

# ICE SUBSCRIBER AGREEMENT

## 1. DEFINITIONS.

(a) "Derived Data" means i) Subscriber Permitted Uses Data, and ii) data which has been created by the Subscriber based upon a methodology applied to Pricing Data and approved in writing by ICE.

(b) "Device" means any unit of equipment, fixed or portable, that receives, accesses or displays Market Data in visible, audible or other comprehensible form.

(c) "Exchanges" means ICE Futures Europe, ICE Futures Singapore, ICE Futures U.S. and ICE Endex.

(d) "Force Majeure Event" means any act, event, omission or accident beyond the reasonable control of ICE Data including but not limited to any natural disaster, war, terrorist attack, act of god, fire, weather event, earthquake, labor dispute or strike or power failure.

(e) "Market Data" means Pricing Data and Derived Data.

(f) "Person" means any natural person, proprietorship, corporation, partnership, limited liability company or other organization.

(g) "Pricing Data" means real time data specifying the prices and quantities at which the Traded Contracts have traded or are available to trade, including Exchange-implied prices and quantities.

(h) "Subscriber Permitted Uses Data" means charts and statistics (e.g., moving averages, implied prices between expiries and products, option Greeks) that are derived from the Pricing Data by the Subscriber or Vendor, but Subscriber Permitted Uses does not include use of the Pricing Data in connection with the creation, compilation or preparation of an index, basket or other similar financial product.

(i) "Traded Contracts" means contracts as traded on the Exchanges listed above and any corresponding indices published by the Exchanges.

## 2. PROPRIETARY RIGHTS IN THE MARKET DATA.

(a) Subscriber acknowledges and agrees that the Exchange has exclusive and valuable property rights in the Market Data, that such Market Data constitute valuable confidential information and proprietary rights of each of the Exchanges, not within the public domain, that such Market Data shall remain valuable confidential information, and proprietary rights of each of the Exchanges at least until the Exchanges authorize placement of their respective Market Data in the public domain, and that, but for this Agreement, Subscriber would have no rights or access to such Market Data. Whether or not a particular Page 2 of 4 Version 2.0

Exchange has placed its Market Data in the public domain or has authorized the placement of its Market Data in the public domain shall be determined according to the terms of such Exchange's agreement with Vendor, which agreement is described in Section 3(a).

(b) Subscriber acknowledges and agrees that disclosure of any Market Data, or any breach or threatened breach of any other covenants or agreements contained herein, would cause irreparable injury to each of the Exchanges for which money damages would be an inadequate remedy. Accordingly, Subscriber further acknowledges and agrees that each of the Exchanges shall be entitled to specific performance and injunctive and other equitable relief from the breach or threatened breach of any provision, requirement or covenant of this Agreement (including, without limitation, any disclosure or threatened disclosure of Market Data) in addition to and not in limitation of any other legal or equitable remedies which may be available.

### **3. RECEIPT OF MARKET DATA BY SUBSCRIBER.**

(a) The Agreement sets forth the terms and conditions upon which Subscriber may receive and use the Exchanges Market Data. Subscriber acknowledges that, notwithstanding such agreement, each of the Exchanges may, in its discretion, discontinue disseminating its own Market Data or change or eliminate its own transmission method, speed or signal characteristics. In addition, Subscriber acknowledges and agrees that the Exchanges reserve the right to disapprove any Subscriber and retain the right to direct Vendor to terminate any Subscriber's receipt of Market Data for any reason or no reason, in which event the Exchanges shall so notify Vendor and Vendor shall cease providing Market Data to Subscriber as soon as practicable.

