



October 1, 2021

**VIA CFTC PORTAL**

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: ICE NGX Self-Certification of Rule Amendments: Contracting Party Agreement - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

In accordance with 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 to amend 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(j). As further described below, ICE NGX intends to implement the amendments in two steps, on November 1, 2021 and on November 30, 2021, or on such later date or dates as ICE NGX may designate.

**1. Overview**

ICE NGX is making certain amendments (the “Amendments”) to the CPA to facilitate and implement the staged transition to Royal Bank of Canada (“RBC”). The amendments are set out in two steps:

- the “Step One” amendments are set out in Appendix I to this letter, and are intended to become effective November 1, 2021 or on such later date as ICE NGX may designate;
- the “Step Two” amendments are set out in Appendix II to this letter, and are intended to become effective November 30, 2021 or on such later date as ICE NGX may designate.

**2. Transition to New Banking Provider**

Today ICE NGX notified all Contracting Parties that it intends to transition to a new primary banking provider, over the month of November 2021. Once the transition is fully implemented,

- Contracting Party cash collateral will be held in segregated accounts at RBC “for the benefit of” the respective Contracting Party;
- letters of credit provided as collateral will specify RBC as the advising bank for ICE NGX;



- monthly physical and financial settlement payments, and daily variation margin settlement where applicable, will be made into and out of RBC; and
- RBC will be the credit facility provider to ICE NGX.

### **3. Amendments**

#### ***Step One - Anticipated implementation: November 1, 2021***

The “Step One” amendments make a number of changes to the CPA to streamline the CPA and facilitate the transition to RBC. Among other things, the “Step One” amendments will:

- (a) clarify the treatment, holding and return of cash collateral, including payment of interest on cash collateral;
- (b) clarify intended treatment and interpretations under the US Bankruptcy Code;
- (c) harmonize and consolidate provisions relating to invoicing;
- (d) provide for payment by wire transfer only, including transfers or deposits of cash collateral; and
- (e) clarify the description of Exchange indebtedness, as between Exchange’s Principal Banker and the Exchange Letter of Credit Issuing Bank.

#### ***Step Two - Anticipated implementation: November 30, 2021***

The “Step Two” amendments provide that all cash in the cash collateral accounts is Eligible Collateral under the CPA, and provide for settlement of daily variation margin gains and losses into and out of the cash collateral accounts (variation margin gains and losses are settled daily only on Financially Settled Canadian Power Products).

The “Step Two” amendments also change the definition of Default Rate and related defined terms, facilitating a transition to a different base rate for calculating the Default Rate.

ICE NGX intends for the “Step Two” amendments set out in Appendix II to become effective on November 30, 2021, or on such later date as ICE NGX may designate.

### **4. Compliance with the Act and Regulations**

ICE NGX reviewed the Amendments and determined that they comply with the requirements of the Act and the rules and regulations promulgated by the Commission in implementing the Act. In this regard, ICE NGX reviewed the derivatives clearing organizations core principles (“Core Principles”) and determined that the amendments are potentially relevant to the following Core Principles and the applicable regulations of the Commission thereunder.



Risk Management (Core Principle D): The Amendments facilitate ICE NGX's compliance with Core Principle D - Risk management and Commission Regulation 39.13, as the Amendments enhance ICE NGX's ability to access cash provided by a Contracting Party in the event of a default by that Contracting Party. Specifically, the "Step Two" amendments provide for the merging, into a single cash collateral account, both (a) cash provided by a Contracting Party to facilitate daily settlement of variation margin gains and losses on Financially Settled Canadian Power Products and (b) interest paid to a Contracting Party on its cash collateral balance, with (c) cash collateral, and deeming all cash in the cash collateral account to be Eligible Collateral Support as defined in the CPA.

Settlement Procedures (Core Principle E): The Amendments facilitate ICE NGX's compliance with Core Principle E - Settlement procedures and Commission Regulation 39.14, as the Amendments clarify and strengthen ICE NGX's settlement processes. Specifically, the Amendments harmonize and consolidate the CPA provisions relating to invoicing, provide that payments of cash collateral and outstanding settlement amounts must be made wire payment only, and strengthen ICE NGX's processes for settling daily variation margin gains and losses on Financially Settled Canadian Power Products.

Treatment of Funds (Core Principle F): The Amendments facilitate ICE NGX's compliance with Core Principle F - Treatment of funds and Commission Regulation 39.15, as the Amendments clarify the treatment, holding and return of cash collateral from ICE NGX's clearing participants. Specifically, the Amendments strengthen ICE NGX's ability to access cash collateral if required, and strengthen and clarify the processes and treatment of cash collateral received from clearing participants.

