calculate the Termination Amount payable with respect to the termination of such open Transactions.

(ii) The Termination Amount will be an amount equal to the sum of:-

(1) the aggregate amount of losses and costs (expressed as a positive number), net of any gains (expressed as a negative number), which for the avoidance of doubt and without duplication, in each case will include, but not be limited to, any Initial Payments (as defined in the CME Rules) and related margin payments, that are incurred by OTC Clearing Member in entering into offsetting Transactions and/or entering into and terminating Temporary Hedging Transactions;

(2) all unpaid amounts due to OTC Clearing Member under such open Transactions (expressed as a positive number), less all unpaid amounts due to Customer under such open Transactions (expressed as a negative number); and

(3) any and all reasonable out-of-pocket expenses, penalties, fines and taxes that OTC Clearing Member incurs, including reasonable attorneys' fees, in connection with the exercise of its remedies.

(iii) Subject to Sections 4(b)(iv) and 4(b)(v) below:-

(1) if the Termination Amount is a positive number, Customer will pay such Termination Amount to OTC Clearing Member; or

⁵ Consider whether the requirement for such event to be "continuing" under this CME-Cleared OTC Addendum conflicts with the approach otherwise specified in the relevant futures customer agreement with respect to futures contracts.

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- (2) if the Termination Amount is a negative number, OTC Clearing Member will pay the absolute value of such Termination Amount to Customer.

A Termination Amount due in respect of a Liquidation Date will, together with any amount of interest payable pursuant to Section 4(d)(iv), be payable on the day on which notice of such amount payable is effective.

(iv) Upon calculation of the Termination Amount, OTC Clearing Member will:-

(1) apply any of Customer's excess cash margin recorded in the Account with respect to such terminated Transactions by OTC Clearing Member to any Termination Amount owed by Customer to OTC Clearing Member;

(2) sell or otherwise dispose of, realize, set off or apply any or all of the Customer's excess non-cash margin recorded in the Account with respect to such terminated Transactions by OTC Clearing Member, and apply the proceeds thereof to any Termination Amount owed by Customer to OTC Clearing Member; and

(3) take such other or further actions as OTC Clearing Member, in good faith and in its commercially reasonable discretion, deems necessary or appropriate for the protection of its rights hereunder to the fullest extent permitted under Applicable Law.

(v) Following satisfaction in full of Customer's obligations and liabilities to OTC Clearing Member under the Agreement, OTC Clearing Member will return to Customer any Customer margin recorded in the Account by OTC Clearing Member with respect to such terminated Transactions and remaining after the liquidation, setoff and/or application under Section 4(b)(iv) above. Each party will remain liable for amounts, if any, remaining unpaid by it after any liquidation, setoff and/or application under Section 4(b)(iv).

(c) **Notice of Remedy.** The parties may agree to include terms relating to "Notice of Remedy" in the Schedule.

(d) **Power of Attorney; Default Interest; Statement.**

(i) Customer appoints OTC Clearing Member as Customer's attorney-in-fact to sign, complete, and deliver any and all documents necessary or desirable to enter into offsetting Transactions in accordance with Sections 4(a)(iv) and 4(b)(i) and to take such other steps incidental to or necessary for OTC Clearing Member to enter into such offsetting Transactions.

(ii) Customer agrees to cooperate with OTC Clearing Member, to use all reasonable efforts, and to take such other actions as OTC Clearing Member may reasonably request from time to time, as may be necessary or appropriate in order for OTC Clearing Member to evidence or carry out the intent and purposes of this CME-Cleared OTC Addendum or to show the ability to carry out the intent and purposes of this CME-Cleared OTC Addendum.

(iii) If Customer defaults in the performance of any payment obligation, Customer will, to the extent permitted by law, be required to pay interest (before as well as after judgment) on the overdue amount to OTC Clearing Member on demand in the same currency as such overdue amount, for the period from (and including) the original due date for such payment to (but excluding) the date of actual payment, at the Default Rate. If Customer defaults in the performance of any obligation required to be settled by delivery, it will compensate OTC Clearing Member on demand if, and to the extent, provided for in the terms of the relevant Transaction or elsewhere in the Agreement.

(iv) Subject to applicable limitation of liability provisions (howsoever described) in the Agreement including, but not limited to, any limitation of liability with respect to a failure or delay by the CME, any Trading Platform or any third party in the performance of obligations related to Transactions, if OTC Clearing Member fails to perform any payment obligation in accordance with this CME-Cleared OTC Addendum, OTC Clearing member will, to the extent permitted by law, be required to pay interest on the overdue amount to Customer on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Applicable Rate.

(v) For the avoidance of doubt, Sections 4(d)(iii) and (iv) will apply solely with respect to obligations arising under Sections 4(a) and (b), and will not apply to interest payable by Customer on debit balances or by OTC Clearing Member on equity balances in the Account in the ordinary course, which will be at rates agreed by the parties from time to time in accordance with a written interest schedule that may be incorporated into the Agreement.

(vi) On or as soon as reasonably practicable following the actions described in Section 4(b) above, OTC Clearing Member will provide to Customer a statement:-

- (1) showing, in reasonable detail, such calculations (including any data or information used in making such calculations);
- (2) specifying any Termination Amount payable; and
- (3) giving details of the relevant account to which any amount payable to OTC Clearing Member is to be paid.

