



August 9, 2013

Via e mail: submissions@cftc.gov

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NGX Clearinghouse Certification of Rule Amendment; CFTC Rule 40.6

Commodity Futures Trading Commission
Three Lafayette Centre
1155 - 21st Street, N.W.
Washington, D.C. 20581

Re: Natural Gas Exchange Inc. - Certification of clearinghouse rule amendment

Dear Ms. Jurgens:

In accordance with Commodity Futures Trading Commission (“Commission”) Rule 40.6, 17 C.F.R. §40.6, Natural Gas Exchange Inc. (“NGX”) hereby submits amendments to its rulebook (the Contracting Party’s Agreement or “CPA”) which relate to the clearing of transactions. Specifically, as explained below, NGX is amending the CPA as follows:

- Amending Section 3.2 by adding new paragraph I;
- Amending certain definitions in Section 1.2 as necessary for the new product additions, including the terms “Default”, “Failure to Deliver”, “Failure to Take” and “Failure to Pay” and the implications of failures as set out in Sections 5.1, 5.3, 5.5, 5.6 5.13, 6.4 and 8.2;
- Adding new Sections 4.5 and 4.6 to address invoicing and settlement procedures relating to new product additions;
- Amending Section 2.4 to clarify indebtedness owing by NGX; and
- Amending Section 5(b) of Schedule “C” to better clarify how entities can meet the minimum qualification requirement to become contracting parties.

TEXT OF RULE AMENDMENT

See Appendix “A”

DATE OF INTENDED IMPLEMENTATION

NGX intends to implement this rule amendment on July X, 2013.

CERTIFICATION THAT THE RULE COMPILES WITH ACT AND REGULATIONS

The certification of compliance is attached.

CONCISE EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE AND EFFECT OF THE PROPOSED RULE AMENDMENT AND ITS COMPLIANCE WITH CORE PRINCIPLES AND RULES

NGX is amending its rulebook, the Contracting Party Agreement (“CPA”), in order to add a rule whereby it may accept trades or positions that are transferred to it by another entity that is legally authorized to effectuate the transfer of such trades to NGX due to a non-recurring event. This rule amendment is being adopted in contemplation by NGX of a business alliance with an entity that currently acts as a riskless principal in physical power contracts. That entity, Nasdaq OMX Commodities Clearing Company (“NOCC”) is not registered with the Commission as a DCO.

The alliance does not involve any change in the corporate organization of either party. Under the terms of the NOCC-NGX alliance, NOCC will cease providing riskless principal services. NGX is taking steps to list physically-delivered futures contracts on power. Those contracts will be available to U.S. persons through direct access by NGX under its registration as a FBOT. NGX will clear all such futures contracts traded on or subject to the rules of the FBOT facility. NOCC will provide various types of technical and sales support services to NGX on an outsourced basis.

The purpose of the rule amendment is to make it possible for NOCC to effectuate a bulk transfer of the open positions or transactions for which it is the riskless principle through a novation with NGX. The purpose of such a novation is to effect the transfer of open positions at the time that the alliance agreement is implemented. NOCC plans to cease its operations as riskless principal and the transfer of positions will enable it to do so with respect to all contracts that remain open at that time.

Operationally, the novation will discharge the mutual obligations of NOCC and its counterparties on the physical power contracts by substituting therefore a physically delivered futures contract between each of NOCC’s counterparties and NGX as clearinghouse. The price of the novated contracts will be the same as the original contract price. In addition, any margin or collateral supporting each position will be posted with NGX directly by the counterparties. There will be a brief double posting of collateral by the counterparties until NOCC releases and returns collateral posted to it.

The effect of the rule change will be to establish the authority under which NGX can arrange to accept a bulk transfer of positions that is effectuated in furtherance of an agreement to substitute one universal counterparty (NOCC) for another clearing service provider (NGX). Similar authorizing rules have been relied upon by the Chicago Mercantile Exchange (“CME”) and the

Chicago Board of Trade (“CBT”) in connection with the CBT’s decision to change clearing services providers, replacing the Clearing Corporation with the CME¹ and by the Chicago Climate Exchange.² Accordingly, there is substantial precedent that a rule like new CPA Section 3.2 I is the appropriate authority and procedure for effectuating such an agreed upon transfer.

