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OFFICE OF THE SECRETARIAT

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October 19, 2009

Attention: Secretary

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

**Re: Natural Gas Exchange Inc. - Notification and self-certification of rule changes**

1. **SUBMISSION**  
In accordance with Regulation 40.6(a), Natural Gas Exchange Inc. ("NGX") hereby submits amendments to its rulebook (the "Contracting Party's Agreement" or "CPA").
2. **TEXT OF RULE CHANGE**  
The text of the rule amendments is attached as Appendix "A", with additions underlined and deletions struck out.
3. **DATE OF IMPLEMENTATION/EFFECTIVE DATE**  
The amendments will become effective as of October 20, 2009.
4. **OPPOSING VIEWS**  
There were no substantive opposing views to the amendments.
5. **APPLICATION OF THE ACT AND REGULATIONS**  
An officer's certificate is attached as Appendix "B".

Please do not hesitate to contact myself (403-974-1705) or our Chief Legal Counsel, Cheryl Graden (416-947-4359) for any further information the Commission or its staff may require in connection with this rule amendment.

Yours truly,

A handwritten signature in black ink, appearing to read 'Peter Krenkel', written over a horizontal line.

Peter Krenkel  
President, Natural Gas Exchange Inc.

cc: Cheryl Graden, NGX  
CFTC Southwestern Regional Office

**CONTRACTING PARTY'S AGREEMENT ("CPA")  
WITH NATURAL GAS EXCHANGE INC. ("NGX")**

**NOTICE OF AMENDMENTS TO CPA EFFECTIVE ON OCTOBER 20, 2009  
(NOTICE DATE: OCTOBER 9, 2009)**

This notification, pursuant to the terms of the CPA, relates to amendments to the CPA (the "CPA Revisions"). These revisions are to Article 3 and to Schedules A, C, E and H, and shall become effective on October 20, 2009.

The following chart summarizes the CPA Revisions. Please refer to the NGX website at [www.ngx.com](http://www.ngx.com) under the heading "News and Notices", as well as the members' section "CPA and Other Documents", for additional details and the specific text of the CPA Revisions.

ARTICLE OR SCHEDULE	AMENDED ARTICLES
Article 3 - General	Article 3 has been revised to: <ul style="list-style-type: none"> <li>- clarify that a CP will be responsible for all wire transfer fees applied by Exchange's bank relating to Eligible Collateral Support (s. 3.2(a))</li> <li>- clarify NGX's right to first priority in the security a CP is required to grant to Exchange in its Collateral (s. 3.2(b))</li> <li>- Clarify how interest on Eligible Collateral Support is determined (s. 3.2(j))</li> </ul>
Schedule A - Fee Schedule	Schedule A has been revised to clarify transaction fees for cleared & bilateral transactions in oil, transaction fees for gas option transactions, and add clearing fees for physical oil at U.S. delivery points
Schedule C - Risk Management Policy	Schedule C has been revised to clarify that a CP will be responsible for all wire transfer fees applied by Exchange's bank relating to Eligible Collateral Support (s. 8)
Schedule E - Natural Gas, Oil and Electricity Swaps and Options	Schedule E has been revised to add definitions for existing products - Ontario Extended Peak and Ontario Extended Off-Peak (s. 10)
Schedule H - Physical Oil Transactions	Table 1 of Article 4 has been revised to add new delivery points, remove others, and amend certain system price abbreviations and price option descriptions, and footnotes

**PRIVATE AND CONFIDENTIAL**

The Agreement has been prepared for participants in the NGX Trading System and NGX Clearing System and contains private and confidential information in respect of the business of Natural Gas Exchange Inc. Natural Gas Exchange Inc. has made applications to the Alberta Securities Commission and other similar regulatory authorities in other provinces of Canada in respect of such business and has received exemptions from the application of various provisions of such legislation. This documentation has not been approved by any regulatory authority.

**RISK DISCLOSURE STATEMENT**

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

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SCHEDULES:

Schedule "A"	-	Fee Schedule
Schedule "B"	-	Mediation and Arbitration
Schedule "C"	-	Risk Management Policy
Schedule "D"	-	NGX Product List
Schedule "E"	-	Natural Gas, Oil and Electricity Swaps and Options
Schedule "F"	-	Physical Gas Transactions – Canadian Delivery Points
Schedule "G"	-	Physical Gas Transactions – U.S. Delivery Points with Mediated Delivery Nominations
Schedule "H"	-	Physical Oil Transactions
Schedule "I"	-	Bilateral Transactions

(August 1, 2009)

**TERMS AND CONDITIONS**

**ARTICLE 1 - INTERPRETATION**

**1.1 General**

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

Schedule "A"	-	Fee Schedule
Schedule "B"	-	Mediation and Arbitration
Schedule "C"	-	Risk Management Policy
Schedule "D"	-	NGX Product List
Schedule "E"	-	Natural Gas, Oil and Electricity Swaps and Options
Schedule "F"	-	Physical Gas Transactions – Canadian Delivery Points
Schedule "G"	-	Physical Gas Transactions – U.S. Delivery Points with Mediated Delivery Nominations
Schedule "H"	-	Physical Oil Transactions
Schedule "I"	-	Bilateral Transactions

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

(August 1, 2009)

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

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

(June 8, 2009)

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

(May 1, 2009 or such later date as may be designated  
by Exchange on notice to the Contracting Parties)

## 1.2 Definitions

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

- a. "Administrator" means such person(s) designated by each Contracting Party in accordance with Section 3.1(b) who are (i) authorized to designate employees, consultants and agents who are authorized to enter into Transactions for trading and/or clearing on behalf of the Contracting Party and thus bind the Contracting Party to their respective Obligations and (ii) are designated as an "Administrator" for this purpose;
- b. "Agreement" means, collectively, the Execution Page, the Terms and Conditions and all Schedules, each as may be amended, restated or replaced from time to time in accordance with this Agreement;
- c. "Application" means the application and supporting financial and any other information provided to Exchange by a Contracting Party at Exchange's request as a precondition to becoming qualified by Exchange prior to entering into this Agreement;
- d. "Approved Financial Institution" has the meaning ascribed thereto in Schedule "C";
- e. "Arbitration" means the procedure described in Schedule "B";
- f. "Authorized Representatives" has the meaning ascribed thereto in Section 3.1(b);
- g. "Available Margin Limit" has the meaning ascribed thereto in Schedule "C";
- h. "Bank Collateral Agreement" means the agreement between Exchange and Exchange's Principal Banker dated July 30, 2004, as may be amended, modified, restated or replaced from time to time and as posted on Exchange's Website in a secured access section;
- i. "Bilateral Product" means any product that: (i) is listed on the NGX Product List; and (ii) is offered for trading on the NGX Trading System;
- j. "Bilateral Transaction" means a trade entered into from time to time directly between two Contracting Parties through the NGX Trading System, pursuant to Schedule I, for the purchase or sale of any Bilateral Product, which trade is cleared and settled in accordance with the terms and conditions of the bilateral agreement between the two Contracting Parties and not cleared and settled through the NGX Clearing System;
- k. "Business Day" means any day except Saturday, Sunday and statutory holidays in the Province of Alberta;
- l. "Buyer" means a Contracting Party or Exchange that has entered a Physical Transaction that has been entered: (i) on the NGX Trading System; or (ii) into the ICE Trading Platform, with an obligation to take gas or Oil, as applicable;
- m. "Call Option" means an option obligating the Option Buyer to cause an Underlying Transaction to become effective if the relevant Option Exercise Conditions have, or deemed to have, been met (the "Exercise") such that the Option Buyer becomes the buyer in the Underlying Transaction (the Buyer if a Physical Transaction and the Fixed Price Payer if a Swap Transaction) and, as of the

Exercise, the terms and conditions applicable to such Underlying Transaction govern, all of which shall correspond to, have the particulars and will be referred to in all trading and other information generated on the NGX Trading System and NGX Clearing System by one of the designations set forth in Schedule "E", and which option may be available on the NGX Trading System or NGX Clearing System from time to time;

