

Natural Gas Exchange Inc. is a recognized exchange and clearing agency in the Province of Alberta. NGX continues to hold exemptive relief orders in certain other provinces. This documentation has not been approved by any regulatory authority.

NGX is a registered Derivatives Clearing Organization and as a Foreign Board of Trade ("FBOT") in the United States.

### **RISK DISCLOSURE STATEMENT**

The risk of loss in entering into Transactions pursuant to the Agreement can be substantial. Consideration should be given to numerous factors, including the fact that Collateral may be applied against losses. Failure to provide additional Eligible Collateral Support when required may result in the liquidation of a position reflected by any Transaction. Under certain market conditions, it may be difficult or impossible to liquidate a position. The use of leverage can lead to large losses as well as gains. This brief statement is not intended to disclose all significant risks of the natural gas, oil and power markets and Contracting Parties should carefully study commodity physicals, futures and swap trading and seek advice from their advisor(s).

## TABLE OF CONTENTS

ARTICLE 1 - INTERPRETATION .....	3
1.1 General .....	3
1.2 Definitions.....	4
1.3 Interpretation.....	19
1.4 Miscellaneous .....	20
1.5 Representations and Warranties .....	20
1.6 Standard Contracting Party Agreement.....	21
1.7 ICE Participant Agreement .....	21
1.8 Non-contra Proferentum .....	21
1.9 Taxes on Services .....	21
ARTICLE 2 - REPRESENTATIONS AND WARRANTIES.....	22
2.1 Of the Contracting Party: General.....	22
2.2 Of the Credit Support Provider: General.....	22
2.3 Of the Contracting Party: Qualification and Status.....	22
2.3(a) Special Participant.....	23
2.4 Of Exchange: General .....	23
2.5 Representations Repeated .....	24
2.6 Additional Representations of the Contracting Party.....	24
2.7 No Reliance.....	25
ARTICLE 3 – GENERAL.....	26
3.1 Application.....	26
3.2 Agreements of the Contracting Party .....	26
3.3 Eligible Collateral Support and Collateral .....	32
3.4 Agreements of Exchange .....	36
3.5 NGX Financial Power Auction System .....	38
3.6 Open Position Limits .....	38
3.7 Trades in Error .....	38
3.8 Market Makers and Liquidity Providers .....	40
3.9 Events of Default .....	40
3.10 Exchange Bankruptcy Event of Default.....	42
ARTICLE 4 - PHYSICALLY SETTLED FUTURES TRANSACTIONS AND PHYSICALLY SETTLED FUTURES PRODUCTS.....	43
4.1 Physically Settled Gas Futures Products - General .....	43
4.2 Invoices for Physically Settled Gas Futures Transactions .....	44
4.3 Physically Settled Oil Futures Products – General .....	45
4.4 Invoices for Physically Settled Oil Futures Transactions.....	46
4.5 Physically Settled Power Futures Products - General .....	47
4.6 Invoices for Physically Settled Power Futures Transactions .....	48
4.7 Early Payment of Invoices .....	49
ARTICLE 5 - RECOURSE AND LIABILITY .....	50
5.1 Failure to Deliver .....	50
5.2 Failure to Pay .....	51
5.3 Failure to Take .....	52
5.4 Failure to Provide Eligible Collateral Support.....	54
5.5 Rights of Exchange in Physically Settled Futures Transactions .....	54
5.6 Liquidation Procedure.....	55
5.7 Full Satisfaction .....	56
5.8 Limitations on Liability .....	56
5.9 No Indirect Damages .....	57
5.10 GST on Damages .....	57
5.11 Deposit Agreement .....	58
5.12 Indices .....	59

5.13	Remedies Upon an Unremedied Exchange Default or Exchange Bankruptcy Event of Default .....	59
5.14	Interpretation in relation to the U.S. Federal Deposit Insurance Exchange Improvement Act of 1991, as amended (“FDICIA”) .....	61
ARTICLE 6 –	CODE OF CONDUCT .....	63
6.1	Code of Conduct: Prohibitions.....	63
6.2	Trade Practice Oversight.....	63
6.3	Hearings .....	64
6.4	Additional Remedies Available to Exchange.....	65
6.5	Emergency Authority.....	66
6.6	Liability for Expenses .....	66
ARTICLE 7 -	TAXES .....	68
7.1	GST.....	68
7.2	Tax Legislation .....	68
7.3	Taxes.....	68
ARTICLE 8 –	FINANCIALLY SETTLED FUTURES PRODUCTS AND OPTION PRODUCTS .....	70
8.1	Financially Settled Futures Products, and Option Products - General .....	70
8.2	Rights of Exchange .....	71
8.3	Close-out Procedure.....	72
8.4	Invoices for Financially Settled Futures Products and Option Products .....	73
ARTICLE 9 -	MISCELLANEOUS.....	76
9.1	Term.....	76
9.2	Notices .....	77
9.3	Interest on Payments in Arrears .....	77
9.4	Relationship of Parties .....	78
9.5	Trading Information.....	78
9.6	Assignment .....	79
9.7	General.....	79

SCHEDULES:

Schedule “A”	-	Fee Schedule
Schedule “B”	-	Mediation and Arbitration
Schedule “C”	-	Risk Management Policy
Schedule “D”	-	NGX Product List
Schedule “E”	-	Natural Gas Options and Gas and Power Financially Settled Futures Transactions
Schedule “F”	-	Physically Settled Gas Futures Transactions – Canadian Delivery Points
Schedule “G”	-	Physically Settled Gas Futures Transactions – U.S. Delivery Points
Schedule “H”	-	Physically Settled Oil Futures Transactions
Schedule “I”	-	Forward (Bilateral) Transactions
Schedule “J”	-	Physically Settled Gas Futures Transactions – U.S. Delivery Points with Assigned Delivery
Schedule “K”	-	Physically Settled Power Futures Transactions – U.S. Delivery Points

## TERMS AND CONDITIONS

### ARTICLE 1 - INTERPRETATION

#### 1.1 General

- a. Incorporation into Agreement - The Terms and Conditions have been incorporated as part of the Agreement between the Contracting Party and Exchange. The following Schedules attached hereto are also incorporated as part of the Agreement:

Schedule "A"	-	Fee Schedule
Schedule "B"	-	Mediation and Arbitration
Schedule "C"	-	Risk Management Policy
Schedule "D"	-	NGX Product List
Schedule "E"	-	Natural Gas Options and Gas and Power Financially Settled Futures Transactions
Schedule "F"	-	Physically Settled Gas Futures Transactions – Canadian Delivery Points
Schedule "G"	-	Physically Settled Gas Futures Transactions – U.S. Delivery Points
Schedule "H"	-	Physically Settled Oil Futures Transactions
Schedule "I"	-	Forward (Bilateral) Transactions
Schedule "J"	-	Physically Settled Gas Futures Transactions – U.S. Delivery Points with Assigned Delivery
Schedule "K"	-	Physically Settled Power Futures Transactions – U.S. Delivery Points

To the extent that any Schedule (including, without limitation, any appendices thereto) conflicts with these Terms and Conditions, these Terms and Conditions shall prevail.

- b. Revision of Agreement - The Terms and Conditions and Schedules may be revised from time to time by Exchange upon notice to the Contracting Parties, such revisions to be effective for the purpose of this Agreement on the following basis:
- (i) notwithstanding any other provision contained herein, orders active on the NGX Trading System at the time the Physically Settled Futures Oil Trading Specifications are revised by Exchange shall, if applicable, be automatically amended to be consistent with the revised Physically Settled Futures Oil Trading Specifications;
  - (ii) other than as set forth above, revisions will be effective six (6) Business Days following receipt of notice by the Contracting Parties of such revision or (a) at such later date as may be designated as the Revision Effective Date (defined in Section 1.1(c)), or as may be otherwise designated in such notice, or (b) at such earlier date as may be required for compliance with applicable laws or regulations, to protect the integrity of the NGX Trading System or NGX Clearing System or for the correction of errors,

provided that any such revisions which alter adversely any rights, benefits, liabilities or Obligations of any Contracting Party, except to the extent required by applicable law or regulation, shall not be effective in respect of Transactions which are not then fully performed. Revisions to this Agreement result in the Contracting Party having certain rights of termination of this Agreement as more particularly set forth in Section 9.1.

- c. Revision Date – Any section of the Agreement which is revised from time to time will contain a revision date set forth below the applicable section which will be the effective date of such revision(s) (the “Revision Effective Date”) having accounted for the notice requirements in Section 1.1(b). A Revision Effective Date may be deleted from copies of the Agreement which are distributed ninety (90) days following any such Revision Effective Date.

## 1.2 Definitions

Capitalized words and phrases used herein shall for all purposes of this Agreement (unless there is something in the subject matter or context inconsistent therewith) have the meanings set out below or the meanings set forth in the specific section in which they are used herein:

- a. “Administrator” means such person(s) designated by each Contracting Party in accordance with Section 3.2(d) who are (i) authorized to designate employees, consultants and agents who are authorized to enter into Transactions for trading and/or clearing on behalf of the Contracting Party and thus bind the Contracting Party to their respective Obligations and (ii) are designated as an “Administrator” for this purpose;
- b. “Agreement” means, collectively, the Execution Page, the Terms and Conditions and all Schedules, each as may be amended, restated or replaced from time to time in accordance with this Agreement, which collectively shall constitute the Rules of NGX Trading and Clearing Systems;
- c. “Applicant” means an entity submitting an Application to become a Contracting Party;
- d. “Application” means the application in the form prescribed by Exchange and supporting financial and any other information provided to Exchange by an Applicant at Exchange’s request as a precondition to becoming qualified by Exchange prior to entering into this Agreement;
- e. “Approved Financial Institution” means any bank approved by Exchange with long-term, unsecured, unsubordinated debt (not supported by third party credit enhancement) with at least one credit rating of at least (i) “A” from Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or (ii) “A2” from Moody’s Investors Service, Inc., or their respective successors;
- f. “Arbitration” means the procedure described in Schedule “B”;
- g. “Authorized Representatives” has the meaning ascribed thereto in Section 3.2(d);
- h. “Available Margin Limit” has the meaning ascribed thereto in Schedule “C”;
- i. “Bank Collateral Agreement” means the agreement between Exchange and Exchange’s Principal Banker dated July 30, 2004, as may be amended, modified, restated or replaced from time to time;
- j. “Block Transaction” has the meaning ascribed thereto in Section 3.2(g);
- k. “Business Day” means any day except Saturday, Sunday and statutory holidays in the Province of Alberta, except when referred to in the context of a Physically Settled Power Futures Product with U.S. Delivery Points, where Business Day shall mean any day except Saturday, Sunday and any day upon which federal reserve banks are closed for regular business;

- l. “Buyer” means a Contracting Party or Exchange as applicable that has entered into a Physically Settled Futures Transaction in Gas, Oil or Physical Power or a Financially Settled Futures Transaction in financial power, as applicable, that has been entered: (i) on the NGX Trading System; (ii) subject to the Block Transaction provision of Section 3.2(g); or (iii) subject to its Exchange of Futures for Related Product provision under Section 3.2 f);
- m. “Call Option” means an option obligating the Option Buyer to cause an Underlying Futures Transaction to become effective if the relevant Option Exercise Conditions have, or deemed to have, been met (the “Exercise”) such that the Option Buyer becomes the buyer in the Underlying Transaction (the Buyer if a Physically Settled Futures Transaction or Financially Settled Futures Transaction and the Fixed Price Payer if a Financially Settled Futures Transaction) and, as of the Exercise, the terms and conditions applicable to such Underlying Transaction govern, all of which shall correspond to, have the particulars and will be referred to in all trading and other information generated on the NGX Trading System and NGX Clearing System by one of the designations set forth in Schedule “E”, and which option may be available on the NGX Trading System or NGX Clearing System from time to time;
- n. “Canadian Dollar” or “\$” means the lawful currency of Canada;
- o. “Cash Collateral” has the meaning ascribed thereto in Section 9(b) of Schedule “C”;
- p. “Cash Settlement Amount” means the amount payable on the Settlement Date as more particularly described in Schedule “E”;
- q. “Cash Settlement Date” means, for each Financially Settled Futures Transaction, the Business Day determined by Exchange from time to time in accordance with industry practice for such Transaction, as posted on Exchange’s Website not less than one month prior to the occurrence of such date, other than Invoices issued as a result of a Contracting Party’s Default or under the Close-out Procedure which amounts require payment immediately;
- r. “Chief Compliance Officer” shall have the meaning set out in Section 6.2 of these Terms and Conditions;
- s. “Close-out Procedure” means the procedure outlined in Section 8.3 pursuant to which the Exchange may enter into Option Transactions or any Financially Settled Futures Transaction, as the case may be, to Set-Off, in whole or in part, the Obligations of the Defaulting Party under Option Transactions or Financially Settled Futures Transactions;
- t. “Collateral” has the meaning set forth in Section 3.3(b);
- u. “Confirmation” means any Physically Settled Futures Gas Confirmation, Physically Settled Futures Oil Confirmation, Physically Settled Futures Power Confirmation, Financially Settled Futures Confirmation, Option Confirmation, Exchange of Futures for Related Product Confirmation or Forward Confirmation;
- v. “Contract Quantity” means the total quantity of gas, Physical Power or Oil to be delivered or taken during the term of a Physically Settled Futures Transaction;
- w. “Contracting Party” means the party, other than Exchange, who has become an approved participant on Exchange, and has entered into this Agreement, and “Contracting Parties” means all parties, including the Contracting Party, which have entered into a Contracting Party Agreement;

- x. “Contracting Party Affiliate” means, in relation to the Contracting Party (the “First Contracting Party”), any other Contracting Party (an “OCP”) that is controlled, directly or indirectly, by the First Contracting Party, any OCP that controls, directly or indirectly, the First Contracting Party or any OCP directly or indirectly under common control with the First Contracting Party, except as may be waived by Exchange pursuant to Exchange’s written consent; or any other OCP affiliated with the Contracting Party that does not otherwise qualify under this definition if agreed to in writing by Exchange, the OCP and the First Contracting Party. For this definition, “control” of any OCP or the First Contracting Party means ownership of a majority of the voting power of the OCP or the First Contracting Party;
- y. “Contracting Party Affiliate Default” means a Default by a Contracting Party Affiliate under a Contracting Party Agreement;
- z. “Contracting Party Agreement” has the meaning set forth in Section 1.6;
- aa. “Contracting Party Suspension” means one or more of the cancellation of any or all Orders of the Contracting Party regarding a Product and the termination of access to the NGX Trading System and the NGX Clearing System of the Contracting Party in relation to any or all Products;
- bb. “Credit Support Document” means any agreement or instrument provided by the Contracting Party or any Credit Support Provider as, or in relation to, Collateral, including, without limitation, in relation to the provision of Eligible Collateral Support or the establishment or maintenance of any Lien;
- cc. “Credit Support Provider” means any person other than the Contracting Party which provides Collateral for the Obligations of the Contracting Party;
- dd. “Critical NGX Trading System Issue” means any event or events that cause the NGX Trading System to be unavailable to multiple Contracting Parties, or an action by Exchange to make the NGX Trading System unavailable to all Contracting Parties, for a consecutive three minute period during any Trading Day, and a “Non-Critical NGX Trading System Issue” means any NGX Trading System issue that is not a Critical NGX Trading System Issue;
- ee. “Current Market Price” means, for any NGX Product, an amount determined at a particular point in time by Exchange in its sole discretion;
- ff. “Current Month Accounts Net Payable” has the meaning ascribed thereto in Schedule “C”;
- gg. “Cushing Exchanges” means Physically Settled Oil Futures Transactions which the initiating Contracting Party simultaneously offers to sell and purchase Oil as “Cushing Exchanges” in accordance with (and as further described in) Schedule “H” and Appendix 2 thereto;
- hh. “Daily Contract Quantity” or “DCQ” means the quantity of gas to be delivered or taken during each Delivery Day of a Physically Settled Gas Futures Transaction;
- ii. “Daily Financially Settled Futures” means a Futures Product which is designated as “DS” as well as “Fin” in the NGX Product List and may be made available on the NGX Trading System, and which must be cleared on the NGX Clearing System from time to time with such further particulars as applicable to such Product as set forth in the NGX Product List and in Schedule “E”;

- jj. “Daily Financially Settled Futures Settlement Amount” means the amount payable by or to a Contracting Party with respect to a Daily Financially Settled Futures Transaction as set forth in Schedule “E”;
- kk. “Daily Financially Settled Futures Settlement Net Payable” has the meaning ascribed thereto in Schedule “C”;
- ll. “Daily Financially Settled Futures Transaction” means a transaction for the purchase or sale of a Daily Financially Settled Futures, excluding Forward Transactions, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Products as set forth in the NGX Product List and Schedule “E”;
- mm. “Default” means, with respect to a Contracting Party: (i) with respect to a Physically Settled Power Futures Transaction, as determined by Exchange pursuant to Section 6 of Schedule “K”; (ii) with respect to any other transaction, any one or more of a Failure to Deliver, Failure to Pay, Failure to Take, Event of Default; Failure to Provide Eligible Collateral Support; Financially Settled Futures Party’s Default; or Option Party’s Default of such Contracting Party or a Contracting Party Affiliate Default of any of its Contracting Party Affiliates;
- nn. “Default Rate” means a fluctuating interest rate equal to the Prime Rate (for Canadian dollar Invoices) or U.S. Base Rate (for U.S. dollar Invoices) from time to time plus two percent (2%) per annum; provided, however, that the Default Rate shall never exceed the maximum lawful rate;
- oo. “Defaulting Option Party” means the Contracting Party in respect of which an Option Party’s Default or other Default has occurred under this Agreement;
- pp. “Defaulting Party” means a Contracting Party in respect of which a Default has occurred;
- qq. “Defaulting Financially Settled Futures Party” means the Contracting Party in respect of which a Financially Settled Futures Party’s Default or other Default has occurred under this Agreement;
- rr. “Delivery Day” means a day, commencing at a particular time on one day and ending at a particular time on the next day, such time being dependent upon the applicable Transportation System at the Delivery Point on which gas is to be delivered or taken as required by a Physically Settled Gas Futures Transaction;
- ss. “Delivery Period” means, for a Physically Settled Oil Futures Transaction, the period during which deliveries and takes of Oil are to occur under such Physically Settled Oil Futures Transaction, and for a Physically Settled Power Futures Transaction, shall have the meaning set out in Schedule “K” hereto;
- tt. “Delivery Point” means, for a Physically Settled Futures Transaction, the location at which the parties to such Transaction have agreed to transfer title to, deliver and take the gas, Physical Power or Oil subject to such Transaction, being the transfer point as designated by the applicable Transportation System or, in the case of a Physically Settled Power Futures Transaction, by the applicable Transmission Provider, for the Delivery Point;
- uu. “Disciplinary Committee” has the meaning set out in Section 6.2;
- vv. “Deposit Agreement” means the agreement amended and restated as of December 11, 2008 between Exchange and the Escrow Agent;



- ww. “Eligible Collateral Support” has the meaning ascribed thereto in Section 3.3(a);
- xx. “Escrow Agent” means the trustee under the Deposit Agreement;
- yy. “Event of Default” means the occurrence of any of the events set forth in Section 3.9;
- zz. “Exchange” means Natural Gas Exchange Inc., a body corporate with offices, and carrying on business, in Calgary, Alberta and any successors thereto;
- aaa. “Exchange Bankruptcy Event of Default” means the occurrence of any of the events set forth in Section 3.10;
- bbb. “Exchange Default” means the failure by Exchange to perform any of its Obligations in respect of any Transaction with the Contracting Party that is not an Unremedied Exchange Default;
- ccc. “Exchange Letter of Credit” means the letter of credit provided for the benefit of Contracting Parties who have entered into Futures Transactions, which has been deposited with the Escrow Agent pursuant to the provisions of the Deposit Agreement;
- ddd. “Exchange Letter of Credit Issuing Bank” means The Bank of Nova Scotia;

(Effective December 24, 2015, or such other date as may be designated by the Exchange upon notice to the Contracting Parties).

- eee. “Exchange of Futures for Related Product Confirmation” means the notification by Exchange as to any EFRP Transaction entered into by the Contracting Party which will include particulars of the EFRP Transaction;
- fff. “Exchange of Futures for Related Product Transactions” or “EFRP Transactions” has the meaning set out in Section 3.2(f);
- ggg. “Exchange’s Principal Banker” means The Toronto-Dominion Bank;
- hhh. “Exchange’s Website” means a site owned and maintained by Exchange available on the internet at [www.ngx.com](http://www.ngx.com);
- iii. “Excise Tax Act” means the *Excise Tax Act* (Canada);
- jjj. “Execution Page” means the execution page executed and delivered by the Contracting Party and Exchange pursuant to which the Contracting Party becomes a party to this Agreement;
- kkk. “Failure Amount” means the difference between the amount payable on any Invoice and the amount actually paid on account of any such Invoice;
- lll. “Failure Quantity” means the difference between the Contract Quantity (or any portion thereof) to be delivered or received in accordance with a Physically Settled Futures Transaction and the quantity of gas or Oil actually delivered or taken, or the quantity of Physical Power scheduled to be delivered or taken, in accordance with such Physically Settled Futures Transaction;
- mmm. “Failure to Deliver” means (i) in the case of a Physically Settled Gas Futures Transaction or Physically Settled Oil Futures Transaction, the failure of a Seller or Exchange to make delivery of any portion of the Contract Quantity to be delivered in accordance with a Physically Settled Futures Transaction as determined by the applicable Transportation System and as more

particularly set forth in Schedules “F”, “G”, “H” or “J”, as applicable; or, (ii) in the case of a Physically Settled Power Futures Transactions, a Failure to Schedule to Deliver;

- nnn. “Failure to Pay” means the failure of a Contracting Party or Exchange to make payment of any amount under any Invoice issued in accordance with this Agreement or under Section 5.13;
- ooo. “Failure to Provide Eligible Collateral Support” means the failure of a Contracting Party to provide Eligible Collateral Support when required in accordance with Section 3.3(a);
- ppp. “Failure to Schedule to Deliver” means the failure, where such failure is not due to a Force Majeure Event (as such term is defined in Schedule “K”), of a Seller or Exchange to schedule to deliver at any time prior to 2:30pm Central Prevailing Time of the day following the Physical Power Delivery Date any portion of the Contract Quantity to be scheduled in accordance with a Physically Settled Futures Power Transaction as determined by the applicable Transmission Provider and as more particularly set forth in Schedule “K”;
- qqq. “Failure to Schedule to Take” means the failure, where such failure is not due to a Force Majeure Event (as such term is defined in Schedule “K”), of a Buyer or Exchange to schedule to take at any time prior to 2:30pm Central Prevailing Time of the day following the Physical Power Delivery Date any portion of the Contract Quantity to be scheduled in accordance with a Physically Settled Futures Power Transaction as determined by the applicable Transmission Provider and as more particularly set forth in Schedule “K”;
- rrr. “Failure to Take” means (i) in the case of a Physically Settled Gas Futures Transaction or Physically Settled Oil Futures Transaction, the failure of a Buyer or Exchange to take delivery of any portion of the Contract Quantity to be received in accordance with a Physically Settled Futures Transaction as determined by the applicable Transportation System and as more particularly set forth in Schedules “F”, “G”, “H” or “J”, as applicable or, (ii) in the case of a Physically Settled Power Futures Transaction, a Failure to Schedule to Take;
- sss. “Financial Power Products” has the meaning ascribed thereto in Section 5.13(b);
- ttt. “Financially Settled Futures” means a Futures Product which is designated as “Fin” in the NGX Product List and may be made available on the NGX Trading System, and which must be cleared on the NGX Clearing System with such further particulars as are applicable in Schedule “E”;
- uuu. “Financially Settled Futures Confirmation” means the notification by Exchange as to any Financially Settled Futures Transactions entered into by the Contracting Party on a day, which will include particulars of the Financially Settled Futures Product, including the Calculation Period, Effective Date, Fixed Price, Floating Price and Notional Quantity (all as defined in Schedule “E”);
- vvv. “Financially Settled Futures Party” means a Contracting Party which has entered into a Financially Settled Futures Transaction with Exchange as either a Fixed Price Payer or a Floating Price Payer, as the case may be, of the relevant Financially Settled Futures Product;
- www. “Financially Settled Futures Party’s Default” means the occurrence of a material breach of a representation or warranty made herein by the Contracting Party or failure by the Contracting Party to perform any of its Obligations under a Financially Settled Futures Transaction;
- xxx. “Financially Settled Futures Settlement Date” means, for each Financially Settled Futures Transaction, the Business Day determined by Exchange from time to time in accordance with

industry practice for such Financially Settled Futures Transaction, as posted on Exchange's Website not less than one month prior to the occurrence of such date, other than Invoices issued as a result of a Financially Settled Futures Party's Default or under the Close-out Procedure which amounts require payment immediately;

- yyy. "Financially Settled Futures Settlement Net Payable" has the meaning ascribed thereto in Schedule "C";
- zzz. "Financially Settled Futures Transaction" means a transaction for the purchase or sale of a Financially Settled Futures the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to the relevant Products as set forth in the NGX Product List and Schedule "E";
- aaaa. "Fixed Price Payer" means, in respect of a Financially Settled Futures Transaction in financial power, the party which is obligated to make payments of amounts calculated by reference to a Fixed Price, Notional Quantity and Calculation Period (all as defined in Schedule "E"), as more particularly set forth in Schedule "E";
- bbbb. "Floating Price" has the meaning ascribed thereto in Schedule "E";
- cccc. "Floating Price Payer" means, in respect of a Financially Settled Futures Transaction in financial power, the party which is obligated to make payments from time to time of amounts calculated by reference to a Floating Price, Notional Quantity and Calculation Period (all as defined in Schedule "E"), as more particularly set forth in Schedule "E";
- dddd. "Forward Product" within the meaning of the Agreement, but not necessarily as defined under Canadian laws, means a contract or agreement of a commodity for deferred shipment or delivery upon which the Contracting Parties intend to physically settle;
- eeee. "Forward Confirmation" means the notification by Exchange as to any Forward Transaction entered into by the Contracting Party on a day, which will include particulars of the respective Forward Transaction including, without limitation, the Purchase Price, Contract Quantity, Delivery Period, Delivery Point and Product;
- ffff. "Forward Transaction" means a trade entered into from time to time directly between two Contracting Parties through the NGX Trading System, pursuant to Schedule "I", for the purchase or sale of any Forward Product, which trade is settled in accordance with the terms and conditions of the bilateral agreement between the two Contracting Parties and not cleared and settled through the NGX Clearing System;
- gggg. "Futures" within the meaning of the Agreement, but not necessarily as defined under the *Securities Act* (Alberta), means a contract or agreement for the delivery of a commodity in the future, at a price set at contract initiation, which can be used for hedging or assuming price risk and which can be settled by delivery or off-set, and which is required to be cleared by NGX and can be either a "Physically Settled Futures Product" or a "Financially Settled Futures";
- hhhh. "Gas Products" has the meaning ascribed thereto in Section 5.13(b);
- iiii. "GST" means the goods and services tax imposed under the Excise Tax Act;

- jjjj. “General Suspension” means the termination of access to the NGX Trading System and/or NGX Clearing System for all Contracting Parties in relation to some or all Products, whether on a temporary or longer basis;
- kkkk. “Guarantee” has the meaning ascribed hereto in Section 3.3(e);
- llll. “Hearing Panel” means a panel comprised of three members appointed by the Chief Compliance Officer further described in Section 6.3;
- mmmm. “ICE” means IntercontinentalExchange, Inc. or any successors thereto;
- nnnn. “ICEBlock” means the component of the ICE Trading Platform that is the portal to the NGX Clearing System and is available to submit Exchange of Futures for Related Product Transactions provided under Section 3.2(f) and Block Transactions as provided under Section 3.2(g);
- oooo. “ICEBlock Error Notice” means a notice received by Exchange from ICE with respect to an Off-Exchange Transaction submitted through ICEBlock, which requires Exchange to correct an error in the trade details or which requires the cancellation of the applicable Off-Exchange Cleared Transactions in each case such correction or cancellation arising under, and in accordance with, the terms of the applicable ICE agreements and procedures applicable to Off-Exchange Transactions submitted through ICEBlock;
- pppp. “ICE-Originated Order” means an Order entered into on the ICE Trading Platform for an ICE Forward Product in natural gas or Physical Power with a U.S delivery point that may be automatically treated as, interact with, and be matched against a bid or offer for an NGX Physically Settled Futures Product in natural gas or Physical Power, as applicable, with a U.S. delivery point if best execution would be not in an ICE Forward Product but in an NGX Physically Settled Futures Product. An ICE-Originated Order is termed by the ICE Trading Platform to be a “Clearing Enabled Order”;
- qqqq. “ICE Trading Platform” means ICE’s trading platform as defined in the ICE Participant Agreement in respect of all products other than NGX Products but, for greater clarity, excludes ICEBlock;
- rrrr. “ICE Participant Agreement” means the standard form agreement entered into between IntercontinentalExchange, Inc. and a Contracting Party, as amended, restated or replaced from time to time;
- ssss. “Invoice” means the invoice or statement as to the amount payable by or owing to a Contracting Party in respect of Obligations as more particularly described in Section 4.1, Section 4.2, Section 4.3, Section 4.4, Section 4.5, Section 4.6, Section 5.1, Section 5.2, Section 8.1, Section 8.4, Schedule “E” and Schedule “P”, as applicable;
- tttt. “Lien” means a security interest, lien, mortgage, charge, pledge, hypothecation, right of Set-Off or assignment or transfer by way of security;
- uuuu. “Liquidation Procedure” means the procedure outlined in Section 5.6 pursuant to which Exchange may enter into Physically Settled Futures Transactions to Set-Off, in whole or in part, the Obligations of the Contracting Party under Physically Settled Futures Transactions;
- vvvv. “Margin Limit” has the meaning ascribed thereto in Schedule ”C”;

- www. “Mark-to-Market Settlement Amount” means the amount payable by or to a Contracting Party with respect to a Financially Settled Futures Transaction as set forth in Schedule “E”;
- xxxx. “Market Price Band” means, for any NGX Product, the amount expressed in dollars that is above or below the Current Market Price for any such NGX Product as determined by Exchange in its sole discretion and as disclosed by Exchange through Exchange’s website from time to time;
- yyyy. “Mediation” means the procedure described in Schedule “B”;
- zzzz. “Minimum Qualification Requirement” has the meaning described in Section 2.3;
- aaaa. “MTM Settlement Date” means for each Financially Settled Futures Transaction, the second Business Day following the date the applicable Mark-to-Market Settlement Amount (as set forth in Schedule “E”) has been determined (unless such MTM Settlement Date falls on a Recognized Banking Holiday, in which case the MTM Settlement Date shall be the next Business Day after the Recognized Banking Holiday), other than Invoices issued as a result of a Financially Settled Futures Party’s Default or under the Close-out Procedure which amounts require payment immediately;
- bbbb. “MTM Settlement Net Payable” has the meaning ascribed thereto in Schedule “C”;
- cccc. “NAFTA Failure” has the meaning described in Section 2.6(g);
- dddd. “NGX Cleared ICE Products” means all Products listed in the NGX Product List that: (i) do not have the NGX designation; and (ii) are offered for trading on the ICE Trading Platform and clearing on the NGX Clearing System;
- eeee. “NGX Clearing System” means the electronic database system comprised of computer equipment, NGX Clearing System Software and other terms and conditions provided in this Agreement for the purpose of facilitating the clearing of Transactions by Contracting Parties;
- ffff. “NGX Clearing System Software” means: (i) the computer programs including, without limitation, computer source code, computer object code, documentation, technical manuals, operation manuals, user manuals, and any other documents relating to program operation and maintenance that facilitate the clearing of Transactions entered into on the NGX Trading System or ICE Trading Platform and related user documentation; (ii) any additional machine readable computer code or printed material not included in the foregoing from time to time provided by Exchange to the Contracting Party including third party software; and (iii) any alterations, modifications or enhancements to the computer programs installed by Exchange from time to time;
- gggg. “NGX Close-out Transactions” means, in respect of a Defaulting Financially Settled Futures Party, Financially Settled Futures Transactions entered into by Exchange on the NGX Trading System or ICE Trading Platform, as applicable, or Financially Settled Futures Transactions entered into by Exchange off the NGX Trading System or ICE Trading Platform, as applicable, which replace some or all of the Financially Settled Futures Transactions of such Defaulting Financially Settled Futures Party and offset, in whole or in part, each of the Financially Settled Futures Transactions of such Defaulting Financially Settled Futures Party, pursuant to the Close-out Procedure and, in respect of a Defaulting Option Party, Option Transactions entered into by Exchange on the NGX Trading System or ICE Trading Platform, as applicable, or Option Transactions entered into by Exchange off the NGX Trading System or ICE Trading Platform, as applicable, which replace some or all of the Option Transactions of such Defaulting Option Party

and offset, in whole or in part, each of the Option Transactions of such Defaulting Option Party, pursuant to the Close-out Procedure;

- hhhhh. “NGX Liquidation Transactions” means Physically Settled Futures Transactions entered into by Exchange on the NGX Trading System or ICE Trading Platform, or physical transactions in the deliverable commodity entered into by Exchange outside of the NGX Trading System or ICE Trading Platform, which offset, in whole or in part, the Obligations of a Contracting Party under its Physically Settled Futures Transactions pursuant to the Liquidation Procedure;
- iiii. “NGX Financial Power Auction” means the auction process by which Contracting Parties submit bids and/or offers for the financial power or related Products being offered through the NGX Financial Power Auction System;
- jjjj. “NGX Financial Power Auction System” means the databases, computer systems, hardware, software and other terms and conditions provided in this Agreement, that enables a NGX Financial Power Auction;
- kkkk. “NGX Product List” means the product list set forth in Schedule “D”;
- llll. “NGX Products” means all Products listed in the NGX Product List that: (i) are designated as “NGX”; and (ii) offered for trading on the NGX Trading System and/or clearing on the NGX Clearing System;
- mmmm. “NGX Trading System” means the databases, computer systems, hardware and software that facilitate the entering into of Transactions and Forward Transactions of NGX Products by the Contracting Parties including, without limitation, that portion of the ICE Trading Platform used to facilitate trading of NGX Products but, for greater clarity, excludes ICEBlock;
- nnnn. “Obligations” means, in the case of any Contracting Party, the payment and performance obligations of the Contracting Party, including (without limitation) in respect of a Guarantee under Section 3.3(e), or, except as Exchange may otherwise agree, any payment and performance obligations of its Contracting Party Affiliates, with respect to any Transaction or as otherwise applicable under this Agreement and, in the case of Exchange, the payment and performance obligations of the Exchange with respect to any Transaction or as otherwise applicable under this Agreement;
- oooo. “Off-Exchange Broker Representative” means any broker authorized by a Contracting Party, in accordance with the applicable ICE agreement(s) and procedures, to submit Off-Exchange Transactions on that Contracting Party’s behalf to Exchange for clearing in accordance with Section 3.2(f);
- pppp. “Off-Exchange Cleared Transaction” has the meaning ascribed thereto in Section 3.2(f);
- qqqq. “Off-Exchange Transaction” has the meaning ascribed thereto in Section 3.2(f);
- rrrr. “Oil” means crude oil or condensate that meets or exceeds the quality specifications for a particular Physically Settled Oil Futures Transaction, as determined by the applicable Transportation System;
- ssss. “Open Position Limit” means the maximum quantity of gas, power or Oil in respect of which the Contracting Party may incur obligations for payment for or deliveries or receipts of gas, Physical

Power, Oil or for payment for financial power pursuant to any Transactions, as determined by Exchange for any Trading Day in respect of each Product;

- ttttt. “Option Buyer” means, in respect of an Option Transaction, the Contracting Party who has entered into an Option Transaction as the buyer of the relevant Option Product;
- uuuuu. “Option Confirmation” means the notification by Exchange as to any Option Transaction entered into by a Contracting Party on a day, which will include the particulars of the Option Transaction, including the Transaction Date, identifying it as a Put Option or a Call Option, the Underlying Transaction, the Option Premium Price, the Notional Quantity, the Option Exercise Date and the Strike Price (each as defined in Schedule “E”);
- vvvvv. “Option Exercise Conditions” has the meaning ascribed thereto in Schedule “E”;
- wwwww. “Option Party” means a Contracting Party which has entered into an Option Transaction with Exchange;
- xxxxx. “Option Party’s Default” means the occurrence of a material breach of representation or warranty made herein by a Contracting Party or a failure by the Contracting Party to perform its Obligations under an Option Transaction;
- yyyyy. “Option Premium Amount” means the amount payable by the Option Buyer on the Option Premium Payment Date, as more particularly defined in Schedule “E”;
- zzzzz. “Option Premium Payment Date” means a date that is two Business Days from the Transaction Date that Exchange entered an Option Transaction into the NGX Trading System or NGX Clearing System on behalf of the Contracting Party;
- aaaaa. “Option Product” means a Put Option or a Call Option;
- bbbbb. “Option Seller” means, in respect of an Option Transaction, the Contracting Party who has entered into an Option Transaction as the seller of the relevant Option Product;
- ccccc. “Option Transaction” means a transaction in respect of an Option Product, excluding Forward Transactions, that is entered into by an Option Party and Exchange for the purchase or sale of such product, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Option Product as set forth in Schedule “E”;
- ddddd. “Order” means an order to buy or sell any Product entered into the NGX Trading System or ICE Trading Platform by a Contracting Party, or by Exchange acting on behalf of a Contracting Party pursuant to Sections 3.2(f) or (g);
- eeeee. “Park and Loan Service” means such service referred to as Park and Loan in the applicable Transportation System’s tariff or terms and conditions for the applicable U.S. Delivery Point;
- fffff. “Physically Settled Futures Oil Trading Specifications” means the fixed and variable terms applicable to different types of Physically Settled Oil Futures Transactions which are further described in Schedule “H”;
- ggggg. “Physical Settlement Date” means, for each Physically Settled Futures Transaction, the day determined by Exchange from time to time in accordance with industry practice for such Physically Settled Futures Transaction, as posted on Exchange’s Website not less than one month

prior to the occurrence of such date, other than any Physically Settled Futures Transaction for which an Invoice has been issued as a result of a Default or under the Liquidation Procedure, in which case the Physical Settlement Date will be the date set out in such Invoice;

- hhhhh. “Physically Settled Futures Confirmation” means any Physically Settled Futures Gas Confirmation or Physically Settled Futures Oil Confirmation, as applicable;
- iiiiii. “Physically Settled Futures Gas Confirmation” means the notification by Exchange as to any Physically Settled Futures Gas Transaction entered into by the Contracting Party on a day, which will include particulars of the respective Physically Settled Gas Futures Transactions including the Purchase Price, Daily Contract Quantity, Delivery Point, and Physically Settled Gas Futures Product;
- jjjjj. “Physically Settled Futures Oil Confirmation” means the notification by Exchange as to any Physically Settled Oil Futures Transactions entered into by the Contracting Party on a day, which will include particulars of the respective Physically Delivered Oil Futures Transactions including, without limitation, the Purchase Price, Contract Quantity, Delivery Period, Delivery Point and Physically Settled Oil Futures Product;
- kkkkk. “Physically Settled Futures Product” means any Physically Settled Gas Futures Product, Physically Settled Power Futures Product or Physically Settled Oil Futures Product, as applicable;
- lllll. “Physically Settled Futures Power Confirmation” means the notification by Exchange as to any Physically Settled Futures Power Transaction entered into by the Contracting Party on a day, which will include particulars of the respective Physically Settled Power Futures Transactions including the Purchase Price, Hourly Contract Quantity (as defined in Schedule “K”), U.S. Delivery Point, and Physically Settled Gas Futures Product;
- mmmmm. “Physically Settled Futures Transaction” means any Physically Settled Gas Futures Transaction, Physically Settled Power Futures Transaction or Physically Settled Oil Futures Transaction, as applicable;
- nnnnn. “Physically Settled Gas Futures Product” means a physical product for the purchase or sale of natural gas that is designated as “Phys” in the NGX Product List and may be made available on the NGX Trading System, and/or NGX Clearing System from time to time with such further particulars as may be applicable in Schedules “F” or “G”;
- ooooo. “Physically Settled Gas Futures Transaction” means a transaction for the purchase and sale of a Physically Settled Gas Futures Product, the terms of which shall include this Agreement and, for greater certainty, also includes the particulars applicable to such Physically Settled Gas Futures Product as set out in the NGX Product List and Schedules “F” and “G”;
- ppppp. “Physically Settled Oil Futures Product” means a physical product for the purchase and sale of Oil that is designated as “Phys” in the NGX Product List and as may be made available on the NGX Trading System, and/or the NGX Clearing System from time to time with such further particulars as may be applicable in Schedule “H”;
- qqqqq. “Physically Settled Oil Futures Transaction” means a transaction for the purchase and sale of a Physically Settled Oil Futures Product, the terms of which shall include this Agreement and, for greater certainty, also includes the particulars applicable to such Physically Settled Oil Futures Product as set out in the NGX Product List and Schedule “H”;



- rrrrrr. “Physically Settled Power Futures Product” means a physical product for the purchase or sale of Physical Power that is designated as “Phys” in the NGX Product List” and may be made available on the NGX Trading System, and/or NGX Clearing System from time to time with such further particulars as may be applicable in Schedule “K”;
- ssssss. “Physically Settled Power Futures Transaction” means a transaction for the purchase and sale of a Physically Settled Power Futures Product, the terms of which shall include this Agreement and, for greater certainty, also includes the particulars applicable to such Physically Settled Power Futures Product as set out in the NGX Product List and Schedule “K”;
- tttttt. “Physical Power” means electric power generated in and delivered to specified Delivery Points;
- uuuuuu. “Physical Power Delivery Date” means the date upon which a Physically Settled Power Futures Transaction is scheduled to occur;
- vvvvvv. “Previous Month Accounts Net Payable” has the meaning ascribed thereto in Schedule “C”;
- wwwwww. “Prime Rate” means the annual rate of interest established by Exchange’s Principal Banker from time to time as the reference rate it will use to determine the rates of interest on Canadian dollar loans made in Canada and designated by it as its prime rate;
- xxxxxx. “Proceedings” means any action, suit or proceeding (including any thereof commenced by third party notice or counterclaim), arbitration, mediation or other legal, equitable or statutory process which may result in any judgment, order, award or determination having the force of law or which is otherwise binding on one or more parties thereto or participants therein;
- yyyyyy. “Product “ means any product that: (i) is listed on the NGX Product List; and (ii) is offered for trading on the NGX Trading System; a Product may include a Physically Settled Futures Product, a Financially Settled Futures, a Forward Product, or an Option Product;
- zzzzzz. “Purchase Amount” means the aggregate price agreed to be paid for the Contract Quantity of gas, Physical Power or Oil, as applicable, by the Buyer and to be received by the Seller for the Contract Quantity of gas, Physical Power or Oil, as applicable, pursuant to a Physically Settled Futures Transaction;
- aaaaaa. “Purchase Price” means the price per unit of gas, Physical Power or Oil agreed to be paid for the receipt of gas, Physical Power or Oil by the Buyer and to be received by the Seller for the delivery of gas, Physical Power or Oil pursuant to any Physically Settled Futures Transaction, such price or formula for the calculation of such price being established on the Transaction Date;
- bbbbbb. “Put Option” means an option obligating the Option Buyer to cause an Underlying Transaction to become effective if the relevant Option Exercise Conditions have, or deemed to have, been met (the “Exercise”) such that the Option Buyer becomes the seller in the Underlying Transaction (the Seller if a Physically Settled Futures Transaction or a Financially Settled Futures Transaction and the Floating Price Payer if a Financially Settled Futures Transaction) and as of the Exercise the terms and conditions applicable to such Underlying Transaction govern, all of which shall correspond to, have the particulars and will be referred to in all trading and other information generated on the NGX Trading System by one of the designations set forth in Schedule “E” and which option may be available on the NGX Trading System from time to time;
- cccccc. “Recognized Banking Holiday” means any Business Day that is recognized by major Canadian and/or United States banks as a holiday;

- ddddddd. “Regulations” means all applicable laws, regulations, rules, orders, judgments, interpretations, policies and other binding similar pronouncements originating with a legislature, board, agency, court, stock exchange or other regulatory body with jurisdiction;
- eeeeeee. “Regulatory Approvals” means all approvals, authorizations, consents, licenses, permits, qualifications, exemptions or orders of any governmental authority or regulatory agency required to be obtained and all registrations, filings or qualifications with or before, or any required notice that must be provided to any person, and in particular to any governmental authority or regulatory body;
- ffffff. “Retained Settlement Amounts” has the meaning set forth in Section 8.4(g);
- ggggggg. “Risk Management Policy” means the risk management policies and procedures of Exchange as set forth in Schedule “C”;
- hhhhhhh. “Schedules” means all Schedules to this Agreement;
- iiiiiii. “schedule” means the schedule provided to the Transmission Provider by Exchange or Contracting Party through its scheduling system to either deliver or take Physical Power. For greater clarity “schedule” may be a noun or a verb (as in “to schedule”);
- jjjjjjj. “Seller” means a Contracting Party or Exchange that has entered a Physically Settled Futures Transaction that has been entered: (i) on the NGX Trading System; or (ii) into the ICE Trading Platform, with an obligation to deliver gas, Physical Power or Oil, as applicable;
- kkkkkkk. “Services” means the services that Exchange provides to the Contracting Party in connection with this Agreement but excluding, for greater clarity, Exchange’s obligations to deliver, take or pay for gas, Physical Power or oil as required under any Transaction and Exchange’s obligations to pay any amount under any Financially Settled Futures Transaction or Option Transaction;
- lllllll. “Set-Off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which a party is entitled or subject (whether arising under this Agreement, any Transaction, applicable law or otherwise) that is exercised by, or imposed on, such party;
- mmmmmmm. “Settlement Date” means a Financially Settled Futures Settlement Date or a Physical Settlement Date, as the case may be;
- (April 14, 2014 or such other date the Exchange may designate by notice to the Contracting Parties)
- nnnnnnn. “Specified Entity” means in relation to the Contracting Party or a Credit Support Provider, any entity that controls, directly or indirectly, the Contracting Party or Credit Support Provider, as the case may be;
- ooooooo. “Straddle Option” means the simultaneous purchase or sale of a Put Option and a Call Option by a Contracting Party;
- ppppppp. “Swap” means a contract, agreement or transaction for physical or financial settlement, including an option thereon, that provides on an executory basis for an exchange of one or more payment(s) based on the value or level of the price of a commodity. Swaps are not offered for trading on the NGX Trading System but may be submitted under the Exchange of Futures for

Related Product provision of Section 3.2(f) for exchange into Futures Products in financial power and cleared as such by the NGX Clearing System;

- qqqqqq. “System Constraint Period” means a potential constraint at a particular Delivery Point with respect to Physically Settled Futures Transactions, determined by Exchange in its sole discretion, which may increase the risk of backstopping arrangements being utilized at that Delivery Point. System Constraint Periods may include, but are not limited to, tolerance change days for the Intra-Alberta Delivery Point, significant curtailment notice periods, either interruptible or otherwise, on all other Delivery Points or when Park and Loan Service is unavailable. In the event of a System Constraint Period, Exchange will notify all Contracting Parties involved in a Transaction at the Delivery Point where a System Constraint Period exists prior to the last nomination cycle available to shippers at that Delivery Point;
- rrrrrr. “Terms and Conditions” means the terms and conditions of this Agreement with the exception of the Schedules;
- ssssss. “Trading Day” for each Delivery Point, means any day on which Exchange opens the NGX Trading System to Contracting Parties for transacting in certain Products as designated by Exchange publishing in advance on Exchange’s Website a calendar of such Trading Days on the NGX Trading System;
- tttttt. “Transaction Date” means the date upon which a Contracting Party enters into a Transaction;
- uuuuuu. “Transactions” means Physically Settled Futures Transactions, Financially Settled Futures Transactions, or Option Transactions and for clarity includes without limitation, Physically Settled Futures Transactions and Financially Settled Futures Transactions established through the Exchange of Futures for Related Product provision of Section 3.2(f);
- vvvvvv. “Transportation System” means the pipeline or facility operator as specified in the Schedules which prescribes the system of rules and procedures governing nominations, confirmations and determinations as to the delivery and receipt of gas or Oil for the applicable Delivery Point;
- wwwwww. “Transmission Provider” means any entity or entities transmitting or transporting Physical Power on behalf of Seller or Buyer to or from the Delivery Point in a particular Physically Settled Futures Power Transaction;
- xxxxxx. “Underlying Transaction” means, in the case of an Option Transaction, the underlying Physically Settled Futures Transaction or Financially Settled Futures Transaction as the case may be, identified in association with such Option Transaction as set forth in Schedule “E”, and which transaction becomes effective if the relevant Option Exercise Conditions have been met such that the Option Party becomes either the Buyer or the Seller (with respect to underlying Physically Settled Futures Transactions) or a Floating Price Payer or Fixed Price Payer (with respect to underlying Financially Settled Futures Transactions in financial power in respect of such transaction, as the case may be, depending on whether such Option Transaction relates to a Call Option or a Put Option, and further to the particulars of such Option Transaction as set forth in Schedule “E”;
- yyyyyy. “Undertaking” means the undertakings of the Escrow Agent to the Contracting Parties in respect of certain matters relating to the Exchange Letter of Credit as more particularly set forth in Appendix “C” to the Deposit Agreement;

zzzzzz. “Unremedied Exchange Default” means:

- (i) an Exchange Failure to Pay that has not been remedied by payment to the Contracting Party by Exchange or the Escrow Agent, as the case may be, pursuant to this Agreement and the Deposit Agreement; or
- (ii) an Exchange Failure to Pay resulting from an Exchange Failure to Take or Exchange Failure to Deliver that has not been remedied by payment to the Contracting Party by Exchange or the Escrow Agent, as the case may be, pursuant to this Agreement and the Deposit Agreement, and that is not otherwise:
  - (I) the subject matter of an Exchange Notice Not to Pay, as defined in the Deposit Agreement; or
  - (II) the subject matter of Mediation or Arbitration between Exchange and the Contracting Party; or
  - (III) the result or effect of a Force Majeure event,

and that remains unpaid on the thirtieth (30<sup>th</sup>) day following the date of the Exchange Failure to Pay;

aaaaaaa. “U.S. Base Rate” means the annual rate of interest established by The Toronto-Dominion Bank from time to time as the reference rate it will use to determine the rates of interest on U.S. dollar loans made in Canada and designated by it as its U.S. base rate;

bbbbbbb. “U.S. dollar” or “U.S. \$” means the lawful currency of the United States of America; and

ccccccc. “Variation Margin” has the meaning ascribed thereto in Schedule “C”.

