

Form 4 -C2014
Company - Direct Access Interface Agreement

**DIRECT ACCESS INTERFACE
DEVELOPMENT AND MAINTENANCE AGREEMENT**

- Company -

This agreement ("**Agreement**") dated as of _____, is entered into by _____ (the "**Company**"), organized and existing under the laws of _____, with its principal place of business at _____, and Intercontinental Exchange Holdings, Inc. ("**Intercontinental**"), a Delaware corporation, with its principal place of business at 5660 New Northside Drive, 3rd Floor, Atlanta, Georgia 30328 and ICE Futures Canada, Inc. (the "Exchange"), a corporation incorporated under the laws of Manitoba, Canada, with its registered office at 850A Pembina Highway, Winnipeg, Manitoba, R3M 2M7 Canada.

1. PURPOSE OF THE AGREEMENT

- A. Intercontinental owns and operates an electronic trading system ("the **Trading System**") and owns an open application program interface (the "**API**") that permits third party vendors, such as the Company, to develop user interfaces in order to access the Trading System.
- B. The Exchange is recognized as a commodity futures exchange under *The Commodity Futures Act (Manitoba)*;
- C. The Exchange Contracts can be traded on the Trading System in accordance with the Exchange Rules;
- D. The Company wants to develop its own user interface in order to access the Trading System via the API for the purpose of permitting the trading of the Exchange Contracts.
- E. This Agreement shall govern the relationship between Intercontinental, the Exchange and the Company as the Company develops, implements, tests its user interface via access to the Simulation Environment, and operates its user interface for the purpose of facilitating trading of the Exchange Contracts by Direct Access Trading Participants.

2. DEFINITIONS

"**Access Permissions**" means any password or other security based permission granted by either the Exchange or Intercontinental to Company to access the Simulation Environment and/or the Trading System.

"**Act**" means *The Commodity Futures Act (Manitoba)*.

"**Affiliates**" means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with, either the Company, Intercontinental, or the Exchange as the case may be, where "control" means the (i) ownership of, or the power to vote, more than 50% of the voting stock, shares or interests of an entity or (ii) ability to direct the management or ability to direct the management or affairs of an entity.

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"API" means the open application program interface and transport software and additional functionality that facilitates electronic access to the Simulation Environment and/or the Trading System via order entry or placement mechanisms, each as modified or enhanced from time to time.

"API Documentation" means any informational materials provided by Intercontinental or the Exchange to the Company from time to time, in written, electronic or other form.

"API Materials" means, collectively, the API, API Software and API Documentation.

"API Software" means API Library (a programming library to build order submission/retrieval against the Trading System), as modified or enhanced from time to time.

"API Trading ID" means a log-in for inputting into the Trading System which will, on successful log-in, effect the connection of a conformed trading user interface to the API.

"API User" means a Person (including Intercontinental or the Exchange) that uses the API to access the Trading System in accordance with the Exchange Rules.

"Best Industry Practice" means the exercise of skill, diligence, foresight and judgement that would be expected from a highly skilled person engaged in the same type of undertaking applying best standards currently applied in the software industry.

"Certificate of Conformance" means the certificate to be issued by Intercontinental to the Company upon successful completion of conformance testing or re-conformance testing in accordance with Schedule A (6).

"Charges" means the charges payable by the Company to the Exchange or Intercontinental.

"DAI" – means the Company's Direct Access Interface as developed, tested, and implemented by the Company in accordance with this Agreement.

"DATP Application/Agreement" means the Exchange form of agreement entered into between the Exchange and a Direct Access Trading Participant which agreement regulates, inter alia, access to the Trading System.

"Development Period" means the period of time from the date this Agreement is signed by both parties until the date and time at which Intercontinental delivers an initial Certificate of Conformance to the Company.

"Direct Access Trading Participant" – means an entity registered as a Direct Access Trading Participant with the Exchange.

"Exchange" means ICE Futures Canada, Inc.

"Exchange Confidential Information" means all and any information, data or other materials including documents and/or software concerning the Exchange, the Exchange's participants, customers, and/or trading on the Trading System which is

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marked as confidential or is by its nature confidential or has not entered the public domain other than by reason of a breach of this Agreement.

"Exchange Contracts" means all of the futures contracts and options on futures contracts as the Exchange lists and makes available for trading on the Trading System from time to time.

"Exchange Participant" means a Person registered as a Participant of the Exchange.

"Exchange Rules" means, collectively, the Rules of the Exchange as approved from time to time.

"Exchange Trademarks" means the trademarks which are owned by and or licensed to the Exchange (whether registered or unregistered) which are licensed to the Company pursuant to this Agreement, and such other trademarks as are agreed between the parties from time to time.

"ICE" means the Intercontinental Exchange Holdings, Inc. or any Person it appoints to act on its behalf in fulfilling any responsibilities under this Agreement.

"ICE Confidential Information" means all and any information, data or other materials including documents and/or software concerning Intercontinental, its customers, and/or trading on the Trading System which is marked as confidential or is by its nature confidential or has not entered the public domain other than by reason of a breach of this Agreement.

"ICE Trademarks" means the trademarks which are owned by or licensed to Intercontinental (whether registered or unregistered), which are licensed to the Company pursuant to this Agreement including: "Intercontinental Exchange", and Intercontinental's globe design and such other trademarks as are agreed between the parties from time to time.

"Internal Market Data Distribution Agreement" means the agreement between ICE Data LLP and the Company authorizing the Company to receive Market Data for the purposes of using, processing and disseminating it.

