

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

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

### **RISK DISCLOSURE STATEMENT**

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

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## APPENDIX I – Definitions

### SCHEDULES:

Schedule A	–	Fee Schedule
Schedule B	–	Mediation and Arbitration
Schedule C	–	Collateral and Risk Management
Schedule D	–	ICE NGX Product List
Schedule E	–	Natural Gas Options and Financially Settled Gas and Power 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 Environmental Futures Transactions
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Schedule K	–	Physically Settled Power Futures Transactions – U.S. Delivery Points

## **TERMS AND CONDITIONS**

### **ARTICLE 1 – MEMBERSHIP**

#### **1.1 Application, Participation and Access**

- a. Application – An Applicant must submit a completed Application with Exchange for consideration to become a Contracting Party. Exchange will 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 Decline – Exchange may decline an Application if, 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, or 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;
  - (iii) the Applicant may not, because of the Applicant’s financial situation or for any other reason, be able to satisfy its Obligations to Exchange;
  - (iv) such acceptance may cause, or risk causing, Exchange to violate any laws, legislation, regulations or other requirements to which Exchange may be subject; or
  - (i) such acceptance is otherwise not in the public interest.
- c. Written Grounds for Declining – If the Application is declined, Exchange will provide the Applicant with a written notice that the Application has been declined including a statement setting out the general grounds upon which the Application has been declined.
- d. Access Decision: Request to be Heard – Each of the following may file a written Request to be Heard in accordance with Article 6 of this Agreement, within fifteen (15) calendar days of deemed receipt of written notice of the relevant decision by Exchange described below:
  - (i) an Applicant whose Application is declined;
  - (ii) a Contracting Party whose membership or access is suspended by Exchange;
  - (iii) a Contracting Party whose membership or access is terminated by Exchange;

(each an “Access Decision”). For the avoidance of doubt, the opportunity to be heard in no way restricts or postpones Exchange’s authority and power to declare a Contracting Party Suspension and/or termination, or to effect the Liquidation and Close-out Procedures with respect to the Contracting Party’s Transactions.
- e. Waiver of Opportunity to be Heard – Failure of the Applicant or the Contracting Party, as applicable, to file a Request to be Heard within fifteen (15) days of deemed receipt of the written Access Decision, except where proven for good cause, will constitute a waiver of the right to an opportunity to be heard and to any appeal in respect of the Access Decision, and the Access Decision will be deemed final.
- f. Access Decision: Opportunity to be Heard – The Proceedings will be conducted by a Panel in accordance with Article 6 of this Agreement and Exchange’s Hearing Procedures.

- g. Access Decision: Notice of Appeal – An Applicant or Contracting Party that is the subject of a Panel decision in respect of an Access Decision may file with Exchange a Notice of Appeal of the Panel’s decision, within fifteen (15) days of deemed receipt of the Panel’s written decision.
- h. Access Decision: Waiver of Appeal – Failure of the Applicant or the Contracting Party, as applicable, to file a Notice of Appeal within fifteen (15) days of deemed receipt of the Panel’s written decision, except where proven for good cause, will constitute a waiver of the right to an appeal, and the Panel’s decision will be deemed final.
- i. Access Decision: Appeal –
  - (i) The Appeal Proceedings will be conducted by an Appeal Panel in accordance with Article 6 of this Agreement and Exchange’s Hearing Procedures.
  - (ii) An Appeal Panel’s decision in respect of an Access Decision is final.
- j. Access Decision: Panel and Appeal Panel Authority –
  - (i) A Panel or Appeal Panel may confirm, vary or reverse an Access Decision, provided that the Panel or Appeal Panel may not reverse or vary an Access Decision if the Applicant or Contracting Party, as applicable, does not satisfy the Minimum Qualification Requirement.
  - (ii) Notwithstanding anything else in this Section, neither a Request to be Heard or a Notice of Appeal in respect of an Access Decision, nor a decision by a Panel or Appeal Panel restricts Exchange’s authority and discretion to impose any limitations or conditions on the Applicant or Contracting Party, as applicable, that Exchange determines, in its absolute discretion, necessary or appropriate to protect the security and integrity of Exchange.

## **1.2 Qualification and Status**

- a. Minimum Qualification Requirements – The Contracting Party is required at all times during the term of this Agreement to be, and represents and warrants that it 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 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”).
- b. Compliance with Conditions – The Contracting Party is required to and will, at all times during the term of this Agreement comply with any other conditions or requirements imposed by Exchange, whether pursuant to Schedule C or otherwise, as part of the Contracting Party’s initial qualification to transact through Exchange or after being granted access to the ICE NGX Trading System and ICE NGX Clearing System;
- c. General Representations and Warranties – The Contracting Party represents and warrants that:
  - (i) 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
  - (ii) 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.

### **1.3 Standard Contracting Party Agreement**

- a. Standard Form – This Agreement will be the standard form of agreement between Exchange and each of the Contracting Parties in respect of Transactions, the ICE NGX Trading System and ICE NGX Clearing System, and ICE NGX Data Products; the intention being that all Contracting Parties will be equal in respect of the Rules and their respective rights and Obligations, except as specifically otherwise provided in the Rules.
- b. Rules and Jurisdiction of Exchange – Each Contracting Party, by executing the Execution Page, acknowledges that the provisions of the Agreement form part of the Rules of the Exchange, agrees to be bound by and comply with the Rules of the Exchange, and expressly acknowledges and consents to the jurisdiction of Exchange.
- c. Public List of Contracting Parties – Exchange will publish a list of all Contracting Parties on Exchange’s Website.

### **1.4 ICE Participant Agreement**

- a. ICE Trading Platform – For greater clarity, this Agreement does not govern access to and transacting on the ICE Trading Platform.
- b. ICE Participant Agreement – The Contracting Party is required to enter into, and remain in good standing under, an ICE Participant Agreement with ICE. The ICE Participant Agreement governs the Contracting Party’s access to and transacting on the ICE Trading Platform, and is a valid and binding legal obligation of the Contracting Party with ICE.
- c. Conflicts – In the event of a conflict between the ICE Participant Agreement and this Agreement:
  - (i) where the conflict relates to the trading and clearing of ICE NGX Products, this Agreement governs;
  - (ii) where the conflict relates to trading of ICE Forward Products including Products executed as ICE Forward Products, the ICE Participant Agreement governs; and
  - (iii) where the conflict relates to clearing by ICE NGX, this Agreement governs.

### **1.5 Representations and Warranties of the Contracting Party**

- a. Duly Executed and Legally Valid and Binding – The Contracting Party represents and warrants that:
  - (i) 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;
  - (ii) 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;
  - (iii) this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of the Contracting Party.
- b. Principal – The Contracting Party represents and warrants that it 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.
- c. Regulatory – The Contracting Party represents and warrants as follows.

- (i) Regulatory Approvals – 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 ICE NGX Trading System and/or ICE NGX Clearing System for the purpose of entering into and/or clearing of Transactions respectively;
  - (ii) 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 ICE NGX.
  - (iii) 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.
- d. ICE Participant Agreement – The Contracting Party represents and warrants that it has entered into an ICE Participant Agreement and remains in good standing under such agreement.
- e. 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.
- f. Intention to Physically Settle – The Contracting Party represents and warrants that:
  - (i) with respect to each Transaction resulting from a Clearing Enabled Order, it will have entered the Clearing Enabled Order with the intention that the resulting Transaction be physically settled; and
  - (ii) with respect to an EFRP Transaction involving an EPF or EFP, it will have entered into the Forward or other OTC instrument with the intention that the resulting Transaction be physically settled.
- g. Access to Relevant System(s) - To the extent it wishes to be entitled to enter into a Physically Settled Futures Transactions, the Contracting Party has and will at all times have
  - (i) in the case of a Physically Settled Gas Futures Transaction, access to capacity on the relevant Transportation System to allow the Contracting Party to perform its Obligations under all Physically Settled Gas Futures Transactions;
  - (ii) in the case of a Physically Settled Power Futures Transaction, an agreement with the Transmission Provider to allow the Contracting Party to perform its Obligations under all Physically Settled Environmental Futures Transactions; and
  - (iii) in the case of a Physically Settled Environmental Futures Transaction, an account with the applicable Registry to allow the Contracting Party to perform its Obligations under all Physically Settled Environmental Futures Transactions.
- h. USMCA – The Contracting Party, when entering into a Physically Settled Gas Futures Transaction or Forward Transaction as Seller, represents and warrants that natural gas delivered, or to be delivered, from or at a Canadian Delivery Point will be wholly obtained or produced in North America and qualifies as an originating good pursuant to Annex 4-B of the United States - Mexico - Canada Agreement.
- i. Risk Management Policies, Procedures and Practices – The Contracting Party represents and warrants that it has sufficient and satisfactory written risk management policies, procedures and practices in place to address both financial and operational risks in its organisation, and will provide to Exchange, if requested, an annual certification attesting to same.



- j. Further Information – The Contracting Party agrees to provide to Exchange evidence of the matters described in this Section and any other representations and warranties made under this Agreement, including certified resolutions, constating documents, incumbency certificates, opinions, policies and/or procedures and other documentation as may be reasonably requested by Exchange.

#### **1.6 Representations relating to the Credit Support Provider**

- a. Representations by the Contracting Party – The Contracting Party represents and warrants that:
- (i) 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;
  - (ii) 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
  - (iii) 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.
- b. Further Information – The Contracting Party agrees to provide to Exchange evidence of the matters described in this Section, 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.

#### **1.7 Representations of Exchange**

- a. Exchange Representations – Exchange represents and warrants that:
- (i) Exchange is a corporation duly and validly incorporated and subsisting under the laws of Canada;
  - (ii) 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;
  - (iii) 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;
  - (iv) this Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of Exchange;
  - (v) Exchange is a registrant under the Excise Tax Act and its GST registration number is R136904232;
  - (vi) Exchange's sole business is conducted pursuant to Contracting Party Agreements with Contracting Parties and the matters contemplated therein, the provision of auction services for the purpose of facilitating Transactions, the provision of ICE NGX Data Products and the administration of the ICE NGX Indices;
  - (vii) Exchange's indebtedness for borrowed money consists solely of its indebtedness to Exchange's Principal Banker and to the Exchange Letter of Credit Issuing Bank, to facilitate the payment of

Invoices by Exchange and to facilitate the management of a Default, Liquidation and/or Close-out Procedures;

- (viii) Exchange is, to the extent required by U.S. law, registered as a Foreign Board of Trade and registered as a Derivatives Clearing Organization at the time when Exchange enters into a transaction hereunder;
- (ix) where agreed upon between Exchange and applicable regulators, Exchange will file reports for and in the place of its Contracting Parties with respect to Transactions cleared through the ICE NGX Clearing System in compliance with applicable laws or regulations; and
- (x) 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 ICE NGX Trading System and ICE NGX Clearing System for the purpose of entering into and clearing Transactions.

## **1.8 Representations Repeated**

- a. Deemed Repeated – The representations and warranties of Exchange and the Contracting Party are deemed to be repeated on each date the Contracting Party enters into any Transaction.

## **1.9 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 on such terms and conditions as Exchange may determine from time to time.
- b. Responsibilities –
  - (i) Any Contracting Party appointed as a market maker agrees to use commercially reasonable efforts throughout each Trading Day to post bids and offers that meet the agreed upon criteria in certain Products and to submit orders to allow the Products to meet the agreed upon criteria should any Products not be posted with bids and offers within the market criteria.
  - (ii) Any Contracting Party appointed as a liquidity provider agrees to use commercially reasonable efforts to provide target levels of trading volume in certain Products, in accordance with the agreed-upon criteria.
- 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 must be conducted in accordance with the provisions of this Agreement and applicable law.

## **1.10 Other Categories of Access**

- a. Special Participant – Any party not meeting the Minimum Qualification Requirement or who meets the Minimum Qualification Requirement, but wishes to transact or clear, respectively, on the ICE NGX Trading System or ICE 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 ICE NGX shall establish through the amendment of this Agreement. For the avoidance of doubt, such amendments to this Agreement will make clear that the Contracting Party will remain responsible

to ICE NGX in all respects under this Agreement for all Transactions that it enters into on, or clears through, ICE NGX, including those Transactions which it undertakes on behalf of its Customer Participant(s).

### **1.11 Term and Termination**

- 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
- b. Termination –
  - (i) Termination of Dormant Contracting Party – Without limitation of any other rights under this Agreement, Exchange may, in its sole discretion, give notice of termination to a Contracting Party that is dormant. For the purposes of this section, a Contracting Party is considered dormant if it has not had any trading, clearing or data access activity with Exchange over the past 12 consecutive months.
  - (ii) 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 the Contracting Party or Exchange, either Contracting Party or Exchange may give notice of termination to the other.
  - (iii) 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.
  - (iv) Termination by Exchange or Contracting Party – In addition, and without limitation, to any other rights of termination under this Agreement except as set out in Section 5.14, either the Contracting Party or Exchange may give notice of termination to the other at any time.
- c. Notice of Termination – A notice of termination of this Agreement by Exchange or the Contracting Party must be provided in writing and must specify or, in the case of a notice of termination provided by a Contracting Party under paragraph 1.11.b.(iv), request an effective date (the “Termination Date”) which Termination Date may be no earlier than one Business Day following receipt or deemed receipt of such notice. Notwithstanding the above, the Termination Date for a notice of termination by Exchange of a Contracting Party (i) in respect of which an Event of Default has been declared and is continuing or (ii) in accordance with Section 1.11.b.(ii) is the date specified in such notice.
- d. Effect of Termination – Effective on the Termination Date of any termination of this Agreement by Exchange or the Contracting Party:
  - (i) all Transactions will continue to be governed by the provisions of this Agreement relating to such Transactions as at the Termination Date;
  - (ii) this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement and, for clarity, until any outstanding Invoices of the Contracting Party are deemed paid and settled, as determined in the sole discretion of Exchange;
  - (iii) the Contracting Party will not be entitled to enter into any Transactions after the Termination Date;
  - (iv) 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;

- (v) the license granted under this Agreement to the Contracting Party in respect of the ICE NGX Clearing System will terminate and Exchange may request return of any related data and materials; and
- (vi) the license granted under this Agreement to the Contracting Party in respect of the ICE NGX Data Products will terminate and, absent an agreement with ICE Data LLP that provides for continuation of access to the ICE NGX Data Products, the Contracting Party shall
  - (A) cease all use of and access to the ICE NGX Data Products provided under this Agreement; and
  - (B) expunge the ICE NGX Data Products and any portion or copies thereof from all of the Contracting Party's electronic systems, except to the extent the Contracting Party is otherwise required by applicable law or regulatory document retention obligations provided no commercial or productive use can be made of the ICE NGX Data Products to retain such records.

## **ARTICLE 2 – TRADING**

### **2.1 Trading Hours**

- a. Trading Hours – The trading hours for a particular Product are as specified from time to time in the specifications for such product as made available on Exchange's Website.

### **2.2 Entering into Transactions**

- a. ICE NGX Products – Transactions in ICE NGX Products are entered into through the matching of bids and offers in the ICE NGX Trading Platform.
- b. ICE Forward Products – Transactions in ICE Forward Products are entered into through the ICE Trading Platform and submitted to Exchange through Exchange's automated systems. A transaction in an ICE Forward Product that is cleared by ICE NGX becomes, upon acceptance for clearing, a Transaction in an ICE NGX Physically Settled Gas Futures Product or Physically Settled Power Futures Products, as applicable.
- c. Bids and Offers for U.S. Delivery Points: Gas – Bids and offers for ICE Gas Forward Products and for Physically Settled Gas Futures Products with U.S. Delivery Points are included within a single electronic display. A bid or offer for an ICE Gas Forward Product does not interact with Orders for the corresponding Physically Settled Gas Futures Product unless the Contracting Party submitting the bid or offer designates it as a "Clearing Enabled Order". If a Clearing Enabled Order is matched with another Clearing Enabled Order in the same product, the Orders are executed as a transaction in an ICE Forward Product that is submitted to Exchange for conversion into and clearing as a Physically Settled Gas Futures Product.
- d. Bids and Offers for U.S. Delivery Points: Physical Power – Bids and offers for ICE Power Forward Products and for Physically Settled Power Futures Products with U.S. Delivery Points are included within a single electronic display. A bid or offer for an ICE Power Forward Product does not interact with Orders for the corresponding Physically Settled Power Futures Product unless the Contracting Party submitting the bid or offer designates it as a "Clearing Enabled Order". If a Clearing Enabled Order is matched with another Clearing Enabled Order in the same product, the Orders are executed as a transaction in an ICE Forward Product that is submitted to Exchange for conversion into and clearing as a Physically Settled Power Futures Product.
- e. ICE NGX Financial Power Auction System – Exchange may from time to time during the term of this Agreement conduct ICE NGX Financial Power Auctions using the ICE NGX Financial Power Auction System. The clearing of any and all resulting Transactions is governed by the terms and conditions of this Agreement.

## **2.3 Exchange of Futures for Related Product Transactions (“EFRP Transactions”)**

- a. Permissible EFRP Transactions – The following types of transactions arranged between Off-Exchange Principals that are both Contracting Parties are permitted to be submitted to Exchange for the purpose of establishing a position in a Financially Settled Futures Product, Physically Settled Futures Product or Option or novating an off-exchange transaction to a Transaction in a Physically Settled Futures Product, as applicable, each of the following an Exchange for Related Position or “EFRP” Transaction:
- (i) Exchange for Physical Future (“EPF”) – a simultaneous novation and exchange of a position in a Forward or other physically settled OTC instrument negotiated off-exchange, including a transaction in an ICE Forward Product, for a corresponding position in a Physically Settled Futures Product with the same underlying commodity and delivery point as the OTC instrument;
  - (ii) Exchange for Financial Future (“EFF”) – a simultaneous novation and exchange of a position in an OTC Swap or other OTC instrument for a corresponding position in a Financially Settled Futures Product with the same underlying as the original OTC instrument;
  - (iii) Exchange for Physical (“EFP”) – a simultaneous exchange of a position in a Forward or other physically settled OTC instrument negotiated off-exchange, not including a transaction in an ICE OTC Product, for an opposing position in a related Financially Settled Futures Product;
  - (iv) Exchange for Swap (“EFS”) or Exchange for Risk (“EFR”) – a simultaneous exchange of a position in an OTC Swap or other OTC instrument negotiated off-exchange, for an opposing position in a related Financially Settled Futures Product or Physically Settled Futures Product; and
  - (v) Exchange of Options for options (“EOO”) – a simultaneous exchange of a position in an OTC option or other OTC instrument with similar characteristics negotiated off-exchange for an opposing position in a related Options Product.
- b. Intention to Physically Settle – A Contracting Party may only include, as part of an EFRP Transaction, Forwards and other OTC instruments that the Contracting Party intended, at the time of entering into the Forward or other OTC instrument.
- c. Corresponding Volume Requirement – The volume of the exchange contract(s) must be approximately equivalent to the volume of the OTC instrument.
- d. Submission – Submission of trade details of an EFRP Transaction may be made by a Broker Representative or by the Off-Exchange Principals through ICEBlock or by providing instructions to Exchange, or by instant messaging or email or, if neither is available, by telephone (“Verbal Instructions”).
- e. Deemed Agreement to Submit – In submitting an EFRP to Exchange under this Section for clearing, the Off-Exchange Principals to that transaction (whether submitted directly or through a Broker Representative) are deemed to have mutually agreed to submit the transaction to Exchange for clearing pursuant to this Agreement and for the resulting Transaction to be governed entirely by this Agreement.
- f. Appointment of Exchange as Agent – 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.
- g. Responsibility for Accuracy of Submission – The Off-Exchange Principals shall be exclusively responsible for accurately submitting the details of an EFRP Transaction to Exchange whether submitted directly or through a Broker Representative.
- h. Effect of Submission – Once an EFRP Transaction is submitted to Exchange (whether through ICEBlock or Verbal Instructions), an Off-Exchange Principal or Broker Representative (if applicable) is not entitled to

unilaterally reject the terms of the EFRP Transaction, and such EFRP Transaction shall be deemed final and binding in accordance with the terms of this Agreement subject to

- (i) any trade in error being reported to Exchange in respect of the EFRP Transaction, and
  - (ii) Exchange voiding the transaction in accordance with this Agreement.
- i. Characterization of Off-Exchange Transaction – The Exchange will 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 a Forward, a spot product or a Swap.
  - j. No Exchange Liability for Off-Exchange Transaction – Exchange takes no responsibility and shall have no liability for any agreement between Off-Exchange Principals with respect to any Off-Exchange Transaction.
  - k. Records – 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.
  - l. Exchange Authority – In addition to any other rights Exchange has under this Agreement, Exchange may, in its sole discretion, for legal, regulatory, operational or other 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 following the time of the initial submission to Exchange, in which case Exchange will notify the Off-Exchange Principals that the transaction has been rejected and any applicable EFRP Transaction shall be considered null and void with no further obligations or liability of Exchange.
  - m. Limitation of Liability and Recourse – In addition to the limitations on liability set out in Article 8, the Contracting Party acknowledges and agrees that Exchange will 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, relating to or arising from any trade in error reported to Exchange, or any acts or omissions of Exchange or its affiliates with respect to such EFRP Transactions. Contracting Parties, including as Off-Exchange Principals, acknowledge and agree that their sole recourse or remedy with respect to an EFRP Transaction is limited to the pursuit of private remedies available under existing law as between the Off-Exchange Principals and any Broker Representatives.