It should be noted that the transfer of positions is not being undertaken in furtherance of a merger, or acquisition of, a DCO. Accordingly, Commission Rule 39.3(f) is not triggered and is not the appropriate vehicle for effectuating the movement of the positions. Commission rule 39.3(f) provides the procedure to be used in for the transfer of a DCO registration and associated open interest of a DCO due to a corporate event, such as a merger or acquisition. Commission Rule 39.3(f) provides that

In anticipation of a corporate change that will result in the transfer of all or substantially all of a derivatives clearing organization's assets to another legal entity, the derivatives clearing organization shall submit a request for approval to transfer the derivatives clearing organization's registration and positions comprising open interest for clearing and settlement.

Under the rule, a transfer request must be filed three months prior to the anticipated corporate change.

Rule 39.3(f), however, on its face clearly does not apply to these facts. The non-recurring event contemplated by NGX and NOCC does not involve any corporate change, which is the event which triggers Rule 39.3(f). Moreover, the transfer here does not involve the movement of open interest

¹ . The CBT amended its rule enabling it to move positions to read as follows:

701.00 Clearing Services - The Exchange may discontinue the clearance of futures and options contracts through a particular Clearing Services Provider, and select and substitute another Clearing Services Provider or method of clearance.

701.01 Transfer of Open Positions to Clearing Services Provider - Each clearing member 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 of open positions to any Clearing Services Provider.

A reciprocal rule change by the Chicago Mercantile Exchange (“CME”), the replacement DCO, was added to read as follows:

8C03. TRANSFERS

The Clearing House may accept transfers of positions from another clearing house in order to perform clearing services for another exchange or Market. Such transfers shall be made in accordance with the Rules and operating procedures of the Exchange. Such transfers must be made at the daily settlement value per Rule 813.F.

² In 2002, the Chicago Climate Exchange, which changed status from an Exempt Commercial Market to a contract market moved open positions to the Clearing Corporation, a DCO. The Chicago Climate Exchange adopted Rule 413 under which it effect the transfer. That rule provides in part:

413. Transfers of Positions

(a) * * *

(b) Upon written request, the Exchange may, in its sole discretion, allow the transfer of a position as a result of a merger, asset purchase, consolidation, or similar non-recurring transaction for a Person that is an organization.

(c) Clearing Members must transfer positions pursuant to this Rule 413 at the same prices that appear on the books of the transferring Clearing Member, and the transfer must indicate the date when the original trade was made . . .

from one DCO to another. NOCC is not a DCO. The NOCC contracts are forward contracts for the delivery of power. The arrangement contemplated here will not affect in any way the legal status of NGX or of its DCO Registration. Rather, the NGX- NOCC arrangement is an agreement of cooperation whereby NOCC, once it terminates its operations as a riskless principal, will provide technical assistance to NGX in connection with NGX's listing and clearing certain physically delivered futures contracts in power.

Compliance with Core Principles

This rule change, which is being undertaken in contemplation of a cooperation agreement between NGX and NOCC is consistent, and complies with, the Core Principles and Rules thereunder. In this regard, the terms of the NGX-NOCC agreement will not have an adverse impact on NGX's continued compliance with section 5b of the Act or the Commission's rules thereunder. An analysis of the NGX-NOCC agreement and its impact on NGX's clearing operations in respect of the relevant Core Principles follows.

Core Principle B: Financial Resources

The pertinent terms of the NGX-NOCC agreement include a revenue sharing arrangement between NGX and NOCC. The cost to NGX of its entering into the agreement largely will be recouped from future revenue flows. NGX has sufficient financial resources to meet any obligations arising out of the agreement which will be considered to be operating costs of NGX and to remain in compliance with the financial resource requirements of Commission Rule 39.11(a)(2).

Core Principle C: Participant and Product Eligibility

As noted above, these contracts will be foreign futures listed on NGX FBOT.³ NGX's DCO Registration Order applies to all asset classes of foreign futures that are traded on NGX FBOT. Moreover, the new physically delivered futures contracts in power share a common clearing architecture as the physically delivered natural gas futures contracts that NGX currently clears. Many of the existing provisions of the CPA, practices and procedures that apply to all NGX physically delivered futures will also apply to physically delivered power futures, including margining methodology and treatment of collateral. As discussed with respect to Core Principle D, the risk management procedures for power will follow established procedures that apply to other asset classes. As with many physically delivered futures contracts traded on NGX, because the terms and conditions of the futures contracts are in close alignment with cash market practices, a very high proportion of those contracts will be settled through delivery, or scheduling to deliver.⁴ This

³ Forward contracts with similar contract terms to the NGX futures contract may also be traded on the ICE trading platform. Those contracts are not cleared by NGX and are not relevant to this rule amendment.