"Maintenance Period" means the period immediately following the Development Period.

"Manitoba Securities Commission" – means the statutory regulatory body that is the Exchange's primary regulator and which is based at 500 - 400 St. Mary Avenue, Winnipeg, Manitoba, Canada R3C 4K5.

"Order Router" means a person or entity able to connect and interface to the Trading System for the purpose of trading the Exchange Contracts through a Responsible Individual of a registered Direct Access Trading Participant.

"Person" includes an individual, partnership, corporation or cooperative.

"Market Data" means data generated by the Trading System on a real time basis specifying the current market prices of the Exchange Contracts.

"Responsible Individual" means an individual appointed by a DATP to act as its Responsible Individual in accordance with the Exchange Rules.

"Simulation Environment" means a test environment which duplicates the Trading System for the trading of the Exchange Contracts.

3. DEVELOPMENT OF A DIRECT ACCESS INTERFACE

A. License to Access and Use the Simulation Environment and API

Subject to the terms and conditions of this Agreement, Intercontinental grants the Company, during the Development Period, a revocable, non-exclusive, non-transferable right (without the right to sublicense this right):

1. to download or otherwise obtain or receive the API Materials;
2. to use the API Materials, as presently existing and as later modified, solely for the purpose of developing, testing and maintaining a user interface and accessing the Simulation Environment through the API for the purpose of creating the Company's DAI.

The Company may only develop more than one user interface to access the Trading System through the API under the terms of this Agreement with the permission of Intercontinental. In the event of Intercontinental granting permission to the Company to develop more than one user interface to access the Trading System through the API, all terms of this Agreement shall be equally applicable to all user interfaces to access the Trading System through the API developed and tested by the Company.

4. MAINTENANCE OF A DIRECT ACCESS INTERFACE

A. License to Access and Use the API

Subject to the terms and conditions of this Agreement, Intercontinental grants the Company, during the Maintenance Period, a revocable, non-exclusive, non-transferable right (without the right to sublicense this right)

1. to download and/or receive the API and API Software;
2. to use the API Materials, as presently existing and as later modified, solely for the purpose of developing, testing and maintaining the Company's DAI and access the Platform through the API for the same purpose.

B. Charges and Costs

In consideration of the licenses and services provided hereunder, the Company will pay the Charges as may be charged, from time to time, by the Exchange or Intercontinental upon the giving of three months written notice, in the manner

provided for under this Agreement, which notice is to be in advance of the first date upon which the Charges are to apply.

C. Subcontractors

The Company must obtain Intercontinental's prior written consent to using any sub-contractor in connection with the API. Any such consent shall not excuse the Company from performing its obligations under this Agreement and the Company shall remain responsible for acts, omissions and neglects of its sub-contractors as if they were its own acts, omissions and neglects. The Company shall ensure that any such sub-contractor is made aware (to the extent necessary) of the terms of the Agreement and that such sub-contractor agrees to comply with all relevant terms and obligations to which the Company is subject under this Agreement pursuant to the Company's contractual relationship with such sub-contractor, as if such sub-contractor were a party to this Agreement.

D. Restrictions

The Company will not and will not attempt to:

1. download, connect, gain or provide access to or use the API Materials for any purpose not expressly authorized by this Agreement or attempt to do any of the foregoing;
2. access or use the Trading System unless authorized to do so, as a registered Direct Access Trading Participant of the Exchange, or as a Customer of a registered Direct Access Trading Participant, in accordance with the terms of a signed and completed DATP Application/Agreement via an API Trading ID;
3. use, copy, merge or transfer copies of the API Materials, except as specifically authorized in this Agreement;
4. use any backup or archival copy of the API Software (or permit any third party to use such copy) for any purpose other than to replace the original copy in the event that it is destroyed or becomes defective;
5. rent, lease, grant a security interest in, sublicense, distribute, transfer, adapt, copy, modify, translate or timeshare the API Software or any of the Company's rights under this Agreement, except as expressly authorized in accordance with the terms of this Agreement;
6. use, or allow the use of, the Company's DAI in a manner which will bring the Company into breach of its obligations under the terms of the Exchange Rules and the Act;
7. reverse engineer, disassemble, decompile or otherwise attempt to access the source code of the API Software;

8. create any upgrades or other translation, adaptation, variation, modification, enhancement or improvement of or to the API Software or any portion thereof;
9. use the API Materials after any expiration, termination or cancellation of this Agreement or the license granted in this Agreement;
10. use the API or the API Software to store or otherwise archive in any form, or permit any of its employees or agents to so store or archive, any Market Data or other data provided via the API except as expressly permitted by a signed and operational Internal Market Data Distribution Agreement;
11. access any OTC data via the API without authorization from Intercontinental;
12. use Market Data obtained directly or indirectly via the API in any way which will bring the Company into breach of its obligations under the terms of the Exchange Rules or the Act, or otherwise for improper purposes or in any way which will detrimentally affect the commercial interests of the Exchange, Intercontinental, or their affiliates, in particular using any derivative of any Market Data obtained directly or indirectly via the API for the purpose of trading any product other than the Exchange Contracts. For the avoidance of doubt, the Company is not authorized to have access to, or distribute (whether internally or externally) any Market Data, or to grant read-only access to any Market Data to any third parties without a Internal Market Data Distribution Agreement;
13. use the Simulation Environment or Trading System, Market Data, API Materials in any way which violates the terms of any agreement that the Company has in place with Intercontinental or either of their affiliates.