- n. "Canadian Dollar" or "\$" means the lawful currency of Canada;
- o. "Cleared Only Product" means any Product on the NGX Product List that: (i) is designated as "Cleared Only"; and (ii) is not available for trading on the NGX Trading System or the ICE Trading Platform; but (iii) is cleared through the NGX Clearing System;
- p. "Close-out Procedure" means the procedure outlined in Section 8.3 pursuant to which Exchange may enter into Swap Transactions or Option Transactions, as the case may be, to Set-Off, in whole or in part, the Obligations of the Defaulting Swap Party under Swap Transactions or of the Defaulting Option Party under Option Transactions, as the case may be;
- q. "Collateral" has the meaning set forth in Section 3.2(b);
- r. "Confirmation" means any Physical Confirmation, Swap Confirmation or Option Confirmation;
- s. "Contract Quantity" means the total quantity of gas or Oil to be delivered or taken during the term of a Physical Transaction;
- t. "Contracting Party" means the party, other than Exchange, which has entered into this Agreement, and "Contracting Parties" means all parties, including the Contracting Party, which have entered into a Contracting Party Agreement;
- u. "Contracting Party Affiliate" means, in relation to the Contracting Party (the "First Contracting Party"), any other Contracting Party (an "OCP") that is controlled, directly or indirectly, by the First Contracting Party, any OCP that controls, directly or indirectly, the First Contracting Party or any OCP directly or indirectly under common control with the First Contracting Party, except as may be waived by Exchange pursuant to Exchange's written consent; or any other OCP affiliated with the Contracting Party that does not otherwise qualify under this definition if agreed to in writing by Exchange, the OCP and the First Contracting Party. For this definition, "control" of any OCP or the First Contracting Party means ownership of a majority of the voting power of the OCP or the First Contracting Party;
- v. "Contracting Party Affiliate Default" means a Default by a Contracting Party Affiliate under a Contracting Party Agreement;
- w. "Contracting Party Agreement" has the meaning set forth in Section 1.6;
- x. "Contracting Party Suspension" means one or more of the cancellation of any or all Orders of the Contracting Party regarding a Product and the termination of access to the NGX Trading System and the NGX Clearing System of the Contracting Party in relation to any or all Products;
- y. "Credit Support Document" means any agreement or instrument provided by the Contracting Party or any Credit Support Provider as, or in relation to, Collateral, including, without limitation, in relation to the provision of Eligible Collateral Support or the establishment or maintenance of any Lien;
- z. "Credit Support Provider" means any person other than the Contracting Party which provides Collateral for the Obligations of the Contracting Party;



- aa. "Critical NGX Trading System Issue" means any event or events that cause the NGX Trading System to be unavailable to multiple Contracting Parties, or an action by Exchange to make the NGX Trading System unavailable to all Contracting Parties, for a consecutive three minute period during any Trading Day, and a "Non-Critical NGX Trading System Issue" means any NGX Trading System issue that is not a Critical NGX Trading System Issue;
- bb. "Current Month Accounts Net Payable" has the meaning ascribed thereto in Schedule "C";
- cc. "Cushing Exchanges" means Physical Oil Transactions entered through the Oil Trading Platform which the initiating Contracting Party simultaneously offers to sell and purchase Oil as "Cushing Exchanges" in accordance with (and as further described in) Schedule "H" and Appendix 2 thereto;
- dd. "Daily Contract Quantity" or "DCQ" means the quantity of gas to be delivered or taken during each Delivery Day of a Physical Gas Transaction;
- ee. "Default" means, with respect to a Contracting Party, any one or more of a Failure to Deliver, Failure to Pay, Failure to Take, Event of Default, Failure to Provide Eligible Collateral Support, Swap Party's Default or Option Party's Default of such Contracting Party or a Contracting Party Affiliate Default of any of its Contracting Party Affiliates;
- ff. "Default Rate" means a fluctuating interest rate equal to the Prime Rate (for Canadian dollar Invoices) or U.S. Base Rate (for U.S. dollar Invoices) from time to time plus two percent (2%) per annum; provided, however, that the Default Rate shall never exceed the maximum lawful rate;
- gg. "Defaulting Option Party" means the Contracting Party in respect of which an Option Party's Default or other Default has occurred under this Agreement;
- hh. "Defaulting Party" means a Contracting Party in respect of which a Default has occurred;
- ii. "Defaulting Swap Party" means the Contracting Party in respect of which a Swap Party's Default or other Default has occurred under this Agreement;
- jj. "Delivery Day" means a day, commencing at a particular time on one day and ending at a particular time on the next day, such time being dependent upon the applicable Transportation System at the Delivery Point on which gas is to be delivered or taken as required by a Physical Gas Transaction;
- kk. "Delivery Period" means, for a Physical Oil Transaction, the period during which deliveries and takes of Oil are to occur under such Physical Oil Transaction;
- ll. "Delivery Point" means, for a Physical Transaction, the location at which the parties to such Transaction have agreed to transfer title to, deliver and take the gas or Oil subject to such Transaction, being the transfer point as designated by the applicable Transportation System for the Delivery Point;
- mm. "Deposit Agreement" means the agreement amended and restated as of December 11, 2008 between Exchange and the Escrow Agent;
- nn. "Electricity Products" has the meaning ascribed thereto in Section 5.13(b);
- oo. "Eligible Collateral Support" has the meaning ascribed thereto in Section 3.2(a);
- pp. "Escrow Agent" means the trustee under the Deposit Agreement;

- qq. "Event of Default" means the occurrence of any of the events set forth in Section 3.9;
- rr. "Exchange" means Natural Gas Exchange Inc., a body corporate with offices, and carrying on business, in Calgary, Alberta and any successors thereto;
- ss. "Exchange Bankruptcy Event of Default" means the occurrence of any of the events set forth in Section 3.10;
- tt. "Exchange Default" means the failure by Exchange to perform any of its Obligations in respect of any Swap Transaction or Option Transaction with the Contracting Party;
- uu. "Exchange Letter of Credit" means the letter of credit provided for the benefit of Contracting Parties who have entered into Transactions, which has been deposited with the Escrow Agent pursuant to the provisions of the Deposit Agreement;
- vv. "Exchange's Principal Banker" means The Toronto-Dominion Bank;
- ww. "Exchange's Website" means a site owned and maintained by Exchange available on the internet at [www.ngx.com](http://www.ngx.com);
- xx. "Excise Tax Act" means the *Excise Tax Act* (Canada);
- yy. "Execution Page" means the execution page executed and delivered by the Contracting Party and Exchange pursuant to which the Contracting Party becomes a party to this Agreement;
- zz. "Failure Amount" means the difference between the amount payable on any Invoice and the amount actually paid on account of any such Invoice;
- aaa. "Failure Quantity" means the difference between the Contract Quantity (or any portion thereof) to be delivered or received in accordance with a Physical Transaction and the quantity of gas or Oil actually delivered or taken in accordance with such Physical Transaction;
- bbb. "Failure to Deliver" means the failure of a Seller or Exchange to make delivery of any portion of the Contract Quantity to be delivered in accordance with a Physical Transaction as determined by the applicable Transportation System and as more particularly set forth in Schedules "F", "G" or Schedule "H", as applicable;
- ccc. "Failure to Pay" means the failure of a Contracting Party or Exchange to make payment of any amount under any Invoice issued in accordance with this Agreement or under Section 5.13;
- ddd. "Failure to Provide Eligible Collateral Support" means the failure of a Contracting Party to provide Eligible Collateral Support when required in accordance with Section 3.2(a);
- eee. "Failure to Take" means the failure of a Buyer or Exchange to take delivery of any portion of the Contract Quantity to be received in accordance with a Physical Transaction as determined by the applicable Transportation System and as more particularly set forth in Schedules "F", "G" or Schedule "H", as applicable;
- fff. "Fixed Price Payer" means, in respect of a Swap Transaction, the party which is obligated to make payments of amounts calculated by reference to a Fixed Price, Notional Quantity and Calculation Period (all as defined in Schedule "E"), as more particularly set forth in Schedule "E";
- ggg. "Floating Price" has the meaning ascribed thereto in Schedule "E";

