

# Chicago Board of Trade Market Data Subscriber Agreement

## 1. LICENSE

### 1.1 Member Firm.

Member Firm has obtained the right to receive and retransmit Market Data of the Chicago the CBOT ("CBOT") as the Market Data may be added or deleted from time to time by the CBOT.

### 1.2 Market Data.

The Parties agree that the term "Market Data" shall mean Last Price Information and/or the Order Book, separately or in combination. The Parties further agree that "Last Price Information" shall mean any representation that conveys, either directly or indirectly, information and data pertaining to commodity futures and/or options traded on the CBOT including, but not limited to, market prices of commodity futures or options, opening and closing range prices, high-low prices, settlement prices, estimated and actual contract volume, information regarding market activity including exchange for physical transactions, best bid or best offer and/or the size of the best bid or best offer. The Parties also agree that "Order Book" shall mean the representation of a discrete number of best bids and best offers then pending on the CBOT's electronic trading system along with the corresponding size of each bid and offer. Chicago Board Of Trade Exhibit A to the Chicago Board of Trade Member Firm Market Data Agreement

### 1.3 Display Device.

The Parties agree that the term "Display Device" shall mean any type of equipment, either fixed or portable, that is capable of accessing and displaying Market Data.

### 1.4 Grant.

Member Firm hereby grants Subscriber a non-exclusive and nontransferable License to receive Market Data. Subscriber agrees and acknowledges that the CBOT reserves the right to disapprove any Subscriber and retains the right to direct Member Firm to terminate any Subscriber's receipt of Market Data for any reason or no reason, in which event the CBOT shall so notify Member Firm and Member Firm shall cease providing Market Data to that Subscriber as soon as practicable.

### 1.5 Proprietary Rights.

The Parties acknowledge and agree that the Market Data are and do constitute valuable confidential information, copyrighted materials and proprietary rights of the CBOT, not within the public domain, and that, but for this Agreement, Subscriber would have no access or rights with respect thereto.

## 2. SUBSCRIBER'S RESTRICTIONS AND OBLIGATIONS

### 2.1 Restrictions on Use

Subscriber agrees that the Market Data are solely for Subscriber's private and individual receipt. The Parties agree that nothing herein shall preclude a Subscriber from furnishing the Market Data to any of its branch

offices, provided that the branch office shall have first been approved by the CBOT and Member Firm, and provided further that Subscriber agrees to pay Member Firm's additional Service fees as shall be agreed upon by Member Firm and Subscriber. Subscriber also agrees to pay Member Firm any penalties or interest assessed against Subscriber by Member Firm on behalf of the CBOT. In addition, Subscriber may, in the regular course of its business, occasionally furnish, to each of its customers, branch offices, and guaranteed introducing brokers, in a quantity restricted to that necessary to enable Subscriber to conduct its business, a de minimis number of segments of Market Data. Such dissemination must be strictly limited to telephonic communications not entailing the use of computerized voice synthesization or any other technology and must be strictly related to the trading activity of Subscriber or any such recipients. Any such recipients must be advised by Subscriber that such segments are proprietary and confidential information not to be disclosed or disseminated to other persons or entities. Subscriber agrees to make all reasonable efforts to ensure that such recipients abide by the provisions of this Agreement.

#### 2.2 Restrictions on Distribution and Competition.

Subscriber shall not, except as provided in Paragraph 2.1, redistribute, sell, license, retransmit or otherwise provide

Market Data in any format by electronic or other means, including but not limited to the Internet, any Intranet or other networks except with the express written authorization of the CBOT. Subscriber shall not reproduce, misappropriate, market or store the Market Data in a retrieval system. Subscriber shall not use the Market Data in any way to compete with the CBOT nor Member Firm, nor use the Market Data in any way so as to assist or allow a third party to compete with the CBOT or Member Firm. Chicago Board Of Trade Exhibit A to the Chicago Board of Trade Member Firm Market Data Agreement

#### 2.3 Confidentiality.

Subscriber shall safeguard the confidentiality of the Market Data, and shall not communicate or otherwise furnish, or permit to be communicated or otherwise furnished, said Market Data, in any format, to any news distributing company, or to any other location than that above designated, or allow any person, firm or corporation whatsoever to take, directly or indirectly, any of said Market Data, from said offices or locations, and Subscriber will comply with any requirement respecting the location in its place of business of its blackboards, tickers, telephones and instrumentalities, and will adopt and enforce, with respect to persons entering its place of business, any regulation which the CBOT or Member Firm may deem it advisable to prescribe in order to prevent the Market Data from being improperly taken from Subscriber's place of business. Subscriber further agrees to protect the confidentiality of the Market Data through the use of passwords, account numbers, access numbers, and any other security measures Member Firm or Exchange shall require to prevent unlicensed or unauthorized parties from gaining access to the Market Data, and Subscriber agrees that the passwords, account numbers, access numbers, and the other security measures are non-transferable.