5. CERTIFICATES OF CONFORMANCE

- A. Certificates of Conformance may be issued to the Company in respect of its DAI where such DAI is deemed by Intercontinental to have complied with such standards as Intercontinental have issued (and may revise from time to time) governing access to the API and the conformance guidelines published by Intercontinental.
- B. In the event that the Company alters its DAI subsequent to receipt of its Certificate of Conformance it shall notify Intercontinental of the details of such alteration and, if appropriate, comply with the request of Intercontinental to re-conform the Company's altered DAI.
- C. A Certificate of Conformance may be withdrawn by Intercontinental in any case where the Company's DAI is deemed subsequently not to comply with any such standards as the same may be revised from time to time.
- D. If, during the Maintenance Period, the Company undertakes transactions in, or in relation to, the Exchange Contracts on the Platform, in any capacity whatsoever,

including, whether: (i) through a third party; (ii) on its own behalf; or, (iii) on behalf of a third party, the Company shall ensure that it has a policy in place in relation to undertaking such transactions which is in compliance with the relevant regulatory guidance regarding conflicts of interest and material interest, and related matters.

- E. For the avoidance of doubt, the Company is not authorized to provide any entity with a connection to the Trading System through the Company's DAI for the Exchange Contracts or to distribute (whether internally or externally) any Market Data or to grant read-only access to any Market Data unless the entity is a registered Direct Access Trading Participant Agreement with the Exchange, or has executed a Standard Vendor Agreement with ICE Data UK (as the case may be). The Company must execute a Direct Access Trading Participant Application/Agreement and/or a Standard Vendor Agreement, to either trade the Exchange Contracts or access Market Data, as the case may be.

6. GENERAL PROVISIONS

A. Covenants and Acknowledgements of Company with respect to API

The Company acknowledges and agrees that:

1. the Company has no rights, other than those described in clause 3(A), 4(A) and 4(C) of this Agreement and subject to 4(D), to use the API Materials and expressly agrees not to modify, translate, adapt, reverse engineer, decompile or disassemble the API or API Software except to the extent permitted by law;
2. the Company will not nor attempt to download, connect, gain or provide access to or use the API for any purpose not expressly authorized by this Agreement;
3. for the purposes only of the rights granted under clauses 3(A) and 4(A), the "Company" shall include sub-contractors engaged by the Company to undertake the purposes described above (provided that the Company obtains Intercontinental's prior written consent to using any such sub-contractor). For the avoidance of doubt, any such consent shall not excuse the Company from performing its obligations under this Agreement and the Company shall remain responsible for acts, omissions and neglects of its sub-contractors as if they were its own acts, omissions and neglects;
4. all intellectual property in the API, API Software, API Documentation, Intercontinental Trademarks, and the Exchange Trademarks, (together the "**Materials**") vests in Intercontinental, the Exchange or its or their licensors as the case may be, and that no title to or ownership of the Materials as they currently exist or are later modified, is or will be transferred to the Company under this Agreement. The Company agrees not to make any claim of any ownership interest in such intellectual property rights including, without limitation, copyrights and patents in the

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Materials or any enhancements, adaptations, developments or modifications thereto;

5. the Company has no rights, title or ownership in the Market Data;
6. the Company will use Best Industry Practice when developing, testing and supporting its DAI and at all times when performing its obligations under this Agreement;
7. the Company will not access or attempt to access any OTC data via the API and that it will only have access rights to the Exchange's futures and options data; and
8. the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.

B. Changes to the Platform, the Trading System, Simulation Environment, the API or Other Systems.

The Company agrees and understands that, throughout the term of this Agreement, Intercontinental, the Exchange, their licensors or Persons working on their behalf, may change, modify, enhance or replace, the Platform, the Trading System, the Simulation Environment, the API or other related systems ("**Changes**") in a way that impacts the Company's DAI. Intercontinental and the Exchange reserve the right to make such Changes without prior notification to the Company in emergency situations or where failure to do so may give rise to a regulatory breach. Intercontinental and the Exchange shall endeavor to minimize any disruption to the Company when effecting Changes, and shall give prior notice to the Company where it is practicable to do so.

The Company shall bear the sole responsibility and expense of making any changes to its DAI that result from these Changes. The Company agrees to implement any changes required and described by written notice served or posted in a manner provided for in this Agreement by the Exchange or Intercontinental in the manner and within the time limits provided for by any such notice, as appropriate.

A failure to implement the Changes required within the time limits specified within the notice shall result in all Certificates of Conformance issued in respect of the Company's DAI prior to this time period being revoked.

C. Confidentiality

Subject to the exceptions described below, all API Software, API Documentation, Intercontinental Confidential Information and the Exchange Confidential Information and any other information specifically identified, either verbally or in writing, as confidential, that is obtained under or in the course of business or activities relating to this Agreement by one party from the other shall be kept on a confidential basis by the party receiving that information, its officers and employees and, as such, shall not be disclosed to third parties or used for any purpose other than a purpose specifically authorized by this Agreement. The

parties recognize that a breach of this clause or any part of it or of the confidentiality protections in the attached Schedules by a party may give rise to irreparable injury to the party whose information is or may be the subject of such a breach (the "**Complaining Party**") such that remedies other than injunctive relief may not be adequate. Accordingly, the Complaining Party has the right to seek, from an appropriate court, equitable and injunctive relief to prevent the threatened or actual unauthorized use of any confidential information covered by this Agreement.

The obligation assumed by the parties in this clause shall not apply to information in the public domain at the time of any disclosure by a party hereto, so long as it came into the public domain otherwise than by breach of this Agreement.

