

**ICE Futures Canada, Inc.**  
**Application Instructions for Direct Access Trading Participants**

Enclosed is an Application/Agreement and related documents which must be completed by an entity seeking to become registered as a Direct Access Trading Participant with ICE Futures Canada, Inc. Please note that the By-Laws, Rules and Annexures of ICE Futures Canada are incorporated by reference in the application/agreement and you should ensure that you have a copy of the current documents prior to executing the application/agreement. The latest versions of these documents are maintained on the website and available to be downloaded at;

[https://www.theice.com/futures\\_canada\\_rulebook.jhtml](https://www.theice.com/futures_canada_rulebook.jhtml)

The following is a list of documents that must be furnished by applicants for Direct Access Trading Participant status. You may complete and send by email or fax, but one original should then be provided by mail or courier. Please send the forms to the attention of:

Sheryl Silverberg  
Administrative Assistant  
ICE Futures Canada, Inc.  
850A Pembina Highway  
Winnipeg, Manitoba  
R3M 2M7  
(204) 925-5002  
[Sheryl.Silverberg@theice.com](mailto:Sheryl.Silverberg@theice.com)

**A. Forms to be Completed:**

1. ICE Futures Canada Direct Access Trading Participant Application/Agreement form and attached Schedules "A" and "B";
2. Certified Copy of a Resolution of the Board of Directors (Corporations), Certified Copy of Partnership, or Opinion of Counsel (LLC's only) (examples attached);
3. Clearing Authorization and Guarantee Form 6-C2007; Annex 8.B or Annex 8.B2. This form is not required if the applicant is also applying to become a Clearing Participant of ICE Clear Canada, Inc.)
4. Revenue Ruling Submission Template – the "60/40 Tax" form. (Note that this form is a requirement pursuant to Rule 1.12 of ICE Futures Canada and must be completed by all applicants, whether or not they have a US taxpayer ID.)

**B. Documents to be Provided by Applicant:**

1. a) Certificate of Incorporation, and all amendments thereto (if applicant is a corporation); or
- b) Articles of Organization and Operating Agreement and all amendments thereto (if applicant is a limited liability company); or
- c) Partnership Agreement (and all amendments thereto).
2. If the applicant is applying in a category that requires the filing of financial information, the most recent audited financial statements and most recent monthly/quarterly financial statements. (Note: Please include all notes to the financial statements).

**General Information**

1. Direct Access Trading Participants are able to connect directly to the Trading System utilizing a conformance tested front end system. The system can be company owned (in which case a company DAI agreement is required), or can be provided by an ISV. These agreements are administered by Jeanette Pasciolla at: (212) 938-3957 or [jeanette.pasciolla@theice.com](mailto:jeanette.pasciolla@theice.com). You are required to state whether you have a company owned system connection or will be using an ISV at Article 2.2 of the application/agreement.
2. DATPs must either be registered as a Clearing Participant with ICE Clear Canada or have an agreement with a registered Clearing Participant of ICE Clear Canada (FCM) whereby all trades of the DATP are accepted and cleared, in accordance with the Rules. (See Rule 4C.01)

A list of the registered Clearing Participants is set out on the website at:  
<https://www.theice.com/marketdata/reports/icefuturescanada/ReportContent.shtml?participantListReport=>

3. The annual fees for registration as a Direct Access Trading Participant are set out in Rule 25 and are:

**25.02 Annual Participant Fees**

On or before January 1<sup>st</sup> in each year, the following fees will be payable by registered Participants:

- (1) Direct Access Trading Participants

Company Categories

Futures Commission Merchant	\$5,000.00
Merchant	\$5,000.00
General	\$1,000.00
Liquidity Provider	\$5,000.00
Market Maker	Negotiable

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

Individual Categories

General	\$1,000.00
Liquidity Provider	\$5,000.00
Market Maker	Negotiable

Annual Participant fees are payable annually, in advance. At the time of registration, a Direct Access Trading Participant will be invoiced for the pro-rata amount owing to the end of the calendar year.

4. Direct Access Trading Participants will be added to the relevant subscription lists and will receive information from the Exchange, including rule amendments, by e-mail. As noted in the Rules, it is incumbent upon the Authorized Representative and the Responsible Persons to read and respond to e-mails and other communications from the Exchange on a timely basis.

5. Please note that Direct Access Trading Participants have an obligation to ensure that they meet all financial and operational requirements of the category they are registered under. There is a positive requirement on DATPs to have in place supervision policies and procedures relevant to their business operations.

**4C.04 Direct Access Trading Participants and Trading Participants – Supervision Obligations**

Each Direct Access Trading Participant and Trading Participant, other than an individual, shall adopt written policies and procedures (the "Supervision System") to be followed by the directors, officers, partners and employees of the Participant who are involved in or engage in business activities that impact on Exchange matters, that are adequate, taking into account the nature, scope and complexity of the business and affairs of the Participant, to ensure compliance with these Rules, the Act and the rules and regulations of all other Self-Regulatory Organizations of which the Participant is a member.

Question/Concerns

1. Participant status or the Rules;

Linda Vincent  
Corporate Secretary  
(204) 925-5009  
[Linda.Vincent@theice.com](mailto:Linda.Vincent@theice.com)

Sheryl Silverberg  
Participant Administrator  
(204) 925-5002  
[Sheryl.Silverberg@theice.com](mailto:Sheryl.Silverberg@theice.com)

2. For trading or operational issues:

Steve Teller  
Director, Market Regulation  
(204) 925-5019  
[Steve.Teller@theice.com](mailto:Steve.Teller@theice.com)

Wenzel Lieb  
Manager, Clearing & Product Support  
(204) 925-5017  
[Wenzel.lieb@theice.com](mailto:Wenzel.lieb@theice.com)

**ICE Futures Canada, Inc.**

**Application / Agreement for Direct Access Trading Participant Status**

**(For Companies)**

**TO: ICE Futures Canada, Inc.  
850A Pembina Highway  
Winnipeg, Manitoba  
R3M 2M7**

The undersigned, (type the complete legal name and mailing address of the Applicant for Direct Access Trading Participant Status)

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(herein either the "DATP" or the "Applicant"), applies for Direct Access Trading Participant Status with ICE Futures Canada, Inc. ("ICEFC" or the "Exchange"), and acknowledges that, upon acceptance by the Exchange, this document shall constitute a binding agreement between the Exchange and the Participant upon the terms, and subject to the conditions set out herein. This Agreement must have a completed Schedule "A" and "B" completed and a signed Corporate Resolution attached. Unless stated otherwise, this Agreement becomes effective at the Effective Time.

**WHEREAS**

- (A) The Exchange is recognized as a commodity futures exchange under *The Commodity Futures Act (Manitoba) C.C.S.M. c. C152* (the "Act") and as such is regulated by the Manitoba Securities Commission (MSC);
- (B) The Exchange, in collaboration with IntercontinentalExchange Inc. ("ICE" or "IntercontinentalExchange") owns and operates a trading platform (the "Platform") as defined herein;
- (C) The Exchange and IntercontinentalExchange are the owners or licensees, as the case may be, of the software used in the Platform Software, as defined below;
- (D) IntercontinentalExchange has authorized the Exchange to sub-license certain of its proprietary materials to the Exchange market participants as further specified herein;
- (E) The Applicant wishes to connect with the Platform to trade Exchange Contracts and requests that the Exchange grant it a non-exclusive non-transferable license to use the Platform Software to interface with the Platform, upon the terms and subject to the conditions set out in this Application / Agreement, and the Exchange Rules; and

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

(F) This Application / Agreement is for the purposes of enabling the Applicant to conduct business in relation to Exchange Contracts, as defined below, listed on the Exchange from time to time.

A. Questions

1. The Applicant applies for Direct Access Trading Participant status in the following category: (check one)
  - Merchant
  - Futures Commission Merchant
  - Liquidity Provider
  - Market Maker
  - General
  
2. The Company is a (check one)
  - General Partnership
  - Limited Partnership
  - Corporation
  - Limited Liability Corporation
  - Cooperative
  
3. The Company (if a partnership) was registered under the laws of the Province/State of \_\_\_\_\_ in the country of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.
  
4. The Company was incorporated (if a corporation) under the laws of the Province/State of \_\_\_\_\_ in the Country of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.
  
5. The Company is:
  - a fully independent operation
  - a wholly owned subsidiary of  
(Full legal name of parent company)

Name of Parent Company

\_\_\_\_\_  
(Address if different from Head Office Address)

Effective control of the company is exercised by:

\_\_\_\_\_  
(Name of Controlling Person/Company)

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

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(Address if different from Head Office Address)

6. Has the Company ever had, used, operated under or carried on business under any name other than the name listed in Question 1?