## **2.4 Block Transactions**

- a. Submission and Confirmation of Block Trades –
  - (i) Subject to the provisions of this Section, Block Transactions between two Contracting Parties may be effected through ICEBlock, through Verbal Instructions or through such other method or media as permitted by the Exchange.
  - (ii) The Broker or either party to the Block Transaction must report the details of the Block Transaction directly into ICEBlock, by Verbal Instruction to the Exchange, or by such other method or media permitted by the Exchange, within 15 minutes from the time the parties agree 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.
  - (iii) Each Contracting Party to a Block Transaction reported to Exchange is liable for that Block Transaction as reported.
  - (iv) Promptly upon the Block Transaction being reported to Exchange, Exchange will notify each party to the Block Transaction of the Transaction details.

- (v) Each party to a Block Transaction may notify Exchange of any errors in the Block Transaction by instant message or email or, if neither is available, by telephone. If Exchange is notified within 15 minutes of the Block Transaction being reported to Exchange, Exchange will confirm the error and enter adjustments to the Block Transaction. If Exchange is notified more than 15 minutes after the Block Transaction is reported to Exchange, Exchange may, in its sole discretion, confirm the error and enter adjustments to the Block Transaction. Exchange will not be liable to the Broker or either party to the Block Transaction in relation to any error relating to a Block Transaction reported to Exchange.
  - (vi) Prior to Exchange accepting a Block Transaction, Exchange may, in its sole discretion, confirm the details of the Block Transaction with the parties by instant message or email or, if neither is available, by telephone. Within 15 minutes of Exchange requesting confirmation, the parties shall confirm such Block Transaction, instant message or email or, if neither is available, by telephone.
  - (vii) If either or both parties to the Block Transaction fail to provide confirmation within the required timeframe, Exchange may, in its sole discretion, accept the Block Transaction. Failure to confirm a Block Transaction does not alleviate the Contracting Party's liability for the Block Transaction as set out in this section. Exchange will not be liable to the Broker or to either party of the Block Transaction in relation to any decision to confirm or not confirm nor to accept or not accept a Block Transaction in accordance with this section.
  - (viii) Promptly upon accepting a Block Transaction, Exchange will update the ICE NGX Clearing System to reflect the Block Transaction and deliver a Confirmation of the resulting Transaction in accordance with this Agreement.
- b. Permitted Products – Block Transactions may be transacted only in Physically Settled Futures Products and Financially Settled Futures Products authorized for that purpose by the Exchange from time to time and in its sole discretion.
  - c. Minimum Futures Block Size – A Block Transaction must meet the applicable Minimum Futures Block Size set out from time to time for each product in Schedule D.
  - d. Permissible Aggregation to Meet Minimum Size – A Contracting Party, for its own account, may aggregate multiple orders to meet the Minimum Futures Block Size.
  - e. Impermissible Aggregation – A Contracting Party may not
    - (i) aggregate different legs of a futures contract spread to meet the Minimum Futures Block Size, or
    - (ii) aggregate different legs of an options contract spread to meet the Minimum Futures Block Size, provided, however, the different legs may be aggregated if the aggregate amount is in total 150% of the Minimum Futures Block Size
  - f. Quoting Block Transaction Prices – Each time a Contracting Party or Broker quotes a Block Transaction price, the Contracting Party or Broker must make clear to each potential counterparty or party, as applicable, that the price being quoted is a Block Transaction price for a Transaction and is not the price prevailing on the ICE NGX Trading System for a Transaction in that Product.
  - g. Permissible Pricing Range – The Block Transaction may be consummated at a price mutually agreed upon by the parties to the transaction; provided that,
    - (i) the price for the Block Transaction does not exceed:
      - (A) the day's overall traded market high and low by the following ranges below;

- (B) 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:

Commodity	Range
Physically Settled Gas Futures Product	2.0 percent
Financially Settled Gas Futures Product	2.0 percent
Financially Settled Power Futures Product	5.0 percent
Physically Settled Power Futures Product	5.0 percent
Physically Settled Environmental Futures Product	5.0 percent

or,

- (C) if not traded either that day or the previous day on the market, as the parties shall mutually agree;
- (ii) 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.

For clarity, nothing in this Section prohibits a single Contracting Party from entering into one or more Block Transactions at the same price with one or more Contracting Parties, such price being determined by a method as the Contracting Parties shall agree.

- h. Exchange Authority – In addition to any other rights Exchange has under this Agreement, Exchange may, in its sole discretion, for legal, regulatory, operational or other reasons, including (without limitation) to maintain the integrity of Exchange or the delivery process, reject a Block Transaction submitted to Exchange (whether submitted through ICEBlock or Verbal Instructions) as soon as practicable following 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 shall be considered null and void with no further obligations or liability of Exchange.
- i. Records – Upon request by Compliance staff, the Contracting Parties that are parties to a Block Transaction must promptly produce satisfactory evidence that the Block Transaction was arranged and reported to Exchange in accordance with this Agreement.

## 2.5 Transfer Trades

- a. Request to Exchange – Upon written request, Exchange in its discretion may permit the transfer or assignment and novation of a position, contract or Transaction of a Contracting Party to the account of a Contracting Party as a result of a merger, asset purchase, consolidation or similar non-recurring transaction between two (2) or more entities.
- b. Transfer Price – 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.



- c. Effecting the Transfer – 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 or assignment and novation of open positions to Exchange.
- d. Effect of Transfer – A position, contract or Transaction transferred in accordance with this Section continues to be subject to this Agreement.
- e. Recordkeeping – The parties to the transfer must retain all records related to the transfer for a period of five years.

## **2.6 Trades in Error**

- a. Application – The following trade in error provisions apply only to Transactions executed as ICE NGX Products. For greater clarity, these provisions do not apply to EFRP Transactions. Trades in error for Transactions executed as ICE Forward Products are governed exclusively through the ICE Participant Agreement. In the event that Exchange is notified by ICE that a trade in error has occurred in respect of a Transaction that was executed as an ICE Forward Product in accordance with this Agreement, Exchange is entitled to rely solely on this notification with regard to taking any and all appropriate and necessary action on the ICE 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.
- b. Report by Contracting Party – A Contracting Party may report a trade in error to Exchange.
- c. Notice by Exchange – In the event a trade in error is brought to the attention of Exchange,
  - (i) Exchange will give notice on the ICE NGX Trading System that a trade in error has been reported and is under investigation; and
  - (ii) Exchange may declare a General Suspension in respect of the Product which is the subject of the Transaction entered into in error.
- d. Consequences –
  - (i) If both of the following apply:
    - (A) the trade in error is brought to the attention of Exchange within ten (10) minutes after the time of the relevant Transaction, and
    - (B) the price at which the Transaction was executed is outside the Market Price Band

Exchange may, in its sole discretion cancel the Transaction.
  - (ii) If either or both of the following apply:
    - (A) the trade in error is brought to the attention of Exchange more than ten (10) minutes after the time of the relevant Transaction but within the same Trading Day, and/or
    - (B) the price at which the Transaction was executed is inside the Market Price Band

Exchange may contact the Contracting Parties who are parties to the Transaction to determine whether the Contracting Parties will consent to the cancellation of the trade in error, and

    - (C) if both of the Contracting Parties so consent, the Transaction will be cancelled; or

- (D) if one or both of the Contracting Parties does not so consent, 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.

- (iii) Notwithstanding the above, Exchange may, in its sole discretion, determine to cancel or void a trade.
- e. Exchange Authority – Notwithstanding the above, Exchange retains unilateral authority to cancel any order or any trade which it considers to be at an unrepresentative price where there has been no referral or request from a Contracting Party. The Exchange reserves the right to consider each alleged error trade situation on its individual merits and may therefore amend these policies in light of the circumstances of each individual case.
- f. Notice of Cancellation of Trade in Error – Exchange will give notice on the ICE NGX Trading System of any cancellation of a trade in error in accordance with this Agreement.
- g. No Liability – The decision of Exchange with respect to any alleged trade in error is final. Exchange will have no liability for a decision to contact, or not contact, Contracting Parties in respect of a trade in error reported to Exchange, and will have no liability in respect of any decision to cancel or not cancel any Transaction reported as a trade in error.
- h. 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.
- i. 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.

## **2.7 Non-clearable Transactions**

- a. Determination by Exchange – 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 ICE 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, instant message or email.

## **2.8 Settlement Prices**

- a. Determination of Settlement Prices – Exchange will determine, in its sole discretion, the Settlement Price for each Product on each Trading Day.
- b. Settlement Price Determination Period – The time period during which daily Settlement Prices are determined is
- (i) for Physically Settled Environmental Futures Products, 13:45-14:00 MPT; and
- (ii) for all other Products, 12:28-12:30 MPT.
- c. Request to Re-determine a Settlement Price – Upon request or dispute by a Contracting Party that Exchange recalculate or redetermine a Settlement Price, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation or redetermination should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable.

- d. Exchange May Revise a Settlement Price – If Exchange concludes that the Settlement Price of any contract is or was erroneous, it may correct the Settlement Price in accordance with Exchange’s procedures at any time prior to final settlement of the contract.

### **ARTICLE 3 – GENERAL OBLIGATIONS**

#### **3.1 System Access**

- a. Access to ICE NGX Trading System and ICE NGX Clearing System – Exchange will provide access to the ICE NGX Trading System and ICE NGX Clearing System to the Contracting Party during the ICE NGX market hours specified on Exchange’s Website, for Transactions in all Products (i) that are made available for trading and/or clearing by Exchange, (ii) for which the Contracting Party is approved to trade and clear. Pursuant to Section 1.4, access to the ICE Trading Platform is governed exclusively by the ICE Participant Agreement.
- b. ICE NGX Trading System Issues –
  - (i) Upon determining that a Critical ICE NGX Trading System Issue exists. Exchange will
    - (A) immediately halt trading on the ICE NGX Trading System for all ICE NGX Products and withdraw all Orders for each Contracting Party from the ICE NGX Trading System;
    - (B) use commercially reasonable efforts to ensure all Contracting Parties are notified by telephone or email or through the ICE NGX Trading System that a Critical ICE NGX Trading System Issue exists;
    - (C) if the Critical ICE 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 ICE NGX Trading System Issue;
    - (D) use commercially reasonable efforts to advise all Contracting Parties when the ICE 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 ICE NGX Trading System and by telephone.
  - (ii) Upon determining a Non-Critical ICE NGX Trading System Issue exists, Exchange will
    - (A) determine if the Non-Critical ICE NGX Trading System Issue requires that access to the ICE NGX Trading System be halted;
    - (B) send a message through the ICE NGX Trading System advising all Contracting Parties that a Non-Critical ICE NGX Trading System Issue exists and providing a report on the status; and
    - (C) send a message through the ICE NGX Trading System advising all Contracting Parties when the Non-Critical ICE NGX Trading System Issue will be resolved.
  - (iii) For clarity, any issue arising in connection with the ICE Trading Platform is not the responsibility of the Exchange.
- c. Resolution of ICE NGX Trading System Issues – Exchange will use commercially reasonable efforts to resolve and correct each Critical ICE NGX Trading System Issue as quickly as possible and, Exchange will use commercially reasonable efforts to resolve and correct any Non-Critical ICE NGX Trading System issue within a reasonable time under the circumstances.

- d. Network Security – Exchange will use commercially reasonable efforts to ensure that security systems and procedures designed to prevent unauthorized access to the ICE NGX Trading System and ICE NGX Clearing System through any network connections between the Contracting Party and the ICE NGX Trading System and ICE NGX Clearing System are implemented and maintained. Exchange will monitor the ICE NGX Trading System and ICE 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 promptly notify the Contracting Party and may, in its sole discretion, take all commercially reasonable steps to remedy the situation, including without limitation halting the Contracting Party’s access to the ICE NGX Trading System and ICE NGX Clearing System and withdrawing all of the Contracting Party’s Orders from the ICE NGX Trading System.

### **3.2 Obligations of the Contracting Party**

- a. Record Keeping – The Contracting Party will 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.
- b. Designated Persons – The Contracting Party hereby agrees (i) to designate a person as Administrator (and an alternate person if desirable) by notice in writing by email to Exchange from time to time, who will be authorized to and will 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”) are entitled to have access to the ICE NGX Trading System and/or ICE NGX Clearing System (the “access notices”), including (without limitation) for the purpose of entering into Transactions on behalf of the Contracting Party (thus binding the contracting Party to Obligations); and (ii) 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 Article 2 by Authorized Representatives or their 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 all Broker Representatives when acting in respect of the Contracting Party and will indemnify, defend and hold harmless 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 ICE NGX Trading System and ICE NGX Clearing System, the Administrator will instruct Exchange (and, if the Contracting Party has access to the ICE Trading Platform, ICE) by telephone as to any such cancellation in writing. Exchange shall have no obligation to inquire about or confirm the authorization of Broker Representatives by Authorized Representatives under any circumstances.
- c. 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 explicitly described under this Agreement, 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.
- d. 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 such record exists and is relevant to any such dispute, controversy, difference or question relating to the Contracting Party.

- e. Fees – The Contracting Party will pay the applicable fees to Exchange in such amounts as are set out in Schedule A – Fees or as otherwise agreed to by the Contracting Party with Exchange, and as set out in any Invoice.
- f. U.S. Internal Revenue Service Reporting –
  - (i) Contracting Parties who are subject to the reporting requirements of brokers under Section 6045 of the U.S. Internal Revenue Code (“Code”) and the U.S. Treasury Regulations thereunder shall comply with such requirements, as amended from time to time, with respect to transactions effected on, or otherwise subject to this Agreement in the manner prescribed by Section 6045 of the Code, the regulations thereunder, and such other provisions of the Code and regulations that are pertinent thereto. Failure of a Contracting Party to comply with this provision will result in immediate suspension of such Contracting Party’s trading privileges on the Exchange (and the privileges of any successor to such Contracting Party) until the Contracting Party complies with these reporting requirements in all respects. Such compliance includes the filing of all returns that were required to have been filed under Section 6045 but were not filed or were filed improperly; and
  - (ii) Notwithstanding any other provision of this Agreement, upon request by Exchange, each Contracting Party Parties (with respect to transactions occurring on Exchange) will supply Exchange or directly to the U.S. Internal Revenue Service or any grand jury properly convened within the United States, books, papers, records, or other data as described in Section 7602 of the Code and the U.S. Treasury Regulations thereunder (hereinafter collectively referred to as “records”). Such requests will be made by Exchange whenever Exchange receives a written request, summons or subpoena to produce such records from the U.S. Internal Revenue Service or from any grand jury. Failure of a Contracting Party to comply with this provision will result in immediate suspension of such Contracting Party’s trading privileges on Exchange (and the privileges of any successor to such Contracting Party) until the Contracting Party complies with these reporting requirements in all respects.
- g. Ranking Requirement – In respect of each contract for physical delivery of natural gas, whether making delivery or taking delivery, Contracting Party will rank Exchange as “last-to-be-cut” or “first-to-be-delivered”, as applicable, for each nomination cycle.
- h. Written Risk Management Policy Required – The Contracting Party will maintain a current written risk management policy. The Contracting Party will 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 will make reasonable efforts to facilitate any such audits.

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

- a. Eligible Collateral Support and Collateral – Each Contracting Party is required to provide from time to time, as security for the Contracting Party’s Obligations, and in such amounts, such forms, at such times and in accordance with such systems as may be prescribed by or pursuant to this Agreement, including Schedule C,

or Exchange's stated policies in respect thereof, credit support consisting of one or more of the following: (i) an irrevocable letter of credit issued by an Approved Financial Institution in favour of Exchange in a form acceptable to Exchange; or (ii) Cash Collateral (collectively, "Eligible Collateral Support").

- b. Net or Set-Off of Payables – In addition, Exchange may, in its discretion, withhold payables or any other amounts owing to the Contracting Party or its Contracting Party Affiliates from Exchange as additional Collateral and may otherwise Net or Set-off any such payables, other amounts, or obligations against payables or other amounts or obligations owing by the Exchange to the Contracting Party or its Contracting Party Affiliates, and the Contracting Party, as Contracting Party and as Contracting Party Affiliate, hereby consents to any such Netting or Set-Off.
- c. 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 any and all Cash Collateral or other cash constituting Eligible Collateral Support) delivered to, deposited with, or held by or on behalf of Exchange;
  - (ii) any rights to payment or performance owing from Exchange to the Contracting Party including, without limitation:
    - (A) any Previous Month Accounts Net Payable;
    - (B) any Current Month Accounts Net Payable;
    - (C) any Financially Settled Futures Settlement Net Payable and any MTM Settlement Net Payable; and
    - (D) any Variation Margin; 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").

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 the CCAA, the BIA, the WURA, and any successor or like Canadian statutory provisions. In addition, without limiting any other rights or protections hereunder of under FDICIA or other applicable law, Exchange and the Contracting Party agree that the rights set out herein are "contractual rights" as defined in 11 U.S.C. §556; that this is a "commodity contract" as defined in 11 U.S.C. § 761 and/or a "master netting agreement" as defined in 11 U.S.C. § 101(38A); that Exchange is a "financial participant" as defined in 11 U.S.C. § 101(22A); and that Exchange is entitled to the rights and protections set out in 11 U.S.C. §§546(e) and (j), 556, 561, 562, and 761.

- d. Failure to Provide Eligible Collateral Support – The Contracting Party agrees and acknowledges that upon any failure by the Contracting Party to provide Eligible Collateral Support to Exchange in the amounts and manner set out under this Agreement, Exchange shall have the rights and remedies set out in this Agreement including, without limitation, the rights to suspend a Contracting Party or effect the Liquidation and Close-out Procedures with respect to the Contracting Party's Transactions.
- e. Use of Collateral – Exchange may pledge, transfer or realize on a Contracting Party's Collateral to satisfy the Obligations of the Contracting Party under this Agreement and, for greater certainty, may not use the Contracting Party's Collateral for Exchange's general corporate purposes.
- f. Exercising on Collateral – 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 of the Contracting Party or any of its Contracting Party Affiliates;
  - (ii) sell, retain, liquidate, apply, collect on and, except as Exchange may otherwise agree, Net or 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.
- g. Separate Cash Collateral Account – Exchange will deposit Cash Collateral relating to a Contracting Party in that Contracting Party's Cash Collateral Account. Exchange will maintain the Contracting Party's Cash Collateral Account separate from the corporate funds of Exchange and from the funds of any affiliates or subsidiaries of Exchange, separate from the Cash Collateral of each other Contracting Party other than a Contracting Party Affiliate of the Contracting Party, and subject to a registered security interest in favour of Exchange in accordance with this Section 3.3. Exchange agrees to use all Cash Collateral only 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 depositing of amounts into the Cash Collateral Account, 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. Interest on Cash Collateral – 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. Exchange will, on a monthly basis, credit to the Cash Collateral Account, interest earned on each day on the amount of the balance in the Cash Collateral Account as of the end of that day at an interest rate as notified by Exchange from time to time (“Contracting Party Interest”). The Contracting Party acknowledges and agrees that Exchange’s records are the final and binding records of daily balances in a Cash Collateral account for the purpose of calculating Contracting Party Interest. Contracting Party Interest credited to the Cash Collateral Account becomes Cash Collateral as of the time it is deposited in the Cash Collateral Account by Exchange.
- i. Collateral Balances –
  - (i) Exchange will provide the Contracting Party with direct viewing access to Exchange’s records in respect of the Contracting Party’s Collateral, via access to the ICE NGX Clearing System in accordance with this Agreement.
  - (ii) The Contracting Party is obligated to promptly inform Exchange if it becomes aware of a discrepancy between Exchange’s records and the Contracting Party’s own records relating to its Collateral.
- j. Return of Eligible Collateral Support – A Contracting Party may request a return of Eligible Collateral Support, and Exchange agrees to return excess Eligible Collateral Support to the Contracting Party, to the extent and pursuant to the terms provided for under Schedule C.
- k. Wire Payment of Cash Collateral – All transfers or deposits of Cash Collateral to or with Exchange by or on behalf of a Contracting Party shall be made by wire payment to the banking instructions provided by Exchange. All returns of Cash Collateral by Exchange to a Contracting Party shall be made by wire payment to the banking instructions provided by the Contracting Party and confirmed by Exchange. For greater certainty, any correspondent or intermediary bank fees relating to the deposit, transfer or return of Cash Collateral are the responsibility of the Contracting Party.