In particular, the Company accepts and acknowledges that as the Exchange is recognized as a commodity futures exchange under the Act by the Manitoba Securities Commission and Intercontinental is an exempt commercial market in the United States of America, each may, from time to time, be subject to analogous legislation and/or regulation in one or more other jurisdictions. The Exchange has obligations in relation to the protection of much of the information which comprises the Exchange Confidential Information. The Company agrees that it will not use or facilitate the use of the Exchange Confidential Information for any purpose other than the access and use of the Platform and the Trading System by the Exchange Direct Access Trading Participants in compliance with all legislative and regulatory requirements relating to access and to trading upon the Platform and the Trading System (including but not limited to the Act and the Exchange Rules). The Company shall assume all responsibility for keeping itself fully informed of all such rules, regulations, requirements, policies and laws.

D. Intellectual Property Indemnification

In the event that any claim or threatened claim for costs and or any losses, damages, liabilities, claims and demands is incurred by or made against the Company by a third Person alleging that the Materials (or any part thereof) infringes upon that Person's proprietary rights, the Company will:

1. promptly notify Intercontinental and/or the Exchange as appropriate in writing of any such threatened or actual claim;
2. not make any admission without Intercontinental's and the Exchange's written consent;
3. co-operate and assist Intercontinental or the Exchange to the extent that that co-operation may reasonably be required; and
4. at Intercontinental's and/or the Exchange's request and expense allow Intercontinental and/or the Exchange to conduct and/or settle all negotiations and litigation resulting from any such claim.

Intercontinental or the Exchange as the case may be, will indemnify and hold harmless the Company in relation to the costs which the Company reasonably

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incurs in co-operating with and assisting Intercontinental or the Exchange in this manner.

If any part of the Materials is found by a final decision of a court of competent jurisdiction to constitute an infringement of the proprietary rights of a third Person, or if Intercontinental / the Exchange concedes that infringement through a settlement of a claim, Intercontinental / the Exchange shall, at its sole option and expense, in addition to providing the indemnification described above, either (A) procure for the Company the right to use the relevant part of the Materials; or (B) modify the relevant part of the Materials so as to render it non-infringing.

Intercontinental / the Exchange shall not be liable under this clause if Intercontinental / the Exchange can demonstrate that the alleged infringement arose directly or indirectly from an unauthorized action of the Company or unauthorized use of the Materials by the Company, in which case the provisions of sub-clause E (3) hereto shall apply.

E. Indemnification by the Company

The Company agrees to indemnify Intercontinental, the Exchange, and their affiliated companies and their respective officers, directors, market participants, employees, agents, consultants and licensors for any and all losses, damages, expenses and costs (including all reasonable attorneys' fees) arising from a claim, suit or other proceeding made or instituted by any person or entity against Intercontinental, the Exchange and their affiliated companies and their officers, directors, members and employees, agents, consultants and licensors, arising from any or all of the following:

1. the Company's or a Direct Access Trading Participant (or the employees or customers of a Direct Access Trading Participant) use of, or inability to use, its DAI due to any alleged defect in the interface; or,
2. a Person's unauthorized access or use of the Company's DAI or user identification number to access the Simulation Environment or the Platform; or
3. any other act or omission of the Company constituting gross negligence, willful misconduct or infringement of intellectual property rights by the Company.

F. Security Requirements

The Company agrees that it will not allow any Person who is not a DATP, or not specifically authorized by a DATP pursuant to the Exchange Rules, to have access to the Platform through its DAI. The Company may verify that a Person is a DATP, or authorized to have access by such DATP, by following such procedures that are communicated from time to time, to the Company by Intercontinental and/or the Exchange.

The Company agrees that no arrangement or agreement which it may have with a Direct Access Trading Participant will in any way prevent or restrict the rights or

abilities of either Intercontinental or the Exchange to limit or terminate the access of any Direct Access Trading Participant or any other Person to the Platform. The Company also agrees to immediately notify Intercontinental and the Exchange if it becomes aware of any unauthorized access to the Platform or its user identification number or if it becomes aware of any information relating to the violation of an Intercontinental and/or Exchange Rule. The Company will use its best endeavors to ascertain the source of any unauthorized access or use and will co-operate with Intercontinental and/or the Exchange as the case may be in its efforts to gather more information about any potential rule violation.

G. Regulatory Requirements

The Company warrants that throughout the term of this Agreement, it shall provide and maintain its DAI, and any related equipment and services, in full compliance with applicable regulatory requirements, including, without limitation, all regulatory, audit trail, record keeping and record retention requirements imposed by the Manitoba Securities Commission, the Act, the regulator or regulators of its home jurisdiction, Intercontinental requirements, and the Exchange Rules, and shall assume all responsibility for keeping itself fully informed of all such rules, regulations, requirements policies and laws.

In particular, and without limitation, the Company acknowledges that portions of the API and the software contained in the Platform and in the Simulation Environment and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. The Company will therefore:

1. comply with all legal requirements established under these controls;
2. co-operate fully with Intercontinental in any official or unofficial audit or inspection that relates to these controls; and
3. not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to any country in contravention of the sanctions programmes established and published by the United States Department of the Treasury, or any national thereof or to any country or national thereof that is embargoed by Executive Order. Details of the United States Department of the Treasury sanctions programmes may be found at: www.treas.gov.