- hhh. "Floating Price Payer" means, in respect of a Swap Transaction, the party which is obligated to make payments from time to time of amounts calculated by reference to a Floating Price, Notional Quantity and Calculation Period (all as defined in Schedule "E"), as more particularly set forth in Schedule "E";
- iii. "Gas Products" has the meaning ascribed thereto in Section 5.13(b);
- jjj. "GST" means the goods and services tax imposed under the Excise Tax Act;
- kkk. "General Suspension" means the termination of access to the NGX Trading System and/or NGX Clearing System for all Contracting Parties in relation to some or all Products, whether on a temporary or longer basis;
- lll. "Guarantee" has the meaning ascribed hereto in Section 3.2(e);
- mmm. "ICE" means IntercontinentalExchange, Inc. or any successors thereto;
- nnn. "ICEBlock" has the meaning ascribed thereto in Section 3.1(d);
- ooo. "ICEBlock Error Notice" means a notice received by Exchange from ICE with respect to an Off-Exchange Transaction submitted through ICEBlock, which requires Exchange to correct an error in the trade details or which requires the cancellation of the applicable Off-Exchange Cleared Transactions in each case such correction or cancellation arising under, and in accordance with, the terms of the applicable ICE agreements and procedures applicable to Off-Exchange Transactions submitted through ICEBlock;
- ppp. "ICE Trading Platform" means ICE's trading platform as defined in the ICE Participant Agreement in respect of all products other than NGX Products but, for greater clarity, excludes ICEBlock;
- qqq. "ICE Participant Agreement" means the standard form agreement entered into between IntercontinentalExchange, Inc. and a Contracting Party, as amended, restated or replaced from time to time;
- rrr. "Invoice" means the invoice or statement as to the net amount payable by or owing to a Contracting Party as more particularly described in Section 4.1, Section 4.2, Section 4.3, Section 4.4, Section 5.1, Section 5.2, Section 8.1, Section 8.4 or Schedule I;
- sss. "Lien" means a security interest, lien, mortgage, charge, pledge, hypothecation, right of Set-Off or assignment or transfer by way of security;
- ttt. "Linked Deal" means up to four linked Physical Oil Transactions entered through the Oil Trading Platform as a "Linked Deal" in accordance with (and as further described in) Schedule "H";
- uuu. "Liquidation Procedure" means the procedure outlined in Section 5.6 pursuant to which Exchange may enter into Physical Transactions to Set-Off, in whole or in part, the Obligations of the Contracting Party under Physical Transactions;
- vvv. "Margin Limit" has the meaning ascribed thereto in Schedule "C";
- www. "Market Price Band" means, for any NGX Product, the amount expressed in dollars that is above or below the current market price for any such NGX Product as determined by Exchange and as disclosed by Exchange through the NGX Trading System from time to time;
- xxx. "Mediation" means the procedure described in Schedule "B";

- yyy. "Minimum Qualification Requirement" has the meaning described in Section 2.3;
- zzz. "NAFTA Failure" has the meaning described in Section 2.6(f);
- aaaa. "NGX Cleared ICE Products" means all Products listed in the NGX Product List that: (i) do not have the NGX designation; and (ii) are offered for trading on the ICE Trading Platform and clearing on the NGX Clearing System;
- bbbb. "NGX Clearing System" means the electronic database system comprised of computer equipment, NGX Clearing System Software and other terms and conditions provided in this Agreement for the purpose of facilitating the clearing of Transactions by Contracting Parties;
- cccc. "NGX Clearing System Software" means: (i) the computer programs including, without limitation, computer source code, computer object code, documentation, technical manuals, operation manuals, user manuals, and any other documents relating to program operation and maintenance that facilitate the clearing of Transactions entered into on the NGX Trading System or ICE Trading Platform and related user documentation; (ii) any additional machine readable computer code or printed material not included in the foregoing from time to time provided by Exchange to the Contracting Party including third party software; and (iii) any alterations, modifications or enhancements to the computer programs installed by Exchange from time to time;
- dddd. "NGX Close-out Transactions" means, in respect of a Defaulting Swap Party, Swap Transactions entered into by Exchange on the NGX Trading System or ICE Trading Platform, as applicable, or Swap Transactions entered into by Exchange off the NGX Trading System or ICE Trading Platform, as applicable,, which replace some or all of the Swap Transactions of such Defaulting Swap Party and offset, in whole or in part, each of the Swap Transactions of such Defaulting Swap Party, pursuant to the Close-out Procedure and, in respect of a Defaulting Option Party, Option Transactions entered into by Exchange on the NGX Trading System or ICE Trading Platform, as applicable, or Option Transactions entered into by Exchange off the NGX Trading System or ICE Trading Platform, as applicable,, which replace some or all of the Option Transactions of such Defaulting Option Party and offset, in whole or in part, each of the Option Transactions of such Defaulting Option Party, pursuant to the Close-out Procedure;
- eeee. "NGX Liquidation Transactions" means Physical Transactions entered into by Exchange on the NGX Trading System or ICE Trading Platform, or Physical Transactions entered into by Exchange outside of the NGX Trading System or ICE Trading Platform, which offset, in whole or in part, the Obligations of a Contracting Party under its Physical Transactions pursuant to the Liquidation Procedure;
- ffff. "NGX Power Auction" means the auction process by which Contracting Parties submit bids and/or offers for the electricity or related Products being offered through the NGX Power Auction System;
- gggg. "NGX Power Auction System" means the databases, computer systems, hardware, software and other terms and conditions provided in this Agreement, that enables a NGX Power Auction;
- hhhh. "NGX Product List" means the product list set forth in Schedule "D";
- iiii. "NGX Products" means all Products listed in the NGX Product List that: (i) are designated as "NGX"; and (ii) offered for trading on the NGX Trading System and/or clearing on the NGX Clearing System;
- jjjj. "NGX Trading System" means the databases, computer systems, hardware and software that facilitate the entering into of Transactions and Bilateral Transactions of NGX Products by the Contracting Parties including, without limitation, the Oil Trading Platform and that portion of the

ICE trading platform used to facilitate trading of NGX Products but, for greater clarity, excludes ICEBlock and the Off-Exchange Oil Interface;

- kkkk. "Obligations" means, in the case of any Contracting Party, the payment and performance obligations of the Contracting Party, including (without limitation) in respect of a Guarantee under Section 3.2(e), or, except as Exchange may otherwise agree, any payment and performance obligations of its Contracting Party Affiliates, with respect to any Transaction or as otherwise applicable under this Agreement and, in the case of Exchange, the payment and performance obligations of the Exchange with respect to any Transaction or as otherwise applicable under this Agreement;
- llll. "Off-Exchange Broker Representative" means any broker authorized by a Contracting Party, in accordance with the applicable ICE agreement(s) and procedures, to submit Off-Exchange Transactions on that Contracting Party's behalf to Exchange for clearing in accordance with Section 3.1(d);
- mmmm. "Off-Exchange Cleared Transaction" has the meaning ascribed thereto in Section 3.1(d);
- nnnn. "Off-Exchange Oil Interface" has the meaning ascribed thereto in Section 3.1(d);
- oooo. "Off-Exchange Transaction" has the meaning ascribed thereto in Section 3.1(d);
- pppp. "Oil" means crude oil or condensate that meets or exceeds the quality specifications for a particular Physical Oil Transaction, as determined by the applicable Transportation System;
- qqqq. "Oil Products" has the meaning ascribed thereto in Section 5.13(b);
- rrrr. "Oil Trading Platform" means the trading platform provided by, or on behalf of NGX, to facilitate the trading of NGX Products relating to Oil pursuant to this Agreement;
- ssss. "Open Position Limit" means the maximum quantity of gas, Oil or electricity in respect of which the Contracting Party may incur obligations for payment for or deliveries or receipts of gas, Oil or for payment for electricity pursuant to any Transactions, as determined by Exchange for any Trading Day in respect of each Product;
- tttt. "Option Buyer" means, in respect of an Option Transaction, the Contracting Party who has entered into an Option Transaction as the buyer of the relevant Option Product;
- uuuu. "Option Confirmation" means the notification by Exchange as to any Option Transaction entered into by a Contracting Party on a day, which will include the particulars of the Option Transaction, including the Transaction Date, identifying it as a Put Option or a Call Option, the Underlying Transaction, the Option Premium Price, the Notional Quantity, the Option Exercise Date and the Strike Price (each as defined in Schedule "E");
- vvvv. "Option Party" means a Contracting Party which has entered into an Option Transaction with Exchange;
- wwww. "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;
- xxxx. "Option Premium Amount" means the amount payable by the Option Buyer on the Option Premium Payment Date, as more particularly defined in Schedule "E";