## 5. Certifications

ICE NGX hereby certifies that the Amendments to the CPA discussed in this submission comply with the Act and the rules and regulations promulgated by the Commission thereunder. ICE NGX is not aware of any substantive opposing views expressed regarding the Amendments. ICE NGX further certifies that, concurrent with this filing, a copy of the submission was posted on ICE NGX's website and may be accessed at <https://www.theice.com/ngx>.

Please do not hesitate to contact me (403-974-1701) or our General Counsel and CCO, Martin McGregor (403-974-1740) for any further information the Commission or its staff may require in connection with this notice.

Yours truly,

A handwritten signature in black ink, appearing to read "Greg Abbott", is written over a horizontal line.

Greg Abbott  
President & COO

Encls.



## APPENDIX I - (STEP ONE)

### AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

#### TERMS AND CONDITIONS

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

#### 1.2 Definitions

“Cash Collateral” means cash delivered by or on behalf of the Contracting Party to Exchange as Eligible Collateral Support ~~has the meaning ascribed thereto in Section 9 of Schedule “C”;~~

“Cash Collateral Account” means an interest-bearing deposit account in the name of the Exchange at Exchange’s Principal Banker;

“Mark-to-Market Settlement Amount” or “MTM Settlement Amount” means the amount payable by or to a Contracting Party with respect to a Financially Settled Futures Transaction as set forth in Schedule “E”;

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

...

#### 2.4 Of Exchange: General

Exchange represents and warrants that: ... (g) Exchange’s indebtedness for borrowed money consists solely of its indebtedness to Exchange’s Principal Banker and to the Exchange Letter of Credit Issuing Bank, to facilitate the payment of Invoices by Exchange and ~~to the Exchange Letter of Credit Issuing Bank to facilitate the management of a Default, Liquidation and/or Close-out Procedure, such indebtedness is incurred in conjunction with the Exchange Letter of Credit (as defined in Section 5.11);~~

...

#### 3.3 Eligible Collateral Support and Collateral

- a. Eligible Collateral Support and Collateral – ~~In accordance with the Risk Management Policy, the Each~~ Contracting Party shall ~~be obligated to~~ provide from time to time, as security for the Contracting Party’s Obligations, and in such amounts, such forms, at such times and in accordance with such systems as may be prescribed by or pursuant to this Agreement, including Schedule “C”, or Exchange’s stated policies in respect thereof, credit support consisting of one or more of the following:



- (i) \_\_\_\_\_ an irrevocable letter of credit issued by an Approved Financial Institution in favour of Exchange in a form acceptable to Exchange; or
- (ii) Cash Collateral ~~cash delivered by or on behalf of the Contracting Party to Exchange and held by Exchange in a segregated bank account specified by Exchange, which will be subject to a registered security interest in favour of Exchange with~~

(collectively, “Eligible Collateral Support”).

~~The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange’s bank relating to the receipt, deposit or transfer of such Eligible Collateral Support.~~ In addition, Exchange may, in its discretion, withhold ~~and the Contracting Party hereby consents to such withholding,~~ payables or any other amounts owing to the Contracting Party or its Contracting Party Affiliates from Exchange as additional Collateral and may otherwise deduct, net, recoup, setoff, or otherwise credit any such payables, other amounts, or obligations against payables or other amounts or obligations owing by the Exchange to the Contracting Party or its Contracting Party Affiliates, and the Contracting Party hereby consents to any such withholding, deduction, netting, recoupment, setoff, or credit on behalf of itself and its Contracting Party Affiliates.

~~The Contracting Party agrees and acknowledges that upon any failure by such Contracting Party to provide Eligible Collateral Support to Exchange in the amounts and manner set forth under the Risk Management Policy, Exchange shall have the rights and remedies set forth in this Agreement including, without limitation, the rights to cause a Contracting Party Suspension, effect the Close-out Procedure and/or effect the Liquidation Procedure with respect to the Contracting Party’s Transactions.~~

~~Exchange agrees that it shall be obligated to (i) return any Eligible Collateral Support to the Contracting Party, to the extent and pursuant to the terms provided under the Risk Management Policy and (ii) require all Contracting Parties to comply with the provisions of the Risk Management Policy.~~

b. Grant of Security –

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

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, effect the Close-out Procedure and/or effect the Liquidation Procedure with respect to the Contracting Party's Transactions.