### **3.4 Contracting Party Affiliates**

- a. Net or Set-Off – The Contracting Party, as Contracting Party and as Contracting Party Affiliate, hereby agrees that Exchange shall be entitled to Net or 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 any provision of this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate) 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 of 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 Net or Set-Off hereby granted is in addition to any legal or equitable right of set-off or any similar right granted at law, and does not require for its exercise any mutuality or connection, other than that hereby created, between the Obligations Netted or Set-Off. If an obligation or right is unascertained at the time of any such Net or Set-Off, Exchange may in good faith estimate the amount or value of such obligation or right, in which case Net or 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.
- b. Guarantee of Contracting Party Affiliate – The Contracting Party hereby unconditionally and irrevocably guarantees (the “Guarantee”) the due and punctual payment and performance in full when due, whether in the ordinary course, by termination, acceleration or otherwise, of all Obligations of its Contracting Party



Affiliates to Exchange under the Contracting Party Agreements entered into by such Contracting Party Affiliates, and all such guaranteed obligations are and shall be direct obligations of the Contracting Party. All Collateral provided by a Contracting Party 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 Contracting Party's performance of the Guarantee. Except as Exchange may otherwise agree, the Contracting Party acknowledges and agrees that Exchange may realize on the Collateral provided by it to Exchange hereunder (including without limitation drawing upon any letters of credit) to pay and perform the Contracting Party's Guarantee. 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 to pay the Obligations and the Guarantee that are due.

- c. Suretyship Waiver – The Obligations of Contracting Party and its Contracting Party Affiliates and the grant of security in respect of this Agreement under this Agreement 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).
- d. Collateral of Contracting Party Affiliate – Except as Exchange may otherwise agree in writing with the Contracting Party, for the purpose of securing the payment and performance of both the Contracting Party's Obligations and the Contracting Party's Guarantee, 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 Schedule C, the Liquidation and Close-out Procedures pursuant to Article 5, or as may be otherwise necessary to comply with the terms and conditions of this Agreement.

### **3.5 Obligations of Exchange**

- a. 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 or Physical Power 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 9.5 of this Agreement, as Collateral and for the purpose of securing such Collateral for the Obligations of the Contracting Party.
- b. Confirmations – Exchange will electronically deliver the relevant Confirmation to the Contracting Party as soon as reasonably possible after the entering into of each Transaction. Delivery of each Confirmation will be in the form of an electronic report posted on Exchange's Website in the secured access section. The Contracting Party is responsible for accessing its Confirmations on Exchange's Website.
- c. Regulatory Approvals – Exchange will 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.

### **3.6 Confidentiality**

- a. Confidential Treatment by Exchange –
  - (i) Exchange agrees to use commercially reasonable efforts to keep confidential any and all non-public information received from the Contracting Party from time to time, including pursuant to the Application, including business, financial and strategic information in respect of the Contracting Party and any of its affiliates.

- (ii) Exchange agrees to use commercially reasonable efforts to keep confidential any and all public information in respect of any Transaction entered into by the Contracting Party, and any and all information about the trading patterns, prices (including market price reference) and accounts, that does not constitute an ICE NGX Data Product.
- (iii) Nothing in this Section 3.6 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, 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, and nothing under this Agreement shall 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 be a Contracting Party be kept confidential and secret by Exchange.

b. Confidential Treatment by Contracting Party –

- (i) The Contracting Party agrees to keep strictly confidential any and all non-public information, received from Exchange from time to time, including business, financial and strategic information in respect of, Exchange and any of its affiliates.
- (i) The Contracting Party agrees to keep strictly confidential any training manuals and technical and operating information in respect of Exchange and any of its affiliates, the ICE NGX Trading System and the ICE NGX Clearing System, and that such information will remain the sole and exclusive property of Exchange.
- (ii) The Contracting Party agrees to use any material or information referred to in paragraph (i) or (ii) only for the purposes contemplated by this Agreement, and to 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 consultants for the purposes contemplated by this Agreement.
- (iii) The Contracting Party may use any information in respect of the market created through the Contracting Party's access to the ICE NGX Trading System and ICE NGX Clearing System for its business purposes, provided that, 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.
- (iv) Nothing in this Section 3.6 shall restrict the Contracting Party or any affiliate of the Contracting Party from compliance with any law, regulation or governmental authority applicable to such Contracting Party or affiliate of the Contracting Party requiring disclosure, or require that any 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.

c. Trading Information –

- (i) The Contracting Party hereby acknowledges that all information in respect of the market created through the Contracting Party's access to the ICE NGX Trading System and ICE 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 release 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.

- (ii) 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.

### **3.7 Treatment of Personal Data**

- a. Interpretation – For the purpose of this Section 3.7,

“Controller” shall have the meaning given to such terms in the General Data Protection Regulation (EU) 2016/679 (including any relevant implementing measure or successor legislation thereto)

“Canadian Personal Data” means “personal information” as defined in the PIPEDA;

“EU GDPR” means the General Data Protection Regulation (EU) 2016/679, as may be amended from time and including any relevant implementing measure or successor legislation thereto;

“Personal Data” means, as applicable

- (i) “personal data”, as defined in the “EU GDPR”; or
- (ii) Canadian Personal Data;

“PIPEDA” means the *Personal Protection and Electronic Documents Act*, as may be amended from time to time and including any relevant implementing measure or successor legislation thereto;

“Process” (and derivations thereof) has the meaning given to it (and derivations thereof) in the EU GDPR.

- b. Controller – The Exchange is a Controller with respect to Personal Data provided to it by Contracting Parties and their representatives and may collect and use Personal Data for the purposes of fulfilling contractual obligations and operating in accordance with the Contracting Party Agreement and Regulations.
- c. Lawful basis – Each Contracting Party shall ensure that in respect of any Personal Data that it provides to the Exchange it has a lawful basis for processing the relevant Personal Data in this manner.
- d. Acknowledgements, Agreements and Consents – Each Contracting Party and the Exchange
  - (i) acknowledges that the recording of conversations between the trading, clearing and other relevant personnel of the Contracting Party and/or its affiliates and the Exchange and/or its affiliates in connection with the Contracting Party Agreement and any Transaction or potential Transaction will take place to the extent permitted or required under Regulations;

- (ii) agrees, to the extent permitted by applicable law, that recordings may be submitted as evidence in any hearing or proceeding relating to a dispute under this Agreement;
  - (iii) acknowledges that the other provisions of the Section 3.7 shall apply to any such recordings made by the Exchange; and
  - (iv) consents to such disclosures being made in accordance with the Contracting Party Agreement and is required under applicable Regulations.
- e. PIPEDA – To the extent that ICE NGX collects Canadian Personal Data under this Agreement and engages in the extraterritorial transfer of the Canadian Personal Data, the following provisions apply.
- (i) ICE NGX shall process the Canadian Personal Data in accordance with this Agreement.
  - (ii) The Contracting Party shall ensure that adequate notice is provided and appropriate consents are obtained as required by, as applicable, PIPEDA, SBC 2003, c 63, Personal Information Protection Act, SA 2003, c P-6.5 or An Act respecting the Protection of Personal Information in the Private Sector, CQLR c P-39.1, as amended or supplemented from time to time, and any similar Canadian federal or provincial legislation now in force or that may in the future come into force governing the protection of personal employee information in the private sector.
  - (iii) ICE NGX has implemented and maintains security measures to protect Canadian Personal Data consistent with the requirements of PIPEDA.
  - (iv) The Contracting Party and Exchange will comply with all valid requests made by competent legal authorities.
  - (v) Upon request by Applicant, ICE NGX shall provide Applicant with the opportunity to retrieve the Canadian Personal Data.

### **3.8 Required Information and Required Notices to Exchange**

#### **a. Required Information –**

- (i) Annual Financial Statements – The Contracting Party will file with Exchange audited or, if audited are not available, unaudited consolidated financial statements for the fiscal year within 140 days of the end of the fiscal year to evidence that the Contracting Party continues to satisfy the Minimum Qualification Requirement.
- (ii) Interim Financial Statements – On request of Exchange, the Contracting Party will file with Exchange the Contracting Party's unaudited consolidated financial statements for each of the Contracting Party's 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 the Contracting Party.
- (iii) Periodic Contracting Party Information Update – On request of Exchange, the Contracting Party will provide Exchange with current information in respect of the Contracting Party's legal status, affiliations, operations and contact names and information, all in the form and timing required by Exchange.
- (iv) Further Information – The Contracting Party agrees to provide
  - (A) 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 ICE NGX Trading System or the ICE NGX Clearing System;

- (B) reasonable confirmation in respect of the representations and warranties provided by the Contracting Party under this Agreement, relating to the Contracting Party and the Credit Support Provider; and
    - (C) such further documentation or information as is required from time to time by Exchange, including but not limited to supporting documentation or information relating to tax matters.
  - (v) Further Inquires – The Contracting Party agrees to Exchange making such further investigations, inquiries or credit checks as Exchange may deem reasonably necessary and agrees to provide such documentation or information as is requested by Exchange in the conduct of such investigation or inquiry.
- b. Required Notices –
- (i) Material Adverse Change in Financial Condition – The Contracting Party agrees to notify Exchange of any material adverse change in the financial condition of the Contracting Party or the Credit Support Provider, and of any material change to any of the information provided to Exchange in the Application or pursuant to any inquiry by Exchange.
  - (ii) Minimum Qualification Requirements Not Met – The Contracting Party agrees to notify Exchange promptly upon becoming aware that the Contracting Party does not, or will not, satisfy the Minimum Qualification Requirements set out in this Agreement.
  - (iii) Prior Notice of Corporate Transaction or Name Change – Contracting Party will provide Exchange 30 days’ prior written notice of any name change, merger, amalgamation, division, consolidation or similar non-recurring transaction, arrangement or agreement, including any change in control, in respect of the Contracting Party or the Credit Support Provider. In connection with any such name change, merger, amalgamation, division, consolidation, or other non-recurring transaction, arrangement or agreement, Contracting Party will execute any further instruments and take further action as Exchange reasonably requests to perfect or continue Exchange’s first ranking Lien on the Collateral.
  - (iv) Notice of Event of Default – The Contracting Party is required to, and agrees to and acknowledges the requirement to, notify Exchange promptly upon
    - (A) the occurrence of any event listed in paragraph 5.7.a, in respect of the Contracting Party or any Credit Support Provider or any Specified Entity;
    - (B) becoming aware of an intention for a merger without assumption as described in Section 5.7, in respect of the Contracting Party or any Credit Support Provider.

## **ARTICLE 4 – GENERAL PRODUCT TERMS**

### **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 out in the ICE NGX Product List and Schedules F, G or J.
- b. Entering into Physically Settled Gas Futures Transactions –
  - (i) Each of Exchange and the Contracting Party, in respective capacity as the Buyer or Seller, as the case may be, agrees to be bound by any Physically Settled Gas Futures Transactions entered into by the Contracting Party in accordance with this Agreement, including through the ICE NGX Trading

System, executed on the ICE Trading Platform as an ICE Product, or entered as a Block Transaction or EFRP Transaction.

- (ii) The Contracting Party agrees to pay the Purchase Amount and any applicable taxes and take receipt of the Contract Quantity of gas or to take receipt of the Contract Quantity of gas as may be required pursuant to its Physically Settled Gas Futures Transactions.
  - (iii) Exchange agrees to pay the Purchase Amount and any applicable taxes and to deliver or cause to be delivered the Contract Quantity of gas or to take or cause to be taken the Contract Quantity of gas as may be required pursuant to any Physically Settled Gas Futures Transaction.
- c. Recourse Against Exchange – The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physically Settled Gas Futures Transaction is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set out 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 Gas Futures Transaction.
- d. Settlement of Invoice Amounts – All amounts payable by a Contracting Party under any Physically Settled Gas Futures Transaction are due and are payable and are to be settled pursuant to Article 7 and the terms of this Agreement.
- e. 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.
- f. Full Satisfaction – The obligations of the Exchange and Contracting Party under any Physically Settled Gas Futures Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

#### **4.2 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 out in the ICE NGX Product List and Schedule K.
- b. Entering into Physically Settled Power Futures Transactions –
  - (i) 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 Power Futures Transactions entered into by the Contracting Party in accordance with this Agreement, including through the ICE NGX Trading System, executed on the ICE Trading Platform as an ICE Forward Product, or entered as a Block Transaction or EFRP Transaction.
  - (ii) The Contracting Party agrees to pay the Purchase Amount and any applicable taxes and to deliver the Contract Quantity of Physical Power or to take receipt of the Contract Quantity of Physical Power as may be required pursuant to its Physically Settled Power Futures Transactions.
  - (iii) Exchange agrees to pay the Purchase Amount and any applicable taxes and to deliver or cause to be delivered the Contract Quantity of Physical Power or to take or cause to be taken the Contract Quantity of Physical Power as may be required pursuant to any Physically Settled Power Futures Transaction.

- c. Recourse Against Exchange – The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physically Settled Power Futures Transaction is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set out 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 Power Futures Transaction.
- d. Settlement of Invoice Amounts – All amounts payable by a Contracting Party under any Physically Settled Power Futures Transaction are due and are payable and are to be settled pursuant to Article 7 and the terms of this Agreement.
- e. 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.
- f. Full Satisfaction – The obligations of the Exchange and Contracting Party under any Physically Settled Power Futures Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

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

- a. Forms of Physically Settled Environmental Futures Products – The forms of Physically Settled Environmental Futures Products and a description of such Physically Settled Environmental Futures Products which may be made available by Exchange to the Contracting Party from time to time is set out in the ICE NGX Product List and Schedule H
- b. Entering into Physically Settled Environmental Futures Transactions –
  - (i) Each of Exchange and the Contracting Party, in its respective capacity as the Buyer or Seller, as the case may be, agrees to be bound by any Physically Settled Environmental Futures Transactions entered into by the Contracting Party in accordance with this Agreement, including through the ICE NGX Trading System, or entered as a Block Transaction or EFRP Transaction.
  - (ii) The Contracting Party agrees to pay the Purchase Amount and any applicable taxes and take receipt of the Contract Quantity of Environmental Products or to deliver the Contract Quantity of Environmental Products as may be required pursuant to its Physically Settled Environmental Futures Transactions.
  - (iii) Exchange agrees to pay the Purchase Amount and any applicable taxes and take receipt of the Contract Quantity of Environmental Products or to deliver or cause to be delivered the Contract Quantity of Environmental Products as may be required pursuant to any Physically Settled Environmental Futures Transaction.
- c. Recourse Against Exchange — The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physically Settled Environmental Futures Transactions is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set out 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 Environmental Futures Transaction.
- d. Settlement and Netting of Invoice Amounts – All amounts payable by a Contracting Party under any Physically Settled Environmental Futures Transaction are due and are payable and are to be settled pursuant to Article 7 and the terms of this Agreement.

- e. 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 Environmental Products or take or cause to be taken the Contract Quantity of Environmental Products at the relevant Registry in satisfaction of a Physically Settled Environmental Futures Transaction will be satisfied by the delivery or taking of the Contract Quantity of Environmental Products to or from Exchange, as the case may be, on a net basis in accordance with this Agreement.

#### **4.4 Financially Settled Futures Products – General**

- a. Forms of Financially Settled Futures Products – The forms of Financially Settled Futures Products and a description of such Products which may be made available by Exchange to the Contracting Party from time to time are set out in the ICE 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 ICE NGX Clearing System.
- b. Entering into Financially Settled Futures Transactions –
  - (i) Each of Exchange and the Contracting Party agrees to be bound by any Financially Settled Futures Transactions entered into by the Contracting Party in accordance with this Agreement, including through the ICE NGX Trading System, or entered as a Block Transaction or EFRP Transaction.
  - (ii) Each of Exchange and the Contracting Party agrees to pay the Financially Settled Futures Settlement Amount and, if applicable, MTM Settlement Amount as may be required pursuant to any Financially Settled Futures Transactions.
- c. Recourse Against Exchange – The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Financially Settled Futures Transaction 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.
- d. 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.
- e. Settlement of Invoice Amounts – All amounts payable by the Contracting Party or Exchange under any Financially Settled Futures Transaction are due and are payable and are to be settled pursuant to Article 7 and the terms of this Agreement.

#### **4.5 Option Products – General**

- a. Forms of Option Products – The forms of 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 out in the ICE NGX Product List and Schedule E;
- b. Entering into Option Transactions –
  - (i) Each of Exchange and the Contracting Party, each in its respective capacity as the Option Buyer or Option Seller, as the case may be, agrees to be bound by any Option Transaction entered into by the Contracting Party in accordance with this Agreement, including through the ICE NGX Trading System, or entered as a Block Transaction, EFRP Transaction, 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.



- (ii) The Option Buyer agrees to pay the Option Premium Amount as may be required pursuant to any such Option Transactions.
- c. Recourse Against Exchange – The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Option Transaction is against Exchange and agrees that in the event of an Exchange Default, the Contracting Party is entitled to all rights of law except as specifically limited by this Agreement.
- d. Performance of Option Transaction – 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 became effective, which Obligations will be fully performed upon the payment of all amounts by the respective parties to such Underlying Transactions.
- e. Settlement of Invoice Amounts – All amount payable by the Contracting Party or Exchange under any Option Transaction are due and are payable and are to be settled pursuant to Article 7 and the terms of this Agreement.

## **ARTICLE 5 – FAILURE, DEFAULT AND LIQUIDATION AND CLOSE-OUT PROCEDURES**

### **PART 5A – FAILURES**

#### **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 (II) scheduling to obtain a quantity of Physical Power, or (III) obtaining a quantity of Environmental Products, as applicable, equal to the Failure Quantity 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 applicable Transportation System, Transmission Provider or Registry as a result of such Failure to Deliver; (c) transportation, storage and other costs, if any, related to obtaining the Failure Quantity, and (d) in the case of a Failure to Schedule to Deliver, any additional Transmission Provider fees, charges, collateral calls or penalties; plus
  - (ii) interest from the date of the occurrence of the Failure to Deliver at the Default Rate to and including the date of payment to Exchange of all such amounts; plus
  - (iii) liquidated damages of:
    - (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 Physically Settled Power Futures Transactions and Physically Settled Environmental 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.