- yyyy. "Option Premium Payment Date" means a date that is two Business Days from the Transaction Date that Exchange entered an Option Transaction into the NGX Trading System or NGX Clearing System on behalf of the Contracting Party;
- zzzz. "Option Product" means a Put Option or a Call Option;
- aaaa. "Option Seller" means, in respect of an Option Transaction, the Contracting Party who has entered into an Option Transaction as the seller of the relevant Option Product;
- bbbb. "Option Transaction" means a transaction in respect of an Option Product, excluding Bilateral Transactions, that is entered into by an Option Party and Exchange for the purchase or sale of such product, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Option Product as set forth in Schedule "E";
- cccc. "Order" means an order to buy or sell any Product entered into the NGX Trading System or ICE Trading Platform by a Contracting Party, or by Exchange acting on behalf of a Contracting Party pursuant to Sections 3.1(d) or (e);
- dddd. "Park and Loan Service" means such service referred to as Park and Loan in the applicable Transportation System's tariff or terms and conditions for the applicable U.S. Delivery Point;
- eeee. "Physical Confirmation" means any Physical Gas Confirmation or Physical Oil Confirmation, as applicable;
- ffff. "Physical Gas Confirmation" means the notification by Exchange as to any Physical Gas Transactions entered into by the Contracting Party on a day, which will include particulars of the respective Physical Gas Transaction including the Purchase Price, Daily Contract Quantity, Delivery Point, and Physical Gas Product;
- gggg. "Physical Gas Product" means a physical product for the purchase or sale of natural gas that is designated as "Phys" in the NGX Product List and may be made available on the NGX Trading System, ICE Trading Platform and/or NGX Clearing System from time to time with such further particulars as may be applicable in Schedules "F" or "G";
- hhhh. "Physical Gas Transaction" means a transaction for the purchase or sale of a Physical Gas Product, excluding Bilateral Transactions, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Physical Gas Product as set forth in the NGX Product List and Schedules "F" or "G";
- iiii. "Physical Oil Confirmation" means the notification by Exchange as to any Physical Oil Transactions entered into by the Contracting Party on a day, which will include particulars of the respective Physical Oil Transactions including, without limitation, the Purchase Price, Contract Quantity, Delivery Period, Delivery Point and Physical Oil Product;
- jjjj. "Physical Oil Product" means a physical product for the purchase and sale of Oil that is designated as "Phys" in the NGX Product List and as may be made available on the NGX Trading System and/or NGX Clearing System from time to time with such further particulars as may be applicable in Schedule "H";
- kkkk. "Physical Oil Trading Specifications" means the fixed and variable terms applicable to different types of Physical Oil Transactions which are further described in Schedule "H";
- llll. "Physical Oil Transaction" means a transaction for the purchase and sale of a Physical Oil Product, excluding Bilateral Transactions, the terms of which shall include this Agreement and, for greater

certainty, also includes the particulars applicable to such Physical Oil Product as set out in the NGX Product List and Schedule "H";

- mmmmm. "Physical Product" means any Physical Gas Product or Physical Oil Product, as applicable;
- nnnnn. "Physical Settlement Date" means, for each Physical Transaction, the Business Day determined by Exchange from time to time in accordance with industry practice for such Physical Transaction, as posted on Exchange's Website not less than one month prior to the occurrence of such date, other than any Physical 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;
- ooooo. "Physical Transaction" means any Physical Gas Transaction or Physical Oil Transaction, as applicable;
- ppppp. "Previous Month Accounts Net Payable" has the meaning ascribed thereto in Schedule "C";
- qqqqq. "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;
- rrrrr. "Proceedings" means any action, suit or proceeding (including any thereof commenced by third party notice or counterclaim), arbitration, mediation or other legal, equitable or statutory process which may result in any judgment, order, award or determination having the force of law or which is otherwise binding on one or more parties thereto or participants therein;
- sssss. "Products" means Physical Products, Swap Products and/or Option Products;
- ttttt. "Purchase Amount" means the aggregate price agreed to be paid for the Contract Quantity of gas or Oil, as applicable, by the Buyer and to be received by the Seller for the Contract Quantity of gas or Oil, as applicable, pursuant to a Physical Transaction;
- uuuuu. "Purchase Price" means the price per unit of gas or Oil agreed to be paid for the receipt of gas or Oil by the Buyer and to be received by the Seller for the delivery of gas or Oil pursuant to any Physical Transaction, such price or formula for the calculation of such price being established on the Transaction Date;
- vvvvv. "Put Option" means an option obligating the Option Buyer to cause an Underlying Transaction to become effective if the relevant Option Exercise Conditions have, or deemed to have, been met (the "Exercise") such that the Option Buyer becomes the seller in the Underlying Transaction (the Seller if a Physical Transaction and the Floating Price Payer if a Swap Transaction) and as of the Exercise the terms and conditions applicable to such Underlying Transaction govern, all of which shall correspond to, have the particulars and will be referred to in all trading and other information generated on the NGX Trading System by one of the designations set forth in Schedule "E" and which option may be available on the NGX Trading System from time to time;
- wwwww. "Regulations" means all applicable laws, regulations, rules, orders, judgments, interpretations, policies and other binding similar pronouncements originating with a legislature, board, agency, court, stock exchange or other regulatory body with jurisdiction;
- xxxxx. "Regulatory Approvals" means all approvals, authorizations, consents, licenses, permits, qualifications, exemptions or orders of any governmental authority or regulatory agency required to be obtained and all registrations, filings or qualifications with or before, or any required notice

- that must be provided to any person, and in particular to any governmental authority or regulatory body;
- yyyyy. "Risk Management Policy" means the risk management policies and procedures of Exchange as set forth in Schedule "C";
- zzzzz. "Schedules" means all schedules to this Agreement;
- aaaaa. "Seller" means a Contracting Party or Exchange that has entered a Physical Transaction that has been entered: (i) on the NGX Trading System; or (ii) into the ICE Trading Platform, with an obligation to deliver gas or Oil, as applicable;
- bbbbb. "Services" means the services that Exchange provides to the Contracting Party in connection with this Agreement but excluding, for greater clarity, Exchange's obligations to deliver, take or pay for gas or Oil as required under any Transaction and Exchange's obligations to pay any amount under any Swap Transaction or Option Transaction;
- ccccc. "Set-Off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which a party is entitled or subject (whether arising under this Agreement, any Transaction, applicable law or otherwise) that is exercised by, or imposed on, such party;
- dddd. "Specified Entity" means in relation to the Contracting Party or a Credit Support Provider, any entity that controls, directly or indirectly, the Contracting Party or Credit Support Provider, as the case may be. For this definition "control" means ownership of a majority of the voting power of the Contracting Party or Credit Support Provider;
- eeeee. "Straddle Option" means the simultaneous purchase or sale of a Put Option and a Call Option by a Contracting Party;
- fffff. "Swap Clearing Amount" means the amount payable on the Swap Settlement Date as more particularly described in Schedule "E";
- ggggg. "Swap Confirmation" means the notification by Exchange as to any Swap Transactions entered into by the Contracting Party on a day, which will include particulars of the Swap Product, including the Calculation Period, Effective Date, Fixed Price, Floating Price and Notional Quantity (all as defined in Schedule "E"), as more particularly set forth in Schedule "E";
- hhhhh. "Swap Party" means a Contracting Party which has entered into a Swap Transaction with Exchange as either a Fixed Price Payer or a Floating Price Payer, as the case may be, of the relevant Swap Product;
- iiii. "Swap 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 Swap Transaction;
- jjjj. "Swap Product" means a swap product that is designated as "Fin" in the NGX Product List and may be made available on the NGX Trading System and/or NGX Clearing System from time to time with such further particulars as may be applicable in Schedule "E";
- kkkkk. "Swap Settlement Date" means, for each Swap Transaction, the Business Day determined by Exchange from time to time in accordance with industry practice for such Swap Transaction, as posted on Exchange's Website not less than one month prior to the occurrence of such date, other than Invoices issued as a result of a Swap Party's Default or under the Close-out Procedure which amounts require payment immediately;



