

## Uniform Subscriber Addendum

This ADDENDUM is entered into by and between the subscriber, optionsXpress, and each of the Exchanges designated below:

- CFE
- CME Group (CBOT, CME, COMEX, NYMEX)
- Deutsche Borse (Eurex)
- Euronext – LIFFE
- HKFE
- ICE Futures Europe (formerly IPE)
- ICE Futures US (formerly NYBOT)
- KCBOT
- LME
- ME/ MX
- MEFF
- MGEX
- One Chicago
- SFE
- SGX
- TGE
- TOCOM
- WCE

### 1. Definitions.

1. "Device" means any unit of equipment, fixed or portable, that receives, accesses or displays Market Data in visible, audible or other comprehensible form.
2. "Force Majeure Event" means any flood, extraordinary weather conditions, earthquake or other act of God, fire, war, terrorism, insurrection, riot, labor dispute, accident, action of government, communications or power failures, or equipment or software malfunctions.
3. "Person" means any natural person, proprietorship, corporation, partnership, limited liability company or other organization.
4. "Market Data" means information and data pertaining to futures contracts and options contracts or similar derivative instruments traded on the Exchanges as well as associated index data, that includes, without limitation, opening and closing range prices, high-low prices, settlement prices, current bid and ask prices, last sale prices, price limits, requests for quotations, estimated and actual contract volume data, text messages pertaining to market activity, contract specifications, fast or late messages and, as determined by each of the Exchanges, may include information respecting exchange-for-physical (EFP) or against actuals (AA) transactions. With respect to Subscriber's obligations under this Addendum, Market Data includes information, data and materials that are derived from the foregoing and that convey information to Subscriber that is substantially equivalent to Market Data.

### 2. Proprietary Rights In The Market Data.

1. Subscriber acknowledges and agrees that each of the Exchanges has exclusive and valuable property rights in and to its own Market Data, that such Market Data constitute valuable confidential information, trade secrets and/or proprietary rights of each of the Exchanges, not within the public domain, that such Market Data shall remain valuable confidential information, trade secrets and/or proprietary rights of each of the Exchanges at least until the Exchanges place their respective Market Data in the public domain or authorize placement of their respective Market Data in the public domain, and that, but for this Addendum, Subscriber would have no rights or access to such Market Data. Whether or not a particular 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).
2. 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 Addendum (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.**

1. Vendor and Subscriber have entered into an agreement by which Vendor will, among other things, provide Subscriber with Market Data. Vendor has entered into agreements with each of the Exchanges whereby Vendor has been granted the right to receive Market Data and to retransmit the same to Subscriber. This Addendum to the agreement between Vendor and Subscriber sets forth the terms and conditions upon which Subscriber may receive and use 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.
2. Except as provided in (2) below, Subscriber will use Market Data only for its own internal business activities and only at the offices and locations 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 subparagraph 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 or any office or location other than that designated above, nor allow any other party to take, directly or indirectly, any of the Market Data from such offices or locations, 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 Addendum, 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 any of 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 Addendum. 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.
3. 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 by means of: (i) the Internet, any Intranet or any other type of network; (ii) portable Devices (e.g., pocket pagers, personal digital assistants, laptop computers, etc.); and (iii) synthesized voice responses over telephones, 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 any of 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, any Persons designated by any Exchange may have access to Subscriber's offices or locations 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 1½% per month), through Vendor, to compensate any 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 such Exchange. Subscriber shall maintain the records and books upon which it bases its reporting for CFE, CBOT, CME, KCBOT, or ONE CHICAGO Market Data for three (3) years following the period to which the records relate. Subscriber shall maintain the records and books upon which it bases the reporting for NYMEX, COMEX, or NYBOT Market Data 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. In addition, Subscriber agrees to pay Vendor any penalties assessed against Subscriber by Vendor on behalf of any Exchange. Nothing herein shall limit a Vendor's obligation pursuant to separate agreement between Vendor and any of the Exchanges (as applicable) to pay Exchange fees.

## **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 Addendum 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.**

SUBSCRIBER AGREES THAT NEITHER VENDOR NOR THE EXCHANGES MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE MARKET DATA, OR THE TRANSMISSION, TIMELINESS, ACCURACY OR COMPLETENESS THEREOF, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR ANY WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM ANY COURSE OF DEALING OR USAGE OF TRADE.

## **9. Limitations Of Liability And Damages.**

Subscriber agrees that: (i) the provision of Market Data is made with equipment, communications devices, and/or leased lines not owned or operated solely by Vendor or the Exchanges; (ii) neither Vendor nor the Exchanges, nor their respective members, directors, officers, employees or agents, guarantees the sequence, accuracy or completeness of the Market Data, nor shall any of them be liable to Subscriber or any other Person for any delays, inaccuracies, errors or omissions in Market Data, or in the transmission thereof, or for any other damages arising in connection with Subscriber's receipt or use of Market Data, whether or not resulting from negligence on their part, a Force Majeure Event or any other cause beyond their reasonable control; and (iii) if the foregoing disclaimer and limitation of liability should be deemed invalid or ineffective by a court of competent jurisdiction, neither Vendor nor

the Exchanges, nor their respective members, directors, officers, employees or agents shall be liable for any of the foregoing beyond the actual amount of loss or damage, or the sum of fifty dollars (\$50.00), whichever is less.

#### **10. Term And Termination.**

Subject to Subscriber's strict compliance with the provisions of this Addendum, 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 Addendum shall survive the termination of this Addendum.

#### **11. Indemnification.**

Subscriber will indemnify, defend and hold Vendor 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 Addendum, 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, each of the Exchanges will be considered to be a third-party beneficiary of this Addendum and may bring an action to enforce its terms directly against Subscriber. Any action arising out of this Addendum 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 Illinois. Any action arising out of this Addendum between the KCBOT and Subscriber shall be governed and construed in accordance with the internal laws (and not the law of conflicts) of the State of Missouri. Any action arising out of this Addendum between NYMEX, COMEX, or NYBOT 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 Addendum without the prior written consent of the Exchanges (as applicable). Neither Vendor nor Subscriber may modify or amend the terms of this Addendum. In the event of any conflict between the terms and conditions of this Addendum 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 Addendum will prevail. If, for any reason, one or more provisions of this Addendum is held invalid, the other provisions of the Agreement shall remain in full force and effect.

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