- b. Invoicing for Damages – Exchange will enter trade adjustments into the ICE NGX Clearing System for the account of the Seller to reflect any amounts owing to or owed by Setter under paragraph 5.1.a. Exchange will use best efforts to enter such trade adjustments prior to the date the applicable Invoice is locked for payment in accordance with subsection 7.1.c.
- c. Exchange as Pass-through for Damages – Notwithstanding any other provision of this Agreement, Exchange reserves the right to pass on to the Contracting Party any direct damages passed to Exchange under this Section 5.1 that directly result from a failure by the Contracting Party to perform its obligations to make delivery of natural gas in a timely manner as set out in this Agreement, even if the Contracting Party eventually made full delivery of the Contract Quantity to be delivered under a Physically Settled Gas Futures Transaction.
- d. 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 (II) scheduling to obtain a quantity of Physical Power, or (III) obtaining a quantity of Environmental Products, as applicable, equal to the Failure Quantity over that portion of the Purchase Amount that would have been payable with respect to the Failure Quantity, (b) the costs or charges, if any, levied by the applicable Transportation System, Transmission Provider or Registry, as a result of such Failure to Deliver, (c) transportation, transmission, storage and other costs, if any, related to obtaining the Failure Quantity, (d) in the case of Physical Power, any additional Transmission Provider fees, charges, collateral calls or penalties; plus
  - (ii) interest from the date of the occurrence of the Failure to Deliver at the Default Rate to and including the date of payment to the Buyer of all such amounts.
- e. Providing Quantum of Damages –
  - (i) On or before the 5<sup>th</sup> calendar day of the month following the delivery month, Buyer will provide to Exchange, in a manner acceptable to Exchange, the amounts payable by Exchange under paragraph 5.1.d (i) and (ii), including an explanation thereof, in respect of the Physically Settled Futures Transaction which is the subject of the Failure to Deliver.
  - (ii) Notwithstanding section 5.1.d and paragraph 5.1.e (i), if the Failure to Deliver relates to a Physically Settled Gas Futures Transaction with a U.S. Delivery Point and Buyer does not deliver the information described in paragraph 5.1.e (i) within the required time, Exchange will enter trade adjustments into the ICE NGX Clearing System reflecting, for the account of the Buyer as full satisfaction of any amounts owing to Buyer as a result of the Failure to Deliver,
    - (A) the Gas Daily Absolute High price at the applicable delivery point on the applicable gas day for the Failure Quantity, or
    - (B) if the Gas Daily Absolute High price at the applicable delivery point on the applicable gas day is equal to or greater than the Gas Daily Midpoint price plus 50% at the applicable delivery point on the applicable gas day, the amount that is equal to the Gas Daily Midpoint price plus 50% at the applicable delivery point on the applicable day for the Failure Quantity.

- (iii) Exchange will use best efforts to enter such trade adjustments prior to the date the applicable Invoice is locked for payment in accordance with subsection 7.1.c.

## **5.2 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, equal to the Failure Quantity; (c) the costs or charges levied by the Transportation System, Transmission Provider or Registry, as a result of such Failure to Take; (d) transportation, transmission, storage and other costs, if any, related to the Failure to Take the Failure Quantity; and (e) in the case of Physical Power, any additional Transmission Provider fees, charges or penalties (including any collateral calls); plus
  - (ii) interest from the date of the occurrence of the Failure to Take at the Default Rate to and including the date of payment to Exchange of all such amounts; plus
  - (iii) liquidated damages of:
    - (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 Physically Settled Power Futures Transactions and Physically Settled Environmental 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.
- b. Invoicing for Damages – Exchange will enter trade adjustments into the ICE NGX Clearing System for the account of the Buyer to reflect any amounts owing to or owed by Buyer under paragraph 5.3.a. Exchange will use best efforts to enter such trade adjustments prior to the date the applicable Invoice is locked for payment in accordance with subsection 7.1.c.
- c. Exchange as Pass-through for Damages – Notwithstanding any other provision of this Agreement, Exchange reserves the right to pass on to the Contracting Party any direct damages passed to Exchange under this Section 5.2 that directly result from a failure by the Contracting Party to perform its obligations to take delivery of natural gas in a timely manner as set out in this Agreement, even if the Contracting Party eventually took full delivery of the Contract Quantity to be delivered under a Physically Settled Gas Futures Transaction.
- d. 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, equal to the Failure Quantity, (c) the costs or charges levied by the Transportation System, Transmission Provider or Registry, as a result of such Failure to Take, and (d) transportation, transmission, storage and other costs, if any, related to the Failure to Take the Failure Quantity; plus

- (ii) interest from the date of the occurrence of the Failure to Take at the Default Rate to and including the date of payment to the Seller of all such amounts.

e. Providing Quantum of Damages –

- (i) On or before the 5<sup>th</sup> calendar day of the month following the delivery month, Seller will provide to Exchange, in a manner acceptable to Exchange, the amounts payable by Exchange under paragraph 5.2.d.(i) and (ii), including an explanation thereof, in respect of the Physically Settled Futures Transaction which is the subject of the Failure to Take.
- (ii) Notwithstanding section 5.2.d. and paragraph 5.2.e.(i), if the Failure to Take relates to a Physically Settled Gas Futures Transaction with a U.S. Delivery Point and Seller does not deliver the information described in paragraph 5.2.e.(i) within the required time, Exchange will enter trade adjustments into the ICE NGX Clearing System reflecting, for the account of the Seller as full satisfaction of any amounts owing to Seller as a result of the Failure to Take,
  - (A) the Gas Daily Absolute Low price at the applicable delivery point on the applicable gas day for the Failure Quantity, or
  - (B) if the Gas Daily Absolute Low price at the applicable delivery point on the applicable gas day is equal to or lesser than the Gas Daily Midpoint price minus 50% at the applicable delivery point on the applicable gas day, the amount that is equal to the Gas Daily Midpoint price minus 50% at the applicable delivery point on the applicable day for the Failure Quantity.
- (iii) Exchange will use best efforts to enter such trade adjustments prior to the date the applicable Invoice is locked for payment in accordance with subsection 7.1.c.

### 5.3 Backstopping Transactions

- a. Backstopping – Upon Exchange becoming aware of a Failure to Deliver or a Failure to Take by a Contracting Party under a Physically Settled Gas Futures Transaction at Evening Cycle or later, or upon receiving advance notification of an impending Failure to Deliver or Failure to Take at Timely Cycle, Exchange may, acting in a commercially reasonable manner and in accordance with Schedule F, G or J, as applicable, determine to offset or replace, in a whole or in part, the respective performance obligations under the Physically Settled Gas Futures Transactions that the Contracting Party failed upon (any transaction resulting therefrom, a “Backstopping Transaction”), in such manner and on such terms as may be then available to Exchange.
- b. Trade Adjustments to be Entered on Invoice – Exchange will enter trade adjustments in the ICE NGX Clearing System for the account of the failing Contracting Party to reflect any such Backstopping Transaction. Exchange will use best efforts to enter such trade adjustments prior to the date the applicable Invoice is locked for payment in accordance with subsection 7.1.c.

### 5.4 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) liquidated damages of \$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 if Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages.
- b. By Exchange – In the event of a Failure to Pay by Exchange that is (a) not rectified by Exchange within three (3) Business Days of receipt by Exchange from a Contracting Party of a notice of Failure to Pay by Exchange, and (b) 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 Contracting Party 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 Contracting Party of all such amounts.

The Contracting Party will notify Exchange in writing of the amounts payable under (i) and (ii), itemizing those amounts separately.

For greater certainty, no interest will be payable by Exchange to the Contracting Party in respect of any late payment by Exchange to Contracting Party of an Invoice resulting from a failure by the Contracting Party to notify Exchange of its current banking instructions no less than five (5) Business Days prior to the applicable Settlement Date.

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

- a. Exchange Authority – 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 Article 5 or elsewhere under this Agreement.

## **PART 5B – CONTRACTING PARTY DEFAULT AND EVENT OF DEFAULT**

### **5.6 Contracting Party Default**

- a. Default Automatic – A Contracting Party is in Default upon the occurrence or continuation of any of the events referred to in the definition of “Default”.
- b. Exchange Authority to Act – On the occurrence, continuation or upon Exchange becoming aware, of a Default by a Contracting Party, Exchange may, in its sole discretion, take any or any combination of the following actions, with or without prior notice to the Contracting Party and, if prior notice is not given, Exchange will endeavour to promptly notify the Contracting Party after taking any such action:
  - (i) in accordance with Schedule C, request an additional amount of Eligible Collateral Support from the Defaulting Party, which the Defaulting Party is required to provide in accordance with this Agreement including Schedule C;
  - (ii) decline to enter into any Transactions with the Defaulting Party;
  - (iii) limit or restrict the Defaulting Party's trading permissions in one or more products;
  - (iv) with respect to Physically Settled Gas Futures Transactions,

- (A) cancel or amend any schedules or nominations to deliver or take gas from the Defaulting Party with the applicable Transportation System;
  - (B) declare a Failure to Deliver or Failure to Take, as applicable, by the Defaulting Party in respect of such delivery or take Obligations; and
  - (C) enter into Backstopping Transactions in respect of such delivery or take Obligations;
- (iii) with respect to Physically Settled Power Futures Transactions,
  - (D) cancel or amend any schedules to deliver or take Physical Power from the Defaulting Party in the system of the applicable Transmission Provider;
  - (E) declare a Failure to Delivery or Failure to Take, as applicable, by the Defaulting Party in respect of such delivery or take Obligations; and
- (v) with respect to Physically Settled Environmental Futures Transactions,
  - (A) cancel, decline or amend any title transfers submitted to the applicable Registry to deliver or take Environmental Products Power to or from the Defaulting Party; and
  - (B) declare a Failure to Delivery or Failure to Take, as applicable, by the Defaulting Party in respect of such delivery or take Obligations;
- (vi) if the Default is the result of a Failure to Provide Eligible Collateral Support, withhold payments due from Exchange to the Defaulting Party under this Agreement as if paid or provided to Exchange as Collateral, up to the amount of the request for Eligible Collateral Support;
- (vii) in accordance with Article 6, suspend a Contracting Party for a period, which may be in excess of the period during which the Defaulting Party is in Default; and
- (viii) if applicable, impose a Summary Sanction in accordance with Article 6.

## 5.7 Contracting Party Event of Default

- a. Automatic Event of Default – An Event of Default occurs automatically in respect of a Contracting Party upon the occurrence or continuation of any of the following, and no declaration of Event of Default is required to be made by Exchange for the Event of Default to occur and no notification to the Contracting Party in respect of the Event of Default is required to be made to the Contracting Party.
  - (i) 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; (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; (8) causes or is subject to any event that, 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 (10) in the case of a bank, trust and loan company, credit union, treasury branch, caisse populaire or similar entity, (i) is taken control of, under the relevant applicable legislation, by a regulator, supervisor or any similar official with primary prudential oversight over it; (ii) is the subject of an order for the winding up of the entity or the resolution of the entity, which may include any of (A) vesting the shares or debt of the entity in a regulatory or supervisory body, (B) appointing a receiver in respect of the entity, (C) its deposit liabilities are assumed by a bridge institution, or (D) converting the shares or debt of the entity; (iv) causes or is subject to any event that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive) or clause 10 takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

- b. Exchange may Declare Event of Default – Exchange may declare an Event of Default in respect of the Contracting Party on the occurrence or continuation of any of the following events:
- (i) Default by Contracting Party or Contracting Party Affiliate – A Default by or in respect of the Contracting Party or a Default or Event of Default in respect of any Contracting Party Affiliate of the Contracting Party;
  - (ii) Credit Support Default –
    - (A) 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
    - (B) 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;
  - (iii) 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;
  - (iv) 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:
    - (A) 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

- (B) 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, and
  - (v) Cross-Default – An event of default is declared in respect of the Contracting Party, any affiliate of the Contracting Party or any Credit Support Provider of the Contracting Party, at any other clearinghouse as “event of default” is defined in the respective rulebook of the other clearinghouse.
- c. Communication of Event of Default –
- (i) Notwithstanding that no notification of Event of Default is required to be made to the Contracting Party in respect of an automatic Event of Default pursuant to Section 5.7.a, Exchange will make best efforts to inform the Contracting Party after Exchange becomes aware that an automatic Event of Default has occurred.
  - (ii) As soon as practicable after declaring an Event of a Default in respect of a Contracting Party in accordance with Section 5.7.b, Exchange will notify the Defaulting Party. For greater certainty, no notice is required where an Event of Default exists for the Defaulting Party under Section 5.7.a.
  - (iii) Exchange will notify each applicable regulatory authority as required under applicable Regulations.
  - (iv) Exchange will publish a notice on Exchange’s website that an Event of Default has been declared in respect of the Contracting Party, as required under applicable Regulations.
- Failure by Exchange to satisfy any of the foregoing clauses (i) through (iv) shall not affect the occurrence or existence of any Event of Default, and Exchange shall not be required to satisfy any such clause if prohibited from doing so by applicable law.
- d. Exchange Authority to Act – On the declaration or occurrence or at any time during the existence of an Event of Default in respect of a Contracting Party, and 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, Exchange may, in its sole discretion and in addition to any rights or remedies under 5.6.b. and elsewhere in this Agreement or at law, equity or otherwise, without limitation:
- (i) pursuant to Section 3.3 and Schedule C, request an additional amount of Eligible Collateral Support from the Defaulting Party, which the Defaulting Party is required to provide in accordance with this Agreement including Schedule C;
  - (ii) demand payment under or in respect of, sell, realize upon, use or drawdown the Defaulting Party's Collateral and apply such Collateral to the Defaulting Party's Obligations;
  - (iii) pursuant to Article 6, suspend a Contracting Party for a period, which may be in excess of the period during which the Event of Default continues in respect of the Defaulting Party;
  - (iv) accelerate or declare immediately due and payable any unpaid Invoice;
  - (v) accelerate or declare immediately payable or to be performed any Obligations in respect of any Transaction, including by issuing an Invoice, payable in cash only within two business days of receipt by the Defaulting Party, in respect of
    - (A) any amounts for gas delivered;
    - (B) any amounts of Physical Power scheduled for delivery, (which Invoiced amount may include an excess amount to be held pending receipt of final invoices from the Transmission Provider);



- (C) any Environmental Products for which title transfer has been submitted to the applicable Registry;
- (D) any unsatisfied Revocation Obligations;
- (vi) withhold payments due from Exchange to the Defaulting Party under this Agreement as if paid or provided to Exchange as Collateral;
- (vii) with respect to the Defaulting Party's Transactions,
- (viii) terminate any Transaction;
- (A) Net or Set-Off the Defaulting Party's offsetting positions;
- (B) invoke the Liquidation and Close-out Procedures; and
- (ix) terminate this Agreement by notice to the Defaulting Party to be effective upon the date of receipt or deemed receipt, 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 including, for greater certainty, in respect of any applicable Seller's Warranty under Schedule H.

## **5.8 Liquidation and Close-out Procedures**

- a. Liquidation and Close-out Procedures – Exchange may, in its sole discretion, enter into Transactions, on or off Exchange and in such manner and on such terms as may be then available to Exchange to
  - (i) liquidate the Defaulting Party's Obligations under any Transactions that Exchange has determined to liquidate (each resulting Transaction a “Liquidation Transaction”); and
  - (ii) Net or Set-Off in whole or in part, the Defaulting Party's Obligations under any Transactions that Exchange has determined to close-out (each resulting Transaction a “Close-out Transaction”).
- b. Effect of Liquidation Transactions and Close-Out Transactions – Upon Exchange entering into a Liquidation Transaction or Close-out Transaction, the Defaulting Party's Obligations under the Transactions (the “Offset Transactions”) that were Netted or Set-Off, in whole or in part, by the Liquidation Transactions or Close-out Transactions will be deemed terminated and Exchange will assume all of the rights of the Defaulting Party under the Offset Transactions.
- c. Deemed Performance – The Defaulting Party will be deemed to have performed its payment and performance Obligations, as applicable, under all Liquidation Transactions and Close-out Transactions only if and to the extent Exchange determines that the applicable amounts have been irrevocably allocated to the Defaulting Party's account and under that portion or all of the Offset Transactions only if and to the extent Exchange determines that the applicable amounts have been irrevocably Netted or Set-Off by such Liquidation Transactions or Close-out Transactions. No such deemed performance shall apply, and any such deemed performance shall be automatically void, in the event any such allocation or Netting or Set-Off is appealed, stayed, reversed, negated, voided or modified in any respect.
- d. For the Risk and Account of the Defaulting Party – Any Liquidation Transactions or Close-out Transactions entered into in accordance with this Article 5 will be allocated to the Defaulting Party's account.
- e. Exchange Not Liable – Neither the Defaulting Party nor any other person shall have any claim or right against Exchange regarding Exchange's determination to, or not to, liquidate or close-out any of the Defaulting Party's Transactions, nor regarding the timing of any liquidation or close-out nor the manner in which or the price at which Transactions have been liquidated or closed-out pursuant to this Article 5.

- f. Liquidation and Close-out Transaction Fees – All Transaction Fees relating to
- (i) any Close-out Transactions are the responsibility of the Defaulting Party;
  - (ii) any Liquidation Transaction, including any assignment and novation or transfer of the Defaulting Party's Transactions from the Defaulting Party to a non-defaulting Contracting Party in accordance with the Liquidation and Close-out Procedures including the Default Auction Procedures, are the responsibility of the Defaulting Party; and
  - (iii) accepting or receiving the Defaulting Party's Transactions, including any assignment and novation or transfer of the Defaulting Party's Transactions in accordance with the Liquidation and Close-out Procedures including the Default Auction Procedures, are the responsibility of the non-defaulting Contracting Party.

## **5.9 Default Auction Procedures**

- a. Default Auction – Exchange may determine to liquidate some or all of the Defaulting Party's Transactions pursuant to one or more auctions (each a "Default Auction").
- b. Exchange Discretion over Default Auction Form and Participation – If Exchange determined to conduct a Default Auction in respect of some or all of the Defaulting Party's positions, Exchange may determine, acting reasonably in the circumstances,
- (i) the manner, form and conduct of the Default Auction, and
  - (ii) which and how many Contracting Parties may be invited to participate in the Default Auction.
- c. Participation and Procedures –
- (i) Participation in a Default Auction by any Contracting Party is voluntary.
  - (ii) Prior to commencement of a Default Auction, Exchange will provide each participant (each a "Default Auction Participation") with information (the "Auction Specifications") about the conduct of the Default Auction and the portfolio(s) to be auctioned.
  - (iii) Bids can only be submitted in a Default Auction during the time period specified by Exchange, beginning at the "Bidding Open Time" and expiring at the "Bidding Close Time" each as set out in the Auction Specifications for the Default Auction. Exchange may, in its sole discretion, postpone or extend the bidding period by giving notice of such postponement or extension including the new Bidding Open Time and Bidding Close Time, as applicable, to all Default Auction Participants, and the terms "Bidding Open Time" and "Bidding Close Time" shall be construed accordingly. At the Bidding Close Time, each bid submitted and not withdrawn is a binding offer from the bidder for the positions and at the price specified in the bid.
  - (iv) Exchange, in its sole discretion, may determine to accept a Bid for some or all of the Defaulting Party's positions.
  - (v) Exchange will notify the winning Bidder(s) that its bid has been accepted, and will promptly transfer such positions from the account of the Defaulting Party to the account of the winning Bidder(s) in Exchange's systems or books and records.
- d. Exchange Not Liable – Exchange will not be liable to any person for any recompense or damages if a Bidder's bid is accepted or is not accepted for some or all of the positions specified in the bid.

- e. Confidentiality – All matters relating to a Default Auction, including the following, are confidential and non-public information subject to the confidentiality provisions in this Agreement:
- (i) the fact of the Default Auction and that Exchange is seeking bids as part of a Default Auction;
  - (ii) participation, including whether the Contracting Party is invited to participate and accepts or declines to participate;
  - (iii) the Transaction for which a bid is requested, and any verbal or written discussions between Exchange and the Contracting Party regarding a Default Auction or the relevant Transactions; and
  - (iv) any bid submitted in a Default Auction including whether the Contracting Party submitted a bid, and whether or not the Contracting Party's bid is accepted.