#### 2.4 Illegal Purposes.

Subscriber shall not use, or allow any other person to use, the Market Data for any illegal purpose or otherwise engage in, permit, or in any way assist in or promote the illegal use of the Market Data.

#### 2.5 Notice.

Subscriber shall promptly notify Member Firm and the CBOT if it knows of or learns of any person or persons having unauthorized or unlawful access to the Market Data.

#### 2.6 Reporting.

Upon request, Subscriber agrees to provide to Member Firm any information or reports that may be required by the CBOT and that is reasonably related to Subscriber's receipt of the Market Data.

## 2.7 Access and Observation.

Where Subscriber is a business, Subscriber agrees that during regular business hours and upon reasonable oral or written notice and to ensure compliance with this Agreement, any person or persons designated by the CBOT or Member Firm shall have access to the Subscriber's offices or places and shall have the right to observe the use made of the Market Data and to examine and inspect any Display Device and any other Devices, attachments or apparatuses, as well as any books and records required to be maintained by Subscriber in connection with its receipt and use of Market Data.

## 3. PAYMENT

Subscriber agrees to pay Member Firm for the right to receive the Market Data in the amount as shall be agreed to by Member Firm and Subscriber. The Exchange has no right to control the price that Member Firm charges the Subscriber for the right to receive the Market Data, except with respect to any penalties assessed against Subscriber by Chicago Board Of Trade Exhibit A to the Chicago Board of Trade Member Firm Market Data Agreement Member Firm as directed by the CBOT. Subscriber also agrees to make prompt adjustment (including interest thereon at the rate of 1-1/2% per month), through Member Firm, to compensate the CBOT for under-reported receipt of Market Data by Subscriber discovered by the CBOT or Member Firm. In addition, at the election of the CBOT, Subscriber will be liable for the reasonable costs of any audit that reveals a discrepancy in the CBOT's favor of five percent (5%) or more of the amount of fees actually paid to the CBOT.

## 4. TERMINATION

Subscriber agrees that Member Firm may, with or without notice, terminate the license of the Market Data granted hereunder (and the furnishing of Market Data) at any time for any reason whatsoever, including, but not limited to, whenever directed to do so by the CBOT, or whenever in Member Firm's judgment there shall have been any breach by Subscriber of the provisions of this Agreement.

## 5. DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION.

### 5.1 Disclaimer of Warranties.

SUBSCRIBER AGREES THAT NEITHER THE CBOT, MEMBER FIRM NOR SUBVENDOR, NOR THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR AGENTS, GUARANTEE THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF THE DESIGNATED MARKET DATA, MARKET INFORMATION OR OTHER INFORMATION FURNISHED OR THAT THE DESIGNATED MARKET DATA HAVE BEEN VERIFIED. SUBSCRIBER AGREES THAT THE DESIGNATED MARKET DATA AND OTHER INFORMATION PROVIDED HEREUNDER IS FOR INFORMATION PURPOSES ONLY AND IS NOT INTENDED AS AN OFFER OR SOLICITATION WITH RESPECT TO THE PURCHASE OR SALE OF ANY SECURITY OR COMMODITY AND THAT THE DESIGNATED MARKET DATA AND OTHER INFORMATION SHOULD NOT SERVE AS THE BASIS FOR ANY INVESTMENT DECISION.

