



March 5, 2024

**VIA CFTC PORTAL**

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st St., N.W.  
Washington, D.C. 20581

**Re: Amendment to ICE NGX Canada Inc. Rules - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and CFTC Regulation § 40.6(a): CPA Amendments - Liquidation Procedures**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, ("Act") and Commodity Futures Trading Commission ("Commission") Regulation 40.6(a), ICE NGX Canada Inc. ("ICE NGX") is submitting this self-certification relating to changes (the "Amendments") to the ICE NGX Contracting Party Agreement ("CPA"). The CPA functions as the rulebook for ICE NGX's exchange and clearinghouse operations and is a "rule" as that term is defined under Commission Regulation 40.1(i).

**1. Overview**

The Amendments are designed to update the rules and procedures relating to Defaults, Events of Default and the Liquidation and Close-out Procedures to reflect current practices and understanding. As part of this update, the Amendments consolidate the currently distinct but related concepts of Close-out Procedure and Liquidation Procedure, and also streamline defined terms and descriptions relevant to Defaults, Events of Default and liquidation and close-out.

ICE NGX intends to implement the Amendments on April 15, 2024 or on such later date as ICE NGX may designate.

The text of the amended CPA provisions is attached as the Appendix to this letter.

Note: All capitalized terms not otherwise defined herein have the meaning given to them in the CPA.

**2. Details of Rule Changes**

***Summary of Changes***

The Amendments consolidate the concepts and procedures, including ICE NGX's discretionary authority, in a Default or Event of Default that are currently applicable to specific types of products only (set out in the first table below), into new, dedicated sections that are applicable to all types of products (set out in the second table below).

**ICE NGX Canada Inc.**  
Suite 2610, 225 – 6<sup>th</sup> Avenue SW  
Calgary, AB  
Canada T2P 1N2  
**ice.com**

Current Section		Applicability
5.5	Rights of Exchange in Physically Settled Futures Transactions	Physically Settled Futures Transactions only
5.7	Liquidation Procedure	Physically Settled Futures Transactions only
8.2	Rights of Exchange	Financially Settled Futures Transactions only
8.3	Close out Procedure	Financially Settled Futures Transactions only
Sch. K, 7.c.	ERCOT - Procedures on Non-Performance	Physically Settled Power Futures Transactions only

New Section after Amendments		Applicability
5.6	Contracting Party Default	All Transactions (physically settled and financially settled)
5.7	Contracting Party Event of Default	
5.8	Liquidation and Close-out Procedures	

### ***Guarantee of Contracting Party Affiliate - Terms and Conditions***

The Amendments clarify that the guarantee by a Contracting of the obligations of each of its Contracting Party Affiliates, provided under current section 3.3.1.b., is a direct obligation of the Contracting Party. This is a clarifying change, and does not substantively alter the effect of the current section 3.3.1.b.

### ***Net or Set-Off - Terms and Conditions***

The Amendments change the current defined term “Set-Off” to “Net or Set-Off”, and update the definition. The Amendments make corresponding changes throughout the CPA Terms and Conditions, to reflect the revised defined term to rely on the defined term wherever applicable.

The Amendments also enhance the “deemed performance” section that is designed to give finality to a Defaulting Contracting Party following the Liquidation and Close-out Procedures. Finally, the Amendments remove the “present value” concept in determining the final net settlement amount following the Liquidation and Close-out Procedures, to reflect that ICE NGX will determine the net settlement amount based on the outcome of the Liquidation and Close-out Procedures.

### ***Automatic Event of Default and Communication of Event of Default - Terms and Conditions***

The Amendments specify that an Event of Default is triggered automatically in respect of a Contracting Party upon the occurrence of a bankruptcy-related event. We note that the description of bankruptcy-related events is not being changed. We note further that no change is being made to the consequences of an Event of Default - i.e., the authority for ICE NGX to take action as a result of an Event of Default, including an automatic Event of Default, continues to be discretionary and not automatic.

As a consequence of this change, the Amendments specify that no declaration is required by ICE NGX, and notice is required to be given to the Contracting Party, in the case of an automatic Event of Default.

### ***Authority to Act in a Default and Event of Default - Terms and Conditions***

The changes described in the table above facilitate the re-working of the provisions that set out ICE NGX's discretionary authority, away from product-specific provisions to situation-specific provisions. This allows for greater transparency in the rulebook by more explicitly setting out ICE NGX's discretionary authority to act in case of a Default, and its additional discretionary authority in case of an Event of Default.

The Amendments explicitly include, in the list of actions authorized in a Contracting Party Default, the authority to decline to enter into transactions with the defaulting Party and to limit or restrict the Defaulting Party's trading permissions. These actions are currently authorized under other provisions of the CPA; ICE NGX is including them in this list for greater transparency.

The Amendments also clarify that ICE NGX's discretionary authority to act applies upon both the occurrence and/or the continuation of a Default or Event of Default, as applicable.

### ***Liquidation and Close-out Procedures - Terms and Conditions***

As illustrated in the tables above, the Amendments consolidate the concepts of Liquidation Procedure, currently applicable to only physically settled products, and Close-out Procedure, currently applicable to only financially settled products, into revised section 5.8 applicable to all types of products. This consolidation reflects ICE NGX's current Default Management Procedures and facilitates greater flexibility to manage the liquidation of a Defaulting Contracting Party's portfolio, across all types products in the portfolio.

### ***Default Auction Procedures - Terms and Conditions***

The Amendments to section 5.9 establish, in the rulebook, a general framework for the conduct of a default auction.

The Amendments to section 3.6 explicitly provide for confidentiality of information relating to delivery failures and any actual or potential liquidation.

### ***Final Close-out Netting and Set-off and Final Invoice - Terms and Conditions***

The Amendments to section 5.10 set out the process for determining the final netting and set-off amount, calculated after the drawdown of the Defaulting Contracting Party's collateral and the liquidation and close-out of the Defaulting Contracting Party's open positions and positions delivered but not yet settled. The Amendments set out, in revised section 5.11, particulars relating to determination, issuance and payment of a Final Invoice to the Defaulting Contracting Party, and make corresponding amendments to Article 7 to reflect the Final Invoice concept.

The Amendments also specify that if, following the final close-out Netting and Set-Off the net settlement amount is owed from ICE NGX to the Exchange, and the Defaulting Party has outstanding Revocation Obligations under physically settled environmental products cleared by ICE NGX, ICE NGX will further Net and Set-Off the net settlement amount against the outstanding Revocation Obligations. Implementation of this new section 5.11.g. is contingent upon regulatory approval for ICE NGX to launch trading and clearing of environmental products.

***Exchange Default - Terms and Conditions***

The Amendments consolidate provisions and concepts relating to a default by ICE NGX, and make corresponding, clarifying and other non-substantive amendments to certain related provisions.

***Definitions - Terms and Conditions***

The Amendments remove a number of defined terms relating to defaults, liquidation and close-out, consolidating similar concepts into fewer defined terms to improve the accessibility and readability - and therefore transparency - of relevant CPA provisions.

The Amendments update the definition of “Failure to Pay”, to reflect the settlement payment deadline of 12:00 noon Mountain Prevailing Time implemented through CPA amendments that became effective December 1, 2022. The Amendments also make corresponding and/or clarifying and updating changes to several other defined terms, including to reflect the consolidated terminology described above.