#### **5.10 Final Close-out Netting or Set-Off**

- a. Determining a Net Settlement Amount –

- (i) In the event Exchange determines a single net settlement amount payable by or to the Defaulting Party, Exchange will Net or Set-Off
  - (A) any and all amounts that are owed or deemed to be owed by the Defaulting Party to Exchange under this Agreement including any unpaid Invoice and under any Transaction but not including any Unsatisfied Revocation Obligations,  
  
against
  - (B) any and all amounts that are owed by Exchange to the Defaulting Party under this Agreement plus the value of the Defaulting Party's Eligible Collateral Support that Exchange was able to realize on or drawn down, using commercially reasonable efforts.
- (ii) If the net settlement amount calculated under paragraph 5.10.a.(i) is payable by the Defaulting Party to Exchange, Exchange will make available a Final Invoice to the Defaulting Party for that net settlement amount in accordance with Section 5.11. For the avoidance of doubt, failure by Exchange to make a Final Invoice available does not affect the validity of the obligations of the Defaulting Party to Exchange.
- (iii) To the extent that the net settlement amount calculated under paragraph 5.10.a.(i) is payable by Exchange to the Defaulting Party, Exchange will further Net or Set-Off that amount against any then-outstanding Unsatisfied Revocation Obligations of the Defaulting Contracting Party under Physically Settled Environmental Products. If the residual amount following this Netting or Set-Off is payable
  - (A) by the Defaulting Party to Exchange, Exchange will issue a Final Invoice to the Defaulting Party for the residual amount in accordance with Section 5.11; and
  - (B) by Exchange to the Defaulting Party, Exchange will pay the residual amount in accordance with Section 5.11.
- (iv) Liquidated Damages – 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.

- (v) **Currency Conversion** – For the purpose of determining a net settlement amount, the rate used for converting any sum into Canadian dollars or U.S. dollars, as applicable, shall be the actual rate Exchange obtained from Exchange's Principal Banker when converting such sum into Canadian dollars or U.S. dollars, as applicable.

#### **5.11 Final Invoice**

- a. **Final Invoice** – Exchange will forthwith make available to the Defaulting Party an Invoice (“Final Invoice”) reflecting the net settlement amount due to or from the Defaulting Party. Any Netting or Set-Off in any Final Invoice shall be automatically effective as of the date of the Final Invoice, without regard to whether the Final Invoice was made available, and, for the avoidance of doubt, failure by Exchange make a Final Invoice available does not affect the validity of the obligations of the Defaulting Party to Exchange.
- b. **Net Settlement Amount Owning by Defaulting Party** – If the net settlement amount is owing from the Defaulting Party to Exchange, the net settlement amount is payable within two Business Days from the date the Final Invoice was made available.
- c. **Net Settlement Amount Owning by Exchange** – If the settlement amount is owing from Exchange to the Defaulting Party and is not subject to challenge or dispute, the net settlement amount is payable on the next applicable settlement date after the Final Invoice was made available.
- d. **Return of Remaining Eligible Collateral Support** – If the net settlement amount is owing from Exchange to the Defaulting Party and is not subject to challenge or dispute, Exchange will return any remaining Eligible Collateral Support to the Defaulting Party in accordance with Schedule C.
- e. **Full Satisfaction** – The payment or receipt by the Contracting Party of the Final Invoice amount to or from Exchange, incorporating any applicable Netting or Set-Off, will constitute full satisfaction of the net settlement amount in respect of the Obligations payable to or receivable by the Defaulting Party and Exchange, other than in respect of any applicable Seller's Warranty.
- f. **Assigned Delivery Adjustments** – Notwithstanding paragraph e., if Exchange receives a notice of adjustment from the Defaulting Party or the applicable delivery counterparty within the timeframe specified in Schedule J indicating that the volume or quantity contracted for under a Physically Settled Gas Futures Transaction at a U.S. Delivery Point with Assigned Delivery was not performed, Exchange will issue an adjusted Final Invoice, payable on the terms set out in the adjusted Final Invoice.
- g. **Contingent Revocation Obligations** – Notwithstanding paragraphs c., d. and e., Exchange may withhold payment of a net settlement amount owing to the Defaulting Party or withhold the return of remaining Eligible Collateral Support to the Defaulting Party if Exchange has reasonable belief of an impending Revocation of Environmental Products for which the Defaulting Party is the Warranting Seller.

### **PART 5C – EXCHANGE DEFAULT**

#### **5.12 Exchange Bankruptcy Event of Default**

- a. **Exchange Bankruptcy** – An Exchange Bankruptcy Event of Default will be deemed to occur on the occurrence and continuation of any of the following events:
  - (i) 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 WURA;
  - (ii) the making by Exchange of any assignment for the general benefit of creditors including, without limitation, any assignment made pursuant to the BIA;

- (iii) 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;
  - (iv) the filing by Exchange of a proposal or a notice of intention to make a proposal under the BIA;
  - (v) 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.
- b. Limitation – Notwithstanding the above, if any of the proceedings referred to in paragraph 5.12.a.(i), the appointment referred to in 5.12.a.(iii) or an order referred to in 1.1 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 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.

### **5.13 Deposit Agreement**

- a. Failure to Pay by Contracting Party –
- (i) In the event of a Failure to Pay by a Contracting Party, Exchange may immediately file with the Escrow Agent a Direction to Pay Same-Day pursuant to, and as defined in, the Deposit Agreement, for the sole purpose of satisfying one or more Invoices owing by Exchange to one or more Contracting Parties that would otherwise be subject to a Failure to Pay by Exchange.
  - (ii) Upon verification of the Direction to Pay Same-Day, the Escrow Agent will forthwith provide sufficient proceeds from the Exchange Letter of Credit to Exchange, and Exchange will forthwith use such proceeds solely to satisfy the Invoice(s) that would otherwise be subject to a Failure to Pay by Exchange.
  - (iii) Exchange will promptly disclose, through notice posted to Exchange's website, that a Direction to Pay Same-Day was processed by the Escrow Agent.
- b. Failure to Pay by Exchange – In the event of a Failure to Pay by Exchange that is not rectified by Exchange within three (3) Business Days from receipt by Exchange of a notice of an Exchange Failure to Pay, Exchange shall immediately file with the Escrow Agent a Direction to Pay pursuant to, and as defined in, the Deposit Agreement and shall notify the Contracting Party Payee(s) (as defined in the Deposit Agreement) that the Direction to Pay has been filed.
- c. Contracting Party's Demand – In the event of a Failure to Pay by Exchange that is not rectified by Exchange within (5) Business Days from receipt by Exchange of a notice of Exchange Failure to Pay, each Contracting Party that is the subject of the Exchange Failure to Pay may file with the Escrow Agent a Contracting Party's Demand pursuant to, and as defined in, the Deposit Agreement .
- d. Exchange Notice Not To Pay – In the event that the Contracting Party files with the Escrow Agent a Contracting Party's Demand, Exchange may file with the Escrow Agent a Notice Not To Pay pursuant to, and as defined in, the Deposit Agreement, certifying that:
- (i) Exchange has already filed with the Escrow Agent a Direction to Pay in respect of the Exchange Failure to Pay;

- (ii) five (5) Business Days have not elapsed from receipt by Exchange of the notice of Exchange Failure to Pay which forms the basis for the Contracting Party's Demand;
  - (iii) either the Contracting Party or Exchange has initiated Mediation in respect of a dispute, controversy, difference or question relating to the Exchange Failure to Pay, and
    - (A) twenty (20) days have not expired from the date of initiation of such Mediation; or
    - (B) the resolution of the Mediation has resulted in the amount owing to the Contracting Party being lower than the amount specified in the Contracting Party's Demand;
  - (iv) either the Contracting Party or Exchange has initiated Arbitration in respect of a dispute, controversy, difference or question relating to the Exchange Failure to Pay, and
    - (A) the Arbitrator or the Arbitral Tribunal, as the case may be, has not issued a decision in respect of such matter; or
    - (B) the decision of the Arbitrator or Arbitral Tribunal, as the case may be, has resulted in the amount owing to the Contracting Party being lower than the amount specified in the Contracting Party's Demand; or
  - (v) the amount owing to the Contracting Party in respect of the Contracting Party's Demand has been satisfied.
- e. Contracting Party May Re-File – In the event that Exchange files with the Escrow Agent the Notice Not To Pay, the Contracting Party may refile the Contracting Party's Demand with the Escrow Agent, with:
  - (i) a statement indicating that five (5) Business Days have elapsed from receipt by Exchange of the notice of Exchange Failure to Pay which forms the basis for the Contracting Party's Demand;
  - (ii) if Mediation has been initiated, a statement from the mediator twenty (20) days have elapsed from the date of initiation of the Mediation or a joint direction from the Contracting Party and Exchange as to the resolution of the Mediation; or
  - (iii) if Arbitration has been initiated, a statement from the Arbitrator or the Arbitral Tribunal, as the case may be, as to the decision in respect of the matter.
- f. Concurrent Outstanding Demands – In the event the Escrow Agent has received a Direction to Pay Same-Day, Direction to Pay or Contracting Party's Demand pursuant to which payment has not yet been made in accordance with the Deposit Agreement (each an "Outstanding Demand"), and the Escrow Agent receives one or more additional Directions to Pay Same-Day, Directions to Pay or Contracting Party's Demands (each an "Additional Demand") (together, the Outstanding Demands and Additional Demands, "Demands") and the aggregate amount of the Demands exceeds the amount then available for drawdown under the ICE NGX Letter of Credit, in accordance with the Deposit Agreement.
  - (i) The Escrow Agent shall not make payment on a Demand until the processes described in paragraphs (ii) and (iii) have been determined and/or completed.
  - (ii) The Escrow Agent will notify the Contracting Party Payee under each Demand of the aggregate amount of all such Demands.
  - (iii) The amounts payable to each such Contracting Party under the Demands shall be made as follows:
    - (A) The amounts payable under all Demands received within five (5) Business Days from the date the Escrow Agent received the first Outstanding Demand (the "First Outstanding

Demand”) will be prorated as a proportion of the total of all Demands received by the Escrow Agent with that five (5) Business Day period; and

- (B) If, the following the preceding step, an amount remains available for drawdown under the ICE NGX Letter of Credit, the amounts payable under all Demands received between six (6) and thirty (30) Business Days from the date the Escrow Agent received the First Outstanding Demand will be prorated as a proportion of the total of all Demands received within the six (6) to thirty (30) Business Day period.

- g. Escrow Agent Undertaking – Exchange will provide the Escrow Agent with the Contracting Party’s name and will provide the Contracting Party with an executed copy of the Escrow Agent’s Undertaking to the Contracting Party in respect of the Deposit Agreement.
- h. Deposit Agreement Prevails – 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.

#### **5.14 Procedures Upon an Unremedied Exchange Default or Exchange Bankruptcy Event of Default**

- a. Early Termination – In the event that there occurs and is continuing an Unremedied Exchange Default or Exchange Bankruptcy Event of Default, the Contracting Party, in addition to any remedies it may have at law or in equity or otherwise under this Agreement or under any Transaction, may give notice in writing to Exchange of termination of this Agreement (the date of such notice being the “Early Termination Notice Date”), designating a day no earlier than five (5) days following the Early Termination Notice Date and no later than sixty (60) days after becoming aware of such Unremedied Exchange Default or Exchange Bankruptcy Event of Default, as an early termination date (the “Early Termination Date”). On the Early Termination Date, all of the Contracting Party’s outstanding Transactions (collectively the “Terminated Transactions”) will be terminated.
- b. Procedures Upon Early Termination – If the Terminated Transactions are terminated by the Contracting Party pursuant to this Section, Exchange will 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 the Contracting Party, 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 the Contracting Party, if any, resulting from the termination of the Terminated Transactions (the “Losses”).
- c. Determination of Gains and Losses in Terminated Transactions – 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 Gas Futures Transactions, Financially 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 ICE NGX Trading System;
  - (ii) with respect to Terminated Transactions that are Physically Settled Power Futures Transactions, have traded the highest overall volume of Physically Settled Power Futures Products on the relevant Transmission Provider listed on the ICE NGX Trading System;

- (iii) with respect to Terminated Transactions that are Physically Settled Environmental Futures Transactions, have traded the highest overall volume of Physically Settled Environmental Futures Products from the same jurisdiction as the underlying Environmental Product for the Terminated Transactions listed on the ICE NGX Trading System; or
- (iv) with respect to Terminated Transactions that are Financially Settled Power Futures Transactions, have traded the highest overall volume of Financially Settled Power Futures Products on the relevant Transmission Provider listed on the ICE NGX Trading System,

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

d. Net Termination Amount –

- (i) 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 and Net or Set-Off all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under the Agreement and all Obligations owed by the Contracting Party to Exchange under the Agreement to reduce all such amounts to a single net amount (the “Net Termination Amount”) and notify the Contracting Party in writing of the Net Termination Amount owed to or owing by the Contracting Party (the “Early Termination Notice”).
- (ii) To the extent that the Net Termination Amount is payable to the Contracting Party 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 Early Termination Notice regarding such calculation.
- (iii) To the extent that the Net Termination Amount is payable to Exchange by the Contracting Party, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Early Termination Notice.

e. Right of Contracting Party to Determine Net Termination Amount –

- (i) In the event that Exchange has not provided an Early Termination Notice to the Contracting Party within five (5) days following the Early Termination Date, the Contracting Party shall have the right to
  - (A) 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; and
  - (B) aggregate and Net or Set-Off all Gains and Losses along with all other Obligations owing by Exchange to the Contracting Party under the Agreement and all Obligations owing by the Contracting Party to Exchange under the Agreement to reduce all such amounts to a single Net Termination Amount and notify Exchange in writing of the Net Termination



Amount owing to or owing by the Contracting Party, which written notice will constitute the applicable “Early Termination Notice”.

- (ii) The payments terms set out in section 5.14(d)(ii) or (iii), as applicable, will apply with reference to the date the Contracting Party notifies Exchange of the Net Termination Amount.

For greater certainty, the Net or Set-Off of all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party or by the Contracting Party to Exchange under this Agreement shall be deemed to be equivalent to a single master netting agreement.

- f. **Currency and Payment of Net Termination Amount** – Any and all payments under this Section shall be made by wire payment in Canadian dollars or U.S. dollars as determined by Exchange. If the Contracting Party determines the Net Termination Amount and Exchange does not determine the currency of payment within one (1) Business Day of receipt of the Early Termination Notice, the Contracting Party may determine the currency of payment of the Net Termination Amount. For greater certainty, any correspondent or intermediary bank fees relating to payments under this Section are the responsibility of the Contracting Party. Any amount which is not paid when due under this Section 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.
- g. **Section 5.14 Termination Rights Prevail** – A Contracting Party’s rights under this Section supersede its right to voluntarily terminate this Agreement in accordance with Article 1. For greater certainty, an affected Contracting Party may not exercise its voluntary right under Article 1 to terminate this Agreement if an Exchange Failure to Pay has occurred which, with the giving of notice or the lapse of time or both, would constitute an Unremedied Exchange Default or Exchange Bankruptcy Event of Default.
- h. **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 shall apply thereto *mutatis mutandis*.

## **5.15 Interpretation in relation to the (“FDICIA”)**

- a. **Interpretation** – The Exchange intends that certain provisions of Section 5.14 be interpreted in relation to certain terms (identified by quotation marks) that are defined in FDICIA, as follows.
  - (i) The Exchange is a “clearing organization.”
  - (ii) An obligation of a Contracting Party to make a payment to the Exchange, or of the Exchange to make a payment to a Contracting Party, subject to a netting contract, is a “covered clearing obligation” and a “covered contractual payment obligation.”
  - (iii) An entitlement of a Contracting Party to receive a payment from the Exchange, or of the Exchange to receive a payment from a Contracting Party, subject to a netting contract, is a “covered contractual payment entitlement.”
  - (iv) The Exchange is a “member,” and each Contracting Party is a “member.”

- (v) The amount by which the covered contractual payment entitlements of a Contracting Party or the Exchange exceed the covered contractual payment obligations of such Contracting Party or the Exchange after netting under a netting contract is its “net entitlement.”
- (vi) The amount by which the covered contractual payment obligations of a Contracting Party or the Exchange exceed the covered contractual payment entitlements of such Contracting Party or the Exchange after netting under a netting contract is its “net obligation.”
- (vii) This Agreement, including Section 5.14, is a “netting contract.”

## **PART 5D – GENERAL**

### **5.16 No Indirect Damages**

- a. No Indirect Damages – Without limitation to any other provision in this Agreement, and other than as specifically set out forth in this Agreement, in no event shall Exchange or any Contracting Party 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 any Contracting Party's suppliers or customers against the Exchange or any Contracting Party arising out of any Failure to Deliver, Failure to Take or Failure to Pay or any other matter for which liability may be assessed under this Agreement in respect of a Transaction.

### **5.17 GST on Damages**

- a. GST – If either Buyer, Seller or Exchange (the “Payer”) 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
  - (i) the Payer is the Seller, then the Payer 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
  - (ii) the Payer is the Buyer, then the Payer 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.

## **ARTICLE 6 – REGULATORY AND COMPLIANCE**

### **PART 6A – VIOLATIONS, DUTIES AND RESPONSIBILITIES**

#### **6.1 Trade Practice Violations**

- a. Trade Practice Violations – The Contracting Party and its Representatives must not:
  - (i) manipulate or attempt to manipulate prices of any Product offered by Exchange;
  - (ii) spread inaccurate information about the market that may influence prices on the Exchange;
  - (iii) report false transactions to the Exchange;
  - (iv) arrange and/or execute wash transactions or money passes;

- (v) conduct or attempt to conduct fraudulent transactions;
- (vi) participate in non-competitive transactions, other than as permitted under these Rules;
- (vii) enter orders, or causing orders to be entered, other than in good faith for the purpose of executing bona fide transactions.

## **6.2 Prohibitions**

- a. Collusion; Constraint on Competition – The Contracting Party and its Representatives must not 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.
- b. Fraud; Misrepresentation; Unlawful Activity – The Contracting Party and its Representatives must not engage in any act of fraud, bad faith, extortion, dishonest conduct, misrepresentation, or material misstatement, or any other unlawful activity including, without limitation, in respect of any information provided to Exchange, including financial information, or matter pertaining to the performance of any Transaction or in any other dealing with Exchange or the other Contracting Parties.
- c. Unauthorized Access – The Contracting Party and its Representatives must not willfully or negligently engage in unauthorized access to the Exchange, or assist a party in obtaining unauthorized access to the Exchange.
- d. Conduct Detrimental to the Exchange – The Contracting Party and its Representatives must not 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, ICE NGX Trading System or ICE NGX Clearing System.
- e. Impeding a Proceeding – No person may engage in conduct which may impede the progress of a Proceeding, and any such conduct will be reported to the relevant Panel or Exchange for appropriate action.

## **6.3 Duty to Comply and Supervise; Vicarious Responsibility**

- a. Duty to Comply – The Contracting Party must, and is responsible for ensuring that its Representatives will, comply with the Rules and with the terms of any agreement with the Exchange or any order or decision of, or any suspension imposed by, the Exchange or any panel, committee or subcommittee of the Exchange and resulting from any Mediation or Arbitration.
- b. Duty to Supervise – Each Contracting Party must diligently supervise the Exchange-related activities of its Representatives. For purposes of this Section, the term “agent” in the definition of “Representative” includes any Exchange-related activities associated with automated trading systems that generate, submit and/or cancel messages without human intervention.
- c. Supervisory Policies and Procedures – Each Contracting Party must establish, administer and enforce supervisory systems, policies and procedures reasonably designed to achieve compliance with the Rules, taking into account the nature and size of the Contracting Party and its Exchange-related activities.
- d. Vicarious Responsibility – Each Contracting Party is responsible and liable for the actions and omissions of its Representatives. Where a Contracting Party’s Representative commits a violation of the Rules, the Contracting Party is also deemed to have committed the violation.

## **6.4 Open Position Limits**

- a. Position Limits – Exchange may set and vary from time to time the Open Position Limit for the Contracting Party and the detailed requirements relating thereto. 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 and, in its sole discretion, liquidate any positions which remain above the Open Position Limit after the expiry of such notice period.