H. Necessary Consents

The Company agrees to obtain at its sole expense, or to work with Intercontinental as the case may be to obtain any consent (from landlords, telecommunications authorities, government authorities or others) that are or may become necessary for the installation or maintenance of any software or any connection which is provided for under this Agreement or the Schedules hereto. The Company also agrees to comply with any terms imposed in connection with those consents subject to prior review and to reimburse Intercontinental for any out-of-pocket expenses (including reasonable fees of attorneys or agents) it may

incur in obtaining those consents. The Company will notify Intercontinental and the Exchange immediately if any such consent is withdrawn.

I. Records Retention

The Company shall provide an audit trail of information relating to the use of the Company's conformed DAI by any Direct Access Trading Participant (including the Direct Access Trading Participant's employees and customers) and retain relevant information, for audit purposes for at least five (5) years following the period to which the data relates and Intercontinental and the Exchange shall have the right to access and audit this data upon two (2) days prior written notice to the Company.

7. DISCLAIMERS AND LIMITATIONS OF LIABILITY

A. Neither Intercontinental nor the Exchange:

1. Guarantee the sequence, timeliness, accuracy or completeness of any of its data;
2. Guarantee the accuracy or completeness of the API Software or the API Documentation;
3. Guarantee that all parties with access to the API for the purposes of interfacing with the Simulation Environment and/or the Platform will have the same access rights;
4. Guarantees uninterrupted use of the Simulation Environment or the Platform to the Company; and/or
5. Make any representations or warranties, express or implied, including, without limitation, implied warranties or warranties of title, non-infringement, merchantability, and quality for fitness for a particular purpose. No oral or written information or advice given by Intercontinental or the Exchange shall create a warranty and the Company may not rely upon such information or advice.

B. In relation to all and any claim or claims which the Company has or may have against Intercontinental and/or the Exchange, the following shall apply in relation to any and all claims arising or which the Company has or may have against Intercontinental or the Exchange in connection with the API Materials or pursuant to or in connection with this Agreement:

1. Neither Intercontinental nor the Exchange shall be liable in any way to the Company or to any other person or entity for any losses, damages, costs or expenses, including, but not limited to, loss of profits, loss of use, or direct, indirect, incidental or consequential loss or damages arising from:
 - (a) any faults with the API or API Software, however those faults may arise save where the fault or faults which have given rise to such loss or losses shall have been caused by an act or omission or

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series of acts or omissions by Intercontinental and/or the Exchange, and any, or all of its or their officers, directors, members, employees, agents, consultants or licensors, which act or omission or series of acts or omissions amounts to gross negligence;

- (b) the suspension, termination or inability to access or use the API or API Software or any inaccuracies or omissions in any information provided, however such suspensions, terminations, malfunctions, inaccuracies or omissions may arise;
- (c) any failure or delay suffered by the Company or any Exchange market participant or other Person that receives access to the Platform through the Company's DAI;
- (d) any other cause in connection with the furnishing, performance, maintenance or use of or inability to use all or any part of the Simulation Environment, Trading System, the API or API Software; or
- (e) any losses resulting from unauthorized access or any other misuse of the API.

These limitations of liability shall apply whether a claim arises in contract, tort, negligence, strict liability or otherwise.

- 2. In no circumstances shall any party to this Agreement (a "party") be liable to the other parties to this Agreement, any Exchange market participant, or any other person or entity for any indirect, incidental or consequential loss or damages, including, but not limited to, loss of or lost profits, even if such losses were foreseeable, or the party had been advised of the possibility of these damages, or the damages are due to the error, omission or negligence of that party or its officers, employees, agents or representatives.
- 3. Except as expressly provided in this Agreement or under law, all warranties, conditions, undertakings, terms or representations expressed or implied by statute, common law or otherwise are hereby excluded.
- 4. Save as provided in Clause (C) below, the aggregate liability of either or both Intercontinental and the Exchange to the Company under or in connection with this Agreement (including for the avoidance of doubt any claims made under Clause 6 (D) ("General Provisions – Intellectual Property Indemnification")) shall be the greater of the following:
 - (a) an amount equal to the Charges paid by the Company to Intercontinental and the Exchange hereunder for the period of three (3) calendar months immediately preceding the date upon which the act or omission of Intercontinental and/or the Exchange occurred, or in the case of a series of acts or omissions the date upon which the first of the series occurred; or

(b) Cdn. \$10,000.

- C. Subject to clause 6 (D), the Company shall notify Intercontinental and the Exchange of any claim arising under or in connection with this Agreement within three (3) calendar months of the date on which it became aware of the specific act, fact, circumstance or event which gave rise to the claim or, if earlier, the date on which it ought reasonably, in all the circumstances, to have become so aware and shall bring such claim within six (6) calendar months of that date.

8. TERM, TERMINATION AND SUSPENSION

A. Term

This Agreement shall take effect when signed by all parties and shall be for a period of one (1) calendar year and shall be renewed automatically upon the expiry of that period and each calendar year thereafter until it is terminated pursuant to any of the provisions described at clause 8 (B) or 8 (C) below. However, a failure on the part of the Company to commence development of its user interface within six (6) months of the date first above written shall lead to the Agreement being automatically terminated on the date which is the business day subsequent to the expiry of the period six (6) months subsequent to the date first above written.

B. Termination

The parties shall have the following rights to terminate this Agreement:

1. Termination for a Material Breach.

If any party hereto materially breaches any provision of this Agreement and fails to completely cure that breach within one (1) calendar month after receiving written notice of the breach, a non-breaching party may terminate the Agreement.