***Conforming and Re-organizing Amendments - Terms and Conditions***

The Amendments further improve the organization and readability of Article 5, by grouping related provisions into the following new “Parts” of Article 5:

- Part 5A - Failures
- Part 5B - Contracting Party Default
- Part 5C - Exchange Default
- Part 5D - General

The Amendments also make conforming changes to other provisions of the CPA to reflect the changes described in this submission.

***Schedule “C” - Initial Margin Determination***

The Amendments update section 2 of Schedule “C” to more explicitly state ICE NGX’s discretion in determining Initial Margin and to better reflect ICE NGX’s portfolio margining model, while retaining flexibility for ICE NGX to set product-specific Initial Margin Rates where appropriate.

***Schedule “C” - Risk to Exchange***

The Amendments to section 10 of Schedule “C” codify ICE NGX’s current practices, by explicitly including in the non-exhaustive list of examples under “any other reasonable actions” the authority to withhold settlement payments due from ICE NGX to a Defaulting Contracting Party.

***Schedule “K” - Physically Settled Power Futures Transactions (ERCOT)***

The amendments to Schedule “K” reflect the consolidation of discretionary authority to act in a Default or Event of Default situation into Article 5 of the Terms and Conditions. This facilitates changes to align the “Procedures on Non-Performance” in section 7.c. of Schedule “K” with the corresponding provisions for Physically Settled Natural Gas Products. These amendments better reflect ICE NGX’s current approach of consistent practices in similar situations, to the extent

**ICE NGX Canada Inc.**

Suite 2610, 225 – 6<sup>th</sup> Avenue SW

Calgary, AB

Canada T2P 1N2

**ice.com**



appropriate across all products. Consistent practices and rules improve predictability and transparency for participants and speed up assessment, decision-making and action by ICE NGX in an actual Default or Event of Default.

### **3. Compliance with Core Principles**

ICE NGX reviewed the Amendments and determined that they comply with the rules and regulations of the Commission. In this regard, ICE NGX reviewed the derivatives clearing organization (“DCO”) core principles (each a “Core Principle”) and determined that the Amendments are potentially relevant to the following Core Principles and applicable regulations of the Commission thereunder.

**Compliance (Core Principle A):** The Amendments are consistent with Core Principle A - Compliance and Commission Regulation 39.10, as the Amendments clarify and enhance ICE NGX’s policies and procedures for complying with Commission regulations and internal policies.

**Risk Management (Core Principle D):** The Amendments are consistent with Core Principle D - Risk Management and Commission Regulations

- § 39.13(g)(4) as the Amendments to section 2 of Schedule “C” enhance the description of ICE NGX’s discretionary authority in determining Initial Margin to better reflect ICE NGX’s portfolio margining model;
- § 39.13(h)(6) as the Amendments to Article 5 of the Terms and Conditions provide more explicitly set out ICE NGX’s discretionary authority to act in a Default or Event of Default;
- § 39.13(h)(6) as the Amendments to section 10 of Schedule “C” explicitly specify ICE NGX’s discretionary authority to withhold settlement payments owing to a Defaulting Contracting Party.

**Settlement Procedures (Core Principle E):** The Amendments are consistent with Core Principle E - Settlement Procedures and Commission Regulations

- § 39.14 generally, as the Amendments to
  - Article 5 of the Terms and Conditions codify ICE NGX’s practices in relation to determining and issuing a Final Invoice, and the payment terms thereof, following a liquidation; and
  - Article 7 of the Terms and Conditions update the invoicing-related provisions to reflect the Final Invoice concept; and
- § 39.14(g), as the Amendments to Schedule “K” update the procedures on non-performance relating Physically Settled Power Products.

**Default Rules and Procedures (Core Principle G):** The Amendments are consistent with Core Principle G and Commission Regulations § 39.16(a) and (c), as the Amendments to Article 5 of



the Terms and Conditions update, clarify and enhance the transparency of ICE NGX's rules and procedures relating to Defaults, Events of Default and the liquidation and close-out of a Defaulting Contracting Party's portfolio.

Public Information (Core Principle L): The Amendments are consistent with Core Principle L Regulations § 39.21(a) and (c)(6) as the Amendments enhance the transparency and readability of ICE NGX's rulebook by

- consolidating the provisions relating to liquidation and close-out;
- consolidating and more explicitly setting out ICE NGX's discretionary authority to act in a Default or Event of Default; and
- consolidating defined terms and concepts relating to failures, Defaults, Events of Default and liquidation and close-out.

#### **4. Certifications**

ICE NGX certifies that the proposed Amendments discussed in this submission comply with the Commodity Exchange Act, including the Core Principles and the Regulations of the Commission thereunder. ICE NGX is not aware of opposing views expressed regarding the Amendments. ICE NGX further certifies that, concurrent with this filing, a copy of this submission was posted to ICE NGX's website.

Yours truly,

*"signed by"*

---

By: Martin McGregor  
Title: General Counsel & CCO  
Date: March 5, 2024

## APPENDIX

### AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

#### TERMS AND CONDITIONS

*[Note: Insertions are underlined, deletions are struck through.]*

#### 1.2 Definitions

“Cash Settlement Date” means, for each Financially Settled Futures Transaction, the Business Day determined by Exchange from time to time in accordance with industry practice for such Transaction, as posted on Exchange’s Website not less than one month prior to the occurrence of such date, other than amounts declared immediately due and payable under Article 5 ~~Invoices issued as a result of a Contracting Party’s Default or under the Closeout Procedure amounts require payment immediately;~~

~~“Close-out Procedure” means the procedure outlined in Section 8.3 pursuant to which the Exchange may enter into Close-out Transactions Option Transactions or any Financially Settled Futures Transaction, as the case may be, to Set-Off, in whole or in part, the Obligations of the Defaulting Party under Option Transactions or Financially Settled Futures Transactions;~~

~~“ICE NGX Close-out Transactions” means a, in respect of a Defaulting Financially Settled Futures Party, Financially Settled Futures Transactions entered into by Exchange on the ICE NGX Trading System or ICE Trading Platform, as applicable, or Financially Settled Futures Transactions entered into by Exchange off the ICE NGX Trading System or ICE Trading Platform, as applicable, which replace some or all of the Financially Settled Futures Transactions of such Defaulting Financially Settled Futures Party and offset, in whole or in part, each of the Financially Settled Futures Transactions of such Defaulting Financially Settled Futures Party, pursuant to the in accordance with the Liquidation and Close-out Procedures and, in respect of a Defaulting Option Party, Option Transactions entered into by Exchange on the ICE NGX Trading System or ICE Trading Platform, as applicable, or Option Transactions entered into by Exchange off the ICE NGX Trading System or ICE Trading Platform, as applicable, which replace some or all of the Option Transactions of such Defaulting Option Party and offset, in whole or in part, each of the Option Transactions of such Defaulting Option Party, pursuant to the Close-out Procedure;~~

~~“Contracting Party Affiliate Default” means a Default by a Contracting Party Affiliate under a Contracting Party Agreement;~~

“Default” means, with respect to a Contracting Party, any of the following:

- (i) any one or more of a Failure to Deliver, Failure to Pay, Failure to Take, Failure to Provide Eligible Collateral Support, or failure to perform any other Obligations under a Transaction Financially Settled Futures Party’s Default; ~~or Option Party’s Default of such~~ by the Contracting Party; or a Contracting Party Affiliate Default of any of its Contracting Party Affiliates; and



- (ii) ~~with respect to a Physically Settled Power Futures Transaction, in addition to the events listed in paragraph (i), as determined by Exchange pursuant to Schedule "K"~~ a material breach of a representation or warranty made herein by the Contracting Party;

~~"Defaulting Financially Settled Futures Party" means the Contracting Party in respect of which a Financially Settled Futures Party's Default or other Default has occurred under this Agreement;~~

~~"Defaulting Option Party" means the Contracting Party in respect of which an Option Party's Default or other Default has occurred under this Agreement;~~

"Event of Default" has the meaning set out in Section ~~5.53.9~~;

"Exchange Bankruptcy Event of Default" means the occurrence of any of the events set forth in Section ~~5.113.10~~;

"Failure to Pay" means the failure of a Contracting Party or Exchange to make payment, prior to 12:00 p.m. Mountain Prevailing Time on the relevant Settlement Date, of any amount under any Invoice issued in accordance with this Agreement;

~~"Financially Settled Futures Party's Default" means the occurrence of a material breach of a representation or warranty made herein by the Contracting Party or failure by the Contracting Party to perform any of its Obligations under a Financially Settled Futures Transaction;~~

~~"Financially Settled Futures Settlement Date" means, for each Financially Settled Futures Transaction, the Business Day determined by Exchange from time to time in accordance with industry practice for such Financially Settled Futures Transaction, as posted on Exchange's Website not less than one month prior to the occurrence of such date, other than amounts declared immediately due and payable under Article 5a Invoices issued as a result of a Financially Settled Futures Party's Default or under the Close-out Procedure which amounts require payment immediately;~~

~~"Liquidation and Close-out Procedures" means the procedure outlined in Article 5 Section 5.6 pursuant to which Exchange may enter into Physically Settled Futures Transactions to Set Off, in whole or in part, the Obligations of the Contracting Party under Physically Settled Futures Transactions;~~

~~"ICE NGX Liquidation Transactions" means a Physically Settled Futures Transactions entered into by Exchange on the ICE NGX Trading System or ICE Trading Platform, or physical transactions in the deliverable commodity entered into by Exchange outside of the ICE NGX Trading System or ICE Trading Platform, which offset, in whole or in part, the Obligations of a Contracting Party under its Physically Settled Futures Transactions pursuant to~~ in accordance with the Liquidation and Close-out Procedures;

"MTM Settlement Date" means for each Financially Settled Power Futures Transaction, the second Business Day following the date the applicable Mark-to-Market Settlement Amount (as set forth in Schedule "E") has been determined (unless such MTM Settlement Date falls on a Recognized Banking Holiday, in which case the MTM Settlement Date shall be the next Business

ICE NGX Canada Inc.

Suite 2610, 225 – 6<sup>th</sup> Avenue SW

Calgary, AB

Canada T2P 1N2

[ngx.com](http://ngx.com)

[ice.com](http://ice.com)





Day after the Recognized Banking Holiday), other than for amounts declared immediately due and payable under Article 5~~a Invoices issued as a result of a Financially Settled Futures Party's Default or under the Close-out Procedure which amounts require payment immediately;~~

~~"Option Party's Default" means the occurrence of a material breach of representation or warranty made herein by a Contracting Party or a failure by the Contracting Party to perform its Obligations under an Option Transaction;~~

~~"ICE NGX Close-out Transactions" means, in respect of a Defaulting Financially Settled Futures Party, Financially Settled Futures Transactions entered into by Exchange on the ICE NGX Trading System or ICE Trading Platform, as applicable, or Financially Settled Futures Transactions entered into by Exchange off the ICE NGX Trading System or ICE Trading Platform, as applicable, which replace some or all of the Financially Settled Futures Transactions of such Defaulting Financially Settled Futures Party and offset, in whole or in part, each of the Financially Settled Futures Transactions of such Defaulting Financially Settled Futures Party, pursuant to the Close-out Procedure and, in respect of a Defaulting Option Party, Option Transactions entered into by Exchange on the ICE NGX Trading System or ICE Trading Platform, as applicable, or Option Transactions entered into by Exchange off the ICE NGX Trading System or ICE Trading Platform, as applicable, which replace some or all of the Option Transactions of such Defaulting Option Party and offset, in whole or in part, each of the Option Transactions of such Defaulting Option Party, pursuant to the Close-out Procedure;~~

~~"ICE NGX Liquidation Transactions" means Physically Settled Futures Transactions entered into by Exchange on the ICE NGX Trading System or ICE Trading Platform, or physical transactions in the deliverable commodity entered into by Exchange outside of the ICE NGX Trading System or ICE Trading Platform, which offset, in whole or in part, the Obligations of a Contracting Party under its Physically Settled Futures Transactions pursuant to the Liquidation Procedure;~~

"Physical Settlement Date" means, for each Physically Settled Futures Transaction, the day determined by Exchange from time to time in accordance with industry practice for such Physically Settled Futures Transaction, as posted on Exchange's Website not less than one month prior to the occurrence of such date, other than amounts declared immediately due and payable under Article 5~~any Physically Settled Futures Transaction for which an Invoice has been issued as a result of a Default or under the Liquidation Procedure, in which case the Physical Settlement Date will be the date set out in such Invoice;~~

"Regulations" means ~~all—any~~ applicable laws, regulations, rules, orders, judgments, interpretations, policy policies and other binding similar pronouncements originating with a legislature, securities or derivatives regulatory authority, board, agency, court, stock exchange or other regulatory body with jurisdiction;

"Transactions" means a Physically Settled Futures Transactions, Financially Settled Futures Transactions, or Option Transactions and for clarity includes without limitation, a Backstopping Transaction, Close-out Transaction, Liquidation Transaction and a Physically Settled Futures Transactions ~~s and or~~ Financially Settled Futures Transactions established through the EFRP Exchange of Futures for Related Product provision of this Agreement Section 3.2;

...

## ARTICLE 3 – GENERAL OBLIGATIONS

### 3.1 Application, Participation and Access

#### d. Opportunity to be Heard – ...

For the avoidance of doubt, the right to a hearing before a Participation and Access Hearing Panel in no way restricts or postpones Exchange's authority and power to cause a Contracting Party Suspension and/or termination, or to effect the Liquidation and Close-out Procedures ~~and/or the Liquidation Procedure~~ with respect to the Contracting Party's Transactions.

...

### 3.3 Eligible Collateral Support and Collateral

...

#### c. 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 forth under this Agreement, Exchange shall have the rights and remedies set forth in this Agreement including, without limitation, the rights to cause a Contracting Party Suspension ~~or~~ effect the Liquidation and Close-out Procedures ~~and/or effect the Liquidation Procedure~~ with respect to the Contracting Party's Transactions.

...

#### 3.3.1 Contracting Party Affiliates

...

#### 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 the Risk Management Policy, the Liquidation and Close-out Procedures pursuant to Article 5 Section 5.6, the Close-out Procedure pursuant to Section 8.3, or as may be otherwise necessary to comply with the terms and conditions of this Agreement.