- de. Upon a Default with respect to any Contracting Party, Exchange shall also be entitled to:
- (i) exercise all rights and remedies of a secured party under applicable law with respect to the Collateral provided by the Contracting Party or any of its Contracting Party Affiliates;
  - (ii) sell, retain, liquidate, apply, collect on and, except as Exchange may otherwise agree, set off any or all Collateral against any outstanding Obligations owed to Exchange by the Contracting Party or any of its Contracting Party Affiliates;
  - (iii) instruct any bank that has issued a letter of credit held by Exchange in the name of the Contracting Party or any of its Contracting Party Affiliates to pay under the letter of credit up to the amount of the Obligations that are due;
  - (iv) exercise any other remedies provided under this Agreement or any other remedies available at law, in equity or otherwise.
- ed. Separate ~~Bank~~ Cash Collateral Account – Exchange will deposit Cash Collateral ~~all amounts consisting of cash transferred as Eligible Collateral Support relating to a Contracting Party in that Contracting Party's Cash Collateral Account in an interest bearing bank account at Exchange's Principal Banker~~ Exchange will maintain the Contracting Party's Cash Collateral Account separate from the corporate funds of Exchange and from ~~or the funds that~~ of any affiliates or subsidiaries of Exchange, separate from the Cash Collateral of each other Contracting Party other than a Contracting Party Affiliate of the Contracting Party, and subject to a registered security interest in favour of Exchange in accordance with this Section 3.3. Exchange ~~will keep all such amounts of Eligible Collateral Support from each Contracting Party in a separate bank account in trust and agrees to hold use all of such amounts~~ Cash Collateral as trustee only in accordance with the provisions of this Agreement. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any ~~such~~ depositing of amounts into the Cash Collateral Account, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any such loss.
- fe. Bank Collateral Agreement – Exchange hereby confirms that the Bank Collateral Agreement is in full force and effect and has provided Exchange's Principal Banker with the Contracting Party's name and address for the purpose of providing any notice under, and the undertaking of Exchange's Principal Banker set forth in the Bank Collateral Agreement.
- gf. Interest on Eligible Collateral Support – ~~Cash Collateral will be deposited in an interest bearing bank account ("Cash Collateral Account").~~ Exchange will provide the Contracting Party with direct viewing access to its Cash Collateral Account, failing which, and upon request by the Contracting Party, Exchange will account monthly to the Contracting Party for all daily interest earned in a Cash Collateral Account ~~which exceeds \$100,000 or U.S.~~





~~\$100,000 on any day.~~ ICE NGX will, on a monthly basis, credit to the Cash Collateral Account, interest earned on each day on the amount of the balance in the Cash Collateral Account, as of 2:00 p.m. (Mountain time), that exceeds \$100,000 or U.S. \$100,000, as applicable, at an interest rate as notified by ICE NGX from time to time (“Contracting Party Interest”). Any interest earned in excess of the Contracting Party Interest shall be deducted monthly by ICE NGX from the Cash Collateral Account for administrative purposes. ~~In order for the Contracting Party to earn daily interest on their Cash Collateral Account for the day upon which such Eligible Collateral Support is deposited with Exchange, such Eligible Collateral Support must be received by Exchange in accordance with the Risk Management Policy no later than 2:00 p.m. (Mountain time).~~

hg. Return of Eligible Cash Collateral Support – A Contracting Party may request a return of Eligible Collateral Support, and Exchange agrees to return excess Eligible Collateral Support to the Contracting Party, to the extent and pursuant to the terms provided for under Schedule “C” - Risk Management Policy. ~~Cash Collateral will remain in the Cash Collateral Account and be returned to the Contracting Party only in accordance with Section 9 of Schedule “C”;~~

ih. Return of Contracting Party Interest – A Contracting Party may request a return of its Contracting Party Interest if its Initial Margin is less than eighty percent (80%) of Net Equity, as those terms as defined in Schedule “C”. Exchange agrees to return the relevant Contracting Party Interest 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 provided that the Contracting Party’s Initial Margin is less than eighty percent (80%) of Net Equity on that Business Day. If the Contracting Party’s Initial Margin exceeds eighty percent (80%) of Net Equity. Exchange shall not be liable to the Contracting Party for any cost or loss incurred as a result of any such depositing of Contracting Party Interest, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any cost or any interest earned.

i. Wire Payment of Cash Collateral - All transfers or deposits of Cash Collateral to or with Exchange by or on behalf of a Contracting Party, and all returns of Cash Collateral by Exchange to a Contracting Party, shall be made by wire payment to the banking instructions provided by Exchange. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by Exchange’s bank and any corresponding bank, if applicable, relating to the receipt, deposit, return or transfer of Cash Collateral.

...