(e) **Setoff.** The parties may agree to include terms relating to “Setoff” in the Schedule.

5. POSITION LIMITS AND CREDIT LIMITS.

The parties may agree to include terms relating to “Position Limits and Credit Limits” in the Schedule.

6. DEFINITIONS.⁶

As used in this CME-Cleared OTC Addendum:-

“**Account**” means accounts carried by OTC Clearing Member for the purposes of clearing and settlement of Transactions on behalf and in the name of Customer which shall be governed by the Agreement.

“**Applicable Law**” means regulations of all applicable Federal, state and self-regulatory agencies, organizations or authorities, including, but not limited to:-

- (a) the provisions of the CEA and any rules, regulations, orders and interpretations promulgated thereunder by the CFTC;
- (b) the constitution, by-laws, rules, regulations, orders and interpretations of the CME and any Trading Platform on or subject to the rules of which Transactions are executed and/or cleared, and any relevant self-regulatory organization; and
- (c) the terms and conditions of any user agreement or other agreement entered into by Customer with the CME in respect of Transactions.

“**Applicable Rate**” has the meaning specified in the Schedule.

“**Business Day**” means, subject to the Schedule, a day (other than a Saturday or Sunday):-

- (a) in relation to any notice or other communication, including any notice under Section 4 of this CME-Cleared OTC Addendum, on which the CME is open for business; and
- (b) in relation to any payment or delivery obligation, determined in accordance with the CME Rules.

“**CEA**” means the Commodity Exchange Act, as amended from time to time.

⁶ Consider whether any of the Definitions are redundant with terms otherwise defined in the relevant futures customer agreement.

“**CFTC**” means the Commodity Futures Trading Commission.

“**CME**” means the CME Group.

“**CME Rules**” means the Chicago Mercantile Exchange Rulebook, as published by the CME, as amended from time to time.

“**Default Rate**” has the meaning specified in the Schedule.

“**Event of Default**” means any such event (howsoever described) in the Agreement.

“**Futures Commission Merchant**” has the meaning specified in Section 1a(20) of the CEA, as amended from time to time.

“**law**” includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and “**lawful**” and “**unlawful**” will be construed accordingly.

“**OTC Transaction**” means “OTC Derivatives” (as defined in the CME Rules) that the CME has designated as eligible for clearing in accordance with the CME Rules.

“**Termination Amount**” means the amount payable upon termination of the relevant Transaction or Transactions determined in accordance with Section 4(b) of this CME-Cleared OTC Addendum.

“**Trading Platform**” means a trading facility or other broker or trade-negotiation platform, communication network or auction facility on which Transactions are executed or traded.

“Transactions” means OTC Derivatives entered into by Customer in the OTC (as defined in the CME Rules) market, or executed or traded on or subject to the rules or trading protocols of a Trading Platform; and, in each case, submitted to and accepted for clearing and settlement by the CME for Customer’s Account with OTC Clearing Member.

IN WITNESS WHEREOF, the parties have executed this CME-Cleared OTC Addendum to the Agreement on the respective dates specified below with effect from the date specified on the first page of this CME-Cleared OTC Addendum.

[CUSTOMER]

[OTC CLEARING MEMBER]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE TO THE
CME-CLEARED OVER-THE-COUNTER DERIVATIVES ADDENDUM

dated as of _____, between

_____ (the "**OTC Clearing Member**") and

_____ (the "**Customer**").

The following terms and conditions (the "Schedule") will supplement the CME-Cleared OTC Addendum between OTC Clearing Member and Customer with respect to Transactions (as defined herein).

Accordingly, the parties agree as follows:-

- (a) "***Agreement***" means, for the purpose of this CME-Cleared OTC Addendum:-
_____.
- (b) "***Business Day***" [will have the meaning specified in Section 6 of this CME-Cleared OTC Addendum.][means _____.]
- (c) ***Optional Termination***. For the purpose of Section 4(a) of this CME-Cleared OTC Addendum:-
- (i) The period applicable to OTC Clearing Member's notice of optional termination is:- [X Business Days].
- (ii) The period for transfer of Transactions by OTC Clearing Member to such other OTC Clearing Member is:- [X Business Days].
- (d) "***Notice of Remedy***" means, for the purpose of Section 4(c) of this CME-Cleared OTC Addendum:-
_____.
- (e) "***Default Rate***" means, for purpose of Section 4(d) of this CME-Cleared OTC Addendum:- [X%].⁷
- (f) "***Applicable Rate***" means, for purpose of Section 4(d) of this CME-Cleared OTC Addendum:- [Y%].⁸
- (g) "***Setoff***" means, for the purpose of Section 4(e) of this CME-Cleared OTC Addendum:-
_____.
- (h) "***Position Limits and Credit Limits***" means, for the purpose of Section 5 of this CME-Cleared OTC Addendum:-
_____.

⁷ Parties may specify an agreed rate or an agreed formula for the determination of a rate such as: "A rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus [X%] per annum. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed."

⁸ See note 7 above.