...

### **3.6 Confidentiality**

...

#### **b.h- Confidentiality 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
  - (A) business, financial and strategic information in respect of, Exchange and any of its affiliates; and
  - (B) information relating to any request for physical backstopping or any actual or potential Liquidation or Close-out Procedures.

#### **c.a- Confidentiality 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 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 is not ICE NGX Data Products, including in seeking indicative quotes in respect of the open Transactions of the Contracting Party and in the case of Exchange invoking the Liquidation and Close-out Procedures in respect of the Contracting Party.

...

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

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

...

- g. Recourse Against Exchange – Exchange agrees to pay or cause to be paid the Purchase Amount to the Seller, to deliver or cause the delivery of the Contract Quantity of gas to the Buyer and to take or cause to be taken the Contract Quantity of gas from the Seller. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physically Settled Gas Futures Transactions is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set forth under this Agreement in the event of any Failure to Deliver, Failure to Pay or Failure to

Take by Exchange relating to a Physically Settled Gas Futures Transaction. ~~In the event that there is such a Failure to Deliver, Failure to Pay or Failure to Take by Exchange which is not remedied by Exchange within five Business Days and is not the subject matter of Mediation or Arbitration, and there is at that time a Defaulting Party under this Agreement or any other Contracting Party Agreement, Exchange will (if requested) disclose the name of any such Defaulting Party to any Contracting Parties affected by any such Failure to Deliver, Failure to Pay or Failure to Take, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.~~

...

## 4.2 Physically Settled Power Futures Products - General

...

e. 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 Futures Transactions entered into by the Contracting Party through the ICE NGX Trading System or under the EFRP provision of this Agreement ~~Section 3.2.~~

(ii) ~~Each of Exchange and the~~ 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 or ~~deliver Physical Power~~ as may be required pursuant to its ~~any such~~ 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.

f. 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 forth under this Agreement in the event of any Failure to Deliver, Failure to Pay or Failure to Take by Exchange relating to a Physically Settled Power Futures Transaction.

*[Note: Subsequent subsections of Section 4.2 will be renumbered to reflect the amendments described above.]*

...

## ARTICLE 5 - FAILURE, DEFAULT AND LIQUIDATION AND CLOSE-OUT PROCEDURES RECOURSE AND LIABILITY

### PART 5A – FAILURES

#### 5.1 Failure to Deliver

...

#### 5.2~~3~~ Failure to Take~~Failure to Pay~~

[Note: All text in this section is being moved, with no additional edits.]

...

#### 5.3~~6~~ Backstopping Transactions~~Failure to Take~~

[Note: All text in this section is being moved, with no additional edits.]

...

#### 5.4~~3~~ Failure to Pay~~Failure to Provide Eligible Collateral Support~~

[Note: All text in this section is being moved, with no additional edits.]

...

#### 5.5~~4~~ Failure to Provide Eligible Collateral Support~~Rights of Exchange in Physically Settled Futures Transactions~~

[Note: All text in this paragraph is being moved, with no additional edits.]

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

#### 5.6 Contracting Party Default~~Backstopping Transactions~~

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, 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;

- (ii) 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)e- with respect to Physically Settled Power Futures Transactions,
  - (A) cancel or amend any schedules to deliver or take Physical Power from the Defaulting ~~Contracting~~ Party ~~by amending its schedule~~ in the system of the applicable ~~Transmission Provider~~ ~~system~~;
  - (B) declare a Failure to Delivery or Failure to Take, as applicable, by the Defaulting Party in respect of such delivery or take Obligations; and
- (iv) 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;
- (v) 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;
- (vi) in accordance with Section 6.4, cause a Contracting Party Suspension for a period, which may be in excess of the period during which the Defaulting Party is in Default; and
- (vii) if applicable, impose a Summary Sanction in accordance with Section 6.5.

## **5.7 Contracting Party Event of Default**

- a. Event of Default – Exchange may declare an Event of Default in respect of the Contracting Party on the occurrence and continuation of the following events:

(i) Default by Contracting Party or Contracting Party Affiliate –

*[Note: All text in this paragraph is being moved, with no additional edits.]*

(ii) Credit Support Default –

*[Note: All text in this paragraph is being moved, with no additional edits.]*

(iii) Misrepresentation – A representation made or repeated or deemed to have been made or repeated by [the Contracting Party, any Contracting Party Affiliate of the Contracting Party](#), or any Credit Support Provider ~~or of 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) Bankruptcy –

*[Note: All text in this paragraph is being moved, with no additional edits.]*

(v) Merger Without Assumption –

*[Note: All text in this paragraph is being moved, with no additional edits.]*

(vi) Cross-Default –

*[Note: All text in this paragraph is being moved, with no additional edits.]*

b. Notification of Event of Default – As soon as practicable after declaring an Event of a Default in respect of a Contracting Party, Exchange will:

(i) notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy);

(ii) notify each applicable regulatory authority as required under applicable Regulations; and

(iii) 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.

c. [Exchange Authority to Act – Upon Exchange declaring 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](#) ~~exercise any combination of the rights and remedies contained in this Section 5.5 or Sections 5.6, 8.2 or 8.3 and in addition to~~ any rights or remedies [under 5.6.b. and elsewhere](#) in this Agreement or at law, equity or otherwise ~~including, without limitation, its rights to~~:



- ~~(i)a-~~ pursuant to Section 3.3 and Schedule “C”, request an additional amount of Eligible Collateral Support from the Defaulting Party;
- ~~(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;~~or~~
- ~~(iii)b-~~ pursuant to Section 6.4, cause a Contracting Party Suspension for a period which may be in excess of the period during which the Event of Default continues in respect of the Defaulting Party ~~is in Default, or permanently;~~
- ~~(iv)e-~~ 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 ~~declare~~
  - ~~(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; ~~any unpaid Invoices; and to~~
- ~~(v)~~ withhold payments due from Exchange to the Defaulting Party under this Agreement ~~(including, without limitation, under any Transaction) and withhold such payments as if paid or provided to Exchange as Collateral;~~
- ~~(vi)~~ with respect to the Defaulting Party’s Transactions,
  - ~~(A)~~ terminate any Transaction,
  - ~~(B)~~ net or offset the Defaulting Party’s offsetting positions in the same contract;
  - ~~(C)~~ invoke the Liquidation and Close-out Procedures;
- ~~(vii)g-~~ terminate this Agreement by notice to the Defaulting Party to be effective upon the date of receipt or deemed receipt ~~(which notice may be the same as that delivered under this Section 5.5 or under Section 8.2 or 8.3);~~ provided, this Agreement shall remain in effect for Transactions entered into prior to the date of termination until all Obligations to Exchange in respect of such Transactions have been paid and

performed 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 – ~~In the event that~~ 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, ~~acting in a commercially reasonable manner and in accordance with Section 5.5 determines~~ to
- (i) liquidate the Defaulting Party's Obligations under any Transactions that Exchange has determined to liquidate (each resulting Transaction a "Liquidation Transaction"); or
  - (ii) replace some or all of the Defaulting Party's Transactions and offset, 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").
- c. 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 offset or replaced 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.
- d. 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 allocated to its account and under that portion or all of the Offset Transactions which are offset by such Liquidation Transactions or Close-out Transactions.
- e. 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.
- h. 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 Transactions have been liquidated pursuant to this Article 5.