- lllll. "Swap Settlement Net Payable" has the meaning ascribed thereto in Schedule "C";
- mmmmmm. "Swap Transaction" means a transaction for the purchase or sale of a Swap Product, excluding Bilateral Transactions, the terms of which shall include this Agreement and for greater certainty also includes the particulars applicable to such Swap Product as set forth in the NGX Product List and Schedule "E";
- nnnnnn. "System Constraint Period" means a potential constraint at a particular Delivery Point with respect to Physical Gas Transactions, determined by Exchange in its sole discretion, which may increase the risk of backstopping arrangements being utilized at that Delivery Point. System Constraint Periods may include, but are not limited to, tolerance change days for the Intra-Alberta Delivery Point, significant curtailment notice periods, either interruptible or otherwise, on all other Delivery Points or when Park and Loan Service is unavailable. In the event of a System Constraint Period, Exchange will notify all Contracting Parties involved in a Transaction at the Delivery Point where a System Constraint Period exists prior to the last nomination cycle available to shippers at that Delivery Point;
- oooooo. "Terms and Conditions" means the terms and conditions of this Agreement with the exception of the Schedules;
- pppppp. "Time Trades" means two Physical Oil Transactions entered through the Oil Trading Platform as a "Time Trade" in accordance with (and as further described in) Schedule "H";
- qqqqqq. "Trading Day" for each Delivery Point, means any day on which Exchange opens the NGX Trading System to Contracting Parties for transacting in certain Products as designated by Exchange publishing in advance on Exchange's Website a schedule of such Trading Days on the NGX Trading System;
- rrrrrr. "Transaction Date" means the date upon which a Contracting Party enters into a Transaction;
- ssssss. "Transactions" means Physical Transactions, Swap Transactions or Option Transactions and for clarity includes, without limitation, Off-Exchange Cleared Transactions;
- tttttt. "Transportation System" means the pipeline or facility operator as specified in the Schedules which prescribes the system of rules and procedures governing nominations, confirmations and determinations as to the delivery and receipt of gas or Oil for the applicable Delivery Point;
- uuuuuu. "Underlying Transaction" means, in the case of an Option Transaction, the underlying Physical Transaction or Swap Transaction, as the case may be, identified in association with such Option Transaction as set forth in Schedule "E", and which transaction becomes effective if the relevant Option Exercise Conditions have been met such that the Option Party becomes either the Buyer or the Seller (with respect to underlying Physical Transactions) or a Floating Price Payer or Fixed Price Payer (with respect to underlying Swap Transactions in respect of such transaction, as the case may be, depending on whether such Option Transaction relates to a Call Option or a Put Option, and further to the particulars of such Option Transaction as set forth in Schedule "E");
- vvvvvv. "Undertaking" means the undertakings of the Escrow Agent to the Contracting Parties in respect of certain matters relating to the Exchange Letter of Credit as more particularly set forth in Appendix "C" to the Deposit Agreement;
- wwwwww. "U.S. Base Rate" means the annual rate of interest established by The Toronto-Dominion Bank from time to time as the reference rate it will use to determine the rates of interest on U.S. dollar loans made in Canada and designated by it as its U.S. base rate;
- xxxxxx. "U.S. dollar or "\$U.S." means the lawful currency of the United States of America; and

yyyyyy. "Variation Margin" has the meaning ascribed thereto in Schedule "C".

(August 1, 2009)

### 1.3 Interpretation

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

(May 1, 2009) or such later date as may be designated  
by Exchange on notice to the Contracting Parties.)

### 1.4 Miscellaneous

- a. This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta and the federal laws of Canada applicable therein. Reference to such laws shall not, by the application of conflicts of law rules, or otherwise, require the application of any laws other than the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each of the Contracting Party and Exchange hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta. Each of the Contracting Party and Exchange hereby agrees that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any Physical Transaction.
- b. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any Proceeding relating to this Agreement or any Credit Support Document. Each party (i) certifies that no representative, agent or attorney of the other party or any Credit Support Provider has represented, expressly or otherwise, that such other party would not, in the event of such a Proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement and provide for any Credit Support Document, as applicable, by, among other things, the mutual waivers and certifications in this section.
- c. Each of the Contracting Party and Exchange hereby intend that this Agreement, including each Transaction hereunder and each Credit Support Document, be construed as an "eligible financial contract" within the meaning of the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA"), the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") and the *Winding-up and Restructuring Act* (Canada) (the "WRA");

- d. Each of the Contracting Party and Exchange intend and agree that each and every Transaction is a transaction in exempt commodities conducted in accordance with section 2(h) of the *Commodity Exchange Act* (United States).
- e. Each of the Contracting Party and Exchange hereby agree that the services provided by Exchange to the Contracting Party through the NGX Trading System and NGX Clearing System are provided in the Province of Alberta.
- f. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- g. If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable to an extent that does not affect the operation of this Agreement in a fundamental way, the remainder of the provision in question, or its application to any circumstance other than that to which it has been held invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

#### 1.5 Representations and Warranties

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

#### 1.6 Standard Contracting Party Agreement

This Agreement will be the standard form of agreement between Exchange and each of the Contracting Parties in respect of the NGX Trading System and NGX Clearing System (the "Contracting Party Agreement"); the intention being that each of the Contracting Parties will be equal in respect of their respective rights and Obligations, except as specifically otherwise provided in the Contracting Party Agreement. Exchange will provide the Contracting Party with a list of the other Contracting Parties on request.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

#### 1.7 ICE Participant Agreement

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

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

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

**1.8 Non-contra Proferentum**

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

**1.9 Taxes on Services**

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

## ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

### 2.1 Of the Contracting Party: General

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

(May 1, 2009) or such later date as may be designated  
by Exchange on notice to the Contracting Parties)

### 2.2 Of the Credit Support Provider: General

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

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

The Contracting Party represents and warrants that: (a) the Contracting Party is, and will at all times during the term of this Agreement be, a corporation, partnership, organization, trust or other business entity with a net worth exceeding \$5,000,000 or total tangible assets exceeding \$25,000,000, as shown on its latest balance sheet, or has a majority of its voting shares owned directly or indirectly by one or more of any such business entities (the "Minimum Qualification Requirement"), and comply with any other conditions or requirements imposed by Exchange, whether pursuant to the Risk Management Policy or otherwise, as part of the Contracting Party's initial qualification to transact through Exchange or after

being granted access to the NGX Trading System and NGX Clearing System; (b) the information provided by the Contracting Party in the Application is true and correct as of the date noted in the Application and the information provided to Exchange by the Contracting Party from time to time as required by or as permitted under this Agreement will be true and correct as of the date of such information; and (c) the Contracting Party will provide upon request to Exchange all Regulatory Approvals applicable to it (or its investment manager or adviser, if any) in the jurisdiction of organization residence of the Contracting Party (or such investment manager or adviser), or any other information, including without limitation, regarding its corporate structure, governance, credit status or solvency, as may be reasonably required by Exchange.

#### 2.4 Of Exchange: General

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

#### 2.5 Representations Repeated

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

#### 2.6 Additional Representations of the Contracting Party

Each Contracting Party represents and warrants that:

- a. **Access to Transportation System.** To the extent it wishes to be entitled to enter into Physical Transactions, the Contracting Party has and will at all times have access to capacity on the Transportation Systems to allow the Contracting Party to perform its Obligations under all Physical Transactions.
- b. **Business Related.** With respect to each Transaction based upon the price of a commodity, on the date such Transaction is entered into, it will be entering into such Transaction in conjunction with a line of its business (including financial intermediation services) or the financing of a line of its business.

- c. **U.S. Status.** The Contracting Party has consulted the *Commodity Exchange Act* (United States) and the regulations of the Commodity Futures Trading Commission and to the extent required by U.S. law, the Contracting Party is an (i) "eligible swap participant", (ii) "eligible contract participant" and (iii) "eligible commercial entity" with respect to each Transaction.
- d. **Accredited Investor.** If resident in the Province of Ontario, the Contracting Party is, and will be, at all times during the term of this Agreement an "accredited investor" as defined in National Instrument 45-106 that is a corporation, partnership, organization, trust or other business entity.
- e. **Principal.** The Contracting Party is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction and any other documentation relating to this Agreement that it is required by the Agreement to deliver, as principal and not as agent or in any other capacity, fiduciary or otherwise:
- f. **NAFTA.** The Contracting Party, when entering into a Physical Transaction as Seller, represents and warrants that natural gas or Oil delivered, or to be delivered, from or at a Canadian Delivery Point shall be wholly obtained or produced in North America and qualifies as an originating good pursuant to Annex 401 of the North American Free Trade Agreement with the exception of Oil product types CLK, WCS and AHS as more particularly set forth in Appendix 1 to Schedule "H" (the "Exception Products"). Exception Products may not qualify as an originating good pursuant to Annex 401 of the North American Free Trade Agreement (a "NAFTA Failure"). The sole recourse of any Contracting Party that is a Buyer of such Exception Products for any such NAFTA Failure will be the receipt from Exchange of any fees and duties paid by the Contracting Party that sold such Exception Products to Exchange as further contemplated below in this Section 2.6(f).