Yes  No

If yes, list here and describe the circumstances surrounding the use of such name(s):

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(If insufficient space, attach schedule)

7. Authorized Representatives:

The Applicant appoints the individual(s) set out in Schedule "A" hereto as its Authorized Representative(s). The Applicant will keep this information updated.

8. Responsible Individuals:

The Applicant appoints the individuals set out in Schedule "B" hereto as Responsible Individuals as required by Rule 8B.02. The Applicant will keep this information updated.

PRIOR LICENSING, MEMBERSHIPS OR REGISTRATION

(Note: Attach schedules or Appendices as necessary)

9. Has the Applicant ever been registered with, or a member of ICE Futures Canada (formerly Winnipeg Commodity Exchange)?

Yes  No

10. List all other commodity exchanges the applicant has been a member or participant of.

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Exchange Name	Category
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Exchange Name	Category
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Exchange Name	Category
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Direct Access Trading Participant Application/Agreement

11. List all self-regulatory organizations that the Applicant is a member of.

SRO	Category of Registration (if applicable)
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SRO	Category of Registration (if applicable)
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SRO	Category of Registration (if applicable)
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12. List all regulatory authorities (such as provincial securities commission, the CFTC, the FSA or the SEC) the Applicant is registered with.

Regulatory Authority	Category
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Regulatory Authority	Category
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Regulatory Authority	Category
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**REFUSAL, SUSPENSION, CANCELLATION OR DISCIPLINARY ACTIONS**

13. Has the Applicant ever been rejected from membership or participant status on, or expelled or suspended from, any securities or derivatives exchange?

If yes, state the date, reason and exchange.

Yes  No

Date	Reason	Exchange
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14. Has the Applicant ever been subject to any disciplinary action taken by any exchange (securities or derivatives) or regulatory authority?

Yes  No

If yes, state the date, reason and exchange.

Date	Reason	Exchange
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Date	Reason	Exchange
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Form 1-C2013  
Direct Access Trading Participant Application/Agreement  
BANKRUPTCY

15. Has the Applicant and/or any of the partners (if a Partnership) ever failed in business or filed for or been petitioned into, bankruptcy?

Yes  No

If yes, state the date and detail the status of settlement.

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Date	Details
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16. Has the Applicant and/or any of the partners (if a Partnership) ever made arrangements with creditors or taken advantage of the provisions of the Orderly Payment of Debts Act, the Bankruptcy and Insolvency Act, or the Company Creditors Arrangements Act or other legislation for the benefit of creditors?

Yes  No

If yes, detail the status of settlement

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Date	Details
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OFFENCES UNDER THE LAW

17. Has the Applicant been, or has any partner, officer or director of the Applicant held an office in this company or any other company at a time when it was, charged with a criminal offence or indicted under a federal, provincial, or state law in any country?

Yes  No

If yes, state the date and details.

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Date	Details
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18. Has any partner, officer, or director of the Applicant ever been personally charged with any criminal offenses, excluding minor traffic violations?

Yes  No

If yes, state the dates and details of charges.

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Date	Charges
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Direct Access Trading Participant Application/Agreement

19. Are there any pending claims, complaints, litigation or outstanding or unsatisfied judgments against the Applicant or against any partner, officer, or director of the Applicant?

Yes  No

If yes, state the date and details.

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Date	Details
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20. Has the Applicant ever been refused a fidelity bond?

Yes  No

B. Agreement

1 **Definitions and Interpretation**

1.1 In this Agreement unless otherwise expressly stated to the contrary:

(a) the following terms shall have the following meanings:

- |                                      |  |
|--------------------------------------|--|
| <b>"Act"</b>                         | means <i>The Commodity Futures Act</i> C.C.S.M. c. C152;   |
| <b>"Affiliate"</b>                   | means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with, either the Applicant 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 affairs of an entity; |
| <b>"API"</b>                         | means the open application program interface, transport software and additional functionality that facilitate order entry or placement to the Platform;  |
| <b>"Approved Direct Access User"</b> | means a Direct Access User which is authorized by the Exchange and/or Intercontinental;  |
| <b>"Business Day"</b>                | shall have the meaning in the Exchange Rules;  |
| <b>"CFTC"</b>                        | means the U.S. Commodity Futures Trading Commission;   |
| <b>"Clearing Participant"</b>        | means a registered participant of ICE Clear Canada, Inc.;  |

<b>“Commission or MSC”</b>	means The Manitoba Securities Commission;
<b>"Compulsory Improvements"</b>	means the improvements necessitated by regulatory or significant operational concerns which are mandatory for the Applicant to install;
<b>“Confidential Information”</b>	has the meaning given in Clause 22;
<b>"Customer"</b>	means a customer of a DATP who is duly authorized by such DATP to conduct trades on the Exchange;
<b>“DATP”</b>	means a Direct Access Trading Participant and has the meaning given in the Exchange Rules;
<b>“Effective Time”</b>	means the date that this Agreement is executed by the DATP, the Exchange and ICE.
<b>“Exchange Contract(s)”</b>	means all of the futures contracts and options on futures contracts as the Exchange lists and makes available for trading on the Platform from time to time;
<b>“Exchange Rules”</b>	means, collectively, the Rules of the Exchange as approved from time to time; and
<b>"ICE Interface"</b>	means ICE’s proprietary API interface application software known as WebICE;
<b>"Improvements"</b>	means modifications, improvements or additions to the Platform, the Platform Software or any part or parts thereof as provided by the Exchange and/or ICE to the Applicant in accordance with Clause 5;
<b>"Intellectual Property Rights"</b>	means ICE’s and/or the Exchange’s patents (including all renewals, extensions or divisions thereof), copyright, trade marks, know how, design rights, registered designs, domain names, database rights and confidential information including any and all similar rights in any jurisdictions;
<b>"ISV"</b>	means an independent software vendor who has written software applications to facilitate connection to the Platform via the API;
<b>"License Fee"</b>	means the sum payable by the Applicant in accordance with the Exchange Rules;

<b>"Market Data"</b>	means the data displayed by the Platform on a real time basis specifying the market prices of the Exchange Contracts;
<b>"Order Routing"</b>	has the meaning given in Clause 2.4 hereof;
<b>"Password"</b>	means each and every password, logon code, logon id, mnemonic or individual trading mnemonic or similar means of access or identification issued to the Applicant for one or more of its Responsible Individuals;
<b>"Person"</b>	includes an individual, partnership, limited liability corporation, corporation, cooperative or other entity.
<b>"Platform"</b>	means that part of the combination of software, operating software, hardware, communication equipment and data owned by, licensed to, or in the possession of the Exchange as updated, varied and modified from time to time, which makes up the Platform for the trading of the Exchange Contracts by approved market participants of the Exchange comprising, inter alia, the systems and facilities for the execution and processing of the Exchange Contracts and for the reporting, surveillance and control of transactions made through such systems and facilities.
<b>"Platform Software"</b>	means the software supplied by the Exchange to approved market participants, in accordance with the Exchange Rules, in order to access the Platform in order to facilitate viewing of and/or trading in the Exchange Contracts on the Platform as the case may be, comprising a graphical user interface and/or API and/or such other elements as may be notified as necessary for such purpose as the Exchange may determine from time to time. For the avoidance of doubt, the Platform Software includes the API but does not include a Direct Access Interface.
<b>"Purposes"</b>	means the trading of the Exchange Contract(s) supported by the Platform and the Platform Software;
<b>"Regulatory Authority"</b>	means the MSC or any successor or other body in the Province of Manitoba, Canada, or in the United States or overseas, which has authority to regulate the business, operation and trading activities of the

Direct Access Trading Participant Application/Agreement

Exchange, any participant of the Exchange (whether registered or not), any user of the Trading System, a Clearing Participant, Customer or Responsible Individual;

**"Related Documentation"**

means such documents and materials as are made available to the Applicant by the Exchange or ICE, from time to time relating to the operation and use of the Platform or the Platform Software;

**"Responsible Individual"**

means an individual registered by a Direct Access Trading Participant with the Exchange as a Responsible Individual in accordance with the Exchange Rules;

**"Trade Capture Data"**

means the data generated by the Platform specifying the details of trades by the DATP (whether on its own behalf or on behalf of any Customer) in the Exchange Contracts;

**"User Interface"**

means the DATP's own software (as provided by an ISV or another Direct Access User) conformed as appropriate and used to connect to the API; and

**"Voluntary Improvements"**

means the improvements other than Compulsory Improvements;

- (b) all other defined words and expressions shall have the meaning given to them in either the Exchange Rules, the Act and Regulations to the Act, CFTC Regulations, the Participant Agreements, or within the body of this Agreement, as the case may be.