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

a. Invoices for Physically Settled Futures Transactions – Notwithstanding any other provision of this Agreement, Exchange will post on Exchange’s Website for sole access by the Contracting Party ~~(or will provide the Contracting Party, upon request, with)~~ an Invoice on or before the 15th day of each calendar month for deliveries and receipts of gas during the prior calendar month pursuant to Physically Settled Futures Transactions, which are payable in the same currency, setting forth a net amount owing by or to the Contracting

Party itemizing and applying Set-off to each Purchase Amount payable or receivable in respect of any such Physically Settled Futures Transactions, any amounts payable to Exchange for fees to Exchange under the Fee Schedule and any amounts payable on account of GST any applicable taxes. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Physical Settlement Date that has been requested in accordance with the Risk Management Policy and to hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. ~~The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange, subject to Post Settlement Delivery Adjustments set out in Schedule “J”.~~

b. Full Satisfaction - The payment or receipt by the Contracting Party of such the net amount of an Invoice for Physically Settled Futures Transactions in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange in respect of the Physically Settled Gas Futures Transactions, subject to Post-Settlement Delivery Adjustments set out in Schedule “J”. ~~Terms — Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. An officer of the Contracting Party authorized to provide banking instructions shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.~~

c. Payment of Invoices - Payment of Invoices for Physically Settled Futures Transactions shall be in accordance with Article 7. Final Invoices — The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.

...

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

a. Invoices for Physically Settled Futures Transactions – Notwithstanding any other provision of this Agreement, and subject to any requirement for accelerated invoicing as set out in Schedule “K”, Exchange will post on Exchange’s Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice on





or before the 15th day of each calendar month for scheduling of deliveries and receipts of Physical Power during the prior calendar month pursuant to Physically Settled Power Futures Transactions, which are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each Purchase Amount payable or receivable in respect of any such Physically Settled Power Futures Transactions, any amounts payable to Exchange for fees ~~to Exchange under the Fee Schedule~~ and any amounts payable on account of any applicable taxes. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Physical Settlement Date that has been requested in accordance with the Risk Management Policy and to hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. ~~The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange.~~

b. Full Satisfaction - The payment or receipt by the Contracting Party of such the net amount of an Invoice for Physically Settled Power Futures Transactions in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any Purchase Amount, payable to or receivable by the Contracting Party and Exchange in respect of the Physically Settled Power Futures Transactions. ~~Terms — Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. An officer of the Contracting Party authorized to provide banking instructions shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.~~

c. Payment of Invoices - Payment of Invoices for Physically Settled Power Futures Transactions shall be in accordance with Article 7. ~~Final Invoices — The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice or unless the Contracting Party has made a Failure to Schedule to Deliver or a Failure to Schedule to Take, in which case, Invoices payable will not be considered final until 180 days after the Physical Power Delivery Date.~~

...

#### 4.7 — Early Payment of Invoices



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

...

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

...

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

...

## ARTICLE 7 - INVOICES AND TAXES

### 7.1 Invoices

a. 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 owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable:

(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.

b. Disputed Invoice Items - Any items on any Invoice disputed by any Contracting Party must be noted to Exchange:

- (i) for Invoices for Physically Settled Gas Futures Transactions, no later than five Business Days prior to the Physical Settlement Date;
  - (ii) for Invoices for Physically Settled Power Futures Transactions, no later than five Business Days prior to the Physical Settlement Date;
  - (iii) for Invoices for Daily Financially Settled Futures Transactions, no later than one Business Day prior to the Settlement Date;
  - (iv) for Invoices for all other Financially Settled Futures Transactions, no later than one Business Day prior to the Settlement Date;
  - (v) for Invoices for Option Transactions, no later than one Business Day prior to the Premium Payment Date; and
  - (vi) for Invoices for Forward (Bilateral) Transactions, no later than five Business Days prior to the Physical Settlement Date.
- c. Invoices Final and Binding - Unless the Contracting Party has advised Exchange of any error in, or dispute in respect of, an Invoice, the Invoice will be final and binding, absent manifest error, for all purposes on both the Contracting Party and Exchange:
- (i) for Invoices for Physically Settled Gas Futures Transactions, 120 days after the Physical Settlement Date on which the Invoice was due;
  - (ii) for Invoices for Physically Settled Power Futures Transactions, 120 days after the Physical Settlement Date on which the Invoice was due, unless the Contracting Party has made a Failure to Schedule to Deliver or a Failure to Schedule to Take, in which case, Invoices payable will not be considered final until 180 days after the Physical Power Delivery Date;
  - (iii) for Daily Financially Settled Futures Transactions, 120 days after the MTM Settlement Date on which the Invoice was due;
  - (iv) for all other Financially Settled Futures Transactions, 120 days after the Settlement Date on which the Invoice was due;
  - (v) for Option Transactions, 120 days after the Premium Payment Date on which the Invoice was due; and
  - (vi) for Invoices for Forward (Bilateral) Transactions, 120 days after the Physical Settlement Date on which the Invoice was due.