(b)(1) Except as provided in (2) below, Subscriber will use Market Data only for its own internal business activities and on the Devices designated by Subscriber in writing to Vendor from time-to-time. (The term "for its own internal business activities", as used in the immediately preceding sentence herein, means for Subscriber's (a) trading, for its own account or for the account of its customers, of commodity futures contracts, options on commodity futures contracts or similar derivative instruments, or (b) evaluating, for its own internal business decisions or advice to its customers, the movements or trends in markets for commodity futures contracts, options on commodity future contracts, or like derivative instruments, subject to all of the limitations set forth below in this sub-paragraph as to the telephonic disclosure to customers of a necessary and de minimis number of segments of Market Data.) Subscriber agrees that it will not communicate or otherwise furnish, or permit to be communicated or otherwise furnished, the Market Data, in any format, to any other party, nor allow any other party to take, directly or indirectly, any of the Market Data from any office or location as designated above, and will adopt and enforce any policy that is reasonable to prevent the Market Data from being taken therefrom. Subscriber specifically agrees, without limiting or varying its obligations under paragraph 7 herein or otherwise set forth in this Agreement, that Subscriber shall not use or permit another person to use any Market Data for the purposes of determining or arriving at any price, including any settlement prices, for commodity futures contracts, options on commodity futures contracts, or like derivatives instruments traded on any exchange other than the Exchanges. Subscriber will abide by any other limitations on such use that the Exchanges may specify. Subscriber will use its best efforts to ensure that its partners, officers, directors, employees and agents maintain sole control and physical possession of, and sole access to, Market Data received through Devices in Subscriber's possession. (2) Notwithstanding (1) above, 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 redissemination 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. Notwithstanding the foregoing, in the event that a Subscriber is a newspaper which reports on, among other things, exchanges on which commodity futures contracts or options on commodity futures are traded, such Subscriber shall be permitted to publish, in its newspaper published for the day following the receipt by such Subscriber of the Market Data, the Market Data received by Subscriber from Exchanges on the day prior to such publication.

(c) In the event that Vendor has agreed to permit Subscriber to receive, access or display Market Data through means other than a Vendor-provided Device, such as an uncontrolled datafeed, Subscriber will use its best efforts to ensure that no other device, attachment or apparatus is used which may allow third parties not subject to Subscriber's reporting obligations under Section 3(b) above to access the Market Data.

**4. REPORTING.** Subscriber agrees to furnish promptly to Vendor any information or reports that may be required by the Exchanges as applicable and that is reasonably related to Subscriber's receipt of Market Data. Subscriber further agrees to furnish promptly to Vendor any additional information or reports that may be required by the agreement between Vendor and Subscriber referred to in Section 3(a) as it relates to Subscriber's receipt of Market Data.

**5. RIGHT OF INSPECTION AND AUDIT.** During regular business hours, following a minimum of 10 business days' notice, any Persons designated by ICE Data on behalf of an Exchange may have access to Subscriber's offices or locations, under Page 3 of 4 Version 2.0 the Subscribers corporate security policies, in order to observe the use made of the Market Data and to examine and inspect any Devices, attachments or apparatuses, as well as any books and records required to be maintained by Subscriber under Sections 3(b) and 4 in connection with its receipt and use of Market Data. Subscriber will make prompt adjustment (including interest thereon at the rate of 1.5% per month), through Vendor, to compensate an Exchange that discovers an under-reported use of the Market Data by Subscriber. In addition, at the election of any such Exchange, Subscriber will be liable for the reasonable costs of any audit that reveals a discrepancy in such Exchange's favor of five percent (5%) or more of the amount of fees actually due any Exchange. Subscriber shall maintain the records and books upon which it bases the reporting for the Exchanges for six (6) years following the period to which the records and books relate. In the event that Subscriber fails to retain such records and books as required above, Subscriber agrees to pay each Exchange's reasonable estimate of any discrepancy discovered pursuant to any such audit.

**6. EXCHANGE FEES.** Subscriber will pay Vendor (unless Vendor has assumed Subscriber's payment obligations hereunder), for and on behalf of each of the Exchanges (as applicable), for the right to receive Market Data in accordance with the then-current fee schedule published by each of the Exchanges from time-to-time (including any and all applicable federal, state or local taxes). Each Exchange's fees are subject to modification by each of them at any time, without prior notice to Subscriber.

**7. COVENANTS, REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER.** Subscriber covenants, represents and warrants that it is not engaged in the business of distributing Market Data and that, to its knowledge after reasonable inquiry, it is receiving the Market Data from a Vendor that is authorized by the Exchanges to distribute the Market Data. Subscriber agrees that it will not use or permit any other Person to use Market Data for any illegal purpose. Subscriber agrees that it will not use Market Data in any way to compete with the Exchanges or Vendor, nor use the Market Data in any way so as to assist or allow a third party to compete with the Exchanges or Vendor. Subscriber agrees that the provision of Market Data by the Exchanges hereunder is conditioned upon Subscriber's strict compliance with the terms of this Agreement and that Vendor may, with or without notice and with or without cause, forthwith discontinue said service whenever in its judgment there has been any default or breach by Subscriber of the provisions hereof, or whenever directed to do so by any of the Exchanges.