⁴ It should be noted that NGX currently only clears futures contracts. Forward contracts traded off of the NGX FBOT may be registered with, and cleared by NGX under NGX rules governing transactions that are "Exchange of a Derivative for a Related Product." Transactions registered under this rule are cleared as futures contracts. Forward contracts are also traded on NGX FBOT, but such contracts are not cleared and would not be relevant to this rule change.

alignment in the terms and conditions of the contracts also leads to greater liquidity, transparency in clearing and effective risk management. Accordingly, physical power futures contracts are consistent with the eligibility characteristics of the other physical futures contracts cleared by NGX. The amendment to Section 5(b) of Schedule “C” merely clarifies the process NGX undertakes in accepting a contracting party. While contracting parties must meet a minimum qualification requirement either on its own or through a controlling entity, NGX does not always require a guarantee. The revised rule preserves NGX’s right to exercise its discretion in accepting contracting parties and more accurately reflects the acceptance process.

Core Principle D: Risk Management

NGX will apply its established margin methodology to the power contracts cleared by it. It will use historic prices provided by NOCC as the predicate for these calculations. Going forward, NGX will make these calculations using prices generated from its own traded markets, supplemented as necessary and appropriate by readily available price information from the cash market. As with all other NGX physically delivered futures contracts, letters of credit, subject to certain conditions specified by the CPA relating to quality and dispersion, will be considered to be an acceptable form of collateral.

Core Principle E: Settlement Procedures

The settlement procedures for physically delivered power futures will be the same as for other NGX physically delivered futures contracts. As with natural gas, a high degree of contracts are expected to settle through physical delivery. NGX, as with its other contracts, remains involved as a party through the physical settlement process. As provided under NGX’s DCO Registration Order, NGX will apply an accrual model as its daily settlement process.

Core Principle G: Default Rules and Procedures

The guaranty fund maintained by NGX is self-funded. There will be no impact on it as a consequence of clearing physically settled futures contracts. The amended rules provide appropriate default procedures for physical power products that are consistent with existing clearinghouse rules as well as Electric Reliability Council of Texas procedures and operations. The rules allow NGX to contain losses and liquidity pressures to continue to meet its obligations.

Core Principle J: Reporting

Information required by the Commission to be reported regarding the newly listed and cleared power futures contracts will be reported on the same basis that applies to currently traded and cleared futures contracts.

Core Principle R: Legal Risk Considerations

The NGX-NOCC arrangement has been duly entered into and is a legal obligation binding on both parties under Canadian and U.S. law. There will be no adverse consequence to NGX or its Participants in the unlikely event that the agreement is not renewed when its term expires. In such an event, the parties will cooperate in the orderly wind up of this portion of the business.

Conclusion

In summary, Rule 39.3(f) does not apply to the NGX/NOCC arrangement. The past precedent that the Commission has established of approving or permitting the certification of rules of other DCOs or designated contract markets that authorize them to transfer positions in a variety of circumstances apply to this particular arrangement as well. The rule that NGX is adopting is similar to those previously approved by or certified to the Commission. It is a general rule relating to NGX's ability to accept the transfer of positions in its discretion on subject to a non-recurring agreement to do so.

Finally, it should be noted that the NGX Registration Order covers futures contracts listed on its trading facility. NGX already trades cash-settled Canadian power futures. Moreover, it should be noted that this business will have little effect on NGX's overall clearing operations, representing no greater than about 5% of NGX's overall collateral. Accordingly, no change to NGX's DCO Registration Order is necessary and its clearing of power contracts listed on its FBOT is consistent with Part 48 of the Rules and with its Registration as a DCO. Clearing these additional class of contracts will have no adverse effect on NGX's continuing compliance with section 5b of the Act and Commission regulations thereunder.