### 1.3 Interpretation

- a. Headings and the provision of a table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- b. All terms defined in this Agreement shall have the above-defined meanings when used in any certificate, report or other document made or delivered pursuant to this Agreement, unless otherwise defined in such other certificate, report or document. Any definition of or reference to any agreement, instrument or other document in this Agreement shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated or replaced (subject to any restrictions on such amendments, restatement or replacement set forth herein or in any other such document). Any reference to any Regulation in this Agreement shall be construed as referring to such Regulation, as amended, restated, replaced or re-enacted from time to time.
- c. Defined terms used in the singular shall import the plural and *vice versa*.
- d. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including”.

- e. Unless otherwise indicated, “Section” references are to the section in the Terms and Conditions or the Schedules in which such reference appears.

#### **1.4 Miscellaneous**

- a. This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta and the federal laws of Canada applicable therein. Reference to such laws shall not, by the application of conflicts of law rules, or otherwise, require the application of any laws other than the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each of the Contracting Party and Exchange hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta. Each of the Contracting Party and Exchange hereby agrees that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any Physically Settled Futures Transaction.
- b. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any Proceeding relating to this Agreement or any Credit Support Document. Each party (i) certifies that no representative, agent or attorney of the other party or any Credit Support Provider has represented, expressly or otherwise, that such other party would not, in the event of such a Proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement and provide for any Credit Support Document, as applicable, by, among other things, the mutual waivers and certifications in this section.
- c. Each of the Contracting Party and Exchange hereby intend that this Agreement, including each Transaction hereunder and each Credit Support Document, be construed as an “eligible financial contract” within the meaning of the *Companies’ Creditors Arrangement Act* (Canada) (the “CCA”), the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) and the *Winding-up and Restructuring Act* (Canada) (the “WRA”);
- d. Each of the Contracting Party and Exchange intend and agree that each and every Transaction conducted on or subject to the rules of NGX acting as a registered Foreign Board of Trade be conducted in accordance with section 4(b) of the *Commodity Exchange Act* (United States) and Part 48 of the rules of the U.S. Commodity Futures Trading Commission.
- e. Each of the Contracting Party and Exchange hereby agree that the services provided by Exchange to the Contracting Party through the NGX Trading System and NGX Clearing System are provided in the Province of Alberta.
- f. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- g. If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable to an extent that does not affect the operation of this Agreement in a fundamental way, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law.

#### **1.5 Representations and Warranties**

Any representations and warranties of the Contracting Party in this Agreement are made in favour of Exchange and the Contracting Party acknowledges the reliance of Exchange on such

representations and warranties. Any representations and warranties of Exchange are made in favour of the Contracting Party and Exchange acknowledges the reliance of the Contracting Party on such representations and warranties.

#### **1.6 Standard Contracting Party Agreement**

This Agreement will be the standard form of agreement between Exchange and each of the Contracting Parties in respect of the NGX Trading System and NGX Clearing System (the “Contracting Party Agreement”); the intention being that each of the Contracting Parties will be equal in respect of their respective rights and Obligations, except as specifically otherwise provided in the Contracting Party Agreement. It further being the intention that the Contracting Party Agreement shall constitute the rules of NGX Trading System and NGX Clearing System and that each Contracting Party, by entering into the Contracting Party Agreement shall be bound by the Contracting Party Agreement and acknowledges the jurisdiction of Exchange. Exchange will provide the Contracting Party with a list of the other Contracting Parties on request.

#### **1.7 ICE Participant Agreement**

For greater clarity, this Agreement does not govern the relationship between Exchange and Contracting Parties with respect to having access to and transacting on the ICE Trading Platform.

Furthermore, in the event of a conflict between the ICE Participant Agreement and this Agreement:

- a. Where the conflict relates to the trading and clearing of NGX Products, this Agreement governs;
- b. Where the conflict relates to trading of ICE Products, the ICE Participant Agreement governs; or
- c. Where the conflict relates to clearing by NGX, this Agreement governs.

#### **1.8 Non-contra Proferentum**

This Agreement shall not be interpreted or construed against Exchange merely because it has been prepared by Exchange.

#### **1.9 Taxes on Services**

Unless otherwise specified, all references to amounts in connection with the Services, including without limitation, fees, prices, charges and liquidated damages, exclude all taxes or other levies and assessments under applicable taxing Regulations in respect of a Service or Transaction.

## **ARTICLE 2 - REPRESENTATIONS AND WARRANTIES**

### **2.1 Of the Contracting Party: General**

The Contracting Party represents and warrants that: (a) the Contracting Party has all requisite power, authority and capacity to enable it to execute and deliver this Agreement and to perform its Obligations and to carry out the transactions contemplated under this Agreement; (b) the execution and delivery of, and the performance of the Obligations of the Contracting Party under, this Agreement have been duly and validly authorized by all action of the Contracting Party necessary to ensure their validity and enforceability; (c) this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of the Contracting Party; (d) all Regulatory Approvals to the date of this representation and warranty, in connection with or for the due execution, delivery by the Contracting Party of this Agreement and the performance of its terms by the Contracting Party have been made, obtained and complied with, or are the subject of exemptions or waivers that are in full force and effect, on or prior to the date that the Contracting Party obtains access to the NGX Trading System and/or NGX Clearing System for the purpose of entering into and/or clearing of Transactions respectively; (e) to the extent that the Contracting Party is to have access to and only enters or submits ICE-Originated Orders to NGX, the Contracting Party has entered into an ICE Participant Agreement and remains in good standing under such agreement, which at all times during the term of this Agreement constitutes a valid and binding legal obligation of the Contracting Party with ICE, (f) Contracting Party will only enter into ICE-Originated Orders for which the Contracting Party intends that the Transaction be physically settled unless the best execution requires execution as an NGX Physically Settled Futures Contract; and (g) Contracting Party will only include Forward Transactions as part of an Exchange of Futures for Related Product Transaction for which Contracting Party at the time entering into the Contract intended the Transaction to be physically settled. The Contracting Party agrees to provide to Exchange evidence of the matters described in the preceding sentence, including certified resolutions, constating documents, incumbency certificates and opinions as may be reasonably requested by Exchange in respect of the foregoing or any other representations and warranties made under this Agreement.

### **2.2 Of the Credit Support Provider: General**

The Contracting Party represents and warrants that: (a) the Credit Support Provider has all requisite power, authority and capacity to enable it to execute and deliver the Credit Support Documents and to perform its Obligations and to carry out the transactions contemplated under the Credit Support Documents; (b) the execution and delivery of, and the performance of the obligations of the Credit Support Provider under, the Credit Support Documents have been duly and validly authorized by all action of the Credit Support Provider necessary to ensure their validity and enforceability; and (c) all Regulatory Approvals required to be made or obtained for the due execution, delivery and performance by the Credit Support Provider of the Credit Support Documents and the performance of its terms by the Credit Support Provider or exemptions or waivers from the requirements to make or give the same will have been made or obtained and complied with on or prior to the date that the Credit Support Provider provides such Credit Support Documents. The Contracting Party agrees to provide to Exchange evidence of the matters described in the preceding sentence, including certified resolutions, constating documents, incumbency certificates and opinions as may be reasonably requested by Exchange in respect of the Credit Support Provider and Credit Support Documents.

### **2.3 Of the Contracting Party: Qualification and Status**

The Contracting Party represents and warrants that: (a) the Contracting Party is, and will at all times during the term of this Agreement be, a corporation, partnership, organization, trust or other business entity with a net worth exceeding \$5,000,000 or total tangible assets exceeding \$25,000,000, as shown on its latest balance sheet, or is controlled, directly or indirectly, by one or more of any such

business entities (the “Minimum Qualification Requirement”), and comply with any other conditions or requirements imposed by Exchange, whether pursuant to the Risk Management Policy or otherwise, as part of the Contracting Party’s initial qualification to transact through Exchange or after being granted access to the NGX Trading System and NGX Clearing System; (b) the information provided by the Contracting Party in the Application is true and correct as of the date noted in the Application and the information provided to Exchange by the Contracting Party from time to time as required by or as permitted under this Agreement will be true and correct as of the date of such information; and (c) the Contracting Party will provide upon request to Exchange all Regulatory Approvals applicable to it (or its investment manager or adviser, if any) in the jurisdiction of organization residence of the Contracting Party (or such investment manager or adviser), or any other information, including without limitation, regarding its corporate structure, governance, credit status or solvency, as may be reasonably required by Exchange.

### **2.3(a) Special Participant**

Any party not meeting the requirement in Section 2.3 or who meets the requirement of Section 2.3, but wishes to transact or clear, respectively, on the NGX Trading System or NGX Clearing System as a customer through a Contracting Party willing to act on behalf of such a customer, may request Participation Rights as a “Customer Participant” under such conditions and on such terms as NGX shall establish through the amendment of this Agreement. For the avoidance of doubt, such amendments to this Agreement shall make clear that the Contracting Party shall remain responsible to NGX in all respects under this Agreement for all Transactions that it enters into on, or clears through, NGX, including those Transactions which it undertakes on behalf of its Customer Participant(s).

## **2.4 Of Exchange: General**

Exchange represents and warrants that: (a) Exchange is a corporation duly and validly incorporated and subsisting under the laws of Alberta; (b) Exchange has all requisite power, authority and capacity to enable it to execute and deliver this Agreement and to perform its Obligations and to carry out the transactions contemplated under this Agreement; (c) the execution and delivery of, and the performance of the Obligations of Exchange under, this Agreement have been duly and validly authorized by all action of Exchange necessary or desirable to ensure their validity and enforceability; (d) this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of Exchange; (e) Exchange is a registrant under the Excise Tax Act and its GST registration number is R136904232; (f) Exchange’s sole business is conducted pursuant to Contracting Party Agreements with Contracting Parties and the matters contemplated therein; (g) Exchange’s indebtedness for borrowed money consists solely of its indebtedness to Exchange’s Principal Banker, to facilitate the payment of Invoices by Exchange and to the Exchange Letter of Credit Issuing Bank, such indebtedness is incurred in conjunction with the Exchange Letter of Credit (as defined in Section 5.11); (h) Exchange is, to the extent required by U.S. law, registered as a Foreign Board of Trade and with respect to the NGX Clearing System, registered as a Derivatives Clearing Organization at the time when Exchange enters into a transaction hereunder; (i) where agreed upon between Exchange and its regulators, Exchange will file reports for and in the place of its Contracting Parties with respect to Transactions cleared through the NGX Clearing System in compliance with applicable laws or regulations; and (j) all Regulatory Approvals, to the date of this representation and warranty, in connection with or for the due execution, delivery by Exchange of this Agreement and the performance of its terms by Exchange have been made, obtained and complied with, or are the subject of exemptions or waivers that are in full force and effect, on or prior to the date that the Contracting Party obtains access to the NGX Trading System and NGX Clearing System for the purpose of entering into Transactions.

(Effective December 24, 2015, or such other date as may be designated by the Exchange upon notice to the Contracting Parties).



## 2.5 Representations Repeated

The representations and warranties of Exchange and the Contracting Party will be deemed to be repeated on each date the Contracting Party enters into any Transaction.

## 2.6 Additional Representations of the Contracting Party

Each Contracting Party represents and warrants that:

- a. **Access to Transportation System.** To the extent it wishes to be entitled to enter into Physically Settled Futures Transactions, the Contracting Party has and will at all times have access to capacity on the Transportation Systems, or, in the case of a Physically Settled Futures Power Transaction, the Transmission Provider, to allow the Contracting Party to perform its Obligations under all Physically Settled Futures Transactions.
- b. **Business Related.** With respect to each Transaction based upon the price of a commodity, on the date such Transaction is entered into, it will be entering into such Transaction in conjunction with a line of its business (including financial intermediation services) or the financing of a line of its business.
- c. **Intent to take delivery and mitigate risk.**
  - (i) With respect to each transaction in a Forward Product which is entered into through NGX Trading System, it will be entering into the Forward Transaction intending for the transaction to be physically settled; and
  - (ii) With respect to each transaction in a Forward Product involving an Exchange of Futures for Related Product Transaction, including ICE Transactions, it will have entered into the transaction with the intent for the transaction to be physically settled.
- d. **U.S. Status.** The Contracting Party has consulted the *Commodity Exchange Act* (United States) and the regulations of the Commodity Futures Trading Commission and to the extent required by U.S. law, the Contracting Party is an "eligible contract participant" with respect to any swap submitted to NGX.
- e. **Accredited Investor.** If resident in the Province of Ontario, the Contracting Party is, and will be, at all times during the term of this Agreement an "accredited investor" as defined in National Instrument 45-106 that is a corporation, partnership, organization, trust or other business entity.
- f. **Principal.** The Contracting Party is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction and any other documentation relating to this Agreement that it is required by the Agreement to deliver, as principal and not as agent or in any other capacity, fiduciary or otherwise.
- g. **NAFTA.** The Contracting Party, when entering into a Physically Settled Futures Transaction or Forward Transaction as Seller, represents and warrants that natural gas or Oil delivered, or to be delivered, from or at a Canadian Delivery Point shall be wholly obtained or produced in North America and qualifies as an originating good pursuant to Annex 401 of the North American Free Trade Agreement with the exception of Oil product types CLK, WCS and AHS as more particularly set forth in Appendix 1 to Schedule "H" (the "Exception Products"). Exception Products may not qualify as an originating good pursuant to Annex 401 of the North American Free Trade Agreement.

- h. **Risk Management Policies, Procedures and Practices.** The Contracting Party represents and warrants that it has sufficient and satisfactory risk management policies, procedures and practices in place to address both financial and operational risks in its organisation, and will provide to Exchange, if requested, an annual certification attesting to same.

## 2.7 **No Reliance**

In connection with the negotiation of, the entering into, and the confirming of the execution of this Agreement, any Credit Support Document to which it is party, each Transaction and any other documentation relating to this Agreement that it is required by this Agreement to deliver: (a) the other party hereto or thereto is not acting as a fiduciary or financial, investment or commodity trading advisor for it; (b) it is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the other party hereto or thereto other than the representations expressly set forth in this Agreement, in such Credit Support Document, or in any Confirmation; (c) the other party hereto or thereto has not given to it (directly or indirectly through any other person) any assurance or guaranty whatsoever as to the merits (either legal, regulatory, tax, financial, accounting or otherwise) of this Agreement, such Credit Support Document, such Transaction or such other documentation; (d) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and trading decisions (including, without limitation, decisions regarding the suitability of any Transaction pursuant to this Agreement) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party hereto or thereto; (e) it is entering into this Agreement, such Credit Support Document, such Transaction and such other documentation with a full understanding of all the terms, conditions and risk (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; and (f) it is a sophisticated investor.

**ARTICLE 3 – GENERAL****3.1 Application**

- a. An Applicant shall submit a completed Application with Exchange for consideration to become a Contracting Party. Exchange shall review the Application to determine whether the Applicant meets Exchange's requirements under this Agreement. Exchange may impose any limitations on the Applicant that it deems necessary or appropriate in order to protect the security and integrity of Exchange.
- b. Exchange may reject an Application if, after having regard to such factors as Exchange considers relevant including, without limitation, the past or present conduct, business or condition of the applicant or any of its directors, senior officers or holders of a significant equity interest, Exchange is of the opinion that (i) the Applicant will not comply with this Agreement; (ii) the Applicant is not qualified by reason of integrity; or (iii) such acceptance is otherwise not in the public interest.
- c. If the Application is rejected, the Applicant shall take no recourse against Exchange. Exchange shall provide the Applicant with a statement setting out the grounds upon which the Application has been rejected.

**3.2 Agreements of the Contracting Party**

- a. Exchange Information – The Contracting Party will from time to time during the term of this Agreement on the request of Exchange file with Exchange the following: (i) audited or, if audited are not available, unaudited consolidated financial statements for its fiscal year within 140 days of the end of fiscal year and unaudited consolidated financial statements for each of the first three fiscal quarters within 60 days of the end of such fiscal quarter or such substitutional financial information as may be acceptable to Exchange and such Contracting Party; (ii) such reasonable additional financial or other information as may be requested by Exchange from time to time and which is reasonably necessary for the administration or prudent operation of the NGX Trading System or the NGX Clearing System; and (iii) reasonable confirmation in respect of the representations and warranties of the Contracting Party provided in Sections 2.1 and 2.3 and of the Credit Support Provider provided in Section 2.2; and, in addition, agrees to file a notice with Exchange in respect of any material adverse change in the financial condition of the Contracting Party or the Credit Support Provider, or of any material change to any of the information provided to Exchange in the Application or pursuant to any inquiry by Exchange, and agrees to Exchange making such further investigations, inquiries or credit checks as Exchange may deem reasonably necessary and agrees to provide such information as is requested by Exchange in the conduct of such investigation or inquiry.
- b. Transfer trades.
  - i. Upon written request, Exchange in its discretion may permit the transfer and novation of a position, contract, agreement or transaction for the account of a Contracting Party as a result of a merger, asset purchase, consolidation, business alliance, or similar non-recurring transaction, arrangement or agreement between Exchange and an entity that has the legal authority to effectuate the transfer of the position, contract, agreement or transaction to Exchange.
  - ii. Such transfers will take place at the same prices that appear on the books of the transferring entity and the transfer records must indicate the date when the original trade was made.

- iii. Each Contracting Party affected by the transfer shall comply in all respects with any statement of policy or other notice issued by the Exchange relating to the procedures and processes that must be followed to effectuate the transfer and novation of open positions to Exchange.
  - iv. The parties to the transfer must retain all records related to the transfer for a period of five years.
- c. Record Keeping – The Contracting Party shall maintain all documents and records directly related to Transactions executed on or subject to the rules of the Exchange, and any activity in underlying commodities and related cash and derivatives markets, in such manner and form and at such times as may be prescribed by Exchange, Exchange’s regulators or Contracting Party’s regulator. The Contracting Party agrees to provide copies, if requested, of its documents and records directly related to such activities and agrees to cause a person under the control or direction of the Contracting Party who is reasonably knowledgeable in respect of the activities of the Contracting Party under this Agreement to be available by phone or at the offices of Exchange in Calgary at a reasonable time and for a reasonable period in respect of any such activities.
- d. Designated Persons – The Contracting Party hereby agrees to designate a person as Administrator (and an alternate person if desirable) by notice in writing by fax or email to Exchange from time to time, who will be authorized to and shall inform Exchange (and, if the Contracting Party has, or intends to have access to the ICE Trading Platform, ICE) as to which individuals (“Authorized Representatives”) shall have access to the NGX Trading System and/or NGX Clearing System (the “access notices”), including (without limitation) for the purpose of entering into Transactions, and hereby agrees that Exchange will be entitled to rely without further inquiry on such access notices provided, whether such access notices are delivered directly to Exchange or indirectly through ICE, including (without limitation) with respect to Off-Exchange Transactions submitted to Exchange pursuant to Section 3.2(f) by Authorized Representatives or their Off-Exchange Broker Representatives, if applicable. The Contracting Party hereby accepts all responsibility for all actions of, or liabilities and Obligations incurred under this Agreement by Authorized Representatives (and by Off-Exchange Broker Representatives under Section 3.2(f)) and indemnifies Exchange for any Proceedings that may be commenced against Exchange by Authorized Representatives. In the event that the Administrator wishes to cancel the user-id of any person having access to the NGX Trading System and NGX Clearing System, the Administrator shall contact NGX (and, if the Contracting Party has access to the ICE Trading Platform, ICE) by telephone as to any such cancellation and confirm such cancellation by written or fax notice. Exchange shall have no obligation to inquire about or confirm the authorization of Off-Exchange Broker Representatives by Authorized Representatives under any circumstances.
- e. Confidentiality – The Contracting Party agrees to use the NGX Trading System and/or NGX Clearing System and any training manuals or any operating, financial or other information, in respect of Exchange, the NGX Trading System or the, NGX Clearing System only for the purposes contemplated by this Agreement, to keep confidential any such information in respect of the provisions thereof, that such information will remain the sole and exclusive property of Exchange, and that the Contracting Party will not copy or reproduce such information by any means whatsoever or provide or otherwise make available the whole or any portion of such information to any person in any form except to its officers, directors, employees, agents and to its consultants for the purposes contemplated by this Agreement. The Contracting Party may use any information in respect of the market created through the Contracting Party’s access to the NGX Trading System and NGX Clearing System for its business purposes but to the extent that the information was not furnished by or does not relate solely to the Contracting Party, it may not publish or otherwise disclose such information publicly. Nothing in this Section 3.2(e) shall

restrict the Contracting Party or a Contracting Party Affiliate from compliance with any law, regulation or governmental authority applicable to such Contracting Party or a Contracting Party Affiliate requiring disclosure, or require that any such information which is in the public domain or acquired from a third party who is not under any obligation of confidentiality or secrecy to Exchange or independently developed by such Contracting Party, be kept confidential and secret by any Contracting Party.

- f. Exchange of Futures For Related Product Transactions (“EFRP Transactions” or “Exchange of Futures for Related Product Transactions”) between two Contracting Parties (the “Off-Exchange Principals”), which involve Financially or Physically Settled Futures Transaction positions and a related position not executed on the NGX Trading System with respect to physical natural gas transactions (including Forward Transactions executed on the ICE Trading Platform), physical oil transactions, physical power transactions and Option Transactions on the foregoing and Swap transactions or options thereon; or Forward Transactions in Canadian natural gas, Physical Power or oil executed on the NGX Trading System (together “Off-Exchange Transactions”), may be submitted to Exchange in accordance with this Section 3.2(f).
- (i) Submission of trade details of an EFRP Transaction may be made by an Off-Exchange Broker Representative or by the Off-Exchange Principals through ICEBlock or by providing verbal, instant messaging or email instructions to Exchange (“Verbal Instructions”).
  - (ii) In submitting a transaction to Exchange under this Section 3.2(f) for clearing, the Off-Exchange Principals to that transaction (whether submitted directly or through an Off-Exchange Broker Representative shall be deemed to have mutually agreed to submit the transaction to Exchange for clearing via Section 3.2(f) and for such transaction (which constitutes a buy Transaction and a sell Transaction in the applicable Product (referred to herein as “ EFRP Cleared Futures Transactions”) to be governed entirely by the terms and conditions of this Agreement as a Financially or Physically Settled Futures Transaction. Exchange takes no responsibility and shall have no liability for any agreement between Off-Exchange Principals with respect to any Off-Exchange Transaction. Off-Exchange Principals submitting EFRP Transactions directly through Verbal Instructions thereby designate Exchange as agent for the purpose of carrying out such Verbal Instructions and agree to be bound by any acts of Exchange in carrying out such instructions.
  - (iii) The Off-Exchange Principals shall be exclusively responsible for accurately submitting the details of an EFRP Transaction to Exchange whether submitted directly or through an Off-Exchange Broker Representative. Contracting Parties to any EFRP Transaction must maintain all documents relevant to the EFRP Transaction and related positions, including all documents customarily generated in accordance with cash or other relevant market practices. Once submitted (whether through ICEBlock or Verbal Instructions), an Off-Exchange Principal or Off-Exchange Broker Representative (if applicable) shall not be entitled to unilaterally reject the trade terms submitted for an EFRP Cleared Futures Transaction to Exchange, and such EFRP Cleared Futures Transactions shall be deemed final and binding in accordance with the terms of this Agreement subject to (A) any trade in error cancellation in an NGX Product, (B) receipt by Exchange of an ICEBlock Error Notice, or (C) Exchange voiding the transaction in accordance with section 3.1(e)(vii).
  - (iv) The Exchange shall rely on the characterization by the Off-Exchange Principals or their agents of any Off-Exchange Transaction submitted as the related product of an EFRP Transaction as being in a Forward Product, a spot product, or a Swap.

- (v) In addition to any other rights Exchange has under this Agreement, Exchange may, in its sole discretion, for legal, regulatory, operational or similar reasons, including (without limitation) to maintain the integrity of Exchange, reject an EFRP Transaction submitted to Exchange (whether submitted through ICEBlock or Verbal Instructions) as soon as technologically practicable of the time of the initial submission to Exchange, in which case Exchange or ICE shall notify the Off-Exchange Principals that the transaction has been rejected and any applicable EFRP Cleared Futures Transactions shall be considered null and void with no further obligations or liability of Exchange.
  - (vi) In addition to the limitations on liability set forth in Section 5.8, Contracting Party acknowledges and agrees that Exchange shall have no responsibility or liability whatsoever for any errors or inaccuracies of any EFRP Transaction information submitted to Exchange, whether through ICEBlock or Verbal Instructions including, without limitation, for any ICEBlock or ICE system errors, delays, outages, inaccuracies, ICEBlock Error Notices, or any acts or omissions of ICE or Exchange with respect to such EFRP Transactions. Contracting Parties, including Off-Exchange Principals, acknowledge and agree that their sole recourse or remedy with respect to EFRP Transactions is limited to the pursuit of private remedies available under existing law as between the Off-Exchange Principals and any Off-Exchange Broker Representatives.
- g. Block Transactions.
- (i) Block Transactions between two Contracting Parties (each acting for itself or through its agent) may be effected through the ICEBlock electronic trading facility or by telephonic means as provided by the Exchange, rather than on the NGX Trading System, in accordance with the provisions of this Rule.
  - (ii) Block Transactions may be transacted only in Futures Products authorized for that purpose by the Exchange. The minimum volume to qualify as a Block Transaction under this rule is as the Exchange shall establish in its discretion and publish on its website from time to time.
  - (iii) A Contracting Party, for its own account, may aggregate multiple orders to meet the contract minimums for a Block Transaction.
  - (iv) A Contracting Party may not
    - (I) aggregate different legs of a futures contract spread to meet the minimum volumes set forth in subsection (f)(ii).

- (II) aggregate different legs of an options contract spread to meet the minimum volumes set forth in subsection (f)(ii), provided, however, the different legs may be aggregated if the aggregate amount is in total 150% of the minimum block volume.
- (v) Each time a Contracting Party quotes a Block Transaction price, the Contracting Party must make clear to the potential counter-party(ies) that the price being quoted is a Block Transaction price for a Futures Transaction and is not the price prevailing on the NGX Trading System for a Futures Transaction in that Product.
- (vi) The Block Transaction may be consummated at a price mutually agreed upon by the parties to the transaction; provided that,
- (I) the price for the Block Transaction does not exceed:
- (1) the day's overall traded market high and low by the following ranges below;
  - (2) if not traded that day, by the previous day's traded market high and low by the following ranges; provided however, that the Exchange, in exceptional circumstances, may in its discretion, choose to permit a price to exceed the following ranges:

<b>Commodity</b>	<b>Range</b>
Physically Settled Oil Futures Product	3.5 percent
Physically Settled Gas Futures Product	2.0 percent
Financially Settled Futures Product	2.0 percent
Financial Power Product	5.0 percent
Physically Settled Power Futures Product	5.0 percent

- (II) or, if not traded either that day or the previous day on the market, as the parties shall mutually agree.
- (III) In the case of an option, the price is no more than one-half the maximum applicable quote spread outside a price derived from a generally accepted theoretical model, which is based on the range of the day's underlying futures high and low prices, if traded on the market.
- (vii) Immediately upon agreeing to enter into the Block Transaction, or upon the market's opening (or re-opening) if the transaction is agreed to be entered into by the parties at a time when the market is closed, the buyer of the Block Transaction or its agent shall report the details of the Block Transaction directly into ICEBlock or by Verbal Instruction to the Exchange. Within 15 minutes of reporting the details of the Block Transaction, the seller of the Block Transaction or its agent shall confirm such Block Transaction on the screen or by telephonic means as provided by the Exchange. The Exchange shall immediately notify the parties to the transaction of the details of the

Block Transaction upon confirmation, and immediately update the NGX Clearing System reports.

- (viii) Upon request by any employee of the compliance department, Contracting Parties must produce satisfactory evidence that the Block Transaction was arranged in accordance with the Agreement.
- h. Other Instructions to Exchange – It is acknowledged by Exchange that under certain circumstances a Contracting Party may give verbal, instant messaging, or email instructions to Exchange in circumstances other than those described under Section 3.2(f), and Exchange may, in its sole discretion, agree to act on such instructions. The Contracting Party hereby designates Exchange as its agent for the purpose of carrying out any such instructions and agrees to be bound by any acts of Exchange in carrying out such instructions. The Contracting Party acknowledges that Exchange may in its sole discretion refuse to agree to act on the basis of any such instructions and that Exchange will have no liability to the Contracting Party in respect of any errors, omissions, or other actions regarding such instructions or in respect of any refusal to act.
- i. Recording – The Contracting Party acknowledges, consents and agrees to the electronic recording by Exchange of all conversations, instructions or agreements between Exchange and the Contracting Party and agrees that any such record will constitute documentary evidence as to any such conversations, instructions or agreements in tangible form. The Contracting Party and Exchange agree not to assert any legal defence as to the admissibility, validity or enforceability of any verbal or instant messaging instructions or agreements as evidenced by any such record, including any assertion that any such instructions or agreement is not in writing or signed by a party or both parties. Exchange will maintain any such record for a period of two years, or longer in particular if Exchange is aware of any dispute, controversy, difference or question which may be resolved by any such record and will provide the Contracting Party with a copy of any portion of such record to the extent relevant to any such dispute, controversy, difference or question relating to the Contracting Party.
- j. Forward Transactions–All terms and conditions applicable to a Forward Transaction are set forth in Schedule I.
- k. Non-clearable Transactions – The Contracting Party acknowledges and agrees that Exchange may determine, in its sole discretion that it is unable to clear certain transactions where transactions have been submitted in error into the NGX Clearing System. In the event that Exchange makes this determination, the transaction will be cancelled and the Contracting Parties to the transaction will be notified of the cancellation as soon as reasonably practicable by either phone, fax or email.
- l. Fees – The Contracting Party will pay the fees to Exchange in such amounts as are set forth in the Fee Schedule or as otherwise agreed to by the Contracting Party with Exchange, and as required by any correct Invoice.
- m. U.S. Internal Revenue Service Reporting
  - (i) Contracting Parties who are subject to the reporting requirements of brokers under Section 6045 of the U.S. Internal Revenue Code (“Code”) and the U.S. Treasury Regulations thereunder shall comply with such requirements, as amended from time to time, with respect to transactions effected on, or otherwise subject to this Agreement in the manner prescribed by Section 6045 of the Code, the regulations thereunder, and such



other provisions of the Code and regulations that are pertinent thereto. Failure of a Contracting Party to comply with this provision will result in immediate suspension of such Contracting Party's trading privileges on the Exchange (and the privileges of any successor to such Contracting Party) until the Contracting Party complies with these reporting requirements in all respects. Such compliance includes the filing of all returns that were required to have been filed under Section 6045 but were not filed or were filed improperly; and

- (ii) Notwithstanding any other provision of this Agreement, upon request by Exchange, Contracting Parties (with respect to transactions occurring on Exchange) will supply Exchange or directly to the U.S. Internal Revenue Service or any grand jury properly convened within the United States, books, papers, records, or other data as described in Section 7602 of the Code and the U.S. Treasury Regulations thereunder (hereinafter collectively referred to as "records"). Such requests will be made by Exchange whenever Exchange receives a written request, summons or subpoena to produce such records from the U.S. Internal Revenue Service or from any grand jury. Failure of a Contracting Party to comply with this provision will result in immediate suspension of such Contracting Party's trading privileges on Exchange (and the privileges of any successor to such Contracting Party) until the Contracting Party complies with these reporting requirements in all respects.

### **3.3 Eligible Collateral Support and Collateral**

- a. Eligible Collateral Support and Collateral – In accordance with the Risk Management Policy, the Contracting Party shall be obligated to provide from time to time, as security for the Contracting Party's Obligations, credit support consisting of: (i) irrevocable letters of credit issued by Approved Financial Institutions in favour of Exchange in a form acceptable to Exchange; or (ii) cash delivered by a Contracting Party to Exchange and held by Exchange in a segregated bank account specified by Exchange, which will be subject to a registered security interest in favour of Exchange (collectively, "Eligible Collateral Support"). The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange's bank relating to the receipt, deposit or transfer of such Eligible Collateral Support. In addition, Exchange may, in its discretion, withhold and the Contracting Party hereby consents to such withholding, payables owing to the Contracting Party from Exchange as additional Collateral. The Contracting Party agrees and acknowledges that upon any failure by such Contracting Party to provide Eligible Collateral Support to Exchange in the amounts and manner set forth under the Risk Management Policy, Exchange shall have the rights and remedies set forth in this Agreement including, without limitation, the rights to cause a Contracting Party Suspension, effect the Close-out Procedure and/or effect the Liquidation Procedure with respect to the Contracting Party's Transactions. Exchange agrees that it shall be obligated to (i) return any Eligible Collateral Support to the Contracting Party, to the extent and pursuant to the terms provided under the Risk Management Policy and (ii) require all Contracting Parties to comply with the provisions of the Risk Management Policy.
- b. Grant of Security – As security for the payment and performance of its Obligations, the Contracting Party does hereby assign, pledge and grant to Exchange a first-ranking security interest in and lien on all estate, right, title and interest of the Contracting Party in and to:
  - (i) any and all cash (including, without limitation, any cash delivered as Eligible Collateral Support), monies and interest bearing instruments contemplated by Section 3.3(j) delivered to, deposited with, or held by or on behalf of Exchange (with the exception of Retained Settlement Amounts);

- (ii) any rights to payment or performance owing from Exchange including, without limitation:
  - (I) any Previous Month Accounts Net Payable for such Contracting Party;
  - (II) any Current Month Accounts Net Payable owed by Exchange to the Contracting Party;
  - (III) any Financially Settled Futures Settlement Net Payable, MTM Settlement Net Payable or Daily Financially Settled Futures Settlement Net Payable for such Contracting Party; and
  - (IV) any Variation Margin for such Contracting Party; and
- (iii) all proceeds (as such term is defined in the *Personal Property Security Act* (Alberta) of any of the foregoing,

(collectively, and together with any letter of credit constituting Eligible Collateral Support, the "Collateral").

For greater clarity, if Exchange is unable for any reason to register its security interest in the Collateral as first in priority to any other security interest registered against the Contracting Party in such Collateral, then the foregoing shall not constitute Collateral.

Upon any of the Collateral being returned or paid to the Contracting Party, the said Collateral shall be released from the Liens granted to Exchange by the Contracting Party hereunder. Any Lien granted as contemplated above attaches upon execution and delivery of this Agreement or, in the case of Collateral delivered to, deposited with, or held by or on behalf of Exchange, upon the delivery, deposit or holding of such Collateral to, with, by or on behalf of Exchange, or in the case of rights to payment or performance in favour of the Contracting Party under any Transaction, at the time such Transaction is entered into.

Exchange may file or record this Agreement or any financing statement, security notice or similar instrument in any public office as may be necessary to establish, perfect or maintain the interests of Exchange as a secured party. The Contracting Party hereby waives any requirement of the applicable personal property security legislation or similar legislation to provide a verification statement to the Contracting Party upon registration of any such Agreement, financing statement, security notice or similar instrument. Upon the full, final and indefeasible satisfaction of all Obligations, and termination of this Agreement, the Lien shall cease and determine, all rights and interests in the Collateral granted hereunder and hereby will revert to and revest in the Contracting Party without further act or formality whatsoever, whereupon Exchange shall, at the request and cost of the Contracting Party, execute such releases or discharges of the Lien or of such filings or recordations, prepared by or on behalf of the Contracting Party and acceptable to Exchange, without recourse to or warranty by Exchange. Exchange shall not have any duty or obligation in respect of any Collateral except the obligation to keep the same with the same degree of care as it keeps its own property of a similar type, and in particular shall not be responsible for or by reason of any loss arising from any failure of Exchange's Principal Banker (whether as a result of bankruptcy, insolvency or otherwise) with which any amount paid by or on behalf of the Contracting Party as Collateral will have been deposited or placed for safekeeping. No Obligation shall be considered to

have been discharged by reason of the existence of the Lien or the rights herein provided unless (and then only to the extent that) Exchange has finally and indefeasibly collected and applied to such Obligation any amount held as or obtained in respect of Collateral or the net proceeds (after satisfying any costs of realization) of realization of any Collateral or has drawn down upon any letter of credit and applied the same to such Obligation or has applied any amount owing by Exchange to the satisfaction thereof and so advised the Contracting Party in writing. The Contracting Party hereby represents and warrants that all Collateral provided to Exchange from time to time is and will be free and clear from any Liens ranking in priority to or equally with the rights of Exchange to such Collateral and that the Lien herein provided to Exchange is and will be a valid first ranking Lien on the Collateral. Exchange and the Contracting Party agree that all Eligible Collateral Support and all Collateral shall constitute “financial collateral” as that term is used in section 11.1 of the CCAA; section 66.34 of the BIA; section 22.1 of the WRA and any successor or like Canadian statutory provisions.

- c. Upon a Default with respect to any Contracting Party, Exchange shall also be entitled to:
- (i) exercise all rights and remedies of a secured party under applicable law with respect to the Collateral provided by the Contracting Party or any of its Contracting Party Affiliates;
  - (ii) sell, retain, liquidate, apply, collect on and, except as Exchange may otherwise agree, set off any or all Collateral against any outstanding Obligations owed to Exchange by the Contracting Party or any of its Contracting Party Affiliates;
  - (iii) instruct any bank that has issued a letter of credit held by Exchange in the name of the Contracting Party or any of its Contracting Party Affiliates to pay under the letter of credit up to the amount of the Obligations that are due;
  - (iv) exercise any other remedies provided under this Agreement or any other remedies available at law, in equity or otherwise.
- d. Set-Off – The Contracting Party hereby agrees that Exchange shall be entitled to Set-Off all Obligations payable or to be performed by Exchange to the Contracting Party or, except as Exchange may otherwise agree, any of its Contracting Party Affiliates, under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate), whether under Sections 5.5(c), 5.6, 8.2 or 8.3 or otherwise and whether or not matured or contingent and irrespective of the currency or place of payment, against any Obligations payable or to be performed by the Contracting Party or any of its Contracting Party Affiliates to Exchange under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate). The contractual right of Set-Off hereby granted is in addition to any legal or equitable right of set-off granted at law, and does not require for its exercise any mutuality or connection, other than that hereby created, between the Obligations Set-Off. If an obligation or right is unascertained at the time of any such Set-Off, Exchange may in good faith estimate the amount or value of such obligation or right, in which case Set-Off will be effected on the basis of such estimate and the relevant party shall account to the other party if such obligation or right at any time thereafter is ascertained.
- e. Guarantee of Contracting Party Affiliate and Letter of Credit – Except as Exchange may otherwise agree, the Contracting Party agrees that all Collateral provided by it to Exchange hereunder (including without limitation all letters of credit) is provided not only to secure the performance of the Contracting Party’s Obligations hereunder, but also to secure the performance

of the Obligations of all of its Contracting Party Affiliates to Exchange under the Contracting Party Agreements entered into by such Contracting Party Affiliates. Except as Exchange may otherwise agree, for the purpose of allowing Exchange to realize on the Collateral provided by it to Exchange hereunder (including without limitation all letters of credit) to pay any of its Contracting Party Affiliates' Obligations, the Contracting Party hereby unconditionally guarantees (the "Guarantee") the prompt and complete payment and performance when due, whether in the ordinary course, by termination, acceleration or otherwise, of all Obligations of its Contracting Party Affiliates. This Guarantee is one of payment and not of collection. This Guarantee is irrevocable and shall remain in full force and effect and be binding upon the Contracting Party, its successors and assigns during the term of this Agreement and until all of the Obligations of its Contracting Party Affiliates have been satisfied in full. Upon the occurrence of a Default with respect to any Contracting Party or, except as Exchange may otherwise agree, any Contracting Party Affiliate, Exchange shall be entitled to draw upon any letter of credit provided to it by the Contracting Party up to the amount of the Obligations that are due.

- f. Suretyship Waiver – The Obligations of Contracting Party and its Contracting Party Affiliates and the grant of security in respect of this Agreement under Section 3.3(b) shall not be affected by any circumstance of any kind, including circumstances which might otherwise constitute a legal or equitable discharge of or defence of a guarantor or surety (other than payment in full).
- g. Separate Bank Account – Exchange will deposit all amounts consisting of cash transferred as Eligible Collateral Support in an interest bearing bank account at Exchange's Principal Banker separate from the corporate funds of Exchange or that of any affiliates or subsidiaries of Exchange. Exchange will keep all such amounts of Eligible Collateral Support from each Contracting Party in a separate bank account in trust and agrees to hold all of such amounts as trustee in accordance with the provisions of this Agreement. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of amounts, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any such loss.
- h. Bank Collateral Agreement – Exchange hereby confirms that the Bank Collateral Agreement is in full force and effect and has provided Exchange's Principal Banker with the Contracting Party's name and address for the purpose of providing any notice under, and the undertaking of Exchange's Principal Banker set forth in the Bank Collateral Agreement.
- i. Collateral of Contracting Party Affiliate – Except as Exchange may otherwise agree in writing with the Contracting Party, any Collateral provided by any Contracting Party and any Contracting Party Affiliate will be allocated between the Contracting Party and such Contracting Party Affiliate at any time and from time to time by Exchange to the extent required by the Risk Management Policy, the Liquidation Procedure pursuant to Section 5.6, the Close-out Procedure pursuant to Section 8.3, or as may be otherwise necessary to comply with the terms and conditions of this Agreement.
- j. Interest on Eligible Collateral Support – Cash Collateral will be deposited in an interest bearing bank account ("Cash Collateral Account"). Exchange will provide the Contracting Party with direct viewing access to its Cash Collateral Account, failing which, and upon request by the Contracting Party, Exchange will account monthly to the Contracting Party for all daily interest earned in a Cash Collateral Account which exceeds \$100,000 or U.S. \$100,000 on any day. NGX will, on a monthly basis, credit to the Cash Collateral Account, interest earned at an interest rate as notified by NGX from time to time ("Contracting Party Interest"). Any interest earned in excess of the Contracting Party Interest shall be deducted monthly by NGX from the Cash

Collateral Account for administrative purposes. Cash Collateral, including Contracting Party Interest, will remain in the Cash Collateral Account and returned to the Contracting Party only in accordance with Section 9 of Schedule “C” or to settle an invoice. In order for the Contracting Party to earn daily interest on their Cash Collateral Account for the day upon which such Eligible Collateral Support is deposited with Exchange, such Eligible Collateral Support must be received by Exchange in accordance with the Risk Management Policy no later than 2:00 p.m. (Mountain time).

### **3.4 Agreements of Exchange**

- a. Confidentiality – Exchange hereby agrees to use its commercially reasonable efforts to keep confidential any and all financial or other information received from the Contracting Party from time to time, including pursuant to the Application, and information in respect of any Transaction entered into by the Contracting Party, any and all information about the trading patterns, prices (including market price reference) and accounts. Nothing in this paragraph shall prevent Exchange from disclosing any information as may be required or allowed pursuant to the terms of this Agreement, to ICE or to any other service provider of Exchange in connection with the performance of any Transaction or as may be required to be disclosed by either Exchange or ICE by law or any regulatory authority, or as may be disclosed in the course of securing, or pursuant to, any order, consent or approval signifying, any Regulatory Approval.
- b. Software License – Exchange grants to the Contracting Party a limited, revocable, paid-up, non-transferable and non-exclusive license to use the NGX Clearing System for the sole purpose of, and in accordance with, this Agreement. Exchange represents and warrants to the Contracting Party that it has the full right, power and authority to license the NGX Clearing System to the Contracting Party.
- c. Indemnification for Infringement – Exchange agrees to protect, defend, hold harmless and indemnify the Contracting Party from and against any and all claims, damages, liabilities, losses and expenses for any infringement or alleged infringement of a patent, copyright, trade secret or other intellectual property right by the NGX Clearing System or the Contracting Party’s use thereof. Exchange will have the sole right to defend, on behalf of the Contracting Party or in its own name, any such action for infringement but Exchange will provide the Contracting Party with reasonable information in respect of such action from time to time. Exchange may settle any action for infringement against the Contracting Party for which its obligation of indemnification of the Contracting Party is effective hereunder without the Contracting Party’s written approval and may settle any other such action for infringement with the Contracting Party’s written approval, which approval will not be unreasonably withheld. Exchange will have no indemnity obligation for infringement claims: (i) resulting from any combination, operation or use of the NGX Clearing System with any programs or equipment not supplied by Exchange, if such infringement would have been avoided but for such use; (ii) resulting from any activity of the Contracting Party which is in breach of this Agreement; or (iii) if the Contracting Party does not give Exchange prompt notice of an infringement claim against it and provide Exchange, at Exchange’s cost, with reasonable assistance with the defence of the action.
- d. Encumbrances – Exchange hereby agrees not to create any security interest, pledge or otherwise encumber any amount deposited as Collateral, any amount payable by the Contracting Party, or any gas, Physical Power or Oil to be delivered by or received by the Contracting Party, under any Transaction except as held by Exchange, or any assignee of Exchange as contemplated by

Section 9.6 of this Agreement, as Collateral and for the purpose of securing such Collateral for the Obligations of the Contracting Party.