## **7.2 Payment of Invoices**

- a. Wire Payment of Invoices - Except as otherwise agreed between Exchange and the Contracting Party, payment of Invoices 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. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by Exchange's bank and any corresponding bank, if applicable, relating to payment or receipt of Invoice amounts, in accordance with this Agreement and Exchange's stated policies.

- b. Return of Retained Settlement Amounts – A Contracting Party may instruct Exchange to retain payables of MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts (“Retained Settlement Amounts”) owing by Exchange to the Contracting Party. Retained Settlement Amounts will be deposited by Exchange in an interest bearing bank account at Exchange's Principal Banker separate from the corporate funds of Exchange or its affiliates or subsidiaries, and separate from the Eligible Collateral Support and other funds of the Contracting Party and of any other Contracting Party. Exchange will provide the Contracting Party with direct viewing access to this bank account. ICE NGX will, on a monthly basis, credit to this bank account interest earned at an interest rate as notified by ICE NGX from time to time (“Retained Settlement Interest”). Any interest earned in excess of the Retained Settlement Interest shall be deducted monthly by ICE NGX from the Cash Collateral Account for administrative purposes. A Contracting Party may request a return of any such Retained Settlement Amounts and Retained Settlement Interest if its Initial Margin is less than eighty percent (80%) of Net Equity, as those terms are defined in Schedule “C”. Exchange agrees to return the relevant Retained Settlement Amounts and Retained Settlement Interest 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 provided that the Contracting Party's Initial Margin is less than eighty percent (80%) of Net Equity on that Business Day. If the Contracting Party's Initial Margin exceeds eighty percent (80%) of Net Equity on that Business Day, Exchange agrees to return the Retained Settlement Amounts and Retained Settlement Interest on the next Business Day that is not a Recognized Banking Holding, on which the Contracting Party's Initial Margin is less than eighty percent (80%) of Net Equity. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of Retained Settlement Amounts or Retained Settlement Interest, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any loss or any interest earned.

...

## ~~7.2 — Reserved.~~

*[Note: The numbering of sections in Article 7 will be updated to reflect the amendments above.]*

...

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

- a. Invoices for Financially Settled Futures Transactions other than Daily Financially Settled Futures Transactions – Exchange will post on Exchange's Website for sole access by the Contracting Party ~~(or will provide the Contracting Party, upon request, with)~~ an Invoice on



the second Business Day of each calendar month in respect of each Financially Settled Futures Transaction to be settled in the prior calendar month that are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each amount payable or receivable in respect of any Obligations under any Financially Settled Futures Transactions, ~~and any amounts~~ payable to Exchange for fees ~~to Exchange~~ under the Fee Schedule and any amounts payable on account of any applicable taxes. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Cash Settlement Date that has been requested in accordance with the Risk Management Policy and will hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange.

b. Invoices for Daily Financially Settled Futures Transactions – Exchange will post on Exchange’s Website for sole access by the Contracting Party ~~(or will provide the Contracting Party, upon request, with)~~ Invoices in respect of Daily Financially Settled Futures Transactions as follows:

- (i) for the MTM Settlement Amounts, an Invoice prior to the commencement of, or on, the Business Day following the day each MTM Settlement Amount is determined as set forth in Schedule “E”, that is payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each amount payable or receivable in respect of any Obligations under all Daily Financially Settled Futures Transactions;
- (ii) an Invoice on the second Business Day of each calendar month in respect of Daily Financially Settled Futures Transactions mark-to-market settled in the prior calendar month and that are payable in the same currency, setting forth the Daily Financially Settled Futures Settlement Amounts for that month, ~~and any net amounts~~ payable to Exchange for fees ~~to Exchange~~ under the Fee Schedule and any amounts payable on account of any applicable taxes, provided that such Invoice shall include, where applicable, a Post-Settlement Load Adjustment Amount; ~~and~~

~~(iii)~~ — Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the MTM Settlement Date and the Cash Settlement Date that has been requested in accordance with the Risk Management Policy and will hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange.

The payment or receipt by the Contracting Party of such net MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange with respect to a Daily Financially Settled Futures Settlement Transaction once all such amounts in respect of the applicable Term have been paid, unless a Daily Financially



Settled Futures Settlement Transaction has been fully offset as determined in the sole discretion of Exchange, in which case full satisfaction of the applicable settlement amounts shall occur once all MTM Settlement Amounts, and if applicable, all Daily Settlement Amounts, have been paid (or received) as the case may be, in respect of all settlement amounts incurred up to and including the date of full offset.

c. Invoices for Option Transactions – Exchange will post on Exchange’s Website for sole access by the Contracting Party ~~(or will provide the Contracting Party, upon request, with)~~ Invoices in respect of each Option Transaction as follows:

- (i) for the Option Premium Amount, on the Business Day following the transaction date of the Option Transaction; and
- (ii) any other invoices become applicable only if the relevant Option Exercise Conditions have been met, Invoices shall be issued and payable as per the associated Underlying Transaction that has become effective on such exercise.