EXPLANATION OF SUBSTANTIVE OPPOSING VIEWS

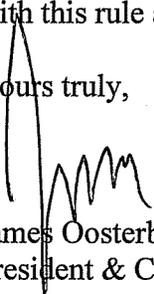
No substantive opposing views were expressed to NGX. No counterparty of NOCC has objected to the transfer. If any did, it would be possible for that counterparty to prevent its position from being transferred. Because every participant on NGX self-clears, by refusing to become an NGX participant the counterparty could prevent the position from being transferred. Counterparties to NOCC who thus object to the transfer would remain outside of the transfer and the original contract would remain in effect.

NOTICE OF PENDING CERTIFICATION

NGX posted on its website (www.ngx.com) a notice of the pending certification concurrent with its filing of the submission with the Commission.

Please do not hesitate to contact myself (403-974-1765) or our Legal Counsel, Jennifer Oosterbaan (403-974-1740) for any further information the Commission or its staff may require in connection with this rule amendment.

Yours truly,

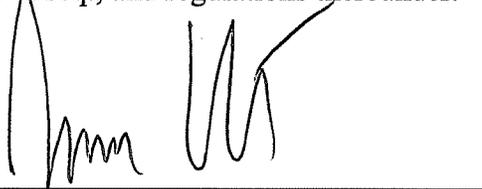


James Oosterbaan
President & CEO, Natural Gas Exchange Inc.

cc: Jennifer Oosterbaan, NGX
Corrine Fiesel, NGX
CFTC Southwestern regional office

CERTIFICATION PURSUANT TO SECTION 5c OF THE
COMMODITY EXCHANGE ACT AND COMMODITY
FUTURES TRADING COMMISSION RULE 40.6

I hereby certify that the foregoing rule amendment complies with the Commodity Exchange Act, 7
U.S.C. §1 et seq., and regulations thereunder.

A handwritten signature in black ink, appearing to be 'James Oosterbaan', is written over a horizontal line. The signature is stylized and somewhat cursive.

By: James Oosterbaan
Title: Natural Gas Exchange Inc.
Dated: August 9, 2013

Appendix “A”

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 in the United States and has pending an application to be registered 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 ~~electricity~~power markets and Contracting Parties should carefully study commodity physicals, futures and swap trading and seek advice from their advisor(s).

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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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- Electricity 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

(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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 Electricity 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.

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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(~~ed~~) 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 ~~22~~“B”;
- g. “Authorized Representatives” has the meaning ascribed thereto in Section 3.2(~~ed~~);
- h. “Available Margin Limit” has the meaning ascribed thereto in Schedule ~~22~~“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 and as posted on Exchange’s Website in a secured access section;
- j. “Block Transaction” has the meaning ascribed thereto in Section 3.2(~~fg~~);
- 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 electricity~~ 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(~~f~~g); or (iii) subject to its Exchange of Futures for Related Product provision under Section 3.2(~~e~~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”;

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~
- 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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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 ~~22~~“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 ~~22~~“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, Swap,~~ 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;
- 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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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.~~ ~~“Electricity Products” has the meaning ascribed thereto in Section 5.13(b);~~
- ww. ~~xx.~~ “Eligible Collateral Support” has the meaning ascribed thereto in Section 3.3(a);
- xx. ~~yy.~~ “Escrow Agent” means the trustee under the Deposit Agreement;
- yy. ~~zz.~~ “Event of Default” means the occurrence of any of the events set forth in Section 3.9;
- zz. ~~aaa.~~ “Exchange” means Natural Gas Exchange Inc., a body corporate with offices, and carrying on business, in Calgary, Alberta and any successors thereto;
- aaa. ~~bbb.~~ “Exchange Bankruptcy Event of Default” means the occurrence of any of the events set forth in Section 3.10;
- bbb. ~~eee.~~ “Exchange Default” means the failure by Exchange to perform any of its Obligations in respect of any Swap Transaction or Option Transaction with the Contracting Party;
- ccc. ~~ddd.~~ “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. ~~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;
- eee. ~~fff.~~ “Exchange of Futures for Related Product Transactions” or “EFRP Transactions” has the meaning set out in Section 3.2(~~ef~~);
- fff. ~~ggg.~~ “Exchange’s Principal Banker” means The Toronto-Dominion Bank;
- ggg. ~~hhh.~~ “Exchange’s Website” means a site owned and maintained by Exchange available on the internet at www.ngx.com;
- hhh. ~~iii.~~ “Excise Tax Act” means the *Excise Tax Act* (Canada);
- iii. ~~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;
- jjj. ~~kkk.~~ “Failure Amount” means the difference between the amount payable on any Invoice and the amount actually paid on account of any such Invoice;
- kkk. ~~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;