1.2 Interpretation:

- (a) the headings in this Agreement shall not affect the interpretation of this Agreement;
- (b) any words or terms importing the singular shall, where the context permits, include the plural and vice versa;
- (c) any words or terms importing the masculine gender shall include the feminine gender and shall, where the context permits or requires, include a partnership, limited liability company incorporated company or any other association;

Direct Access Trading Participant Application/Agreement

- (d) a reference to any statutory provisions shall be construed as references to those provisions as modified or re-enacted from time to time and to any subordinate legislation made under such provisions and shall include references to any repealed statutory provisions which have been so re-enacted (whether with or without modification);
- (e) a reference to a Clause or Schedule, unless the context otherwise requires, is a reference to a clause or a schedule to this Agreement.

**2 License to use the Platform Software and to access the Platform**

2.1 Subject to the terms and conditions of this Application / Agreement and the Exchange Rules, the Exchange grants the Applicant, for the term of this Agreement:

- (a) a non-exclusive, non-transferable, revocable license to use the Platform Software for the Purposes on its own behalf, and on behalf of its Customers; and
- (b) a non-exclusive, non-transferable right to interface with the Platform for the Purposes, utilizing the relevant Direct Access Interface or ICE Interface as applicable, on its own behalf and on behalf of its Customers provided that the right to interface shall only exist if the Applicant has a valid Certificate of Conformance for its own Direct Access Interface Agreement or utilizes the services of a Company or ISV which has a Direct Access Interface Agreement with a valid Certificate of Conformance.

2.2 Unless the Application has its own Direct Access Interface Agreement, it must either be connected to an entity that has a Direct Access Interface Agreement, or have log in and password access to the ICE Platform through WebICE. Please check off the appropriate box;

The Applicant has its own Direct Access Interface Agreement which has a valid Certificate of Conformance;

- or -

The Applicant will utilize the services of:

\_\_\_\_\_  
(type full name of ISV which has a valid Certificate of Conformance)

- or -

The Applicant will access the ICE Platform via WebICE

2.3 Each individual employee of a DATP and each customer of a DATP must have a unique Authorized Trader ID. The Exchange (ICE User Admin) will provide Login Ids and Passwords to the Responsible Individuals of the DATP who will assign them. The Responsible Individuals must provide the Exchange with notice of each new employee and customer that it provides access to and must keep this information up to date.

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

- 2.4 A DATP is authorized by the Exchange to allow its employees and/or Customers to connect and interface to the Platform. The DATP shall be responsible for all trading and other activities conducted by its employees and/or Customers on the Trading System.
- 2.5 Unless the Applicant is a Clearing Participant of ICE Clear Canada, Inc. (the designated clearinghouse of the Exchange), the Applicant must have and maintain a Clearing Authorization and Guaranty with, or have a Systems Managed Account(s) issued by a Clearing Participant as a requirement of Direct Access Trading Participant status.

- The Applicant's Clearing Participant is:

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(type full name of Clearing Participant)

- or -

- The Applicant is a Clearing Participant.
- 2.6 The Clearing Authorization and Guaranty or the Systems Managed Account Form must be filed with the Exchange and maintained in order for the Applicant to maintain its DATP status. Subject to the Rules if at any time the Clearing Authorization and Guaranty or Systems Managed Account is suspended or terminated, this Agreement is immediately terminated and the Applicant will have no further DATP privileges, unless, prior to the suspension or termination another Clearing Authorization and Guaranty or Systems Managed Account Form is filed with the Exchange.

### 3 Proprietary Rights

- 3.1 The Exchange warrants to the Applicant that it has (or has been licensed by IntercontinentalExchange or a third party) all necessary rights, consents and permissions to license (or sub-license, as the case may be) use of the Platform Software and access to the Platform to the DATP under the terms and conditions of this Agreement for the Purposes.
- 3.2 The Applicant hereby agrees that the copyright and all other Intellectual Property Rights of whatever nature in the Platform, Platform Software and Related Documentation (and in all parts thereof) and in all other materials and documentation whatsoever relating to the Platform as provided to the Applicant by the Exchange (the "**Materials**") shall be and shall remain vested in the Exchange, IntercontinentalExchange, and/or their licensors, as the case may be. It is understood that the Exchange, by the terms of this clause, has no intention of acquiring, or acquiring rights to, the related software of the Applicant which shall at all times remain the property of the Applicant. The Applicant undertakes to do all such acts and things and execute all such documents as the Exchange may direct the Applicant to do and as may be necessary to establish, protect and maintain the right, title and interest of the Exchange, IntercontinentalExchange and their licensors, in and to such Intellectual Property Rights.

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

- 3.3 Subject in any event to Clause 7 (Liability) hereof, the Exchange shall indemnify the Applicant from and against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses (together “**Losses**”) arising out of or in connection with any claim or action that the use by the Applicant of the Materials for the Purposes under the terms of this Agreement infringes the Intellectual Property Rights of any third party, provided that:
- (a) the Applicant shall promptly notify the Exchange in writing of any claim or action of which it has notice;
  - (b) the Applicant shall not make any admission as to liability or agree to any settlement of or compromise any claim or action without the prior written consent of the Exchange which shall not be unreasonably withheld or delayed;
  - (c) The Exchange shall, at its own request and expense, be entitled to have the conduct of or settle all negotiations and litigation arising from any claim or action and the Applicant shall, at the request and expense of the Exchange, give all reasonable assistance in connection with such negotiations and litigation; and
  - (d) the Applicant does not transfer the conduct of any such claim or authorize any third party to settle, negotiate or litigate in respect of such claim or does not otherwise invoke any indemnity provision in any third party agreement in respect of such claim (except as may be authorized by the Exchange).
- 3.4 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 the Exchange concedes that infringement through a settlement of a claim, the Exchange shall, at its sole option and expense, in addition to providing the indemnification described above, either:
- (a) procure for the DATP 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.
- 3.5 The Exchange shall not be liable for the Losses incurred by the Applicant in co-operating with and assisting the Exchange in accordance with the terms of Clause 3.3 if the Exchange can reasonably demonstrate that the alleged infringement arose from an unauthorized action of the Applicant, unauthorized use of the Materials or unauthorized use of the Applicant's Interface or ICE Interface in conjunction with the Materials, in which case the provisions of Clause 8 shall apply.

#### **4 Obligations of the Applicant**

The Applicant hereby agrees:

- 4.1 that it will not, and shall ensure that its officers, directors, employees, Responsible Individuals, agents, Affiliates and other representatives, (whether or not registered with the Exchange) will not, except in accordance with this Agreement:

## Form 1-C2013

### Direct Access Trading Participant Application/Agreement

- (a) copy, interfere or tamper with, alter, amend or modify the Platform Software or any part or parts thereof except as is necessary to access the Platform in accordance with the provisions of this Agreement;
  - (b) reverse compile, reverse engineer or disassemble the Platform Software; nor
  - (c) interface with the Platform Software via any medium other than by a Direct Access Interface that is subject to a valid Certificate of Conformance, nor purport to do any of the same or permit or purport to permit any of the same to be done except insofar as such acts are expressly permitted by laws;
- 4.2 to comply fully with restrictions on use of the Platform Software and the Platform for the purpose of viewing or effecting trading on the Exchange (as applicable and as specified in the Schedule to this Agreement), and for these purposes to establish and maintain adequate supervisory and security procedures to prevent unauthorized access to and use of the Platform, the Platform Software and the Passwords;
- 4.3 upon either suspension or termination of the Applicant as the owner of a User Interface, or the disconnection of any User Interface pursuant to Clause 5.5 or termination of this Agreement for whatever reason, the Applicant shall forthwith to cease use of the Platform and the Platform Software and at the Exchange's request, immediately delete any copies of the Platform Software and deliver up to the Exchange the Related Documentation and (where relevant) all copies thereof or any part of any of the same in the possession, or under the control, of the Applicant, and the Applicant (by one of its executive officers) shall certify in writing to the Exchange that it has complied with this Clause 4.3;
- 4.4 to refrain, and to ensure that its officers, employees, Responsible Individuals, agents and other representatives (whether or not registered with the Exchange) refrain from any act or omission which damages or impairs or may damage or impair the Platform, the Platform Software or any part or parts thereof;
- 4.5 that it shall (except as provided elsewhere in the Agreement):
- (a) not use or permit the use of the Platform Software for any improper, unauthorized or illegal purpose (including, without limitation, any prohibited transactions, trading practices, improper trading or market manipulation) or do anything that would bring the Exchange or IntercontinentalExchange into disrepute with a Regulatory Authority or any third party;
  - (b) use the Platform Software and Materials only in the normal course of the Applicant's business and strictly in accordance with the purposes specified in this Agreement and in accordance with the Exchange Rules;
  - (c) subject to sub-clause (h) hereto, not permit third parties to have access to the Platform or Platform Software except for any purposes permitted under a Direct Access Interface Agreement or the Exchange Rules or in order to ensure compliance with its obligations hereunder;
  - (d) ensure that all of the following:



## Form 1-C2013

### Direct Access Trading Participant Application/Agreement

- (i) its Customers (whether or not registered participants of the Exchange);
- (ii) its officers, employees, Responsible Individuals, agents and other representatives (whether or not registered with the Exchange) of the Applicant; and
- (iii) the officers, employees, agents and other representatives (whether or not registered as participants with the Exchange) of Affiliates of the Applicant;

are made aware (to the extent necessary) of the terms of this Agreement and that all relevant rights and obligations are reflected in the Applicant's contractual relationship with such third parties (to the extent appropriate), as if they were parties to this Agreement;

- (e) notify the Exchange and ICE as soon as practicable of any defect or malfunction in or any problem in accessing or using the Platform or the Platform Software;
  - (f) subject to Clauses 4.5(g), 4.5(h), 4.5(i) and 4.7 below, not distribute (or rent, sell, sub-license or timeshare) the Platform, Trade Capture Data and Market Data or any details of the method of operation of the Platform Software);
  - (g) disseminate Market Data or Trade Capture Data only to Affiliate companies of the Applicant who require access to such Market Data or Trade Capture Data for non-commercial administrative purposes, internal business purposes, and internal IT maintenance and support, directly relating to the Applicant itself ("Approved Affiliates");
  - (h) only allow access to the Platform Software to such of its agents and employees who are responsible for the Applicant's internal IT maintenance and support; and,
  - (i) that it will be bound by and will comply in all respects with all applicable provisions of law and with the obligations of DATPs registered with the Exchange pursuant to the Exchange Rules.
- 4.6 make available to each and every Regulatory Authority with regulatory authority within the jurisdiction in which the Applicant, any Responsible Individual of the Applicant, or Customer, might be incorporated, registered or operating its business, at the request of the Exchange, such information, including Market Data or Trade Capture Data, as such Regulatory Authority may request to be provided by the Exchange in respect of its participants;
- 4.7 Subject always to the provisions of the Related Documentation and the Exchange Rules, the Applicant shall be entitled to disclose:
- (a) information generally and properly available to all registered participants and Direct Access Users; and
  - (b) where disclosure is required by law, by any court of competent jurisdiction or by any Regulatory Authority (including for these purposes, the Exchange) (a "**Legal**

Direct Access Trading Participant Application/Agreement

**Disclosure Requirement**”), and where notice of such a Legal Disclosure Requirement is received in advance by an Applicant, then, if permissible, the Applicant must (except in circumstances where the requester is the Exchange) give the Exchange and IntercontinentalExchange not less than 2 (two) Business Days' notice of the date upon which disclosure will occur under the Legal Disclosure Requirement. If, however, such Legal Disclosure Requirement is not received sufficiently in advance and must be complied with within 2 (two) Business Days of receipt, then, if permissible, the Applicant shall (except in circumstances where the requester is the Exchange) confirm to the Exchange and IntercontinentalExchange that such disclosure has occurred as soon as practicable after such disclosure has occurred;

4.8 to retain:

- (a) data relating to all transactions conducted via the Platform; and
- (b) an audit trail in respect of such transactions conducted via the Platform,

in accordance with the recommendations and/or requirements of the Regulatory Authority in the jurisdiction in which the Applicant, Responsible Individual or Customer is authorized, registered, or conducts it business, as the case may be;

4.9 to notify immediately the Exchange if it becomes aware of any unauthorized access to the Platform, the Platform Software or the Passwords or if it becomes aware of any violation of any MSC requirement, regulatory authority requirement, or Exchange Rule, and will use best efforts to ascertain the source of any unauthorized access or use and will co-operate with the Exchange to gather more information relating to any potential violation;

4.10 to obtain at its sole expense, or to work with the Exchange to obtain any consents that are or may become necessary for the installation or maintenance of any software or connection which is provided for under this Agreement;

4.11 to comply with any terms imposed in connection with the consents to be obtained in accordance with Clause 4.10 (subject to prior review), and to reimburse the Exchange for any out-of-pocket expenses (including reasonable fees of attorneys or agents) it may incur in obtaining those consents. The Applicant will notify the Exchange immediately if any such consent is withdrawn; and

4.12 that it shall be fully responsible for all acts and omissions of its Approved Affiliates, officers, employees, Responsible Individuals, agents, Customers and other representatives (whether or not Participants of, or registered with, the Exchange) to the same extent as it is for the acts and omissions of itself or of persons directly employed by it.

## **5 Modifications and Updates to the Platform Software and the Applicant Interface**

5.1 From time to time the Exchange may directly or indirectly provide Improvements to the Applicant as it shall deem fit.

## Form 1-C2013

### Direct Access Trading Participant Application/Agreement

- 5.2 The Exchange shall provide the Applicant with reasonable notice of the date by which any Compulsory Improvements must be installed by the Applicant. In the event that the Applicant fails to install Compulsory Improvements by the date notified by the Exchange, then the Exchange shall be entitled to suspend the Applicant's access to the Platform for a period of six months from the date upon which the Compulsory Improvements should have been installed in accordance with the Exchange's notice. The last date in this six month suspension period shall be known as "the Final Installation Date". It being understood that if the Applicant installs the relevant Compulsory Improvements before the Final Installation Date then such suspension shall cease; further, in the event that the Applicant has not installed the Compulsory Improvements by the Final Installation Date then this Agreement shall be automatically terminated.
- 5.3 The Applicant shall bear the sole responsibility and expense of making any changes to its Direct Access Interface, as the case may be that result from Improvements.
- 5.4 The Exchange shall only be obliged to support:
- (a) the current version of the Platform Software ("**Supported Version**"); and
  - (b) the immediately preceding version of the Supported Version ("**Prior Release**"), (unless it is not commercially practicable for the Exchange to continue supporting the Prior Release).
- 5.5 Notwithstanding that a Direct User's Interface has a valid Certificate of Conformance, the Exchange may at any time disconnect any Direct User Interface where the operation of such Direct User Interface is detrimental to the Platform, the Platform Software, Users, IntercontinentalExchange or the Exchange

## 6 Sub-contractors

The Exchange shall be entitled to appoint such sub-contractors as it shall deem fit to carry out the whole or any part of its obligations hereunder, it being understood that the appointment of such sub-contractors by the Exchange shall not limit the Exchange's obligations under the terms of this Agreement.

## 7 Liability

- 7.1 Otherwise than as detailed in this Agreement, the Exchange does not guarantee the sequence, timeliness, accuracy or completeness of any of the Exchange's Market Data or Trade Capture Data nor guarantee the accuracy, responsiveness or completeness of the Platform, the Platform Software or the Related Documentation.
- 7.2 THE APPLICANT ACKNOWLEDGES THAT THE PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION, ACCESS TO ANY INTERFACE AND ANY THE EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THEM, ARE PROVIDED "AS IS". EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ICE FUTURES CANADA, INC., INTERCONTINENTALEXCHANGE, INC., AND THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, AND LICENSORS OF THE EXCHANGE AND INTERCONTINENTALEXCHANGE (THE "**DISCLAIMING PARTIES**"), MAKE NO, AND HEREBY DISCLAIM ALL, WARRANTIES, CONDITIONS, UNDERTAKINGS, TERMS OR REPRESENTATIONS,

Direct Access Trading Participant Application/Agreement

EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, IN RELATION TO THE PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION AND ACCESS TO ANY INTERFACE OR ANY PARTS OR PARTS OF THE SAME. THE DISCLAIMING PARTIES SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT (EXCEPT AS OTHERWISE PROVIDED HEREIN). THE DISCLAIMING PARTIES FURTHER DISCLAIM ALL WARRANTIES, IMPLIED OR OTHERWISE, RELATING TO ANY THIRD PARTY MATERIALS (EXCEPT

AS OTHERWISE PROVIDED HEREIN). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE EXCHANGE SHALL CREATE A WARRANTY AND THE USER MAY NOT RELY UPON SUCH INFORMATION OR ADVICE EXCEPT TO THE EXTENT SPECIFIED IN THIS AGREEMENT.