## **PART 6B – INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS**

### **6.5 Investigations and Inquiries**

- a. Compliance Staff – Compliance Staff shall have the authority to
  - (i) monitor activities in respect of the entering into and performance of Transactions through the ICE NGX Trading System, the ICE Trading Platform, and/or the ICE NGX Clearing System;
  - (ii) conduct investigations of possible violations of the Rules, and to request the production of and examine any documents; and
  - (iii) make inquiries and do such other things as are reasonably necessary or advisable to verify compliance with the Rules by all Contracting Parties and their Representatives.
- b. No Disclosure Required – During the course of an investigation or inquiry, neither Compliance Staff nor the Exchange generally is required to provide any person or Contracting Party or Representative with any details or particulars relating to its monitoring activities, investigations or inquiries, including their purpose, the nature of any complaint, or any findings or conclusions resulting therefrom. Notwithstanding the above, Exchange may disclose such information pursuant to applicable laws and regulations or court order.
- c. Requirement to Provide Information, Documents and Records – The Contracting Party and/or Representative must, upon request, promptly provide to Compliance Staff copies, if requested, of documents and records related to its or their activities pursuant to this Agreement and will ensure that any such information is accurate.
- d. Cooperation – The Contracting Party will cause a person under the control or direction of the Contracting Party who is reasonably knowledgeable in respect of the relevant activities of the Contracting Party and its Representatives and, if applicable, a particular person requested by Compliance Staff, 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 inquiry by Compliance Staff.
- e. Form and Recording – Compliance Staff may direct that any statement required to be given in relation to an inquiry or investigation be given in writing, by electronic means, recorded by any means and/or orally while under oath.
- f. Further Inquiries – At any time during the course of, or at the conclusion of, an inquiry or investigation, the Chief Compliance Officer has the authority to direct that Compliance Staff make further inquiries in respect of any Contracting Party or Representative, action, omission, conduct or potential violation or any other matter.

### **6.6 Chief Compliance Officer Authority**

- a. Chief Compliance Officer – Where the Chief Compliance Officer is of the reasonable opinion that a violation has occurred, the Chief Compliance Officer has the authority to:
  - (i) impose a Summary Sanction in accordance with this Article 6;
  - (ii) issue a warning letter or a cease and desist order or a reprimand to the Contracting Party and/or the Contracting Party's Representative, stating that there may have been a violation of the Rules, and that a continuation of such activity may result in disciplinary action, which warning letter, cease and

desist order or reprimand, as applicable, may be considered in future inquiries, investigations and disciplinary proceedings;

- (iii) enter into a written settlement agreement with the Contracting Party or Contracting Party's Representative, whereby the Contracting Party or Representative, with or without admitting guilt, agrees to
  - (A) a cease and desist order or a reprimand;
  - (B) a fine of up to \$100,000 for each violation alleged plus the monetary value of any gains received as a result of the alleged violation; and/or
  - (C) a suspension;
- (iv) issue a written notice ("Notice of Violation") to the Contracting Party or Contracting Party's Representative, setting out the violation(s) and
  - (A) imposing a fine on the Contracting Party or Representative, as applicable, of up to \$100,000 for each violation alleged plus the monetary value of any gains received as a result of the alleged violation; and/or
  - (B) suspending, on a temporary or permanent basis, the Contracting Party or Representative, as applicable (a "Disciplinary Suspension").

## **6.7 Summary Sanctions**

- a. Application – This Section applies only in respect of the violations set out in Subsection 6.7.b.
- b. Summary Sanction – The Chief Compliance Officer may summarily impose a sanction (a "Summary Sanction") on a Contracting Party, in accordance with Exchange's stated Summary Sanctions schedule and in an amount not to exceed \$5,000 per violations, for
  - (i) failing to make timely, accurate and full payment of an Invoice to Exchange in accordance with this Agreement;
  - (ii) failing to make timely provision of Eligible Collateral Support in accordance with Schedule "C" - Risk Management of this Agreement;
  - (iii) failing to make timely and accurate submissions to the Exchange of notices or financial statements as required under any provision of this Agreement;
  - (iv) failing to maintain a current written risk management policy that address the risks the Contracting Party may pose to Exchange, as required under this Agreement; and
  - (v) failing to make timely payment to Exchange of any fee, penalty or other charge in accordance with this Agreement.
- c. Non-exclusive Penalty – Nothing in this Section shall preclude any other action against a Contracting Party pursuant to Article 6 or otherwise with respect to conduct described in this Section.
- d. Notice of Summary Sanction – The Chief Compliance Officer will provide written notice ("Notice of Summary Sanction") to the Contracting Party of any Summary Sanction that the Chief Compliance Officer has determined to impose on the Contracting Party.

- e. Payment of Summary Sanction Penalty – A Summary Sanction is due and payable within ten (10) business days after deemed receipt of the Notice of Summary Sanction, unless the Contracting Party has, within that time filed with Exchange a Request to be Heard.
- f. Summary Sanctions: Request to be Heard –
  - (i) A Request to be Heard in respect of a Summary Sanction must be made in writing in accordance with his Article 6 of this Agreement.
  - (ii) A Request to be Heard in respect of a Summary Sanction must be accompanied by a filing fee (the “Filing Fee”) of the greater of USD 1,000 or 20% of the sanction specified in the Notice of Summary Sanction; Exchange may determine in its discretion to reduce or waive the Filing Fee.
- g. Waiver of Opportunity to be Heard – Failure of the Contracting Party to file a Request to be Heard within ten (10) business days of deemed receipt of the Notice of Summary Sanction, except where proven for good cause, will constitute an admission of the facts and findings in the Notice of Summary Sanction and a waiver of the right to an opportunity to be heard in respect of the Summary Sanction.
- h. Summary Sanction: Opportunity to be Heard –
  - (i) The Proceedings will be conducted by a Panel in accordance with Article 6 of this Agreement and Exchange’s Hearing Procedures.
  - (ii) A Panel’s decision in respect of a Summary Sanction is final.
- i. Summary Sanctions: Panel Authority – A Panel may confirm or reverse the Summary Sanction.

## **6.8 Settlement Agreement Procedures**

- a. Required Content – A settlement agreement must be in writing, and include the following:
  - (i) details of the alleged violation(s);
  - (ii) a statement of the facts to be admitted or agreed by the Respondent;
  - (iii) the agreed disposition of the matter, including any penalty to be imposed and amount of costs and expenses to be paid by the Respondent; and
  - (iv) a waiver by the Respondent of an opportunity to be heard and appeal should the settlement agreement be accepted by the Chief Compliance Officer and be ratified by a Panel and, if so accepted and ratified, an acknowledgement that notice of the settlement will be published on Exchange’s Website.
- b. Request for Review of Settlement Agreement – Within fifteen (15) calendar days of agreeing to enter into a settlement agreement, the Respondent will file a written Request to be Heard, attaching the settlement agreement signed by the Respondent and the Chief Compliance Officer, for a review of the settlement agreement.
- c. Failure to Request Review – Failure by the Respondent to file the Request to be Heard for the purpose of review of the settlement agreement within the timeframe specified in the previous subsection invalidates the settlement agreement. Notwithstanding the above, the Respondent and the Chief Compliance Officer may enter into a new or revised settlement agreement subject to this Section.
- d. Review of Settlement Agreement –

- (i) The Proceedings will be conducted in accordance with this Agreement and Exchange's Hearing Procedures.
  - (ii) A Panel's decision in respect of a settlement agreement is final.
- e. Settlement Review: Panel Authority – A Panel may ratify or reject a settlement agreement. A Panel may not amend or require the amendment of a settlement agreement.
- f. Ratification of Settlement Agreement – If the Panel ratifies the settlement agreement,
  - (i) the settlement agreement is binding on the parties and the subject matter of the settlement agreement is considered closed and final and not subject to any further review or appeal; and
  - (ii) the Panel will issue an order in accordance with the terms of the settlement agreement, and a notice of the settlement will be published on Exchange's Website.
- g. Rejection of Settlement Agreement – If the Panel rejects the settlement agreement, the Respondent and Chief Compliance Officer may submit a new or revised settlement agreement for review in accordance with the procedures set out above, or the Chief Compliance Officer may impose a fine or suspension in accordance with the authority described in this Article 6. A member of the Panel that reviewed the settlement agreement may participate in the review of a revised settlement agreement, but may not participate in any other Proceedings in respect of the matter.
- h. Privilege – All matters relating to a settlement agreement, including any discussions, negotiations and submissions to a Panel relating to the settlement agreement, are without prejudice to the parties and shall not be disclosed by them in any way in any subsequent proceedings.

## **6.9 Disciplinary Proceedings**

- a. Notice of Violation – A Notice of Violation must be in writing, and include the following:
  - (i) the acts, practices or conduct in which the Contracting Party or Contracting Party's Representative, as applicable, (the "Respondent") is found to have engaged;
  - (ii) the Rule(s) found to have been violated as a result of such acts, practices or conduct;
  - (iii) the facts relied upon; and
  - (iv) that the Respondent is entitled, within fifteen (15) calendar days from deemed receipt of the Notice of Alleged Violation, to file with Exchange a written Request to be Heard, and that failure to file a Request to be Heard will constitute an admission of the facts and findings in the Notice of Violation and a waiver of the right to an opportunity to be heard and of any applicable right to appeal in respect of the Notice of Violation.
- b. Disciplinary: Request to be Heard –
  - (i) A Respondent may file with Exchange a Request to be Heard in response to a Notice of Violation, within fifteen (15) calendar days of deemed receipt of the Notice of Violation.
  - (ii) A Request to be Heard in respect of a Notice of Violation must be made in writing in accordance with Article 6 of this Agreement.
- c. Waiver of Opportunity to be Heard – Failure of the Respondent to file a Request to be Heard within fifteen (15) calendar days of deemed receipt of the Notice of Violation will constitute an admission of the facts and

findings in the Notice of Violation and a waiver of the right to an opportunity to be heard and to any applicable right to appeal in respect of the Notice of Violation.

d. Disciplinary: Opportunity to be Heard –

- (i) The Proceedings will be conducted by a Panel in accordance with Article 6 of this Agreement and Exchange's Hearing Procedures.
- (ii) A Panel's decision in respect of a fine imposed under a Notice of Violation is final and may not be appealed.

e. Disciplinary Suspension: Notice of Appeal – A Respondent that is the subject of a Panel decision in respect of a Disciplinary Suspension may file with Exchange a Notice of Appeal, within fifteen (15) days of deemed receipt of the Panel's written decision.

f. Disciplinary Suspension: Waiver of Appeal – Failure of the Contracting Party to file a Notice of Appeal within fifteen (15) days of deemed receipt of the Panel's written decision, except where proven for good cause, will constitute a waiver of the right to an appeal, and the Panel's decision will be deemed final.

g. Disciplinary Suspension: Appeal –

- (i) Appeal Proceedings will be conducted by an Appeal Panel in accordance with Article 6 of this Agreement and Exchange's Hearing Procedures.
- (ii) An Appeal Panel's decision in respect of a Disciplinary Suspension is final.

h. Disciplinary: Panel and Appeal Panel Authority –

- (i) A Panel convened for a disciplinary proceeding may
  - (A) return the matter to Compliance Staff with instructions for further investigation;
  - (B) issue a cease and desist order or a reprimand;
  - (C) confirm, vary or reverse a fine or Disciplinary Suspension imposed under a Notice of Violation;
  - (D) substitute a fine of up to \$100,000 for each violation alleged plus the monetary value of any gains received as a result of the alleged violation, in the place of a Disciplinary Suspension imposed under a Notice of Violation; and/or
  - (E) find that no violation has occurred.
- (ii) An Appeal Panel convened in respect of the appeal from a Disciplinary Suspension may
  - (A) confirm, vary or reverse a Disciplinary Suspension imposed under a Notice of Violation; and/or
  - (B) find that no violation has occurred.

i. Disciplinary Suspension: Panel and Appeal Panel Authority –

- (i) Notwithstanding anything else in this Agreement, a Panel or Appeal Panel may not require Exchange to provide access to a Contracting Party that does not satisfy the Minimum Qualification Requirement.



- (ii) Notwithstanding anything else in this Agreement, neither a Request to be Heard or Notice of Appeal, nor a decision by a Panel or Appeal Panel restricts Exchange's authority and discretion to impose any limitations or conditions on a Contracting Party or Contracting Party's Representative, as applicable, that Exchange determines, in its absolute discretion, necessary or appropriate to protect the security and integrity of Exchange.

#### **6.10 Procedures relating to Panel Proceedings**

a. Request to be Heard – A Request to be Heard must:

- (i) be made in writing;
- (ii) except with respect to a Request to be Heard in respect of a settlement agreement, set out the grounds for the request, which may only be one or more of the following:
  - (A) the decision in respect of which the Request to be Heard is filed was unsupported by the evidence or was against the weight of the evidence;
  - (B) the decision in respect of which the Request to be Heard is filed was based on an error of law, or a misinterpretation of the Rules;
  - (C) the applicable decision maker did not consider facts or evidence that were or are available, whether at the time the decision was made or at the time the Request to be Heard is filed, and, had the decision maker considered such facts or evidence, its decision would have been different;
  - (D) in respect of a Notice of Violation, the penalty stated in the Notice of Violation is unfair or unreasonable; or
  - (E) in respect of an Access Decision, the decision of the Exchange is unfair or unreasonable; and
- (iii) contain a brief statement of all matters relied upon by the Applicant, Contracting Party or Respondent, as applicable, and be accompanied by the evidence that the Applicant, Contracting Party or Respondent seeks to rely upon.

b. Rejection of Request to be Heard – Exchange may reject a Request to be Heard that does not contain valid grounds for the request, and must notify the appellant in writing of any such rejection.

c. Procedures for Convening a Panel –

- (i) Within the timeline specified in Exchange's Hearing Procedures, the Chief Compliance Officer will convene a Panel, composed in accordance with Exchange's Hearing Procedures.
- (ii) Within the timeline specified in Exchange's Hearing Procedures, the Panel will provide the Applicant, Contracting Party or Respondent, as applicable, with a Notice of Proceedings including relevant dates and procedures and the names of the Panel members.
- (iii) A challenge to the composition of the Panel must be made in accordance with Exchange's Hearing Procedures and the timelines set out therein.
- (iv) Failure of the Applicant, Contracting Party or Respondent, as applicable, to file a written challenge to the composition of the Panel within the timeline specified in Exchange's Hearing Procedures, except where proven for good cause, will constitute a waiver of the right to such challenge.

d. Procedures for Panel Proceedings –

- (i) The Panel will conduct the Proceedings in accordance with this Agreement and Exchange’s Hearing Procedures. Panel proceedings will be heard in writing unless the Panel (other than a Panel in respect of a Summary Sanction) decides to accept oral evidence in accordance with Exchange’s Hearing Procedures.
- (ii) Each of Applicant, Contracting Party or Respondent, as applicable, and Exchange will be entitled to be represented by counsel and to present documentary evidence and submit written statements to the Panel.
- (iii) Failure by the Applicant, Contracting Party or Respondent, as applicable, to submit written statements by the deadline specified in the Exchange’s Hearing Procedures will constitute an admission of the alleged facts and/or violations, as applicable, and a waiver of any applicable right to appeal.
- (iv) The Panel may ask any questions of the Applicant, Contracting Party or Respondent, as applicable, or Exchange, in writing by seeking a written response within the timeline specified by the Panel or, except in the case of a Panel in respect of a Summary Sanction, if the Panel decides to accept oral evidence in accordance with Exchange’s Hearing procedures, orally during the hearing to receive oral evidence.
- (v) A written decision summarizing the Panel’s general reasons for decision will be provided to the Applicant, Contracting Party or Respondent, as applicable, and Exchange, and posted on Exchange’s Website.

**6.11 Procedures relating to Appeal Proceedings**

a. Notice of Appeal – A Notice of Appeal must:

- (i) be made in writing, and must set out the grounds of appeal, which may only be any one or more of the following:
  - (A) the Panel’s decision was based on an error of law, or a misinterpretation of the Rules; or
  - (B) the Panel did not consider facts or evidence that a party put into the record before the Panel and, had the Panel considered such facts or evidence in the record before it, the Panel’s decision would have been different; and
- (ii) contain a brief statement of all matters relied upon by the appellant and must be accompanied by the facts or evidence the appellant seeks to rely upon in the appeal.

b. Rejection of Notice of Appeal – Exchange may reject a Notice of Appeal that does not contain a valid basis for appeal, and must notify the appellant in writing of any such rejection.

c. Procedures for Convening an Appeal Panel –

- (i) Within the timeline specified in Exchange’s Hearing Procedures, the Chief Compliance Officer will convene an Appeal Panel, composed in accordance with Exchange’s Hearing Procedures.
- (ii) Within the timeline specified in Exchange’s Hearing Procedures, the Appeal Panel will provide the Applicant, Contracting Party or Respondent, as applicable, with a Notice of Proceedings including relevant dates and procedures and the names of the Appeal Panel members.

- (iii) A challenge to the composition of the Appeal Panel must be made in accordance with Exchange's Hearing Procedures and the timelines set out therein.
  - (iv) Failure of the Applicant, Contracting Party or Respondent, as applicable, to file a written challenge to the composition of the Appeal Panel within the timeline specified in Exchange's Hearing Procedures, except where proven for good cause, will constitute a waiver of the right to such challenge.
- d. Procedures for Appeal Proceedings –
- (i) The Appeal Panel will conduct the Appeal Proceedings in accordance with this Agreement and Exchange's Hearing Procedures.
  - (ii) Each of Applicant, Contracting Party or Respondent, as applicable, and Exchange will be entitled to be represented by counsel and submit written statements and make oral submissions to the Panel.
  - (iii) Failure by the Applicant, Contracting Party or Respondent, as applicable, to submit written statements by the deadline specified in the Exchange's Hearing Procedures or appear at the Appeal Proceedings will be deemed to be an admission of the alleged facts and/or violations, as applicable, and a waiver of any further right to appeal.
  - (iv) The Appeal Panel may ask any questions of the Applicant, Contracting Party or Respondent, as applicable, or Exchange, in writing by seeking a written response within the timeline specified by the Appeal Panel, or orally during the Appeal Proceedings.
  - (v) A written decision summarizing Appeal Panel's general reasons for decisions will be provided to the Applicant, Contracting Party or Respondent, as applicable, and Exchange, and posted on Exchange's Website.
- e. Scope of Appeal – The scope of an appeal is limited to the grounds for appeal set out in the Notice of Appeal. An Appeal Hearing is not a trial de novo.

## **PART 6C – ADDITIONAL REMEDIES AVAILABLE TO EXCHANGE**

### **6.12 Suspension**

- a. Contracting Party Suspension – In addition to its rights under this Agreement or under law, equity or otherwise Exchange, in its sole discretion exercised in a commercially reasonable manner, may suspend a Contracting Party for such periods as it believes necessary or advisable if Exchange believes any of the following events or conditions are occurring or have occurred:
- (i) a material adverse change in the financial condition of the Contracting Party, a its Contracting Party Affiliate or any other affiliate of the Contracting Party or any person providing credit support for the Contracting Party, each as determined in the sole discretion of Exchange;
  - (ii) circumstances that may have detrimental effect to Exchange or the Contracting Party, including circumstances which make the continued access to the ICE NGX Trading System by the Contracting Party detrimental to the existence of an orderly market, or otherwise detrimentally affects the interests, welfare or integrity of the ICE NGX Trading System or ICE NGX Clearing System;
  - (iii) circumstances relating to 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 the Contracting Party, an officer, principal, or a Credit Support Provider for the Contracting Party, or against a Contracting Party Affiliate or any other affiliate of the Contracting Party; or
- (v) a Default or Event of Default in respect of the Contracting Party or a Contracting Party Affiliate, or a Cross-Default as described in Section 5.7 of this Agreement.

For greater certainty, a suspension of a Contracting Party is an Access Decision for the purposes of Section 1.1 of this Agreement.

- b. Suspension of a Contracting Party – Without limitation to Exchange’s rights under this Agreement, a suspension imposed on a Contracting Party under this Agreement may include any one or more of the following:
  - (i) cancelling any or all of the Contracting Party’s existing Orders regarding a Product;
  - (ii) removing, temporarily or indefinitely, the Contracting Party’s trading permissions in one or more Products;
  - (iii) removing, temporarily or indefinitely, the Contracting Party’s access to the ICE NGX Trading System and/or the ICE NGX Clearing System;
  - (iv) exercising any of Exchange’s rights under Article 5, 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.
- c. Contracting Party’s Representative Suspension – In addition to its rights under this Agreement or under law, equity or otherwise, Exchange, in its sole discretion exercised in a commercially reasonable manner, may suspend a Contracting Party’s Representative for such periods as it believes necessary or advisable if Exchange believes any of the following events or conditions are occurring or have occurred:
  - (i) circumstances that may have detrimental effect to Exchange or the Contracting Party, including circumstances which make the continued access to the ICE NGX Trading System by the Contracting Party’s Representative detrimental to the existence of an orderly market, or otherwise detrimentally affects the interests, welfare or integrity of the ICE NGX Trading System or ICE NGX Clearing System;
  - (ii) circumstances relating to 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;
  - (iii) disciplinary action by an applicable regulatory authority against the Contracting Party’s Representative.