- e. Access to NGX Trading System and NGX Clearing System – Exchange will provide access to the NGX Trading System and NGX Clearing System to the Contracting Party for such periods on each Business Day for Transactions in all Products that are available for trading and/or clearing as the case may be as may be designated by notice to the Contracting Parties from time to time, and may provide access on non-Business Days for trading and/or clearing as the case may be in some or all Products. Pursuant to Section 1.7, access to the ICE Trading Platform is governed exclusively by the ICE Participant Agreement.
- f. Confirmations – Exchange agrees to electronically deliver the appropriate Confirmations to the Contracting Party as soon as reasonably possible after the entering into each: (i) Physically Settled Futures Transaction; (ii) Financially Settled Futures Transaction; (iii) Forward Transaction; and (iv) Option Transaction, respectively. Delivery of Physically Settled Futures Gas Confirmations, Physically Settled Futures Power Confirmations or Option Confirmations and for which the underlying commodity for the applicable Transactions is gas or power shall be in the form of an electronic report posted on Exchange’s Website (the “Electronic Report”) in the secured access section. Contracting Party is responsible for accessing relevant Confirmations on the Electronic Report. Delivery of Physically Settled Futures Oil Confirmations, Exchange of Futures for Related Product Confirmations or Option Confirmations for which the underlying commodity for the applicable Transactions is Oil shall be via email or facsimile.
- g. Regulatory Approvals – Exchange hereby agrees to give notice of any termination of any Regulatory Approval in respect of the performance of this Agreement by Exchange to any Contracting Party whose performance of this Agreement is affected by such termination.
- h. NGX Trading System Issues –
  - (i) Upon determining that a Critical NGX Trading System Issue exists, Exchange shall:
    - (I) immediately halt trading on the NGX Trading System for all NGX Products and withdraw all Orders for each Contracting Party from the NGX Trading System;
    - (II) use commercially reasonable efforts to ensure all Contracting Parties are notified by telephone or email or through the NGX Trading System that a Critical NGX Trading System Issue exists;
    - (III) if the Critical NGX Trading System Issue extends beyond one hour, use commercially reasonable efforts to advise all Contracting Parties on the status and progress in resolving such Critical NGX Trading System Issue;
    - (IV) use commercially reasonable efforts to advise all Contracting Parties when the NGX Trading System will be fully operational; and
    - (V) determine if it is necessary to extend the Trading Day and advise all Contracting Parties through the NGX Trading System and by telephone.
  - (ii) Upon determining a Non-Critical NGX Trading System Issue exists, Exchange shall:
    - (I) determine if the Non-Critical NGX Trading System Issue requires that access to the NGX Trading System be halted;

- (II) send a message through the NGX Trading System advising all Contracting Parties that a Non-Critical NGX Trading System Issue exists and providing a report on the status; and
  - (III) send a message through the NGX Trading System advising all Contracting Parties when the Non-Critical NGX Trading System Issue will be resolved.
- (iii) For clarity, any issues arising in connection with the ICE Trading Platform are not the responsibility of Exchange.
- i. Resolution of NGX Trading System Issues – Exchange shall use commercially reasonable efforts to resolve and correct each Critical NGX Trading System Issue as quickly as possible and, Exchange shall use commercially reasonable efforts to resolve and correct any Non-Critical NGX Trading System issue within a reasonable time under the circumstances.
  - j. Network Security – Exchange shall use commercially reasonable efforts to ensure that security systems and procedures designed to prevent unauthorized access to the NGX Trading System and NGX Clearing System through any network connections between the Contracting Party and the NGX Trading System and NGX Clearing System are implemented and maintained. Exchange will monitor the NGX Trading System and NGX Clearing System for and take commercially reasonable steps to prevent fraud and breaches of security. Upon learning of or suspecting any such fraud or breaches of security, that could affect the Contracting Party, Exchange will immediately notify the Contracting Party and take all commercially reasonable steps to remedy the situation, including without limitation halting the Contracting Party's access to the NGX Trading System and NGX Clearing System and withdrawing all of the Contracting Party's Orders from the NGX Trading System.

### **3.5 NGX Financial Power Auction System**

Exchange may from time to time during the term of this Agreement conduct NGX Financial Power Auctions using the NGX Financial Power Auction System. The clearing of any and all resulting Transactions is governed by the terms and conditions of this Agreement.

### **3.6 Open Position Limits**

The Contracting Party agrees that Exchange may set and vary from time to time the Open Position Limit for the Contracting Party. In the event the Contracting Party exceeds the Open Position Limit, Exchange will review the Open Position Limit and may cancel some or all Orders of the Contracting Party upon giving 24 hours notice of such cancellation to the Contracting Party where reasonably practicable to do so.

### **3.7 Trades in Error**

The following trade in error provisions apply only to Transactions involving NGX Products. For greater clarity, these provisions do not apply to Exchange of Futures for Related Product Transactions. Trades in error for ICE Transactions are dealt with exclusively through the ICE Participant Agreement. In the event that Exchange is notified by ICE that a trade in error has occurred in an ICE Transaction that has been accepted for clearing by NGX subject to NGX's Exchange of Futures for Related Product provision, Exchange is entitled to rely solely on this notification with regard to taking any and all appropriate and necessary action on the NGX Clearing System and has no liability whatsoever for any resulting claims, losses, damages, expenses or costs, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise.

- a. Notice by Contracting Party – Whenever a Contracting Party has entered into a Transaction in error through the NGX Trading System or into the NGX Clearing System (pursuant to an Exchange of Futures for Related Product Transaction) has been entered in error, such Contracting Party may bring such error to the attention of Exchange within ten (10) minutes after such error occurs.
- b. Consequences – In the event a trade in error contemplated by this Section 3.7 is brought to the attention of Exchange within ten (10) minutes after such error occurs (the “Reporting Time”), the following procedure will apply:
- (i) Exchange will give notice on the NGX Trading System that a trade in error has been reported and is under investigation;
  - (ii) Exchange may cause a General Suspension in respect of the Product which is the subject of the Transaction entered into in error;
  - (iii) if the Transaction is outside the Market Price Band, Exchange will be entitled, in its sole discretion, to cancel the Transaction; and
  - (iv) if the Transaction is within the Market Price Band, Exchange will contact the Contracting Parties who are parties to the Transaction to determine whether such Contracting Parties will consent to the cancellation of the trade in error, and if such consent is given by all of the Contracting Parties to such Transaction, the Transaction will be cancelled and notice given on the NGX Trading System as to the cancellation of such Transaction; or
  - (v) failing such consent to the cancellation of the trade in error being granted within ten (10) minutes of the Reporting Time, the Transaction will not be cancelled and the Transaction and any and all resulting Obligations remain valid and binding upon all Contracting Parties to the Transaction.
- c. Consequences – In the event a trade in error contemplated by this Section 3.7 is brought to the attention of Exchange more than ten (10) minutes after such error occurs, the following procedure will apply:
- (i) Exchange may give notice on the NGX Trading System that a trade in error has been reported and is under investigation;
  - (ii) Exchange may cause a General Suspension in respect of the Product which is the subject of the Transaction entered into in error; and
  - (iii) Exchange may contact the Contracting Parties who are parties to Transaction relating thereto to determine whether such Contracting Parties will consent to the cancellation of the trade in error, and if such consent is given by all of the Contracting Parties to such Transaction, the Transaction will be cancelled and notice given on the NGX Trading System as to the cancellation of such Transaction. If consent is not given by both Contracting Parties to such Transaction, the Transaction will not be cancelled and the Transaction and any and all resulting Obligations remain valid and binding upon all Contracting Parties to the Transaction.
- d. Liquidated Damages – Without limitation to any other rights or remedies of Exchange under this Agreement or at law, equity or otherwise, in appropriate circumstances determined in the sole discretion of Exchange, Exchange may assess an amount as liquidated damages of \$5,000



payable by the Contracting Party who has entered into the Transaction in error, representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development, reputation and integrity of the business carried on by Exchange.

- e. Indices – All transactions determined to be trades in error that result in the cancellation of a Physically Settled Futures Transaction will not be included in the completion of the relevant index.

### **3.8 Market Makers and Liquidity Providers**

- a. Appointment – Subject to the concurrence of the Contracting Party to be appointed, Exchange may appoint, and maintain as confidential the identity of, any one or more Contracting Parties as a market maker or liquidity provider in one or more Products in the event that in the opinion of Exchange such appointment will assist in the provision of a fair and orderly market on such terms and conditions as may be negotiated with any such Contracting Party which are not inconsistent with this Agreement, except in respect of the existence of such additional agreement in respect of such appointment between the Contracting Party and Exchange.
- b. Responsibilities –
  - (i) Any Contracting Party appointed as a market maker will agree to use commercially reasonable efforts throughout each Trading Day to post bids and offers that meet the market criteria in certain Products and to submit orders to allow the Products to meet the required market criteria should any Products not be posted with bids and offers within the market criteria. The market criteria for any Product shall be set by Exchange from time to time having regard to the objective of achieving a fair and orderly market; and
  - (ii) Any Contracting Party appointed as a liquidity provider will agree to use commercially reasonable efforts to provide target levels of trading volume in certain Products.
- c. Compliance – All activities including the entering into of any Transactions by any Contracting Party pursuant to its role as market maker or liquidity provider as authorized by this Agreement and any such additional agreement in respect of such activities as authorized hereunder will be made in accordance with the provisions of this Agreement and applicable law. Such activities caused by the Contracting Party in its role as market maker or liquidity provider will not be considered by Exchange as any marketing irregularities as described in this Agreement.

### **3.9 Events of Default**

An Event of Default in respect of the Contracting Party will be deemed to occur on the occurrence and continuation of the following events:

- a. Credit Support Default –
  - (i) failure by the Contracting Party or any Credit Support Provider to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed; or
  - (ii) the expiration or termination of any Credit Support Document or the failing or ceasing of any Credit Support Document, or any security interest granted by such party or a Credit Support Provider to Exchange, to be in full force and effect for the purpose of this

Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all Obligations of the Contracting Party under any Transaction or this Agreement to which a Credit Support Document or security interest relates without the written consent of Exchange; or

- b. Misrepresentation – A representation made or repeated or deemed to have been made or repeated by any Credit Support Provider or the Contracting Party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or
- c. Bankruptcy – The Contracting Party or any Credit Support Provider or any Specified Entity; (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or
- d. Merger Without Assumption – The Contracting Party or any Credit Support Provider of the Contracting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as another entity and, at the time of such consolidation, amalgamation, merger or transfer, reorganization, reincorporation or reconstitution:
  - (i) the resulting, surviving or transferee entity fails to assume all the Obligations of the Contracting Party or the obligations of such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

- (ii) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

### **3.10 Exchange Bankruptcy Event of Default**

An Exchange Bankruptcy Event of Default will be deemed to occur on the occurrence and continuation of the following events:

- a. Exchange institutes or becomes subject to a proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, the primary purpose of which is relief from Exchange's creditors, including, without limitation the CCAA, the BIA or the WRA;
- b. the making by Exchange of any assignment for the general benefit of creditors including, without limitation, any assignment made pursuant to the BIA;
- c. the appointment or taking possession by a receiver, receiver and manager, interim receiver, monitor, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for Exchange or for substantially all of Exchange's assets;
- d. the filing by Exchange of a proposal or a notice of intention to make a proposal under the BIA;
- e. the entry of an order of garnishment, attachment, charging order, execution, warrant, sequestration, levy, third party demand or similar proceedings by any person in respect of any material portion of the assets, property or undertaking of Exchange;

provided, however, that if any of the proceedings referred to in 3.10(a), the appointment referred to in 3.10(c) and the order referred to in 3.10(e), as may be applicable, are instituted or presented against Exchange, an Exchange Bankruptcy Event of Default will only occur if: (i) such proceeding, appointment or order is not contested, diligently and on a timely basis, by Exchange; and (ii) any such proceeding, appointment or order is not withdrawn, dismissed, discharged, stayed or restrained in each case within 30 days of the institution or commencement thereof.

## **ARTICLE 4 - PHYSICALLY SETTLED FUTURES TRANSACTIONS AND PHYSICALLY SETTLED FUTURES PRODUCTS**

### **4.1 Physically Settled Gas Futures Products - General**

- a. Forms of Physically Settled Gas Futures Products – The forms of Physically Settled Gas Futures Products and a description of such Physically Settled Gas Futures Products which may be made available by Exchange to the Contracting Party from time to time is set forth in the NGX Product List and Schedules "F", "G" or "J".
- b. Forward Transactions - The Exchange may make available for trading Forward Products which are not cleared by the NGX Clearing System, except pursuant to the Exchange of Futures for Related Product provision of section 3.2(f). Forward Products are made available on the NGX Trading System for Gas Products with Canadian delivery points. Forward Products for Gas Products with U.S. delivery points are available for trading on the ICE Trading Platform.
- c. Futures Transactions - The Exchange may make available for trading Physically Settled Gas Futures Products for which clearing by NGX Clearing System is required. Physically Settled Gas Futures Products with Canadian and U.S. Delivery Points are available for trading on NGX.
- d. Bids and Offers for Canadian Delivery Points- Bids and offers of Forward Products in Gas with Canadian delivery points available for trading on NGX are separated from and do not interact with bids and offers of Physically Settled Gas Futures Products with Canadian Delivery Points available for trading on NGX.
- e. Bids and Offers for U.S. Delivery Points - Bids and offers of Forward Products in Gas with U.S. Delivery Points ("ICE Gas Products") and Physically Settled Gas Futures Products with U.S. Delivery Points ("NGX Gas Products") are included within a single electronic display. A bid or offer for an ICE Gas Product does not interact with bids or offers for an NGX Gas Product unless the Contracting Party designates it as an ICE-Originated Order, which is termed by the ICE Trading Platform to be a "Clearing Enabled Order." An ICE-Originated Order interacts only with bids or offers for ICE Gas Products unless best execution would be as an NGX Gas Product. In that case, the ICE-Originated bid or offer is matched and executed as an NGX Physically Settled Gas Futures Product and cleared by NGX as such.
- f. Entering into Physically Settled Futures Transactions – Each of Exchange and the Contracting Party, in its respective capacity as the Buyer or the Seller, as the case may be, agrees to be bound by any Physically Settled Futures Transactions entered into by the Contracting Party through the NGX Trading System or under the EFRP provision of Section 3.2(f). Each of Exchange and the Contracting Party agrees to pay the Purchase Amount and any amount of GST and take receipt of gas or deliver gas as may be required pursuant to any such Physically Settled Futures Transactions.
- g. Recourse Against Exchange – Exchange agrees to pay or cause to be paid the Purchase Amount to the Seller, to deliver or cause the delivery of the Contract Quantity of gas to the Buyer and to take or cause to be taken the Contract Quantity of gas from the Seller. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physically Settled Futures Transactions is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set forth under this Agreement in the event of any Failure to Deliver, Failure to Pay or Failure to Take by Exchange relating to a Physically Settled Futures Transaction. In the event that there is such a Failure to Deliver, Failure to Pay or Failure to Take by Exchange which is not remedied by Exchange within five Business Days and is not the

subject matter of Mediation or Arbitration, and there is at that time a Defaulting Party under this Agreement or any other Contracting Party Agreement, Exchange will (if requested) disclose the name of any such Defaulting Party to any Contracting Parties affected by any such Failure to Deliver, Failure to Pay or Failure to Take, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.

- h. Settlement and Netting of Invoice Amounts – All amounts payable by a Contracting Party under any Physically Settled Futures Transaction are due and are payable and are to be settled pursuant to the terms of this Agreement. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency on account of the Purchase Amount, fees and GST for the Contracting Party, if applicable. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange's bank relating to the receipt, deposit or transfer of amounts payable by the Contracting Party. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange.
- i. Netting of Obligations to Deliver or Take – All Obligations of Exchange and the Contracting Party to deliver or cause the delivery of the Contract Quantity of gas or take or cause to be taken the Contract Quantity of gas at any Delivery Point in satisfaction of a Physically Settled Gas Futures Transaction will be satisfied by the delivery or taking of the Contract Quantity to or from Exchange, as the case may be, on a net basis in accordance with this Agreement.
- j. The obligations of the Exchange and Contracting Party under any Physically Settled Gas Futures Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

#### **4.2 Invoices for Physically Settled Gas Futures Transactions**

- a. Invoices for Physically Settled Futures Transactions – Notwithstanding any other provision of this Agreement, Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice on or before the 15th day of each calendar month for deliveries and receipts of gas during the prior calendar month pursuant to Physically Settled Futures Transactions, which are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each Purchase Amount payable or receivable in respect of any such Physically Settled Futures Transactions, any amounts payable for fees to Exchange and any amounts payable on account of GST. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Physical Settlement Date that has been requested in accordance with the Risk Management Policy and to hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange, subject to Post-Settlement Delivery Adjustments set out in Schedule "J".
- b. Terms – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to

Exchange at least five Business Days prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. An officer of the Contracting Party authorized to provide banking instructions shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.

- c. Final Invoices – The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.

#### **4.3 Physically Settled Oil Futures Products – General**

- a. Oil Products – The forms of Oil Products and a description of such Oil Products which may be made available by Exchange to the Contracting Party from time to time is set forth in the NGX Product List and additional terms and conditions with respect to Physically Settled Oil Futures Transactions are set forth in Schedule "H".
- b. The Exchange may make available for trading Forward Products in Oil which are not cleared by NGX Clearing System. The Exchange may make available for trading Physically Settled Oil Futures Transactions for which clearing by NGX Clearing System is required.
  - (i) Bids and offers of Forward Products in Oil are separated from bids and offers of Physically Settled Oil Futures Transactions listed on the NGX Trading System and do not interact.
- c. Entering into Physically Settled Oil Futures Transaction – Each of Exchange and the Contracting Party, in its respective capacity as the Buyer or the Seller, as the case may be, agrees to be bound by any Physically Settled Oil Futures Transactions entered into by the Contracting Party through the NGX Trading System. Each of Exchange and the Contracting Party agrees to pay the Purchase Amount and any amount of GST and take receipt of Oil or deliver Oil at the applicable Delivery Point as may be required pursuant to any such Physically Settled Oil Futures Transactions.
- d. Recourse Against Exchange – Exchange agrees to pay or cause to be paid the Purchase Amount to the Seller, to deliver or cause the delivery at the applicable Delivery Point of the Contract Quantity of Oil (in accordance with the applicable Physically Settle Oil Futures Specifications and the rules and procedures of the applicable Transportation System) to the Buyer and to take or cause to be taken at the applicable Delivery Point the Contract Quantity of Oil from the Seller. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physically Settled Oil Futures Transactions is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set forth under this Agreement in the event of any Failure to Deliver, Failure to Pay or Failure to Take by Exchange. In the event that there is such a Failure to Deliver, Failure to Pay or Failure to Take by Exchange which is not remedied by Exchange within five Business Days and is not the subject matter of Mediation or Arbitration, and there is at that time a Defaulting Party under this Agreement or any other Contracting Party Agreement, Exchange will disclose the name of any such then Defaulting Party to any Contracting Parties affected by any such Failure to Deliver, Failure to Pay or Failure

to Take, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.

- e. Settlement and Netting of Invoice Amounts – All amounts payable by a Contracting Party under any Physically Settled Oil Futures Transaction are due and are payable and are to be settled pursuant to the terms of this Agreement. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency on account of the Purchase Amount, fees and GST for the Contracting Party, if applicable. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange's bank relating to the receipt, deposit or transfer of amounts payable by the Contracting Party. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange.
- f. Netting of Obligations to Deliver or Take – All Obligations of Exchange and the Contracting Party to deliver or cause the delivery of the Contract Quantity of Oil of the same Physically Settled Oil Futures Specifications or take or cause to be taken the Contract Quantity of Oil of the same Physically Settled Oil Futures Specifications at the same Delivery Point for the same Delivery Period in satisfaction of a Physically Settled Oil Futures Transaction will be satisfied by the delivery or taking of the Contract Quantity to or from Exchange, as the case may be, on a net basis in accordance with this Agreement.
- g. The obligations of Exchange and the Contracting Party under any Physically Settled Oil Futures Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

#### **4.4 Invoices for Physically Settled Oil Futures Transactions**

- a. Invoices for Physically Settled Oil Futures Transactions – Notwithstanding any other provision of this Agreement, Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice before the Physical Settlement Date for such Physically Settled Oil Futures Transactions, which are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each Purchase Amount payable or receivable in respect of any such Physically Settled Oil Futures Transactions, any amounts payable for fees to Exchange and any amounts payable on account of GST.

To the extent practicable, Invoices shall be based on actual accounting information. If actual accounting information is not available, Exchange will be entitled to prepare Invoices based on reasonable estimates and will reconcile accounts as soon as reasonably practicable in Invoices for following months. Upon written request by the Contracting Party, Exchange shall provide the rationale for the use of estimated amounts to be reconciled hereunder.

Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Physical Settlement Date that has been requested in accordance with the Risk Management Policy and to hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange.

- b. Terms – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. An officer of the Contracting Party authorized to provide banking instructions shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.
- c. Final Invoices – The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.

#### **4.5 Physically Settled Power Futures Products - General**

- a. Forms of Physically Settled Power Futures Products – The forms of Physically Settled Power Futures Products and a description of such Physically Settled Power Futures Products which may be made available by Exchange to the Contracting Party from time to time is set forth in the NGX Product List and Schedule “K”
- b. Forward Transactions - Exchange may make available for trading Forward Products which are not cleared by the NGX Clearing System, except pursuant to the Exchange of Futures for Related Product provision of section 3.2(f). Forward Products for Physical Power Products with U.S. Delivery Points are available for trading on the ICE Trading Platform.
- c. Futures Transactions - Exchange may make available for trading Physically Settled Futures Products for which clearing by NGX Clearing System is required. Physically Settled Power Futures Products are available for trading on the NGX Trading System.
- d. Bids and Offers for U.S. Delivery Points - Bids and offers of Forward Products in Physical Power with U.S. Delivery Points (“ICE Physical Power Products”) and Physically Settled Power Futures Products with U.S. Delivery Points (“NGX Physical Power Products”) are included within a single electronic display. A bid or offer for an ICE Physical Power Product does not interact with bids or offers for an NGX Physical Power Product unless the Contracting Party designates it as an ICE-Originated Order, which is termed by the ICE Trading Platform to be a “Clearing Enabled Order.” An ICE-Originated Order interacts only with bids or offers for ICE Physical Power Products unless best execution would be as an NGX Physical Power Product. In that case, the ICE-Originated bid or offer is matched and executed as an NGX Physically Settled Power Futures Product and cleared by NGX as such.
- e. Entering into Physically Settled Futures Transactions – Each of Exchange and the Contracting Party, in its respective capacity as the Buyer or the Seller, as the case may be, agrees to be bound by any Physically Settled Futures Transactions entered into by the Contracting Party through the NGX Trading System or under the EFRP provision of Section 3.2(f). Each of Exchange and the Contracting Party agrees to pay the Purchase Amount and any applicable taxes and take receipt of Physical Power or deliver Physical Power as may be required pursuant to any such Physically Settled Futures Transactions.



- f. Settlement and Netting of Invoice Amounts – All amounts payable by a Contracting Party under any Physically Settled Futures Transaction are due and are payable and are to be settled pursuant to the terms of this Agreement. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency on account of the Purchase Amount, fees and any applicable taxes for the Contracting Party, if applicable. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange’s bank relating to the receipt, deposit or transfer of amounts payable by the Contracting Party. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange.
- g. Netting of Obligations to Deliver or Take – All Obligations of Exchange and the Contracting Party to schedule to deliver the Contract Quantity of Physical Power or schedule to take the Contract Quantity of Physical Power at any U.S. Delivery Point in satisfaction of a Physically Settled Power Futures Transaction will be satisfied by the scheduling of the delivery or taking of the Contract Quantity to or from Exchange, as the case may be, on a net basis in accordance with this Schedule “K” of this Agreement.
- h. The obligations of the Exchange and Contracting Party under any Physically Settled Power Futures Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

#### **4.6 Invoices for Physically Settled Power Futures Transactions**

- a. Invoices for Physically Settled Futures Transactions – Notwithstanding any other provision of this Agreement, and subject to any requirement for accelerated invoicing as set out in Schedule “K”, Exchange will post on Exchange’s Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice on or before the 15th day of each calendar month for scheduling of deliveries and receipts of Physical Power during the prior calendar month pursuant to Physically Settled Power Futures Transactions, which are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each Purchase Amount payable or receivable in respect of any such Physically Settled Power Futures Transactions, any amounts payable for fees to Exchange and any amounts payable on account of any applicable taxes. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Physical Settlement Date that has been requested in accordance with the Risk Management Policy and to hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange.
- b. Terms – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. An officer of the Contracting Party authorized to provide banking instructions shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this

information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.

- c. Final Invoices – The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice or unless the Contracting Party has made a Failure to Schedule to Deliver or a Failure to Schedule to Take, in which case, Invoices payable will not be considered final until 180 days after the Physical Power Delivery Date.

#### **4.7 Early Payment of Invoices**

A Contracting Party may, if desired, make payment to Exchange prior to the applicable Settlement Date, and such funds, when received, will be applied against that Contracting Party's Invoice amounts, or may be Set-off against amounts then owed by NGX to the Contracting Party in accordance with Section 3.3(d) of this Agreement.

## ARTICLE 5 - RECOURSE AND LIABILITY

### 5.1 Failure to Deliver

- a. By the Seller – In the event of a Failure to Deliver by the Seller, the Seller will pay to Exchange an amount equal to:
- (i) the reasonable direct costs, claims, expenses and damages suffered or incurred by Exchange as a result of the Seller’s failure to deliver the Failure Quantity including, without limitation or duplication, (a) any excess of the cost of (I) obtaining a quantity of gas or Oil or (II) scheduling to obtain a quantity of Physical Power, as applicable, equal to the Failure Quantity (adjusted for any quality and transportation differentials with respect to Oil) over that portion of the Purchase Amount that would have been payable with respect to the Failure Quantity (the “Seller Replacement Amount”), (b) the costs or charges, if any, levied by the Transportation System, or, in the case of a Physically Settled Power Futures Transaction, the Transmission Provider, as a result of such Failure to Deliver, (c) transportation, storage and other costs, if any, related to obtaining the Failure Quantity, and (d) in the case of a Failure to Schedule to Deliver, any additional Transmission Provider fees, charges, collateral calls or penalties; plus
  - (ii) interest from the date of the occurrence of the Failure to Deliver at the Default Rate to and including the date of payment to Exchange of all such amounts; plus,
  - (iii) liquidated damages of:
    - (I) with respect to Physically Settled Gas Futures Transactions, \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation and integrity of the business carried on by Exchange if (a) the Failure to Deliver occurs during a System Constraint Period, and (b) Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages;
    - (II) with respect to Physically Settled Oil Futures Transactions, the greater of:
      - (a) \$5,000; or
      - (b) an amount equal to one percent (1%) of the product of the Contract Price and the Failure Quantity,

if Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages, it being understood and agreed that the liquidated damages contemplated by this Section 5.1(a)(iii)(B) and the liquidated damages contemplated by Section 5.3(a)(iii)(B) shall not be assessed by Exchange more than once with respect to any Cushing Exchange notwithstanding there may have been a Failure to Deliver or Failure to Take under more than one Physically Settled Oil Futures Transaction forming such Cushing Exchange; and
    - (III) with respect to Physically Settled Power Futures Transactions, \$5,000, representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation and

integrity of the business carried on by Exchange if Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages;

Exchange will deliver to the Seller a separate Invoice in respect of the Physically Settled Futures Transaction which is the subject of the Failure to Deliver itemizing separately the amounts payable by the Seller under (i), (ii) and, if applicable, (iii).

- b. By Exchange – In the event of a Failure to Deliver by Exchange, Exchange will pay to the Buyer an amount equal to:
- (i) the reasonable direct costs, claims, expenses and damages suffered or incurred by the Buyer as a result of Exchange’s failure to deliver the Failure Quantity including, without limitation or duplication, (a) any excess of the cost of obtaining (I) obtaining a quantity of gas or Oil or (II) scheduling to obtain a quantity of Physical Power, as applicable, equal to the Failure Quantity (adjusted for any quality and transportation differentials with respect to Oil) over that portion of the Purchase Amount that would have been payable with respect to the Failure Quantity, (b) the costs or charges levied, if any, by the Transportation System, or, in the case of a Physically Settled Power Futures Transaction, the Transmission Provider, as a result of such Failure to Deliver, (c) transportation, transmission, storage and other costs, if any, related to obtaining the Failure Quantity, (d) in the case of Physical Power, any additional Transmission Provider fees, charges, collateral calls or penalties; plus
  - (ii) interest from the date of the occurrence of the Failure to Deliver at the Default Rate to and including the date of payment to the Buyer of all such amounts.

The Buyer will deliver to Exchange a separate Invoice in respect of the Physically Settled Futures Transaction which is the subject of the Failure to Deliver itemizing separately the amounts payable by Exchange under (i) and (ii).

## **5.2 Failure to Pay**

- a. By the Buyer – In the event of a Failure to Pay by the Buyer, the Buyer will pay to Exchange an amount equal to:
- (i) the Failure Amount; plus
  - (ii) interest from the date of the occurrence of the Failure to Pay at the Default Rate to and including the date of payment to Exchange of all such amounts; plus,
  - (iii) in appropriate circumstances determined in the sole discretion of Exchange, an amount as liquidated damages of:
    - (I) with respect to any Failure to Pay relating to a Physically Settled Oil Futures Transaction, the greater of:
      - (a) \$5,000; or
      - (b) an amount equal to one percent (1%) of the amount due and not paid;

or

(II) with respect to any other Failure to Pay, \$5,000;

representing the pre-estimated amount of the costs of the investigation and damage suffered by Exchange in respect of injury to the development, reputation and integrity of the business carried on by Exchange.

Exchange will deliver to the Buyer a separate Invoice in respect of the Failure to Pay itemizing separately the amounts payable under (i), (ii) and, if applicable, (iii).

b. By Exchange – In the event of a Failure to Pay by Exchange that is (i) not rectified by Exchange within one (1) Business Day of the Failure to Pay by Exchange and (ii) not satisfied by payment from the Escrow Agent in respect of a Direction to Pay pursuant to, and as defined in, the Deposit Agreement, Exchange will pay to the Seller an amount equal to:

- (i) the Failure Amount; plus
- (ii) interest from the date of the occurrence of the Failure to Pay at the Default Rate to and including the date of payment to the Seller of all such amounts.

The Seller will deliver to Exchange a separate Invoice in respect of the Failure to Pay itemizing separately the amounts payable under (i) and (ii).

### **5.3 Failure to Take**

a. By the Buyer – In the event of a Failure to Take by the Buyer, the Buyer will pay to Exchange an amount equal to:

- (i) the reasonable direct costs, claims, expenses and damages suffered or incurred by Exchange as a result of the Buyer's failure to take the Failure Quantity including without limitation or duplication, (a) any excess of that portion of the Purchase Amount payable with respect to the Failure Quantity over the proceeds from the sale of the Failure Quantity, if any (the "Buyer Replacement Amount"); (b) the cost of storing or selling a quantity of gas or Oil, as applicable, equal to the Failure Quantity; (c) the costs or charges levied by the Transportation System, or, in the case of a Physically Settled Power Futures Transaction, the Transmission Provider, as a result of such Failure to Take, and (d) transportation, transmission, storage and other costs, if any, related to the Failure to Take the Failure Quantity; and (e) in the case of Physical Power, any additional Transmission Provider fees, charges or penalties (including any collateral calls); plus,
- (ii) interest from the date of the occurrence of the Failure to Take at the Default Rate to and including the date of payment to Exchange of all such amounts; plus
- (iii) liquidated damages of:
  - (I) with respect to Physically Settled Gas Futures Transactions, \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation and integrity of the business carried on by Exchange if (a) the Failure to Take occurs during a System Constraint Period, and (b) Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages;

- (II) with respect to Physically Settled Oil Futures Transactions, the greater of:
- (a) \$5,000; or
  - (b) an amount equal to one percent (1%) of the product of the Contract Price and the Failure Quantity,

if Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages, it being understood and agreed that the liquidated damages contemplated by this Section 5.3(a)(iii)(B) and the liquidated damages contemplated by Section 5.1(a)(iii)(B) shall not be assessed by Exchange more than once with respect to any Cushing Exchange notwithstanding there may have been a Failure to Deliver or Failure to Take under more than one Physically Settled Oil Futures Transaction forming such Cushing Exchange; and

- (III) (A) with respect to Physically Settled Power Futures Transactions, \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation and integrity of the business carried on by Exchange if Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages;

Exchange will deliver to the Buyer a separate Invoice in respect of the Physically Settled Futures Transaction which is the subject of the Failure to Take itemizing separately the amounts payable under (i), (ii) and, if applicable, (iii).

- b. By Exchange – In the event of a Failure to Take by Exchange, Exchange will pay to the Seller an amount equal to:
- (i) the reasonable direct costs, claims, expenses and damages suffered or incurred by the Seller as a result of Exchange's failure to take the Failure Quantity including, without limitation or duplication, (a) any excess of that portion of the Purchase Amount payable with respect to the Failure Quantity over the proceeds from the sale of the Failure Quantity, if any, (b) the cost of storing or selling a quantity of gas or Oil, as applicable, equal to the Failure Quantity, (c) the costs or charges levied by the Transportation System, or, in the case of a Physically Settled Power Futures Transaction, the Transmission Provider, as a result of such Failure to Take, and (d) transportation, transmission, storage and other costs, if any, related to the Failure to Take the Failure Quantity; plus
  - (ii) interest from the date of the occurrence of the Failure to Take at the Default Rate to and including the date of payment to the Seller of all such amounts.

The Seller will deliver to Exchange a separate Invoice in respect of the Physically Settled Futures Transaction which is the subject of the Failure to Take itemizing separately the amounts payable under (i) and (ii).

#### **5.4 Failure to Provide Eligible Collateral Support**

Without limitation to any other rights or remedies of Exchange under this Agreement, at law, in equity or otherwise, if a Failure to Provide Eligible Collateral Support by any Contracting Party occurs, Exchange may exercise any of its rights under Section 5.5 and Section 8.2.

#### **5.5 Rights of Exchange in Physically Settled Futures Transactions**

On the occurrence, or upon Exchange becoming aware, or, in the case of a Physically Settled Power Futures Transaction, upon the determination by Exchange in accordance with Schedule “K”, of a Default with respect to the Contracting Party, or in the event of a dispute over a Transaction entered into pursuant to Sections 3.2(f) or (g), Exchange will notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy) and thereafter without further notice or formality prescribed by law or otherwise, all of which are hereby waived by the Defaulting Party to the extent permitted by applicable law, may exercise any combination of the rights and remedies contained in this Section 5.5 or Sections 5.6, 8.2 or 8.3 and any rights or remedies under this Agreement or at law, equity or otherwise including, without limitation, its rights to:

- a. pursuant to Section 3.3(a) and Schedule “C”, request an additional amount of Eligible Collateral Support from the Defaulting Party;
- b. pursuant to Section 6.4, cause a Contracting Party Suspension for a period, which may be in excess of the period during which the Defaulting Party is in Default, or permanently;
- c. declare any amounts for Oil or gas delivered, any amounts of Physical Power scheduled for delivery, or any unpaid Invoices immediately due and payable and to withhold payments under this Agreement (including, without limitation, under any Transaction) and withhold such payments as if paid or provided to Exchange as Collateral;
- d. notwithstanding Section 3.4. of Schedule “H”, suspend deliveries of Oil to Contracting Party or takes of Oil from Contracting Party under one or more Physically Settled Futures Transactions, by amending the applicable notices of shipment, reallocating volumes or otherwise;
- e. with respect to Physically Settled Power Futures Transactions, cancel or amend any schedules to deliver or take Physical Power from Contracting Party by amending its schedule in the Transmission Provider system;
- f. without limitation to any other right hereunder, offset any deliveries or takes of Oil under this Agreement; or
- g. terminate any Transaction, or declare immediately payable or to be performed any Obligations in respect of any Physically Settled Futures Transaction, any NGX Liquidation Transaction or this Agreement and, in connection therewith, exercise any of the following rights:
  - (i) pursuant to Section 3.3(e) or Section 8.3, Set-Off, in whole or in part (including by entering into Offsetting Transactions), any Obligations payable or to be performed by Exchange (to the Defaulting Party or to any Contracting Party Affiliate of the Defaulting Party) against Obligations payable or to be performed by the Defaulting Party (or by any Contracting Party Affiliate of the Defaulting Party) to Exchange, which Obligations may extend to periods beyond the periods during which the Contracting Party is in Default;

- (ii) demand payment under or in respect of, sell, realize upon, use or drawdown the Collateral and apply such Collateral to the Contracting Party's Obligations; or
- (iii) terminate this Agreement by notice to the Defaulting Party to be effective upon the date of receipt or deemed receipt (which notice may be the same as that delivered under this Section 5.5 or under Section 8.2 or 8.3); provided, this Agreement shall remain in effect for Transactions entered into prior to the date of termination until all Obligations to Exchange in respect of such Transactions have been paid and performed.

For the purpose of converting any sum in any currency into Canadian Dollars, the rate used for converting such currency into Canadian Dollars shall be the actual rate Exchange obtained from Exchange's Principal Banker when converting into Canadian Dollars. Any such amounts which are immediately due and payable, but would have been payable at a future date except for the provisions of this Section 5.5, will be discounted to present value. The rate of interest used in discounting to present value shall be determined by Exchange in a commercially reasonable manner. Exchange will forthwith issue an Invoice reflecting all amounts due and payable by the Defaulting Party.

## **5.6 Liquidation Procedure**

In the event that Exchange acting in a commercially reasonable manner and in accordance with Section 5.5 or Schedule "F", "G", "H" or "K" determines to offset, in whole or in part, Obligations of the Defaulting Party under any Physically Settled Futures Transactions on behalf of such Contracting Party and having notified the Contracting Party of such determination, Exchange may enter orders and NGX Liquidation Transactions to offset, in whole or in part, such Obligations in such manner and on such terms as may be then available to Exchange. As a consequence of Exchange exercising its rights under this Section 5.6:

- a. any NGX Liquidation Transactions will be treated as allocated to the Defaulting Party's account;
- b. Exchange hereby agrees that the Defaulting Party will, for the purposes of determining Exchange's damages, be deemed to have performed its Obligations to deliver or take gas or Oil or schedule to take Physical Power, as applicable, under all NGX Liquidation Transactions allocated to its account and under that portion or all of its Physically Settled Futures Transactions, which are offset by such NGX Liquidation Transactions (any such transaction entered under Section 5.6(b) or Section 8.3(b), an "Offsetting Transaction");
- c. for the purposes of determining Exchange's damages, Exchange will Set-Off any and all such amounts that are owed to the Defaulting Party against any and all such amounts that are owed or deemed to be owed by such Defaulting Party under the Offsetting Transactions to arrive at a single net settlement amount payable to or by the Defaulting Party, which shall be immediately due and payable. For clarity, without limitation to any other rights of Exchange under this Agreement, such net settlement amount shall include, without limitation, an amount as liquidated damages representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation, and integrity of the business carried on by Exchange, where Exchange has determined, in its sole discretion, that appropriate circumstances exist for such liquidated damages.
- d. Exchange will forthwith provide the Defaulting Party with an Invoice for the Offsetting Transactions setting forth the amounts owed to or by the Defaulting Party and the net settlement amount due to or from the Defaulting Party;



- e. payment to Exchange of any net settlement amount owed by the Defaulting Party shall be deemed to satisfy all of its Obligations to pay any and all amounts, including, without limitation, the Purchase Amount, with respect to the Offsetting Transactions; and
- f. Exchange shall pay any net settlement amount owed to the Defaulting Party with respect to the Offsetting Transactions and upon such payment, shall assume all of the rights of the Defaulting Party under the Offsetting Transactions.

### **5.7 Full Satisfaction**

Upon payment of the amounts required to be paid in accordance with this Agreement by Exchange or the Contracting Party, as the case may be, in respect of any Failure to Deliver, Failure to Pay or Failure to Take in respect of any Physically Settled Futures Transaction, Exchange or the Defaulting Party, as the case may be, shall have no further liability under any such Physically Settled Futures Transaction or this Agreement in respect of any such Failure to Deliver, Failure to Pay or Failure to Take.

### **5.8 Limitations on Liability**

- a. **Electronic System** – Except in instances where there has been a finding of wilful or wanton misconduct on the part of Exchange, neither Exchange, its affiliates or service providers, nor the agents, directors, officers, employees and representatives of Exchange, its affiliates or service providers shall be liable to the Contracting Party, for any losses, damages, costs or expenses arising from any failure, defect, or malfunction in, or any fault in delivery, delay, omission, suspension, inaccuracy, termination, entry of data on behalf of either Exchange or Contracting Party or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to access all or part of the ICE Trading Platform, the NGX Trading System or the NGX Clearing System or any Services, including, without limitation, the taking of verbal or instant messaging instructions and/or the entering of any Order into the NGX Trading System or ICE Trading Platform, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise. Without limitation to the foregoing, Contracting Party shall assume, and shall release and waive Exchange from, all liability, loss or damage arising or suffered at any time and from time to time in connection with any Transactions entered into by or on behalf of the Contracting Party by personnel other than Authorized Representatives.
- b. **Personnel** – Except in cases where there has been a finding of wilful or wanton misconduct, neither Exchange nor its respective agents, directors, officers and employees shall be liable to the Contracting Party, for any losses, damages, costs or expenses arising from an act, omission or error by Exchange, whether performed for the Contracting Party or to be performed by Exchange, in respect of any Transactions, but not including any act or omission by Exchange which constitutes a Failure to Pay, Failure to Deliver or Failure to Take by Exchange, in the case of a Transaction; or an act or omission by Exchange, whether performed for the Contracting Party or to be performed by Exchange, in respect of any matter relating to the ICE Trading Platform, NGX Trading System or NGX Clearing System.
- c. **Liability of the Contracting Party** – The Contracting Party and its agents, directors, officers and employees shall not be liable to Exchange or any of the other Contracting Parties for any claims, including third party claims, demands, liabilities, losses, damages, costs or expenses arising from:
  - (i) any failure, defect or malfunction in, or any fault in delivery, delay, omission, suspension, inaccuracy or termination or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to access all or part of the NGX

Trading System, NGX Clearing System or any support services, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise; nor

- (ii) an act or omission of Exchange, whether performed for the Contracting Party or to be performed by Exchange in respect of any Transactions, or in respect of any matter relating to the NGX Trading System or NGX Clearing System,
- (iii) the provision by a Contracting Party of any and all information about the trading patterns, prices (including market price reference) and accounts of such Contracting Party.

provided that the provisions of this subparagraph c. are not intended to limit, alter or vary the Obligations of the Contracting Party under any Transaction and the Contracting Party will remain liable for the performance under any such Transaction.

- d. **Time Limits** – Any reference in respect of any dispute in respect of a claim for wilful or wanton misconduct in respect of the matters described in Sections 5.8(a) or (b), respectively, must be referred to Mediation within 60 days of the Contracting Party becoming aware of such event and if not settled by Mediation must be referred to Arbitration within 30 days of conclusion of the Mediation in order for the Contracting Party to be entitled to bring any claim against Exchange.
- e. **Limit of Liability** – The aggregate liability of Exchange shall be limited to an aggregate amount of \$10,000 for a single claim and an aggregate amount of \$1,000,000 for all claims of Contracting Parties on a single day and where if all claims cannot be satisfied for a single day because of the dollar limitation on recoveries, all such claims shall be limited to a pro rata share of the maximum per day amount. This limit of liability does not apply to the liability of Exchange for a Failure to Pay, Failure to Deliver or Failure to Take, in the case of a Transaction, and in respect of Exchange’s agreement to indemnify the Contracting Party for infringement as set forth in Section 3.4(c).
- f. **Warranty of Fitness** – Other than as expressly provided in Section 5.8(a), Exchange hereby expressly disclaims any warranty, express or implied, in respect of all or any part of the NGX Trading System or NGX Clearing System or any of the Services, notwithstanding anything contained in this Agreement or any Schedule including, without limitation, any warranty in respect of merchantability or fitness for a particular purpose or use.
- g. **No Indemnification** – For greater certainty, the limitations of liability of Exchange set forth in this Section 5.8 shall not be construed as implying or requiring any indemnification by the Contracting Party of any of the other Contracting Parties.

## **5.9 No Indirect Damages**

Other than as specifically set forth in this Agreement, in no event shall Exchange, the Contracting Party or any of the other Contracting Parties be liable under this Agreement or any Transaction for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the other Contracting Parties’ suppliers or customers against the Contracting Party or other Contracting Parties arising out of any Failure to Deliver, Failure to Take or Failure to Pay or any other matter for which liability may be assessed under this Agreement.

## **5.10 GST on Damages**

If either Buyer, Seller or Exchange (the “Payor”) is required to make a payment, or reduce or extinguish, without payment, all or part of the amount of a debt or obligation to or for the benefit

of the other party (the “Other Party”) as a consequence of a Failure to Deliver, Failure to Pay or Failure to Take (the “Forfeiture Amount”), and:

- a. the Payor is the Seller, then the Payor will also pay to the Other Party the amount of GST required to be collected by the Other Party in respect of that payment; or
- b. the Payor is the Buyer, then the Payor shall pay to the Other Party an amount in addition to the Forfeiture Amount (the total of this amount and the Forfeiture Amount is referred to as the “Gross Amount”) such that the Other Party will be entitled to the benefit of the Forfeiture Amount, after taking into account the payment of the GST it is obligated to remit in respect of the Gross Amount.

### **5.11 Deposit Agreement**

- a. Failure to Pay by Exchange – In the event of a Failure to Pay by Exchange which is not rectified by Exchange within one (1) Business Day from the Failure to Pay by Exchange, Exchange shall immediately file with the Escrow Agent a Direction to Pay pursuant to, and as defined in, the Deposit Agreement and shall notify Contracting Party Payee(s) (as defined in the Deposit Agreement) of such Direction to Pay having been filed.
- b. Exchange Failure to Pay Resulting from a Failure to Deliver, Failure to Take or Exchange Default – The Contracting Party will be entitled in the event of an Exchange Failure to Pay resulting from an Failure to Take, Failure to Deliver or Exchange Default to file with the Escrow Agent the Contracting Party’s Demand pursuant to, and as defined in, the Deposit Agreement after the expiry of five Business Days from the occurrence of such event.

In the event that the Contracting Party files with the Escrow Agent the Contracting Party’s Demand, Exchange will be entitled to file with the Escrow Agent the Notice Not To Pay pursuant to, and as defined in, the Deposit Agreement in the event that:

- (i) five (5) Business Days have not elapsed from the occurrence of the Exchange Default, as the case may be;
- (ii) either the Contracting Party or Exchange has initiated Mediation in respect of a dispute, controversy, difference or question in respect of the Exchange Default, as the case may be, and twenty (20) days have not expired from the date of initiation of such Mediation;
- (iii) either the Contracting Party or Exchange has initiated Arbitration in respect of a dispute, controversy, difference or question in respect of the Exchange Default, as the case may be, and the Arbitrator or the Arbitral Tribunal, as the case may be, has not issued a decision in respect of such matter; or
- (iv) the amount in respect of the Contracting Party’s Demand has been satisfied.

In the event that Exchange files with the Escrow Agent the Notice Not To Pay, the Contracting Party is entitled to refile with the Escrow Agent the Contracting Party’s Demand with:

- (i) a statement indicating the passage of five (5) Business Days;
- (ii) if Mediation is agreed to, a statement from the mediator as to the passage of twenty (20) days from the initiation of Mediation or a joint direction from the Contracting Party and Exchange as to the resolution of the Mediation; or

- (iii) if Arbitration is agreed to, a statement from the Arbitrator or the Arbitral Tribunal, as the case may be, as to the decision in respect of the matter.

Exchange hereby agrees to provide the Escrow Agent with the Contracting Party's name and address for notices from the Escrow Agent and will cause the Escrow Agent to give the Undertaking to the Contracting Party in respect of the Deposit Agreement.

- c. In the event of any conflict between the provisions of this Agreement and the Deposit Agreement, the rights of Exchange and the Contracting Party under this Agreement will be deemed to be amended and interpreted in accordance with the provisions of the Deposit Agreement.