## **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 determines 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 Participant") 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.
  - (iii) Exchange, in its sole discretion, may determine to accept a Bid for some or all of the Defaulting Party's positions.
  - (iv) 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.
- h. Exchange Not Liable – Exchange will not be liable to any person for any recompense or damages if a Bidder's bid is not accepted for some or all of the positions specified in the bid.
- i. 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;
- (ii) the Transactions 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
- (iii) 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 and Set-Off**

### **a. Determining a Net Settlement Amount –**

- (i) To arrive at a single net settlement amount payable by or to the Defaulting Party, Exchange will 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 ~~such~~ 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 draw 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 issue a Final Invoice to the Defaulting Party for that net settlement amount in accordance with Section 5.11.
- (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 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 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.

- b. 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.
- c. Currency Conversion – For the purpose of ~~determining a net settlement amount~~ ~~converting any sum in any currency into Canadian Dollars~~, the rate used for converting ~~such currency any sum~~ into Canadian ~~Dollars~~ 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~~ dollars or U.S. dollars, as applicable.
- d. Present Value – Any such amounts which are immediately due and payable, but would have been payable at a future date except for the provisions of this Article 5, will be discounted to present value. ~~The at the~~ rate of interest ~~used in discounting to present value shall be~~ determined by Exchange acting in a commercially reasonable manner.

## **5.11 Final Invoice**

- a. Final Invoice – Exchange will forthwith issue an Invoice ("Final Invoice") to the Defaulting Party reflecting the net settlement amount due to or from the Defaulting Party.
- b. Net Settlement Amount Owing by Defaulting Party – A Final Invoice amount owing from the Defaulting Party to Exchange is payable within two Business Days from the date the Final Invoice was issued.
- c. Net Settlement Amount Owing by Exchange – A Final Invoice amount owing from Exchange to the Defaulting Contracting Party is payable on the next applicable settlement date.
- d. Return of Remaining Eligible Collateral Support – If the Final Invoice amount is due from Exchange to the Defaulting Party, Exchange will return any remaining Eligible Collateral Support to the Defaulting Party in accordance with Schedule C - Risk Management Policy.
- e. Full Satisfaction – The payment or receipt by the Contracting Party of the Final Invoice amount to or from Exchange 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 forth in the adjusted Final Invoice.

## 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 the following events:

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

b. Limitation – Notwithstanding the above, ~~provided, however, that~~ if any of the proceedings referred to in paragraph 5.12.a.(i) ~~3.10(a)~~, the appointment referred to in paragraph 5.12.a.(iii) ~~3.10(c)~~ ~~and the or an~~ order referred to in paragraph 5.12.a.(v) ~~3.10(e)~~, as ~~may be~~ applicable, are instituted or presented against Exchange, an Exchange Bankruptcy Event of Default will only occur if:

- (i) such proceeding, appointment or order is not contested, ~~diligently and~~ on a timely basis, by Exchange; and
- (ii) any such proceeding, appointment or order is not withdrawn, dismissed, discharged, stayed or restrained in each case within 30 days of the institution or commencement thereof.

### **5.134 Deposit Agreement**

*[Note: This section is being renumbered, with no additional edits.]*

...

## 5.12—Indices

[Note: All text in this section is being moved, with no additional edits.]

...

### 5.1~~4~~<sup>3</sup> Remedies Upon an Unremedied Exchange Default or Exchange Bankruptcy Event of Default

- a. Early Termination –
- b. Remedies Upon Early Termination – If the Terminated Transactions are terminated by the Contracting Party pursuant to [this](#) Section ~~5.13~~, Exchange shall in good faith calculate in a commercially reasonable manner:
  - (i) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic benefit to it, if any, resulting from the termination of the Terminated Transactions (the “Gains”); and
  - (ii) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic loss to it, if any, resulting from the termination of the Terminated Transactions (the “Losses”).
- 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) Reserved; or
  - (iv) with respect to Terminated Transactions that are transactions in Financially Settled Futures Products for which the notional quantity is financial power (collectively, “Financial Power Products”), have traded the highest overall volume of Financial Power 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 Payment Amount – As soon as practicable following the Early Termination Date and in no event later than five (5) days following the Early Termination Date, Exchange shall aggregate, Set-Off and net all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under the Agreement (“Receivables”) and all payables owed by the Contracting Party to Exchange under the Agreement (“Payables”) to reduce all such amounts to a single net amount (the “Net Termination Payment”) and notify the Contracting Party in writing of the Net Termination Payment owed to or owing by the Contracting Party (the “Termination Notice”). (For clarity, the Set-Off and netting of all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under this Agreement shall be deemed to be equivalent to a single master netting agreement.) To the extent that the Contracting Party is owed a Net Termination Payment by Exchange, Exchange shall pay the Net Termination Payment to the Contracting Party as soon as practicable, making commercially reasonable efforts to pay such Net Termination Payment within ten (10) Business Days of receipt by the Contracting Party of the Termination Notice regarding such calculation. To the extent that the Contracting Party owes a Net Termination Payment to Exchange, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Termination Notice. In the event that Exchange has not provided a Termination Notice to the Contracting Party within the five (5) day period set forth above, the Contracting Party shall have the right to calculate its Gains or Losses, as the case may be, for the Terminated Transactions, by determining a Price for each such Terminated Transaction, such Price being a good faith commercially reasonable representation of market value, which value may be disputed in good faith.

e. Currency and Payment of Net Termination Amount – Any and all payments under this Section ~~5.13~~ shall be made in freely available Canadian currency by wire payment. For greater certainty, any correspondent or intermediary bank fees relating to payments under this Section ~~5.13~~ are the responsibility of the Contracting Party. Any amount which is not paid when due under this Section ~~5.13~~ shall bear interest (both before and after judgment) at the Default Rate, as from the due date of payment until the date of payment, compounded monthly.

~~f.e.~~ Contracting Party’s Right to Terminate – A Contracting Party’s rights under this Section ~~5.13~~ supersede its right to voluntarily terminate this Agreement in accordance with the

terms set out herein. For greater certainty, an affected Contracting Party cannot exercise its voluntary right to terminate this Agreement if an Exchange Failure to Deliver, Exchange Failure to Take, Exchange Failure to Pay or Exchange Default has occurred which, with the giving of notice or the lapse of time or both, would constitute an Unremedied Exchange Default or Exchange Bankruptcy Event of Default.

~~g.d.~~ Exchange's Right to Cause Early Termination of all Agreements and Transactions – The Contracting Party acknowledges that Exchange has entered into Contracting Party Agreements with other Contracting Parties and, pursuant thereto, Exchange is, from time to time, party to Transactions with such other Contracting Parties. The Contracting Party acknowledges and agrees that, in the event it or one or more other Contracting Parties designates an Early Termination Date (the "Triggering Early Termination Date") pursuant to this Agreement or one or more of the other Contracting Party Agreements, Exchange shall immediately become entitled, in its sole discretion, to designate an Early Termination Date under any one or more of this Agreement and the other Contracting Party Agreements. If Exchange does so, Exchange may designate an Early Termination Date for any or all such terminations which is the same day or is a day later than the Triggering Early Termination Date, in Exchange's sole discretion. In the event that Exchange does designate one or more Early Termination Dates following the Triggering Early Termination Date, all the other provisions of this Section ~~5.13~~ shall apply thereto mutatis mutandis.