- lll. ~~mmn.~~ “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;
- mmm. ~~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;
- nnn. ~~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);
- ooo. “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”;
- ppp. “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”;
- qqq. ~~ppp.~~ “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;
- rrr. “Financial Power Products” has the meaning ascribed thereto in Section 5.13(b);
- sss. ~~qqq.~~ “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”;
- ttt. ~~rrr.~~ “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”);

uuu ~~sss~~–“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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

vvv ~~ttt~~–“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;

www ~~uuu~~–“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;

xxx ~~vvv~~–“Financially Settled Futures Settlement Net Payable” has the meaning ascribed thereto in Schedule “C”;

yyy ~~www~~–“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”;

zzz ~~xxx~~–“Fixed Price Payer” means, in respect of a Financially Settled Futures Transaction in ~~electricity~~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”;

aaaa ~~yyy~~–“Floating Price” has the meaning ascribed thereto in Schedule “E”;

bbbb ~~zzz~~–“Floating Price Payer” means, in respect of a Financially Settled Futures Transaction in ~~electricity~~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”;

cccc ~~aaaa~~–“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;

dddd ~~bbbb~~–“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;

eeee ~~eeee~~–“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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- ffff ~~dddd~~–“Futures” within the meaning of the Agreement, but not necessarily as defined under the *Securities Act of the Revised Statutes of (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”;
- gggg ~~eeee~~–“Gas Products” has the meaning ascribed thereto in Section 5.13(b);
- hhhh ~~ffff~~–“GST” means the goods and services tax imposed under the Excise Tax Act;
- iiii ~~eeee~~–“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;
- jjjj ~~hhhh~~–“Guarantee” has the meaning ascribed hereto in Section 3.3(e);
- kkkk ~~iiii~~–“Hearing Panel” means a panel comprised of three members appointed by the Chief Compliance Officer further described in Section 6.3;
- llll ~~jjjj~~–“ICE” means IntercontinentalExchange, Inc. or any successors thereto;
- mmmm ~~kkkk~~–“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 ~~and Block Transactions as~~ provided under Section 3.2(~~e~~f) and Block Transactions as provided under Section 3.2(~~f~~g);
- nnnn ~~llll~~–“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;
- oooo ~~mmmm~~–“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”;
- pppp ~~nnnn~~–“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;
- qqqq ~~oooo~~–“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;

~~rrrr~~ ~~pppp~~—“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 “I”, as applicable;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

~~ssss~~ ~~qqqq~~—“Lien” means a security interest, lien, mortgage, charge, pledge, hypothecation, right of Set-Off or assignment or transfer by way of security;

~~tttt~~ ~~rrrr~~—“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;

~~uuuu~~ ~~ssss~~—“Margin Limit” has the meaning ascribed thereto in Schedule “C”;

~~vvvv~~ ~~tttt~~—“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”;

~~wwww~~ ~~uuuu~~—“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;

~~xxxx~~ ~~vvvv~~—“Mediation” means the procedure described in Schedule “B”;

~~yyyy~~ ~~wwwww~~—“Minimum Qualification Requirement” has the meaning described in Section 2.3;

~~zzzz~~ ~~xxxx~~—“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 ~~Swap~~ Financially Settled Futures Party’s Default or under the Close-out Procedure which amounts require payment immediately;

~~aaaa~~ ~~yyyy~~—“MTM Settlement Net Payable” has the meaning ascribed thereto in Schedule ~~“C”~~ “C”;

~~bbbb~~ ~~zzzz~~—“NAFTA Failure” has the meaning described in Section 2.6(g);

~~cccc~~ ~~aaaa~~—“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;

~~dddd~~ ~~bbbb~~—“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;