7.3 NONE OF THE DISCLAIMING PARTIES SHALL BE LIABLE IN ANY WAY TO THE APPLICANT OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES, LOSS OF PROFITS, GOODWILL, LOSS OF USE OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THEY WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO :

- (a) ANY FAULTS WITH THE PLATFORM OR PLATFORM SOFTWARE, HOWEVER THOSE FAULTS MAY ARISE;
- (b) THE SUSPENSION, TERMINATION OR INABILITY TO ACCESS OR USE THE PLATFORM OR PLATFORM SOFTWARE OR ANY INACCURACIES OR OMISSIONS IN ANY INFORMATION PROVIDED, HOWEVER SUCH SUSPENSION, TERMINATION, INABILITY TO ACCESS, INACCURACY OR OMISSION MAY ARISE;
- (c) ANY FAILURE OR DELAY SUFFERED BY THE APPLICANT OR ANY RESPONSIBLE INDIVIDUAL THAT RECEIVES ACCESS TO THE PLATFORM THROUGH THE DATP'S INTERFACE OR THE ICE INTERFACE;
- (d) ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF OR INABILITY TO USE ALL OR ANY PART OF THE PLATFORM OR PLATFORM SOFTWARE;
- (e) ANY LOSSES RESULTING FROM UNAUTHORIZED ACCESS, ALTERATION, OR ANY OTHER MISUSE OF THE PLATFORM SOFTWARE OR THE PLATFORM; OR
- (f) ANY INJURIOUS ACT, DEFAULT, OR OMISSION UNLESS SUCH ACT, DEFAULT OR OMISSION WAS THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE DISCLAIMING PARTY OR PARTIES SOUGHT TO BE HELD LIABLE THEREFOR.

7.4 In no circumstances shall either the Exchange or ICE, nor any of its own officers, directors, employees, agents, or licensors be liable to the other party or any other person or entity for any indirect; incidental; consequential damages or punitive damages; or damages for loss of profits or goodwill, even if it has been advised of the possibility of

Direct Access Trading Participant Application/Agreement

these damages and even if the damages are due to the other party's error, omission or negligence.

- 7.5 Subject in all cases to the foregoing, the maximum aggregate liability of the Exchange to the User for any and all claims made by the User in relation to this Agreement in any calendar year shall be ten thousand dollars (\$10,000), however that liability arises, including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.
- 7.6 Each Party shall notify the other of any claim arising under or in connection with this Agreement within one (1) calendar month of the date on which it becomes aware of the specific act, fact, circumstance or event which gave rise to the claim. Neither party shall have any liability to the other for any such claim notified after such one (1) month period.

**8 The Applicant's Indemnification**

The Applicant agrees to indemnify, protect and hold harmless the Disclaiming Parties for any and all losses, damages, expenses and costs, including reasonable legal fees, arising from a claim, suit or other proceeding made or instituted by any Regulatory Authority, person or entity arising from:

- (a) unauthorized access to, or use of the Platform or the Platform Software; or
- (b) unauthorized access to or use of the Applicant's Interface or the ICE Interface to access the Platform, or unauthorized access to or use of the Materials, that causes damage to the Platform, the Platform Software, any other participant, User or the Exchange; or
- (c) any breach of Clause 4.8 which gives rise to liability due to inaccurate or incomplete disclosure; or
- (d) any unauthorized use of the Materials.

**9 Term and Termination**

- 9.1 This Agreement shall take effect when signed by both 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 unless terminated in accordance with this Agreement.
- 9.2 A party shall have the right to terminate this Agreement forthwith by giving written notice to the other party if the other party makes any arrangement or composition with its creditors or if a bankruptcy petition is presented or if a receiving order is made against it or if, being a company, an order is made or a resolution is passed for the winding-up of the other party or an order is made for the appointment of an administrator to manage the other party's affairs, business and property, or if a receiver is appointed in respect of any of the other party's assets or undertaking, or if circumstances arise which entitle the Court or a creditor to appoint an administrative receiver, receiver or manager or which entitle the Court to make a winding-up order, or if the other party takes or suffers any similar or analogous action in consequence of debt in any part of the world.

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

9.3 The Exchange may terminate this Agreement at any time upon the occurrence of any of the events specified in subsections (i) through (vii) of this clause 9.3. Such action shall in all events be without liability to the Exchange as a consequence thereof. The Exchange's right to take such action pursuant to subsections (i) and (ii) shall take effect ten (10) days from notice by the Exchange that the event listed in such subsection has occurred, unless the Applicant cures such breach within such notice period. The Exchange's right to take such action pursuant to subsections (iii) through (x) shall be immediate and without prior notice by the Exchange Pursuant to this clause 9.3, the Exchange may terminate this Agreement or suspend access to the Platform if:

- (i) any fees or other amounts due to the Exchange hereunder or otherwise pursuant to the Exchange Rules are past due;
- (ii) the Applicant breaches any material obligation of this Agreement;
- (iii) such termination is required by applicable law or regulation or Court order;
- (iv) such termination is provided by the Exchange Rules or by order of any applicable committee of the Exchange;
- (v) the death of the Applicant (if an individual);
- (vi) if the Applicant is a Clearing Participant, termination of the Applicant's status as a Clearing Participant in accordance with the Exchange Rules and/or the rules of ICE Clear Canada, Inc. unless the Applicant, prior to termination of its Clearing Participant status, registers a new Clearing Authorization and Guaranty with the Exchange or is granted Systems Managed Account access by another Clearing Participant.
- (vii) if the Applicant is not a Clearing Participant, termination of DATP's clearing relationship with a Clearing Participant of ICE Clear Canada, Inc.;
- (viii) the termination of the applicant's relationship with a Direct Access User unless, prior to, or simultaneously with such termination, the Applicant obtains the facilities of another approved Direct Access User and provides notice to the Exchange; and
- (ix) pursuant to the provisions of clauses 5.2 and 12.2, respectively, of this Agreement.

9.4 The Applicant may terminate this Agreement on giving thirty (30) days' written notice to the Exchange.

## 10 Consequences of Termination

Any termination of this Agreement shall be without prejudice to the accrued rights of the parties as at the date of such termination, and to the continuation in force of all

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

provisions of this Agreement expressed to survive such termination, including, but not limited to, Clauses 3, 4, 7, 8, 20 and 22 of Part B.

**11 Suspension of Access to Platform**

The Applicant accepts and acknowledges that the Exchange shall have the right, whether in accordance with the rights reserved to the Exchange under the terms of the Exchange Rules or in accordance with its contractual rights under this Agreement, to immediately discontinue access by an Applicant (including any Responsible Individuals and Customers trading through such Applicant) to the Platform until further notice.

**12 Amendments**

12.1 The Exchange may in its sole discretion amend any provision of this Agreement by notice to the Applicant, where failure to do so will or would be likely to give rise to a breach of the rules and regulations of an applicable Regulatory Authority by the Exchange. The Applicant 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 at all times.

12.2 The Exchange may further amend the provisions of this Agreement by notice sent in accordance with Clause 16 to the listed recipient, who shall be referred to as the "Notice Recipient". The amendment to this Agreement contained within the notice sent to the Notice Recipient shall be effective one (1) month subsequent to receipt of the notice by the Notice Recipient ("the Amendment Effective Date"), unless the Notice Recipient raises a substantive objection to the amendment before the Amendment Effective Date. If a substantive objection is raised by the Notice Recipient prior to the Amendment Effective Date, then the Exchange shall have the discretion to suspend the Applicant's access to the Platform from the Amendment Effective Date until such time that the Applicant has confirmed its acceptance of the relevant amendment in writing to the Exchange. In the event that the Applicant has not signified its acceptance of the amendment in writing to the Exchange by the date six (6) months subsequent to the Amendment Effective Date, then the Exchange reserves the right to terminate this Agreement on one (1) month's notice to the Applicant.

**13 Waiver**

The failure of a party hereto to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

**14 Assignment**

14.1 The Applicant may not assign this Agreement without the prior written consent of the Exchange.

14.2 The Exchange may assign or transfer its rights, obligations and duties under this Agreement, without prior notice and in its absolute discretion, to any entity:

Form 1-C2013

Direct Access Trading Participant Application/Agreement

- (a) controlling, controlled by, or under common control with the Exchange; or
- (b) which succeeds to all or substantially all of the assets and business of the Exchange

The Exchange may otherwise assign or transfer its rights, obligations and duties under this Agreement following no less than one (1) month prior written notice to the Applicant of its intention to do so.