Each Contracting Party that is a Seller of an Exception Product hereby agrees to be liable for, pay to and indemnify the Exchange, for the applicable duty of 5.25 cents (\$U.S./barrel) and the United States merchandise processing fee at the ad valorem rate of 0.21% as listed in 19 CFR § 24.23(b)(1)(i)(A), to the total value of such daily importations OR \$U.S.400.00, whichever is less, which any subsequent Buyer of such Exception Product from Exchange is required to pay, but not in any event any amount paid in respect of penalties, interest, late filing fees or other costs whether directly or indirectly attributable to the NAFTA Failure. Such payments and indemnification will be made by the Contracting Party that is the Seller of such Exception Product to Exchange upon receipt by Exchange from the Contracting Party that buys such Exception Product of evidence satisfactory in the sole discretion of Exchange as to such deliveries and payments. To the extent that the Contracting Party that is the Seller pays such duties and fees to Exchange hereunder, Exchange agrees to pay such amounts to the Contracting Party that buys such Exception Product from Exchange, such payment to occur as soon as practicable following receipt by Exchange thereof.

(June 8, 2009)

## 2.7 No Reliance

In connection with the negotiation of, the entering into, and the confirming of the execution of this Agreement, any Credit Support Document to which it is party, each Transaction and any other documentation relating to this Agreement that it is required by this Agreement to deliver: (a) the other party hereto or thereto is not acting as a fiduciary or financial, investment or commodity trading advisor for it; (b) it is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the other party hereto or thereto other than the representations expressly set forth in this Agreement, in such Credit Support Document, or in any Confirmation; (c) the other party hereto or thereto has not given to it (directly or indirectly through any other person) any assurance or guaranty whatsoever as to the merits (either legal, regulatory, tax, financial, accounting or otherwise) of this Agreement, such Credit Support Document, such Transaction or such other documentation; (d) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and

trading decisions (including, without limitation, decisions regarding the suitability of any Transaction pursuant to this Agreement) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party hereto or thereto; (e) it is entering into this Agreement, such Credit Support Document, such Transaction and such other documentation with a full understanding of all the terms, conditions and risk (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; and (f) it is a sophisticated investor.

~~(May 1, 2009 or such later date as may be designated  
by Exchange on notice to the Contracting Parties)~~



### ARTICLE 3 – GENERAL

#### 3.1 Agreements of the Contracting Party

- a. **Exchange Information** – The Contracting Party will from time to time during the term of this Agreement on the request of Exchange file with Exchange the following: (i) audited or, if audited are not available, unaudited consolidated financial statements for its fiscal year within 140 days of the end of fiscal year and unaudited consolidated financial statements for each of the first three fiscal quarters within 60 days of the end of such fiscal quarter or such substitutional financial information as may be acceptable to Exchange and such Contracting Party; (ii) such reasonable additional financial or other information as may be requested by Exchange from time to time and which is reasonably necessary for the administration by Exchange of the provisions of the Risk Management Policy; and (iii) reasonable confirmation in respect of the representations and warranties of the Contracting Party provided in Sections 2.1 and 2.3 and of the Credit Support Provider provided in Section 2.2; and, in addition, agrees to file a notice with Exchange in respect of any material adverse change in the financial condition of the Contracting Party or the Credit Support Provider and agrees to Exchange making such further investigations, inquiries or credit checks as Exchange may deem reasonably necessary.
- b. **Designated Persons** – The Contracting Party hereby agrees to designate a person as Administrator (and an alternate person if desirable) by notice in writing by fax or email to Exchange from time to time, who will be authorized to and shall inform Exchange (and, if the Contracting Party has, or intends to have access to the ICE Trading Platform, ICE) as to which individuals ("Authorized Representatives") shall have access to the NGX Trading System and/or NGX Clearing System (the "access notices"), including (without limitation) for the purpose of entering into Transactions, and hereby agrees that Exchange will be entitled to rely without further inquiry on such access notices provided, whether such access notices are delivered directly to Exchange or indirectly through ICE, including (without limitation) with respect to Off-Exchange Transactions submitted to Exchange pursuant to Section 3.1(d) by Authorized Representatives or their Off-Exchange Broker Representatives, if applicable. The Contracting Party hereby accepts all responsibility for all liabilities and Obligations incurred under this Agreement by Authorized Representatives (and by Off-Exchange Broker Representatives under Section 3.1(d)). In the event that the Administrator wishes to cancel the user-id of any person having access to the NGX Trading System and NGX Clearing System, the Administrator shall contact NGX (and, if the Contracting Party has access to the ICE Trading Platform, ICE) by telephone as to any such cancellation and confirm such cancellation by written or fax notice. Exchange shall have no obligation to inquire about or confirm the authorization of Off-Exchange Broker Representatives by Authorized Representatives under any circumstances.
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- c. **Confidentiality** – The Contracting Party agrees to use the NGX Trading System and/or NGX Clearing System and any training manuals or any operating, financial or other information, in respect of Exchange, the NGX Trading System or the, NGX Clearing System only for the purposes contemplated by this Agreement, to keep confidential any such information in respect of the provisions thereof, that such information will remain the sole and exclusive property of Exchange, and that the Contracting Party will not copy or reproduce such information by any means whatsoever or provide or otherwise make available the whole or any portion of such information to any person in any form except to its officers, directors, employees, agents and to its consultants for the purposes contemplated by this Agreement. The Contracting Party may use any information in respect of the market created through the Contracting Party's access to the NGX Trading System and NGX Clearing System for its business purposes but to the extent that the information was not furnished by or does not relate solely to the Contracting Party, it may not

publish or otherwise disclose such information publicly. Nothing in this Section 3.1(c) shall restrict the Contracting Party or a Contracting Party Affiliate from compliance with any law, regulation or governmental authority applicable to such Contracting Party or a Contracting Party Affiliate requiring disclosure, or require that any such information which is in the public domain or acquired from a third party who is not under any obligation of confidentiality or secrecy to Exchange or independently developed by such Contracting Party, be kept confidential and secret by any Contracting Party.

- d. Off-Exchange Clearing – Transactions between two Contracting Parties (the "Off-Exchange Principals") not executed on the NGX Trading System or ICE Trading Platform ("Off-Exchange Transactions") may be submitted to Exchange, in accordance with this Section 3.1(d) for clearing in connection with a Product available for clearing on Exchange.
- i. Submission of trade details of an Off-Exchange Transaction for clearing may be made:
- (A) by an Off-Exchange Broker Representative through:
- (1) an ICE off-exchange web interface ("ICEBlock"); or
  - (2) providing verbal, instant messaging or email instructions to Exchange ("Verbal Instructions"),
- with respect to physical gas transactions, option transactions and financial transactions for which the underlying commodity is gas or electricity; or
- (B) directly by the Off-Exchange Principals through:
- (1) an off-exchange web interface ("Off-Exchange Oil Interface") with respect to physical Oil transactions and financial transaction for which the underlying commodity is Oil; or
  - (2) providing Verbal Instructions with respect to any physical gas or Oil transactions or any option transactions or financial transactions.
- ii. In submitting an Off-Exchange Transaction to Exchange for clearing, the Off-Exchange Principals to that transaction (whether submitted directly or through an Off-Exchange Broker Representative) shall be deemed to have mutually agreed to submit the Off-Exchange Transaction to Exchange for clearing and for such transaction (which constitutes a buy Transaction and a sell Transaction in the applicable Product (referred to herein as "Off-Exchange Cleared Transactions")) to be governed entirely by the terms and conditions of this Agreement. Exchange takes no responsibility and shall have no liability for any prior agreement that may exist between Off-Exchange Principals with respect to any Off-Exchange Transaction that is submitted to Exchange for clearing. Off-Exchange Principals submitting Off-Exchange Transactions directly through Verbal Instructions thereby designate Exchange as agent for the purpose of carrying out such Verbal Instructions and agree to be bound by any acts of Exchange in carrying out such instructions.
- iii. The Off-Exchange Principals shall be exclusively responsible for accurately submitting the details of an Off-Exchange Transaction to Exchange whether submitted directly or through an Off-Exchange Broker Representative. Once submitted (whether through ICEBlock, the Off-Exchange Oil Interface or Verbal Instructions), an Off-Exchange Principal or Off-Exchange Broker Representative (if applicable) shall not be entitled to unilaterally reject the trade terms submitted to Exchange, and Off-Exchange Cleared Transactions shall be deemed final and binding in accordance with the terms of this

Agreement subject to (A) any trade in error cancellation in an NGX Product, (B) receipt by Exchange of an ICEBlock Error Notice, or (C) Exchange voiding the transaction in accordance with section 3.1(d)(iv).