2. Immediate Termination for Specific Breaches.

As an alternative to the termination rights described in paragraph 8 (B)(1) above, Intercontinental or the Exchange may immediately terminate this Agreement if the Company:

- (a) allows a Person other than a Direct Access Trading Participant or the employees or customers of a Direct Access Trading Participant to access the Platform through its Direct Access Interface;
- (b) distributes or grants read-only access to Market Data in contravention of the terms of this Agreement and in the absence of any Standard Data Vendor Agreement in force as between the parties;

- (c) ceases doing business as a going concern;
- (d) files any petition under any relevant bankruptcy or insolvency law whether or not of Canada or the United States of America, becomes insolvent, has an involuntary petition in bankruptcy filed against it or has a receiver appointed for it or its property;
- (e) files any petition or is the subject of any petition or proceedings under insolvency law in any other jurisdiction;
- (f) does anything that would bring the Exchange or Intercontinental into disrepute with the Manitoba Securities Commission, the Commodity Futures Trading Commission, or any other regulatory authority, or any third party; or,
- (g) does anything which is injurious or damaging to the Exchange, Intercontinental, or its or their Affiliates.

3. Termination on Notice.

Any party may terminate this Agreement by giving three (3) calendar months' prior written notice in accordance with the terms of clause 9 (E).

4. Termination Because of a Change in Law

Intercontinental and/or the Exchange may terminate this Agreement forthwith in the event of any change in applicable law or government regulations or court order or threatened court order or proceedings or threat of proceedings that materially impairs the ability of Intercontinental or the Exchange to provide the licenses, services or access described in this Agreement.

C. Rights Upon Termination

Upon termination of this Agreement for any reason permitted above, the Company shall immediately cease use of the Materials. Any use of the Materials after this date will constitute infringement and a violation of the Exchange's and/or Intercontinental's rights. If Intercontinental or the Exchange terminates this Agreement for any reason permitted above, Intercontinental or the Exchange shall have the right to notify all Exchange market participants who use the Company's user interface of the termination of this Agreement with a view to allowing those Exchange market participants the opportunity to make alternative arrangements for their access to the Platform. Nothing in this Agreement, including the preceding sentence, shall be deemed to restrict Intercontinental's or the Exchange's ability to communicate with Exchange market participants for any reason either may deem appropriate.

Upon termination of this Agreement for any reason or by way of any notice provided for under this Agreement, the Company shall immediately cease use of and delete all and any Exchange Confidential Information, and the Company shall immediately certify to the Exchange that it has taken steps to so delete and prevent any further use of or access to Exchange Confidential Information. To

the extent that Exchange Confidential Information is contained in or evidenced in documents or electronically stored data, the Company will take appropriate steps to ensure that those documents and/or that data shall remain available to the Exchange upon request from the Exchange for up to five (5) years following the notice of termination.

D. Suspension

The Exchange or Intercontinental (as the case may be) may, upon reasonable notice, suspend the Company's use of the Simulation Environment or the Platform via its DAI by withdrawing all operational Access Permissions. For the avoidance of doubt, the Exchange or Intercontinental reserves the right to suspend the Company's use of the Simulation Environment or the Platform via its DAI without notice in emergency situations or where failure to do so may give rise to a regulatory breach.

9. ADDITIONAL PROVISIONS

A. Assignment

This Agreement shall bind and inure to the benefit of the parties and their authorized successors and assigns; provided, however, that the Company may not assign or transfer its rights and obligations under this Agreement, whether totally or in part, without the prior written consent of the Exchange or Intercontinental.

B. Exclusion of Third Party Rights

A Person who is not a party to this Agreement has no right to enforce any term of this Agreement and shall not be a third party beneficiary hereof, provided, however, that nothing herein shall affect any right or remedy of a third party which arises under any other agreement to which such Person is a party.

C. Waiver

No party's acceptance of default on the part of one or both of the other parties in relation to any obligation under this Agreement shall be regarded as a mere forbearance, and shall not imply a waiver, alteration or innovation regarding any obligation under this Agreement.

D. Entire Agreement

1. This Agreement, together with its Schedules, contains the entire agreement between the parties with respect to its subject matter, superseding any other communications or understandings between the parties.
2. The Exchange and/or Intercontinental may, in their sole discretion, amend any provision of this Agreement by notice to the Company, where failure to so amend would or is likely to give rise to a regulatory breach by the

Exchange or Intercontinental as the case may be. The Company expressly acknowledges and agrees that this provision is a condition of the Agreement and is necessary to ensure that regulatory compliance is maintained by the Exchange and Intercontinental at all times.

3. Subject to clause 9 (D)(2), no other change or amendment of a non-regulatory nature to any provision of this Agreement will be effective unless it is in writing and signed by all of the parties.

E. Notice

Any written notice required by this Agreement shall be made through personal delivery, overnight delivery through a reputable delivery service such as Purolator or Federal Express, electronic mail, or registered first class mail, to the relevant address set out in Schedule A. In the case of any notice served by either or Intercontinental or the Exchange in relation to Charges, regulatory matters or in relation to matters such as technical or other requirements contained in this Agreement or any of the schedules hereto, notice may be served by Intercontinental or the Exchange through posting on a website whose address has been advised to the Company representative referred to at Schedule (A)(7) by either Intercontinental or the Exchange. Any written notice served in accordance with this clause shall be effective at 9 am Eastern Standard Time on the second business day after posting and in the case of personal delivery or posting upon a website by Intercontinental or the Exchange at 9 am Eastern Standard Time on the next business day following the date of personal delivery or posting on the website.