~~eeee~~ ~~eeee~~—“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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

ffff ~~dddd~~–“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 ~~Swap~~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;

ggggg ~~eeee~~–“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;

hhhhh ~~ffff~~–“NGX Financial Power Auction” means the auction process by which Contracting Parties submit bids and/or offers for the ~~electricity~~financial power or related Products being offered through the NGX Financial Power Auction System;

iiii ~~ggggg~~–“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;

jjjjj ~~hhhhh~~–“NGX Product List” means the product list set forth in Schedule “D”;

kkkkk ~~iiii~~–“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;

lllll ~~jjjjj~~–“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;

mmmmm ~~kkkkk~~–“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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

nnnnn ~~nnnnn~~–“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(e);

ooooo ~~ooooo~~–“Off-Exchange Cleared Transaction” has the meaning ascribed thereto in Section 3.2(e);

ppppp ~~ppppp~~–“Off-Exchange Transaction” has the meaning ascribed thereto in Section 3.2(e);

qqqqq ~~qqqqq~~–“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;

rrrrr ~~rrrrr~~–“Open Position Limit” means the maximum quantity of gas, ~~Oil~~power or ~~electricity~~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 ~~electricity~~financial power pursuant to any Transactions, as determined by Exchange for any Trading Day in respect of each Product;

sssss ~~sssss~~–“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;

ttttt ~~ttttt~~–“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”);

uuuuu ~~uuuuu~~–“Option Exercise Conditions” has the meaning ascribed thereto in Schedule “E”;

vvvvv ~~vvvvv~~–“Option Party” means a Contracting Party which has entered into an Option Transaction with Exchange;

wwwww ~~wwwww~~–“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;

xxxxx ~~xxxxx~~–“Option Premium Amount” means the amount payable by the Option Buyer on the Option Premium Payment Date, as more particularly defined in Schedule “E”;

yyyyy ~~yyyyy~~–“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;

zzzzz ~~zzzzz~~–“Option Product” means a Put Option or a Call Option;

~~aaaaaa~~ ~~yyyyy~~–“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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

~~bbbbb~~ ~~zzzzz~~–“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”;

~~ccccc~~ ~~aaaaa~~–“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(~~ef~~) or (~~fg~~);

~~dddddd~~ ~~bbbbbb~~–“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;

~~eeeee~~ ~~eeeeee~~–“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”;

~~fffff~~ ~~dddddd~~–“Physical Settlement Date” means, for each Physically Settled Futures Transaction, the ~~Business Day~~ 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;

~~ggggg~~ ~~eeeeee~~–“Physically Settled Futures Confirmation” means any Physically Settled Futures Gas Confirmation or Physically Settled Futures Oil Confirmation, as applicable;

~~hhhhh~~ ~~fffff~~–“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;

~~iiiiii~~ “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;

~~jjjjj~~ ~~eeeeee~~–“Physically Settled Futures Product” means any Physically Settled Gas Futures Product, Physically Settled Power Futures Product or Physically Settled Oil Futures Product, as applicable;

~~kkkkk~~ ~~hhhhh~~–“Physically Settled Futures ~~Oil~~Power Confirmation” means the notification by Exchange as to any Physically Settled ~~Oil~~ Futures ~~Transactions~~Power Transaction entered into by the Contracting Party on a day, which will include particulars of the respective Physically ~~Delivered~~ ~~Oil~~Settled Power Futures Transactions including, ~~without limitation,~~ the Purchase Price, Hourly

Contract Quantity, ~~Delivery Period~~ (as defined in Schedule "K"), U.S. Delivery Point, and Physically Settled ~~Oil~~Gas Futures Product;

~~lllll~~ ~~lllll~~ "Physically Settled Futures Transaction" means any Physically Settled Gas Futures Transaction, Physically Settled Power Futures Transaction or Physically Settled Oil Futures Transaction, as applicable;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

~~mmmmmm~~ ~~jjjjj~~ "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";

~~nnnnnn~~ ~~kkkkkk~~ "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";

~~oooooo~~ ~~lllll~~ "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"~~;

~~pppppp~~ ~~mmmmmm~~ "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"~~;

~~qqqqqq~~ "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";

~~rrrrrr~~ "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";

~~ssssss~~ "Physical Power" means U.S. power generated in and delivered to U.S. Delivery Points;

~~tttttt~~ "Physical Power Delivery Date" means the date upon which a Physically Settled Power Futures Transaction is scheduled to occur;

~~uuuuuu~~ ~~nnnnnn~~ "Previous Month Accounts Net Payable" has the meaning ascribed thereto in Schedule ~~"C"~~;