#### **5.12 Indices**

- a. Liability for Exchange Indices – Neither Exchange nor its agents, directors, officers and employees shall be liable to the Contracting Party for any losses, costs or expenses arising from any matter relating to the calculation, methodology of calculation, compilation, or publication of any indices which are calculated by Exchange which are used for the settlement of any Transaction. Exchange does not make any express or implied warranties in respect of the results which may be achieved through the use of any of such indices or in respect of the value of any of such indices at any given time, nor that any settlement prices established are at a fair, proper or correct amount. Neither Exchange nor its agents, directors, officers and employees shall, under any circumstances, be liable for errors or deficiencies in the calculation, methodology of calculation or publication of any of such indices nor shall Exchange be obligated to provide notice of, or publish, errors in any of such indices in any manner.
- b. Other Indices – Products, which are settled pursuant to the terms of this Agreement on the basis of settlement prices reported by any entity other than Exchange, are not issued, endorsed, sold or promoted by such entity, nor has such entity passed on their legality or suitability. Neither Exchange, nor its respective agents, directors, officers and employees shall be liable to the Contracting Party for any losses, costs, expenses arising from any matter relating to the source or accuracy of the underlying data, calculation, methodology of calculation, compilation, or publication of any indices which are used for the settlement of any Transaction and which are derived from any publication or any other third party index. Exchange does not make any express or implied warranties in respect of the results which may be achieved through the use of any of the indices or in respect of the values of any of the indices at any given time, nor that any settlement prices so established are at a fair, proper or correct amount. Neither Exchange, nor its agents, directors, officers and employees shall, under any circumstances, be liable for errors or deficiencies in the calculation, methodology of calculation, compilation or publication of any of the indices nor shall Exchange be obligated to provide notice of, or publish, errors in any of the indices in any manner. Nor shall Exchange nor its agents, directors, officers and employees shall be liable to the Contracting Party for any losses, damages, costs or expenses arising from any failure of publisher of such indices to establish settlement prices or report settlement prices for their contracts at a fair, proper or correct amount.

#### **5.13 Remedies Upon an Unremedied Exchange Default or Exchange Bankruptcy Event of Default**

- a. Early Termination – In the event that there occurs and is continuing an Unremedied Exchange Default or Exchange Bankruptcy Event of Default, the Contracting Party, in addition to any remedies it may have at law or in equity or otherwise under this Agreement or under any Transaction, may, on no less than five (5) days notice to Exchange (the “Early Termination

Notice Date”), designate a day no earlier than the Early Termination Notice Date and no later than sixty (60) days after becoming aware of such Unremedied Exchange Default or Exchange Bankruptcy Event of Default, as an early termination date (the “Early Termination Date”). On the Early Termination Date, all outstanding Transactions (collectively the “Terminated Transactions”) shall be terminated.

- b. Remedies Upon Early Termination – If the Terminated Transactions are terminated by the Contracting Party pursuant to Section 5.13(a), Exchange shall in good faith calculate in a commercially reasonable manner: (i) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic benefit to it, if any, resulting from the termination of the Terminated Transactions (the “Gains”); and (ii) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic loss to it, if any, resulting from the termination of the Terminated Transactions (the “Losses”). Gains and Losses shall be determined, for each Terminated Transaction, by reference to relevant market information which shall consist of the arithmetic average (the “Calculation”) of market quotations (“Prices”) provided by the five (5) Contracting Parties who:
- (i) with respect to Terminated Transactions that are Physically Settled Oil Futures Transactions (collectively, “Oil Products”), have traded the highest overall volume of Oil Products listed on the NGX Trading System ;
  - (ii) with respect to Terminated Transactions that are Physically Settled Gas Futures Transactions, Options contemplating the delivery of gas or Options or for which the notional quantity is gas (collectively, “Gas Products”), have traded the highest overall volume of Gas Products listed on the NGX Trading System;
  - (iii) with respect to Terminated Transactions that are Physically Settled Power Futures Transactions, have traded the highest overall volume of Physically Settled Power Futures Products listed on the NGX Trading System; or
  - (iv) with respect to Terminated Transactions that are transactions in Financially Settled Futures for which the notional quantity is financial power (collectively, “Financial Power Products”), have traded the highest overall volume of Financial Power Products listed on the NGX Trading System,

over the immediately prior consecutive twelve (12) month period (the “Highest Volume”) and the terms and conditions under which the Contracting Party would reasonably be able to enter into a replacement agreement with a third party on the same material terms and conditions as set out in the Terminated Transaction (a “Replacement Transaction”). If Prices are not forthcoming from any such five (5) Contracting Parties, Exchange shall obtain Prices from the Contracting Party with the next Highest Volume until five Prices have been obtained for the Calculation, and in circumstances where five such Prices are not forthcoming, Exchange shall perform the Calculation on such lesser number of Prices that can be obtained using the above method. Notwithstanding the foregoing, nothing in this Agreement shall require or be deemed to require the Contracting Party to enter into a Replacement Transaction.

As soon as practicable following the Early Termination Date and in no event later than five (5) days following the Early Termination Date, Exchange shall aggregate, Set-Off and net all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under the Agreement (“Receivables”) and all payables owed by the Contracting Party to Exchange under the Agreement (“Payables”) to reduce all such amounts to a single net amount (the “Net Termination

Payment”) and notify the Contracting Party in writing of the Net Termination Payment owed to or owing by the Contracting Party (the “Termination Notice”). (For clarity, the Set-Off and netting of all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under this Agreement shall be deemed to be equivalent to a single master netting agreement.) To the extent that the Contracting Party is owed a Net Termination Payment by Exchange, Exchange shall pay the Net Termination Payment to the Contracting Party as soon as practicable, making commercially reasonable efforts to pay such Net Termination Payment within ten (10) Business Days of receipt by the Contracting Party of the Termination Notice regarding such calculation. To the extent that the Contracting Party owes a Net Termination Payment to Exchange, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Termination Notice. In the event that Exchange has not provided a Termination Notice to the Contracting Party within the five (5) day period set forth above, the Contracting Party shall have the right to calculate its Gains or Losses, as the case may be, for the Terminated Transactions, by determining a Price for each such Terminated Transaction, such Price being a good faith commercially reasonable representation of market value, which value may be disputed in good faith. .

Any and all payments under this Section 5.13 shall be made in freely available Canadian currency by wire payment or electronic funds transfer. Any amount which is not paid when due under this Section 5.13 shall bear interest (both before and after judgment) at the Default Rate, as from the due date of payment until the date of payment, compounded monthly.

- c. A Contracting Party’s rights under this Section 5.13 supersede its right to voluntarily terminate this Agreement in accordance with the terms set out herein. For greater certainty, an affected Contracting Party cannot exercise its voluntary right to terminate this Agreement if an Exchange Failure to Deliver, Exchange Failure to Take, Exchange Failure to Pay or Exchange Default has occurred which, with the giving of notice or the lapse of time or both, would constitute an Unremedied Exchange Default or Exchange Bankruptcy Event of Default.
- d. Exchange’s Right to Cause Early Termination of all Agreements and Transactions – The Contracting Party acknowledges that Exchange has entered into Contracting Party Agreements with other Contracting Parties and, pursuant thereto, Exchange is, from time to time, party to Transactions with such other Contracting Parties. The Contracting Party acknowledges and agrees that, in the event it or one or more other Contracting Parties designates an Early Termination Date (the “Triggering Early Termination Date”) pursuant to this Agreement or one or more of the other Contracting Party Agreements, Exchange shall immediately become entitled, in its sole discretion, to designate an Early Termination Date under any one or more of this Agreement and the other Contracting Party Agreements. If Exchange does so, Exchange may designate an Early Termination Date for any or all such terminations which is the same day or is a day later than the Triggering Early Termination Date, in Exchange’s sole discretion. In the event that Exchange does designate one or more Early Termination Dates following the Triggering Early Termination Date, all the other provisions of this Section 5.13 shall apply thereto *mutatis mutandis*.

**5.14 Interpretation in relation to the U.S. Federal Deposit Insurance Exchange Improvement Act of 1991, as amended (“FDICIA”)**

- a. The Exchange intends that certain provisions of Section 5.13 be interpreted in relation to certain terms (identified by quotation marks) that are defined in FDICIA, as follows:
  - (i) The Exchange is a “clearing organization.”

- (ii) An obligation of a Contracting Party to make a payment to the Exchange, or of the Exchange to make a payment to a Contracting Party, subject to a netting contract, is a “covered clearing obligation” and a “covered contractual payment obligation.”
- (iii) An entitlement of a Contracting Party to receive a payment from the Exchange, or of the Exchange to receive a payment from a Contracting Party, subject to a netting contract, is a “covered contractual payment entitlement.”
- (iv) The Exchange is a “member,” and each Contracting Party is a “member.”
- (v) The amount by which the covered contractual payment entitlements of a Contracting Party or the Exchange exceed the covered contractual payment obligations of such Contracting Party or the Exchange after netting under a netting contract is its “net entitlement.”
- (vi) The amount by which the covered contractual payment obligations of a Contracting Party or the Exchange exceed the covered contractual payment entitlements of such Contracting Party or the Exchange after netting under a netting contract is its “net obligation.”
- (vii) This Agreement, including Section 5.13, is a “netting contract.”

**ARTICLE 6 – CODE OF CONDUCT****6.1 Code of Conduct: Prohibitions**

The Contracting Party agrees that it will not:

- a. manipulate or attempt to manipulate prices of any Product offered by Exchange, including, without limitation, by spreading inaccurate information, reporting false transactions, arranging and executing wash transactions, money passes, fraudulent transactions, non-competitive transactions or any other act designed or intended to artificially affect reported revenues;
- b. collude with other market participants to affect the price or supply of any commodity, market or tenor, allocate territories, customers or products, or otherwise unlawfully constrain competition;;
- c. conduct trading with the intent of misrepresenting the financial condition of the Contracting Party or its related entities;
- d. engage in any act of fraud, bad faith, extortion, dishonest conduct, or material misstatement, or any other unlawful activity including, without limitation, in respect of any information provided to Exchange or matter pertaining to the performance of any Transaction or in any other dealing with Exchange or the other Contracting Parties;
- e. wilfully or negligently engage in unauthorized access to the Exchange, or assist a party in obtaining unauthorized access to the Exchange; or
- f. commit any act, or do anything, which is, or could foreseeably be, in substance, detrimental to the interests, welfare or integrity of Exchange, the ICE Trading Platform, NGX Trading System or NGX Clearing System.

**6.2 Trade Practice Oversight**

- a. Compliance staff shall have the right to monitor activities in respect of the entering into and performance of Transactions through the NGX Trading System, the ICE Trading Platform, and/or the NGX Clearing System, to conduct investigations of possible violations of section 6.1, and to examine any documents and do such other things as are reasonably necessary or advisable to verify compliance by all Contracting Parties with Section 6.1.
- b. The Contracting Party agrees to promptly provide to compliance staff copies, if requested, of documents and records related to its activities pursuant to this Agreement and agrees it will ensure that any such information is accurate. The Contracting Party will cause a person under the control or direction of the Contracting Party who is reasonably knowledgeable in respect of the activities of the Contracting Party under this Agreement to be available by phone or at the offices of Exchange in Calgary at a reasonable time and for a reasonable period in respect of any such request.
- c. The Chief Compliance Officer has the authority to:
  - (i) direct that compliance staff make further enquiries;
  - (ii) refer the matter to the Disciplinary Committee;



- (iii) issue a warning letter to the Contracting Party, informing it that there may have been a violation of Exchange rules, and that a continuation of such activity may result in disciplinary action; or
  - (iv) where the Chief Compliance Officer is of the opinion that a violation has occurred, enter into a written settlement agreement with the Contracting Party, whereby the Contracting Party, with or without the admission of guilt, may agree to
    - (I) a cease and desist order or a reprimand;
    - (II) a fine of up to \$100,000 for each violation plus the monetary value of any gains received as a result of the violation; and/or
    - (III) a Contracting Party Suspension.
- d. The Disciplinary Committee has authority to:
- (i) confirm, vary or reverse a decision of the Chief Compliance Officer, or reject a settlement agreement entered into between a Contracting Party and the Chief Compliance Officer;
  - (ii) refer or return the matter to compliance staff with instructions for further investigation;
  - (iii) enter into a settlement agreement with the Contracting Party;
  - (iv) order that the Contracting Party pay a fine of up to \$100,000 for each violation plus the monetary value of any gains received as a result of the violation;
  - (v) cause a Contracting Party Suspension. Such Contracting Party Suspension shall take effect immediately upon the provision of notice to the effected Contracting Party for the term specified in such notice; and/or
  - (vi) issue a cease and desist order or a reprimand.

### **6.3 Hearings**

- a. Notification – In the event that the Disciplinary Committee has made a determination that a violation has occurred, and has imposed one or more of the sanctions enumerated in Sections 6.2(c)(iv),(v), or (vi), the Disciplinary Committee will provide the Contracting Party with notice of such decision (“Notice of Violation”).
- b. Response of Contracting Party - A Contracting Party who has received a Notice of Violation shall be entitled, upon written request filed with Exchange within twenty (20) calendar days of receipt of such notice to a hearing before a Hearing Panel. Failure of the Contracting Party to request a hearing within twenty (20) days of the Notice of Violation, except where proven for good cause, shall be deemed to be a waiver of the right to a hearing, and an admission of the allegation or allegations contained in the Notice of Violation.
- c. Hearing Procedures – Hearings will be conducted by a Hearing Panel in accordance with Exchange’s hearing procedures, as amended from time to time. A Contracting Party will be entitled to be represented by counsel and to present witnesses and documentary evidence. No

formal rules of evidence shall apply, and the Hearing Panel shall be entitled to accept or reject any evidence it considers proper.

- d. Decisions of the Hearing Panel – The Hearing Panel may confirm, vary or reverse a decision of the Disciplinary Committee, A written decision setting out the Hearing Panel’s reasons for decision will be provided to the Contracting Party.

#### **6.4 Additional Remedies Available to Exchange**

- a. General Suspension - Exchange, in its sole discretion, may, but is not obligated to, cause a General Suspension for such period as it believes necessary or advisable if Exchange believes any of the following events or conditions are occurring or have occurred:
- (i) any manipulative activity or activity aimed at manipulation of prices, without limitation by spreading inaccurate information, reporting false transactions or otherwise performing any other act designed or intended to manipulate the price for any commodity, or any circumstance or circumstances that might improperly affect the performance of Transactions;
  - (ii) matters affecting the safety or welfare of personnel, or that may have a severe, adverse effect on the building where Exchange is located;
  - (iii) fires, bomb threats, substantial inclement weather, power failures and communication breakdowns;
  - (iv) any event which constitutes, or may in the opinion of Exchange constitute, a force majeure event, as defined in Schedules “F”, “G”, “H” or “K”;
  - (v) any circumstances that cause Exchange host computers to be taken off-line;
  - (vi) any matter that, in the opinion of Exchange, detrimentally affects the Regulatory Approvals of Exchange in respect of its performance of this Agreement; or
  - (vii) the entering into of a Physically Settled Futures Transaction or Swap Transaction in error or outside the Market Price Band.
- b. Consequences of General Suspension – The consequences of a General Suspension will be that Exchange may refuse access to the NGX Trading System and/or NGX Clearing System by the Contracting Parties for any or all Products. The Contracting Party must perform its Obligations to make delivery or take receipt of gas or Oil or schedule to deliver or take Physical Power, as applicable, under the applicable Physically Settled Futures Transactions during any period of General Suspension. Exchange will use its commercially reasonable efforts to provide alternative trading capabilities within three Business Days in the event that access to the NGX Trading System and/or NGX Clearing System cannot be resumed.
- c. Procedures on General Suspension - In the event of a General Suspension, Exchange would immediately notify all Contracting Parties as to the reason and expected duration of the General Suspension by phone, fax, email or if possible by access through the NGX Trading System. All communications by Exchange with Contracting Parties would be undertaken by phone, with fax confirmations until such time as access to the NGX Trading System is resumed or alternative trading facilities are available.

- d. **Contracting Party Suspension** – In addition to its rights under this Agreement or under law, equity or otherwise including, without limitation, Section 6.1, Exchange, in its sole discretion exercised in a commercially reasonable manner, may cause a Contracting Party Suspension for such periods as it believes necessary or advisable if Exchange believes any of the following events or conditions are occurring or have occurred in respect of:
- (i) financial condition, including any material adverse change in the financial condition of the Contracting Party or an affiliate or any person providing credit support for the Contracting Party each as determined in the sole discretion of Exchange, or Failure to Provide Eligible Collateral Support with Exchange when requested to do so;
  - (ii) detrimental effect, including circumstances which make the continued access to the NGX Trading System by the Contracting Party detrimental to the existence of an orderly market for gas, Physical Power or Oil, or otherwise detrimentally affects the interests, welfare or integrity of the NGX Trading System or NGX Clearing System;
  - (iii) regulatory approvals, including any matter which may, as determined in the sole discretion of Exchange, detrimentally affect the Regulatory Approvals of the Contracting Party in respect of its performance of this Agreement;
  - (iv) disciplinary action by an applicable regulatory authority against either the Contracting Party, an officer, principle, or a Credit Support Provider for the Contracting Party; or
  - (v) the occurrence of a Failure to Deliver, Failure to Pay, Failure to Take, Event of Default, a Financially Settled Futures Party's Default, an Option Party's Default or Failure to Provide Eligible Collateral Support.
- e. **Consequences of Contracting Party Suspension** – Without limitation to its rights under Section 6.1, in the event that Exchange causes a Contracting Party Suspension for any cause other than those described in Section 6.1, Exchange will provide notice to such Contracting Party and the Contracting Party will not be entitled to enter into some or all Transactions, as identified in such notice, after receipt of such notice. Upon the occurrence of a Contracting Party Suspension, Exchange may exercise any of the rights under Section 5.5 or Section 8.2, with references to the "Defaulting Party" deemed to be references to the suspended Contracting Party, as well as any other rights or remedies granted under this Agreement or under law, equity or otherwise.

## **6.5 Emergency Authority**

In the event that Exchange or its regulators determine an emergency situation exists in which fair and orderly trading, or the liquidation of, or delivery pursuant to, any Transaction, is likely to be disrupted, or the financial integrity of Exchange is threatened, or the normal functioning of Exchange has been or is likely to be disrupted, Exchange may take such action as may in Exchange's sole discretion appear necessary to prevent, correct or alleviate such emergency situation, including but not limited to (i) declining to enter into any Transactions; (ii) causing a Contracting Party's Suspension; (iii) causing a General Suspension; (iv) effecting the Close-out Procedure; (v) effecting the Liquidation Procedure; and/or (vi) taking any other reasonable actions to preserve the integrity and security of Exchange, the NGX Trading System and/or the NGX Clearing System.

## **6.6 Liability for Expenses**

Exchange may, in its sole discretion, charge an amount as liquidated damages equal to \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by

Exchange in respect of injury to the development, reputation and integrity of the business carried on by Exchange.

**ARTICLE 7 - TAXES****7.1 GST**

The Contracting Party hereby agrees with Exchange that the Contracting Party will not provide Exchange with the declaration in writing contemplated by Section 15.2, Part V, Schedule VI to the Excise Tax Act which is available to a recipient who is registered under Subdivision d of Division V of Part IX of the Excise Tax Act. Each of the Contracting Party and Exchange hereby agree to pay any GST that is required to be paid as Buyer pursuant to any Physically Settled Futures Transaction for which it is a Buyer and Contracting Party agrees to pay any GST that is payable on any fees paid to Exchange. Exchange shall provide the Contracting Party with any information required to enable the Contracting Party to claim an input tax credit. The Contracting Party hereby agrees to provide Exchange with its registration number for the payment of GST, if applicable. Each of the Contracting Party and Exchange hereby agree that it will hold and remit GST paid to it hereunder as required by applicable tax legislation and regulations.

**7.2 Tax Legislation**

- a. Registrant – Exchange is not registered under any provincial sales tax legislation of any of the provinces of Canada or under any other comparable legislation in any provinces; nor is Exchange registered under any state sales tax legislation of any of the states of the United States or under any other comparable legislation in any states.
- b. Self Assessment – The Contracting Party hereby agrees with Exchange that should provincial sales tax in any of the provinces of Canada or under any other comparable legislation in those provinces or any states sales tax in any of the United States or under any other comparable legislation in any states, be exigible in respect of any amounts payable to Exchange pursuant to this Agreement or in respect of any Physically Settled Futures Transaction; or should there be any reporting requirement in respect of any amounts payable to Exchange or in respect of any Physically Settled Futures Transaction; the Contracting Party will be solely liable for such reporting and exigible tax.

**7.3 Taxes**

- a. Payments by Contracting Party – Any and all payments by the Contracting Party hereunder shall be made free and clear of and without deduction for any and all present and future taxes, liens, imposts, stamp taxes, deduction, charges or withholdings, and all liabilities with respect thereto and any interest, additions to tax and penalties imposed with respect thereto but, for greater certainty, not including any taxes imposed on the income or capital of Exchange, or any franchise taxes imposed on Exchange by any taxing authority (hereinafter referred to as “Taxes”). If the Contracting Party shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to Exchange:
  - (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 7.3) Exchange receives an amount equal to the sum it would have received had no such deductions been made; and
  - (ii) the Contracting Party shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with the applicable law.

- b. Payment by Exchange – Exchange may deduct or withhold from any amount payable to the Contracting Party any Taxes required by law to be withheld from any such amount payable to the Contracting Party.

**ARTICLE 8 – FINANCIALLY SETTLED FUTURES PRODUCTS AND OPTION PRODUCTS****8.1 Financially Settled Futures Products, and Option Products - General**

- a. Forms of Financially Settled Futures Products, and Option Products – The forms of Financially Settled Futures Products and Option Products and a description of such Products which may be made available by Exchange to the Contracting Party from time to time are set forth in the NGX Product List and Schedule “E”. Financially Settled Futures Products are Futures Products which can be settled only by the payment of a Cash Settlement Amount and are required to be cleared on NGX Clearing System.
- b. Entering into Financially Settled Futures Transactions – Each of Exchange and the Contracting Party, agrees to be bound by any Financially Settled Futures Transactions as: (i) entered into by the Contracting Party through the NGX Trading System; or (ii) entered into the NGX Clearing System through the Exchange of Futures for Related Product provision of Section 3.2(f). Each of Exchange and the Contracting Party agrees to pay the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount as may be required pursuant to any such Financially Settled Futures Transactions.
- c. Entering into Option Transactions – Each of Exchange and the Contracting Party, each in its capacity as the Option Buyer or Option Seller, as the case may be, agrees to be bound by any Option Transactions as: (i) entered into by the Contracting Party through the NGX Trading System; or (ii) entered into the NGX Clearing System including, but not limited to, the terms of any applicable Underlying Futures Transaction and any associated payment or other obligations if such Option Transaction is exercised giving effect to an Underlying Transaction. The Option Buyer agrees to pay the Option Premium Amount as may be required pursuant to any such Option Transactions.
- d. Recourse Against Exchange – Exchange agrees to pay the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount, if any, to the Contracting Party in respect of a Financially Settled Futures Transaction and Exchange agrees to pay the Option Premium Amount to the Option Seller in respect of an Option Transaction, each case to the extent required under the terms applicable to such Financially Settled Futures Transaction or Option Transaction. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Financially Settled Futures Transactions or Option Transactions is against Exchange and agrees that in the event of an Exchange Default, the Contracting Party is entitled to all rights at law except as specifically limited by this Agreement. Without limitation of the foregoing, in the event that there is an Unremedied Exchange Default, and there is at that time a Defaulting Financially Settled Futures Party or Defaulting Option Party under this Agreement or any other Contracting Party Agreement, Exchange will disclose the name of any such Defaulting Financially Settled Futures Party or Defaulting Option Party to any Contracting Parties affected by such Exchange Default, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.
- e. Performance of Financially Settled Futures Transactions – The settlement obligations of Exchange and the Contracting Party under any Financially Settled Futures Transaction will be fully performed upon the payment of all amounts by the Fixed Amount Payer and the corresponding Floating Amount Payer under any such Financially Settled Futures Transaction.
- f. Performance of Option Transactions – The Obligations of Exchange and the Contracting Party under any Option Transaction will be fully performed upon the payment of all amounts by the

Option Buyer under any such Option Transaction up to and including the Option Exercise Date (as defined in Schedule “E”), at which time, if the relevant Option Exercise Conditions have been met, the Obligations of Exchange and the Contracting Party in association with any Underlying Transaction become effective, which Obligations will be fully performed upon the payment of all amounts by the respective parties to such Underlying Transactions.

- g. Settlement and Netting of Invoice Amounts – All amounts payable by the Contracting Party or Exchange under any Financially Settled Futures Transaction or Option Transaction are due and are payable and are to be settled pursuant to Section 8.4. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-Off the amounts payable or receivable in the same currency on account of the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount, as applicable, and fees for the Contracting Party. The Contracting Party and Exchange will be obligated to pay or entitled to receive, as the case may be, only such net amounts. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange’s bank relating to the receipt, deposit or transfer of amounts payable by the Contracting Party. On the Financially Settled Futures Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange.

## **8.2 Rights of Exchange**

On the occurrence, or upon Exchange becoming aware, of a Default with respect to a Contracting Party or in the event of a dispute over a Transaction entered into pursuant to Sections 3.2(f) or (f), Exchange will notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy), and thereafter without further notice or formality prescribed by law or otherwise, all of which are hereby waived by the Defaulting Party to the extent permitted by applicable law, may exercise any combination of the rights and remedies contained in this Section 8.2 or Sections 5.5, 5.6 or 8.3 and any rights or remedies under this Agreement or at law, equity or otherwise including, without limitation, its rights to:

- a. pursuant to Section 3.3(a) and Schedule “C”, request an additional amount of Eligible Collateral Support from the Defaulting Party;
- b. pursuant to Section 6.4, cause a Contracting Party Suspension for a period, which may be in excess of the period during which the Defaulting Party is in Default, or permanently;
- c. declare any amounts for Oil or gas delivered, , any amounts of Physical Power scheduled for delivery, or any unpaid Invoices immediately due and payable and to withhold payments under this Agreement (including, without limitation, under any Transaction) and withhold such payments as if paid or provided to Exchange as Collateral;
- d. notwithstanding Section 3.4. of Schedule “H”, suspend deliveries of Oil to the Contracting Party or takes of Oil from the Contracting Party under one or more Physically Settled Futures Transactions, by amending the applicable notices of shipment, reallocating volumes or otherwise;
- e. with respect to Physically Settled Power Futures Transactions, cancel or amend any schedules to deliver or take Physical Power from Contracting Party by amending its schedule in the Transmission Provider system;



- f. without limitation to any other right hereunder, offset any deliveries or takes of Oil under this Agreement; or
- g. terminate any Transaction, or declare immediately payable or to be performed any Obligations in respect of any Physically Settled Futures Transaction, any Swap Transaction, Option Transaction, NGX Close-out Transaction or this Agreement and, in connection therewith, exercise any of the following rights:
  - (i) pursuant to Section 3.3(d) or Section 8.3, Set-Off, in whole or in part (including by entering into Offsetting Transactions), any Obligations payable or to be performed by Exchange (to the Defaulting Party or to any Contracting Party Affiliate of the Defaulting Party) against Obligations payable or to be performed by the Defaulting Party (or by any Contracting Party Affiliate of the Defaulting Party) to Exchange, which Obligations may extend to periods beyond the periods during which the Contracting Party is in Default;
  - (ii) demand payment under or in respect of, sell, realize upon, use or drawdown the Collateral and apply such Collateral to the Contracting Party's Obligations; or
  - (iii) terminate this Agreement by notice to the Defaulting Party to be effective upon the date of receipt or deemed receipt (which notice may be the same as that delivered under this Section 8.2 or under Section 8.3 or 5.5); provided, this Agreement shall remain in effect for Transactions entered into prior to the date of termination until all Obligations to Exchange in respect of such Transactions have been paid and performed.

For the purpose of converting any sum in any currency into Canadian Dollars, the rate used for converting such currency into Canadian Dollars shall be the actual rate Exchange obtained from Exchange's Principal Banker when converting into Canadian Dollars. Any such amounts which are immediately due and payable, but would have been payable at a future date except for the provisions of this Section 8.2 will be discounted to present value. The rate of interest used in discounting to present value shall be determined by Exchange in a commercially reasonable manner. Exchange will forthwith issue an Invoice reflecting all amounts due and payable by the Defaulting Party.

### **8.3 Close-out Procedure**

In the event that Exchange acting in a commercially reasonable manner and in accordance with Section 8.2 or Schedule "E" determines to offset, in whole or in part, Obligations of the Defaulting Financially Settled Futures Party under any Swap Transactions or the Defaulting Option Party under any Option Transactions on behalf of such Contracting Party and having notified such Contracting Party of such determination, Exchange may enter into orders or NGX Close-out Transactions to offset, in whole or in part, such Obligations in such manner and on such terms as may be then available to Exchange. As a consequence of Exchange exercising its rights under this Section 8.3:

- a. any NGX Close-out Transactions will be treated as allocated to the Defaulting Party's account;
- b. Exchange hereby agrees that the Defaulting Party will, for the purposes of determining Exchange's damages, be deemed to have performed its settlement obligations to pay the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount, as applicable, in the case of a Financially Settled Futures Transaction, or to pay the Option Premium Amount and/or Option Settlement Amount in the case of an Option Transaction, under all NGX Close-out Transactions allocated to its account and under that portion or all of its Financially Settled Futures Transactions or Option Transactions, as the case may be, which are offset by such NGX Close-out Transactions;

- c. for the purposes of determining Exchange's damages, Exchange will Set-Off any and all such amounts that are owed or deemed to be owed to the Defaulting Party against any and all such amounts that are owed or deemed to be owed by such Defaulting Party under the Offsetting Transactions to arrive at a single net settlement amount payable to or by the Defaulting Party which shall be immediately due and payable; for clarity, without limitation to any other rights of Exchange under this Agreement, such net settlement amount shall include, without limitation, an amount as liquidated damages representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation, and integrity of the business carried on by Exchange, where Exchange has determined, in its sole discretion, that appropriate circumstances exist for the application of such liquidated damages;
- d. Exchange will forthwith provide the Defaulting Party with an Invoice for the Offsetting Transactions setting forth the amounts owed to or by the Defaulting Party and the net settlement amount due to or from the Defaulting Party;
- e. payment to Exchange of any net settlement amount owed by the Defaulting Party shall be deemed to satisfy all of its Obligations with respect to the Offsetting Close-out Transactions; and
- f. Exchange shall pay any net settlement amount owed to the Defaulting Party with respect to the Offsetting Transactions and upon such payment, shall assume all of the rights of the Defaulting Party under the Offsetting Transactions.

#### **8.4 Invoices for Financially Settled Futures Products and Option Products**

- a. Invoices for Financially Settled Futures Transactions other than Daily Financially Settled Futures Transactions – Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice on the second Business Day of each calendar month in respect of each Financially Settled Futures Transaction to be settled in the prior calendar month that are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each amount payable or receivable in respect of any Obligations under any Financially Settled Futures Transactions and any amount payable for fees to Exchange under the Fee Schedule. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Cash Settlement Date that has been requested in accordance with the Risk Management Policy and will hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange.
- b. Invoices for Daily Financially Settled Futures Transactions– Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) Invoices in respect of Daily Financially Settled Futures Transactions as follows:
  - (i) for the MTM Settlement Amounts, an Invoice prior to the commencement of, or on, the Business Day following the day each MTM Settlement Amount is determined as set forth in Schedule "E", that is payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each amount payable or receivable in respect of any Obligations under all Daily Financially Settled Futures Transactions;

- (ii) an Invoice on the second Business Day of each calendar month in respect of Daily Financially Settled Futures Transactions mark-to-market settled in the prior calendar month and that are payable in the same currency, setting forth the Daily Financially Settled Futures Settlement Amounts for that month and any net amount payable for fees to Exchange under the Fee Schedule; and
- (iii) Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the MTM Settlement Date and the Cash Settlement Date that has been requested in accordance with the Risk Management Policy and will hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange

The payment or receipt by the Contracting Party of such net MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange with respect to a Daily Financially Settled Futures Settlement Transaction once all such amounts in respect of the applicable Term have been paid, unless a Daily Financially Settled Futures Settlement Transaction has been fully offset as determined in the sole discretion of Exchange, in which case full satisfaction of the applicable settlement amounts shall occur once all MTM Settlement Amounts, and if applicable, all Daily Settlement Amounts, have been paid (or received) as the case may be, in respect of all settlement amounts incurred up to and including the date of full offset.

- c. Invoices for Option Transactions – Exchange will post on Exchange’s Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) Invoices in respect of each Option Transaction as follows:
  - (i) for the Option Premium Amount, on the Business Day following the transaction date of the Option Transaction; and
  - (ii) any other invoices become applicable only if the relevant Option Exercise Conditions have been met, Invoices shall be issued and payable as per the associated Underlying Transaction that has become effective on such exercise.
- d. Terms for Financially Settled Futures Transactions and Option Transactions – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the MTM Settlement Date and Cash Settlement Date (in the case of Daily Financially Settled Futures Transactions), the Cash Settlement Date (in the case of all other Financially Settled Futures Transactions) and the Premium Payment Date (in the case of Option Transactions). Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least one Business Day prior to the Settlement Date or Premium Payment Date, as the case may be. Payments by the Contracting Party will be made payable to Exchange and will be made by wire payment or electronic funds transfer. The Contracting Party shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.

- e. Corrections to the Invoice – In the event that the prices for any Financially Settled Futures Transaction or Option Transaction is corrected by the publication from which such indices is derived for settlement of such Transaction after a Cash Settlement Date, Exchange will post on Exchange’s Website for sole access by the Contracting Party (or will issue to the Contracting Party, upon request) a correcting Invoice to reflect the corrected Cash Settlement Amount or Daily Financially Settled Futures Settlement Amount within two (2) Business Days of being advised of such change. The correcting Invoices will be due and payable within five (5) Business Days of their issuance on terms as outlined in Section 8.4(b).
- f. Final Invoices – The Contracting Party and Exchange agree that any Invoice on any Cash Settlement Date, MTM Settlement Date or Premium Payment Date will be final and binding, absent manifest error, for all purposes 120 days after such Settlement Date, MTM Settlement Date or Premium Payment Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.
- g. Early Payment of Invoices - A Contracting Party may, if desired, make payment to Exchange prior to the applicable Settlement Date, and such funds, when received, will be applied against that Contracting Party’s Invoice amounts, or may be Set-off against amounts then owed by the Contracting Party to Exchange in accordance with Section 3.3(d) of this Agreement.
- h. Return of Retained Settlement Amounts – A Contracting Party may instruct Exchange to retain payables of MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts (“Retained Settlement Amounts”) owing by Exchange to the Contracting Party. Retained Settlement Amounts will be deposited by Exchange in an interest bearing bank account at Exchange’s Principal Banker separate from the corporate funds of Exchange or its affiliates or subsidiaries, and separate from the Eligible Collateral Support of the Contracting Parties and the funds of any other Contracting Party. A Contracting Party may request a return of any such Retained Settlement Amounts if no Default has occurred with respect to such Contracting Party. Upon such a request, Exchange agrees to return the relevant Retained Settlement Amounts on the next Business Day or, if the next Business Day is a Recognized Banking Holiday, then on the first Business Day that is not a Recognized Banking Holiday, following such request. Daily interest earned on such Retained Settlement Amounts will be remitted to the Contracting Party quarterly unless otherwise requested by the Contracting Party, acting reasonably, or unless all such Retained Settlement Amounts have been returned to the Contracting Party or applied, at the Contracting Party’s request, to invoice settlement prior to the quarter. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of Retained Settlement Amounts, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any loss or any interest earned.

**ARTICLE 9 - MISCELLANEOUS****9.1 Term**

- a. Term – This Agreement will continue in full force and effect unless and until terminated by Exchange pursuant to the terms of this Agreement or by Exchange or the Contracting Party under this Section 9.1.
- b. Termination – In addition, and without limitation, to any other rights of termination granted under this Agreement, either the Contracting Party or Exchange may give notice of termination to the other at any time and this Agreement will be terminated as of the effective date in such notice on the condition that such date is no earlier than one Business Day following receipt or deemed receipt of such notice or, where there is no effective date, then at the end of the period ending eight weeks after receipt of such notice (the “Termination Date”), provided that:
  - (i) this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement and, for clarity, until any outstanding Invoices of the Contracting Party are deemed paid and settled, as determined in the sole discretion of Exchange; and
  - (ii) the Contracting Party will not be entitled to enter into any Transactions after the Termination Date.
- c. Contrary to Law – In the event that the participation by any Contracting Party pursuant to this Agreement constitutes a violation of any law or regulation applicable to such Contracting Party, either Contracting Party or Exchange will be entitled to give notice of termination to Exchange or Contracting Party, respectively, and this Agreement will be terminated on receipt of such notice, provided that this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement.
- d. Revisions – In the event that revisions are made to this Agreement, the Contracting Party will be entitled for a period of ten Business Days after the effective date of such revision to give notice of termination to Exchange and this Agreement will be terminated on receipt of such notice, provided that:
  - (i) this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and otherwise under this Agreement; and
  - (ii) the Contracting Party will not be entitled to enter into any Transactions after such date of receipt of such notice by Exchange except to offset, in whole or in part, the Obligations of the Contracting Party under any Transactions.
- e. Consequences of Termination – Upon termination of this Agreement by Exchange pursuant to the terms of this Agreement or otherwise under this Section 9.1:
  - (i) any Transactions will continue to be governed by the provisions of this Agreement relating to such Transactions as at the effective date of termination;
  - (ii) any Collateral will be returned or credited to the Contracting Party when all of its Obligations under all of its Transactions are fully performed, subject to the other terms of the Agreement relating to Set-Off or application of the Collateral; and

- (iii) the license granted under this Agreement to the Contracting Party in respect of the NGX Clearing System will terminate and Exchange may request return of any related data and materials.

## **9.2 Notices**

Any notice, consent, determination or other communication required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if delivered during normal business hours on a Business Day and left at the relevant address set forth below; or telefaxed or sent by other means of recorded electronic communication; and if to Exchange, addressed to it at:

10<sup>th</sup> Floor, 300 - 5th Avenue SW  
Calgary, Alberta  
T2P 3C4  
Attention: President  
Email : legal@ngx.com  
Telefax: (403) 974-1719

and if to the Contracting Party, faxed or sent by other means of electronic communication and if faxed or emailed then addressed to the attention of the person designated from time to time to receive such notices and/or the trader contacts when appropriate. Other means of electronic communication shall include being available for access by way of the NGX Trading System except in the case of communications required in respect of any revisions to this Agreement or as to the occurrence of a Default, in which case notification by fax or email (with return receipt or a comparable electronic confirmation of delivery) are the only accepted methods of electronic communication.

Notwithstanding the above, specifically with respect to any revisions to the Schedules or the addition of a new schedule to this Agreement (collectively, referred to as "Schedule Revisions"), notice by way of electronic communication shall be sufficiently given if either (a) notice containing Schedule Revisions in their entirety (the "Complete Schedule Revisions") is provided to the Contracting Party by fax or email (with return receipt) (the "Standard Electronic Forms"), or (b) notice summarizing the Product Schedule Revisions is provided to the Contracting Party by one of the Standard Electronic Forms (a "Summary Notice") and the Complete Schedule Revisions are posted on Exchange's Website in a secured access section for Contracting Parties on the same day that such Summary Notice was provided.

Any notice or other communication so given or made shall be deemed to have been given or made on the same day and to have been received on the day of delivery if delivered as aforesaid or on the day of receipt of same by fax or other means of electronic communication, as the case may be, provided such day is a Business Day and that such notice is received by the person notified prior to 3:00 p.m. local time, and, if not, on the first Business Day thereafter.

Each party may change its mailing address, facsimile number or email address for the purposes of this Section 9.2 by notice to the other pursuant hereto.

## **9.3 Interest on Payments in Arrears**

Except as specifically provided herein, interest shall be paid by any party on amounts, which are not paid when due, at the Default Rate from and including the day on which the amount was due to but excluding the day on which the amount is paid. All interest referred to in this Section 9.3 shall be simple interest calculated daily on the basis of a 365-day year. For the purposes of the *Interest Act* (Canada), the corresponding rate of interest applicable to a 366-day year would be the stipulated rate multiplied by 366 and divided by 365.

#### **9.4 Relationship of Parties**

- a. No Partnership or Joint Venture – This Agreement nor the conduct of any party shall in any manner whatsoever constitute or be intended to constitute a partnership or joint venture among the parties or any of them but rather each party shall be severally responsible, liable and accountable for its own Obligations under this Agreement or any conduct arising therefrom and for all claims, demands, actions and causes of action arising therefrom. The parties hereto agree that no party shall have the authority or represent that it has, or hold itself out as having, the authority to act for or assume any obligation or responsibility on behalf of any other party except as may be specifically set forth in this Agreement.
- b. Agency – The Contracting Party hereby specifically appoints, constitutes and empowers Exchange as its true and lawful power of attorney and agent with full power and authority in respect of those matters set forth in this Agreement where Exchange specifically agrees to act on behalf of the Contracting Party and in respect of the receipt, delivery and execution of any Confirmation, Swap Confirmation, Option Confirmation, agreement or notice in writing necessary to ensure the validity or enforceability of any Transaction entered: (i) into by any Contracting Party through the NGX Trading System; or (ii) into the NGX Clearing System against such Contracting Party, including, without limitation, nominations in respect of the delivery or receipt of gas or Oil, scheduling of the delivery or receipt of Physical Power, the Liquidation Procedure and the Close-out Procedure and in respect of any filing necessary or desirable in respect of any Regulatory Approval required pursuant to any applicable securities legislation. The power of attorney and agency granted hereby is irrevocable, is a power coupled with an interest and shall survive the bankruptcy, liquidation, winding-up, merger, amalgamation or incapacity of the Contracting Party and bind the successors of the Contracting Party and shall only terminate on the termination of this Agreement. The Contracting Party agrees to be bound by any representation or action made or taken by Exchange pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm any action of Exchange taken in good faith under this power of attorney.

#### **9.5 Trading Information**

The Contracting Party hereby acknowledges that all information in respect of the market created through the Contracting Party's access to the NGX Trading System and NGX Clearing System and made available to a Contracting Party is confidential and is owned by Exchange. The Contracting Party may use this information for its business purposes but to the extent that the information was not furnished by or does not relate solely to the Contracting Party, it may not publish or otherwise disclose such information publicly. This prohibition on public disclosure by the Contracting Party will not apply if the information is or becomes public through no breach of this Agreement by the Contracting Party; the information is disclosed to the Contracting Party by a third party under no legal obligation of confidence; or the Contracting Party is required by law or any regulatory authority to disclose of it. Subject to the covenants of Exchange contained in this Agreement, all such information may be used by Exchange for any purpose it deems appropriate including, without limitation, distributing such information to any Contracting Party on such terms as Exchange may see fit from time to time. In any event, Exchange may publish, distribute or otherwise disseminate such information as follows:

- a. to any Contracting Party in the manner and subject to the terms and conditions described in this Agreement; or
- b. if the information is or becomes public through no breach of this Agreement by Exchange; or

- c. as may be required by law or any regulatory authority to be disclosed, or as may be disclosed in the course of securing, or pursuant to any order, consent or approval signifying any Regulatory Approvals.

## **9.6 Assignment**

This Agreement or the rights, benefits or Obligations hereunder shall not be assignable by the parties hereto without the consent in writing of the other party to this Agreement. Notwithstanding any other provision to the contrary in this Agreement, Exchange may assign as security its entire right, benefit and interest hereunder to any bank, trust company, financial institution or any other person providing credit facilities or other financing to Exchange, provided however that such bank, trust company, institution or other person (the "Security Holder") shall not have any rights or benefits under this Agreement that are greater than the rights and benefits of Exchange hereunder. The Security Holder shall be entitled to utilize the assignment solely for the purpose of accessing the remedies against the Contracting Party available to Exchange under, and pursuant to, the provisions of this Agreement, including, without limitation of the foregoing, under Section 5.5 relating to Physically Settled Futures Transactions and under Section 8.2 relating to Financially Settled Futures Transactions or Option Transactions, provided however that the Security Holder will not be liable or responsible for the observation or performance of any term, covenant, condition or obligation of Exchange by virtue of any assignment of this Agreement to the Security Holder by Exchange.

## **9.7 General**

Except as expressly noted to the contrary, this Agreement constitutes the entire agreement among the parties with respect to the matters dealt with therein and supersedes all prior agreements, understandings or writings among the parties, whether written or oral, and whether legally enforceable or not, in respect of those matters. Each of Exchange and the Contracting Party hereby agree to comply with all laws which are applicable to the transactions contemplated by this Agreement. Each of the parties shall, from time to time, at its own cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Agreement. Exchange hereby agree to give notice to all Contracting Parties of any change in the ownership, directly or indirectly, of Exchange as soon as reasonably possible after notice of such change is known to Exchange. Time shall be of the essence of this Agreement. The Parties have required that this Agreement and all contracts, documents or notices relating thereto be in the English language; les parties ont exigé que cette convention et tout contrat, document ou avis afférent soient en langue anglaise.



**SCHEDULE "A" – FEE SCHEDULE<sup>1</sup>****Subscription Fees - Monthly<sup>2</sup>**

Subscription Fee per month – Contracting Party	\$2,500
Subscription Fee per month – Contracting Party Affiliate	\$1,000
Subscription Fee per month – Contracting Party, US Phys Products Only <sup>3</sup>	\$1,500
Subscription Fee per month – Contracting Party Affiliate, US Phys Products Only <sup>3</sup>	\$750

**Transaction and Forward Transaction Fees–Physical Gas at Canadian Delivery Points – Business Days**

All Yesterday Products	CAD/GJ	\$0.0025
All other Canadian Products tenor of less than one calendar month	CAD/GJ	\$0.0013
All other Canadian Products tenor of greater than one calendar month	CAD/GJ	\$0.0011
All other US Products tenor of less than one calendar month	USD/MMBtu	\$0.0013
All other US Products tenor of greater than one calendar month	USD/MMBtu	\$0.0011
TCPL Enbridge CDA, TCPL Enbridge EDA, TCPL GMI EDA, TCPL Iroquois, TCPL Niagara, TCPL Chippewa	USD/MMBtu	\$0.002
<b>Spread Products</b>		
All other Canadian Products tenor of less than one calendar month	CAD/GJ/leg	\$0.00065
All other Canadian Products tenor of greater than one calendar month	CAD/GJ/leg	\$0.00055
Spread Products to TCPL Enbridge CDA, TCPL Enbridge EDA, TCPL GMI EDA, TCPL Iroquois, TCPL Niagara, TCPL Chippewa	USD/MMBtu/leg	\$0.001
All other US Products tenor of less than one calendar month	USD/MMBtu/leg	\$0.00065
All other US Products tenor of greater than one calendar month	USD/MMBtu/leg	\$0.00055

**Transaction and Forward Transaction Fees–Oil**

Canadian Delivery Point – cleared	CAD/barrel	\$0.025
Canadian Delivery Point – Forward	CAD/barrel	\$0.01

<sup>1</sup> Note that all fees are subject to rebates as published from time to time on the Exchange's Website. Transactions involving an assignment and novation will be billed up to 50% at the amount posted in this Schedule "A". Please contact NGX's marketing department to determine the costs associated with a particular assignment and novation.

<sup>2</sup> Note that U.S.-based participants will be charged in USD.

<sup>3</sup> US Phys products are products traded at any Hub in the United States.