F. Force Majeure

Neither party will be liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts or omissions, laws or regulations, labour strikes or disputes, transportation unavailability, stoppages or slowdowns, provided that the affected party gives prompt notice to the other of the nature of the event and its estimated duration and resumes performance as soon as possible after the event ends.

G. Clause Headings

The clause headings contained in this Agreement are solely for the convenience of the parties and shall not affect the meaning or interpretation of this Agreement.

H. Severability

Each part of this Agreement is a distinct undertaking. In the event any part of this Agreement shall be determined to be unlawful or otherwise unenforceable, that part shall be deemed severed from this Agreement and of no effect; every other part of this Agreement not so severed shall remain in full force and effect. The parties expressly authorize a court of competent jurisdiction to modify any term of this Agreement to the extent necessary to comply with existing law and to enforce this Agreement as so modified.

I. Continuing Obligations

The obligations and rights under paragraphs 6(C), 6(D), 6(E), 6(F), and 6(G) of this Agreement and in the attached Schedules shall survive the termination of this Agreement.

J. Choice of Law/Jurisdiction/Venue

This Agreement shall be governed by the laws of the State of New York, and the Federal laws of the United States of America. The Company consents and agrees, and hereby submits, to the general and exclusive jurisdiction of the Federal and State courts in New York, New York, agrees to commence any actions, suits, and proceedings only in the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York, and waives any objection to venue in any such court 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.

THE PARTIES HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY.

K. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all of the counterparts together constitute the same document.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

INTERCONTINENTAL EXCHANGE HOLDINGS, INC.

ICE Futures Canada, Inc.

By: _____

By: _____

(Signature)

(Signature)

(Position)

(Position)

(Date)

(Date)

By: _____ (Company Name)

(Signature)

(Position)

(Date)

Schedule A

Development Marketing and Production Usage

1. Procedure

Throughout the term of the Agreement, the parties will have the following rights and responsibilities:

A. Development Plan

The Company represents that it has prepared a development plan, which sets out a tentative schedule for the development and testing of its user interface, and agrees to make details, and a written copy of that plan available to Intercontinental at Intercontinental's request throughout the Development Period. Intercontinental agrees that all information and documentation concerning such development plan shall be deemed to be confidential information of the Company and shall be treated in accordance with clause 6(C) of the Agreement.

B. Development Work

Except for the services provided by Intercontinental that are expressly described in this Schedule, the Company will be responsible, at its own expense, for conducting all design, development and maintenance work related to its user interface and shall do so in accordance with Best Industry Practice. This work includes, but is not limited to, purchase, installation and maintenance of all hardware and software associated with the user interface and the development and maintenance of any source or object code constituting or relating to the user interface. Notwithstanding anything in this Agreement to the contrary, Intercontinental and the Exchange acknowledge and agree that all right, title and interest to the user interface developed by the Company shall inure to and become the exclusive property of the Company.

2. Connectivity

The Company may choose one of the following connections or routes to the Platform through the API.

A. Internet connections

The Company may choose to utilize, at their own expense, a public Internet connection through an Internet Service Provider ("ISP"). The Company may use this Internet connection for development and/or conformance purposes and/or production purposes.

B. Fixed bandwidth connections

The Company can, at their own expense, choose to install and maintain a fixed bandwidth connection between the Company and Intercontinental. The Company may choose to use this line for development and/or conformance purposes and/or production purposes.

The Company will promptly follow all reasonable instructions from Intercontinental, as developed and changed from time to time, relating to any or all of the internet connections

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and/or the installation and maintenance of the fixed bandwidth connection described above.

3. Development Support

Intercontinental will provide support to the Company's development efforts by ensuring that its staff Users or consultants are reasonably available, during regular business hours in Atlanta, to answer reasonable questions from the Company relating to the interaction of its user interface with the API and the Platform. Intercontinental, however, will not provide:

- A. training on the use of the Platform or for any Direct Access Trading Participants or their employees or Customers, that are undergoing mock trading tests; or
- B. first line or other direct support for any Direct Access Trading Participants or their employees or Customers, that are undergoing mock trading tests.

4. Acceptable Use

Company shall not, except without the express prior permission of Intercontinental, subject the Platform to "Unreasonable Use". Unreasonable Use for the purposes of this section means any use which (1) deprives, restricts or otherwise inhibits other third party users' access to the Platform; or (2) subjects the Platform to unacceptable operational loading (i.e. via stress testing).

5. User Interface Requirements

Technical Requirements

The Company agrees that its DAI will meet all applicable technical requirements specified by Intercontinental.

6. Certificate of Conformance

To obtain a Certificate of Conformance, the Company must successfully and to the satisfaction of Intercontinental complete all required tests on the version of the DAI that will be released by the Company for use by Direct Access Trading Participants and employees or customers, to access the Platform.

For the avoidance of doubt, the Company may only make its DAI to the Platform available to Direct Access Trading Participants and employees or customers of Direct Access Trading Participants after it has received a valid Certificate of Conformance from Intercontinental.

If the Company makes any changes to its DAI, it will perform an impact analysis to ascertain if such changes may have an adverse effect on the API, API Software, the Platform, Exchange market participants, Intercontinental or the Exchange. If following the impact analysis the Company reasonably concludes that the change will or is likely to have an adverse effect, it must so notify the Exchange and Intercontinental immediately. Intercontinental in its sole discretion, shall determine whether conformance testing of the amended Company's DAI is necessary. Where Intercontinental so determines, the Company must not use the amended DAI pending successful certification.