~~vvvvvv~~ ~~oooooo~~ "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;

wwwwww ~~pppppp~~ "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;

xxxxxx ~~qqqqqq~~ "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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

yyyyyy ~~rrrrrr~~ "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;

zzzzzz ~~ssssss~~ "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;

aaaaaa ~~ttttt~~ "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;

bbbbbb ~~uuuuuu~~ "Recognized Banking Holiday" means any Business Day that is recognized by major Canadian and/or United States banks as a holiday;

cccccc ~~vvvvvv~~ "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;

dddddd ~~wwwwww~~ "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;

eeeeee ~~xxxxxx~~ "Retained Settlement Amounts" has the meaning set forth in Section 8.4(g);

ffffff ~~yyyyyy~~ "Risk Management Policy" means the risk management policies and procedures of Exchange as set forth in Schedule ~~22~~²³ "C";

gggggg ~~zzzzzz~~ "Schedules" means all ~~schedules~~Schedules to this Agreement;

hhhhhh ~~“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”);~~

iiiii ~~“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;~~

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

iiiii ~~“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;~~

kkkkkk ~~“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;~~

llllll ~~“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;~~

mmmmmm ~~“Straddle Option” means the simultaneous purchase or sale of a Put Option and a Call Option by a Contracting Party;~~

nnnnnn ~~“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(ef) for exchange into Futures Products in ~~electricity~~financial power and cleared as such by the NGX Clearing System;~~

oooooo ~~“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;~~

pppppp ~~“Terms and Conditions” means the terms and conditions of this Agreement with the exception of the Schedules;~~

qqqqqq ~~“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 ~~schedule~~calendar of such Trading Days on the NGX Trading System;~~

~~rrrrrr~~ ~~jjjjjj~~ “Transaction Date” means the date upon which a Contracting Party enters into a Transaction;

~~ssssss~~ ~~kkkkkk~~ “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(e);

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

~~tttttt~~ ~~hhhhh~~ “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;

~~uuuuuuu~~ “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;

~~vvvvvvv~~ ~~mmmmmm~~ “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 ~~electricity~~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”;

~~wwwwwww~~ ~~nnnnnn~~ “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;

~~xxxxxxx~~ ~~oooooo~~ “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;

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

~~zzzzzzz~~ ~~qqqqqq~~ “Variation Margin” has the meaning ascribed thereto in Schedule “C”.

(~~April 29~~, August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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 “CCAA”), 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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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).

(~~April 29~~, [August 26](#), 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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, all of which is incurred in conjunction with the Exchange Letter of Credit (as defined in Section 5.11) or to facilitate the payment of Invoices by Exchange; (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.

~~(April 29, 2013 or such later date as may be designated by Exchange on 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~~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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- c. ~~b.~~ 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. ~~e.~~ 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(~~ef~~) 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(~~ef~~)) 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. ~~d.~~ 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(~~de~~) 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. ~~e.~~ 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 (~~financial transactions~~) ~~for electricity~~ or options thereon; or Forward Transactions in Canadian natural gas, Physical Power or ~~in~~ oil executed on the NGX Trading System (together “Off-Exchange Transactions”), may be submitted to Exchange in accordance with this Section 3.2(~~ef~~).

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- 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(e~~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(e~~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, ~~in the case of electricity,~~ a Swap.

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- 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.

~~f~~ 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
 - (A) aggregate different legs of a futures contract spread to meet the minimum volumes set forth in subsection (f)(ii).
 - (B) 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,
 - (A) 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:

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

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- (B) or, if not traded either that day or the previous day on the market, as the parties shall mutually agree.
 - (C) 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. ~~g.~~ 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(~~ef~~), 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. ~~h.~~ 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~~ i ~~Forward Transactions~~—All terms and conditions applicable to a Forward Transaction are set forth in Schedule I.
- ~~k~~ j ~~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~~ k ~~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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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:
 - (A) any Previous Month Accounts Net Payable for such Contracting Party;
 - (B) any Current Month Accounts Net Payable owed by Exchange to the Contracting Party;
 - (C) any ~~Swap~~ Financially Settled Futures Settlement Net Payable, MTM Settlement Net Payable or Daily Financially Settled Futures Settlement Net Payable for such Contracting Party; and

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- (D) 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).

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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.

[\(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.\)](#)

- 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 [electricity 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.