**15 Severability**

If, at any time, any provision of this Agreement, or any portion thereof, is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

**16 Notices**

All notices or communications to be delivered under or with respect to this Agreement shall be delivered to all parties as set out herein, and be in writing and either be:

- (a) hand delivered or forwarded by registered mail to the last known address of the Applicant; or
- (b) sent via electronic mail,

In the event of any notice being required to be sent to a party under the terms of this Agreement, then such notice shall be addressed as follows:

If to the Exchange:

Name: Sheryl Silverberg / Participant Services  
Address: 850A Pembina Highway, Winnipeg, Manitoba R3M 2M7  
Telephone: (204) 925-5002  
Fax No.: (204) 925-5014  
E-mail: [sheryl.silverberg@theice.com](mailto:sheryl.silverberg@theice.com)

If to the DATP: **[NOTE: IF THIS IS NOT COMPLETED – SERVICE MAY BE EFFECTED ON ANY ONE OF THE RESPONSIBLE INDIVIDUALS APPOINTED BY THE DATP.]**

Name:  
Address:  
Telephone:  
Fax No.:  
E-mail:

Notices shall be deemed to have been served at 9 am in Winnipeg, Manitoba on the Business Day following the date of sending where the notice is sent by hand or electronic mail, or 9 am in Winnipeg, Manitoba on the third Business Day following the date of sending where the notice is sent by registered mail.



Direct Access Trading Participant Application/Agreement

Notices served on an Applicant shall be deemed effective on any Customer, Responsible Individual or Approved Affiliate of such Applicant.

**17 Remedies Not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the Exchange Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

**18 Third Party Rights**

IntercontinentalExchange shall be a third party beneficiary of this Agreement, thereby entitled to receive the rights of the Exchange and enforce the provisions of this Agreement against the Applicant or any other Person, to the same extent as if ICE had been a signatory to this Agreement, in the courts and under the laws of the Province of Manitoba, without giving effect to the principles of conflicts of laws thereof. Notwithstanding the foregoing, nothing in this Agreement will impose directly upon ICE any of the obligations of the Exchange set forth herein.

**19 Regulatory Requirements**

19.1 It shall not be the responsibility of the Exchange to inform Applicants or their employees or Customers of regulatory requirements including without limitation, all regulatory, audit trail, record keeping and record retention requirements to which they may be subject (in any jurisdiction) and no such inference or interpretation shall be drawn from the terms and conditions of this Agreement. The Applicant shall assume all responsibility for keeping itself fully informed of all such Exchange Rules, rules, requirements, policies and laws.

19.2 In particular, the Applicant acknowledges that portions of the Platform Software and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. The Applicant will:

- (a) comply with all legal requirements established under these controls;
- (b) co-operate fully with ICE in any official or unofficial audit or inspection that relates to these controls; and
- (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to the countries of Cuba, Iran, Iraq, Libya, Sudan, Syria, or Afghanistan ("**Prohibited Countries**") (as such list of Prohibited Countries may be amended from time to time in accordance with the Office of Foreign Asset Control Restrictions published by the US Department of Treasury), or any national thereof or to any country or national thereof that is embargoed by Executive Order.

Direct Access Trading Participant Application/Agreement

The Applicant represents and warrants that it will not use the Platform Software in any such country nor will it permit any national of any such country to use the Platform Software for any purpose at any time.

**20 Governing Law and Jurisdiction**

20.1 This Agreement is deemed entered into, and shall be governed by and construed in accordance with, the laws of the Province of Manitoba without giving effect to principles of conflicts of laws thereof, and the laws of Canada, as applicable. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is hereby disclaimed.

20.2 The Applicant consents and agrees, and hereby submits to the general and exclusive jurisdiction of the federal and provincial courts of the Province of Manitoba and agrees to commence any action, suit or proceeding in the Court of Queen's Bench in the City of Winnipeg, Manitoba and waives any objection to venue in any such jurisdiction 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. Nothing contained in this clause shall limit the right of the Exchange to commence any action, suit or proceeding against a non-US Applicant in any other court of competent jurisdiction in which such non-US Applicant is located.

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

**21 Force Majeure**

Other than an obligation of payment under the terms of this Agreement and without prejudice to the Exchange's rights under the terms of the Exchange Rules, a party is not 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, war, acts of terrorism, armed conflict, labor 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.

**22 Confidentiality**

22.1 In Clause 22, "**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the "**Disclosing Party**") to another party (the "**Receiving Party**") whether before or after the date of this Agreement including, without limitation, the Platform Software, Related Documentation, Materials and all information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs and information distributed, used, disseminated or accessed under the terms of this Agreement.

22.2 During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:

- (a) may not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;

## Form 1-C2013

### Direct Access Trading Participant Application/Agreement

- (b) may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clauses 22.3 and 22.4; and
  - (c) shall make every effort to prevent the unauthorized use or disclosure of Confidential Information.
- 22.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its officers, employees, agents, representatives and sub-contractors, or to any court of law or Regulatory Authority, (a "Recipient") to the extent that disclosure is:
- (a) necessary for the purposes of this Agreement or the Exchange Rules; or
  - (b) required by a court of law; or
  - (c) required to ensure compliance by the Receiving Party with its regulatory obligations or as requested by its Regulatory Authority as applicable.
- 22.4 The Receiving Party shall ensure that any Recipient (other than a court of law or Regulatory Authority) is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 22.5 Clauses 22.2 to 22.4 do not apply to Confidential Information which:
- (a) is at the date of this Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or Recipient's breach of this Agreement; or
  - (b) can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party.

## **23 Data Protection**

Both parties shall observe relevant statutory data protection obligations as applicable to them in relation to relevant data that they receive in connection with this Agreement.

## **24 Further Assurance**

The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

**25 Counterparts**

This Agreement may be executed in counterparts by the Parties, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. A complete set of counterparts shall be lodged with each Party.

DATED at the City of \_\_\_\_\_ Province/State of \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Type Full Legal Name of Direct Access  
Trading Participant Applicant)

per: \_\_\_\_\_  
(Authorized Signatory)

\_\_\_\_\_  
(Type Full Name of Authorized Signatory)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Type Address of Authorized Signatory)

\_\_\_\_\_  
(Type Phone Number)

\_\_\_\_\_  
(Type Fax Number)

\_\_\_\_\_  
(Type E-Mail)

Accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the City of  
Winnipeg, in the Province of Manitoba.

**ICE Futures Canada, Inc.**

Per: \_\_\_\_\_

\_\_\_\_\_  
(Name and Title of Authorized Signatory)

**Schedule "A"**  
**Application/Agreement for DATP Status**

**Appointment of one or more Authorized Representative in accordance  
with the Exchange Rule 4D.08**

Initial Filing       Update Filing      Date: \_\_\_\_\_

To: ICE Futures Canada, Inc.  
850A Pembina Highway  
Winnipeg, Manitoba R3M 2M7

Attention: Sheryl Silverberg  
fax # (204) 925-5014

\_\_\_\_\_ (the "DATP") hereby designates each of the individuals named below as Authorized Representative authorized to act on behalf of the DATP for all purposes. Each Authorized Representative has completed the information required, and will keep it updated:

**An Authorized Representative, in accordance with Rule 4D.08 Appointment of Authorized Representative, shall be:**

- **A Senior Officer; or**
  - **A Director; or**
  - **A Partner**
- of the Applicant**

**The Authorized Representative shall represent the DATP in all dealings with the Exchange, with full authority to speak for and bind the DATP; and ensure that the DATP and its partners, shareholders, directors, officers and employees of the DATP comply with Exchange rules and requirements.**

Authorized Representative

1. \_\_\_\_\_

<b>Name</b>	<b>Title</b>	<b>Specimen Signature</b>
_____	_____	_____
<b>Work #</b>	<b>Fax #</b>	<b>Cell #</b>
_____	_____	_____
<b>E-mail</b>	<b>Blackberry</b>	<b>Main Switchboard #</b>
_____	_____	
<b>Other #s Cottage</b>	<b>Home</b>	
_____	_____	

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

2.

_____	_____	_____
<b>Name</b>	<b>Title</b>	<b>Specimen Signature</b>
_____	_____	_____
<b>Work #</b>	<b>Fax #</b>	<b>Cell #</b>
_____	_____	_____
<b>E-mail</b>	<b>Blackberry</b>	<b>Main Switchboard #</b>
_____	_____	
<b>Other #s Cottage</b>	<b>Home</b>	

The Exchange shall be entitled to rely upon this designation of Authorized Representatives until any changes are notified to the Exchange, in writing, in accordance with the Rules.

Form 1-C2013  
 Direct Access Trading Participant Application/Agreement  
**Schedule "B"**  
**Application for DATP Status**  
**Designation of Responsible Individuals**

Initial Filing       Update Filing      Date: \_\_\_\_\_

To: ICE Futures Canada, Inc.  
 850A Pembina Highway  
 Winnipeg, MB R3M 2M7

**Attention: Sheryl Silverberg**  
**fax # (204) 925-5014**

\_\_\_\_\_ (the "DATP") hereby designates each of the individuals named below as Responsible Individuals authorized to act on behalf of the DATP for all purposes relative to clearing and the operations of the Exchange.