#### **5.1~~54~~ Interpretation in relation to the U.S. Federal Deposit Insurance Exchange Improvement Act of 1991, as amended ("FDICIA")**

- a. Interpretation – The Exchange intends that certain provisions of Section 5.~~1413~~ 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 ~~5.15~~5.13, is a “netting contract.”

## **PART 5D – GENERAL**

### **5.16~~9~~ No Indirect Damages**

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

### **5.17~~9~~ GST on Damages**

- a. If either Buyer, Seller or Exchange (the “~~Payer~~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) ~~a.~~ the ~~Payer~~Payer is the Seller, then the ~~Payer~~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) ~~b.~~ the ~~Payer~~Payer is the Buyer, then the ~~Payer~~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**

...

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

...

- e. Consequences of Contracting Party Suspension – Without limitation to its rights under Section 6.1, upon the occurrence of a Contracting Party Suspension with respect to a Contracting Party;

...

- (ii) Exchange may exercise any of the rights under Section ~~5.6~~ ~~5.5~~ or ~~Section 8.2~~, with references to the “Defaulting Party” deemed to be references to the suspended Contracting Party, as well as any other rights or remedies granted under this Agreement or under law, equity or otherwise.

...

## 6.6 Emergency Authority

...

- 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

...

- (viii) effecting the Liquidation ~~Procedure or~~ and Close-out Procedures~~s~~; and/or

...

## ARTICLE 7 - INVOICES AND TAXES

...

### 7.1 Invoices

...

- 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 Daily Financially Settled Futures Transactions, on the MTM Settlement Date and the Cash Settlement Date;
- (iv) for all other Financially Settled Futures Transactions, on the Cash Settlement Date;
- (v) for Option Transactions, on the Premium Payment Date; ~~and~~
- (vi) for Forward (Bilateral) Transactions, on the Physical Settlement Date; and
- (vii) for any Final Invoice issued in accordance with Article 5, within two Business Days from the date the Final Invoice was issued.

...

## 7.2 Payment of Invoices

- a. Wire Payment of Invoices for Physically Settled Gas Futures Transactions and Physically Settled Power Futures Transactions and Final Invoices – Except as 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 issued in accordance with Article 5, 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 by Contracting Party to Exchange and by Exchange to Contracting Party, and any Final Invoice issued in accordance with Article 5, are the responsibility of the Contracting Party. 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.

...

- ~~g. — Failure to Pay — If a Contracting Party fails to pay an Invoice amount prior to 12:00 p.m. Mountain Prevailing Time on the respective Settlement Date or Option Premium Date, as applicable, ICE NGX may, in its sole discretion, take any action permitted under this Agreement including to effect the Close-out or Liquidation Procedure.~~

...

## ARTICLE 8 – LIMITATION OF LIABILITY ~~FINANCIALLY SETTLED FUTURES PRODUCTS AND OPTION PRODUCTS~~

### ~~8.1 Financially Settled Futures Products, and Option Products – General~~

*[Note: All text in this section is being moved, with no additional edits.]*

...

### ~~8.2 Rights of Exchange~~

*[Note: All text in this section is being deleted.]*

...

### ~~8.3 Close-out Procedure~~

*[Note: All text in this section is being deleted.]*

...

### 8.1 Limitations on Liability

*[Note: All text in this section is being moved, with no additional edits.]*

...

### 8.2 Indices

*[Note: All text in this section is being moved, with no additional edits.]*

## ARTICLE 9 - MISCELLANEOUS

...

### 9.4 Relationship of Parties

...

- b. Agency – The Contracting Party hereby specifically appoints, constitutes and empowers Exchange as its true and lawful power of attorney and agent with full power and authority in respect of those matters set forth in this Agreement where Exchange specifically agrees to act on behalf of the Contracting Party and in respect of the receipt, delivery and execution of any Confirmation, Swap Confirmation, Option Confirmation, agreement or notice in writing necessary to ensure the validity or enforceability of any Transaction entered: (i) into by any Contracting Party through the 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, the Liquidation ~~Procedure and the~~ and Close-out Procedures<sup>s</sup> and in respect of any filing necessary or desirable in respect of any Regulatory Approval required pursuant to any Regulation ~~applicable securities legislation~~. The power of attorney and agency granted hereby is irrevocable, is a power coupled with an interest and shall survive the bankruptcy, liquidation, winding-up, merger, amalgamation or incapacity of the Contracting Party and bind the successors of the Contracting Party and shall only terminate on the termination of this Agreement. The Contracting Party agrees to be bound by any representation or action made or taken by Exchange pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm any action of Exchange taken in good faith under this power of attorney.



## SCHEDULE K – PHYSICALLY SETTLED POWER FUTURES TRANSACTIONS

...

### 7. ERCOT

...

#### c. Procedures on Non-Performance by Seller or Buyer – In the event of a Failure to Schedule to Deliver or Failure to Schedule to Take:

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

~~(A) liquidate any Collateral held by it on behalf of the Contracting Party;~~

~~(B) make an immediate request for additional Eligible Collateral Support from the Contracting Party;~~

~~(C) accelerate the invoicing period such that a Contracting Party is Invoiced immediately for such costs incurred by the Exchange (which Invoiced amount may include an excess amount to be held pending receipt of final invoices from the Transmission Provider), such Invoices to be payable within two business days of receipt;~~

(i) Exchange will notify the Contracting Party by instant message, phone or email that the Contracting Party's Schedule is not in balance indicating the quantity affected; and

(ii) Exchange may exercise any of its rights under Section 5.5 of the Terms and Conditions; and

(iii) Exchange may impose an administrative cash penalty upon the Contracting Party; ~~and~~

~~(E) take any other steps that it deems to be reasonable and necessary in order to recoup from the Contracting Party on an expedited basis any costs incurred by the Exchange.~~

~~For greater clarity, in the case of Physically Settled Power Futures Transactions Exchange may take any of the steps set out above prior to declaring that Contracting Party is in Default.~~

~~d. Contracting Party in Default~~

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

...

j. Invoice Amount –

Subject to any accelerated invoicing that occurs in respect of a failure of performance by the Buyer or Seller set out in [Article 5 of the Terms and Conditions](#) ~~Section 7 of this Schedule “K”~~, Exchange will determine the amounts owing or payable by a Contracting Party on a monthly basis for scheduled Physical Power for the Delivery Points as follows:

...

## AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

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

#### **1. Definitions**

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

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

“AR Risk Add-on” means, for each Contracting Party, an amount equal to the sum of applicable holdback margin, early payments and late payments, and applicable taxes.