**Transaction and Forward Transaction Fees–Physical Gas at Canadian Delivery Points – Weekends and Non-Business Days**

NGX AB-NIT Yesterday Fixed Price	CAD/GJ	\$0.0025
NGX AB-NIT Same Day Fixed Price	CAD/GJ	\$0.0025
NGX AB-NIT Same Day Index	CAD/GJ	\$0.0025

**Transaction and Forward Transaction Fees – Financial Power Futures Transactions**

Alberta Hourly	CAD/MWh	\$0.10
All other Alberta Financial Power and Heat Rate	CAD/MWh	\$0.02
Ontario Financial Power and Heat Rate	CAD/MWh	\$0.02
EPCOR RRO	CAD/MWh	\$250 per 1% lot
ENMAX RRO – LFM	CAD/MWh	\$312.50 per 1% lot

**Transaction Fees –Options Transactions (Gas)**

Alberta –(Fixed and Alberta-Basis Futures) Put and Call Options	CAD/GJ	\$0.0011
Alberta Straddle Options	CAD/GJ/leg	\$0.00055

**Clearing Fees –Physical Gas at US Delivery Points**

Henry Hub, Katy Enstor, Michcon, Oasis-Waha and Houston Ship Channel	USD/MMBtu	\$0.003
Opal	USD/MMBtu	\$0.0035
All other US Delivery Points	USD/MMBtu	\$0.002

**Clearing Fees –Physically Settled Oil Futures at US Delivery Points**

United States Delivery Point	USD/barrel	\$0.015
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**Clearing Fees – Futures Transactions at Canadian Delivery Points (Gas)**

NGX AB-NIT Fixed for Floating	CAD/GJ	\$0.0011
All other Natural Gas Futures Products	USD/MMBtu	\$0.0011

**Transaction Fees – Physical Power Futures Transactions**

US POWER – tenor of less than one calendar month	USD/MWh	\$0.03
US POWER – tenor of one calendar month or longer	USD/MWh	\$0.0175
US POWER – tenor of one calendar month or longer spread	USD/MWh	\$.00875/leg
US POWER – tenor of one calendar year	USD/MWh	\$0.0175
US POWER – tenor of one calendar year or longer spread	USD/MWh	\$0.00875/leg
US POWER – tenor of three calendar months or longer	USD/MWh	\$0.0175
US POWER – tenor of three calendar months or longer spread	USD/MWh	\$0.00875/leg
US POWER – tenor of a two month period from July to August in one calendar year	USD/MWh	\$0.0175
US POWER – tenor of a two month period from July to August in one calendar year or longer spread	USD/MWh	\$0.00875/leg

Fees for Delivery Points located in Canada are subject to GST.

## **SCHEDULE "B" - MEDIATION AND ARBITRATION**

### **1. RESORT TO MEDIATION OR ARBITRATION**

- a. Agreement to Mediate - Each of the Contracting Party and Exchange hereby agrees that any dispute, controversy, difference or question that is in respect of a material amount or has a material consequence to the party initiating such process and which arises in respect of this Agreement, or any Transaction shall be referred to Mediation.
- b. Agreement to Arbitrate - Each of the Contracting Party and Exchange hereby agrees that any dispute, controversy, difference or question that is in respect of a material amount or has a material consequence to the party initiating such process and which arises in respect of this Agreement, or any Transaction, which has not been resolved by Mediation within twenty days from the date of initiation of Mediation, shall be referred to and resolved by Arbitration.
- c. Obligations - Each of the Contracting Party and Exchange agree that the provisions of this Schedule "B" are not to be construed as relieving either of the Contracting Party or Exchange from the performance of any Obligations under any Transaction in accordance with its terms, including any obligation to make payment under any Invoice issued in accordance with this Agreement, any obligation to take delivery of any portion of the Contract Quantity to be received in accordance with a Physical Transaction or any obligation to make delivery of any portion of the Contract Quantity to be delivered in accordance with a Physical Transaction. The performance of any such Obligations under any Transaction is not intended to derogate from the agreement of the Contracting Party and Exchange that the decision of an Arbitrator, or the decision of the Arbitral Tribunal (or a majority thereof), as the case may be, shall be final and binding upon the parties in accordance with the provisions of this Schedule "B".

### **2. MEDIATION PROCEDURE**

- a. Notice - The party (Exchange for the purpose of this Schedule "B" being regarded as a single party) initiating mediation shall provide written notice of that request to the other party, including a summary of the dispute. A management level or more senior employee of each party must meet and discuss a settlement within 3 days after notice to mediate has been issued. The place of any mediation procedure shall be in Calgary, Alberta.
- b. Appoint Mediator - If the parties are unable to agree on settlement of the dispute they shall appoint a mediator within 7 days of the notice to mediate being received by the parties. If the parties are unable to agree on a mediator then either party may apply to have the mediator appointed by the Court of Queen's Bench of Alberta.
- c. Points of Issue - Within 3 days after a mediator has been selected, each party shall submit a written statement outlining the points at issue to the mediator and to the other party. The mediator may conduct the proceedings in any manner considered appropriate, taking into account the circumstances of the case, any desires expressed by the parties, and the desire for a speedy resolution of the dispute. The mediator may communicate with the parties orally or in writing and may meet with the parties together or individually. The mediator may make proposals for a settlement, but such proposals need not be in writing nor will such proposals be binding on the parties until they have agreed in writing to accept and be bound by the terms of that proposal.
- d. Mediator In Future Proceedings - The mediator shall not act as a representative or witness of either party or otherwise participate in any arbitration or judicial proceedings related to a dispute that was the subject of the mediation.
- e. Disclosure - Statements made by either party or the mediator in the course of the mediation proceedings (including, without limitation, the pre-mediation meeting between senior employees for each party) shall not be disclosed to any third party and shall not be introduced by the other party or parties in arbitration or

judicial proceedings, whether or not those proceedings relate to the dispute that was the subject of the mediation.

- f. Twenty Day Limit - The mediator shall provide the Contracting Party with a statement signed by such mediator in the event that more than twenty days lapses from the date of initiation of Mediation and no agreement in writing has been reached by the parties.

**3. ARBITRATION PROCEDURE**

- a. Any dispute, claim or controversy between Exchange and the Contracting Party arising out of, relating to, or in connection with, this Agreement and this Schedule "B" shall be finally settled by arbitration administered by the International Chamber of Commerce (the "ICC") and conducted in accordance with the ICC rules of arbitration (the "ICC Rules of Arbitration") in effect at the time of the arbitration. The place of arbitration shall be New York City and the proceedings shall be conducted in the English language. Capitalized terms used in this section and not otherwise defined herein shall have the meanings specified in the ICC Rules of Arbitration.
- b. The arbitration shall be conducted by three arbitrators (each individually an "Arbitrator" and collectively, the "Arbitral Tribunal"). Each party shall nominate one Arbitrator within thirty (30) days after delivery of the Request for Arbitration. In the event a party fails to nominate an Arbitrator, upon request of either party, such Arbitrator shall instead be appointed by the ICC within thirty (30) days of receiving such request. The two Arbitrators appointed in accordance with the above provisions shall nominate the third Arbitrator within thirty (30) days of their appointment. If the first two appointed Arbitrators fail to nominate a third Arbitrator, then, upon request of either party, the third Arbitrator shall be appointed by the ICC within thirty (30) days of receiving such request. The third Arbitrator shall serve as Chairman of the Arbitral Tribunal.
- c. The Award rendered by the Arbitrators shall be final and binding on the parties.
- d. By agreeing to arbitration, the parties do not intend to deprive any court of competent jurisdiction, as specified in paragraph (e) below, of its ability to issue any form of provisional remedy, including but not limited to a preliminary injunction or attachment in aid of the arbitration, or order any interim or conservatory measure. A request for such provisional remedy or interim or conservatory measure by a party to a court shall not be deemed a waiver of this agreement to arbitrate.
- e. For the limited purposes of either compelling arbitration and/or enforcing this paragraph (e), confirming and/or enforcing any arbitral award, and/or seeking provisional remedies in aid of arbitration pursuant to paragraph (d) above, each party hereby irrevocably consents to the jurisdiction of the following courts: (i) the courts of the Province of Alberta, (ii) the Supreme Court of the State of New York sitting in the Borough of Manhattan and the United States District Court for the Southern District of New York, (iii) the courts in any jurisdiction in which the assets or property of either party is located, or (iv) any other court of competent jurisdiction. In such case, each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action or proceeding.
- f. In the event of a conflict or inconsistency between the provisions of this Schedule and any other provisions of this Agreement, as in effect at any time, the provisions of this Schedule shall govern.

## **SCHEDULE "C" - RISK MANAGEMENT POLICY**

### **1. DEFINITIONS**

Words and phrases capitalized in this Risk Management Policy and not defined herein have the same meaning as in this Agreement.

In this Schedule "C", the following terms and phrases mean as follows:

- a. "Adjusted Risk Limit" has the meaning ascribed thereto in section 8(b)(ii);
- b. "Available Margin" means, for any Contracting Party, the difference between the value of the Collateral provided by such Contracting Party and available to Exchange and the Margin Requirement for such Contracting Party, each as calculated hereunder;
- c. "Current Month Accounts Net Payable" means
  - i. for a Contracting Party entering into Physically Settled Gas Futures Transactions and/or Physically Settled Power Futures Transactions, the accounts payable owing by Exchange to such Contracting Party less the accounts receivable owing by such Contracting Party to Exchange pursuant to all Physically Settled Gas Futures Transactions and/or Physically Settled Power Futures Transactions, as applicable, delivered to date during that current month, including, with respect to Physically Settled Gas Futures Transactions, Post-Settlement Delivery Adjustments; and
  - ii. for a Contracting Party entering into Physically Settled Oil Futures Transactions or Physically Settled Gas Futures Transactions with assigned delivery (as set out in Schedule "J"), up to 100% of the Discretionary Delivery Credit;
- d. "Daily Financially Settled Futures Settlement Net Payable" means, for a Contracting Party, the total Daily Financially Settled Futures Settlement Amounts (as set forth in Schedule "E") owing by Exchange to such Contracting Party, less the total Daily Financially Settled Futures Settlement Amounts owing to Exchange by such Contracting Party, including any post settlement adjustments made in accordance with this Agreement;
- e. "Discretionary Delivery Credit" means a discretionary credit of up to 100% of the accounts payable that will be owing by Exchange to such Contracting Party as at the next Physical Settlement Date less the accounts receivable that will be owing by such Contracting Party to Exchange as at the next Physical Settlement Date pursuant to all Physically Settled Oil Futures Transactions and all Physically Settled Gas Futures Transactions with assigned delivery (as set out in Schedule "J") delivered during that current month;
- f. "Initial Margin" means, for each Contracting Party, an amount established by Exchange from time to time based on the applicable Initial Margin Rate for each Product and the aggregate of all Net Open Positions of such Contracting Party;
- g. "Initial Margin Rate" means, for each Product, an amount established by Exchange from time to time as published by Exchange on Exchange's Website;
- h. "Margin Limit" means, for each Contracting Party, an amount determined by Exchange which shall not exceed the value of the Collateral granted by such Contracting Party and available to Exchange, as calculated hereunder;
- i. "Margin Requirement" means, for each Contracting Party, an amount equal to the sum of the Previous Month Accounts Net Payable, Current Month Accounts Net Payable, Futures Settlement Net Payable,

MTM Settlement Net Payable, Daily Futures Settlement Net Payable, Option Premium Amounts, Initial Margin and Variation Margin, as applicable, for such Contracting Party, as calculated hereunder;

- j. "Market Price" means, in respect of any Product, the price reflecting the current market conditions as determined by Exchange;
- k. "MTM Settlement Net Payable" means, for a Contracting Party, the total MTM Settlement Amounts (as set forth in Schedule "E") owing by Exchange to such Contracting Party, less the total MTM Settlement Amounts owing to Exchange by such Contracting Party, including any post settlement adjustments made in accordance with this Agreement;
- l. "Net Open Position" means in respect of each Product, the volume calculated as the positive difference between the sum of all purchases or sales, as applicable, of such Product and the sum of all opposite sales or purchases as applicable.
- m. "Option Premium Amount" has the meaning ascribed thereto in Section 1.2 of the Terms and Conditions and is calculated in accordance with Schedule "E";
- n. "Post-Settlement Delivery Adjustments" has the meaning ascribed thereto in Schedule "J";
- o. "Previous Month Accounts Net Payable" means, for a Contracting Party, the accounts payable owing by Exchange to such Contracting Party less the accounts receivable owing by such Contracting Party to Exchange pursuant to all Physical Transactions delivered during the previous calendar month;
- p. "Risk Limit" has the meaning ascribed thereto in section 8(b)(i);
- q. "Settlement Price" means, in respect of every Product for each Trading Day, the price as determined by Exchange, in its sole discretion, considering the reasonable estimation of the current Market Price using internal and external sources for each Product, such Settlement Price being determined no later than the end of every Business Day. Should the Contracting Party dispute such determination, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable;
- r. "Futures Settlement Net Payable" means, for a Contracting Party, the total Futures Clearing Amounts owing by Exchange to such Contracting Party, less the total Futures Clearing Amounts owing to Exchange by such Contracting Party; and
- s. "Variation Margin" means, in respect of every Product for each trading day, a reasonable estimate of the market value of such Product as determined by Exchange, in its sole discretion, considering the reasonable estimation of the current market value using internal and external sources for each Product. Should the Contracting Party dispute such determination, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable.

## **2. INITIAL MARGIN RATES**

Exchange will determine the Initial Margin Rate applicable to each Product, from time-to-time, and such Initial Margin Rates will be determined at the sole discretion of Exchange.

## **3. DETERMINATION OF MARGIN LIMITS**

- a. Exchange will determine the Margin Limit for each Contracting Party based on Collateral provided by such Contracting Party and available to Exchange in the form and as valued by Exchange pursuant to this Schedule "C".

- b. In the event that a Contracting Party wishes to increase its Margin Limit with Exchange, the Contracting Party will be required to provide additional Eligible Collateral Support with Exchange.
- c. Exchange will determine each Contracting Party's Discretionary Delivery Credit in conjunction with Exchange's insurance provider. Such Discretionary Delivery Credit is subject to change. Exchange shall provide notice in writing of the maximum value of Discretionary Delivery Credit that will be applied in the calculation of each Contracting Party's Margin Requirement.
- d. Exchange reserves the right to require certain Contracting Parties trading in Physically Settled Oil Futures Products to provide a guarantee from a guarantor to be specified by Exchange in an amount no less than the Discretionary Delivery Credit in a form acceptable to Exchange prior to applying the Discretionary Delivery Credit in the calculation of such Contracting Party's Margin Requirement.

**4. UNSECURED CREDIT**

Exchange will not provide unsecured credit to any Contracting Party.

**5. ACTIVATION**

- a. Prior to any Contracting Party being activated to trade on the NGX Trading System and/or NGX Clearing System, the Contracting Party must complete an Application and provide documentation satisfactory to Exchange that it meets: (i) the Minimum Qualification Requirement, as evidenced by its latest financial statements; and (ii) any other qualification requirements imposed by Exchange having regard to overall integrity and security of Exchange, including, without limitation, corporate structure, governance or information relating to creditworthiness.
- b. If the Application is accepted by Exchange, Exchange will confirm to the Contracting Party that it believes the Contracting Party and, if applicable, its Credit Support Provider has satisfied the Minimum Qualification Requirement and any other fitness or financial requirements under this Section 5 or otherwise under this Agreement.
- c. A Contracting Party will be activated on the NGX Trading System and/or NGX Clearing System by Exchange after the Application has been accepted and all pre-requisite requirements have been satisfied under this Section 5 or otherwise under this Agreement and once Exchange has received Collateral which will be used to establish a Margin Limit for that Contracting Party.
- d. Exchange reserves the right to apply order size limits for each Contracting Party.
- e. At the discretion of Exchange, certain Contracting Parties will be allowed to sell only certain Physically Settled Gas Futures Products or Physically Settled Power Futures Products and provide Collateral to Exchange by utilizing Previous Month Accounts Net Payable and Current Month Accounts Net Payable payable by Exchange to such Contracting Parties.
- f. Exchange will activate designated persons for trading in specific Products on the NGX Trading System and/or NGX Clearing System based on instructions from the Administrator, and access by the Contracting Party to the applicable Transportation System pursuant to Section 2.6 of the Terms and Conditions.

**6. VALUATION OF COLLATERAL**

For the purposes of calculating the value of Collateral, Available Margin and Margin Requirement for a Contracting Party, Exchange shall value the Collateral of such Contracting Party as follows:



- a. with respect to each letter of credit constituting Eligible Collateral Support, the undrawn portion of such letter of credit available to Exchange; provided that, no value shall be allocated to such letter of credit as and from 20 calendar days prior to the expiry of such letter of credit;
- b. with respect to cash, or interest bearing instruments contemplated by Section 3.3(j) of the Terms and Conditions, the full amount of cash or the face value of the instrument, as applicable;
- c. with respect to Previous Month Accounts Net Payable, the amount of such Contracting Party's Previous Month Accounts Net Payable; provided that, no positive value shall be allocated for such Contracting Party for such Previous Month Accounts Net Payable after the 20th day of the current month;
- d. with respect to Current Month Accounts Net Payable, the amount of such Contracting Party's Current Month Accounts Net Payable;
- e. with respect to Futures Settlement Net Payable, the amount of such Contracting Party's Futures Settlement Net Payable; provided that, no positive value shall be allocated for such Contracting Party for such Futures Settlement Net Payable after the last calendar day of the month immediately preceding the month when such Futures Settlement Net Payable is to be paid;
- f. with respect to MTM Settlement Net Payable, the amount of such Contracting Party's MTM Settlement Net Payable; provided that no positive value shall be allocated for such Contracting Party;
- g. with respect to Daily Futures Settlement Net Payable, the amount of such Contracting Party's Daily Futures Settlement Net Payable; provided that no positive value shall be allocated for such Contracting Party; and
- h. with respect to Variation Margin, the amount determined for such Contracting Party by Exchange, in its sole discretion; provided that, no positive value shall be allocated for such Contracting Party for such Variation Margin from and after it converts to a Current Month Accounts Net Payable.

**7. DAILY MARGIN LIMIT MONITORING**

- a. During each Trading Day, Exchange will monitor the Margin Requirement of each Contracting Party.
- b. If the Margin Requirement for a Contracting Party is equal to or greater than eighty percent (80%) of the lesser of such Contracting Party's Margin Limit and Adjusted Risk Limit, Exchange will advise the Contracting Party and may request that additional Eligible Collateral Support be provided to Exchange.
- c. If the Margin Requirement for a Contracting Party is equal to or greater than ninety percent (90%) of the lesser of such Contracting Party's Margin Limit and Adjusted Risk Limit, Exchange may halt such Contracting Party from entering orders for Products which will increase its Margin Requirement until the Contracting Party provides additional Eligible Collateral Support to the satisfaction of Exchange.
- d. If the Margin Requirement for a Contracting Party is equal to or greater than ninety-five percent (95%) of the lesser of such Contracting Party's Margin Limit and Adjusted Risk Limit and Exchange does not have sufficient Collateral with respect to such Contracting Party, Exchange will be entitled to, without limitation to any of its other rights or remedies, invoke the Liquidation Procedure pursuant to Section 5.6 of the Terms and Conditions and the Close-out Procedure pursuant to Section 8.3 of the Terms and Conditions.
- e. If the Available Margin for a Contracting Party is less than:
  - (i) with respect to a Contracting Party that transacts in Option Products, \$2,000,000;
  - (ii) with respect to a Contracting Party that does not transact in Option Products, but transacts in Financial Power Products, Physical Power Products and/or Oil Products, \$1,000,000; or

- (iii) with respect to a Contracting Party that does not transact in either Option Products, Financial Power Products or Oil Products, \$500,000,

Exchange will advise the Contracting Party and may request that additional Eligible Collateral Support be posted with Exchange. Exchange may halt such Contracting Party from entering orders for Products which will increase its Margin Requirement until the Contracting Party provides additional Eligible Collateral Support to the satisfaction of the Exchange.

## **8. RISK MANAGEMENT**

### **a. Risk Management Policy**

- (i) Where a Contracting Party qualifies as either a “swap dealer” or a “major swap participant” under the Commodity Exchange Act (United States) and the regulations of the Commodity Futures Trading Commission, the Contracting Party shall maintain a current written risk management policy. The Contracting Party shall from time to time, upon request by Exchange, provide Exchange with information and documents regarding its risk management policies, procedures and practices, including, but not limited to, information and documents concerning liquidity of the Contracting Party’s financial resources and settlement procedures (the “Risk Management Documentation”), and make such information and documents available to Exchange’s regulators upon their request. Exchange may, from time to time, conduct on-site audits of the Risk Management Documentation and the Contracting Party shall make reasonable efforts to facilitate any such audits.

### **b. Risk Limits**

- (ii) Exchange shall set risk limits that prevent a Contracting Party’s Margin Requirement from exceeding two times the Contracting Party’s net worth, or two times the net worth of the Specified Entity where such entity has provided Exchange with financial statements, as adjusted by Exchange in its sole discretion (the “Risk Limit”). Exchange shall provide the Contracting Party with notification of its Risk Limit and any related updates that Exchange determines in its sole discretion are appropriate from time to time.
- (iii) Exchange may allow the Contracting Party to exceed the Risk Limit in an amount to be determined in Exchange’s sole discretion, relative to the Collateral and in accordance with certain standards to be set by Exchange from time to time (the “Adjusted Risk Limit”).

## **9. REQUEST FOR ELIGIBLE COLLATERAL SUPPORT BY EXCHANGE**

a. Upon a request by Exchange for additional Eligible Collateral Support from a Contracting Party in accordance with this Agreement, the Contracting Party agrees to provide such additional Eligible Collateral Support to Exchange within the next Business Day or, if the next Business Day is a day that is a Recognized Banking Holiday, then on the first Business Day that is not a Recognized Banking Holiday following any such request. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange’s bank relating to the receipt, deposit or transfer of such Eligible Collateral Support.

b. A Contracting Party may request a return of Eligible Collateral Support it has provided to Exchange in the form of cash (“Cash Collateral”), or a reduction of Eligible Collateral Support it has provided to Exchange in the form of a letter of credit as Collateral if:

- (i) its Margin Requirement is less than eighty percent (80%) of the value of the Collateral that it has provided and is available to Exchange, all as calculated hereunder (the “Minimum Collateral Amount”); and

- (ii) no Default has occurred with respect to such Contracting Party.

Upon such a request, Exchange agrees to:

- (i) return an amount of Cash Collateral equal to the lesser of:
  - (1) the full amount of such Cash Collateral; or
  - (2) such portion of such Cash Collateral as would reduce the value of the Collateral of the Contracting Party to be retained by Exchange, as calculated hereunder, to the Minimum Collateral Amount,

such return of Cash Collateral to occur on the next Business Day or, if the next Business Day is a Recognized Banking Holiday, then on the first Business Day that is not a Recognized Banking Holiday, following such request; or

- (ii) accept a new or revised letter of credit where the value of the Collateral of the Contracting Party to be retained by Exchange, as calculated hereunder, meets or exceeds the Minimum Collateral Amount.

#### **10. RISK TO EXCHANGE**

Notwithstanding any provision of this Agreement, Exchange reserves the right at any time to: (a) decline to enter into any Transactions which, in Exchange's sole determination, increases the credit exposure or adds additional risk of loss to or otherwise affects the risk profile of Exchange; or (b) take any other reasonable actions to preserve the integrity and security of Exchange, the NGX Trading System and/or the NGX Clearing System (including, without limitation, making a request of a Contracting Party for additional Eligible Collateral Support), as determined in the sole discretion of Exchange.

#### **11. SETTLEMENT**

Exchange will settle all Transactions in accordance with this Agreement, including without limitation the Risk Management Policy for all Contracting Parties including the payment, deposit or transfer of Collateral to Exchange by the Contracting Parties to ensure the performance of all Transactions by the Contracting Parties.

#### **12. AFFILIATE NETTING**

Except as Exchange may otherwise agree, and without limitation to any other provision in this Agreement, Exchange will net the Transactions and related financial obligations of any Contracting Party and its Contracting Party Affiliates under this Agreement as follows:

- a. the Initial Margin will be determined on the aggregate of the Net Open Positions of the Contracting Party and its Contracting Party Affiliates;
- b. the Variation Margin applicable to all Transactions will be netted; and
- c. the accounts payable and accounts receivable for all Transactions will be netted.

The Contracting Party may elect not to continue to have its Physical Transactions, Futures Transactions and Option Transactions with Exchange netted with its Contracting Party Affiliates by agreement with Exchange. Exchange will only agree after the Contracting Party and the Contracting Party Affiliate have provided to Exchange Collateral sufficient to cover the Margin Requirements for each party.

**13. DIVISIONS OR BUSINESS UNITS OF CONTRACTING PARTIES**

At the request of a Contracting Party, Exchange may agree to provide segregated reports, invoices, nominations and Collateral accounts for divisions or business units as designated by the Contracting Party. Such segregation is for administration purposes only and will not change the rights or remedies of Exchange under this Agreement or the obligations of any such Contracting Party to perform its obligations as specified under this Agreement.

## **SCHEDULE "D" – NGX PRODUCT LIST**

### **DEFINITIONS**

"AEFP" is defined in Section 10(b) of Schedule "E";

"AESO" is defined in Section 10(a) of Schedule "E";

"ARG" is defined in Appendix 2 to Schedule "H";

"ATC" means HE 01:00 - 24:00 Monday-Sunday including NERC holidays;

"CGPR" is defined in Section 15(h) of Schedule "F";

"Cleared Only Product" is defined in Section 1.2(q) of the Terms and Conditions;

"Crude Type" is defined in Appendix 1 to Schedule "H";

"CMA" is defined in Appendix 1 to Schedule "H" and in Appendix 2 to Schedule "H", as applicable to U.S. and Canadian crude oil products;

"CP" is defined in Appendix 2 to Schedule "H";

"DNS" is defined in Appendix 1 to Schedule "H";

"Dual Peak" means HE 07:00 – 11:00 AND HE 17:00 – 22:00 Monday-Friday excluding NERC holidays;

"ENMAX LFM" is defined in the NGX Index Methodology Guide;

"Exchange's Website" is defined in Section 1.2(ddd) of the Terms and Conditions;

"Floating Price" is defined in Section 10(y) of Schedule "E";

"GDD" means a daily index published in Platts Gas Daily;

"HE 7-11" HE 07:00 - 11:00 Monday-Friday excluding NERC holidays;

"HE 12-22" means HE 12:00 - 22:00 Monday-Friday excluding NERC holidays;

"HE 17-22" means HE 17:00 – 22:00 Monday-Friday excluding NERC holidays;

"HOEP" is defined in Section 10(dd) of Schedule "E";

"IESO" is defined in Section 10(ee) of Schedule "E";

"IF" means Platts Inside FERC;

"LD1" means an index published in NYMEX Last Day Settle;

"Mini" is means as a contract size between 1-1,000 MWh in an increment of 1;

"NGI" means a publication entitled NGI's Bidweek Survey produced and delivered on the first U.S. business day of each month by Intelligence Press, Inc.;

"NGX AB-NIT Day Ahead Index" is defined in Section 15(jj) of Schedule "F";

"NGX AB-NIT Month Ahead Index (7A)" is defined in Section 15(ll) of Schedule "F";

"NGX AB-NIT Month Ahead (7A US)" is defined in the NGX Index Methodology Guide;

"NGX AB-NIT Same Day Index (2A)" is defined in Section 15(mm) of Schedule "F";

"NGX AB-NIT Same Day (2A US)" is defined in the NGX Index Methodology Guide;

"NGX AB-NIT Same Day Index (4A)" is defined in Section 15(oo) of Schedule "F";

"NGX AB-NIT Same Day Index (5A)" is defined in Section 15(qq) of Schedule "F";

"NGX AB-NIT Same Day Index (5A) in the US" is defined in Section 15(ss) of Schedule "F";

"NGX Alberta Extended Peak Electricity RRO" is defined in the NGX Index Methodology Guide;

"NGX Alberta Flat Electricity RRO" is defined in the NGX Index Methodology Guide;

"NGX Index Methodology Guide" means a document published by Exchange on Exchange's Website that provides descriptions of methodology for determination and definition of price indices;

"NGX AB-NIT Spectra Station #2 Day Ahead Index" is defined in Section 15(uu) of Schedule "F";

"NGX Union-Dawn Day Ahead Index" is defined in Section 15(ww) of Schedule "F";

"Off Peak" means HE 01:00 - 06:00, HE 23:00 and HE 24:00 daily;

"Off Pk Wknd" means Hour Ending ( HE ) 07:00 - 22:00 Saturday and Sunday including NERC holidays;

"Peak" means Hour Ending ( HE ) 07:00 - 22:00 Monday-Friday excluding NERC holidays;

"Platts Gas Daily" has the same meaning as "Gas Daily" as found in Section 15(s) of Schedule "F";

"Platts Inside FERC" means Inside FERC's Gas Market Report as published by Platts, a division of The McGraw-Hill Companies, Inc.;

"WRAP" means Monday through Friday HE 01:00 - 06:00, HE 23:00 and HE 24:00 and HE 01:00 - 24:00, Saturday and Sunday plus NERC holidays; and

"TMX 1a" is defined in Section 2(n) of Schedule "H".

## **CRUDE TYPES**

"AHS" is defined in Appendix 1 to Schedule "H";

"BR" is defined in Appendix 1 to Schedule "H";

"C5" is defined in Appendix 1 to Schedule "H";

"CAL" is defined in Appendix 1 to Schedule "H";

"CLK" is defined in Appendix 1 to Schedule "H";

"CNS" is defined in Appendix 1 to Schedule "H";

"DSW" is defined in Appendix 2 to Schedule "H";  
 "EUG" is defined in Appendix 2 to Schedule "H";  
 "FH" is defined in Appendix 1 to Schedule "H";  
 "HSB" is defined in Appendix 1 to Schedule "H";  
 "LLB" is defined in Appendix 1 to Schedule "H";  
 "LLK" is defined in Appendix 1 to Schedule "H";  
 "LLS" is defined in Appendix 2 to Schedule "H";  
 "LSB" is defined in Appendix 1 to Schedule "H";  
 "M" is defined in Appendix 1 to Schedule "H";  
 "MAR" is defined in Appendix 2 to Schedule "H";  
 "PAS" is defined in Appendix 1 to Schedule "H";  
 "POS" is defined in Appendix 2 to Schedule "H";  
 "SC" is defined in Appendix 1 to Schedule "H";  
 "SHB" is defined in Appendix 1 to Schedule "H";  
 "SHE" is defined in Appendix 1 to Schedule "H";  
 "SLE" is defined in Appendix 1 to Schedule "H";  
 "SO" is defined in Appendix 1 to Schedule "H";  
 "SW" is defined in Appendix 1 to Schedule "H";  
 "SSP" is defined in Appendix 1 to Schedule "H";  
 "WCB" is defined in Appendix 1 to Schedule "H";  
 "WCS" is defined in Appendix 1 to Schedule "H";  
 "WH" is defined in Appendix 1 to Schedule "H";  
 "WTI" is defined in Appendix 2 to Schedule "H"; and  
 "WTS" is defined in Appendix 2 to Schedule "H".

## PRODUCT TYPES

BS	Physical Basis
FP	Fixed Price
ID	Physical Index
HR	An index product that converts to a fixed price contract by multiplying the traded Heat Rate (MMBTU/MWh) by the final NYMEX NG settlement price for the relevant contract month.
FP Spread	Fixed Price Spread
BS Spread	Physical Basis Spread
DBS	Daily Basis Futures
FP Futures	Fixed Futures
BS Futures	Basis Futures
ID Futures	Index Futures

## **SCHEDULE "E" - NATURAL GAS OPTIONS AND GAS AND POWER FINANCIALLY SETTLED FUTURES TRANSACTIONS**

Financially Settled Futures Transactions and Options may be entered into until such times on such trading days as is stipulated by Exchange on the NGX Trading System. This Schedule "E" contains the clearing and settlement provisions for all Financially Settled Futures Products and Option Products listed on the NGX Product List and designated as cleared through the NGX Clearing System.

### **1. RELATIONSHIP TO AGREEMENT**

Nothing in this Schedule "E" will impair the obligations or rights of Exchange or the rights or obligations of the Contracting Party pursuant to this Agreement. Any Contracting Party which is a party to a Financially Settled Futures Transaction or Option Transaction hereby agrees that any such Financially Settled Futures Transaction or Option Transaction includes the provisions of this Schedule "E" and is subject to the terms of this Agreement.

### **2. CALCULATION PERIODS FOR FINANCIALLY SETTLED FUTURES PRODUCTS**

- a. Natural Gas and Oil Financially Settled Futures - The Calculation Period is equal to the number of days in the Financially Settled Futures Transaction starting on the Effective Date and ending on the Period End Date.
- b. Financial Power Futures - The Calculation Period is equal to the number of hours in the applicable Financial Power Product starting on the Effective Date and ending on the Period End Date.

### **3. DETERMINATION OF CASH SETTLEMENT CLEARING AMOUNTS FOR FINANCIALLY SETTLED FUTURES TRANSACTIONS OTHER THAN DAILY FINANCIALLY SETTLED FUTURES TRANSACTIONS**

- a. Calculation of Fixed Amount:

The Fixed Amount payable under a Transaction by the Fixed Price Payer will be calculated as follows:

*The Fixed Amount equals the Notional Quantity times the Calculation Period times the Fixed Price.*

- b. Calculation of Floating Amount:

The Floating Amount payable under a Futures Transaction by the Floating Price Payer will be calculated as follows:

*The Floating Amount equals the Notional Quantity times the Calculation Period times the Floating Price.*

- c. Calculation of Futures Clearing Amount:

The Futures Clearing Amount for each Futures Transaction is the result obtained by subtracting the Floating Amount from the Fixed Amount.

If the Futures Clearing Amount (expressed in \$C or \$U.S.) is greater than 0, Fixed Price Payer agrees to pay to Floating Price Payers such Futures Clearing Amount on the Futures Settlement Date.

If the Futures Clearing Amount (expressed in \$C or \$U.S.) is less than 0, Floating Price Payer agrees to pay to Fixed Price Payer on the Futures Settlement Date the absolute value of such Futures Clearing Amount.



**4. DETERMINATION OF MARK-TO-MARKET SETTLEMENT AND DAILY FINANCIALLY SETTLED FUTURES SETTLEMENT AMOUNTS FOR DAILY FINANCIALLY SETTLED FUTURES TRANSACTIONS**

a. Determination of Mark-to-Market Settlement Amount

On the Transaction Date, the mark-to-market settlement amount ("MTM Settlement Amount") for a Daily Financially Settled Futures Transaction is the result obtained by subtracting the Settlement Price (SP) from the Fixed Price (FP) times the Calculation Period (CP) times the Notional Quantity (NQ);  $(FP - SP \times CP \times NQ)$ .

On each Business Day following the Transaction Date, for the applicable Term of a Daily Futures Transaction, the MTM Settlement Amount is the result obtained by subtracting the Settlement Price (SP) from the Prior Settlement Price (SPP) times the Calculation Period (CP) times the Notional Quantity (NQ).  $(PSS - SP \times CP \times NQ)$ .

If the MTM Settlement Amount (expressed in \$C or \$U.S.) is greater than 0, Fixed Price Payer agrees to pay to Floating Price Payer such MTM Settlement Amount on the MTM Settlement Date.

If the MTM Settlement Amount (expressed in \$C or \$U.S.) is less than 0, Floating Price Payer agrees to pay to Fixed Price Payer the absolute value of such MTM Settlement Amount on the MTM Settlement Date.

b. Determination of Daily Financially Settled Futures Settlement Amount

On each Business Day commencing on the first Business Day of the applicable Term of a Daily Financially Settled Futures Transaction, and continuing for the Term of a Daily Financially Settled Futures Transaction, the Daily Financially Settled Futures Settlement Amount is the result obtained by subtracting the Floating Price (FP) from the Settlement Price (SP) times the Calculation Period (CP) times the Notional Quantity (NQ).  $(SP - FP \times CP \times NQ)$ .

If the Daily Financially Settled Futures Settlement Amount (expressed in \$C or \$U.S.) is greater than 0, Fixed Price Payer agrees to pay to Floating Price Payer such Daily Financially Settled Futures Settlement Amount on the Daily Financially Settled Futures Settlement Date.

If the Daily Financially Settled Futures Settlement Amount (expressed in \$C or \$U.S.) is less than 0, Floating Price Payer agrees to pay to Fixed Price Payer the absolute value of such Daily Financially Settled Futures Settlement Amount on the Financially Settled Futures Settlement Date.

**5. DETERMINATION OF OPTION PREMIUM AMOUNT, OPTION EXERCISE CONDITIONS AND EFFECT OF OPTION EXERCISE**

a. Calculation of Option Premium Amount:

The Option Premium Amount payable by the Option Buyer under an Option Transaction in which the relevant Underlying Transaction is a Futures Transaction equals the Option Premium Price times the Notional Quantity for such Futures Transaction times the Calculation Period for such Futures Transaction.

b. Description of Option Exercise Conditions:

Call Options: An Option Transaction that relates to a Call Option on an Underlying Transaction that is a Futures Transaction will be exercised (the "Call Exercise") such that the Option Buyer shall cause the Underlying Transaction to become effective if, in the case of an Alberta-Fixed or Alberta-Basis Futures Call Option, the Underlying Price is greater than the Strike Price on the relevant Option Exercise Date.

Put Options: An Option Transaction that relates to a Put Option on an Underlying Transaction that is a Futures Transaction will be exercised (the "Put Exercise") such that the Option Buyer shall cause the Underlying Transaction to become effective if, in the case of an Alberta-Fixed or Alberta-Basis Futures Put Option, the Underlying Price is less than the Strike Price on the relevant Option Exercise Date.

c. Effect of Option Exercise:

Alberta-Fixed and Alberta-Basis Futures Call Option - If the Call Exercise occurs, then the Underlying Transaction (the Alberta-Fixed Futures or the Alberta-Basis Futures) becomes effective as of the Call Exercise, the terms and conditions applicable to such Underlying Transaction govern and the following is deemed to have occurred:

- i. the Option Buyer becomes the Fixed Price Payer in respect of such Alberta-Fixed or Alberta-Basis Futures Transaction and has the respective rights and obligations of such payer under this Agreement, including with respect to the applicable Futures Clearing Amount payable on the respective Futures Settlement Date;
- ii. the Option Seller becomes the Floating Price Payer in respect of the Alberta-Fixed or Alberta-Basis Futures and has the respective rights and obligations of such payer under this Agreement, including with respect to the applicable Futures Clearing Amount payable on the respective Futures Settlement Date;
- iii. the Strike Price becomes the Fixed Price in respect of the Alberta-Fixed or Alberta-Basis Futures; and
- iv. the Underlying Price becomes the Floating Price in respect of the Alberta-Fixed or Alberta-Basis Futures.

Alberta-Fixed and Alberta-Basis Futures Put Option - If the Put Exercise occurs, then the Underlying Transaction (the Alberta-Fixed Futures or the Alberta-Basis Futures) becomes effective as of the Put Exercise, the terms and conditions applicable to such Underlying Transaction govern and the following is deemed to have occurred:

- i. the Option Buyer becomes the Floating Price Payer in respect of such Alberta-Fixed or Alberta-Basis Futures Transaction and has the respective rights and obligations of such payer under this Agreement, including with respect to the applicable Futures Clearing Amount payable on the respective Futures Settlement Date;
- ii. the Option Seller becomes the Fixed Price Payer in respect of the Alberta-Fixed or Alberta-Basis Futures and has the respective rights and obligations of such payer under this Agreement, including with respect to the applicable Futures Clearing Amount payable on the respective Futures Settlement Date;
- iii. the Underlying Price becomes the Floating Price in respect of the Alberta-Fixed or Alberta-Basis Futures; and
- iv. the Strike Price becomes the Fixed Price in respect of the Alberta-Fixed or Alberta-Basis Futures.

If an Option Transaction is not exercised, then such Option Transaction shall be deemed to have met the Option Expiry Conditions and such Option Transaction will expire on the respective Option Exercise Date with no further opportunity for the Underlying Transaction to become effective.

In the event that the Underlying Price for any Option Transaction (where the Underlying Transaction is a Futures Transaction) is corrected (the "Correction") by the publication from which the applicable price was

derived after the Option Exercise Date, Exchange will post on Exchange's Website for access by the respective Option Buyer and corresponding Option Seller the corrected Underlying Price (the "Corrected Underlying Price"). If such Option Transaction was exercised on the Option Exercise Date but the posting of the Corrected Underlying Price would mean that with the benefit of such information on the Option Exercise Date the respective Option Exercise Conditions would not have been met, then the Underlying Transaction will be cancelled if (a) the Corrected Underlying Price is lower than the Strike Price in the case of a Call Option, or higher than the Strike Price in the case of a Put Option, and (b) the Correction occurs within thirty (30) days (the "Correction Date") of the Option Exercise Date.

If such Option Transaction expired on the Option Exercise Date but the posting of the Corrected Underlying Price would mean that with the benefit of such information on the Option Exercise Date the respective Option Exercise Conditions would have been met, then the expiry will be cancelled and the Underlying Transaction will be deemed to have become effective as of the Option Exercise Date if (a) the Corrected Underlying Price is higher than the Strike price in the case of a Call Option, or lower than the Strike Price in the case of a Put Option and (b) the Correction occurs within the Correction Date.

## **6. FUTURES INVOICES AND OPTION INVOICES**

Invoices for the Futures Clearing Amounts, MTM Settlement Amounts, Daily Financially Settled Settlement Amounts and Option Premium Amounts will be determined in accordance with this Schedule "E" and Section 8.4 of the Terms and Conditions. Invoices will be due and payable as follows:

- a. Financially Settled Futures Transactions and Daily Financially Settled Futures Transactions (other than the MTM Settlement Amount)- in accordance with the Financially Settled Futures Settlement Date.
- b. Daily Financially Settled Futures Transactions – MTM Settlement Amounts and Daily Financially Settled Settlement Amounts will be invoiced in accordance with the MTM Settlement Date and the Financially Settled Futures Settlement Date, respectively.
- c. Options - Option Premium Amount - in accordance with the Option Premium Payment Date; with respect to the Underlying Transaction, if the respective Option Transaction is exercised on the applicable Option Exercise Date, Invoicing will occur as per the Underlying Transaction.

## **7. LIABILITY**

No Indirect Damages - Other than as specifically set forth in this Agreement, in no event shall Exchange or the Contracting Party be liable under this Agreement or any Financially Settled Futures Transaction or Option Transaction for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the suppliers or customers to the Contracting Party arising out of any Financially Settled Futures Party's Default, Option Party's Default or any Exchange Default or any other matter for which liability may be assessed under this Agreement or any Futures Transaction.

## **8. INTERPRETATION**

- a. All amounts of money referred to herein or in this Agreement are in Canadian Dollars unless otherwise expressly stated to be in United States dollars.
- b. Capitalized words and phrases used in this Schedule and not defined in this Schedule will have the same meaning as set forth in this Agreement.

**9. DEFINITIONS**

- a. "Alberta Electric System Operator" or "AESO" means the Alberta Electric System Operator (formerly known as Power Pool of Alberta), a not-for-profit corporation established under the *Electric Utilities Act* (Alberta);
- b. "Alberta Electricity Floating Price" or "AEFP" means the actual hourly price of Financial Power as published (in final, not forecast form) by the AESO in the table entitled "Actual/Forecast" reported for the applicable day in the column for "Actual Posted Pool Price" and in the rows for the applicable Calculation Period, on the AESO internet web page currently located at ets.aeso.ca; provided that such Alberta Electricity Floating Price shall be corrected to reflect any "Pool Price Errors" as may be posted on such web page, or otherwise communicated, from time to time by the Power Pool of Alberta;
- c. "Alberta Extended Off-Peak" means the seven (7) hour period for each day starting at 0000 MPT and ending at 0700 MPT (HE 0000 to HE 0700 inclusive), and the one (1) hour period starting at 2300 MPT and ending at 2400 MPT (HE2400);
- d. "Alberta Extended Peak" means the sixteen (16) hour periods for each day starting at 0700 MPT and ending at 2300 MPT (HE 0800 to HE 2300 inclusive);
- e. "Alberta Flat" means the periods on each calendar day as follows:
- i. in the case of a Sunday on and from which time is to be one hour in advance of mountain standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of mountain standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2500 inclusive); and
  - iii. for all other calendar days, the twenty-four (24) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive);
- f. "Alberta Hourly" means any of the twenty-four (24) hour periods for each day starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive);
- g. "Alberta Off-Peak" means the periods as follows:
- i. in the case of a Sunday on and from which time is to be one hour in advance of mountain standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of mountain standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2500 inclusive);
  - iii. for all other Sundays, the twenty-four (24) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive);
  - iv. for each NERC Holiday, the twenty-four (24) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive); and
  - v. for each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday which is not NERC Holiday, the seven (7) hour period starting at 0000 MPT and ending at 0700 MPT (HE0100 to

HE0700 inclusive); and the one (1) hour period starting at 2300 MPT and ending at 2400 MPT (HE2400);

- h. "Alberta Peak" means the sixteen hour (16) periods for each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday which is not a NERC Holiday, starting at 0700 MPT and ending at 2300 MPT (HE0800 to HE2300 inclusive);
- i. "Alberta Super Peak" means the six (6) hour periods for each day starting at 1600 MPT and ending at 2200 MPT (HE1700 to HE2200 inclusive);
- j. "BBtu" means billions ( $10^9$ ) British thermal units;
- k. "Calculation Period" means the number of days in the Term of a natural gas or Oil Futures Transaction, or the number of days in the Term of the Underlying Transaction if natural gas Option Transaction; and the number of hours in the Term of a financial power Futures Transaction;
- l. "Cherrywood Transformer Station" means the 500kV transformer station currently owned by Hydro One Networks Inc. located at 2275 Fairport Road North in Pickering, Ontario;
- m. "'Effective Date" means in respect of a Futures Transaction, the first day of the term specified in any Futures Product pursuant to this Schedule "E";
- n. "Energy Conversion Rate" means the energy conversion rate for GJ and MMBtu as published by the Gas Industry Standards Board;
- o. "ENMAX" means ENMAX Energy Corporation;
- p. "ENMAX RRO – LFM" means a product that covers a percentage of ENMAX's regulated rate option load that is to be settled as a financial swap using ENMAX LFM plus the trade differential price against the AEFPP with respect to consumed volume. The minimum size for ENMAX RRO – LFM electricity swap is 1.0% of ENMAX's regulated rate option load;
- q. "EPCOR" means EPCOR Energy Inc. and EPCOR Energy Alberta Inc.;
- r. "EPCOR RRO" means a product that covers a percentage of EPCOR's Regulated Rate Option load that is to be settled as a financial swap against the Alberta Electricity Floating Price with respect to consumed volume plus 4.16%, which is a constant value to allow for transmission loss, for each applicable hour. The minimum order size for an EPCOR RRO Financial Power Futures is 1.0% of EPCOR's Regulated Rate Option Load;
- s. "EPT" means Eastern prevailing time;
- t. "Fixed Amount" means an amount payable by the Fixed Price Payer on the Futures Settlement Date to be determined by reference to the Fixed Price, Notional Quantity and Calculation Period for the applicable Futures Product as specified in the NGX Product List;
- u. "Fixed Price" means the fixed price as negotiated electronically for the applicable Futures Product as specified in the NGX Product List and agreed to by Exchange and the Contracting Party upon entering into the Futures Transaction;
- v. "Fixed Price Payer" means the party which is obligated to make payments in respect of the Futures Transaction of amounts calculated by reference to the Fixed Price, Notional Quantity and Calculation Period, as the case may be;

- w. "Floating Amount" means an amount payable by the floating price Payer on the Futures Settlement Date determined by reference to the Floating Price, Notional Quantity and Calculation Period for the applicable Futures Product as specified in the NGX Product List;
- x. "Floating Price" means the floating price for the applicable Futures Product as specified in the NGX Product List;
- y. "Floating Price Payer" means the party which is obligated to make payments from time to time in respect of the Futures Transaction of amounts calculated by reference to the Floating Price, Notional Quantity and Calculation Period, as the case may be;
- z. "GigaJoule" or "GJ" means 1,000,000,000 Joules;
- aa. "Heat Rate" means a measure of generating station thermal efficiency, generally expressed in GJ per net MWh. It is computed by dividing the total GJ content of fuel burned for electric generation by the resulting net MWh generation;
- bb. "Hour Ending" or "HE" means the period ending that hour, e.g. HE1100 means the time starting 10:00:00 and ending at 10:59:59 hours;
- cc. "Hourly Ontario Financial Power Price" or "HOEP" means the Hourly Ontario Financial Power Price as published by IESO on their website. In the event that Locational Marginal Pricing is introduced in the Ontario financial power market or Exchange determines, in its sole discretion acting reasonably, that the HOEP is no longer the applicable reference to determine the Floating Price Description for the Ontario Financial Power Products, the Floating Price Description for the Ontario Financial Power Products shall be the hourly price paid by a Load Facility at the nodal, zonal or other price reference location on the IESO-controlled Grid that is either at, includes or is closest to the Cherrywood Transformer Station;
- dd. "IESO" means the Ontario Independent Electricity System Operator, a not-for-profit entity established by the Government of Ontario;
- ee. "Joule" means that amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;
- ff. "Megawatt" or "MW" means one million (1,000,000) Watts;
- gg. "Megawatt-hour" or "MWh" means one megawatt of electricity for one hour;
- hh. "Month" means a calendar month;
- ii. "MMBtu" means millions ( $10^6$ ) British thermal units;
- jj. "MPT" means Mountain prevailing time;
- kk. "NERC" means the North American Electricity Reliability Council or any successor organization thereto;
- ll. "NERC Holiday" means such additional off-peak days as published by NERC on its internet website in a table called "Additional Off-peak Days (aka holidays) for Eastern and Western Interconnections";
- mm. "Notional Quantity" means the quantity of gas, financial power or oil agreed to by Exchange and the Contracting Party upon entering into a Futures Transaction, which forms the basis of settlement for the Futures Transaction and is referred to in the respective Futures Confirmation as the Notional Quantity;
- nn. "Ontario – Flat" means the periods on each calendar day as follows:

- i. in the case of a Sunday on and from which time is to be one hour in advance of eastern standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of eastern standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2500 inclusive); and
  - iii. for all other calendar days, the twenty-four (24) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2400 inclusive);
- oo. "Ontario Extended Off-Peak" means the seven (7) hour period for each day starting at 0000 EPT and ending at 0700 EPT (HE0100 to HE0700 inclusive); and the one (1) hour period starting at 2300 EPT and ending at 2400 EPT (HE2400);
- pp. "Ontario Extended Peak" means the sixteen hour (16) periods for each day, starting at 0700 EPT and ending at 2300 EPT (HE0800 to HE2300 inclusive)
- qq. "Ontario On-Peak" means the sixteen hour (16) periods for each Monday, Tuesday, Wednesday, Thursday and Friday which is not a NERC Holiday, starting at 0700 EPT and ending at 2300 EPT (HE0800 to HE2300 inclusive);
- rr. "Ontario Off-Peak" means the periods as follows:
- i. in the case of a Sunday on and from which time is to be one hour in advance of eastern standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of eastern standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2500 inclusive);
  - iii. for all other Saturdays and Sundays, the twenty-four (24) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2400 inclusive);
  - iv. for each NERC Holiday, the twenty-four (24) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2400 inclusive); and
  - v. for each Monday, Tuesday, Wednesday, Thursday and Friday which is not NERC Holiday, the seven (7) hour period starting at 0000 EPT and ending at 0700 EPT (HE0100 to HE0700 inclusive); and the one (1) hour period starting at 2300 EPT and ending at 2400 EPT (HE2400);
- ss. "Option Exercise Conditions" means, for any Option Transaction, the option exercise conditions specified in this Schedule "E";
- tt. "Option Exercise Date" means the day on which a Option Transaction is either deemed to be exercised or deemed to expire depending on the Option Exercise Conditions or Option Expiry Conditions, as the case may be, having been met, which date is specified for each Option Transaction as the date the Underlying Price is established by Exchange;
- uu. "Option Expiry Conditions" means, for any Option Transaction, the failure of any or all Option Exercise Conditions to have been met on the respective Option Exercise Date, in which case such Option Transaction shall be deemed to have expired with no further opportunity for the Underlying Transaction to become effective;

- vv. "Option Premium Price" means the price per unit negotiated between the Option Buyer and the Option Seller for any Option Transaction;
- ww. "Period End Date" means, in respect of a Futures Transaction, the last day during the term specified in any Futures Product pursuant to this Schedule "E";
- xx. "PPT" means Pacific prevailing time;
- yy. "Prior Settlement Price" means the Settlement Price for the trading session ending on the Business Day prior to the current trading session;
- zz. "Settlement Price" means, in respect of every Product for each trading day, the price as determined by Exchange, in its sole discretion, considering the reasonable estimation of the current Market Price using internal and external sources for each Product, such Settlement Price being determined no later than the end of every Business Day. Should the Contracting Party dispute such determination, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable
- aaa. "Strike Price" means, in respect of an Option Product, the price negotiated between the Option Buyer and the Option Seller that will constitute the price against which the Underlying Price for that Product will be measured on the applicable Option Exercise Date which measurement forms the basis for determining whether the respective Option Exercise Conditions have been met for that particular Option Product;
- bbb. "TeraJoule" or "TJ" means 1,000,000,000,000 Joules and is equal to 1,000 GJ;
- ccc. "Term" means the period of time to which a Futures Transaction relates commencing on the Effective Date and ending on the Period End Date;
- ddd. "U.S. Provider" is defined in the NGX Price Methodology Guide;
- eee. "Underlying Price" means, in respect of an Option Product, the price to be measured against the relevant Strike Price on the applicable Option Exercise Date, as set forth in the NGX Product List, which measurement forms the basis for determining whether the respective Option Exercise Conditions have been met for that particular Option Product; and
- fff. "Watt" means the power that produces energy at the rate of one (1) Joule per second.