Notwithstanding receipt by the Company of a Certificate of Conformance, Intercontinental or the Exchange may at any time disconnect any Company DAI where the operation of

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such DAI is detrimental to the Platform, the API, Exchange market participants, Intercontinental or the Exchange.

At any time during the certification process, Intercontinental can at its absolute discretion suspend or end testing and where it does so, Intercontinental will provide as much notice to the Company as is reasonably practicable. Upon written notice from Intercontinental, the Company must successfully complete any additional functional and volume certification testing that Intercontinental requires.

7. Contact Details

Throughout the term of this Agreement, the Company agrees that Intercontinental and/or the Exchange may send all notices pursuant to this Agreement to the following person and may contact the following person for any reason pursuant to this Agreement:

Name:

Address:

Telephone No.:

Fax No.:

Email:

The Company may change this contact person from time to time by giving written notice to Intercontinental and the Exchange.

The address for service of notices to Intercontinental shall be:

Name: Johnathan Short
Address: 5660 New Northside Drive, 3rd Floor, Atlanta, GA 30328
Telephone No.: 001 770 738 2120
Fax No.: 001 770 857 4755
Email: johnathan.short@theice.com

The address for service of notices to ICE Futures Canada, Inc. shall be:

Name: E. Bradley Vannan
Address: 850A Pembina Highway, Winnipeg, Manitoba R3M 2M7
Telephone No. 204-925-5005
Fax No.: 204-925-5014
E-mail: brad.vannan@theice.com

Intercontinental and/or the Exchange may change their contact person from time to time by giving written notice to the Company.

8. Use of the User Interface

Obligation to Meet Current/Additional Requirements

The Company agrees and understands that, throughout the term of this Agreement, its DAI must meet all of the requirements described in this Agreement as amended from time to time.

9. Marketing the User Interface

A. Use of Intercontinental Trademarks, Exchange Trademarks and API Documentation

Throughout the term of this Agreement, Intercontinental and the Exchange each grants to the Company, a non-exclusive, non-transferable license (without the right of sublicense) to use the Intercontinental Trademarks, Exchange Trademarks and /or API Documentation as the case may be solely in connection with its marketing of its DAI to the Platform.

The Company will use its best efforts to protect the goodwill and reputation of Intercontinental, the Exchange, the API, Intercontinental Trademarks, Exchange Trademarks and the API Documentation including, but not limited to, high standards of accuracy in all advertisements, brochures and promotional and informational materials using Intercontinental Trademarks, Exchange Trademarks and API Documentation as the case may be.

The Company agrees to submit any advertising, brochure or promotional or informational material that uses one or more of the Intercontinental Trademarks, Exchange Trademarks, or the API Documentation to Intercontinental's and/or the Exchange's marketing department as the case may be for approval before distribution. Intercontinental and/or the Exchange would anticipate reviewing such promotional materials within fifteen (15) business days.

Intercontinental and/or the Exchange, as the case may be, may make any changes or additions to these materials that it believes are appropriate to protect Intercontinental Trademarks, Exchange Trademarks or the API Documentation. The Company will not distribute the materials until it has made the changes required by Intercontinental or the Exchange as the case may be.

The Company will follow any advertising or promotional guidelines developed or changed by Intercontinental or the Exchange from time to time. It will also include in all of its advertisements, brochures and promotional and informational materials relating to its user interface to the Platform the following statement:

“Intercontinental Exchange”, Intercontinental's cube design and the Exchange logo are registered trademarks. Intercontinental Exchange and the Exchange assume no liability in connection with the use of _____ by any person or entity.”
Company's User interface name

During the term of this Agreement, the Company shall not use any mark in connection with its user interface or any other electronic trading system or product that is confusingly similar to either Intercontinental Trademarks or Exchange Trademarks.

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The Company accepts and agrees that Intercontinental and/or the Exchange may at any time instruct them to cease using all or any of the Intercontinental Trademarks, the Exchange Trademarks or API Documentation and that the Company will forthwith cease using such materials and confirm to Intercontinental and the Exchange that it has done so.

B. Use of Information Relating to Exchange Market Participants

The Company cannot use information relating to any Exchange market participant for any purpose other than to develop and maintain a DAI that allows the Exchange market participant to access the Platform through the API. The Company also cannot provide information relating to any Exchange market participant to any other Person, including other exchanges or market participants, without written permission from Intercontinental / the Exchange. This provision prevents the Company from using or disclosing, in any manner, any non-public information about the Exchange market participant including, but not limited to, their names, addresses, Platform trading histories and current or planned hardware and software configurations.

10. SUPPORT

A. Intercontinental Support

Throughout the term of this Agreement, Intercontinental will provide reasonable assistance to the Company and its users, through a telephone hot-line or other means, to help the Company address problems relating to the interaction of its DAI with the API and the Platform. Intercontinental, however, will not provide training on the use of the Company's DAI to any Exchange market participant.

For the avoidance of doubt, the Company shall be responsible for dealing with all of its customer's questions relating to its DAI and shall be responsible for providing technical first line support to Exchange market participants using the Company's DAI.

B. Company Support

Throughout the term of this Agreement, the Company agrees to maintain a telephone hot line or other service to provide support for Direct Access Trading Participants and the employees and customers of the Direct Access Trading Participants who are using the Company's DAI in accordance with this Agreement. The Company's support services must be available from sixty (60) minutes prior to the opening time until sixty (60) minutes after the closing time on each day of trading for Exchange Contracts. Intercontinental will provide the Company with reasonable notice of any planned changes to the trading hours.