~~d. Terms for Financially Settled Futures Transactions and Option Transactions – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the MTM Settlement Date and Cash Settlement Date (in the case of Daily Financially Settled Futures Transactions), the Cash Settlement Date (in the case of all other Financially Settled Futures Transactions) and the Premium Payment Date (in the case of Option Transactions). Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least one Business Day prior to the Settlement Date or Premium Payment Date, as the case may be. Payments by the Contracting Party will be made payable to Exchange and will be made by wire payment or electronic funds transfer. The Contracting Party shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile.~~

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

de. Corrections to the Invoice – In the event that the prices for any Financially Settled Futures Transaction or Option Transaction is corrected by the publication from which such indices is derived for settlement of such Transaction after a Cash Settlement Date, Exchange will post on Exchange’s Website for sole access by the Contracting Party ~~(or will issue to the Contracting Party, upon request)~~ a correcting Invoice to reflect the corrected Cash Settlement Amount or Daily Financially Settled Futures Settlement Amount within two (2) Business Days of being advised of such change. The correcting Invoices will be due and payable within five (5) Business Days of their issuance on terms as outlined in Section 8.4.





- e. Payment of Invoices for Financially Settled Futures Transactions - Payment of Invoices for Financially Settled Futures Transactions shall be made in accordance with Article 7.
- f. ~~Final Invoices—The Contracting Party and Exchange agree that any Invoice on any Cash Settlement Date, MTM Settlement Date or Premium Payment Date will be final and binding, absent manifest error, for all purposes 120 days after such Settlement Date, MTM Settlement Date or Premium Payment Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.~~
- g. ~~Early Payment of Invoices—A Contracting Party may, if desired, make payment to Exchange prior to the applicable Settlement Date, and such funds, when received, will be applied against that Contracting Party’s Invoice amounts, or may be Set-off against amounts then owed by the Contracting Party to Exchange in accordance with Section 3.3 of this Agreement.~~
- h. ~~Return of Retained Settlement Amounts—A Contracting Party may instruct Exchange to retain payables of MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts (“Retained Settlement Amounts”) owing by Exchange to the Contracting Party. Retained Settlement Amounts will be deposited by Exchange in an interest bearing bank account at Exchange’s Principal Banker separate from the corporate funds of Exchange or its affiliates or subsidiaries, and separate from the Eligible Collateral Support and other funds of the Contracting Party and of any other Contracting Party. Exchange will provide the Contracting Party with direct viewing access to this bank account. ICE NGX will, on a monthly basis, credit to this bank account interest earned at an interest rate as notified by ICE NGX from time to time (“Retained Settlement Interest”). Any interest earned in excess of the Retained Settlement Interest shall be deducted monthly by ICE NGX from the Cash Collateral Account for administrative purposes. A Contracting Party may request a return of any such Retained Settlement Amounts and Retained Settlement Interest if its Initial Margin is less than eighty percent (80%) of Net Equity, as those terms are defined in Schedule “C”. Exchange agrees to return the relevant Retained Settlement Amounts and Retained Settlement Interest 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 provided that the Contracting Party’s Initial Margin is less than eighty percent (80%) of Net Equity on that Business Day. If the Contracting Party’s Initial Margin exceeds eighty percent (80%) of Net Equity on that Business Day, Exchange agrees to return the Retained Settlement Amounts and Retained Settlement Interest on the next Business Day, that is not a Recognized Banking Holding, on which the Contracting Party’s Initial Margin is less than eighty percent (80%) of Net Equity. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of Retained Settlement Amounts or Retained Settlement Interest, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any loss or any interest earned.~~

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## AMENDMENTS TO SCHEDULE “I” - FORWARD (BILATERAL) TRANSACTIONS



#### 4. INVOICES

- a. Invoices for Forward (Bilateral Transactions) - Notwithstanding any other provision of this Agreement, Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request with) an Invoice on or before the 15th day of each calendar month for Forward Transactions during the prior calendar month, setting forth a net amount owing by or to the Contracting Party, any amounts payable to Exchange for fees ~~to Exchange~~ under the Fee Schedule and any amounts payable on account of GST. In determining the net amounts payable or receivable by the Contracting Party on each Invoice, Exchange will Set-off the amounts payable or receivable in the same currency. The Contracting Party will be obligated to pay or entitled to receive only such net amounts.
- b. ~~Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions hereof, the amount of the Invoice owed by the Contracting Party to Exchange will be due and payable on the Physical Settlement Date. Full Satisfaction - In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. The payment or receipt by the Contracting Party of the net amount of an Invoice for Forward (Bilateral Transactions) in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange in respect of the Forward (Bilateral) Transactions. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date with respect to physical gas Forward Transactions and prior to the Physical Settlement Date with respect to physical Oil Forward Transactions. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. The Contracting Party shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.~~
- c. Payment of Invoices - Payment of Invoices for Forward (Bilateral) Transactions shall be in accordance with Article 7. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange. The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date with respect to a Forward Transaction will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.