## **SCHEDULE "F" – PHYSICALLY SETTLED GAS FUTURES – CANADIAN DELIVERY POINTS**

### **1. PRODUCT AVAILABILITY**

Transactions of Physically Settled Gas Futures Products may be entered into up to such times on such Trading Days as are stipulated by Exchange through the NGX Trading System to the Contracting Parties from time to time. This Schedule "F" contains the clearing and settlement provisions for all Physically Settled Gas Futures Products that are listed on the NGX Product List and designated as cleared through the NGX Clearing System.

### **2. RELATIONSHIP TO AGREEMENT**

Nothing in this Schedule "F" will impair the obligations or rights of Exchange or the rights or obligations of the Contracting Party pursuant to this Agreement. Any Contracting Party which is a party to a Physically Settled Gas Futures Transaction entered into at a Canadian Delivery Point hereby agrees that any such Physically Settled Gas Futures Transaction includes the provisions of this Schedule "F" and is subject to the terms of this Agreement.

### **3. SPREADS**

- a. A force majeure event at the first Delivery Point or during the first time period of a Gas Spread Transaction may reduce the Obligations of Exchange and Contracting Party under the Gas Spread Transaction at the first Delivery Point or during the first time period but will not affect the Obligations of Exchange and the Contracting Party under the Gas Spread Transaction at the second Delivery Point or during the second time period;
- b. A force majeure event at the second Delivery Point or during the second time period of a Gas Spread Transaction may reduce the Obligations of Exchange and the Contracting Party under the Gas Spread Transaction at the second Delivery Point or during the second time period pursuant to this Schedule but will not affect the Obligations of Exchange and the Contracting Party under the Gas Spread Transaction at the first Delivery Point or during the first time period;
- c. Exchange retains the right to designate a Gas Spread Transaction submitted and accepted for clearing in accordance with Section 3.2(f) of the Terms and Conditions as two separate Physically Settled Gas Futures Transactions for the purposes of applicable fees in Schedule A;

### **4. PRE-DELIVERY PROCEDURE**

- a. Notice of Deliveries - At any time prior to delivery, Exchange may give notification to the Contracting Party of total Daily Contract Quantities due for receipt or delivery, and may request verification from the Contracting Party that the Contracting Party has an active Title Transfer, MTT, services contract or pipeline agreement account, as applicable, with appropriate pipeline operators for services at each Delivery Point at which the Contracting Party transacts, such account being at all times in good standing and, in the case of the Empress Delivery Points, that it holds all necessary entitlements to deliver gas on TCPL Alberta System or receive gas on the TCPL Canadian Mainline System, as applicable, on a firm basis (and not on an interruptible basis).
- b. Verification of Deliveries - Within 24 hours of any request by Exchange, the Contracting Party will verify its capacity to take or deliver the Daily Contract Quantities for each Delivery Day.
- c. Remedial Actions by Contracting Party – If the Contracting Party does not verify its capacity to take or deliver the total Daily Contract Quantities for any Delivery Day in accordance with paragraph b., the Contracting Party shall continue to be entitled to complete such verifications or to enter into a Physically Settled Gas Futures Transaction to offset, in whole or in part, its delivery or receipt obligations until 15:00 on the second Business Day prior to such Delivery Day.
- d. Remedial Actions by Exchange if verifications in accordance with paragraph b. are not given by the Contracting Party - By 15:00 on the second Business Day prior to such Delivery Day, the orders of the Contracting Party which the Contracting Party has entered for the purchase or sale of gas may be

eliminated and Exchange may enter into Physically Settled Gas Futures Transactions to offset, in whole or in part, delivery or receipt obligations, which in the opinion of Exchange may not be performed, in accordance with the Liquidation Procedure as provided in Section 5.5 of the Terms and Conditions.

#### **4. DELIVERY PROCEDURES**

##### **A. AB-NIT DELIVERY POINTS**

On each Trading Day before 11:00 CST, Exchange will submit Title Transfer nominations for the take or delivery of the Daily Contract Quantity for all AB-NIT Yesterday Products. Exchange will for each Contracting Party, aggregate all of the DCQs for delivery and aggregate all of the DCQs for receipt in the AB-NIT Yesterday Products and Exchange will submit a Title Transfer for all deliveries and receipts in GJs with a unique package number, Contracting Party mnemonic and with a start and end date of yesterday.

At the end of each day, Exchange will submit a Title Transfer to TCPL for the delivery or receipt of gas under all Physically Settled Gas Futures Transactions at the AB-NIT Delivery Point as follows:

- a. for all Same Day Products - Exchange will for each Contracting Party, aggregate all of the DCQs for delivery and sum all of the DCQs for receipt in the Same Day Products. Exchange will submit a Title Transfer for all deliveries and receipts in GJs with a unique package number, Contracting Party mnemonic and with a start and end date of today;
- b. for all other Physically Settled Gas Futures Transactions - Exchange will for each Contracting Party aggregate all of the DCQs for delivery tomorrow and aggregate all of the DCQs for receipt tomorrow in the Fixed Price, Basis and Index Physically Settled Gas Futures Transactions. Exchange will submit Title Transfer for all deliveries and receipts in GJs with a unique package number, Contracting Party mnemonic with a start and an end date of tomorrow.

##### **B. EMPRESS AND EASTERN CANADA DELIVERY POINTS**

On each Trading Day, Exchange will submit Title Transfer Nominations for the delivery or take of gas under all Physically Settled Gas Futures Transactions at the applicable Delivery Point entered into through the Trading System before the NAESB Timely Nomination Deadline on each Trading Day as follows:

- a. both Exchange and the Contracting Parties will convert the Daily Contract Quantities under each Physically Settled Gas Futures Transaction from MMBtu to GigaJoules in accordance with the conversion factor as published in the TCPL Terms and Conditions, and round such quantities to the nearest GigaJoule;
- b. both Exchange and the Contracting Parties will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each Delivery Day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at the applicable Delivery Point;
- c. Exchange will submit Title Transfer Nominations to TCPL via NRG Highway before the NAESB Timely Nomination Deadline for all net Daily Contract Quantities of gas to be delivered or to be taken on each Delivery Day at the applicable Delivery Point. The Title Transfer Nomination will also include a unique package number, Contracting Party mnemonic and beginning and end date; and
- d. Any Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the applicable Delivery Point will acknowledge the Title Transfers Nominations submitted by Exchange before the NAESB Timely Nomination Deadline via NRG Highway.

C. UNION-DAWN AND PARKWAY DELIVERY POINTS

On each day, Exchange and the Contracting Parties with Physically Settled Gas Futures Transactions at the Union-Dawn Delivery Point and/or the Union Parkway Delivery Point will submit Name Change Nominations of the delivery or take of gas under all Physically Settled Gas Futures Transactions at each of the Union-Dawn and the Union Parkway Delivery Points as follows:

- a. both Exchange and such Contracting Parties will convert the Daily Contract Quantities under each Physically Settled Gas Futures Transaction from MMBtu to GigaJoules in accordance with the conversion factor as published in the Union General Terms, and round such quantities to the nearest GigaJoule;
- b. the Contracting Parties will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at each of the Union-Dawn and Union Parkway Delivery Points;
- c. any Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the Union-Dawn Delivery Point and the Union Parkway Delivery Point will submit Name Change Nominations for the net Daily Contract Quantity to Union; and
- d. Exchange will submit Name Change Nominations to Union for all net Daily Contract Quantities of gas to be delivered or to be taken at the Union-Dawn Delivery Point and the Union Parkway Delivery Point.

D. SPECTRA DELIVERY POINTS

On each day, Exchange and the Contracting Parties with Physically Settled Gas Futures Transactions at the Spectra Delivery Points will submit Title Transfers of the delivery or take of gas under all Physically Settled Gas Futures Transactions at the Spectra Delivery Points as follows:

- a. each Contracting Party will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each Gas Day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at the Spectra Delivery Points;
- b. each Contracting Party with net Daily Contract Quantities to be delivered or to be taken at the Spectra Delivery Points will submit Title Transfers for their respective net Daily Contract Quantity to Duke;
- c. Exchange will, for each Contracting Party, offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities to be taken for each Gas Day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at the Spectra Delivery Points; and
- d. Exchange will submit Title Transfers to Duke for all net Daily Contract Quantities of gas to be delivered or to be taken at the Spectra Delivery Points.

E. TEP DELIVERY POINTS

Exchange will submit Title Transfers to TransGas for the delivery or receipt of gas under all Physically Settled Gas Futures Transactions at the TEP Delivery Point as follows:

- a. for all Same Day Products - Before 1400 MPT on each day, Exchange will for each Contracting Party, aggregate all of the DCQs for delivery and aggregate all of the DCQs for receipt in the

Same Day Physically Settled Gas Futures Transactions. Exchange will submit a Title Transfer for all net deliveries and net receipts in GJs with the Contracting Party's account number and with a start and end date of today;

- b. for all other Physically Settled Gas Futures Transactions - After Exchange's close of business on each day, Exchange will for each Contracting Party aggregate all of the DCQs for delivery tomorrow and aggregate all of the DCQs for receipt tomorrow in the Physically Settled Gas Futures Transactions. Exchange will submit Title Transfer for all net deliveries and net receipts in GJs with the Contracting Party's account number with a start and an end date of tomorrow.

#### F. ALLIANCE DELIVERY POINTS

On each Trading Day, Exchange will submit Nominations for the delivery or take of gas under all Physically Settled Gas Futures Transactions at the applicable Delivery Point entered into through the Trading System before the NAESB Timely Nomination Deadline on each Trading Day as follows:

- a. both Exchange and the Contracting Parties will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each Delivery Day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at the applicable Delivery Point;
- b. Exchange will submit Nominations via Alliance Pipeline's nomination entry tool before the NAESB Timely Nomination Deadline for all net Daily Contract Quantities of gas to be delivered or to be taken on each Delivery Day at the applicable Delivery Point. The Nomination will also include a unique package number, Contracting Party mnemonic and beginning and end date, and a standard Heat Rate of 39; and
- c. Any Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the applicable Delivery Point must enable a nomination waiver with Alliance Pipelines, which will in turn provide the Contracting Party with an acknowledgment of the Nominations submitted by Exchange before the NAESB Timely Nomination Deadline via the Alliance Pipeline's nomination entry tool found on the Alliance Customer Activity Site.

### 5. PERFORMANCE OF THE PHYSICALLY SETTLED GAS FUTURES TRANSACTIONS

#### A. AB-NIT, UNION-DAWN AND PARKWAY, EASTERN CANADA, SPECTRA, AND TEP DELIVERY POINTS

The Physically Settled Gas Futures Transactions at the applicable Delivery Point will be performed as follows:

By the Contracting Party:

- a. upon the acceptance of the Inventory Transfer Nomination or Name Change Nomination, as applicable, by the appropriate pipeline operator for the total Daily Contract Quantities of gas nominated for delivery or receipt; and
- b. by the payment to Exchange of the Invoice amounts for the Physically Settled Gas Futures Transactions at the applicable Delivery Point.

By Exchange:

- a. upon the acceptance of the Inventory Transfer Nomination or Name Change Nomination, as applicable, by appropriate pipeline operator for the total Daily Contract Quantities of gas nominated for delivery or receipt; and

- b. by the payment to the Contracting Party of the Invoice amounts for the Physically Settled Gas Futures Transactions at the applicable Delivery Point.

**B. EMPRESS DELIVERY POINTS**

- a. Delivery by Seller - The Physically Settled Gas Futures Transactions will be performed by the Seller by the pipeline operator confirming nominations by the Seller of the net Daily Contract Quantity to Exchange.
- b. Receipt by Exchange - The Physically Settled Gas Futures Transactions will be performed by Exchange:
  - i. by the pipeline operator confirming nominations of the net Daily Contract Quantity from Seller to Exchange; and
  - ii. by payment to the Seller of the Purchase Amount in accordance with the Invoice, which will reflect a net amount payable or receivable pursuant to this Agreement.
- c. Receipt by the Buyer - The Physically Settled Gas Futures Transactions will be performed by the Buyer:
  - i. by the pipeline operator confirming nominations of the net Daily Contract Quantity from Exchange to the Buyer; and
  - ii. by payment of the Purchase Amount to Exchange in accordance with the Invoice, which will reflect a net amount payable or receivable pursuant to this Agreement.
- d. Delivery by Exchange - The Physically Settled Gas Futures Transactions will be performed for Exchange by the pipeline operator confirming nominations by Exchange of the net Daily Contract Quantity to Buyer.

**C. ALLIANCE DELIVERY POINTS**

- a. Delivery by Seller - The Physically Settled Gas Futures Transactions will be performed by the Seller by the pipeline operator confirming nominations by the Seller of the net Daily Contract Quantity to Exchange.
- b. Receipt by Exchange - The Physically Settled Gas Futures Transactions will be performed by Exchange:
  - i. by the pipeline operator confirming nominations of the net Daily Contract Quantity from Seller to Exchange; and
  - ii. by payment to the Seller of the Purchase Amount in accordance with the Invoice, which will reflect a net amount payable or receivable pursuant to this Agreement.
- c. Receipt by the Buyer - The Physically Settled Gas Futures Transactions will be performed by the Buyer:
  - i. by the pipeline operator confirming nominations of the net Daily Contract Quantity from Exchange to the Buyer; and
  - ii. by payment of the Purchase Amount to Exchange in accordance with the Invoice, which will reflect a net amount payable or receivable pursuant to this Agreement.

- d. Delivery by Exchange - The Physically Settled Gas Futures Transactions will be performed for Exchange by the pipeline operator confirming nominations by Exchange of the net Daily Contract Quantity to Buyer.

## 7. PROCEDURES ON FAILURE OF PERFORMANCE

### A. AB-NIT, ALLIANCE AND TEP DELIVERY POINTS

Rejection of Title Transfer - In the event that the pipeline operator notifies Exchange that it will not transfer gas from or into a Contracting Party's pipeline account, Exchange will be entitled to initiate the following procedure:

- a. Exchange will notify the Contracting Party by phone that a Title Transfer has been rejected by the pipeline operator indicating the quantity affected and initiating a 60 minute period to allow resolution by the Contracting Party;
- b. if no solution is confirmed from the Contracting Party within such period, then Exchange will give notice by phone or confirm by fax to the Contracting Party that there is a Failure to Deliver or a Failure to Take and indicate the quantity affected; and
- c. Exchange may exercise any of its rights under Section 5.5 of the Terms and Conditions.

### B. EMPRESS, UNION-DAWN AND PARKWAY, EASTERN CANADA AND SPECTRA DELIVERY POINTS

Rejection of a Nomination - In the event that the pipeline operator rejects either all or a portion of the Seller's or the Buyer's Title Transfer or Name Change Nomination, as applicable and respectively, at G.I.S.B. or NAESB Evening Nomination Cycle, as applicable, or later, Exchange will be entitled to initiate the following procedure:

- a. Exchange will notify the Contracting Party by phone that a Title Transfer Nomination has been rejected by TCPL indicating the quantity affected and initiating a 30 minute period to allow resolution by the Contracting Party, followed by a fax confirming the details and the time notice was given;
- b. if no solution is confirmed from the Contracting Party within such period, then Exchange will give notice by phone, confirmed by fax, to the Contracting Party that there is a Failure to Deliver or a Failure to Take and indicate the quantity affected; and
- c. Exchange may exercise any of its rights under Section 5.5 of the Terms and Conditions.

## 8. TITLE

- a. From Seller – Title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall pass from the Seller during delivery at the receipt point specified in such Physically Settled Gas Futures.
- b. To Buyer – Title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall pass to the Buyer during delivery at the receipt point specified in such Physically Settled Gas Futures Transaction.
- c. Regarding Exchange – In no event should this Agreement be construed in a manner whereby title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall:

- i. pass to Exchange, as Buyer, except as required by the Transportation System to facilitate any transfer of title from Exchange to Seller, which in such case shall be deemed to occur concurrently; or
- ii. be held by Exchange, as Seller, except as required by the Transportation System to facilitate any transfer of title from Exchange to Buyer, which in such case shall be deemed to occur concurrently.

**9. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTING PARTY**

The Contracting Party represents and warrants in respect of any Physically Settled Gas Futures Transaction entered into by it that at the time of delivery or receipt:

If it is the Seller –

it has the full right and authority to sell gas;

it owns and has title to gas, or irrevocable authority to sell gas;

gas delivered to the Buyer shall be free from all royalty payments, Liens or encumbrances whatsoever;

it has all necessary rights and entitlements for the delivery of gas on the applicable pipeline on a firm basis (and not on an interruptible basis); and

has an account with the applicable pipeline that is, at all times, in good standing with sufficient inventory to deliver the total DCQ sold on a firm basis under its Physically Settled Gas Futures Transactions for each Gas Day.

If it is the Buyer –

i. it has the full right and authority to purchase gas;

ii. it has all necessary rights and entitlements for the receipt of gas on the applicable pipeline on a firm basis (and not on an interruptible basis); and

iii. it has a TCPL account in good standing with sufficient capacity to take the total DCQ purchased on a firm basis under its Physically Settled Gas Futures Transactions for each Gas Day.

**10. LIABILITY**

- b. Full Satisfaction – Upon payment, in accordance with this Agreement, of the amounts required to be paid by Exchange or the Contracting Party, as the case may be, in respect of any Failure to Deliver, Failure to Pay or Failure to Take in respect of such Physically Settled Gas Futures Transaction, Exchange or such party to a Physically Settled Gas Futures Transaction shall have no further liability under such Physically Settled Gas Futures Transaction or this Agreement in respect of any such Failure to Deliver, Failure to Pay or Failure to Take.
- c. No Indirect Damages – Other than as specifically set forth in this Agreement, in no event shall Exchange or the Contracting Party be liable under this Agreement or any Physically Settled Gas Futures Transaction for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the suppliers or customers of the Contracting Party arising out of any Failure to Deliver, Failure to Take or Failure to Pay or any other matter for which liability may be assessed under the Agreement or any Physically Settled Gas Futures Transaction.

**10. FORCE MAJEURE**

**A. AB-NIT DELIVERY POINT**

- a. A force majeure event will exist in the event:
- i. of a declared force majeure by TCPL; or
  - ii. that TCPL has caused a curtailment of the volume of gas which may be accepted by TCPL for delivery on the TCPL Alberta System,

which has the result of reducing the volume of gas which may be accepted by TCPL for delivery to the TCPL Alberta System by 25% or more, using as 100% of such volume for the winter gas season from November 1 to April 30 the winter system maximum day delivery volume forecast as published in table 3.4.2.1 of TCPL's Nova Gas Transmission Ltd. Annual Plan (12.10 bcf/d for 2002/2003) and using as 100% of such volume for the summer gas season from May 1 to October 31 the summer system maximum day delivery volume forecast as published in table 3.4.2.2 of TCPL's Nova Gas Transmission Ltd. Annual Plan (11.15 bcf/d for 2002/2003); and reducing by 25% or more the aggregate of all obligations under Physically Settled Gas Futures Transactions for all Contracting Parties which can be delivered or received; or

- iii. TCPL has interrupted, curtailed or pro-rated inventory transfer service which affects all TCPL Alberta System shippers who have nominated for deliveries or receipts to take place by inventory transfer service.
- b. Upon the occurrence of a force majeure event, Exchange would determine the extent to which deliveries of gas could be made and receipts could be taken and will allocate the available quantities of gas at the AB-NIT Delivery Point to the available demand at the AB-NIT Delivery Point on a pro rata basis and compliance by any Buyer or any Seller with such pro rationing will not constitute a Failure to Deliver, Failure to Take or Failure to Pay. Certain Physically Settled Gas Futures Products affected by any force majeure event will be halted from trading on the Trading System. Exchange will eliminate or reduce the obligations of the Contracting Party under the Physically Settled Gas Futures Transactions by an adjustment to the reports to reflect the consequences of the force majeure event. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.

**B. EMPRESS DELIVERY POINTS**

- a. A force majeure event will exist at the Empress Delivery Point in the event:
- i. TCPL curtails, interrupts or prorates firm transportation service for all customers holding TCPL firm delivery capacity on TCPL Alberta System at Empress; or
  - ii. TCPL curtails, interrupts or prorates firm transportation service for all customers holding firm transportation capacity on TCPL Canadian Mainline at Empress.
- b. On any day that force majeure exists at the Empress Delivery Point, the Contracting Parties' obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions with a Delivery Point at the Empress Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.



C. UNION-DAWN AND PARKWAY DELIVERY POINTS

- a. A force majeure event will exist at the Union-Dawn Delivery Point or Union Parkway Delivery Point in the event that Union declares force majeure pursuant to Article XI of the Union General Terms.
- b. On any day that force majeure exists at the Union-Dawn Delivery Point or Union Parkway Delivery Point, the Contracting Parties' obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions with a Delivery Point at the Union-Dawn Delivery Point or Union Parkway Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.

D. EASTERN CANADA DELIVERY POINTS

- a. A force majeure event will exist:
  - i. if TCPL curtails, interrupts or prorates firm transportation service for all customers holding TCPL firm Transportation capacity on the TCPL Canadian Mainline System at the Niagara, Chippawa, Iroquois, Emerson Great Lakes or St. Clair Delivery Points; or
  - ii. at the Niagara Delivery Point, if TGP curtails, interrupts or prorates firm transportation service for all customers holding TGP firm transportation capacity at the Niagara Delivery Point; or
  - iii. at the Chippawa Delivery Point, if Empire curtails, interrupts or prorates firm transportation service for all customers holding Empire firm service at the Chippawa Delivery Point;
  - iv. at the Iroquois Delivery Point, if IGTS curtails, interrupts or prorates firm transportation service for all customers holding IGTS firm service at the Iroquois Delivery Point; or
  - v. at the Emerson Great Lakes or St. Clair Delivery Points, if Great Lakes curtails, interrupts or prorates firm transportation service for all customers holding Great Lakes firm service at the Emerson or St. Clair Delivery Point.
- b. On any day that force majeure exists at the Niagara, Chippawa, Iroquois, Emerson Great Lakes or St. Clair Delivery Point, the Contracting Parties' obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions with a Delivery Point at the Niagara, Chippawa, Iroquois, Emerson Great Lakes or St. Clair Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day at that Delivery Point. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.

E. SPECTRA DELIVERY POINTS

- a. A force majeure event will exist at the Spectra Delivery Points in the event that Exchange declares force majeure, pursuant to but not restricted to the declaration of a force majeure condition by Duke at the Spectra Station #2 Compressor, NGX may also declare a force majeure event if any conditions in effect are determined by NGX to adversely affect the physical ability of a majority of Contracting Parties to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions with a Delivery Point at the Spectra Delivery Points.
- b. On any day that force majeure exists at the Spectra Delivery Points, the Contracting Parties' obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions with a Delivery Point at the Spectra Delivery Points shall be reduced by the same percentage as the

curtailment, interruption or pro rationing for that day. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.

**F. TEP DELIVERY POINTS**

- a. A force majeure event will exist in the event:
  - i. of a declared force majeure by TransGas; or
  - ii. that TransGas has caused a curtailment of the volume of gas which may be accepted by TransGas for delivery on the TransGas Transportation System, which has the result of reducing the volume of gas which may be accepted by TransGas for delivery to the TransGas Transportation System by 25% or more, and reducing by 25% or more the aggregate of all obligations under Physically Settled Gas Futures Transactions for all Contracting Parties which can be delivered or received; or
  - iii. TransGas has interrupted, curtailed or pro-rated Nominations service which affects all TransGas Transportation System shippers who have nominated for deliveries or receipts.
- b. Upon the occurrence of a force majeure event, Exchange would determine the extent to which deliveries of gas could be made and receipts could be taken and will allocate the available quantities of gas at the TEP Delivery Point to the available demand at the TEP Delivery Point on a pro rata basis and compliance by any Buyer or any Seller with such pro rationing will not constitute a Failure to Deliver, Failure to Take or Failure to Pay. Certain Physically Settled Gas Futures Products affected by any force majeure event will be halted from trading on the Trading System. Exchange will eliminate or reduce the obligations of the Contracting Party under the Physically Settled Gas Futures Transactions by an adjustment to the reports to reflect the consequences of the force majeure event. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.

**G. ALLIANCE DELIVERY POINTS**

- a. A force majeure event will exist at the Alliance APC-ATP Delivery Point in the event:
  - i. Alliance curtails, interrupts or prorates firm transportation service for all customers holding Alliance firm delivery capacity on Alliance Pipeline; or
  - ii. Alliance curtails, interrupts or prorates firm transportation service for all customers holding firm transportation capacity at Alliance Canadian Receipt Delivery Point.
- b. On any day that force majeure exists at the Alliance Delivery Point, the Contracting Parties' obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions with a Delivery Point at the Alliance Canadian Receipt Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure.

**12. PROCEDURES ON FORCE MAJEURE EVENT**

**A. AB-NIT AND TEP DELIVERY POINTS**

- a. Investigation - Exchange will, in consultation with the applicable pipeline, make a determination of whether a force majeure event exists and an estimate of its probable duration.

- b. Physically Settled Gas Futures Transactions - All Contracting Parties with Physically Settled Gas Futures Transactions for any of the Physically Settled Gas Futures Physically Settled Futures Products for which access to the Trading System may be closed will be asked to provide confirmable estimates of the volume of gas that could be delivered or taken in respect of such obligations under such Physically Settled Gas Futures Transactions in order to ascertain available supply and available demand and as to any preferable alternative arrangements which may affect available supply or available demand.
- c. Notice to Contracting Parties - If a force majeure event is determined to exist, all Contracting Parties will be immediately notified by phone, fax or email, Exchange may cause a temporary General Suspension and Exchange will use its discretion to determine which Products would be closed.
- d. Allocation - Exchange will allocate the available supply to the available demand on a pro rata basis as between Contracting Parties subject to any preferable alternative arrangements made by any Contracting Party and agreed to by Exchange which may reduce available demand.
- e. No Allocation - All obligations under Physically Settled Gas Futures Transactions not covered by the allocations pursuant to paragraph (d) above will be closed as if by an offsetting trade at the Purchase Price.
- f. Next Day - Exchange would, prior to the start of trading on each successive Trading Day:
  - i. make a decision as to the continued existence of the force majeure event and determine which Products, if any, would be available for trading; and
  - ii. notification of the extension or discontinuance of the force majeure event will be made to all Contracting Parties before opening any halted Physically Settled Gas Futures Products.

**B. EMPRESS, UNION-DAWN AND PARKWAY, EASTERN CANADA AND SPECTRA DELIVERY POINTS**

- a. Investigation - Exchange will, in consultation with the applicable pipeline, make a determination of whether a force majeure event exists and an estimate of its probable duration.
- b. Notice to Contracting Parties - If a force majeure event is determined to exist, all affected Contracting Parties will be immediately notified by phone, fax or email:
  - i. that a force majeure event exists;
  - ii. the reduction in obligations for that day; and
  - iii. which Physically Settled Gas Futures Products, if any, will be halted from trading.
- c. Nominations - The Seller, Buyer and Exchange will make all necessary changes to the TCPL nominations to reflect the reduced obligations.
- d. Further Notice - On each successive Trading Day, Exchange will advise the affected Contracting Parties as follows:
  - i. if the force majeure event is continuing;
  - ii. the level of reduction of obligations for that day; and

- iii. which Physically Settled Gas Futures Products, if any, will be halted from trading.

C. ALLIANCE DELIVERY POINTS

- a. Investigation - Exchange will, in consultation with the applicable pipeline, make a determination of whether a force majeure event exists and an estimate of its probable duration.
- b. Notice to Contracting Parties - If a force majeure event is determined to exist, all affected Contracting Parties will be immediately notified by phone, fax or email:
  - i. that a force majeure event exists;
  - ii. the reduction in obligations for that day; and
  - iii. which Physically Settled Gas Futures Products, if any, will be halted from trading.
- c. Nominations - The Seller, Buyer and Exchange will make all necessary changes to the Alliance nominations to reflect the reduced obligations.
- d. Further Notice - On each successive Trading Day, Exchange will advise the affected Contracting Parties as follows:
  - i. if the force majeure event is continuing;
  - ii. the level of reduction of obligations for that day; and
  - iii. which Physically Settled Gas Futures Products, if any, will be halted from trading.

14. INVOICE AMOUNTS

A. AB-NIT DELIVERY POINTS

Exchange will determine the amounts owing or payable on a monthly basis for the AB-NIT Delivery Point as follows:

- a. For gas delivered or received by multiplying the following:
  - i. the portion of the Contract Quantity of gas delivered or taken at the AB-NIT Delivery Point for each Delivery Day of the given Month under all Basis Alberta Physically Settled Gas Futures Transactions and all AB-NIT US\$ and NGX AB-NIT Same Day Index 5A US Products for a given Month expressed in MMBtu's; times
  - ii. the Purchase Price, expressed in U.S. dollars per MMBtu for all Basis Alberta Physically Settled Gas Futures Transactions and AB-NIT U.S.\$ and NGX AB-NIT Same Day Index 5A US Products for such Month and Fixed Price Products; plus
  - iii. the portion of the Contract Quantity of gas delivered or taken at the intra Alberta Delivery Point for each Delivery Day of the given Month under all NGX AB-NIT Same Day Index 2A Transactions, NGX AB-NIT Same Day Index 4A Transactions and NGX AB-NIT Same Day Index 5A Transactions for a given Month expressed in GJs; times
  - iv. Purchase Price, expressed in dollars per GJ for all NGX AB-NIT Same Day Index 2A Transactions, NGX AB-NIT Same Day Index 4A Transactions and NGX AB-NIT Same Day Index 5A Transactions for such Month and Fixed Price Products; plus

- b. All fees as outlined in Schedule "A" of this Agreement; plus
- c. Any fees charged to Exchange by TCPL for the Title Transfers pertaining to the delivery of gas under all such Physically Settled Gas Futures Transactions; plus
- d. Any applicable taxes pursuant to Article 7 of this Agreement.

B. EMPRESS, UNION-DAWN AND PARKWAY, EASTERN CANADA AND HUNTINGON AND SPECTRA AND TEP DELIVERY POINTS

Exchange will determine the amounts owing or payable on a monthly basis for the applicable Delivery Point as follows:

- a. For gas delivered or received by multiplying the following:
  - i. the portion of the Contract Quantity of gas delivered or taken at the applicable Delivery Point under all Physically Settled Gas Futures Transactions for each Delivery Day of the given Month expressed in MMBtu's or GJs, as applicable; times
  - ii. the Purchase Price, expressed in U.S. dollars per MMBtu or Canadian dollars per GJ, as applicable, for all Physically Settled Gas Futures Transactions for such Month; plus
- b. All fees as outlined in Schedule "A" of this Agreement; plus
- c. Any fees charged to Exchange by the applicable pipeline for the Title Transfer or Name Change Nomination pertaining to the delivery of gas under all such Physically Settled Gas Futures Transactions; plus
- d. All applicable taxes pursuant to Article 7 of this Agreement.

C. ALLIANCE DELIVERY POINTS

Exchange will determine the amounts owing or payable on a monthly basis for the applicable Delivery Point as follows:

- a. For gas delivered or received by multiplying the following:
  - i. the portion of the Contract Quantity of gas delivered or taken at the applicable Delivery Point under all Physically Settled Gas Futures Transactions for each Delivery Day of the given Month expressed in MMBtu's or GJs, as applicable; times
  - ii. the Purchase Price, expressed in U.S. dollars per MMBtu or Canadian dollars per GJ, as applicable, for all Physically Settled Gas Futures Transactions for such Month; plus
- b. All fees as outlined in Schedule "A" of this Agreement; plus
- c. Any fees charged to Exchange by the applicable pipeline for the Title Transfer pertaining to the delivery of gas under all such Physically Settled Gas Futures Transactions; plus
- d. All applicable taxes pursuant to Article 7 of this Agreement.

**14. INTERPRETATION**

- a. All times referred to herein are to Central Standard Time ("CST").
- b. The currency of all amounts of money referred to herein for each Delivery Point are as outlined in the NGX Product List.
- c. Capitalized words and phrases used in this Schedule and not defined in this Schedule will have the same meaning as set forth in this Agreement.

**15. DEFINITIONS**

- a. "AB-NIT Delivery Point" means a notional point in Alberta where gas on the TCPL Alberta System can be transferred between TCPL customer accounts utilizing title transfers;
- b. "Alliance" means Alliance Pipeline Limited Partnership;
- c. "Alliance APC-ATP Delivery Point" means Alliance's transfer pool;
- d. "Alliance Customer Activities Website" means the website provided by Alliance to its customers in order to facilitate nomination entry;
- e. "Alliance Pipeline" means the gas pipeline operated by Alliance in the Provinces of British Columbia and Alberta;
- f. "Basis Products" and "Basis Physical Transactions", respectively, means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the formula for the calculation of the Purchase Price is determined at the time of entering into the Physically Settled Gas Futures Transaction and is based on the Henry Futures Settlement Price;
- g. "BBTU" means billions ( $10^9$ ) British thermal units;
- h. "CGPR" means Canadian Gas Price Reporter, published by Enerdata Ltd., or its successor;
- i. "Chippawa Delivery Point" means the interconnection between TCPL Canadian Mainline System and Empire near Chippawa, Ontario;
- j. "Duke" means Duke Energy Gas Transmission;
- k. "Duke BC Pipeline" means the gas pipeline operated by Duke in the Province of British Columbia, formerly called the Westcoast Energy Inc. Pipeline;
- l. "Duke Terms and Conditions" means the General Terms and Conditions of the Westcoast Energy Inc. Pipeline Tariff as amended, restated or replaced from time to time;
- m. "Eastern Canada Delivery Points" collectively, means the Chippawa Delivery Point, Niagara Delivery Point, Iroquois Delivery Point, St. Clair Delivery Point and the Emerson Great Lakes Delivery Point;
- n. "Emerson Great Lakes Delivery Point" means the interconnection between TCPL Canadian Mainline System and Great Lakes near Emerson, Manitoba;
- o. "Empire" means Empire State Pipeline Company;

- p. "Empress Delivery Point" means the interconnection between the TCPL Alberta System and the TCPL Canadian Mainline System at Empress, Alberta;
- q. "Fixed Price Products" and "Fixed Price Physical Transactions" means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the Purchase Price is fixed at the time of entering into the Fixed Price Physically Settled Gas Futures Transaction;
- r. "gas" means natural gas meeting the specifications in the TCPL Terms and Conditions as then in effect at the time of delivery of gas in respect of the AB-NIT Delivery Point;
- s. "Gas Daily" means a publication entitled Platts Gas Daily published by Platts, a division of The McGraw-Hill Companies, Inc.;
- t. "Gas Day" means a period of twenty-four (24) consecutive hours beginning and ending at 9:00 a.m. Central Clock Time;
- u. "Gas Spread Product" means a Physically Settled Gas Futures Product designated as an FP Spread or BS Spread in the NGX Product List, and available on the NGX Trading System or the NGX Clearing System, that allows for the simultaneous entering into as Buyer on the one hand and Seller on the other of two Physically Settled Gas Futures Transactions at two different Delivery Points or during two different time periods;
- v. "Gas Spread Transaction" means a transaction for the purchase or sale of a Gas Spread Product, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Gas Spread Product as set forth in the NGX Product List and Schedule F;
- w. "GigaJoule" or "GJ" means 1,000,000,000 (10<sup>9</sup>) Joules;
- x. "Great Lakes" means Great Lakes Transmission Company;
- y. "Henry Futures Settlement Price" is defined in the NGX Price Index Methodology Guide;
- z. "IGTS" means Iroquois Gas Transmission Company;
- aa. "Index Products" and "Index Physical Transactions", respectively, means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the formula for the calculation of the price of gas is determined at the time of entering into the Physically Settled Gas Futures Transaction and is based on the NGX Union-Dawn Day Ahead Index;
- bb. "Iroquois Delivery Point" means the interconnection between TCPL Canadian Mainline System and IGTS, also referred to as Waddington;
- cc. "Joule" means that amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;
- dd. "Location Products" means those Physically Settled Gas Futures Products where the formula for calculation of the Purchase Price is determined at the time of entering into a Physically Settled Gas Futures Transaction and is based on the Henry Futures Settlement Price;;
- ee. "MMBtu" means 1,000,000 (10<sup>6</sup>) British thermal units;
- ff. "Month" means a month commencing on the first Gas Day of the calendar month and ending on the first Gas Day of the next calendar month;

- gg. "MPT" means mountain prevailing time;
- hh. "MTT" means TCPL Multiple Title Transfer account as defined in the TCPL Terms and Conditions;
- ii. "Name Change Nomination" means a nomination for the transfer of gas as defined in the applicable pipelines services contract;
- jj. "NAESB Timely Nomination Deadline" means timely nomination deadline set out by the North American Energy Standards Board, which may be revised from time to time;
- kk. "NGX AB-NIT Day Ahead Index" means, for gas delivered for the NGX AB-NIT Day Ahead Product, as defined in the NGX Product List, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- ll. "NGX AB-NIT Month Ahead Products" and "NGX AB-NIT Month Ahead Transactions" are those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Month Ahead Physically Settled Gas Futures Transaction and is based on the NGX AB-NIT Month Ahead Index (7A);
- mm. "NGX AB-NIT Month Ahead Index (7A)" means, for gas delivered during the delivery Month for all NGX AB-NIT Month Ahead Products, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- nn. "NGX AB-NIT Same Day Index (2A)" means, for gas delivered under all Daily Index 2A Physically Settled Gas Futures Transactions, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- oo. "NGX AB-NIT Same Day Index 2A Product" and "NGX AB-NIT Same Day Index 2A Transactions" means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions, where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 2A Transaction and is based on the NGX AB-NIT Same Day Index (2A);
- pp. "NGX AB-NIT Same Day Index (4A)" means, for gas delivered for the Daily Index 4A Physically Settled Gas Futures Transaction, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- qq. "NGX AB-NIT Same Day Index 4A Product" and "NGX AB-NIT Same Day Index 4A Transaction" means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 4A Transaction and is based on the NGX AB-NIT Same Day Index (4A);
- rr. "NGX AB-NIT Same Day Index (5A)" means, for gas delivered for the Daily Index 5A Physically Settled Gas Futures Transactions, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- ss. "NGX AB-NIT Same Day Index 5A Product" and "NGX AB-NIT Same Day Index 5A Transaction" means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 5A Transaction and is based on the NGX AB-NIT Same Day Index (5A);
- tt. "NGX AB-NIT Same Day Index (5A) in the US" means, for gas delivered for the Daily Index 5A US Physically Settled Gas Futures Transactions, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's;



- uu. "NGX AB-NIT Same Day Index 5A US Product" and "NGX AB-NIT Same Day Index 5A US Transaction" means those Physically Settled Gas Futures Products and Physically Settled Gas Futures Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 5A US Transaction and is based on the NGX AB-NIT Same Day Index (5A) in the US;
- vv. "NGX AB-NIT Spectra Station #2 Day Ahead Index" means the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published on each Business Day on Exchange's Website;
- ww. "NGX Index Methodology Guide" means a document published by Exchange on Exchange's Website that provides descriptions of methodology for determining and definitions of price indices;
- xx. "NGX Union-Dawn Day Ahead Index" means the daily weighted average price the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- yy. "Niagara Delivery Point" means the interconnection between TCPL Canadian Mainline System and TGP near Niagara Falls, Ontario;
- zz. "Nomination" means a request in electronic or other written form for gas to flow as defined in the Atco Pipelines Agreement;
- aaa. "Northwest Pipeline System" means the gas pipeline operated by Northwest Pipeline Corporation which interconnects with the Duke BC Pipeline;
- bbb. "NRG Highway" means the online nomination system operated by TCPL;
- ccc. "Settlement Price" means as defined in Schedule "C" – Risk Management Policy;
- ddd. "Spectra Delivery Points" collectively, means the Spectra Huntingdon Delivery Point and the Spectra Station #2 Delivery Point;
- eee. "Spectra Huntingdon Delivery Point" means a location on the Duke BC Pipeline near the interconnection with Northwest Pipeline System, referred to as the Huntingdon Pool in the Duke Terms and Conditions;
- fff. "Spectra Station #2 Delivery Point" means a location on the Duke BC Pipeline at Compressor Station No. 2 near Chetwynd, British Columbia;
- ggg. "Spot Day" means the next Gas Day;
- hhh. "St. Clair Delivery Point" means a location on the TCPL Canadian Mainline System near St. Clair, Ontario and as defined in the TCPL Terms and Conditions;
- iii. "TCPL" means TransCanada Pipelines Limited;
- jjj. "TCPL Alberta System" means TCPL's intraprovincial pipeline system located in Alberta, formerly known as NOVA Gas Transmission Ltd.;
- kkk. "TCPL Canadian Mainline System" means TCPL's interprovincial pipeline system;
- lll. "TCPL Terms and Conditions" means the General Terms and Conditions of the Gas Transportation Tariff of TCPL Alberta System;

- mmm. "TEP Delivery Point" means TransGas Transfer Point 3602 for Title Transfers;
- nnn. "TeraJoule" or "TJ" means 1,000,000,000,000 (10<sup>12</sup>) Joules and is equal to 1,000 GJ;
- ooo. "TGP" means Tennessee Gas Pipeline Company;
- ppp. "Title Transfer" means the notification of inventory transfers sent to either Alliance or TCPL directing Alliance or TCPL to transfer gas between a Contracting Party's account and Exchange's account;
- qqq. "Title Transfer Nominations" means the nomination for the transfer of gas into or from MTT account as defined in the TCPL Terms and Conditions;
- rrr. "TransGas" means TransGas Limited;
- sss. "Union" means Union Gas Limited;
- ttt. "Union-Dawn Delivery Point" means the Union's Compressor Station site situated in the northwest corner of Lot 25, Concession II in the Township of Dawn in the County of Lambton;
- uuu. "Union General Terms" means the General Terms & Conditions of the Rate Schedules of Union as amended, restated or replaced from time to time;
- vvv. "Union Parkway Delivery Point" means the junction of Union's and TCPL's facilities, at or adjacent to Union's facilities situated in Part Lot 9 and Part Lot 10, Concession IX, New Survey, Town of Milton, Regional Municipality of Halton; and
- www. "Union Services Contract" means the Interruptible Service Delivery Point Contract between Union and each of the Contracting Parties, which includes the provision by Union of the Name Change Service.

**16. APPOINTMENT OF AGENT**

The Contracting Party will execute a waiver with TCPL appointing Exchange as agent for all natural gas nominations on the Contracting Party's behalf on the TCPL Alberta System.

## **SCHEDULE "G" – PHYSICALLY SETTLED GAS FUTURES CONTRACTS – U.S. DELIVERY POINTS.**

This Schedule "G" contains clearing and settlement provisions for all Physically Settled Gas Futures Products offered at U.S. Delivery Points.

### **1. SPREAD PRODUCTS**

Not available at U.S. Delivery Points with mediated delivery nominations.