[\(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.\)](#)

- 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:
- (A) 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;
 - (B) 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;

- (C) 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;
 - (D) use commercially reasonable efforts to advise all Contracting Parties when the NGX Trading System will be fully operational; and
 - (E) 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:
- (A) determine if the Non-Critical NGX Trading System Issue requires that access to the NGX Trading System be halted;
 - (B) 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
 - (C) 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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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(~~ef~~). 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.

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- 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(~~ef~~). 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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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”.

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- 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.

~~(April 29, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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 EERP 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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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, ~~and~~ (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
(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)
 - 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:
 - (A) 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; ~~and~~
 - (B) with respect to ~~a~~ 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~~

(C) 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, ~~and~~ (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).

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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:
 - (A) 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
 - (B) with respect to any other Failure to Pay, ~~\$5,000~~, 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,

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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:
 - (A) 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; ~~and~~
 - (B) with respect to ~~a~~ 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

(C) (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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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(e) 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 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:

(May 13, August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

f. ~~e.~~-without limitation to any other right hereunder, offset any deliveries or takes of Oil under this Agreement; or

g. ~~f.~~-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(~~d~~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");

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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 Default – The Contracting Party will be entitled in the event of a Failure to Deliver, Failure to Take or Exchange Default by Exchange 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 Failure to Deliver, Failure to Take or 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 Failure to Deliver, Failure to Take or 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 Failure to Deliver, Failure to Take or 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, 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, 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 to 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 Exchange Bankruptcy Event of Default

- a. Early Termination – In the event that there occurs and is continuing an 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 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; ~~or~~
 - (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 ~~electricity~~financial power (collectively, "~~Electricity~~Financial Power Products"), have traded the highest overall volume of ~~Electricity~~Financial Power Products listed on the NGX Trading System,

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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"). 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. 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*.

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
 - (A) a cease and desist order or a reprimand;
 - (B) 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
 - (C) 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 ~~gas~~ 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” ~~or~~ “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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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 ~~and Oil~~ 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 [Swap 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(e). 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 Exchange Default 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 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 ~~Swap~~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.

(~~April 29, August 26,~~ 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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(~~ef~~) 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:

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- a. pursuant to Section 3.3(a) and Schedule ~~“C”~~^{“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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

~~f.~~ e-without limitation to any other right hereunder, offset any deliveries or takes of Oil under this Agreement; or

~~g.~~ f-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 ~~Swap~~ 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:

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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. 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, 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:

10th Floor, 300 - 5th Avenue SW
Calgary, Alberta
T2P 3C4
Attention: President
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.

[\(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.\)](#)

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 affèrent soient en langue anglaise.

Document comparison by Workshare Compare on August-09-13 3:46:24 PM

Input:	
Document 1 ID	file://L:/CPA/Amendments/CPA Versions/151 (May 13-13)/T&Cs/CPA-151-final-cln no schedules.docx
Description	CPA-151-final-cln no schedules
Document 2 ID	file://L:/CPA/Amendments/CPA Versions/152 (Aug 26-13)/CPA-152 - TC - final1.docx
Description	CPA-152 - TC - final1
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	367
Deletions	339
Moved from	10
Moved to	10
Style change	0
Format changed	0
Total changes	726

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

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)
 - 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(~~xxxx~~) 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.

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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.

~~(May 13, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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. A Contracting Party that does not meet the Minimum Qualification Requirement by satisfying the net worth or tangible asset test contemplated thereby (the "Net Worth/Assets Test") on its own but meets the Minimum Qualification Requirement by having a majority of its voting shares owned directly or indirectly by one or more of any such business entities that satisfy the Net Worth/Assets Test will be required to provide a guarantee in an amount equal to or greater than \$5 million from a Credit Support Provider that meets the Net Worth/Assets Test, in addition to any other documentation requested by Exchange pursuant to Section 5(a) of this Schedule "C".~~

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- ~~b.~~ e. 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.~~ d. 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.~~ e. Exchange reserves the right to apply order size limits for each Contracting Party.

- e. ~~f.~~ 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.

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- f. ~~g.~~ 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 ~~3.23.3~~3.23.3(k) of the Terms and Conditions, the full amount of cash or the face value of the instrument, as applicable;

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

- 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 ~~Electricity~~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, ~~Electricity~~Financial Power Products or Oil Products, \$500,000,

(August 26, 2013 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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

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.

- (i) 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.
- (ii) 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.