For greater certainty, a suspension of a Contracting Party’s Representative is an Access Decision for the purposes of Section 1.1 of this Agreement.

- d. Suspension of a Representative – Without limitation to Exchange’s rights under this Agreement, a suspension imposed on a Representative under this Agreement may include any one or more of the following:
  - (i) cancelling any or all of the Representative’s existing Orders regarding a Product;
  - (ii) removing, temporarily or indefinitely, the Representative’s trading permissions in one or more Products;

- (iii) removing the Representative's access, temporarily or indefinitely, to the ICE NGX Trading System and/or the ICE NGX Clearing System.
- e. Notice of Suspension – In the event a suspension is imposed under this Agreement, Exchange will promptly provide written notice, which may be delivered electronically and which will include the effective date and the terms of the suspension, to
  - (i) in the case of a suspension of a Contracting Party, the Contracting Party that is the subject of the suspension; and
  - (ii) in the case of a suspension of a Representative, the Representative that is the subject of the suspension and the Contracting Party that the Representative represents.

### **6.13 General Suspension**

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

- c. Procedures on General Suspension – In the event Exchange declares a General Suspension, Exchange will immediately notify all Contracting Parties as to the reason and expected duration of the General Suspension by notice posted to Exchange’s website, and/or by phone, instant message, email or, if possible, by access through the ICE NGX Trading System. All communications by Exchange with Contracting Parties would be undertaken by phone, instant message or email until such time as access to the ICE NGX Trading System is resumed or alternative trading facilities are available.

#### **6.14 Emergency Authority**

- a. Declaration of Emergency Situation – Exchange may declare an emergency situation to exist if Exchange, in its sole discretion, or its regulators determine that an occurrence, circumstance or situation exists that requires immediate action and threatens or may threaten such things as the financial integrity of Exchange, the normal functioning of the Exchange or the fair and orderly trading in any Product, the liquidation of, or delivery pursuant to, any Transaction, including any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of any Product or any Transaction cleared by Exchange, including failure of the payment system or the bankruptcy or insolvency of any Contracting Party; any geopolitical event; any action taken by any governmental body, or any other board of trade, market, facility, Transportation System, Transmission Provider that may have a direct impact on a Product or Transaction or the underlying commodity of any Product or Transaction, or on trading on the Exchange and any other circumstance which may have a severe, adverse effect upon the functioning of the Exchange.
- b. Exchange Authority to Act in Emergency Situation – 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, imposing or changing Open Position Limits, limiting trading for one or more or all Contracting Parties to liquidate only;
  - (ii) extending or shorting the expiration date for trading in any Product, or extending the delivery period for any Transaction;
  - (iii) ordering the liquidation of open positions, the fixing of a Settlement Price or the reduction in positions;
  - (iv) requiring additional Margin to be collected from Contracting Parties;
  - (v) placing into immediate effect a rule under this Contracting Party Agreement;
  - (vi) suspending a Contracting Party or Contracting Party’s Representative;
  - (vii) declaring a General Suspension;
  - (viii) effecting the Liquidation and Close-out Procedures; and/or
  - (ix) taking any other reasonable actions to preserve the integrity and security of Exchange, the ICE NGX Trading System and/or the ICE NGX Clearing System.

#### **6.15 Liability for Expenses**

- a. Liquidated Damages – In relation to any matter under this Article 6, 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 – INVOICES AND TAXES

### 7.1 Invoices

- a. Netting of Invoice Amounts – In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Net or Set-off the amounts payable or receivable in the same currency on account of
  - (i) for a Physical Settlement Invoice or a Physical Environmental Invoice, the Purchase Amount of the relevant commodity,
  - (ii) for an MTM Settlement Invoice, the MTM Settlement Amounts, and
  - (iii) for a Financial Settlement Invoice, the Financially Settled Futures Settlement Amount,
  - (iv) as applicable and the fees and applicable taxes, if any, for the Contracting Party. The Contracting Party will be obligated to pay or entitled to receive only such net amounts;
- b. Preliminary Invoices – Exchange will post on Exchange’s Website for sole access by the Contracting Party an Invoice in each applicable currency setting forth a net amount owing by or to the Contracting Party, itemizing and applying Net or Set-off to each amount payable or receivable in the same currency:
  - (i) in respect of Physically Settled Gas Futures Transactions, for deliveries and receipts of gas during the prior calendar month pursuant to Physically Settled Futures Transactions, any amount payable for fees to Exchange and any amounts payable on account of applicable taxes, on or before the 10th day of each calendar month;
  - (ii) in respect of Physically Settled Power Futures Transactions, for scheduling of deliveries and receipts of Physical Power during the prior calendar month pursuant to Physically Settled Power Futures Transactions, any amount payable for fees to Exchange and any amounts payable on account of applicable taxes, on or before the 10th day of each calendar month;
  - (iii) in respect of Physically Settled Environmental Futures Transactions, for deliveries and receipts of Environmental Products during that calendar month pursuant to Physically Settled Environmental Futures Transactions, and any amount payable for fees to Exchange and any amounts payable on account of applicable taxes, on or before the 15th day of each calendar month.
  - (iv) in respect of Financially Settled ERCOT Power Futures Transactions, for Financially Settled Futures Settlement Amounts for the prior calendar month, any amount payable for fees to Exchange and any amounts payable on accounts of applicable taxes, on the second Business Day of each calendar month.
  - (v) in respect of Financially Settled Power Futures Transactions:
    - (A) for MTM Settlement Amounts, on or before the Business Day following the day each MTM Settlement Amount is determined as set out in Schedule E; and
    - (B) for Financially Settled Futures Settlement Amounts for the prior calendar month including any applicable Post-Settlement Load Adjustment Amount, and any amount payable for fees to Exchange, on the second Business Day of each calendar month;
  - (vi) in respect of Financially Settled Gas Futures Transactions, for Financially Settled Futures Settlement Amounts for the prior calendar month, any amount payable for fees to Exchange and any amounts payable on account of applicable taxes, on the second Business Day of each calendar month; and

- (vii) in respect of Option Transactions:
  - (A) for the Option Premium Amount, on the Business Day following the transaction date of the Option Transaction; and
  - (B) for any other Invoices that become applicable if the relevant Option Exercise Conditions have been met, issued and payable as per the associated Underlying Transaction that has become effective on such exercise.
- c. Disputed Invoice Items – Any items on any Invoice disputed by any Contracting Party must be noted to Exchange:
  - (i) for Invoices for Physically Settled Gas Futures Transactions, no later than the close of business on the fourth Business Day following the 15th of the month;
  - (ii) for Invoices for Physically Settled Power Futures Transactions, no later than the close of business on the fourth Business Day following the 15th of the month;
  - (iii) for Invoices for Physically Settled Environmental Futures Transactions, no later than the close of business on the second Business Day prior to the Environmental Settlement Date;
  - (iv) for Invoices for MTM Settlement Amounts, no later than one Business Day prior to the Settlement Date;
  - (v) for all other Invoices for Financially Settled Futures Transactions, no later than two Business Days prior to the Financial Settlement Date; and
  - (vi) for Invoices for Option Transactions, no later than one Business Day prior to the Option Premium Payment Date.
- d. Invoices Locked for Payment – After the expiry of the applicable period for disputing an Invoice item set out in paragraph b., the Invoice will be due and payable in its entirety in accordance with paragraph e. and no further changes will be made to the Invoice prior to the relevant Settlement Date.
- e. Invoices Due and Payable – 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 owned by the Contracting Party to Exchange or to the Contracting Party by Exchange as shown on the applicable Invoice after the expiry of the applicable period set out in paragraph b. will be due and payable prior to 12:00 p.m. Mountain Prevailing Time:
  - (i) for Invoices for Physically Settled Gas Futures Transactions, on the Physical Settlement Date;
  - (ii) for Invoices for Physically Settled Power Futures Transactions, on the Physical Settlement Date;
  - (iii) for Invoices for Physically Settled Environmental Futures Transactions, on the Environmental Settlement Date;
  - (iv) for Invoices for MTM Settlement Amounts, on the MTM Settlement Date;
  - (v) for all other Invoices for Financially Settled Futures Transactions, on the Financial Settlement Date;
  - (vi) for Option Transactions, on the Option Premium Payment Date; and
  - (vii) for any Final Invoice, within two Business Days from the date the Final Invoice was made available



- f. Full Satisfaction – The payment or receipt by the Contracting Party of the net amount of an Invoice in accordance with this Agreement to or from Exchange will constitute full satisfaction of any settlement amount payable to or receivable by the Contracting Party and Exchange
- (i) for Invoices for Physically Settled Gas Futures Transactions, in respect of the Physically Settled Gas Futures Transactions including any Purchase Amount;
  - (ii) for Invoices for Physically Settled Power Futures Transactions, in respect of the Physically Settled Power Futures Transactions including any Purchase Amount;
  - (iii) for Invoices for Physically Settled Environmental Futures Transactions, in respect of the Physically Settled Environmental Futures Transactions including any Purchase Amount;
  - (iv) for Invoices for Financially Settled Canadian Power Futures Transactions, in respect of the Financially Settled Power Futures Transaction once all MTM Settlement Amounts and Financially Settled Futures Settlements Amounts in respect of the applicable Term have been paid;
  - (v) for Invoices for Financially Settled ERCOT Power Futures Transactions, in respect of the Financially Settled ERCOT Power Futures Transactions;
  - (vi) for Invoices for Financially Settled Gas Futures Transactions, in respect of the Financially Settled Gas Futures Transactions; and
  - (vii) for Invoices for Option Transactions, in respect of the Option Transactions.
- g. Corrections to an Invoice – In the event that one or more index prices for any Transaction is revised by the provider of the index after the date the relevant Invoice is locked for payment in accordance with section 7.1.d., Exchange will enter adjustments on the next relevant monthly Invoice to reflect the revised index price.
- h. Invoices Final and Binding – Unless either the Contracting Party or Exchange has advised the other of any error in, or dispute in respect of an Invoice, the Invoice will be final and binding, absent manifest error, for all purposes on both the Contracting Party and Exchange
- (i) for Invoices for Physically Settled Gas Futures Transactions, 120 days after the Physical Settlement Date on which the Invoice was due;
  - (ii) for Invoices for Physically Settled Power Futures Transactions, 120 days after the Physical Settlement Date on which the Invoice was due, 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;
  - (iii) for Invoices for Physically Settled Environmental Futures Transactions, 30 days after the Environmental Settlement Date on which the Invoice was due;
  - (iv) for Invoices for MTM Settlement Amounts, 120 days after the MTM Settlement Date on which the Invoice was due;
  - (v) for all other Invoices for Financially Settled Futures Transactions, 120 days after the Financial Settlement Date on which the Invoice was due;
  - (vi) for Option Transactions, 120 days after the Option Premium Payment Date on which the Invoice was due; and

- (vii) for any adjustment resulting from a disputed invoice item previously notified to Exchange, 60 days after the Invoice implementing the adjustment was due.

## **7.2 Payment of Invoices**

- a. Wire Payment of Invoices for Physically Settled Gas Futures Transactions, Physically Settled Power Futures Transactions and Final Invoices –
  - (i) Unless otherwise agreed between the Exchange and the Contracting Party, payment of Invoices for Physically Settled Gas Futures Transactions and Physically Settled Power Futures Transactions, and any Final Invoice, by Contracting Party to Exchange and by Exchange to Contracting Party shall be made by wire payment to the banking instructions provided in accordance with this Agreement and Exchange's stated policies. For greater certainty, any correspondent or intermediary bank fees relating to payments of Invoices for Physically Settled Gas Futures Transactions and Physically Settled Power Futures Transactions, and any Final Invoice, by Contracting Party to Exchange and by Exchange to Contracting Party, are the responsibility of the Contracting Party.
  - (ii) On each Physical Settlement Date, Exchange will Net or Set-Off any and all such amounts owing as between the Exchange and the Contracting Party in the same currency in respect of Physically Settled Gas Futures Transactions, Physically Settled Power Futures Transactions and any applicable fees or taxes due and payable that day to arrive at a single net settlement amount payable per currency by Exchange to the Contracting Party or by the Contracting Party to Exchange.
  - (iii) On the Physical Settlement Date, Exchange may, in its sole discretion, hold any amounts payable from Exchange to the Contracting Party in respect of any Invoice until all amounts payable from the Contracting Party to Exchange then due and payable have been received by Exchange.
- b. Payment of Invoices for MTM Settlement Amounts, Financially Settled Futures Amounts and Physically Settled Environmental Futures Transactions –
  - (i) Exchange will identify a Cash Collateral Account for each Contracting Party that enters into a Financially Settled Futures Transaction or a Physically Settled Environmental Futures Transaction.
  - (ii) Unless otherwise agreed to by Exchange, payments in respect of MTM Settlement Amounts, Financially Settled Futures Settlement Amounts and Physically Settled Environmental Futures Transactions;
    - (A) by Exchange to the Contracting Party will be made by wire transfer by Exchange into the Contracting Party's Cash Collateral Account; and
    - (B) by the Contracting Party to Exchange will be made by wire transfer by Exchange from the Contracting Party's Cash Collateral Account into the Exchange Account identified by Exchange for receiving such funds.
  - (iii) On each Business Day, Exchange will Net or Set-Off any and all such amounts owing on that day as between the Exchange and the Contracting Party in the same currency in respect of MTM Settlement Amounts and Financially Settled Futures Amounts, and Physically Settled Environmental Futures Transactions to arrive at a single net settlement amount payable by Exchange to the Contracting Party or by the Contracting Party to Exchange.
  - (iv) The Contracting Party is responsible for ensuring its Cash Collateral Account has sufficient funds in excess of the applicable Margin Requirement to satisfy the net settlement amount calculated and instructed by Exchange in accordance with subparagraph (iii), prior to 12:00 p.m. Mountain Prevailing Time on the applicable Settlement Date.

- c. Outstanding Request for Eligible Collateral Support – Exchange may deduct from the payment of any Invoice an amount equal to any shortfall, as at the relevant Settlement Date, in the provision by the Contracting Party of Eligible Collateral Support that has been requested in accordance with Schedule C and may hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange.
- d. Early Payment of Invoices – A Contracting Party may, if desired, make payment to Exchange prior to the applicable Settlement Date, and such funds, when received, will be applied against the Contracting Party's Invoice amounts, or may be Net or Set-off against amounts then owed by the Contracting Party to Exchange in accordance with this Agreement.
- e. Pledge of Collateral to Facilitate Payment of Invoices – In accordance with Schedule C, all amounts owing by the Contracting Party in respect of a Transaction to ICE NGX on an Invoice are collateralized. On each Settlement Date or Option Premium Date, as applicable, an amount of the Contracting Party's Collateral equal to any Invoice amount owing by the Contracting Party on that Settlement Date or Option Premium Date, as applicable, may be pledged to Exchange's Principal Banker to facilitate payment of Invoices by Exchange under the Agreement until such times as the Contracting Party's settlement payment is received by Exchange.
- f. Interest on Late Payment of Invoices – Payments on Invoice amounts owing by the Contracting Party to Exchange, or by Exchange to Contracting Party, as applicable, received after the due date will bear interest at the Default Rate beginning on the day after the due date up to and including the date of payments of all such amounts to Exchange, or to the Contracting Party, as applicable. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time. For greater certainty, no interest will be payable by Exchange to the Contracting Party in respect of any late payment by Exchange to Contracting Party of an Invoice resulting from a failure by the Contracting Party to notify Exchange of its current banking instructions no less than five (5) Business Days prior to the applicable Settlement Date.

### **7.3 GST**

- a. No Declaration – 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.
- b. Payment of GST – 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.
- c. Contracting Party GST Number – The Contracting Party hereby agrees to provide Exchange with its registration number for the payment of GST, if applicable.
- d. Remitting GST – 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 Regulations.

### **7.4 Banking Instructions**

- a. Of Contracting Party –
  - (i) An officer or representative of the Contracting Party authorized to provide banking instructions will provide Exchange with the Contracting Party's banking information.

- (ii) An officer or representative of the Contracting Party authorized to provide banking instructions will notify Exchange of any change to the Contracting Party's banking information provided under this subsection no later than five (5) Business Days prior to such change.
  - (iii) The Contracting Party hereby represents and warrants that its banking information provided in accordance with paragraph 7.4.a.(i) and (ii) is accurate and current as of the date so provided.
  - (iv) Exchange is entitled to accept this information via email or other electronic communication, all in accordance with this Agreement and Exchange's stated policies.
- b. Of Exchange – An officer of Exchange authorized to provide banking instructions shall notify the Contracting Party of Exchange's banking information by posting the banking information on its website for access by all Contracting Parties.

## **7.5 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 any sales tax under provincial legislation in any of the provinces of Canada or federal legislation in Canada or under state legislation in any of the United States or federal legislation in the United 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.

## **7.6 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) 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 – DATA, SYSTEMS AND USE RIGHTS; LIMITATION OF LIABILITY**

## **PART 8A – DATA**

## **8.1 Trade Data**

- a. Trade Data: General – Subject to section 8.1.b., the Contracting Party acknowledges and agrees that Exchange owns all rights, title and interest, database rights and trade secret rights in and to all Trade Data and related information submitted in connection with trading on the Exchange. Exchange has the exclusive right to use, distribute, sub-license, disclose and sell anonymized Trade Data and derivative works in any manner, media and jurisdiction. The Contracting Party shall not redistribute Trade Data or derivative works based thereon unless licensed by the Exchange.
- b. Trade Data of the Contracting Party – A Contracting Party's own Trade Data is the non-exclusive property of the Exchange or its affiliates and the Contracting Party, and each of Exchange and that Contracting Party has the right to use, sell, retransmit or redistribute such Trade Data in accordance with and subject to the provisions of this Agreement.

## **8.2 ICE NGX Data Products**

- a. ICE NGX Data Products – The ICE NGX Data Products and any derivative works thereof (as may be modified from time to time), and all Intellectual Property rights therein and thereto, are and shall remain the exclusive property of Exchange or its affiliates, as applicable and, except as expressly set out in this Agreement, the Contracting Party shall have no rights to use such ICE NGX Data Products without the Exchange's or its affiliates prior written consent.
- b. Grant of License to ICE NGX Data Products – Exchange grants to the Contracting Party a limited, revocable, non-transferable, non-sublicensable and non-exclusive license to use the ICE NGX Data Products for the sole purpose of and in accordance with this Agreement including the usage rights and restrictions set out in this Section 8.2.
- c. Permitted Use of ICE NGX Data Products – The Contracting Party and its Authorized Users will access and use the ICE NGX Data Products exclusively for the Contracting Party's own internal business activities.
- d. Restrictions on Use of ICE NGX Data Products –
  - (i) The Contracting Party will not permit any of its employees other than Authorized Users to access the ICE NGX Data Products without the express written consent of ICE Data, LLP or its successors or assigns.
  - (ii) The Contracting Party will not, and will not permit any of its employees to, do any of the following:
    - (A) copy, modify, reverse engineer, reverse assemble or reverse compile the ICE NGX Data Products or any part thereof;
    - (B) license, sublicense, transfer, sell, resell, retransmit, publish, reproduce and/or otherwise distribute or redistribute the ICE NGX Data Products, or any part thereof, in any manner (including, but not limited to, via or as part of any Internet site) to any third party or any person other than the Authorized Users;
    - (C) communicate (orally, in writing, electronically or otherwise), redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the ICE NGX Data Products, in any format, to any third party or any person other than the Authorized Users;
    - (D) use or co-mingle ICE NGX Data Products or permit ICE NGX Data Products to be used or co-mingled in constructing, creating or calculating the value of any other price reference or data, index or indexed products other than for internal business activities only;

- (E) archive ICE NGX Data Products, or create archival or derivative works based on the ICE NGX Data Products or any part thereof.
- (iii) The Contracting Party will take all precautions that are reasonably necessary to prevent any unauthorized access, use, distribution or redistribution of the ICE NGX Data Products.
- (iii) The Contracting Party will not use the ICE NGX Data Products, in whole or in part, in any manner that competes with Exchange or any of its affiliates including, without limitation, any distribution of the ICE NGX Data Products or derivative works based thereon.
- e. Data Access Reporting Requirement – Upon request by Exchange, the Contracting Party will provide, in a format acceptable to Exchange, Exchange with a statement or report, certified to be correct, regarding the Contracting Party’s use of the ICE NGX Data Products including distribution to and use by the Contracting Party’s Representatives.
- f. Audit –
  - (i) The Contracting Party will, at all times during the term of this Agreement and for not less than twenty-four (24) months thereafter, maintain complete and accurate records (including applicable data in electronic format) with respect to payment of Subscription Fees including in respect of Authorized Users, and access to and usage of ICE NGX Data Products for the most recent thirty-six (36) months. During the term of this Agreement and for a twenty-four (24) month period thereafter, Exchange has the right, during normal business hours and upon reasonable notice to the Contracting Party, to
    - (A) audit and review relevant portions of those records; and
    - (B) audit the manner of access to and usage of such Service, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed.