“Available Margin” means, for any Contracting Party, the difference between the value of the Collateral provided by such Contracting Party and available to Exchange and the Margin Requirement for such Contracting Party, each as calculated hereunder;

“Current Month Accounts Net Payable” means, for a Contracting Party, the sum of

- (i) in respect of Physically Settled Futures Transactions, the accounts payable owing by Exchange to such Contracting Party less the accounts receivable owing by such Contracting Party to Exchange for
  - (A) gas delivered or taken to date during that current month pursuant to all Physically Settled Gas Futures Transactions and/or Physically Settled Gas Futures Transactions with assigned delivery;
  - (B) the Physical Power scheduled for delivery or take to date during that current month pursuant to all Physically Settled Power Futures Transactions; and
- (ii) in respect of Physically Settled Gas Futures Transactions with assigned delivery (as set out in Schedule “J”), up to 100% of the Discretionary Delivery Credit, as applicable;

“Daily Financially Settled Futures Settlement Net Payable” means, for a Contracting Party, the total Daily Financially Settled Futures Settlement Amounts (as set forth in Schedule “E”) owing by Exchange to such Contracting Party, less the total Daily Financially Settled Futures Settlement Amounts owing to Exchange by such Contracting Party, including any post settlement adjustments made in accordance with this Agreement;

“Discretionary Delivery Credit” means a discretionary credit of up to 100% of the accounts payable that will be owing by Exchange to such Contracting Party as at the next Physical Settlement Date less the accounts receivable that will be owing by such Contracting Party to Exchange as at the next Physical Settlement Date pursuant to all Physically Settled Gas Futures Transactions with assigned delivery (as set out in Schedule “J”) delivered during that current month;

“Futures Settlement Net Payable” means, for a Contracting Party, the total Futures Clearing Amounts owing by Exchange to such Contracting Party, less the total Futures Clearing Amounts owing to Exchange by such Contracting Party;

“Initial Margin” means, for each Contracting Party, an amount established by Exchange from time to time in accordance with the applicable margin policies of the Exchange as implemented from time to time;

“Initial Margin Rate” means, for a Product, an amount established by Exchange;

“Margin Limit” means, for each Contracting Party, an amount determined by Exchange which shall not exceed the value of the Collateral granted by such Contracting Party and available to Exchange, as calculated hereunder;

“Margin Requirement” means, for each Contracting Party, an amount equal to the sum of the Option Premium Amounts, AR Risk Add-on, Initial Margin and Variation Margin minus Net Accounts Payable, Futures Settlement Net Payable, MTM Settlement Net Payable and Daily Futures Settlement Net Payable, as applicable, for such Contracting Party, as calculated hereunder;

“Market Price” means, in respect of any Product, the price reflecting the current market conditions as determined by Exchange;

“Minimum Available Margin Requirement” means,

- (i) with respect to a Contracting Party that transacts in Option Products, \$2,000,000;
- (ii) with respect to a Contracting Party that does not transact in Option Products, but transacts in Financial Power Products and/or Physical Power Products, \$1,000,000<sup>1,2</sup> or
- (iii) with respect to a Contracting Party that does not transact in either Option Products or Financial Power Products or Physical Power Products, \$500,000.

“MTM Settlement Net Payable” means, for a Contracting Party, the total MTM Settlement Amounts (as set forth in Schedule “E”) owing by Exchange to such Contracting Party, less the total MTM Settlement Amounts owing to Exchange by such Contracting Party, including any post settlement adjustments made in accordance with this Agreement;

“Net Accounts Payable” means, for each Contracting Party, as applicable, an amount equal to the sum of Current Month Accounts Net Payable and Previous Months Accounts Net Payable, each as calculated hereunder;

“Net Equity” means, for each Contracting Party, as applicable, an amount equal to the total amount of Eligible Collateral Support provided minus Margin Requirement plus Initial Margin;

“Net Open Position” means in respect of each Product, the volume calculated as the positive difference between the sum of all purchases or sales, as applicable, of such Product and the sum of all opposite sales or purchases as applicable.

“Option Premium Amount” has the meaning ascribed thereto in Section 1.2 of the Terms and Conditions and is calculated in accordance with Schedule “E”;

“Post-Settlement Delivery Adjustments” has the meaning ascribed thereto in Schedule “J”;

“Previous Month Accounts Net Payable” means, for a Contracting Party, respect of Physically Settled Futures Transactions, the accounts payable owing by Exchange to such Contracting Party less the accounts receivable owing by such Contracting Party to Exchange for

- (i) gas delivered or taken to date during the previous calendar month pursuant to all Physically Settled Gas Futures Transactions; and
- (ii) the Physical Power scheduled for delivery or take during the previous calendar month pursuant to all Physically Settled Power Futures Transactions;

“Risk Limit” has the meaning ascribed thereto in this Schedule “C”;

“Settlement Price” means, in respect of every Product for each Trading Day, the price as determined by Exchange, in its sole discretion, considering the reasonable estimation of the current Market Price using internal and external sources for each Product, such Settlement Price being determined no later than the end of every Business Day. Should the Contracting Party dispute such determination, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable;

“Variation Margin” means, in respect of every Product for each trading day, a reasonable estimate of the market value of such Product as determined by Exchange, in its sole discretion, considering the reasonable estimation of the current market value using internal and external sources for each Product. Should the Contracting Party dispute such determination, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable.

## **2. Initial Margin Rates**

- a. Initial Margin ~~Rate~~ — Exchange may determine, from time-to-time and at its sole discretion, the Initial Margin Rate applicable to each Product, ~~from time to time, and such Initial Margin Rates will be determined at the sole discretion of Exchange;~~ Exchange may also determine, from time-to-time and at its sole discretion, the Initial Margin applicable to a portfolio of Transactions, across one or more Products.
- b. Variation Margin — In determining Variation Margin, Exchange will consider the reasonable estimation of the current market value using internal and external sources for each Product. Upon request or dispute by a Contracting Party, Exchange will investigate and determine, in its sole discretion, whether Variation Margin should be recalculated and will advise the Contracting Party of its determination as soon as reasonably practicable.

## **3. Margin Limit, Risk Limit and Discretionary Delivery Credit**

- a. The Margin Limit for each Contracting Party is the amount at which the Contracting Party’s Initial Margin is equal to eighty percent (80%) of the Contracting Party’s Net Equity. A Contracting Party may increase its Margin Limit with Exchange by increasing its Collateral.
- b. The Contracting Party’s Risk Limit is equal to the Contracting Party’s Margin Limited.
- c. Exchange will determine each Contracting Party’s Discretionary Delivery Credit in conjunction with Exchange’s insurance provider. Such Discretionary Delivery Credit is subject to change. Exchange shall provide notice in writing of the maximum value of Discretionary Delivery Credit that will be applied in the calculation of each Contracting Party’s Margin Requirement.

## **4. Unsecured Credit**

Exchange will not provide unsecured credit to any Contracting Party.

## **5. Activation**

- a. Prior to any Contracting Party being activated to trade on the ICE NGX Trading System and/or ICE NGX Clearing System, the Contracting Party must complete an Application and provide documentation satisfactory to Exchange that it meets: (i) the Minimum Qualification Requirement, as evidenced by its latest financial statements; and (ii) any other qualification requirements imposed by Exchange having regard to overall integrity and security of Exchange, including, without limitation, corporate structure, governance or information relating to creditworthiness.
- b. If the Application is accepted by Exchange, Exchange will confirm to the Contracting Party that it believes the Contracting Party and, if applicable, its Credit Support Provider has satisfied the Minimum Qualification

Requirement and any other fitness or financial requirements under this Section 5 or otherwise under this Agreement.