### 5.2 Limitation of Liability.

SUBSCRIBER AGREES THAT NEITHER THE CBOT, MEMBER FIRM NOR SUBVENDOR, NOR THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR AGENTS, SHALL BE LIABLE TO SUBSCRIBER OR TO ANY OTHER PERSON, FIRM OR CORPORATION WHATSOEVER FOR ANY LOSSES, DAMAGES, CLAIMS, PENALTIES, COSTS OR EXPENSES (INCLUDING LOST PROFITS) ARISING OUT OF OR RELATING TO THE DESIGNATED MARKET DATA IN ANY WAY, INCLUDING BUT NOT LIMITED TO ANY DELAY, INACCURACIES, ERRORS OR OMISSIONS IN THE DESIGNATED MARKET DATA OR IN THE TRANSMISSION THEREOF OR FOR

NONPERFORMANCE, DISCONTINUANCE, TERMINATION OR INTERRUPTION OF SERVICE OR FOR ANY DAMAGES ARISING THEREFROM OR OCCASIONED THEREBY, DUE TO ANY CAUSE WHATSOEVER, WHETHER OR NOT RESULTING FROM NEGLIGENCE ON THEIR PART. IF THE FOREGOING DISCLAIMER AND WAIVER OF LIABILITY SHOULD BE DEEMED INVALID OR INEFFECTIVE, NEITHER THE CBOT, THE MEMBER FIRM, SUBVENDOR NOR AFFILIATES, NOR THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL BE LIABLE IN ANY EVENT, INCLUDING FOR THEIR OWN NEGLIGENCE, BEYOND THE ACTUAL AMOUNT OF LOSS OR DAMAGE, OR THE AMOUNT OF THE MONTHLY FEE PAID BY SUBSCRIBER TO MEMBER FIRM OR SUBVENDOR, WHICHEVER IS LESS. SUBSCRIBER AGREES THAT NEITHER THE CBOT OR MEMBER FIRM OR SUBVENDOR, NOR THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR AGENTS, SHALL BE LIABLE TO SUBSCRIBER OR TO ANY OTHER PERSON, FIRM OR CORPORATION WHATSOEVER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR COSTS OF LOST OR DAMAGED DATA.

### 5.3 Indemnification.

Subscriber shall indemnify and hold (and at the CBOT's and Member Firm's option, defend) the CBOT and Member Firm and their respective members, shareholders, directors, officers, employees, affiliates and agents harmless and shall pay all judgments, settlements losses, damages, expenses and costs (including reasonable attorneys' fees) incurred by them directly or indirectly, as a result of any claim, action suit, litigation or proceeding (a) arising from Subscriber's breach of its obligations, representations, warranties or covenants hereunder; or (b) relating to any delay, inaccuracies, errors, or omissions in the Market Data. The CBOT and Member Firm shall have the right (but not the obligation) to participate in any defense or settlement, in which event each party shall pay for its respective attorneys' fees.

## 6. GENERAL

### 6.1 Entire Agreement.

This Agreement between Member Firm and Subscriber embodies the entire agreement between the Parties with respect to the subject matter hereof.

### 6.2 Amendment and Waiver.

The failure or inability of Member Firm to verify or check any information or activity required by Member Firm, or the failure or inability of Member Firm to perform any activity relating to the verification or checking of any information supplied by Subscriber or any activity of Subscriber will not be deemed to constitute a waiver of any right on the part of Member Firm or the CBOT to enforce the provisions of this Agreement. No waiver, alteration, or modification of any of the provisions, except Paragraphs 1.1, 2.3, and 3, the provisions of which may be modified, altered or waived by the Member Firm or CBOT, as applicable, acting without Subscriber's consent or agreement, shall be binding unless in writing and signed by a duly authorized representative of each Party and the CBOT. Neither the course of conduct between the Parties nor trade usage shall act to modify or alter the provisions of this Agreement.

### 6.3 Governing Law and Forum.

This Agreement shall be deemed to have been entered into in the State of Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of law

principles. Subscriber agrees that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be litigated, if at all, in and before a Court located in the State of Illinois, U.S.A., to the exclusion of the Courts of any other state or country.

#### 6.4 Remedy.

Subscriber acknowledges that its breach of this Agreement would cause immediate and irreparable harm to Member Firm and the CBOT for which money damages would be inadequate. Member Firm and the CBOT shall have the right to enforce their rights against the Subscriber under this Agreement, not only by an action for damages, but also by an action for injunctive or other equitable relief in order to enforce this Agreement, without proof of actual damages or the posting of a bond or other security. Subscriber acknowledges that the CBOT is an intended third-party beneficiary of the rights of Member Firm under the Agreement.

#### 6.5 Severability.

The illegality or unenforceability of any part of this Agreement shall not affect the remainder of this Agreement. If any part of this Agreement is found to be illegal or unenforceable, this Agreement shall be given the meaning as would give effect to the intent of the Parties.