## APPENDIX II - (STEP TWO)

### AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

#### TERMS AND CONDITIONS

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

#### 1.2 Definitions

~~“Bank Collateral Agreement” means the agreement between Exchange and Exchange’s Principal Banker dated July 30, 2004, as may be amended, modified, restated or replaced from time to time;~~

“CAD Bank Rate” means, with respect to any Business Day, a rate per annum equal to the top rate of the operating band for the Bank of Canada on the date of determination as published by the Bank of Canada on its website, currently at <https://www.bankofcanada.ca/>, or any successor source identified as such by the Bank of Canada from time to time.

“Cash Collateral” means cash delivered by or on behalf of the Contracting Party to Exchange as Eligible Collateral Support and Daily Financially Settled Futures Settlement Amounts, MTM Settlement Amounts and Contracting Party Interest amounts deposited by Exchange into the Cash Collateral Account ~~has the meaning ascribed thereto in Section 9 of Schedule “C”;~~

“Cash Collateral Account” means an interest-bearing deposit account in the name of the Exchange at Exchange’s Principal Banker and bearing a FBO or similar designation to signify that cash in the account is attributable to the Contracting Party;

“Default Rate” means a fluctuating interest rate equal to the CAD Bank Rate ~~Prime Rate~~ (for Canadian dollar Invoices) or U.S. Fed Funds Rate ~~Base Rate~~ (for U.S. dollar Invoices) from time to time plus ~~two~~ five and one quarter percent (~~2%~~5.25%) per annum; provided, however, that the Default Rate shall never exceed the maximum lawful rate;

“Exchange’s Principal Banker” means Royal Bank of Canada ~~The Toronto-Dominion Bank;~~

“Fed Funds Rate” means, with respect to any Business Day, a rate per annum equal to the federal funds rate as published on the immediately preceding Business Day to the date of determination by the Federal Open Market Committee on the Board of Governors of the Federal Reserve System website, currently at <https://www.federalreserve.gov>, or any successor source identified as such by the Federal Open Market Committee from time to time.

~~“Prime Rate” means the annual rate of interest established by Exchange’s Principal Banker from time to time as the reference rate it will use to determine the rates of interest on Canadian dollar loans made in Canada and designated by it as its prime rate;~~



~~“Retained Settlement Amounts” has the meaning set forth in Section 8.4;~~

~~“U.S. Base Rate” means the annual rate of interest established by Exchange’s Principal Banker from time to time as the reference rate it will use to determine the rates of interest on U.S. dollar loans made in Canada and designated by it as its U.S. base rate;~~

...

### 3.3 Eligible Collateral Support and Collateral

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b. Grant of Security – As security for the payment and performance of its Obligations, the Contracting Party does hereby assign, pledge and grant to Exchange a first-ranking security interest in and lien on all estate, right, title and interest of the Contracting Party in and to:

(i) any and all cash (including, without limitation, any cash delivered as Eligible Collateral Support), monies and interest bearing instruments contemplated by Section 3.3 delivered to, deposited with, or held by or on behalf of Exchange ~~(with the exception of Retained Settlement Amounts);~~

(ii) any rights to payment or performance owing from Exchange including, without limitation:

(I) any Previous Month Accounts Net Payable for such Contracting Party;

(II) any Current Month Accounts Net Payable owed by Exchange to the Contracting Party;

(III) any Financially Settled Futures Settlement Net Payable, MTM Settlement Net Payable or Daily Financially Settled Futures Settlement Net Payable for such Contracting Party; and

(IV) any Variation Margin for such Contracting Party; and

(iii) all proceeds (as such term is defined in the *Personal Property Security Act* (Alberta) of any of the foregoing

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

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d. Use of Collateral – Exchange may pledge, transfer or realize on a Contracting Party’s Collateral to satisfy the Obligations of the Contracting Party under this Agreement and, for greater certainty, may not use the Contracting Party’s Collateral for Exchange’s general corporate purposes.