Failure or omission by Exchange to conduct an audit pursuant to this section will not relieve the Contracting Party from its responsibilities to comply fully with the rights and restrictions relating to ICE NGX Data Products set out in this section.
  - (ii) The Contracting Party agrees to permit Exchange or its representatives to periodically inspect, remotely or a Subscriber’s sites, and during reasonable hours and at reasonable intervals, the network on or by which any portion of the ICE NGX Data Products are accessed for purposes of evaluating compliance with the terms of this Agreement.
  - (iii) In the event of such an onsite audit undertaken by Exchange at the Contracting Party’s site, Exchange or its representatives shall liaise with the Contracting Party to outline an implementation plan to ensure the Contracting Party’s security protocols and mandatory and/or contractual data security obligations are met in relation to the right inspection and audit. Notwithstanding the foregoing, Exchange may share the information obtained as part of the audit, with its affiliates and their representatives and agents. Exchange acknowledges that the Contracting Party can redact all personal information for purposes of any audit or inspection under this section.
  - (iv) The costs of any such audit and/or inspection shall be borne by Exchange; provided, however, if such audit and/or inspection reveal (A) an underpayment to Exchange of five percent (5%) or more and/or (B) material variance in the access and/or use of the ICE NGX Data Products from the license grant as specified in this Agreement, the Contracting Party shall reimburse Exchange for its reasonable costs and expenses in conducting such audit and/or inspection.

### **8.3 Data: Limitation of Liability and Indemnity**

- a. **Warranty of Fitness: Data** – The Contracting Party acknowledges, understands and accepts that each of Exchange and its affiliates make no warranties whatsoever to the Contracting Party or its affiliates, and that the Trade Data and ICE NGX Data Products are provided on an "as is" basis. Other than as expressly provided in this Article 8, Exchange hereby expressly disclaims any warranty, express or implied, in respect of all or any part of the Trade Data and ICE NGX Data Products, 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.
- b. **Limitation of Liability: Data** – Without limitation to any other provision in this Agreement, and except in instances where there has been a finding of wilful 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, its affiliates or any other person for, and the Contracting Party shall assume, and shall release and waive Exchange from, any claims and all liability, loss or damage, cost or expense arising or suffered from or in connection with any of the following, regardless of whether the claim or loss arises in contract, tort, negligence, strict liability or otherwise:
  - (i) Trade Data; and
  - (ii) the ICE NGX Data Products.
- c. **Time Limits** – Any claim for Exchange's wilful misconduct in respect of the matters described in this Section 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. The Contracting Party will not be entitled to bring any such claim against Exchange after such time periods have expired.
- d. **Limit of Liability** – To the maximum extent permitted by law, the aggregate liability of Exchange under any claim relating to Trade Data or the ICE NGX Data Products shall be limited to an aggregate amount of \$10,000 for a single claim and an aggregate amount of \$100,000 for all claims of Contracting Parties on a single day and where if all such claims cannot be satisfied for a single day because of the foregoing dollar limitation on recoveries, all such claims shall be limited to a pro rata share of the maximum per day amount.
- e. **Indemnity by Contracting Party** – The Contracting Party agrees to defend, hold harmless and indemnify the Exchange and/or its affiliates and each of their respective directors, officers, affiliates, employees and agents from and against claims, judgements, suits, actions and proceedings, and all losses, liabilities, damages, costs and expenses (including legal fees for)
  - (i) any use of the ICE NGX Data Products by the Contracting Party;
  - (ii) any use of the Contracting Party's own Trade Data by the Contracting Party; and
  - (iii) any use of the Trade Data by the Exchange or its affiliates.

## **PART 8B – SOFTWARE AND SYSTEMS**

### **8.4 Software License and Intellectual Property Rights**

- a. **Software License** – Exchange grants to the Contracting Party a limited, revocable, paid-up, non-transferable and non-exclusive license to use the ICE 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 ICE NGX Clearing System to the Contracting Party.

- b. IP Rights: Systems and Services – All Intellectual Property Rights in the ICE NGX Trading System, ICE Trading Platform, ICE NGX Clearing System and the Services and any derivative works thereof, are and shall remain the sole and exclusive property of Exchange or its affiliates, as applicable.

## **8.5 Limitation of Liability: General**

- a. Limitation – 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, its affiliates or any other person, for any losses, damages, costs or expenses arising from or in connection with any failure, defect, or malfunction in, or any fault in delivery, delay, error, act or omission, suspension, inaccuracy, termination, entry of data on behalf of either Exchange or Contracting Party or any other cause, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise.
- b. Waiver of Liability – Without limitation to the foregoing, and 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 and employees shall be liable to the Contracting Party for, and the Contracting Party shall assume, and shall release and waive Exchange from, all liability, loss or damage, costs or expenses arising or suffered at any time and from time to time arising from or in connection with any of the following, however it may arise:
  - (i) any defects, faults, failures or malfunctions with respect to the furnishing, performance, maintenance, use of or inability to access all or part of the ICE Trading Platform, the ICE NGX Trading System or the ICE 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 ICE NGX Trading System or ICE Trading Platform;
  - (ii) the suspension, termination or inability to access or use ICE Trading Platform, the ICE NGX Trading System or the ICE NGX Clearing System or any Services;
  - (iii) any 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, ICE NGX Trading System or ICE NGX Clearing System;
  - (iv) any inaccuracies, errors or omissions in any information provided, however such inaccuracy, error or omission may arise;
  - (v) any 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;
  - (vi) any Transactions entered into by or on behalf of the Contracting Party by personnel other than Authorized Representatives.
- 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 ICE NGX Trading System, ICE 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 ICE NGX Trading System or ICE 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 8.5.a. or b., 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** – To the maximum extent permitted by law, the aggregate liability of Exchange, including in respect of any Collateral, 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 matters treated under Section 8.3.d.
- f. **Warranty of Fitness** – The Contracting Party acknowledges, understands and accepts that each of Exchange and its affiliates make no warranty whatsoever to the Contracting Party or its affiliates, and that the ICE NGX Trading System, ICE NGX Clearing System and the Services are provided on an “as is” basis. Other than as expressly provided in this Section 8.1, Exchange hereby expressly disclaims any warranty, express or implied, in respect of all or any part of the ICE NGX Trading System, ICE 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 out in this Section 8.1 shall not be construed as implying or requiring any indemnification by the Contracting Party of any of the other Contracting Parties, other than under the revocation warranty provisions set out in Schedule H.
- h. **No Liability for Action by a Governmental Authority** – Exchange is not responsible for, and will have no liability whatsoever as a result of, any action taken or not taken by a governmental authority that impacts or may impact the value of the underlying commodity of any Transaction or Physically Settled Futures Product or Financially Settled Futures Product. Neither the Buyer nor the Seller will have any claim against Exchange for any loss, cost, damage or expense incurred or suffered as a result of any action taken or not taken by a governmental authority, including changing the terms, pricing or express or implied value of any commodity or any other tangible or intangible thing including an Environmental Product.

## **PART 8C – INDICES**

### **8.6 Indices**

- a. **Liability for Exchange Indices** – Neither Exchange or its affiliates, nor the agents, directors, officers and employees of Exchange or its affiliates, 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 including those 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 or its affiliates, nor the respective agents, directors, officers and employees of Exchange or its affiliates, 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 that are settled pursuant to the terms of this Agreement on the basis of 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 or its affiliates, nor the respective agents, directors, officers and employees of Exchange or its affiliates will 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, which may include prices published by an independent electricity system operator and regional transmission organization. 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 prices so established are at a fair, proper or correct amount. Neither Exchange or its affiliates, nor the respective agents, directors, officers and employees of Exchange or its affiliates, 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 or its affiliates, nor the respective agents, directors, officers and employees of Exchange or its affiliates be liable to the Contracting Party for any losses, damages, costs or expenses arising from any failure of a publisher of such indices to establish prices or report prices for their contracts at a fair, proper or correct amount.

## **PART 8D - GENERAL**

### **8.7 Indemnification**

- a. Indemnification for Infringement – Subject to Section 8.5(e), 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 of a patent, copyright, trade secret or other intellectual property right by the ICE 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.
- b. No Indemnification – Notwithstanding any other provision in this Agreement, Exchange will have no indemnity obligation for infringement claims:
  - (i) with respect to the ICE NGX Data Products or Trade Data;
  - (ii) resulting from any combination, operation or use of the ICE NGX Clearing System with any programs or equipment not supplied by Exchange, if such infringement would have been avoided but for such use;
  - (iii) resulting from any activity of the Contracting Party which is in breach of this Agreement; or
  - (iv) 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.

- c. No Indemnification by Contracting Party of any other Contracting Parties – For greater certainty, the limitations of liability of Exchange set out in this Article 8 shall not be construed as implying or requiring any indemnification by the Contracting Party of any other Contracting Parties, other than under the revocation warranty provisions set out in Schedule H.

## **8.8 Further Limitations**

- a. No Indirect Damages – Without limitation to any other provision in this Agreement, and other than as specifically set out forth in this Agreement, in no event shall Exchange or any Contracting Party 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 Contracting Party's suppliers or customers against the Exchange or any Contracting Party arising out of any of the following, however they may arise:
- (i) Trade Data;
  - (i) the ICE NGX Data Products;
  - (ii) the ICE NGX Trading System, the ICE NGX Clearing System and the Services, including but not limited to the use or inability to use the ICE NGX Trading System, the ICE NGX Clearing System and/or the Services, and any interruption, inaccuracy, error or omission;
  - (iii) indices, whether calculated and/or administered by Exchange or by any other party; and
  - (iv) any other matter for which liability may be assessed under this Agreement.
- b. No Liability for Action by a Governmental Authority – Exchange is not responsible for, and will have no liability whatsoever as a result of, any action taken or not taken by a governmental authority that impacts or may impact the value of the underlying commodity of any Transaction or Physically Settled Futures Product or Financially Settled Futures Product. Neither the Buyer nor the Seller will have any claim against Exchange for any loss, cost, damage or expense incurred or suffered as a result of any action taken or not taken by a governmental authority, including changing the terms, pricing or express or implied value of any commodity or any other tangible or intangible thing including an Environmental Product.

## **ARTICLE 9 – GENERAL**

### **9.1 Structure and Revisions**

- a. Incorporation into Agreement – The Terms and Conditions including its Appendix I - Definitions 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 – Collateral and Risk Management

Schedule D – ICE NGX Product List

Schedule E – Natural Gas Options and Financially Settled Gas and Power 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 Environmental Futures Transactions

Schedule I – Reserved.

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

- b. Conflicts – To the extent that any Schedule (including, without limitation, any appendices thereto) conflicts with these Terms and Conditions, these Terms and Conditions shall prevail.
- c. Revision of Agreement – The Terms and Conditions and Schedules may be revised from time to time by Exchange upon notice to the Contracting Party.
- d. Effective Date of Revisions to Agreement – Revisions to the Terms and Conditions and Schedules will be effective.
  - (i) six (6) Business Days following notice in accordance with this Section, or
  - (ii) at such later date as may be designated as the Revision Effective Date (as defined in this Section), or as may be otherwise designated in such notice, or
  - (iii) at such earlier date as may be required for compliance with applicable laws or regulations, to protect the integrity of the ICE NGX Trading System or ICE 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 out in Article 1.
- e. Notice of Revisions to Agreement – Notice of revisions to the Terms and Conditions and Schedules shall be sufficiently given by ICE NGX (i) providing the revisions to the Terms and Conditions and Schedule (the “Revisions”) and a notice summarizing the revisions (a “Summary Notice”) to the Contracting Party by email, and (ii) posting the Revisions and Summary Notice on Exchange’s Website in a publicly accessible location.
- f. Revision Effective Date – The effective date of any revision(s) (the “Revision Effective Date”) to these Terms and Conditions and any Schedule will be indicated on each page of the Terms and Conditions or Schedule(s), as applicable, having accounted for the notice requirements in this Section.

## **9.2 Interpretation**

- a. Headings – 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. Construction – Each term defined in this Agreement has the meaning ascribed to it herein 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 will 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 out herein or in any other such document). Any reference to any Regulation in this Agreement will be construed as referring to such Regulation, as amended, restated, replaced or re-enacted from time to time.

- c. Definitions – Capitalized words and phrases used herein will for all purposes of this Agreement (unless the context requires otherwise) have the meanings set out in Appendix I – Definitions or the meanings set out in the specific Section in which they are used herein.
- d. Singular and Plural – Defined terms used in the singular import the plural and vice versa.
- e. Time – 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”.
- f. References to Sections, Schedules, and Others – Unless otherwise indicated, references to a Section, Subsection or paragraph are to the section, subsection or paragraph in the Terms and Conditions or the Schedules in which such reference appears.

### **9.3 Governing Law**

- a. Governing Law – This Agreement will 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 and as applicable thereto, including without limitation in respect of its relationship to other U.S. laws, governed by and in accordance with the U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”). Reference to such laws will 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 and FIDICIA, each as applicable. 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 will not apply to this Agreement or any Physically Settled Futures Transaction.
- b. Waiver of Trial by Jury – 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. Eligible Financial Contract – 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 “WURA”);
- d. Foreign Board of Trade –
  - (i) Each of the Contracting Party and Exchange intend and agree that each and every Transaction conducted on or subject to the rules of ICE 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 CFTC Regulations.
  - (ii) Each of the Contracting Party and Exchange hereby agrees to and submits to the non-exclusive jurisdiction of the CFTC with respect to activities conducted pursuant to Exchange’s registration as a Foreign Board of Trade.

- (iii) Each Contracting Party granted direct access (as that term is defined in Part 48 of the CFTC Regulations) will provide, upon request by the CFTC, the United States Department of Justice or, if appropriate, the National Futures Association, prompt access to the Contracting Party's original books and records or, at the election of the requesting agency, a copy of specified information containing such books and records.
- e. Netting and Set-Off – Each of the Contracting Party and Exchange intend and agree that each and every Transaction cleared by and subject to the rules of ICE NGX acting as a registered Derivatives Clearing Organization be subject to the Netting and Set-Off provisions of this Agreement including in Article 5 of the Agreement.

#### **9.4 No Reliance; Relationship of Parties**

- a. 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, the party delivering such document agrees, acknowledges and represents that:
  - (i) the other party hereto or thereto is not acting as a fiduciary or financial, investment or commodity trading advisor for it;
  - (ii) 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 out in this Agreement, in such Credit Support Document, or in any Confirmation;
  - (iii) 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;
  - (iv) 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;
  - (v) 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
  - (vi) it is a sophisticated investor.
- b. No Partnership or Joint Venture – This Agreement nor the conduct of any party will 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 will 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 will 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 out in this Agreement.
- c. 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 out 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, agreement or notice in writing necessary to ensure the validity or enforceability of any Transaction entered: (i) into by any Contracting Party through the ICE NGX Trading System; or (ii) into the ICE NGX Clearing System against such Contracting Party, including, without limitation, nominations in respect of the delivery or receipt of gas, scheduling of the delivery or receipt of Physical Power, transfer of title to Environmental Products, the Liquidation and Close-out Procedures and in respect of any filing necessary or desirable in respect of any Regulatory Approval required pursuant to any Regulation. The power of attorney and agency granted hereby is irrevocable, is a power coupled with an interest and will survive the bankruptcy, liquidation, winding-up, merger, amalgamation or incapacity of the Contracting Party and bind the successors of the Contracting Party and will only terminate on the effective date of any termination of this Agreement. The Contracting Party agrees to be bound by any representation or action made or taken by Exchange pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm any action of Exchange taken in good faith under this power of attorney.

## **9.5 Assignment**

- a. No Assignment Without Consent – This Agreement or the rights, benefits or Obligations hereunder may not be assigned by the parties hereto without the consent in writing of the other party to this Agreement.
- b. Exchange May Assign – Notwithstanding any other provision to the contrary in this Agreement, Exchange may assign as security its rights, benefits and interest hereunder to any bank, trust company, financial institution or any other person providing credit facilities or other financing to Exchange and to any corporation or insurance company providing default insurance to Exchange, provided however that such bank, trust company, institution or other person or corporation or insurance company (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 will 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 Article 5, 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.

## **9.6 Interest on Payments in Arrears**

- a. Interest – 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.

## **9.7 Notices**

- a. Notices – Any notice, consent, determination or other communication required or permitted to be given or made hereunder must be in writing and will be sufficiently given or made if delivered by hand, email, or registered mail during normal business hours on a Business Day. Such delivery shall be effective at the time of delivery (in the case of delivery by hand or registered mail), or at the time the relevant notice, consent determination or other communication is sent (in the case of delivery by email).
- b. Notices to Exchange – Notices and other communication to Exchange must be addressed to:

ICE NGX Canada Inc.  
Suite 2610, 225 - 6th Avenue SW Calgary, Alberta  
T2P 1N2

Attention: President  
Email: [legal-ICENGX@ice.com](mailto:legal-ICENGX@ice.com)

- c. Notices to Contracting Party – Notices and other communication to the Contracting Party may be addressed to the attention of the person designated by the Contracting Party from time to time to receive such notices. Notwithstanding the above, Exchange may provide notices and other communications to other individuals identified by the Contracting Party as Exchange may consider appropriate and/or necessary.
- d. Other Communications – Other means of electronic communication shall include being available for access by way of the ICE NGX Trading System or the ICE NGX Clearing System.
- e. Changes to Address for Notices – Each party may change its mailing address, or email address for the purposes of this Section by notice to the other pursuant hereto.

## **9.8 General**

- a. Entire Agreement – Except as expressly noted to the contrary, this Agreement constitutes the entire agreement among the parties with respect to the matters dealt with herein 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.
- b. 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.
- c. Compliance with Applicable Laws – Each of Exchange and the Contracting Party hereby agree to comply with all laws which are applicable to the transactions contemplated by this Agreement.
- d. Waiver – Failure by Exchange to exercise any authority, right or remedy under the Agreement will not signify acceptance of the event giving rise to such right or remedy nor will it constitute a waiver of such right or remedy.
- e. Further Documents – Each of the parties will, 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.
- f. Notice of Change in Ownership of Exchange – Exchange hereby agrees 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.
- g. Location of Services – Each of the Contracting Party and Exchange hereby agree that the services provided by Exchange to the Contracting Party through the ICE NGX Trading System and ICE NGX Clearing System are provided in the Province of Alberta.
- h. 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.
- i. Enurement – This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- j. Severability – 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.

- k. Time of the Essence – Time is of the essence of this Agreement.
- l. Non-contra Proferentum – This Agreement shall not be interpreted or construed against Exchange merely because it has been prepared by Exchange.
- m. Choice of Language – The Parties confirm that this Agreement (including the essential stipulations thereof) was negotiated or negotiable and represents the mutual agreement of the Parties. The Parties further confirm that it is their express wish that this Agreement and all documents related to this Agreement, and all communications exchanged between the Parties in the context of the execution of this Agreement, be in the English language only. Les parties confirment que cette entente (incluant les stipulations essentielles) a été négocié ou pouvait l'être et qu'elle est conclue de gré à gré. Les parties confirment également que c'est leur volonté expresse que cette entente, de même que toute documentation s'y rattachant et toute communication entre les parties dans le cadre de l'exécution de celle-ci soit exclusivement en langue anglaise.