**8. DISCLAIMER OF WARRANTIES.** THE PRICING DATA IS PROVIDED "AS-IS", "WHERE IS" AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRICING DATA. WITHOUT LIMITING ANY OTHER DISCLAIMERS, ICE DATA MAKES NO REPRESENTATION OR WARRANTY THAT THE PRICING DATA IS ACCURATE OR COMPLETE, THAT THE PRICING DATA WILL BE FREE FROM ERRORS OR DEFECTS OR THAT IT WILL BE UNINTERRUPTED, OR WITH RESPECT TO NON-INFRINGEMENT OR VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS. EXCEPT TO THE EXTENT EXPRESSLY OTHERWISE STATED IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, UNDERTAKINGS, TERMS AND REPRESENTATIONS OF ICE DATA AND ITS AFFILIATES, IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATING TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) IN RELATION TO THIS AGREEMENT ARE HEREBY EXCLUDED. EXCEPT IN THE CASE OF ICE DATA'S FRAUD OR WILLFUL MISCONDUCT, ICE DATA SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF WHATSOEVER NATURE AND HOWSOEVER ARISING (WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION OR OTHERWISE), INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OR LOSS OF GOODWILL.

## **9. LIMITATIONS OF LIABILITY AND DAMAGES.**

Subscriber acknowledges and agrees that the Pricing Data is provided "AS-IS" and that neither ICE Data, the Exchanges or any of their Affiliates make any representation or warranty, express or implied, with respect to the Market Data. Without limiting any other disclaimers, neither ICE Data, The Exchanges or any of their Affiliates make any representation or warranty that the Pricing Data is accurate or complete, that the Pricing Data will be free from errors or will be uninterrupted.

To the fullest extent permitted by applicable law, under no circumstances, including gross negligence, willful misconduct, or intentional breach of this Agreement, none of ICE Data, any of its Affiliates or any of their respective directors, officers, managers, employees, agents or representatives shall be liable to the Subscriber or any third party for any damages, including, without limitation, incidental, indirect, special, consequential and punitive damages, arising from the use, misuse or inability to use the Market Data or any related documentation, know-how, inventions, discoveries, techniques, improvements or intellectual property rights or a breach of this Agreement by ICE Data or any of its Affiliates. Page 4 of 4 Version 2.0

**10. TERM AND TERMINATION.** Subject to Subscriber's strict compliance with the provisions of this Agreement, the provision of Market Data by any of the Exchanges hereunder will continue in force during the term of the agreement between Subscriber and Vendor and any renewal term thereof. In addition, it is understood that the provisions set forth in paragraphs 2(a) and 2(b) of this Agreement shall survive the termination of this Agreement.

**11. INDEMNIFICATION.** Subscriber will indemnify, defend and hold ICE Data and the Exchanges, and their respective members, directors, officers, employees and agents harmless from and against any and all claims arising out of or in connection with this Agreement, including, without limitation, any liability, loss or damages (including, without limitation, attorneys' fees and other expenses) caused by any inaccuracy in or omission from, Subscriber's failure to furnish or to keep, or Subscriber's delay in furnishing or keeping, any report or record required to be kept by Subscriber hereunder.

**12. MISCELLANEOUS.** In case of any breach by Subscriber of its obligations hereunder, any action arising out of this Agreement between the Exchanges and Subscriber shall be governed and construed in accordance with the internal laws (and not the law of conflicts) of the State of New York. Subscriber may not assign all or any part of this Agreement without the prior written consent of the Exchanges (as applicable). Neither Vendor nor Subscriber may modify or amend the terms of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and any other agreement relating to Subscriber's receipt and use of Market Data, including, without limitation, the agreement between Vendor and Subscriber referred to in Section 3(a), the terms and conditions of this Agreement will prevail. If, for any reason, one or more provisions of this Agreement is held invalid, the other provisions of the Agreement shall remain in full force and effect.