**Rules 4B.02 and 8B.02 require that each DATP appoint a minimum of two Responsible Individuals who shall be responsible for all matters concerning the Trading System. It is the responsibility of the DATP to ensure that this information is maintained and consistently and that the Responsible Individuals it appoints fully understand their duties and responsibilities.**

Responsible Individuals:

1. \_\_\_\_\_  
 Name Title Address  
 \_\_\_\_\_  
 Work # Fax # Cell #  
 \_\_\_\_\_  
 E-mail Blackberry  
 \_\_\_\_\_  
 Other #s Cottage Home

2. \_\_\_\_\_  
 Name Title Address  
 \_\_\_\_\_  
 Work # Fax # Cell #  
 \_\_\_\_\_  
 E-mail Blackberry  
 \_\_\_\_\_  
 Other #s Cottage Home

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

3. \_\_\_\_\_  
Name Title Address

\_\_\_\_\_

Work # Fax # Cell #

\_\_\_\_\_

E-mail Blackberry

\_\_\_\_\_

Other #s Cottage Home

4. \_\_\_\_\_  
Name Title Address

\_\_\_\_\_

Work # Fax # Cell #

\_\_\_\_\_

E-mail Blackberry

\_\_\_\_\_

Other #s Cottage Home

The Exchange shall be entitled to rely upon this designation of Responsible Individuals until any changes are notified to the Exchange, in writing, in accordance with the Rules.



**Certified Copy of a Resolution of the DATP's Board of Directors**

Re: Direct Access Trading Participant status on ICE Futures Canada, Inc.

It has been resolved that;

The Corporation be and is hereby authorized to apply to become a Direct Access Trading Participant on ICE Futures Canada, Inc. ("ICE Futures Canada") and to complete the Application/Agreement and forms prescribed by ICE Futures Canada.

Any one director or officer of the Corporation shall be and is hereby authorized to execute for, in the name of, and on behalf of the Corporation, the Application/Agreement required by ICE Futures Canada and is authorized to execute such other agreements, documents or instruments as are necessary for the purposes of the Corporation becoming a Direct Access Trading Participant on ICE Futures Canada; and

Upon acceptance, execution and delivery of the Application/Agreement by ICE Futures Canada, same will constitute a binding and enforceable agreement of the Corporation pursuant to its terms and conditions.

The undersigned, \_\_\_\_\_, being the \_\_\_\_\_ ("Title") of \_\_\_\_\_ (the "Corporation") hereby certifies that the foregoing is a true and correct copy of the resolution passed by the Board of Directors of the Corporation at a meeting duly called and held on \_\_\_\_\_, 20 \_\_\_\_\_ at which a quorum was present and acting throughout, and that such resolution remains in full force and effect, unchanged.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ .

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name – Please Print)

\_\_\_\_\_  
(Title)

**ICE Futures Canada, Inc.  
Partnership Certificate**

The undersigned, a general partner of \_\_\_\_\_, a partnership duly organized and validly existing under the laws of the Province (State) of \_\_\_\_\_, (Country) \_\_\_\_\_ (the "Partnership") hereby certified to ICE Futures Canada, Inc.

1. Each of the following persons is a general partner in the Partnership, and the signature next to the name of each such person is the genuine signature of each such person, respectively (attach additional sheets, if necessary):

<b>Name</b>	<b>Signature</b>
_____	_____
_____	_____
_____	_____
_____	_____

2. Each of the general partners listed in paragraph 1, acting alone, is authorized, in the name and on behalf of the Partnership and its partners, to take all such actions as may be necessary or appropriate to enable the Partnership to become a registered Direct Access Trading Participant of ICE Futures Canada, Inc. including, without limitation:
- a) Executing and delivering a Direct Access Trading Participant Application/Agreement on behalf of the Partnership, in the form provided by ICE Futures Canada, Inc.; and
  - b) Executing and delivering such other agreements and such other application forms, instruments and documents, and taking such other action, as any such partner may be deemed necessary or appropriate in connection with obtaining Direct Access Trading Participant status in ICE Futures Canada, Inc.

**IN WITNESS WHEREOF, the undersigned has executed this certificate on this**  
**day of \_\_\_\_\_, 20\_\_\_\_\_.**

\_\_\_\_\_  
**General Partner**

**OPINION OF COUNSEL**

**(To be furnished on law firm's letterhead)**

**Attention: Corporate Secretary**

ICE Futures Canada, Inc.  
850A Pembina Highway  
Winnipeg, Manitoba  
R3M 2M7

Sirs:

This opinion is addressed to you in connection with the request of \_\_\_\_\_  
{name of firm} (the "Applicant") to become registered as a Direct Access Trading Participant  
with ICE Futures Canada, Inc. For purposes of rendering this opinion to ICE Futures Canada,  
Inc. we have reviewed such laws and regulations and examined such documents and records  
that we have deemed necessary. I have reviewed the application/agreement signed by the  
LLC, in the form attached hereto. Based upon, and subject to the foregoing, it is our opinion  
that:

- (1) The Applicant is a Limited Liability Company, duly organized and validly existing under  
the laws of the State/Province of: \_\_\_\_\_
- (2) The Application/Agreement for Direct Access Trading Participant Status has been duly  
authorized, executed and delivered by the Applicant.
- (3) The Application/Agreement has been duly executed and delivered by the Applicant and  
constitutes a valid and binding agreement of the Applicant.

This opinion is rendered to ICE Futures Canada, Inc. solely for its benefit and may not be relied  
upon by any other person for any purpose without our prior written consent.

Yours truly,

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**Clearing Authorization and Guaranty**

**Part I – (Clearing Participant to complete)**

In order to induce ICE Futures Canada, Inc. (the “Exchange”) to grant, or to continue to grant, Direct Access Trading Participant registration status and privileges to \_\_\_\_\_ (the “DATP”) and in order to permit the undersigned Clearing Participant to provide clearing services to the DATP pursuant to the provisions of the Rules of the Exchange and the Rules of ICE Clear Canada, Inc. (the “Clearinghouse”) the undersigned Clearing Participant hereby acknowledges and agrees that:

1. It will accept for clearance all Exchange transactions, including Exchange transactions entered through the Trading System and those entered outside the Trading System, effected by the DATP, and/or its employees and customers, when and as provided for in the Exchange Rules and/or the Clearinghouse Rules.
2. It will comply, on a timely basis, with the provisions of the Rules of the Exchange and the Rules of the Clearinghouse and furnish such information as the Exchange and/or the Clearinghouse may from time to time request.
3. It will pay all claims by the Exchange and/or the Clearinghouse against the DATP, its employees and customers, arising under the Exchange Rules and the Rules of the Clearinghouse, including all fees, but excluding disciplinary fines or penalties imposed under the Rules of the Exchange and the Rules of the Clearinghouse.
4. This Clearing Authorization and Guaranty provides for a guarantee of payment, not collection. This Clearing Authorization and Guaranty may be enforced against the Clearing Participant without necessity of any prior efforts of enforcement by the Exchange and/or the Clearinghouse as against the DATP.
5. This Clearing Authorization and Guaranty shall continue in full force and effect until cancelled or terminated as provided for in the Exchange Rules and the Rules of the Clearinghouse, provided, however, that no such termination or cancellation shall in any manner affect the Clearing Participant’s obligations under the provisions of this Clearing Authorization and Guaranty with respect to any obligations and liabilities incurred by the DATP and/or its employees and customers, prior to the effective date and time of such cancellation or termination.
6. This Clearing Authorization and Guaranty shall be governed by, and construed under and in accordance with, the laws of the Province of Manitoba (without regard to the principles of conflicts of laws), and it shall be binding upon the successors and assigns of the Clearing Participant and shall inure to the benefit of the successors and assigns of the Exchange and of the Clearinghouse.
7. All terms and provisions herein shall have the meanings ascribed thereto in the Exchange Rules and the Rules of the Clearinghouse unless otherwise defined herein.