- ~~g. Bank Collateral Agreement — Exchange hereby confirms that the Bank Collateral Agreement is in full force and effect and has provided Exchange’s Principal Banker with the Contracting Party’s name and address for the purpose of providing any notice under, and the undertaking of Exchange’s Principal Banker set forth in the Bank Collateral Agreement.~~
- gh. Interest on Eligible Collateral Support – Exchange will provide the Contracting Party with direct viewing access to its Cash Collateral Account, failing which, and upon request by the Contracting Party, Exchange will account monthly to the Contracting Party for all daily interest earned in a Cash Collateral Account. ICE NGX will, on a monthly basis, credit to the Cash Collateral Account, interest earned on each day on the amount of the balance in the Cash Collateral Account, as of 26:00 p.m. (Mountain Eastern time), that exceeds \$100,000 or U.S. \$100,000, as applicable, at an interest rate as notified by ICE NGX from time to time (“Contracting Party Interest”). ~~Any interest earned in excess of the Contracting Party Interest shall be deducted monthly by ICE NGX from the Cash Collateral Account for administrative purposes.~~ Contracting Party Interest credited to the Cash Collateral Account becomes Eligible Collateral Support as of the time it is deposited in the Cash Collateral Account by Exchange.
- ~~i. Return of Contracting Party Interest — A Contracting Party may request a return of its Contracting Party Interest if its Initial Margin is less than eighty percent (80%) of Net Equity, as those terms as defined in Schedule “C”. Exchange agrees to return the relevant Contracting Party Interest 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 provided that the Contracting Party’s Initial Margin is less than eighty percent (80%) of Net Equity on that Business Day. If the Contracting Party’s Initial Margin exceeds eighty percent (80%) of Net Equity, Exchange shall not be liable to the Contracting Party for any cost or loss incurred as a result of any such depositing of Contracting Party Interest, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any cost or any interest earned.~~

[Note: The numbering of paragraphs in section 3.3 will be updated to reflect the amendments above.]

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## ARTICLE 7 - INVOICES AND TAXES

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### 7.2 Payment of Invoices

- a. Wire Payment of Invoices - Except for payment of MTM Settlement Amounts or as otherwise agreed between Exchange and the Contracting Party, payment of Invoices 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. The Contracting Party shall



be responsible for any and all wire transfer fees applied or deducted by Exchange's bank and any corresponding bank, if applicable, relating to payment or receipt of Invoice amounts, in accordance with this Agreement and Exchange's stated policies.

~~b. Return of Retained Settlement Amounts — A Contracting Party may instruct Exchange to retain payables of MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts (“Retained Settlement Amounts”) owing by Exchange to the Contracting Party. Retained Settlement Amounts will be deposited by Exchange in an interest bearing bank account at Exchange’s Principal Banker separate from the corporate funds of Exchange or its affiliates or subsidiaries, and separate from the Eligible Collateral Support and other funds of the Contracting Party and of any other Contracting Party. Exchange will provide the Contracting Party with direct viewing access to this bank account. ICE NGX will, on a monthly basis, credit to this bank account interest earned at an interest rate as notified by ICE NGX from time to time (“Retained Settlement Interest”). Any interest earned in excess of the Retained Settlement Interest shall be deducted monthly by ICE NGX from the Cash Collateral Account for administrative purposes. A Contracting Party may request a return of any such Retained Settlement Amounts and Retained Settlement Interest if its Initial Margin is less than eighty percent (80%) of Net Equity, as those terms are defined in Schedule “C”. Exchange agrees to return the relevant Retained Settlement Amounts and Retained Settlement Interest 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 provided that the Contracting Party’s Initial Margin is less than eighty percent (80%) of Net Equity on that Business Day. If the Contracting Party’s Initial Margin exceeds eighty percent (80%) of Net Equity on that Business Day, Exchange agrees to return the Retained Settlement Amounts and Retained Settlement Interest on the next Business Day that is not a Recognized Banking Holding, on which the Contracting Party’s Initial Margin is less than eighty percent (80%) of Net Equity. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of Retained Settlement Amounts or Retained Settlement Interest, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any loss or any interest earned.~~ [Payment of Invoices for MTM Settlement Amounts - Exchange will identify a Cash Collateral Account for each Contracting Party that enters into a Financially Settled Futures Transaction. Unless otherwise agreed to by Exchange, payments in respect of MTM Settlement Amounts](#)

[\(i\) by Exchange to the Contracting Party will be made by wire transfer into the Contracting Party’s Cash Collateral Account; and](#)

[\(ii\) by the Contracting Party to Exchange will be made by wire transfer by Exchange from the Contracting Party’s Cash Collateral Account into the Exchange Account identified by Exchange for receiving such funds.](#)

[The Contracting Party is responsible for ensuring its Cash Collateral Account has sufficient funds in excess of the applicable Margin Requirement to satisfy the MTM Settlement Amount prior to the applicable Settlement Day.](#)