### **2. RELATIONSHIP TO AGREEMENT**

Nothing in this Schedule "G" will impair the rights or obligations of Exchange or the rights or obligations of the Contracting Party pursuant to this Agreement. Any Contracting Party which is a party to a Physically Settled Gas Futures Transaction entered into at a U.S. Delivery Point hereby agrees that any such Physically Settled Gas Futures Transaction includes the provisions of this Schedule "G" and is subject to the terms of this Agreement.

### **3. PRE-DELIVERY PROCEDURES**

- a. Notice of Deliveries - At any time prior to delivery, Exchange may give notification to the Contracting Party of the Daily Contract Quantities of gas due for receipt or delivery, and may request verification from the Contracting Party that the Contracting Party has the capability to perform as Buyer or Seller at the U.S. Delivery Points.
- b. Verification of Deliveries - Within 24 hours of any such request, the Contracting Party will verify to Exchange its capacity to take or deliver the net Daily Contract Quantities for each Delivery Day.
- c. Remedial Actions by Contracting Party - If the Contracting Party does not verify its capacity to take or deliver the net Daily Contract Quantity for each Delivery Day in accordance with paragraph b., the Contracting Party shall continue to be required to complete such verifications or to enter into a Physically Settled Gas Futures Transaction to offset, in whole or in part, its delivery or take obligations until 15:00 p.m. on the second Business Day prior to any such Delivery Day.
- d. Remedial Actions by Exchange - After 15:00 p.m. on the second Business Day prior to such Delivery Day if verifications in accordance with paragraph b. are not given by the Contracting Party, the orders of the Contracting Party which the Contracting Party has entered for the purchase or sale of gas may be eliminated and Exchange may enter into Physically Settled Gas Futures Transactions to offset, in whole or in part, delivery or take obligations, which in the opinion of Exchange may not be performed, in accordance with the Liquidation Procedure as provided for in this Agreement.

### **4. DELIVERY PROCEDURES**

On each day, Exchange and the Contracting Parties with Physically Settled Gas Futures Transactions at any U.S. Delivery Point will submit Title Transfers for the delivery or take of gas under all such Physically Settled Gas Futures Transactions as follows:

- a. Each Contracting Party will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken by it on each day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at each of the U.S. Delivery Points;
- b. each Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the U.S. Delivery Points will submit Title Transfers before the NAESB Timely Nomination Deadline for the net Daily Contract Quantity to the applicable U.S. Delivery Point Operator;

- c. Exchange will, for each Contracting Party, offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at each of the U.S. Delivery Points;
- d. Exchange will submit Title Transfers to the applicable U.S. Delivery Point Operator for all net Daily Contract Quantities of gas to be delivered or to be taken at the applicable U.S. Delivery Point, before the NAESB Timely Nomination Deadline; and
- e. any Contracting Party with net Daily Contract Quantities to be delivered to or to be taken from Exchange at the U.S. Delivery Points will submit rankings to the U.S. Delivery Point Operator in accordance with the Transportation General Terms and Conditions published by the applicable U.S. Delivery Point Operator Gas Tariff.

**5. PERFORMANCE OF THE PHYSICALLY SETTLED GAS FUTURESTRANSACTIONS**

The Physically Settled Gas Futures Transactions at the applicable U.S. Delivery Points will be performed as follows:

By the Contracting Party:

- i. upon the acceptance of the Title Transfers by the applicable U.S. Delivery Point Operator for the net Daily Contract Quantities of gas nominated for delivery or take at the U.S. Delivery Points; and
- ii. by the payment to Exchange of the Invoice amounts for the Physically Settled Gas Futures Transactions at the U.S. Delivery Points.

By Exchange:

- i. upon the acceptance of the Title Transfers by the applicable U.S. Delivery Point Operator for the net Daily Contract Quantities of gas nominated for delivery or take at the U.S. Delivery Points; and
- ii. by the payment to the Contracting Party of the Invoice amounts for the Physically Settled Gas Futures Transactions at the U.S. Delivery Points.

**6. PROCEDURES ON FAILURE OF PERFORMANCE**

Rejection of a Title Transfer - In the event that the applicable U.S. Delivery Point Operator does not accept either all or a portion of the Seller's or the Buyer's Title Transfer at G.I.S.B. or NAESB Evening Nomination Cycle, as applicable, or later, Exchange will be entitled to initiate the following procedure:

- i. Exchange will notify the Contracting Party by phone that a Title Transfer has not been accepted by the U.S. Delivery Point Operator indicating the quantity affected and initiating a 30 minute period to allow resolution by the Contracting Party followed by a fax confirming the details and the time notice was given;
- ii. if no confirmable solution is forthcoming from the Contracting Party within the relevant period, then Exchange will give notice by phone, confirmed by fax, to the Contracting Party that there is a Failure to Deliver or Failure to Take, indicating quantity affected; and
- iii. Exchange may exercise any of its rights under Section 5.5 of the Terms and Conditions.

**7. TITLE**

- a. From Seller - Title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall pass from the Seller during delivery at the receipt point specified in any Physically Settled Gas Futures Transaction.
- b. To Buyer - Title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall pass to the Buyer during delivery at the receipt point specified in any Physically Settled Gas Futures Transaction.
- c. Regarding Exchange - In no event shall this Agreement be construed in a manner whereby title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction would:
  - i. pass to Exchange, as Buyer, except as required by the U.S. Delivery Point Operator to facilitate any Title Transfer from Exchange to Seller, which in each such case shall be deemed to occur concurrently; or
  - ii. be held by Exchange, as Seller, except as required by the U.S. Delivery Point Operator to facilitate any Title Transfer from Exchange to Buyer, which in such case shall be deemed to occur concurrently.

**8. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTING PARTY**

The Contracting Party represents and warrants in respect of any Physically Settled Gas Futures Transaction entered into by such Contracting Party that at the time of delivery or receipt:

- a. If it is the Seller:
  - i. it has the full right and authority to sell gas;
  - ii. it owns and has title to gas, or irrevocable authority to sell gas;
  - iii. any gas delivered to Exchange shall be free from all royalty payments, Liens or encumbrances whatsoever; or
  - iv. it has all necessary rights and entitlements with the applicable Delivery Point Operator for the delivery of gas on a firm basis at the applicable Delivery Point with sufficient inventory to deliver the net Daily Contract Quantity sold for each Gas Day.
- b. If the Buyer:
  - i. it has the full right and authority to purchase gas; or
  - ii. it has all necessary rights and entitlements with the applicable Delivery Point Operator to take gas on a firm basis at the applicable Delivery Point with sufficient capacity to take the net Daily Contract Quantity purchased for each Gas Day.

**9. LIABILITY**

- a. Full Satisfaction - Upon payment, in accordance with this Agreement, of the amounts required to be paid by Exchange or the Contracting Party, as the case may be, in respect of any Failure to Deliver, Failure to Pay or Failure to Take in respect of such Physically Settled Gas Futures Transaction, Exchange or such Contracting Party shall have no further liability under such

Physically Settled Gas Futures Transaction or this Agreement in respect of any such Failure to Deliver, Failure to Pay or Failure to Take.

- b. No Indirect Damages - Other than as specifically set forth in this Agreement, in no event shall Exchange or a party to a Physically Settled Gas Futures Transaction be liable under this Agreement or any Physically Settled Gas Futures Transaction for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the suppliers or customers of the Contracting Party arising out of any Failure to Deliver, Failure to Take or Failure to Pay or any other matter for which liability may be assessed under this Agreement or any Physically Settled Gas Futures Transaction.

#### **10. FORCE MAJEURE**

- a. A force majeure event may be declared by Exchange at one of the U.S. Delivery Points if a U.S. Delivery Point Operator or U.S. Pipeline Operator declares a force majeure event or materially curtails, interrupts or prorates firm transportation services for a material number of Contracting Parties. Exchange also reserves the right to declare a force majeure if an event (including, but not limited to, a strike, lockout, national emergency, governmental action or act of God) occurs that materially affects the ability of a material number of Contracting Parties to meet their Obligations and that is beyond the control of the Contracting Parties.  
For clarity, Exchange will not declare a force majeure to the extent performance is affected by any of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in path, firm transportation is also curtailed; (ii) the failure of a Contracting Party to take commercially reasonable efforts to remedy a transportation, supply or market access issue including, but not limited to, changing upstream or downstream pipelines and/or corresponding supplies or markets; (iii) the economic hardship of a Contracting Party, including, but not limited to, the Seller's ability to sell gas at a better price than the Purchase Price or the Buyer's ability to purchase gas at a better price than the Purchase Price or a regulatory authority disallowing, either in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of the Buyer's market or the Buyer's ability to use or resell gas purchased hereunder; or (v) the loss or failure of the Seller's gas supply or depletion of reserves.
- c. On any day that a force majeure event is declared at one of the U.S. Delivery Points, the Contracting Party's obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions at that U.S. Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure event.

#### **11. PROCEDURES ON FORCE MAJEURE EVENT**

- a. Investigation - Exchange will, in consultation with the applicable Delivery Point Operator make a determination of whether a force majeure event exists and an estimate of its probable duration.
- b. Notice to Contracting Parties - If a force majeure event is determined by Exchange to exist (the "Force Majeure Declaration"), all affected Contracting Parties will be immediately notified by phone, fax or email:
  - i. that the Force Majeure Declaration has been made;
  - ii. the reduction in relevant obligations; and
  - iii. which Physically Settled Gas Futures Products, if any, will be halted from trading.

- c. Title Transfer - The Seller, Buyer and Exchange will make all necessary changes to the applicable Delivery Point Operator Title Transfers to reflect the reduced obligations.
- d. Further Notice - Exchange will promptly advise the affected Contracting Parties of any material changes to the Force Majeure Declaration.

**11. INVOICE AMOUNTS**

Exchange will determine the amounts owing or payable on a monthly basis for the U.S. Delivery Points as follows:

- a. For gas delivered or taken by multiplying:
  - i. the portion of the Contract Quantity of gas delivered or taken at each of the U.S. Delivery Points under all Physically Settled Gas Futures Transactions for each Delivery Day of the given Month expressed in MMBtu's; by
  - ii. the Purchase Price, expressed in U.S. dollars per MMBtu for all Physically Settled Gas Futures Transactions for such Month; plus
- b. All fees as outlined in the Fee Schedule; plus
- c. Any fees charged to Exchange by any of the applicable Delivery Point Operators for the Title Transfers pertaining to the delivery of gas under all such Physically Settled Gas Futures Transactions; plus
- d. Any applicable taxes pursuant to Section 7 of the Terms and Conditions.

**13. INTERPRETATION**

- a. All times referred to herein are to Central Prevailing Time.
- b. All amounts of money referred to herein or in this Agreement in respect of the U.S. Delivery Points are in U.S. dollars.
- c. Capitalized words and phrases used in this Schedule and not defined in this Schedule will have the same meaning as set forth in this Agreement.

**14. DEFINITIONS**

- a. "BBtu" means billions ( $10^9$ ) British thermal units;
- b. "gas" means natural gas as produced in its natural state that meets the quality standards defined in the applicable U.S. Delivery Point Operator's Tariff as outlined in the NGX Product List;
- c. "Gas Daily" means a publication entitled Platts Gas Daily published by Platts, a division of The McGraw-Hill Companies, Inc.;
- d. "Gas Day" means a consecutive twenty-four (24) hour period starting and ending at 9:00 a.m. Central Clock Time;
- e. "Henry Futures Settlement Price" is defined in the NGX Price Index Methodology Guide;
- f. "MMBtu" means 1,000,000 ( $10^6$ ) British thermal units;

- g. "Month" means a month commencing on the first Gas Day of the calendar month and ending on the first Gas Day of the next calendar month;
- h. "NAESB Timely Nomination Deadline" means timely nomination deadline set out by the North American Energy Standards Board, which may be revised from time to time;
- i. "NGX Index Methodology Guide" means a document published by Exchange on Exchange's Website that provides descriptions of methodology for determining and definitions of price indices;
- j. "Title Transfers" means a nomination for the transfer of gas as defined in the applicable U.S. Delivery Point Operator's Tariff as outlined in the NGX Product List;
- k. "U.S. Delivery Point Operator" means the applicable U.S. Delivery Point Operator at each Delivery Point as outlined in the NGX Product List and "U.S. Delivery Point Operators" refers to them all collectively;
- l. "U.S. Delivery Points" means all of the Delivery Points listed in the NGX Product List that are designated as utilizing the mediated delivery nomination mechanism outlined in this Schedule "G";
- m. "U.S. Pipeline Operator" means the applicable U.S. Pipeline Operator at each Delivery Point as outlined in the NGX Product List and "U.S. Pipeline Operators" refers to them all collectively.



## **SCHEDULE "H" – PHYSICALLY SETTLED OIL FUTURES TRANSACTIONS**

### **1. PRODUCT AVAILABILITY**

Physically Settled Oil Futures Transactions may be entered into up to such times on such Trading Days as are stipulated by Exchange through the NGX Trading System to the Contracting Parties from time to time. This Schedule "H" and Appendix 1 – Canadian Trading Specifications and Appendix 2 – United States Trading Specifications, attached hereto and forming part of this Schedule "H" (collectively, this "Schedule"), contains additional terms and conditions with respect to such Physically Settled Oil Futures Transactions.

### **2. RELATIONSHIP TO AGREEMENT**

Any Contracting Party which is a party to a Physically Settled Oil Futures Transaction under this Agreement hereby agrees that any such Physically Settled Oil Futures Transaction includes the provisions of this Schedule and is subject to the terms of this Agreement.

### **3. TITLE, DELIVERIES AND TAKES**

#### **3.1 Deliveries and Takes**

Subject to Section 4.3(e) of the Terms and Conditions, Seller shall cause to be delivered, and Buyer shall cause to be taken and paid for, the Contract Volume for each Physically Settled Oil Futures Transaction at the Delivery Point in accordance with this Schedule and the rules and procedures of the applicable Transportation System. The report by the applicable Transportation System in its final allocation for the delivery month shall be accepted, absent a manifest error, as the final determination of the quality and volume of the Oil delivered and taken under this Agreement for such month. As the delivery of Oil is subject to variances related to normal Transportation System operations, all deliveries and takes under each Physically Settled Oil Futures Transaction shall be deemed to occur in equal daily quantities over each delivery month or the applicable Delivery Period, whichever is shorter.

#### **3.2 Title and Risk**

- (a) From Seller - Title to and risk of loss of Oil delivered under any Physically Settled Oil Futures Transaction shall pass from the Seller during delivery at the receipt point specified in such Physically Settled Oil Futures Transaction.
- (b) To Buyer - Title to and risk of loss of Oil delivered under any Physically Settled Oil Futures Oil Transaction shall pass to the Buyer during delivery at the receipt point specified in such Physically Settled Oil Futures Transaction.
- (c) Regarding Exchange - In no event should this Agreement be construed in a manner whereby title to and risk of loss of Oil delivered under any Physically Settled Oil Futures Transaction shall:
  - (i) pass to Exchange, as Buyer, except as required by the Transportation System to facilitate any transfer of title from Exchange to Seller, which in such case shall be deemed to occur concurrently; or
  - (ii) be held by Exchange, as Seller, except as required by the Transportation System to facilitate any transfer of title from Exchange to Buyer, which in such case shall be deemed to occur concurrently.

3.3 Equalization, Adjustment and Conversion

Equalizations, transportation adjustments and conversions of all Oil volumes shall be made in accordance with the Canadian Trading Specifications (Appendix 1 to this Schedule) and the United States Trading Specifications (Appendix 2 to this Schedule).

3.4 Delivery Procedures

Subject to the Risk Management Policy, the Contracting Party shall in respect of each Physically Settled Oil Futures Transaction: (a) comply promptly with all Transportation System rules and procedures governing notices and determinations relating to the delivery and receipt of Oil for the applicable Delivery Points, (b) designate with the Transportation System all Contract Quantities of Oil as firm and fixed volumes and not as swing volumes, and (c) not amend notices of shipment or reallocate volumes related to the Contract Quantities of Oil contemplated by such Physically Settled Oil Futures Transaction.

3.5 Representations and Warranties

The Contracting Party represents and warrants in respect of any Physically Settled Oil Futures Transaction entered into it that at the time of delivery or receipt:

- (a) if it is the Seller,
  - (i) it has the full right and authority to sell the Oil;
  - (ii) it owns and has good title to the Oil or proper and irrevocable title to sell the Oil;
  - (iii) Oil delivered to the Buyer shall be conveyed to Buyer with good title, free and clear from all liens, encumbrances, adverse claims and security interests, including (without limitation) royalties, overriding royalties or like charges against the Oil or the value thereof and Oil Taxes;
  - (iv) the Oil shall conform to the trading specifications of the Physically Settled Oil Futures Transaction as contemplated by this Agreement and within stated tolerances and in accordance with standard commercial practice as determined by the applicable Transportation System; and
  - (vi) it has all necessary rights and entitlements for the delivery of the Oil on all applicable Transportation Systems as contemplated herein.
  
- (b) if it is the Buyer,
  - (i) it has the full right and authority to purchase the Oil; and
  - (ii) it has all necessary rights and entitlements for the receipt of the Oil on all applicable Transportation Systems as contemplated herein.

3.6 Disclaimer

**EXCEPT AS PROVIDED IN SECTION 3.5 OR OTHERWISE EXPRESSLY CONTEMPLATED BY THIS AGREEMENT, SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, IN RESPECT OF OIL DELIVERED UNDER ANY PHYSICALLY SETTLED OIL FUTURES TRANSACTION INCLUDING WITHOUT LIMITATION, ANY WARRANTY IN RESPECT OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.**

3.7 Exemptions

The Contracting Party and Exchange shall cooperate in obtaining any exemption from or reduction of any Oil Tax, GST or other tax imposed by applicable legislation and regulation, subject to Section 7.1 of the Terms and Conditions.

#### 4. **FORCE MAJEURE**

##### 4.1 Additional Definitions

For the purposes of this Article 4, capitalized words and phrases defined below apply, with their derived variations having corresponding meanings:

- (a) "Base Forecast" means, with respect to a delivery month, the last forecast by the operator of a Single Source Supply Stream issued prior to the Notice of Shipment Date for that delivery month of the volume of Oil to be available for shipment from that Single Source Supply Stream during that delivery month;
- (b) "Force Majeure" means, subject to Section 4.2, the occurrence of a Force Majeure Event that constitutes a Major System Disruption and prevents a party from delivering or taking Oil in accordance with this Agreement;
- (c) "Force Majeure Event" means any event that is within the following exclusive list of events: earthquakes, floods and landslides; civil disturbances, sabotage, acts of public enemies, war, blockades, insurrections and riots; epidemics; acts of God; acts of any government or other authority or statutory undertaking including, without limitation, any adoption of, or any change in, any Regulation; an inability to obtain or a curtailment of electric power, water or fuel; strikes, lockouts or other labour disruptions; fires and explosions; breakdowns or failures of pipe, plant, machinery or equipment, and contamination or poisoning of catalyst and/or solvent or biological treatment facilities; other events recognized as events of "force majeure" by Transmission Systems; and Transmission System service reductions of general application to shippers announced following the commencement of the applicable delivery month;
- (d) "Major System Disruption" means any Force Majeure Event that Exchange, acting reasonably, determines:
  - (i) has or will have a material, adverse affect on the ability, generally, of Buyers and Sellers to deliver or take Oil at a particular Delivery Point; or
  - (ii) results in the production, processing or delivery of Oil from a Single Source Supply Stream in volumes less than those set forth in the Base Forecast for a particular delivery month;
- (e) "Notice of Shipment" means the document customarily filed by a shipper with the operator of a Transportation System identifying all receipts, transfers and dispositions relating to the shipper's movements of Oil during a specific delivery month;
- (f) "Notice of Shipment Date" means, with respect to a delivery month, the due date and time generally accepted by industry for the filing of initial Notice of Shipment for such delivery month;
- (g) "Oil Spread Product" means a Physically Settled Oil Futures Product available on the NGX Trading System or the NGX Clearing System, that allows for the simultaneous entering into as Buyer on the one hand and Seller on the other of two Physically Settled Oil Futures Transactions at two different Delivery Points or during two different time periods;
- (h) "Oil Spread Transaction" means a transaction for the purchase or sale of an Oil Spread Product, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Oil Spread Product as set forth in the NGX Product List and this Schedule H;
- (i) "Revised Forecast" means, with respect to a delivery month, a revision of the Base Forecast for that delivery month issued by the operator of a Single Source Supply Stream;
- (j) "Single Source Supply Stream" means a source of Oil designated as such by Exchange pursuant to Section 4.6(a); and
- (k) "Syncrude Project" means the project currently operated by Syncrude Canada Ltd. for the mining, extraction and upgrading of bitumen from the Athabasca oil sands, including, without limitation, the plant and facilities of Syncrude Canada Ltd. located at Mildred Lake, Alberta and any current or future expansions thereof.

#### 4.2 Exclusions from Force Majeure

For further certainty, Force Majeure does not include:

- (a) a reduction of Transportation System service applicable to a delivery month that has not yet begun (such as apportionment);
- (b) a lack of financial resources or an inability to pay; or
- (c) any change in market conditions that would cause the performance of a Physically Settled Oil Futures Transaction to be unprofitable or less economically attractive.

#### 4.3 Limitations on Force Majeure

Force Majeure shall excuse a Failure to Deliver or a Failure to Take only to the extent that the party seeking to rely on it:

- (a) has not, by its negligence or lack of commercially reasonable due diligence or mitigation, contributed to the Failure to Deliver or Failure to Take or its continuation;
- (b) has performed its obligations under the affected Physically Settled Oil Futures Transaction prior to performing under any third party swing sale or purchase agreements on the upstream or downstream Transportation System, as applicable; and
- (c) has allocated its remaining oil supply or markets arrangements at the affected Delivery Point on a pro rata basis among all of its delivery obligations or market obligations at the affected Delivery Point, as applicable, giving priority to all firm obligations over swing obligations, with all Physically Settled Oil Futures Transactions being firm obligations.

Nothing in Section 4.3(a) shall be construed as obligating a party to settle strikes, lockouts or other labour disruptions contrary to its wishes.

#### 4.4 Notice of Force Majeure Event

A Contracting Party wishing to seek relief from its obligation to deliver or to take all or any portion of the Contract Quantity under a Physically Settled Oil Futures Transaction on the basis of Force Majeure shall give notice to Exchange of the occurrence of the applicable Force Majeure Event as soon as is reasonably practicable and, in any event, within three (3) Business Days of the occurrence of that Force Majeure Event. Such notice shall state in reasonable detail the nature of the Force Majeure Event, the expected duration of the effects of the Force Majeure Event and the volumes of Oil anticipated to be affected thereby. Exchange shall, as soon as is reasonably practicable after receipt from a Contracting Party of notice of the occurrence of a Force Majeure Event:

- (a) determine if a Major System Disruption is or is likely to occur and, accordingly, whether Force Majeure applies in the circumstances; and
- (b) promptly notify the Contracting Party giving such notice and any other affected Contracting Party of such determination.

#### 4.5 Effect of Force Majeure

To the extent that a Failure to Deliver or Failure to Take is caused by Force Majeure:

- (a) the non-performing party shall not be considered (for that reason alone) to have caused a Default;
- (b) the parties shall have no obligations to deliver or take the affected volumes of Oil or to extend the affected Physically Settled Oil Futures Transaction; and
- (c) each party shall be liable for its own losses, damages, costs and expenses and all claims, demands, actions and causes of action arising therefrom suffered in connection with the Force Majeure.

## 4.6 Single Source Supply Stream

- (a) Exchange hereby designates the Syncrude Project as a Single Source Supply Stream. In addition, Exchange, acting reasonably, may from time to time designate other fields, projects, facilities, gathering systems, pipelines or other sources of Oil as a Single Source Supply Stream. Any designation of a source of Oil as a Single Source Supply Stream by Exchange pursuant to this Section 4.6(a) may be revoked at any time by Exchange. Notwithstanding the foregoing, no designation of a source of Oil as a Single Source Supply Stream or the revocation of such designation shall apply to a Physically Settled Oil Futures Transaction entered into prior to the making of the designation or the revocation thereof, as the case may be.
- (b) Where Force Majeure applies in respect of the delivery of Oil from a Single Source Supply Stream, Exchange shall upon receipt of the Revised Forecast for that Single Source Supply Stream determine, acting reasonably, the maximum amount by which Contract Quantities under Physically Settled Oil Futures Transactions for the delivery of Oil to Exchange from that Single Source Supply Stream may be reduced during the applicable portion of the Delivery Period to which the Revised Forecast relates, such reduction to be calculated as the percentage difference (expressed as a positive number) between the volumes specified in the Base Forecast and the volumes specified in the Revised Forecast ("Cut Back Portion"). In such circumstances, Seller under a Physically Settled Oil Futures Transaction for the delivery to Exchange of Oil from the affected Single Source Supply Stream may, subject to the limitations set out in Section 4.3, elect by notice to Exchange to reduce the Contract Quantity to be delivered during the applicable portion of the Delivery Period by an amount not exceeding the Cut Back Portion ("Revised Contract Quantity"). If the operator of the Single Source Supply Stream issues one or more further Revised Forecasts, Exchange shall in each such case determine, acting reasonably, the maximum amount by which Contract Quantities under Physically Settled Oil Futures Transactions for the delivery of Oil to Exchange from that Single Source Supply Stream may be further reduced during the applicable portion of the Delivery Period to which such Revised Forecast relates, such further reduction to be calculated as the percentage difference (expressed as a positive number) between the volumes specified in the Revised Forecast and the volumes specified in the immediately preceding Revised Forecast ("Incremental Cutback Portion"). In each such case, Seller under a Physically Settled Oil Futures Transaction for the delivery of Oil to Exchange from that Single Source Supply Stream may, subject to the limitations set forth in Section 4.3, elect by notice to Exchange to reduce the Revised Contract Quantity to be delivered during the applicable portion of the Delivery Period by a further amount not exceeding the Incremental Cutback Portion. For greater certainty, no such election shall have the effect of reinstating Seller's right to deliver Contract Quantities reduced by virtue of one or more prior elections made by Seller pursuant to this Section 4.6(b).
- (c) If, as a result of the occurrence of a Force Majeure Event or additional Force Majeure Events, curtailment of the delivery of Oil from a Single Source Supply Stream extends to one or more delivery months during a Delivery Period subsequent to the delivery month in which a Force Majeure Event first occurred, the process set forth in Section 4.6(b) for determining the Cut Back Portion, Incremental Cut Back Portions and Revised Contract Quantities for each such subsequent delivery month during the Delivery Period shall apply.
- (d) Revised Contract Quantities determined by Exchange in accordance with Section 4.6(b) shall be evidenced in the revised Notice of Shipment documents provided by Exchange to the applicable Transportation System.
- (e) To the extent that the provisions of this Section 4.6 conflict with any other provisions of this Article 4, the provisions of this Section 4.6 shall govern and prevail.

## 4.7 Termination for Continuing Force Majeure

Should Force Majeure remain in effect for 30 or more days, either Exchange or Contracting Party may, at its discretion, give notice to the other party to terminate the affected Physically Settled Oil Futures Transaction, such termination to be effective 30 days after notice of termination was given by the terminating party.

## 4.8 Disputing the Occurrence of Force Majeure

Within 31 days of receipt of a notice given by Exchange pursuant to Section 4.4, a party affected thereby may in good faith dispute the validity of the determination made by Exchange thereunder by giving notice to Exchange stating in reasonable detail the reasons for the dispute and requesting the matter in dispute be referred to Arbitration in accordance with Schedule "B".

## 4.9 Extended Definition of Force Majeure

Notwithstanding anything express or implied in this Article 4 to the contrary, Force Majeure validly invoked by a Contracting Party shall constitute Force Majeure with respect to Exchange's obligations to other Contracting Parties under the applicable corresponding Physically Settled Futures Oil Transactions. In such circumstances, Exchange shall not be obligated pursuant to Section 4.3(c) to allocate its remaining oil supply and market arrangements on a pro rata basis, but shall allocate the full amount of the reduction in the delivery or take obligations caused by such Force Majeure suffered by a Contracting Party to Exchange's obligations to other Contracting Parties under the applicable corresponding Physically Settled Oil Futures Transactions.

## 4.10 Force Majeure for Oil Spread Transactions

- (a) A force majeure event at the first Delivery Point or during the first time period of an Oil Spread Transaction may reduce the Obligations of Exchange and Contracting Party under the Oil Spread Transaction at the first Delivery Point or during the first time period but will not affect the Obligations of Exchange and the Contracting Party under the Oil Spread Transaction at the second Delivery Point or during the second time period;
- (b) A force majeure event at the second Delivery Point or during the second time period of an Oil Spread Transaction may reduce the Obligations of Exchange and the Contracting Party under the Oil Spread Transaction at the second Delivery Point or during the second time period pursuant to this Schedule but will not affect the Obligations of Exchange and the Contracting Party under the Oil Spread Transaction at the first Delivery Point or during the first time period;
- (c) Exchange retains the right to designate an Oil Spread Transaction submitted and accepted for clearing in accordance with Section 3.2(f) of the Terms and Conditions as two separate Physically Settled Oil Futures Transactions for the purposes of applicable fees in Schedule A.

**APPENDIX 1 TO SCHEDULE "H"**  
**CANADIAN TRADING SPECIFICATIONS**

1. Physically Settled Futures Trading Specifications may be revised by Exchange from time to time in accordance with this Agreement. Accordingly, for purposes of entering Physically Settled Oil Futures Transactions, the Physically Settled Futures Oil Trading Specifications electronically displayed on the ICE Trading Platform shall govern.
  
2. In addition to the definitions in Section 1.2 of the Terms and Conditions, Schedule "D", Schedule "E" and this Schedule "H", the capitalized words and phrases that are defined below have application only to Canadian Instruments, with their derived variations having corresponding meanings.
  - (a) "Adjusted Sales Price" means, with respect to a Physically Settled Oil Futures Transaction, the Contract Price for such transaction adjusted in accordance with these Physically Settled Futures Oil Trading Specifications to produce the actual proceeds of sale for the applicable Physically Settled Oil Futures Transaction;
  - (b) "Canadian Instruments" means Canadian domiciled Physically Settled Oil Futures Transactions;
  - (c) "CMA" means the simple average of the daily settlement price for light, sweet crude oil as traded on and published by the U.S. Provider for the prompt month contract trading during the applicable Delivery Period at Cushing, Oklahoma;
  - (d) "Contract Expiry Time" means, with respect to a delivery month, the time of the close of trading on the Trading Day immediately prior to the Notice of Shipment Date for such delivery month;
  - (e) "Crude Contract Expiry Time" means, with respect to a delivery month, the time of the close of trading on the Trading Day immediately prior to the Crude Notice of Shipment Date for such delivery month;
  - (f) "Crude Contract Expiry Time" means, with respect to a delivery month, the time of the close of trading on the Trading Day immediately prior to the Crude Notice of Shipment Date for such delivery month;
  - (g) "Crude Full Index Calculation Period" means, with respect to a delivery month, the period commencing on the first Trading Day of each calendar month immediately prior to the delivery month and ending on the Trading Day on which the Crude Contract Expiry Time for that delivery month occurs;
  - (h) "Crude Index" means the price indices calculated as specified in the NGX Price Index Methodology Guide
  - (i) "Crude Notice of Shipment Date" means, with respect to a delivery month, the due date and time for initial notice of shipments for such delivery month as stated from time to time in the Forecast Reporting Calendar;
  - (j) "Crude Type" means the types and categories of Oil described as such below;
  - (k) "DNS" means the closing daily settlement price for light, sweet crude oil for the applicable delivery month as traded on and published by the U.S. Provider as at the date of the applicable Transaction, as further described in Appendix 2 to Schedule "H";

- (l) "Forecast Reporting Calendar" means the forecast reporting calendar published from time to time by the Crude Oil Logistics Committee, or its successor, or any reasonable replacement thereof as determined by Exchange from time to time;;
- (m) "Full Index Calculation Period" means, with respect to a delivery month, the period commencing on the first Trading Day of each calendar month immediately prior to the delivery month and ending on the Trading Day on which the Contract Expiry Time for that delivery month occurs;
- (n) "NGX Index Guide" means the price index guide of Exchange relating to physical and financial Oil transactions entered through the NGX Trading System and the manner in which each Crude Index is to be generated, available on the NGX Trading System;
- (o) "Notice of Shipment Date" means, with respect to a delivery month, the due date and time for initial notice of shipments for such delivery month as stated from time to time in the Forecast Reporting Calendar;
- (p) "TMX 1a" means a price index calculated over the applicable Crude Full Index Calculation Period from basis differentials from CMA, as further specified in this Agreement and in the Crude Index Guide, for the applicable Crude Type;

Words and phrases not defined in this Agreement, Schedule "D", Schedule "E" or this Schedule "H" (other than Appendix 2 hereto) that have an accepted meaning in the custom and usage of the western Canadian petroleum industry, shall have that meaning.

3. Table I below sets out the Canadian Instruments/Crude Type that are available on the ICE Trading Platform. Each Crude Type has three components that must be selected to enter a Physically Settled Oil Futures Transaction:

- (a) Delivery Point;
- (b) Transportation System; and
- (c) Crude Type.

The abbreviations used in Table I below are as follows:

- (a) Delivery Point

Clearbrook or CLB - at the outlet of the Transportation System selected  
Cromer or Cro – at the outlet of the Transportation System selected  
Edmonton or Edm – at the outlet of the Transportation System selected  
Hardisty or Har – at the outlet of the Transportation System selected  
Kerrobot or Ker – at the outlet of the Transportation System selected  
Milk River or MR – at the outlet of the Transportation System selected  
Regina or REG - at the outlet of the Transportation System selected



**(b) Transportation Systems**

Transportation Systems
Alberta Oilsands (AOSPL)
Bonnie Glen
Bow River South (Bow South)
Central Alberta (Central Ab)
Cold Lake (CLP)
Enbridge
Federated
Fort Saskatchewan (Fort Sask)
Gibson
Husky
Manito
Peace

Transportation Systems
Pembina
Rainbow
Trans Mountain Terasen (TMPL)
Westspur

**(c) Crude Type**

Product Code	Product
AHS	Albian Heavy Sour
BR	Bow River
C5	Condensate
CAL	Central Alberta
CLK	Cold Lake
CNS	CNRL Light Sweet Synthetic
FH	Fosterton Heavy
HSB	Husky Synthetic Blend
LLB	Lloyd Blend
LLK	Lloyd Blend Kerrobert
LSB	Light Sour Blend
M	Midale
MSO	Mixed Sour Blend
MSW	Mixed Sweet Blend

Product Code	Product
PAS	Premium Albian Synthetic
PCR	TMPL, Peace River Sweet
PEM	TMPL, Pembina Sweet
PSO	TMPL, Peace Sour
SHE	Edmonton High Sulphur Sour
SLE	Edmonton Low Sulphur Sour
SO	Sour
SW	Sweet
SSP	Syncrude Sweet Premium
RBW	TMPL, Rainbow Sweet
WCB	Western Canadian Blend
WH	Wabasca
WCS	Western Canada Select
SHB	Surmont Heavy Blend
SC	Smiley Coleville Heavy

4. The ICE Trading Platform requires that the Delivery Period (referred to as Month or Term on the ICE Trading Platform) be completed by selecting from amongst various specific delivery months and multiple month terms as shown on the ICE Trading Platform.
5. The ICE Trading Platform requires that Contract Quantities (referred to as "Volume" on the ICE Trading Platform) be entered in increments of 100m<sup>3</sup> with a minimum of 100m<sup>3</sup> for each Physically Settled Oil Futures Transaction.
6. The Contract Price for each Physically Settled Oil Futures Transaction must be entered on the ICE Trading Platform either as a "Fixed Price" or as an "Index Price" (these price options are referred to as "Price Types" on the ICE Trading Platform).
7. Fixed Prices must be entered in \$U.S. per barrel in increments of \$U.S.0.01. Several pricing options are available for Index Prices under either a posting option, a WTI Index option, or an Crude Index option; in each case a differential (referred to as "Diff" on the Oil Trading Platform) may be entered on the ICE Trading Platform in \$U.S. per barrel in increments of \$U.S.0.01.

8. Available posting options are customized for the applicable Crude Type (see Table I) and include both monthly averages of individual postings and unweighted averages of groups of postings in Canadian Dollars per cubic metre, plus/minus a differential in \$U.S. per barrel. The abbreviations for the posters as follows:

BP or B	–	BP Canada Energy Trading Company Ltd.
Cenovus or C	–	Cenovus Crude Oil Marketing
Flint or F	–	Flint Hills Resources Ltd.
Husky or H	–	Husky Oil Limited
IOL or I	–	Imperial Oil Limited
Shell or Sh	–	Shell Canada Limited
Sun or Su	–	Suncor Inc.

Available WTI Index options refer to CMA settlement prices for the applicable delivery months (see Table I) in \$U.S. per barrel, plus/minus a differential in \$U.S. per barrel. Such WTI Index options are indicated in Table I by "WTI" in the "Systems Price Abbr." column of such table.

Available Crude Index options for the applicable Crude Type (see Table 1) refer to a Crude Index price. Crude Index prices may be quoted on either an applicable postings option or a WTI Index option (see Crude Index Guide for calculation methodology).

Crude Full Index pricing options are only available for pricing Off-Exchange Transactions.

9. All pricing options described above are subject to equalization as described below.
10. The Force Majeure provisions as specified in Article 4 of Schedule "H" shall be applicable to Canadian Instruments.
11. The following governs when Table I indicates that equalization is applicable.
- The Contract Price under each posting option is a base price applicable to the Delivery Point and Crude Type selected, whose reference quality is stipulated by the posters. The Contract Price under each WTI Index and Fixed Price option is a base price applicable to the quality of a common stream as specified in Table I (e.g. Enbridge MSW, Enbridge SHE). To arrive at the Adjusted Sales Price, the Contract Price shall therefore be adjusted to reflect a quality equalization, in accordance with the procedures set out by the Equalization Steering Committee established by the Canadian Association of Petroleum Producers, or any successor thereto. See Table I for stream quality adjustments. "WADF" refers to the most recent available weighted average differential factor published by the applicable Transportation System for the Crude Type.
  - No adjustments shall be made for transportation differentials, except as outlined in Table I below.
  - All necessary conversions of volumes of Oil shall be made at standard reference conditions at 6.29287 barrels per cubic metre except for heavy oil (i.e. LLK, LLB, BR, WCB, and WH), which shall be at 6.2898105 barrels per cubic metre.
  - The Adjusted Sales Price for the volume of Oil delivered shall be paid in Canadian currency. All such conversions of currency shall be calculated to the nearest cent using the average of the Bank of Canada daily noon exchange spot rates (to four decimal places) for the appropriate period.
12. The net amount indicated on each Invoice shall be due on or before the applicable Physical Settlement Date.
13. All payments shall be made in immediately payable funds in Canadian currency by wire transfer or in such other manner as the parties may agree.

**TABLE I – CRUDE TYPES, PRICING AND EQUALIZATION**

<b>Hub Name</b>	<b>Crude Type</b>	<b>Price Option Description</b>	<b>Equalization</b>	<b>Common Stream Reflected</b>	<b>CO / BO (cleared only/ bilateral only)</b>
Clearbrook - Enbridge In-Line	UHC	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Clearbrook - Enbridge North Dakota	UHC	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Clearbrook - Enbridge	UHC	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Cromer - Enbridge	LSB TMX 1a	TMX LSB WTI 1a	No equalization	Enbridge LSB @ Cro	
Cromer - Enbridge	LSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge LSB @ Cro	
Cromer - Enbridge	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Cromer - Enbridge In-Line	LSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Cromer Enbridge In-Line	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Cromer - Virden	LSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Cromer - Westspur	LSB TMX 1a	TMX LSB WTI 1a	Add Enbridge LSB WADF and deduct Westspur LSB WADF	Enbridge LSB @ Cro	

## H-6

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Cromer - Westspur	LSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge LSB WADF and deduct Westspur WADF	Enbridge LSB @ Cro	
Cromer - Westspur	M TMX 1a	TMX M WTI 1a	<sup>1</sup> Add Enbridge Midale WADF and deduct Westspur Midale WADF	Enbridge M @ Cro	
Cromer - Westspur	M	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	<sup>1</sup> Add Enbridge Midale WADF and deduct Westspur Midale WADF	Enbridge M @ Cro	
Edmonton - Alberta Oilsands	SSP TMX 1a	TMX SYN WTI 1a	No equalization	Enbridge SSP @ Edm	
Edmonton - Alberta Oilsands	SSP	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge SSP @ Edm	
Edmonton - Alberta Oilsands	SSP BLX 1a	TMX SYN WTI 1a blended with Net Energy's SYN WTI Monthly Index			BO
Edmonton - Bonnie Glen	SO	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Bonnie Glen Sour @ Edm	
Edmonton - Bonnie Glen	SW TMX 1a	TMX SW WTI 1a	Add MSW WADF and deduct Bonnie Glen Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Bonnie Glen	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Bonnie Glen Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Central Alberta	CAL	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Central Alberta @ Edm	

## H-7

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Edmonton - Cold Lake	CLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Edm	
Edmonton - Cold Lake	CLK TMX WCS 1a	TMX WCS 1a			BO
Edmonton - Enbridge In-line	AHS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	HSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	PAS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	SSP	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	CLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	SHB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO

## H-8

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Edmonton - Enbridge In-line	SHE	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge In-line	SW BLX 1a				BO
Edmonton - Enbridge In-line	SSP BLX 1a	TMX SYN WTI 1a blended with Net Energy's SYN WTI Monthly Index			BO
Edmonton - Enbridge	AHS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Edm	
Edmonton - Enbridge	CNS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge	SHE	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge SHE @ Edm	
Edmonton - Enbridge	SLE	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge SLE @ Edm	
Edmonton - Enbridge	HSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge	PAS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge	SW TMX 1a	TMX SW WTI 1a	No equalization	Enbridge MSW @ Edm	
Edmonton - Enbridge	SW BLX 1a	TMX SW WTI 1a blended with Net Energy's SW WTI Monthly Index			BO

## H-9

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Edmonton - Enbridge	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge MSW @ Edm	
Edmonton - Enbridge	SSP	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge	SSP BLX 1a	TMX SYN WTI 1a blended with Net Energy's SYN WTI Monthly Index			BO
Edmonton - Enbridge	CLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Enbridge	SHB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Federated	C5 TMX 1a	TMX C5 WTI 1a	Add Enbridge C5 WADF and deduct C5 Federated WADF	Enbridge C5 @ Edm	
Edmonton - Federated	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct C5 Federated WADF	Enbridge C5 @ Edm	
Edmonton - Federated	SW TMX 1a	TMX SW WTI 1a	Add MSW WADF and deduct SW Federated WADF	Enbridge MSW @ Edm	
Edmonton - Federated	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct SW Federated WADF	Enbridge MSW @ Edm	
Edmonton - Fort Saskatchewan	C5 TMX 1a	TMX C5 WTI 1a	Add Enbridge C5 WADF, and deduct Fort Sask C5 WADF	Enbridge C5 @ Edm	

## H-10

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Edmonton - Fort Saskatchewan	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Fort Sask C5 WADF	Enbridge C5 @ Edm	
Edmonton - Fort Saskatchewan	C5 BLX 1a	TMX C5 WTI 1a blended with Net Energy's C5 WTI Monthly Index			BO
Edmonton - Horizon	CNS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Edmonton - Peace	C5 TMX 1a	TMX C5 WTI 1a	Add Enbridge C5 WADF and deduct Peace C5 WADF	Enbridge C5 @ Edm	
Edmonton - Peace	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Peace C5 WADF	Enbridge C5 @ Edm	
Edmonton - Peace	SO	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Peace Sour @ Edm	
Edmonton - Peace	SW TMX 1a	TMX SW WTI 1a	Add MSW WADF and deduct Peace Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Peace	WTI	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Peace Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Pembina	C5 TMX 1a	TMX C5 WTI 1a	Add Enbridge C5 WADF and deduct Pembina C5 WADF	Enbridge C5 @ Edm	
Edmonton - Pembina	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Pembina C5 WADF	Enbridge C5 @ Edm	
Edmonton - Pembina	SW TMX 1a	TMX SW WTI 1a	Add MSW WADF and deduct Pembina Sweet WADF	Enbridge MSW @ Edm	



## H-11

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Edmonton - Pembina	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Pembina Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Rainbow	SW TMX 1a	TMX SW WTI 1a	Add MSW WADF and deduct Rainbow Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Rainbow	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Rainbow Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Rainbow	WH	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Edm	
Edmonton - Rangeland	C5 TMX 1a	TMX C5 WTI 1a	Add Enbridge C5 WADF and deduct Rangeland C5 WADF	Enbridge C5 @ Edm	
Edmonton - Rangeland	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$US/bbl.	Add Enbridge C5 WADF and deduct Rangeland C5 WADF	Enbridge C5 @ Edm	
Edmonton - Rangeland	SW TMX 1a	TMX SW WTI 1a	Add MSW WADF and deduct Rangeland Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Rangeland	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$US/bbl.	Add MSW WADF and deduct Rangeland Sweet WADF	Enbridge MSW @ Edm	
Edmonton - Rimbey	C5	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$US/bbl.			BO
Edmonton – Transmountain	AHS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$US/bbl.			BO
Edmonton – Transmountain	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the			BO

## H-12

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
		applicable delivery months in \$US/bbl.			
Edmonton - Transmountain	SSP	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$US/bbl.			BO
Edmonton - Wizard Lake	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$US/bbl.			BO
Hardisty - Cold Lake	CLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Har	
Hardisty - Cold Lake	CLK TMX 1a WCS	TMX WCS 1a			BO
Hardisty - Enbridge Contract Terminal	SW	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge In-line	HSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge In-line	WCS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge In-line	CLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge In-line	LLB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge	HSB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in			BO

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
		\$U.S./bbl.			
Hardisty - Enbridge	WCS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge	CLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Enbridge	LLB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Hardisty - Gibson	BR	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream	
Hardisty - Gibson	LLE	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream	
Hardisty - Gibson	LLG	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream	
Hardisty - Gibson	SO	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Gibson Hardisty Light @ Har	
Hardisty - Husky	LLB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream	

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Hardisty - Husky	WCB	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Stream	Stream	
Hardisty - Husky	WCS TMX 1a	TMX WCS 1a	No equalization	Stream	
Hardisty - Husky	WCS	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream	
Hardisty - Husky	WCS TMX 1b	TMX WCS 1b			BO
Hardisty - Husky	WCS BLX 1a	TMX WCS WTI 1a blended with Net Energy's WCS WTI Monthly Index			BO
Hardisty - Husky	WCS BLX 1b	TMX WCS WTI 1b blended with Net Energy's WCS WTI Daily Index			BO
Kerrobert - Enbridge In-line	LLK	TMX WCS WTI 1b blended with Net Energy's WCS WTI Daily Index			BO
Kerrobert - Enbridge In-line	SW	TMX WCS WTI 1b blended with Net Energy's WCS WTI Daily Index			BO
Kerrobert - Manito/ Enbridge	LLK	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	<sup>2</sup> No Equalization	Stream	
Kerrobert - Mid Sask	SC	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Milk River - Bow River South	BR	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream	
Regina - Enbridge In-line	FH	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO

Hub Name	Crude Type	Price Option Description	Equalization	Common Stream Reflected	CO / BO (cleared only/ bilateral only)
Regina - Enbridge	FH	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Regina - Plains	FH	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO
Regina - South Saskatchewan	FH	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.			BO

## Notes:

- <sup>1</sup> Based on pipeline operational policy, Exchange reserves the right to deliver a portion or all of a traded volume to the International Boundary near North Portal Saskatchewan (Enbridge Pipelines (North Dakota) Inc.). All applicable adjustments for transportation and quality will be applied in such cases.
- <sup>2</sup> Based on Manito pipeline operational policy, non-Manito shippers are not allowed to trade volumes in the Manito system. Any transaction involving a non-Manito shipper will be deemed to occur in the Enbridge system, and may require scheduling adjustments. Please contact Plains Pipelines, Darren Amberson, Pipeline Administration @ 403-298-2193 for further information.