Dated at the City of \_\_\_\_\_, Province/State of \_\_\_\_\_, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(type the full legal name of the Clearing Participant)

Per: \_\_\_\_\_

\_\_\_\_\_  
(type full name and position of authorized signatory)

Form 1-C2013

Direct Access Trading Participant Application/Agreement

Part II – (Direct Access Trading Participant to complete)

In order to induce ICE Futures Canada, Inc. (the "Exchange") to grant, or to continue to grant, Direct Access Trading Participant registration status and privileges to \_\_\_\_\_, (herein the "DATP"), the undersigned DATP hereby acknowledges and agrees that:

1. Business conducted on the Exchange is subject to the Exchange Rules, all Exchange agreements including the Direct Access Trading Participant Application/Agreement, and other regulatory requirements as may be applicable to such business;
2. It shall comply with all Exchange Rules, the terms of all other Exchange agreements, including the Direct Access Trading Participant Application/Agreement, and all other applicable regulatory requirements;
3. It has appointed a minimum of two (2) individuals to act as Responsible Individuals, as that term is defined in the Exchange Rules and/or the Clearinghouse Rules and will ensure such individuals have the corporate power, authority and jurisdiction consistent with the obligations of a Responsible Individual as set out in the Exchange Rules;
4. It will clear all its Exchange transactions, both Trading System and Ancillary Transactions, through \_\_\_\_\_ (the "Clearing Participant") unless it obtains and registers with the Exchange, another written Clearing Authorization and Guaranty;
5. It will advise the Exchange and the Clearinghouse immediately in the event it becomes aware of any potential change to its Clearing Authorization and Guaranty, including its Clearing Participant advising that it intends to terminate the Clearing Authorization and Guaranty.
6. It will not set up accounts with any other Clearing participant, clear, or attempt to clear through any other Clearing Participant, without the prior written consent of the Exchange and the Clearinghouse by way of a written Clearing Authorization and Guaranty.

Dated at the City of \_\_\_\_\_, Province/State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(full legal name of Direct Access Trading Participant)

Per: \_\_\_\_\_  
(authorized signatory)

\_\_\_\_\_  
(type full legal name of authorized signatory and position)

**APPROVED**

**ICE Futures Canada, Inc.**

Date: \_\_\_\_\_

Per: \_\_\_\_\_

**ICE Clear Canada, Inc.**

Date: \_\_\_\_\_

Per: \_\_\_\_\_



**Clearing Authorization and Guaranty**

**Part I - (Clearing Participant to complete)**

In order to induce ICE Futures Canada, Inc. (the "Exchange") to grant, or to continue to grant, Direct Access Trading Participant registration status and privileges to \_\_\_\_\_ (the "DATP") and in order to permit the undersigned Clearing Participant to provide clearing services to the DATP pursuant to the provisions of the Rules of the Exchange and the Rules of ICE Clear Canada, Inc. (the "Clearinghouse") the undersigned Clearing Participant hereby acknowledges and agrees that:

1. It will accept for clearance all Exchange transactions, including Exchange transactions entered through the Trading System and those entered outside the Trading System, which are effected by the DATP, and/or its employees and customers, via the DATP's registered Member Mnemonic (MM) (also referred to as a "RIM"), or via one or more SMAs provided by the Clearing Participant to the DATP or to a client of the DATP, which transactions have been directed to the Clearing Participant's Clearing Member Mnemonic all as provided for in the Exchange Rules and/or the Clearinghouse Rules. The Clearing Participant has been advised that the DATP has registered at least one other Clearing Authorization and Guaranty form with the Exchange. The Clearing Participant agrees that it will not issue any SMAs to a client of the DATP without the DATP's written consent.
2. It will comply, on a timely basis, with the provisions of the Rules of the Exchange and the Rules of the Clearinghouse and furnish such information as the Exchange and/or the Clearinghouse may from time to time request.
3. It will pay all claims by the Exchange and/or the Clearinghouse against the DATP, its employees and customers, arising under the Exchange Rules and the Rules of the Clearinghouse, including all fees for Transactions directed to the Clearing Member Mnemonic of the Clearing Participant, but excluding disciplinary fines or penalties imposed under the Rules of the Exchange and the Rules of the Clearinghouse.
4. This Clearing Authorization and Guaranty provides for a guarantee of payment, not collection. This Clearing Authorization and Guaranty may be enforced against the Clearing Participant without necessity of any prior efforts of enforcement by the Exchange and/or the Clearinghouse as against the DATP.
5. This Clearing Authorization and Guaranty shall continue in full force and effect until cancelled or terminated as provided for in the Exchange Rules and the Rules of the Clearinghouse, provided, however, that no such termination or cancellation shall in any manner affect the Clearing Participant's obligations under the provisions of this Clearing Authorization and Guaranty with respect to any obligations and liabilities incurred by the DATP and/or its employees and customers, prior to the effective date and time of such cancellation or termination.
6. This Clearing Authorization and Guaranty shall be governed by, and construed under and in accordance with, the laws of the Province of Manitoba (without regard to the principles of conflicts of laws), and it shall be binding upon the successors and assigns of the Clearing Participant and shall inure to the benefit of the successors and assigns of the Exchange and of the Clearinghouse.

All terms and provisions herein shall have the meanings ascribed thereto in the Exchange Rules and the Rules of the Clearinghouse unless otherwise defined herein.

Dated at the City of \_\_\_\_\_, Province/State of \_\_\_\_\_, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(type the full legal name of the Clearing Participant)

Per: \_\_\_\_\_

\_\_\_\_\_  
(type full name and position of authorized signatory)

Form 1-C2013  
Direct Access Trading Participant Application/Agreement

Part II - (Direct Access Trading Participant to complete)

In order to induce ICE Futures Canada, Inc. (the "Exchange") to grant, or to continue to grant, Direct Access Trading Participant registration status and privileges to \_\_\_\_\_, (herein the "DATP"), the undersigned DATP hereby acknowledges and agrees that:

1. Business conducted on the Exchange is subject to the Exchange Rules, all Exchange agreements including the Direct Access Trading Participant Application/Agreement signed by the DATP, and other regulatory requirements as may be applicable to such business;
2. It shall comply with all Exchange Rules, the terms of all other Exchange agreements, including the Direct Access Trading Participant Application/Agreement, and all other applicable regulatory requirements;
3. It has appointed a minimum of two (2) individuals to act as Responsible Individuals, as that term is defined in the Exchange Rules and/or the Clearinghouse Rules and will ensure such individuals have the corporate power, authority and jurisdiction consistent with the obligations of a Responsible Individual as set out in the Exchange Rules, subject to any written exemption received;
4. It will clear certain of its Exchange transactions, both Trading System and Ancillary Transactions, through \_\_\_\_\_ (the "Clearing Participant"). The DATP has filed, or is in the process of filing a second Clearing Authorization and Guaranty form which will govern the trading and Transactions that it conducts under that Clearing Participant's Clearing Member Mnemonic. The DATP will not set up accounts with any other Clearing Participant(s), clear, or attempt to clear through any other Clearing Participant(s), without the prior written consent of the Exchange and the Clearinghouse by way of a written and registered Clearing Authorization and Guaranty.
5. It will advise the Exchange and the Clearinghouse immediately in the event it becomes aware of any potential change to its Clearing Authorization and Guaranty form(s), including a situation whereby its Clearing Participant advises that it intends to terminate the Clearing Authorization and Guaranty.

Dated at the City of \_\_\_\_\_, Province/State of \_\_\_\_\_, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(full legal name of Direct Access Trading Participant)

Per: \_\_\_\_\_ (authorized signatory)

\_\_\_\_\_  
(type full legal name of authorized signatory and position)

**APPROVED**

**ICE Futures Canada, Inc.**

**Date:** \_\_\_\_\_

**Per:** \_\_\_\_\_

**ICE Clear Canada, Inc.**

**Date:** \_\_\_\_\_

**Per:** \_\_\_\_\_

Form 1-C2013  
 Direct Access Trading Participant Application/Agreement

<b>ICE Futures Canada - Revenue Ruling Submission Template</b>				
Information required in connection with the designation of ICE Futures Canada as a “qualified board or exchange” within the meaning of §1256(g)(7)(C) of the US Internal Revenue Code (please provide answers to the numbered questions below in the space provided, and submit the completed template signed as appropriate in accordance with the instructions below).				
1	Exchange Participant Name:			
2	Exchange Participant’s United States Tax Identification Number:			
3	Executive Officers – please provide details of those employees with executive responsibility at board level and further on a day to day basis, providing names and executive title as appropriate):	Name: ..... Title:	Name: ..... Title:	Name: ..... Title:
		Name: ..... Title:	Name: ..... Title:	Name: ..... Title:
		Name: ..... Title:	Name: ..... Title:	Name: ..... Title:
I, the Authorized Representative for the Exchange Participant, certify that the above information is provided in good faith and is, to the best of my knowledge and belief, correct:				
Signed: .....		Title: .....		
Print Name: .....		Date: .....		
Please direct any queries that you have in relation to the content of this template or its completion to: Linda Vincent at (204) 925-5009 or <a href="mailto:linda.vincent@theice.com">linda.vincent@theice.com</a> or Steve Teller (204) 925-5019 or <a href="mailto:steve.teller@theice.com">steve.teller@theice.com</a>				
Please fax this form to (204) 925-5014, or e-mail a completed scanned version to <a href="mailto:Sheryl.silverberg@theice.com">Sheryl.silverberg@theice.com</a> .				