- iv. In addition to any other rights Exchange has under this Agreement, Exchange may, in its sole discretion, for legal, regulatory, operational or similar reasons, including (without limitation) to maintain the integrity of Exchange, reject an Off-Exchange Transaction submitted to Exchange for clearing (whether submitted through ICEBlock, the Off-Exchange Oil Interface or Verbal Instructions) within sixty (60) minutes of the time of the initial submission of the Off-Exchange Transaction to Exchange, in which case Exchange or ICE shall notify the Off-Exchange Principals that the transaction has been rejected and any applicable Off-Exchange Cleared Transactions shall be considered null and void with no further obligations or liability of Exchange.
- v. In addition to the limitations on liability set forth in Section 5.8, Contracting Party acknowledges and agrees that Exchange shall have no responsibility or liability whatsoever for any errors or inaccuracies of any Off-Exchange Transactions submitted to Exchange, whether through ICEBlock, the Off-Exchange Oil Interface or Verbal Instructions, including, without limitation, for any ICEBlock system errors, delays, outages, inaccuracies, ICEBlock Error Notices, or any acts or omissions of ICE or Exchange with respect to such Off-Exchange Transactions and their submission to Exchange for clearing. Contracting Parties, including Off-Exchange Principals, acknowledge and agree that their sole recourse or remedy with respect to Off-Exchange Transactions is limited to the pursuit of private remedies available under existing law as between the Off-Exchange Principals and any Off-Exchange Broker Representatives.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~

- e. Other Instructions to Exchange – It is acknowledged by Exchange that under certain circumstances a Contracting Party may give verbal, instant messaging, or email instructions to Exchange in circumstances other than those described under Section 3.1(d), and Exchange may, in its sole discretion, agree to act on such instructions. The Contracting Party hereby designates Exchange as its agent for the purpose of carrying out any such instructions and agrees to be bound by any acts of Exchange in carrying out such instructions. The Contracting Party acknowledges that Exchange may in its sole discretion refuse to agree to act on the basis of any such instructions and that Exchange will have no liability to the Contracting Party in respect of any errors, omissions, or other actions regarding such instructions or in respect of any refusal to act.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~

- f. Recording – The Contracting Party acknowledges, consents and agrees to the electronic recording by Exchange of all conversations, instructions or agreements between Exchange and the Contracting Party and agrees that any such record will constitute documentary evidence as to any such conversations, instructions or agreements in tangible form. The Contracting Party and Exchange agree not to assert any legal defence as to the admissibility, validity or enforceability of any verbal or instant messaging instructions or agreements as evidenced by any such record, including any assertion that any such instructions or agreement is not in writing or signed by a party or both parties. Exchange will maintain any such record for a period of two years, or longer in particular if Exchange is aware of any dispute, controversy, difference or question which may be resolved by any such record and will provide the Contracting Party with a copy of any portion of such record to the extent relevant to any such dispute, controversy, difference or question relating to the Contracting Party.

- g. **Bilateral Trading** – All terms and conditions applicable to a Bilateral Transaction are set forth in Schedule I.

(August 1, 2009)

- h. **Non-clearable Transactions** – The Contracting Party acknowledges and agrees that Exchange may determine, in its sole discretion that it is unable to clear certain transactions where transactions have been submitted in error into the NGX Clearing System. In the event that Exchange makes this determination, the transaction will be cancelled and the Contracting Parties to the transaction will be notified of the cancellation as soon as reasonably practicable by either phone, fax or email.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- i. **Fees** – The Contracting Party will pay the fees to Exchange in such amounts as are set forth in the Fee Schedule or as otherwise agreed to by the Contracting Party with Exchange, and as required by any correct Invoice.

### 3.2 **Eligible Collateral Support and Collateral**

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

(August 1-October 21, 2009)

- 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 3.2(k) delivered to, deposited with, or held by or on behalf of Exchange;
  - ii. any rights to payment or performance owing from Exchange including, without limitation:
    - (A) any Previous Month Accounts Net Payable for such Contracting Party;

- (B) any Current Month Accounts Net Payable owed by Exchange to the Contracting Party;
  - (C) any Swap Settlement Net Payable for such Contracting Party; and
  - (D) any Variation Margin for such Contracting Party; and
- iii. all proceeds (as such term is defined in the *Personal Property Security Act* (Alberta) of any of the foregoing,
- (collectively, and together with any letter of credit constituting Eligible Collateral Support, the "Collateral").

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

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

Exchange may file or record this Agreement or any financing statement, security notice or similar instrument in any public office as may be necessary to establish, perfect or maintain the interests of Exchange as a secured party. The Contracting Party hereby waives any requirement of the applicable personal property security legislation or similar legislation to provide a verification statement to the Contracting Party upon registration of any such Agreement, financing statement, security notice or similar instrument. Upon the full, final and indefeasible satisfaction of all Obligations, and termination of this Agreement, the Lien shall cease and determine, all rights and interests in the Collateral granted hereunder and hereby will revert to and revest in the Contracting Party without further act or formality whatsoever, whereupon Exchange shall, at the request and cost of the Contracting Party, execute such releases or discharges of the Lien or of such filings or recordations, prepared by or on behalf of the Contracting Party and acceptable to Exchange, without recourse to or warranty by Exchange. Exchange shall not have any duty or obligation in respect of any Collateral except the obligation to keep the same with the same degree of care as it keeps its own property of a similar type, and in particular shall not be responsible for or by reason of any loss arising from any failure of Exchange's Principal Banker (whether as a result of bankruptcy, insolvency or otherwise) with which any amount paid by or on behalf of the Contracting Party as Collateral will have been deposited or placed for safekeeping. No Obligation shall be considered to have been discharged by reason of the existence of the Lien or the rights herein provided unless (and then only to the extent that) Exchange has finally and indefeasibly collected and applied to such Obligation any amount held as or obtained in respect of Collateral or the net proceeds (after satisfying any costs of realization) of realization of any Collateral or has drawn down upon any letter of credit and applied the same to such Obligation or has applied any amount owing by Exchange to the satisfaction thereof and so advised the Contracting Party in writing. The Contracting Party hereby represents and warrants that all Collateral provided to Exchange from time to time is and will be free and clear from any Liens ranking in priority to or equally with the rights of Exchange to such Collateral and that the Lien herein provided to Exchange is and will be a valid first ranking Lien on

the Collateral. Exchange and the Contracting Party agree that all Eligible Collateral Support and all Collateral shall constitute "financial collateral" as that term is used in section 11.1 of the CCAA; section 66.34 of the BIA; section 22.1 of the WRA and any successor or like Canadian statutory provisions.

~~(August 1, October 21, 2009)~~

- c. Upon a Default with respect to any Contracting Party, Exchange shall also be entitled to:
- i. exercise all rights and remedies of a secured party under applicable law with respect to the Collateral provided by the Contracting Party or any of its Contracting Party Affiliates;
  - ii. sell, retain, liquidate, apply, collect on and, except as Exchange may otherwise agree, set off any or all Collateral against any outstanding Obligations owed to Exchange by the Contracting Party or any of its Contracting Party Affiliates;
  - iii. instruct any bank that has issued a letter of credit held by Exchange in the name of the Contracting Party or any of its Contracting Party Affiliates to pay under the letter of credit up to the amount of the Obligations that are due;
  - iv. exercise any other remedies provided under this Agreement or any other remedies available at law, in equity or otherwise.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- d. Set-Off – The Contracting Party hereby agrees that Exchange shall be entitled to Set-Off all Obligations payable or to be performed by Exchange to the Contracting Party or, except as Exchange may otherwise agree, any of its Contracting Party Affiliates, under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate), whether under Sections 5.5(c), 5.6, 8.2 or 8.3 or otherwise and whether or not matured or contingent and irrespective of the currency or place of payment, against any Obligations payable or to be performed by the Contracting Party or any of its Contracting Party Affiliates to Exchange under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate). The contractual right of Set-Off hereby granted is in addition to any legal or equitable right of set-off granted at law, and does not require for its exercise any mutuality or connection, other than that hereby created, between the Obligations Set-Off. If an obligation or right is unascertained at the time of any such Set-Off, Exchange may in good faith estimate the amount or value of such obligation or right, in which case Set-Off will be effected on the basis of such estimate and the relevant party shall account to the other party if such obligation or right at any time thereafter is ascertained.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- e. Guarantee of Contracting Party Affiliate and Letter of Credit – Except as Exchange may otherwise agree, the Contracting Party agrees that all Collateral provided by it to Exchange hereunder (including without limitation all letters of credit) is provided not only to secure the performance of the Contracting Party's Obligations hereunder, but also to secure the performance of the Obligations of all of its Contracting Party Affiliates to Exchange under the Contracting Party Agreements entered into by such Contracting Party Affiliates. Except as Exchange may otherwise agree, for the purpose of allowing Exchange to realize on the Collateral provided by it to Exchange hereunder (including without limitation all letters of credit) to pay any of its Contracting Party Affiliates' Obligations, the Contracting Party hereby unconditionally guarantees (the "Guarantee") the prompt and complete payment and performance when due, whether in the

ordinary course, by termination, acceleration or otherwise, of all Obligations of its Contracting Party Affiliates. This Guarantee is one of payment and not of collection. This Guarantee is irrevocable and shall remain in full force and effect and be binding upon the Contracting Party, its successors and assigns during the term of this Agreement and until all of the Obligations of its Contracting Party Affiliates have been satisfied in full. Upon the occurrence of a Default with respect to any Contracting Party or, except as Exchange may otherwise agree, any Contracting Party Affiliate, Exchange shall be entitled to draw upon any letter of credit provided to it by the Contracting Party up to the amount of the Obligations that are due.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- f. Suretyship Waiver – The Obligations of Contracting Party and its Contracting Party Affiliates and the grant of security in respect of this Agreement under Section 3.2(b) shall not be affected by any circumstance of any kind, including circumstances which might otherwise constitute a legal or equitable discharge of or defence of a guarantor or surety (other than payment in full).