**APPENDIX 2 TO SCHEDULE "H"**  
**UNITED STATES TRADING SPECIFICATIONS**

1. Physically Settled Futures Oil Trading Specifications may be revised by Exchange from time to time in accordance with this Agreement. Accordingly, for purposes of entering Physically Settled Oil Futures Transactions, the Physically Settled Futures Oil Trading Specifications electronically displayed on the ICE Trading Platform shall govern.
2. In addition to the definitions in Section 1.2 of the Terms and Conditions, Schedule "D", Schedule "E" and this Schedule "H", the capitalized words and phrases that are defined below have application only to U.S. Instruments, with their derived variations having corresponding meanings.
  - (a) "Argus" means the publications and industry pricing references as provided by Argus Media Ltd.;
  - (b) "CMA" means the simple average of the daily settlement price for light sweet crude oil as traded on and published by the U.S. Provider for the prompt month contract trading during the applicable Delivery Period at Cushing, Oklahoma in U.S. dollars per barrel (USD/bbl), plus or minus a differential in USD/bbl as specified when entering the physical oil transaction.
  - (c) "Shorted Party" means the Contracting Party or Exchange, as applicable, that has or will receive Oil quantity that is less than the requirements under any single Cushing Exchange due to Force Majeure;
  - (d) "Shorted Quantity" means the quantity shortfall of Oil that was required to be delivered by the other party under any single Cushing Exchange due to Force Majeure;
  - (e) "U.S. Instruments" means United States domiciled Physically Settled Oil Futures Transactions; and
  - (f) "U.S. Provider" is defined in Section 10(qqq) of Schedule "E".

Words and phrases which are not defined in this Agreement, Schedule "D", Schedule "E" or this Schedule "H" (other than Appendix 1 hereto) that have an accepted meaning in the custom and usage of the United States petroleum industry, shall have that meaning.

3. Table I below sets out the U.S. Instruments/Crude Type that are available on the NGX Trading System. Each Crude Type has three components that must be selected to enter a Physically Settled Oil Futures Transaction:
  - (a) Delivery Point;
  - (b) Transportation Systems; and
  - (c) Crude Type.

The abbreviations used in Table I below are as follows:

**(a) Delivery Point**

Clovelly or CLV-	in the Louisiana Offshore Oil Port ("LOOP") storage facility
Cushing or CSH-	in the terminal storage facilities
Midland or MID-	in the terminal storage facilities

St James or STJ- at the Capline receipt point as documented by Oil Distribution Services ("ODS")  
 Houma or HMA- at the Shell Transportation System receipt point as documented by ODS

**(b) Transportation Systems**

Capline Pipeline
Enbridge Terminal
Louisiana Offshore Oil Port
Shell Pipeline
Enterprise Terminal

**(c) Crude Type**

Product Code	Product
WTI	West Texas Intermediate
WTS	West Texas Sour
LLS	Light Louisiana Sweet
DSW	Domestic Sweet
MAR	Mars
WCS	Western Canadian Select Heavy
POS	Poseidon
EUG	Eugene Island

- All Crude Types transacted are of common stream quality and meet the specification established by the corresponding Transportation System.
4. The Oil Trading Platform requires that the Delivery Period (referred to as Month or Term on the Oil Trading Platform) be completed by selecting from amongst various specific delivery months and multiple month terms as shown on the Oil Trading Platform.
  5. The Oil Trading Platform requires that Contract Quantities (referred to as "Volume" on the Oil Trading Platform) be entered in increments of 100 barrels per day ("bpd") with a minimum of 100 bpd for each Physically Settled Oil Futures Transaction.
  6. The Contract Price for each Physically Settled Oil Futures Transaction must be entered on the Oil Trading Platform either as a "Fixed Price" or as an "Index Price" (these price options are referred to as "Price Types" on the Oil Trading Platform).
  7. Fixed Prices must be entered in \$U.S. per barrel in increments of \$U.S.0.01. Several options are available for Index Prices under either a posting option or a WTI Index option; in each case a differential (referred to as "Diff" on the Oil Trading Platform) may be entered on the Oil Trading Platform in \$U.S. per barrel in increments of \$U.S.0.01.
  8. Available posting options for individual company 40 degree reference price for WTI crude oil with a differential in \$U.S. per barrel are as follows:

"Argus Average" is the arithmetic average of the daily mid point quote by Argus for the prompt delivery month trading for that specific grade and location.

In the event the mid point of the daily quote is shown as \$U.S.0.005 then the value will be rounded up to the nearest cent.

The abbreviations for the posters as follows:

ConPhil or CP	–	ConocoPhillips
ARG	–	Petroleum Argus Americas Crude Report

Available WTI Index options are:

CMA settlement prices for the applicable delivery months (see Table I below) in \$U.S. per barrel, plus/minus a differential in \$U.S. per barrel as specified when entering the Physically Settled Oil Futures Transaction; and

DNS settlement price is the closing daily settlement price for the U.S. Provider as at the date of the Physically Settled Oil Futures Transaction, plus/minus a differential in \$U.S. per barrel as specified when entering the Physically Settled Oil Futures Transaction.

Such WTI Index options are indicated in Table I below by "CMA" or "DNS" in the "System Price Abbr." column of such table.

All Physically Settled Oil Futures Transactions entered into on a DNS price basis during a Trading Day when the U.S. Provider is closed (for any reason) will be settled using corresponding U.S. Provider values on the most immediate prior trading day of the U.S. Provider.

9. All Cushing Exchanges entered into imply an equal quantity of Domestic Sweet ("DSW") crude oil at Cushing in the Enterprise terminal. The price indices selected from the price options menu for these transactions will be the same for both the delivery and receipt of the Crude Types. The differential quoted against the indices will adjust for location and quality differences for the exchanged Crude Type.
10. Where available, Cushing Exchanges allow Buyers and Sellers to transact simultaneously at one of the eligible locations ("Exchange Locations") shown in Table I and Cushing. Cushing Exchanges will be available for trading on the Oil Trading Platform on each Trading Day for all Physically Settled Oil Futures Products indicated in Table I.
  - (a) The Buyer of the Cushing Exchange will have entered into a Physically Settled Oil Futures Transaction for receipt of the Contract Quantity at Cushing;
  - (b) The Buyer of the Cushing Exchange will have entered into a Physically Settled Oil Futures Transaction for the delivery of the Contract Quantity at the Exchange Location;
  - (c) The Seller of the Cushing Exchange will have entered into a Physically Settled Oil Futures Transaction for delivery of the Contract Quantity at Cushing;
  - (d) The Seller of the Cushing Exchange will have entered into a Physically Settled Oil Futures Transaction for receipt of the Contract Quantity at the Exchange Location;
  - (e) The Settlement Price for the Cushing Exchange will be the Contract Prices (fixed price differential) as agreed; and
  - (f) All other Obligations will be as outlined in this Appendix 2 and this Agreement.



11. The Force Majeure provisions as specified in Article 4 of Schedule "H" shall be applicable to U.S. Instruments except Cushing Exchanges. In the event that quantity imbalances occur as a result of a Force Majeure event on a Cushing Exchange, the Shorted Party shall have the following remedies available and shall use commercial reasonable efforts to rectify these imbalances:
- (a) For Cushing Exchanges, the Shorted Party may elect to reduce the Contract Quantity to be delivered by the Shorted Party by an amount equal to the Shorted Quantity ("Offset Quantity"). The Offset Quantities and Proportional Offset Quantities will thereafter be deemed to become, and will be recognized as, Force Majeure quantities as contemplated in Article 4 of Schedule "H".
  - (b) In the event the Shorted Quantities are known prior to the 20<sup>th</sup> of the month immediately preceding the applicable delivery month of the Delivery Period, the Shorted Party can elect to take the Shorted Quantities in the month immediately following the applicable delivery month of the Delivery Period;
  - (c) In the event the Shorted Quantity are not confirmed until or after the 20<sup>th</sup> of the month immediately preceding the applicable delivery month of the Delivery Period, the Shorted Party can elect to take the Shorted Quantities in the delivery month that is two months following the applicable delivery month of the Delivery Period;
  - (d) In the event that options (b) and (c) above are not commercially feasible, the Shorted Party may require the other party to deliver to the Shorted Party, as soon as practicable, the Crude Type as delivered by the Shorted Party under the subject Physically Settled Oil Futures Transaction, in an amount equal to the Offset Quantity or Proportional Offset Quantity as applicable.

All remedial transactions above will take place using the same Physically Settled Futures Oil Trading Specifications and terms as contemplated in the subject Physically Settled Futures Oil Confirmation, except as specifically provided for above.

12. The net amount indicated on each Invoice shall be due on or before the applicable Physical Settlement Date.
13. All payments shall be made in immediately payable funds in United States currency by wire transfer or in such other manner as the parties may agree.
14. Delivery months begin at 7:00 a.m. on the first day of the calendar month and end at 7:00 a.m. on the first day of the following calendar month.

**TABLE I. CRUDE TYPES, PRICING AND EQUALIZATION**

<b>Hub Name</b>	<b>Crude Type</b>	<b>Price Option Description</b>	<b>Equalization</b>	<b>CO/BO (cleared only/ bilateral only)</b>
Clovelly - LOOP	MARS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Clovelly - LOOP	MARS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Clovelly - LOOP	MARS	Argus Average quoted price for MARS.	No equalization	CO
Clovelly - LOOP	MARS	Individual price postings for WTI 40°	No equalization	CO
Clovelly - LOOP	MARS	Fixed Price	No equalization	CO
Cushing - Enbridge	DSW	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Cushing - Enbridge	DSW	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Cushing - Enbridge	DSW	Argus Average quoted price for WTI.	No equalization	CO
Cushing - Enbridge	DSW	Individual price postings for WTI 40°	No equalization	CO
Cushing - Enbridge	DSW	Fixed Price	No equalization	CO
Cushing - Enbridge	WCS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Cushing - Enbridge	WCS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Cushing - Enbridge	WCS	Individual price postings for WTI 40°	No equalization	CO
Cushing - Enbridge	WCS	Fixed Price	No equalization	CO
Cushing - Enbridge	WTS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Cushing - Enbridge	WTS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Cushing - Enbridge	WTS	Individual price postings for WTI 40°	No equalization	CO
Cushing - Enbridge	WTS	Fixed Price	No equalization	CO
Cushing - Enterprise	DSW	DNS settlement price for the applicable delivery month(s).	No equalization	CO

## H-2

Hub Name	Crude Type	Price Option Description	Equalization	CO/BO (cleared only/ bilateral only)
Cushing - Enterprise	DSW	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Cushing - Enterprise	DSW	Argus Average quoted price for WTI.	No equalization	CO
Cushing - Enterprise	DSW	Individual price postings for WTI 40°	No equalization	CO
Cushing - Enterprise	DSW	Fixed Price	No equalization	CO
Cushing - Enterprise	WCS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Cushing - Enterprise	WCS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Cushing - Enterprise	WCS	Individual price postings for WTI 40°	No equalization	CO
Cushing - Enterprise	WCS	Fixed Price	No equalization	CO
Cushing - Enterprise	WTS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Cushing - Enterprise	WTS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Cushing - Enterprise	WTS	Individual price postings for WTI 40°	No equalization	CO
Cushing - Enterprise	WTS	Fixed Price	No equalization	CO
Houma - Shell	EUG	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Houma - Shell	EUG	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Houma - Shell	EUG	Individual price postings for WTI 40°	No equalization	CO
Houma - Shell	EUG	Fixed Price	No equalization	CO
Houma - Shell	POS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Houma - Shell	POS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Houma - Shell	POS	Argus Average quoted price for POS	No equalization	CO
Houma - Shell	POS	Individual price postings for WTI 40°	No equalization	CO

## H-3

Hub Name	Crude Type	Price Option Description	Equalization	CO/BO (cleared only/ bilateral only)
Houma - Shell	POS	Fixed Price	No equalization	CO
Midland - Enterprise	WTI	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Midland - Enterprise	WTI	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Midland - Enterprise	WTI	Argus Average quoted price for WTI Midland.	No equalization	CO
Midland - Enterprise	WTI	Individual price postings for WTI 40°	No equalization	CO
Midland - Enterprise	WTI	Fixed Price	No equalization	CO
Midland - Enterprise	WTS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
Midland - Enterprise	WTS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
Midland - Enterprise	WTS	Argus Average quoted price for WTS.	No equalization	CO
Midland - Enterprise	WTS	Individual price postings for WTI 40°	No equalization	CO
Midland - Enterprise	WTS	Fixed Price	No equalization	CO
St. James - Capline	LLS	DNS settlement price for the applicable delivery month(s).	No equalization	CO
St. James - Capline	LLS	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
St. James - Capline	LLS	Argus Average quoted price for LLS.	No equalization	CO
St. James - Capline	LLS	Individual price postings for WTI 40°	No equalization	CO
St. James - Capline	LLS	Fixed Price	No equalization	CO
St. James - Capline	EUG	DNS settlement price for the applicable delivery month(s).	No equalization	CO
St. James - Capline	EUG	CMA settlement prices for the applicable delivery month(s).	No equalization	CO
St. James - Capline	EUG	Argus Average quoted price for Eugene Island.	No equalization	CO
St. James - Capline	EUG	Individual price postings for WTI 40°	No equalization	CO

<b>Hub Name</b>	<b>Crude Type</b>	<b>Price Option Description</b>	<b>Equalization</b>	<b>CO/BO</b> <b>(cleared only/ bilateral only)</b>
St. James - Capline	EUG	Fixed Price	No equalization	CO

## **SCHEDULE "I" – FORWARD (BILATERAL) TRANSACTIONS**

Words and phrases capitalized in this Schedule and not defined herein have the same meaning as in this Agreement.

### **1. QUALIFICATION, ACCESS AND ENABLING**

- a. Sections 2.3 and 2.5 of the Terms and Conditions and Sections 5(a), 5(b) and 5(c) of Schedule C apply to a Contracting Party executing a Forward Transaction. A Contracting Party will be activated on the NGX Trading System by Exchange after all pre-requisite requirements have been satisfied under Sections 5(a), 5(b) and 5(c) of Schedule C.
- b. Exchange will provide the Contracting Party with access to the NGX Trading System for such periods on each Business Day that Forward Products are available for trading, as may be designated by notice to the Contracting Parties from time to time, and may provide access on non-Business Days for trading in some or all Forward Products.
- c. A Contracting Party that:
  - (i) has been enabled by its Administrator on the NGX Trading System for the minimum number of Contracting Parties and has been enabled by the minimum number of Contracting Parties on the NGX Trading System for bilateral trading, such minimum number being determined by Exchange in its sole discretion from time to time, may post bids and offers and accept posted bids and offers in Forward Products; or
  - (ii) has not been enabled by its Administrator on the NGX Trading System for the minimum number of Contracting Parties and/or has not been enabled by the minimum number of Contracting Parties on the NGX Trading System for bilateral trading may only accept posted bids and offers in Forward Products that are posted by those Contracting Parties it has been enabled to enter into Forward Transactions with.

### **2. CONFIRMATIONS**

Exchange agrees to electronically deliver a confirmation as soon as reasonably possible after entering into a Forward Transaction. Delivery of such confirmation for Forward Transactions in oil Forward Products shall be via email or facsimile to the Contracting Party. Delivery of confirmation for Forward Transactions in natural gas Forward Products shall be via an electronic notification available on the ICE Trading Platform.

### **3. CANCELLED FORWARD TRANSACTIONS**

- a. In the event that a Contracting Party has entered into a Forward Transaction in error for which the underlying commodity is any product but Oil, Exchange will not cancel the Forward Transaction in error until such time that Exchange has been notified that both Contracting Parties to the Forward Transaction in error have consented to the cancellation of the Forward Transaction in error. If such consent cannot be reached by both Contracting Parties to the Forward Transaction by the earlier of: (i) 120 minutes following the entering of the Forward Transaction; or (ii) 60 minutes following the close of trading on the NGX Trading System on the Trading Day on which the Forward Transaction was entered, the Forward Transaction will continue in full force and effect.
- b. In the event that a Contracting Party has entered into a Forward Transaction in error for which the underlying commodity is Oil, and, after receiving confirmation of the identity of the other Contracting Party to that Forward Transaction, has determined in its sole discretion that it is unable or unwilling to transact with the other Contracting Party to that Forward Transaction, Exchange agrees to cancel the Forward Transaction immediately upon being notified by either one of the Contracting Parties to the Forward Transaction that it is unable or unwilling to transact with the

other Contracting Party. If such notification is not received from either of the Contracting Parties to a Forward Transaction by the earlier of: (i) 120 minutes following the entering of the Forward Transaction; or (ii) 60 minutes following the close of trading on the NGX Trading System on the Trading Day on which the Forward Transaction was entered, the Forward Transaction will continue in full force and effect.

4. **INVOICES**

- a. Notwithstanding any other provision of this Agreement, Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request with) an Invoice on or before the 15<sup>th</sup> day of each calendar month for physical gas Forward Transactions during the prior calendar month and before the Physical Settlement Date for physical oil Forward Transactions during the prior calendar month, setting forth any amounts payable for fees to Exchange and any amounts payable on account of GST.
- b. Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions hereof, the amount of the Invoice owed by the Contracting Party to Exchange will be due and payable on the Physical Settlement Date. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date with respect to physical gas Forward Transactions and prior to the Physical Settlement Date with respect to physical Oil Forward Transactions. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. The Contracting Party shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.
- c. The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date with respect to a Forward Transaction will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.

5. **GENERAL**

- a. In addition to this Schedule I, the following Terms and Conditions and Schedules of this Agreement apply to a Forward Transaction: Sections 3.2 (a, b, c, d, g, h, j and k); Section 3.4 (a, b, c, h, i, and j); Sections 3.9, 3.10, , 5.8, 5.9, 5.12 and 5.13; and Schedules "A", "B", Section 9 of Schedule "C" and Schedule "D" (which, together with this Schedule I, are the "Forward Provisions").
- b. With respect to a Forward Transaction, in the event that there is a conflict between the Forward Provisions and the bilateral agreement directly between the Contracting Parties who are parties to such Forward Transaction, the Forward Provisions shall govern.
- c. Once the Contracting Party receives a Confirmation from the NGX Trading System that a Forward Transaction has occurred, the clearing and settlement of the Forward Transaction is governed

solely by the terms and conditions of the bilateral agreement directly between the Contracting Parties who are parties to such Forward Transaction.



## **SCHEDULE "J" – PHYSICALLY SETTLED GAS FUTURES CONTRACTS WITH ASSIGNED DELIVERY – U.S. DELIVERY POINTS**

This Schedule "J" contains clearing and settlement provisions for all Physically Settled Gas Futures Products with Assigned Delivery offered at U.S. Delivery Points.

### **1. SPREAD PRODUCTS**

Not available at U.S. Delivery Points with Assigned Delivery nominations.

### **2. RELATIONSHIP TO AGREEMENT**

Nothing in this Schedule "J" will impair the rights or obligations of Exchange or the rights or obligations of the Contracting Party pursuant to this Agreement. Any Contracting Party which is a party to a Physically Settled Gas Futures Transaction entered into at a U.S. Delivery Point hereby agrees that any such Physically Settled Gas Futures Transaction includes the provisions of this Schedule "J" and is subject to the terms of this Agreement.

### **3. PRE-DELIVERY PROCEDURES**

- a. Notice of Deliveries - At any time prior to delivery, Exchange may give notification to the Contracting Party of the Daily Contract Quantities of gas due for receipt or delivery, and may request verification from the Contracting Party that the Contracting Party has the capability to perform as Buyer or Seller at the U.S. Delivery Points.
- b. Verification of Deliveries - Within 24 hours of any such request, the Contracting Party will verify to Exchange its capacity to take or deliver the net Daily Contract Quantities for each Delivery Day.
- c. Remedial Actions by Contracting Party - If the Contracting Party does not verify its capacity to take or deliver the net Daily Contract Quantity for each Delivery Day in accordance with paragraph b., the Contracting Party shall continue to be required to complete such verifications or to enter into a Physically Settled Gas Futures Transaction to offset, in whole or in part, its delivery or take obligations until 15:00 p.m. on the second Business Day prior to any such Delivery Day.
- d. Remedial Actions by Exchange - After 15:00 p.m. on the second Business Day prior to such Delivery Day if verifications in accordance with paragraph b. are not given by the Contracting Party, the orders of the Contracting Party which the Contracting Party has entered for the purchase or sale of gas may be eliminated and Exchange may enter into Physically Settled Gas Futures Transactions to offset, in whole or in part, delivery or take obligations, which in the opinion of Exchange may not be performed, in accordance with the Liquidation Procedure as provided for in this Agreement.

### **4. DELIVERY PROCEDURES**

On each day, Contracting Parties with Physically Settled Gas Futures Transactions with Assigned Delivery at any U.S. Delivery Point will submit Title Transfers for the delivery or take of gas under all such Physically Settled Gas Futures Transactions as follows:

- a. Each Contracting Party will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken by it on each day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at each of the U.S. Delivery Points;
- b. each Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the U.S. Delivery Points and that controls the Transportation Entitlement will submit Title Transfers before the NAESB Timely Nomination Deadline for the net Daily Contract Quantity to the

applicable U.S. Delivery Point Operator. In the event a Contracting Party does not control the Transportation Entitlement the Contracting Party shall assign the Transportation Entitlement before the NAESB Timely Nomination Deadline to NGX for the net Daily Contract Quantity to be delivered or taken at the U.S. Delivery Points;

- c. Exchange will, for each Contracting Party, offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each day for all Physically Settled Gas Futures Transactions to determine a net Daily Contract Quantity at each of the U.S. Delivery Points;
- d. Exchange will assign a Transportation Entitlement it receives from a Seller for all net Daily Contract Quantities of gas to be delivered or to be taken at the applicable U.S. Delivery Point to the Buyer, before the NAESB Timely Nomination Deadline; and
- e. any Contracting Party with net Daily Contract Quantities to be delivered to or to be taken from Exchange at the U.S. Delivery Points will submit rankings to the U.S. Delivery Point Operator in accordance with the Transportation General Terms and Conditions published by the applicable U.S. Delivery Point Operator Gas Tariff.

**5. PERFORMANCE OF THE PHYSICALLY SETTLED GAS FUTURES TRANSACTIONS**

The Physically Settled Gas Futures Transactions at the applicable U.S. Delivery Points will be performed as follows:

By the Contracting Party:

- i. upon the acceptance of the Title Transfers by the applicable U.S. Delivery Point Operator for the net Daily Contract Quantities of gas nominated for delivery or take at the U.S. Delivery Points or upon assignment of the Transportation Entitlement; and
- ii. by the payment to Exchange of the Invoice amounts for the Physically Settled Gas Futures Transactions at the U.S. Delivery Points.

By Exchange:

- i. upon the acceptance of the Title Transfers by the applicable U.S. Delivery Point Operator for the net Daily Contract Quantities of gas nominated for delivery or take at the U.S. Delivery Points or upon assignment of the Transportation Entitlement; and
- ii. by the payment to the Contracting Party of the Invoice amounts for the Physically Settled Gas Futures Transactions at the U.S. Delivery Points.

Quantity Alternatives:

- i. In the case of (ii) above with respect to the Contracting Party's performance, Invoices shall be subject to retroactive adjustment by Exchange upon receipt by Exchange of a Post Settlement Delivery Adjustment within 60 days following the posting by Exchange of the original Invoice.

6. **PROCEDURES ON FAILURE OF PERFORMANCE**

Rejection of a Title Transfer - In the event that the applicable U.S. Delivery Point Operator does not accept either all or a portion of the Seller's or the Buyer's Title Transfer at G.I.S.B. or NAESB Evening Nomination Cycle, as applicable, or later, the following procedure shall be initiated:

- i. The Contracting Party will notify Exchange by phone or internet message that a Title Transfer has not been accepted by the U.S. Delivery Point Operator indicating the quantity affected and initiating a 30 minute period to allow resolution by the Contracting Party;
- ii. if no resolution is forthcoming from the Contracting Party within the relevant period, then Exchange will give notice by phone or internet message, confirmed by fax, to the Contracting Party that there is a Failure to Deliver or Failure to Take, indicating quantity affected; and
- iii. Exchange may exercise any of its rights under Section 5.5 of the Terms and Conditions.

7. **TITLE**

- a. From Seller - Title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall pass from the Seller during delivery at the receipt point specified in any Physically Settled Gas Futures Transaction.
- b. To Buyer - Title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction shall pass to the Buyer during delivery at the receipt point specified in any Physically Settled Gas Futures Transaction.
- c. Regarding Exchange - In no event shall this Agreement be construed in a manner whereby title to and risk of loss of gas delivered under any Physically Settled Gas Futures Transaction would be the responsibility of Exchange.

8. **REPRESENTATIONS AND WARRANTIES OF THE CONTRACTING PARTY**

The Contracting Party represents and warrants in respect of any Physically Settled Gas Futures Transaction entered into by such Contracting Party that at the time of delivery or receipt:

- c. If it is the Seller:
  - i. it has the full right and authority to sell gas;
  - ii. it owns and has title to gas, or irrevocable authority to sell gas;
  - iii. any gas delivered to Exchange shall be free from all royalty payments, Liens or encumbrances whatsoever; or
  - iv. it has all necessary rights and entitlements with the applicable Delivery Point Operator for the delivery of gas on a firm basis at the applicable Delivery Point with sufficient inventory to deliver the net Daily Contract Quantity sold for each Gas Day.
- d. If the Buyer:
  - i. it has the full right and authority to purchase gas; or

- ii. it has all necessary rights and entitlements with the applicable Delivery Point Operator to take gas on a firm basis at the applicable Delivery Point with sufficient capacity to take the net Daily Contract Quantity purchased for each Gas Day.

**9. LIABILITY**

- a. Full Satisfaction - Upon payment, in accordance with this Agreement, of the amounts required to be paid by Exchange or the Contracting Party, as the case may be, in respect of any Failure to Deliver, Failure to Pay or Failure to Take in respect of such Physically Settled Gas Futures Transaction, Exchange or such Contracting Party shall have no further liability under such Physically Settled Gas Futures Transaction or this Agreement in respect of any such Failure to Deliver, Failure to Pay or Failure to Take.
- b. No Indirect Damages - Other than as specifically set forth in this Agreement, in no event shall Exchange or a party to a Physically Settled Gas Futures Transaction be liable under this Agreement or any Physically Settled Gas Futures Transaction for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the suppliers or customers of the Contracting Party arising out of any Failure to Deliver, Failure to Take or Failure to Pay or any other matter for which liability may be assessed under this Agreement or any Physically Settled Gas Futures Transaction.

**10. FORCE MAJEURE**

- a. A force majeure event may be declared by Exchange at one of the U.S. Delivery Points if a U.S. Delivery Point Operator or U.S. Pipeline Operator declares a force majeure event or materially curtails, interrupts or prorates firm transportation services for a material number of Contracting Parties. Exchange also reserves the right to declare a force majeure if an event (including, but not limited to, a strike, lockout, national emergency, governmental action or act of God) occurs that materially affects the ability of a material number of Contracting Parties to meet their Obligations and that is beyond the control of the Contracting Parties.  
For clarity, Exchange will not declare a force majeure to the extent performance is affected by any of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in path, firm transportation is also curtailed; (ii) the failure of a Contracting Party to take commercially reasonable efforts to remedy a transportation, supply or market access issue including, but not limited to, changing upstream or downstream pipelines and/or corresponding supplies or markets; (iii) the economic hardship of a Contracting Party, including, but not limited to, the Seller's ability to sell gas at a better price than the Purchase Price or the Buyer's ability to purchase gas at a better price than the Purchase Price or a regulatory authority disallowing, either in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of the Buyer's market or the Buyer's ability to use or resell gas purchased hereunder; or (v) the loss or failure of the Seller's gas supply or depletion of reserves.
- c. On any day that a force majeure event is declared at one of the U.S. Delivery Points, the Contracting Party's obligation to take or deliver gas pursuant to all Physically Settled Gas Futures Transactions at that U.S. Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day. Any Physically Settled Gas Futures Products affected by the force majeure event may be halted from trading for the duration of the force majeure event.

**11. PROCEDURES ON FORCE MAJEURE EVENT**

- a. Investigation - Exchange will, in consultation with the applicable Delivery Point Operator make a determination of whether a force majeure event exists and an estimate of its probable duration.

- b. Notice to Contracting Parties - If a force majeure event is determined by Exchange to exist (the "Force Majeure Declaration"), all affected Contracting Parties will be immediately notified by phone, fax or email:
  - i. that the Force Majeure Declaration has been made;
  - ii. the reduction in relevant obligations; and
  - iii. which Physically Settled Gas Futures Products, if any, will be halted from trading.
- c. Title Transfer - The Seller, Buyer and Exchange will make all necessary changes to the applicable Delivery Point Operator Title Transfers to reflect the reduced obligations.
- d. Further Notice - Exchange will promptly advise the affected Contracting Parties of any material changes to the Force Majeure Declaration.

**12. INVOICE AMOUNTS**

Exchange will determine the amounts owing or payable on a monthly basis for the U.S. Delivery Points as follows:

- a. For gas delivered or taken by multiplying:
  - iii. the portion of the Contract Quantity of gas delivered or taken at each of the U.S. Delivery Points under all Physically Settled Gas Futures Transactions for each Delivery Day of the given Month expressed in MMBtu's; by
  - iv. the Purchase Price, expressed in U.S. dollars per MMBtu for all Physically Settled Gas Futures Transactions for such Month; plus
- b. All fees as outlined in the Fee Schedule; plus
- c. Any fees charged to Exchange by any of the applicable Delivery Point Operators for the Title Transfers pertaining to the delivery of gas under all such Physically Settled Gas Futures Transactions, if applicable; plus
- d. Any applicable taxes pursuant to Section 7 of the Terms and Conditions.

**13. INTERPRETATION**

- a. All times referred to herein are to Central Prevailing Time.
- b. All amounts of money referred to herein or in this Agreement in respect of the U.S. Delivery Points are in U.S. dollars.
- c. Capitalized words and phrases used in this Schedule and not defined in this Schedule will have the same meaning as set forth in this Agreement.

**14. DEFINITIONS**

- a. "Assigned Delivery" with respect to a Physically Settled Natural Gas Contract means the process whereby Exchange does not mediate the delivery nominations process as described in Schedule G, and contracts where Assigned Delivery applies are identified in Schedule D with an asterisk denoting "AD";

- b. "BBtu" means billions ( $10^9$ ) British thermal units;
- c. "gas" means natural gas as produced in its natural state that meets the quality standards defined in the applicable U.S. Delivery Point Operator's Tariff as outlined in the NGX Product List;
- d. "Gas Daily" means a publication entitled Platts Gas Daily published by Platts, a division of The McGraw-Hill Companies, Inc.;
- e. "Gas Day" means a consecutive twenty-four (24) hour period starting and ending at 9:00 a.m. Central Clock Time;
- f. "Henry Futures Settlement Price" is defined in the NGX Price Index Methodology Guide;
- g. "MMBtu" means 1,000,000 ( $10^6$ ) British thermal units;
- h. "Month" means a month commencing on the first Gas Day of the calendar month and ending on the first Gas Day of the next calendar month;
- i. "NAESB Timely Nomination Deadline" means timely nomination deadline set out by the North American Energy Standards Board, which may be revised from time to time;
- j. "NGX Index Methodology Guide" means a document published by Exchange on Exchange's Website that provides descriptions of methodology for determining and definitions of price indices;
- k. "Post-Settlement Delivery Adjustment" is the volumetric adjustment to delivered gas amounts in respect of Physically Settled Gas Futures Transactions which adjustment is confirmed by the relevant U.S. Delivery Point Operator and notified to Exchange by the Contracting Party within 60 days following the end of the month in which delivery has occurred;
- l. "Title Transfers" means a nomination for the transfer of gas as defined in the applicable U.S. Delivery Point Operator's Tariff as outlined in the NGX Product List;
- m. "Transportation Entitlement" means the rights and obligations with respect to the Title Transfer for natural gas to be delivered under a Physically Settled Gas Futures Transaction;
- n. "U.S. Delivery Point Operator" means the applicable U.S. Delivery Point Operator at each Delivery Point as outlined in the NGX Product List and "U.S. Delivery Point Operators" refers to them all collectively;
- o. "U.S. Delivery Points" means all of the Delivery Points listed in the NGX Product List that are designated as utilizing the assigned delivery nomination mechanism outlined in this Schedule "J";
- p. "U.S. Pipeline Operator" means the applicable U.S. Pipeline Operator at each Delivery Point as outlined in the NGX Product List and "U.S. Pipeline Operators" refers to them all collectively.

**SCHEDULE "K" – PHYSICALLY SETTLED  
POWER FUTURES TRANSACTIONS**

**1. PRODUCT AVAILABILITY**

This Schedule "K" contains clearing and settlement provisions for all Physically Settled Power Futures Products offered at Delivery Points that are listed on the NGX Product List and designated as cleared through the NGX Clearing system.

**2. RELATIONSHIP TO AGREEMENT**

Nothing in this Schedule "K" will impair the rights or obligations of Exchange or the rights or obligations of the Contracting Party pursuant to this Agreement. Any Contracting Party which is a party to a Physically Settled Power Futures Transaction entered into at a Delivery Point hereby agrees that any such Physically Settled Power Futures Transaction includes the provisions of this Schedule "K" and is subject to the terms of this Agreement.

**3. INTERPRETATION**

- a. All times referred to are to Central Prevailing Time.
- b. All amounts of money referred to herein or in this Agreement in respect of the ERCOT Delivery Points are in U.S. dollars.
- c. Capitalized words and phrases used in this schedule and not defined in this schedule will have the same meaning as set forth in this Agreement.

**4. DEFINITIONS**

- a. "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority area, and supports interconnection frequency in real time"
- b. "Delivery Hour" means an hour, commencing at a particular time in a day, and ending 60 minutes later in a day, at which Physical Power is scheduled as required by a Physically Settled Power Futures Transaction;
- c. "Delivery Period" means a block of one or more hours specified in a given delivery day. Typically this is "peak" or "off-peak" but may be other blocks of hours as accepted by Exchange;
- d. "Delivery Quantity" means the net quantity from all purchase and sales transaction at a Delivery Point to be scheduled for delivery in a specified Delivery Period for that day;
- e. "ERCOT" means the Electric Reliability Council of Texas;
- f. "ERCOT Delivery Point" means a point at which Physical Power is delivered within the ERCOT control area;
- g. "ERCOT Force Majeure Event" has the meaning ascribed thereto in Section 7(d) of this Schedule "K";
- h. "ERCOT Nodal Protocols" means the current protocols established by ERCOT outlining the procedures and processes used by ERCOT and its market participants for the functioning of the ERCOT system;

- i. “ERCOT Operating Day” means the day, including hours ending 0100 to 2400, during which energy flows from ERCOT;
- j. “ERCOT Settlement Interval” means the time period for which markets are settled;
- k. “ERCOT Settlement Point” means a location at which Physical Power is delivered, being a Resource Node, Load Zone or Hub, as those terms are defined in the ERCOT Nodal Protocols;
- l. “ERCOT Settlement Point Price” means a price calculated for an ERCOT Settlement Point for each ERCOT Settlement Interval using LMP data and the formulas used by ERCOT for DAM Settlement and ERCOT Settlement Calculations for the Real-Time Energy Operations, all as set out and/or defined in the ERCOT Nodal Protocols;
- m. “Exchange Non-Performance Fee” means the fees assessed by Exchange for non-performance in accordance with amounts posted on the NGX website, which be paid by a non-performing party as set forth in Section 5.c. of this Schedule “K”. The Exchange Non-Performance Fee may be higher at less liquid points and for repeat occurrences of non-performance. The verifiable replacement costs of the performing party may be considering in setting the Exchange Non-Performance Fee, especially at less liquid points;
- n. “FERC” means the United States Federal Energy Regulation Commission;
- o. “Firm Physical Power” means Physical Power that is or will be scheduled in accordance with this Schedule K;
- p. “Hourly Contract Quantity” means the quantity of Physical Power to be delivered or taken during each Delivery Hour of a Physically Settled Power Futures Transaction;
- q. “LD Index” means or one or more price indices specified by Exchange on the NGX website for use in the calculation of liquidated damages under Section 5.c. of this Schedule “K”;
- r. “MWH” means megawatt hours;
- s. "Month" means a month commencing on the first day of a calendar month and ending at the beginning of the next calendar month;
- t. “North Hub Index Product” has the meaning set out in Section 4;
- u. “North Hub Index Product Purchase Price” has the meaning set out in Section 4;
- v. “PUCT” means the Public Utilities Commission of Texas;
- w. “Purchase Price” means the purchase price for Physical Power, per MWH;
- x. “Real-Time” means the current instant in time.

## **5. PRE-DELIVERY PROCEDURES**

To transact Physically Settled Power Futures Products with NGX, Contracting Party must represent and, if requested demonstrate, that it is in good standing with: (i) FERC if it is engaging in interstate commerce, and/or (ii) PUCT (with respect to ERCOT Transactions) or other state regulatory authorities in the locations in which the Contracting Party intends to transact, as applicable. Contracting Party must be capable, either directly or via agent, of scheduling energy or other ancillary products (i.e., physical capacity products) in accordance with the tariffs of the Transmission Provider(s). If Contracting Party proposes to schedule through an agent, Exchange must be satisfied as to: (i) the validity of the appointment of the agent; and (ii) CPA-186



the enforceability of Contracting Party's Obligations pursuant to the Agreement, notwithstanding the agent appointment.

**6. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTING PARTY**

The Contracting Party represents and warrants in respect of any Physically Settled Power Futures Transaction entered into by such Contracting Party that at the time of delivery or receipt:

If it is the Seller:

- a. it owns and has title to Physical Power, or has the irrevocable authority to sell Physical Power;
- b. it has the full right and authority to sell Physical Power and to carry out its obligations under this Agreement;
- c. any Physical Power delivered to Exchange shall be free from all royalty payments, Liens or encumbrances whatsoever; and
- d. it has all necessary rights and entitlements with the applicable state regulatory authority and/or FERC, as applicable, for the delivery of Physical Power at the applicable Delivery Point .

If the Buyer:

- a. it has the full right and authority to purchase Physical Power and to carry out its obligations under this Agreement; and
- b. it has all necessary rights and entitlements with the applicable state regulatory authority and FERC, as applicable, to take Physical Power at the applicable Delivery Point.

**7. ERCOT**

The provisions of this Section 7 apply only to Physically Settled Power Futures Transactions at ERCOT Delivery Points.

a. **Delivery Procedures**

With respect to ERCOT Physically Settled Power Futures Transactions, on each day, Exchange and/or the Contracting Parties, as applicable, depending upon the Transmission Provider's requirements at any ERCOT Delivery Point, will submit schedules for the delivery or receipt of Physical Power under all such Physically Settled Power Futures Transactions as follows:

- i. each Contracting Party with an Hourly Contract Quantity to be delivered or to be taken at one or more ERCOT Delivery Points will submit schedules for each Hourly Contract Quantity to the applicable Transmission Provider(s) at or prior to 12:30 p.m. on the day prior to the Physical Power Delivery Day;
- ii. Exchange will, for each Contracting Party, offset the Hourly Contract Quantities due for delivery on a Physical Power Delivery Day against the Hourly Contract Quantities due to be taken on a Physical Power Delivery Day for all Physically Settled Power Futures Transactions to determine a net Hourly Contract Quantity at each of the ERCOT Delivery Points; and
- iii. Exchange will submit schedules to the applicable Transmission Provider for all net Hourly Contract Quantities of Physical Power to be delivered or to be taken at the applicable

ERCOT Delivery Point in a 24 hour period, at or prior to 12:30 p.m. on the day prior to the Physical Power Delivery Day.

**b. Performance of the Physically Settled Power Futures Transactions**

The ERCOT Physically Settled Power Futures Transactions at the applicable ERCOT Delivery Points will be performed between the Contracting Party and the Exchange as follows:

By the Contracting Party:

- i. upon the acceptance of the schedules by the applicable Transmission Provider for the net Hourly Contract Quantities of Power scheduled for delivery or take at the ERCOT Delivery Points; and
- ii. by the payment to Exchange, as applicable, of the Invoice amounts for the Physically Settled Power Futures Transactions at the ERCOT Delivery Points.

By Exchange:

- i. upon the acceptance of the schedules by the applicable Transmission Provider for the net Hourly Contract Quantities of Physical Power scheduled for delivery or take at the ERCOT Delivery Points; and
- ii. by the payment to the applicable Contracting Party of the Invoice amounts for the Physically Settled Power Futures Transactions at the ERCOT Delivery Points.

**1. Procedures on Non-Performance**

**1. Non-Performance by Seller or Buyer**

If Seller's or Buyer's schedule is not in balance at or prior to 2:30 p.m. on the day following the Physical Power Delivery Day with respect to all or part of the Physical Power in a Physically Settled Power Futures Transaction, which results in the Exchange incurring costs equal to one or all of the amounts set out in Sections 5.1.a. or 5.3.a. of this Agreement, then, Exchange may:

- a. liquidate any collateral held by it on behalf of the Contracting Party;
- b. make an immediate demand for further collateral from the Contracting Party;
- c. accelerate the invoicing period such that a Contracting Party is Invoiced immediately for such costs incurred by the Exchange (which Invoiced amount may include an excess amount to be held pending receipt of final invoices from the Transmission Provider), such Invoices to be payable within two business days of receipt;
- d. impose an administrative cash penalty upon the Contracting Party; and
- e. take any other steps that it deems to be reasonable and necessary in order to recoup from the Contracting Party on an expedited basis any costs incurred by the Exchange.

For greater clarity, in the case of Physically Settled Power Futures Transactions Exchange may take any of the steps set out above prior to declaring that a

Contracting Party is in Default.

**2. Contracting Party in Default**

In addition to the rights of the Exchange set out in Section 7.b. above, with respect to any Failure to Schedule to Deliver or Failure to Schedule to Take Exchange may determine in its sole discretion that such party is in Default in accordance with the terms of Section 5.5 of the Terms and Conditions.

**c. North Hub Index Product**

The North Hub Index Product is a Physically Settled Power Futures Product calculated using the arithmetic average of the 15-minute Real Time ERCOT Settlement Point Prices for the ERCOT North Hub as published by ERCOT for the specific hours and ERCOT Operating Days(s) named in the calculation, plus any trading price differential (premium or discount). The North Hub Index Product Purchase Price is determined using the published Real Time ERCOT Settlement Point Prices, as considered final by Exchange at 12:00 p.m. on the fifth business day of the of the month following the time of delivery. For greater clarity, any changes made by ERCOT to the ERCOT Settlement Point Prices following the 12:00 deadline on the fifth of the month will NOT be considered in determining the North Hub Index Product Purchase Price.

**d. ERCOT Force Majeure**

- i. A force majeure event in the ERCOT control area (“**ERCOT Force Majeure Event**”) may be declared by Exchange in its sole discretion at an ERCOT Delivery Point if: (i) the Transmission Provider declares a force majeure event or an emergency event, or materially curtails or interrupts Physical Power delivery at an ERCOT Delivery Point which affects a material number of Contracting Parties, or (ii) if an event occurs that materially affects the ability of a material number of Contracting Parties to meet their Obligations that is beyond the control of the Contracting Parties.
- ii. For clarity, Exchange will not declare an ERCOT Force Majeure Event to the extent performance is affected by any of the following circumstances: (i) the economic hardship of a Contracting Party, including but not limited to, transmission constraint issues, the Seller’s ability to sell Physical Power at a better price than the Purchase Price, or the Buyer’s ability to purchase Physical Power at a better price than the Purchase Price, or a regulatory authority disallowing either in whole or in part, the pass through of costs resulting from this Agreement; or (ii) the loss of the Buyer’s market or the Buyer’s ability to use or resell Physical Power purchased under this Agreement.
- iii. On any day that an ERCOT Force Majeure Event is declared at one of the ERCOT Delivery Points, the Exchange’s and the Contracting Party’s respective obligations to schedule Physical Power pursuant to all Physically Settled Power Futures Transactions at that ERCOT Delivery Point shall be revised or cancelled, as appropriate. Any Physically Settled Power Futures Products affected by the ERCOT Force Majeure Event may be halted from trading for the duration of the ERCOT Force Majeure Event.

**e. Procedures on ERCOT Force Majeure Event**

- i. Investigation - Exchange will, in consultation with the applicable Transmission Provider, if necessary, make a determination of whether an ERCOT Force Majeure Event exists and an estimate of its probable duration.

- ii. Notice to Contracting Parties - If an ERCOT Force Majeure Event is determined by Exchange to exist (the "**ERCOT Force Majeure Declaration**"), all affected Contracting Parties will be immediately notified by phone, fax or email:
  - i. that the ERCOT Force Majeure Declaration has been made;
  - ii. the revision or cancellation in relevant Obligations; and
  - iii. which Products, if any, will be halted from trading.
- iii. Title Transfer - The Seller, Buyer and Exchange will make all necessary changes to the applicable schedules to reflect the reduced obligations.
- iv. Further Notice - Exchange will promptly advise the affected Contracting Parties of any material changes to the ERCOT Force Majeure Declaration.

**f. Title**

- i. From Seller - Title to Physical Power delivered at any ERCOT Delivery Point under any Physically Settled Power Futures Transaction shall pass from the Seller to Exchange at the receipt point specified in any Physically Settled Power Futures Transaction.
- ii. To Buyer - Title to Physical Power delivered at any ERCOT Delivery Point under any Physically Settled Power Futures Transaction shall pass from Exchange to the Buyer at the receipt point specified in any Physically Settled Power Futures Transaction.
- iii. Regarding Exchange - In no event shall this Agreement be construed in a manner whereby risk of loss of Physical Power delivered under any Physically Settled Power Futures Transaction would be held, or be deemed to be held, by Exchange in acting as the intermediate title holder for the purposes of facilitating transfer of title from Buyer to Seller. The transfers of title from the Seller to the Exchange and the Exchange to the Buyer are deemed to occur concurrently.

**g. Liability**

- i. Full Satisfaction - Upon payment, in accordance with this Agreement, of the amounts required to be paid by Exchange or the Contracting Party, as the case may be, in respect of any Failure to Take, Failure to Deliver, Failure to Schedule to Deliver, Failure to Schedule to Take, or Failure to Pay in respect of such Physically Settled Power Futures Transaction, Exchange or such Contracting Party shall have no further liability under such Physically Settled Power Futures Transaction or this Agreement in respect of any such failure.
- ii. No Indirect Damages - Other than as specifically set forth in this Agreement, in no event shall Exchange or a party to a Physically Settled Power Futures Transaction be liable under this Agreement or any Physically Settled Power Futures Transaction for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the suppliers or customers of the Contracting Party arising out of any Failure to Deliver, Failure to Take, Failure to Schedule to Deliver, Failure to Schedule to Take, or Failure to Pay, or any other matter for which liability may be assessed under this Agreement or any Physically Settled Power Futures Transaction.

**h. Invoice Amount**

Subject to any accelerated invoicing that occurs in respect of a failure of performance by the Buyer or Seller set out in Section 7.b.I.(a) of this Schedule “K”, Exchange will determine the amounts owing or payable by a Contracting Party on a monthly basis for scheduled Physical Power for the Delivery Points as follows:

- a. by multiplying:
  - A. Contract Quantity of Power scheduled at each of the Delivery Points under all Physically Settled Power Futures Transactions for each Delivery Day of the given Month expressed in MWH; by
    - a. the Purchase Price for such period, except for all Physically Settled Power Futures Transactions that are North Hub Index Products; or
    - b. for all Physically Settled Power Futures Transactions that are North Hub Index Products, by the North Hub Index Product Purchase Price plus a trading price differential, if applicable; plus
- b. all fees as outlined in the Fee schedule; plus
- c. any fees charged to Exchange by any Transmission Providers for the schedules pertaining to the delivery of Physical Power under all such Physically Settled Power Futures Transactions that have not been recovered by Exchange, which may include amounts set out in Sections 5.1, 5.2, or 5.3 of the Terms and Conditions; plus
- d. any applicable taxes pursuant to Section 7 of the Terms and Conditions.