- c. A Contracting Party will be activated on the ICE NGX Trading System and/or ICE NGX Clearing System by Exchange after the Application has been accepted and all pre-requisite requirements have been satisfied under this Section 5 or otherwise under this Agreement and once Exchange has received Eligible Collateral Support which will be used to establish a Margin Limit for that Contracting Party.
- d. Exchange reserves the right to apply order size limits for each Contracting Party.
- e. At the discretion of Exchange, certain Contracting Parties will be allowed to sell only certain Physically Settled Gas Futures Products or Physically Settled Power Futures Products and provide Collateral to Exchange by utilizing Previous Month Accounts Net Payable and Current Month Accounts Net Payable payable by Exchange to such Contracting Parties.
- f. Exchange will activate designated persons for trading in specific Products on the ICE NGX Trading System and/or ICE NGX Clearing System based on instructions from the Administrator, and access by the Contracting Party to the applicable Transportation System pursuant to Section 2.6 of the Terms and Conditions.

## **6. Valuation of Collateral**

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

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

## **7. Daily Margin Limit Monitoring**

During each Trading Day, Exchange will monitor the Margin Requirement of the Contracting Party and will make the Contracting Party's Margin Requirement available to the Contracting Party.

**8. Request by Exchange for Eligible Collateral Support**

- a. If the Initial Margin for a Contracting Party is equal to or greater than eighty percent (80%) of the Contracting Party's Net Equity, Exchange may request that additional Eligible Collateral Support be provided to Exchange.
- b. If
  - (i) the Initial Margin for a Contracting Party is equal to or greater than ninety percent (90%) of the Contracting Party's Net Equity, or
  - (ii) the Available Margin for the Contracting Party is less than the applicable Minimum Available Margin Requirement,  
Exchange
    - (iii) may request that additional Eligible Collateral Support be provided to Exchange, and
    - (iv) may halt the Contracting Party from entering orders for Products which will increase its Margin Requirement until the Contracting Party provides additional Eligible Collateral Support to the satisfaction of Exchange.
- c. If the Initial Margin for a Contracting Party is equal to or greater than one hundred (100%) of the Contracting Party's Net Equity, Exchange
  - (i) may request that additional Eligible Collateral Support be provided to Exchange, and
  - (ii) will be entitled to, without limitation to any of its other rights or remedies, invoke the Liquidation Procedure pursuant to Section 5.6 of the Terms and Conditions and the Close-out Procedure pursuant to Section 8.3 of the Terms and Conditions.
- d. Except as provided under Section 8.e. of this Section "C", upon a request by Exchange for additional Eligible Collateral Support from a Contracting Party in accordance with this Agreement that is made on a Business Day for the Contracting Party, the Contracting Party agrees to provide such additional Eligible Collateral Support to Exchange within the next Business Day or, if the next Business Day is a Recognized Banking Holiday, then on the first Business Day that is not a Recognized Banking Holiday following any such request.
- e. Upon a request by Exchange for additional Eligible Collateral Support from a Contracting Party in accordance with subsection 8.c. of this Schedule "C" or as otherwise required by Exchange that is made
  - (i) at or before 9:00am Eastern Prevailing Time on a Business Day that that is not a Recognized Banking Holiday for the Contracting Party, the Contracting Party agrees to provide such additional Eligible Collateral Support to Exchange within the Business Day;
  - (ii) after 9:00am Eastern Prevailing Time on a Business Day that is a Recognized Banking Holiday for the Contracting Party, then on the first Business Day that is not a Recognized Banking Holiday following any such request.
- f. Notwithstanding anything else in this Agreement, including all Schedules, whenever the Exchange determines, in its sole discretion, that unstable conditions relating to one or more Products exist, or that the maintenance of an orderly market or the preservation of the fiscal integrity of the Exchange requires additional Eligible Collateral Support, or that any Contracting Party is carrying positions in Products or



incurring risks in its account(s) that are larger than is justified by the financial and/or operational condition of the Contracting Party, the Exchange may require additional Eligible Collateral Support to be deposited with the Exchange within such time(s) as may be specified by the Exchange, and/or may limit withdrawals of any Eligible Collateral Support on deposit from the Contracting Party for such time as may be specified by the exchange.

## **9. Request for Return of Eligible Collateral Support**

- a. A Contracting Party may request a return of Cash Collateral, or a reduction of Eligible Collateral Support it has provided to Exchange in the form of a letter of credit. if:
  - (i) its Initial Margin is less than eighty percent (80%) of Net Equity, all as calculated hereunder (the "Minimum Collateral Amount"); and
  - (ii) no Default has occurred in respect of the Contracting Party and no Event of Default has been declared in respect of the Contracting Party.
- b. Upon such a request, Exchange agrees to:
  - (i) return an amount of Cash Collateral equal to the lesser of:
    - (A) the full amount of such Cash Collateral; or
    - (B) such portion of such Cash Collateral as would reduce the value of the Collateral of the Contracting Party to be retained by Exchange, as calculated hereunder, to the Minimum Collateral Amount,

such return of Cash Collateral to occur on the next Business Day or, if the next Business Day is a Recognized Banking Holiday, then on the first Business Day that is not a Recognized Banking Holiday, following such request; or
  - (ii) accept a new or revised letter of credit where the value of the Collateral of the Contracting Party to be retained by Exchange, as calculated hereunder, meets or exceeds the Minimum Collateral Amount.

## **10. Risk to Exchange**

- a. Notwithstanding any provision of this Agreement, Exchange reserves the right at any time to:
  - (i) decline to enter into any Transactions which, in Exchange's sole determination, increases the credit exposure or adds additional risk of loss to or otherwise affects the risk profile of Exchange; or
  - (ii) take any other reasonable actions to preserve the integrity and security of Exchange, the ICE NGX Trading System and/or the ICE NGX Clearing System (including, without limitation, making a request of a Contracting Party for additional Eligible Collateral Support, withholding payments due from Exchange to the Defaulting Party under this Agreement as if paid or provided to Exchange as Collateral, or invoking the Liquidation ~~Procedure or~~ and Close-out Procedures ~~pursuant to this Agreement~~, as determined in the sole discretion of Exchange.

## **11. Settlement**

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

## **12. Contracting Party Affiliate Netting**

- a. Except as Exchange may otherwise agree, and without limitation to any other provision in this Agreement, Exchange will net the Transactions and related financial obligations of any Contracting Party and its Contracting Party Affiliates under this Agreement as follows:
  - (i) the Initial Margin will be determined on the aggregate of the Net Open Positions of the Contracting Party and its Contracting Party Affiliates;
  - (ii) the Variation Margin applicable to all Transactions of the Contracting Party and its Contracting Party Affiliates will be netted; and
  - (iii) the accounts payable and accounts receivable for all Transactions of the Contracting Party and its Contracting Party Affiliates will be netted.
- b. Exchange may, in its sole discretion and upon request of the Contracting Party, agree not to net the Contracting Party's Transactions and Net Open Positions netted with those of the Contracting Party's affiliates. If Exchange determines to do so, Exchange will only agree after the Contracting Party and each such affiliated Contracting Party have provided to Exchange Collateral sufficient to cover the Margin Requirements for each party.

## **13. Divisions or Business Units of Contracting Parties**

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