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- g. Separate Bank Account – Exchange will deposit all amounts consisting of cash transferred as Eligible Collateral Support in an interest bearing bank account at Exchange's Principal Banker separate from the corporate funds of Exchange or that of any affiliates or subsidiaries of Exchange. Exchange will keep all such amounts of Eligible Collateral Support from each Contracting Party in a separate bank account in trust and agrees to hold all of such amounts as trustee in accordance with the provisions of this Agreement. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of amounts, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any such loss.

(August 1, 2009)

- h. Bank Collateral Agreement – Exchange hereby confirms that the Bank Collateral Agreement is in full force and effect and has provided Exchange's Principal Banker with the Contracting Party's name and address for the purpose of providing any notice under, and the undertaking of Exchange's Principal Banker set forth in the Bank Collateral Agreement.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- i. Collateral of Contracting Party Affiliate – Except as Exchange may otherwise agree in writing with the Contracting Party, any Collateral provided by any Contracting Party and any Contracting Party Affiliate will be allocated between the Contracting Party and such Contracting Party Affiliate at any time and from time to time by Exchange to the extent required by the Risk Management Policy, the Liquidation Procedure pursuant to Section 5.6, the Close-out Procedure pursuant to Section 8.3, or as may be otherwise necessary to comply with the terms and conditions of this Agreement.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- j. Interest on Eligible Collateral Support – The Contracting Party agrees that Exchange will, upon request by the Contracting Party, account monthly to the Contracting Party for all daily interest earned on Eligible Collateral Support consisting of cash deposited in an interest bearing bank account which exceeds \$100,000 Canadian or U.S. \$100,000 on any day by having credited to such bank accounts all amounts of interest earned on such Eligible Collateral Support ~~up to Exchange's Principal Banker's posted "TD-CDN overnight money market rate" less 0.25% for~~

~~Canadian dollar accounts or up to Exchange's Principal Banker's posted "TD U.S. overnight money market rate" less 0.20% for U.S. dollar accounts, as applicable. Daily interest earned on Eligible Collateral Support consisting of cash will be remitted to the Contracting Party quarterly unless otherwise requested by the Contracting Party or unless all such Eligible Collateral Support has been returned to the Contracting Party or applied to invoice settlement prior to the quarter. In order for the Contracting Party to earn daily interest on Eligible Collateral Support consisting of cash for the day 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 12:30 p.m. (Mountain time) for Canadian funds and 1:30 p.m. (Mountain time) for U.S. funds.~~

~~(August 1-October 21, 2009)~~

- k. Investment of Eligible Collateral Support – At the direction of the Contracting Party, instead of depositing Eligible Collateral Support consisting of cash as required by Section 3.2(g), Exchange will invest the Contracting Party's Eligible Collateral Support consisting of cash in an interest bearing instrument offered by Exchange's Principal Banker and approved by Exchange, it being understood that all such instruments shall be registered in the name of Exchange. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such investment, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any such loss.

(August 1, 2009)

### 3.3 Agreements of Exchange

- a. Confidentiality – Exchange hereby agrees to use its commercially reasonable efforts to keep confidential any and all financial or other information received from the Contracting Party from time to time, including pursuant to the Application, and information in respect of any Transaction entered into by the Contracting Party and any and all information about the trading patterns, prices and accounts. Exchange will not use the name of the Contracting Party to endorse or advertise the NGX Trading System or NGX Clearing System. Nothing in this paragraph shall prevent Exchange from disclosing any information as may be required or allowed pursuant to the terms of this Agreement, to ICE or to any other service provider of Exchange in connection with the performance of any Transaction or as may be required to be disclosed by either Exchange or ICE by law or any regulatory authority, or as may be disclosed in the course of securing, or pursuant to, any order, consent or approval signifying, any Regulatory Approval.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- b. Software License – Exchange grants to the Contracting Party a limited, revocable, paid-up, non-transferable and non-exclusive license to use the NGX Clearing System for the sole purpose of, and in accordance with, this Agreement. Exchange represents and warrants to the Contracting Party that it has the full right, power and authority to license the NGX Clearing System to the Contracting Party.
- c. Indemnification for Infringement – Exchange agrees to protect, defend, hold harmless and indemnify the Contracting Party from and against any and all claims, damages, liabilities, losses and expenses for any infringement or alleged infringement of a patent, copyright, trade secret or other intellectual property right by the NGX Clearing System or the Contracting Party's use thereof. Exchange will have the sole right to defend, on behalf of the Contracting Party or in its own name, any such action for infringement but Exchange will provide the Contracting Party with reasonable information in respect of such action from time to time. Exchange may settle any action for infringement against the Contracting Party for which its obligation of indemnification of the Contracting Party is effective hereunder without the Contracting Party's written approval and



may settle any other such action for infringement with the Contracting Party's written approval, which approval will not be unreasonably withheld. Exchange will have no indemnity obligation for infringement claims: (i) resulting from any combination, operation or use of the NGX Clearing System with any programs or equipment not supplied by Exchange, if such infringement would have been avoided but for such use; (ii) resulting from any activity of the Contracting Party which is in breach of this Agreement; or (iii) if the Contracting Party does not give Exchange prompt notice of an infringement claim against it and provide Exchange, at Exchange's cost, with reasonable assistance with the defence of the action.

- d. Encumbrances – Exchange hereby agrees not to create any security interest, pledge or otherwise encumber any amount deposited as Collateral, any amount payable by the Contracting Party, or any gas or Oil to be delivered by or received by the Contracting Party, under any Transaction except as held by Exchange, or any assignee of Exchange as contemplated by Section 9.6 of this Agreement, as Collateral and for the purpose of securing such Collateral for the Obligations of the Contracting Party.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- e. Access to NGX Trading System and NGX Clearing System – Exchange will provide access to the NGX Trading System and NGX Clearing System to the Contracting Party for such periods on each Business Day for Transactions in all Products that are available for trading and/or clearing as the case may be as may be designated by notice to the Contracting Parties from time to time, and may provide access on non-Business Days for trading and/or clearing as the case may be in some or all Products. Pursuant to Section 1.7, access to the ICE Trading Platform is governed exclusively by the ICE Participant Agreement.

- f. Confirmations – Exchange agrees to electronically deliver Physical Confirmations, Swap Confirmations and Option Confirmations to the Contracting Party as soon as reasonably possible after the entering into each Physical Transaction, Swap Transaction and Option Transaction, respectively. Delivery of Physical Gas Confirmations or Option Confirmations and Swap Confirmations for which the underlying commodity for the applicable Transactions is gas or electricity shall be in the form of an electronic report posted on Exchange's Website (the "Electronic Report") in the secured access section. Contracting Party is responsible for accessing relevant Confirmations on the Electronic Report. Delivery of Physical Oil Confirmations or Option Confirmations and Swap Confirmations for which the underlying commodity for the applicable Transactions is Oil shall be via email or facsimile.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- g. Regulatory Approvals – Exchange hereby agrees to give notice of any termination of any Regulatory Approval in respect of the performance of this Agreement by Exchange to any Contracting Party whose performance of this Agreement is affected by such termination.

- h. NGX Trading System Issues –

- i. Upon determining that a Critical NGX Trading System Issue exists, Exchange shall:
- (A) immediately halt trading on the NGX Trading System for all NGX Products and withdraw all Orders for each Contracting Party from the NGX Trading System;
  - (B) use commercially reasonable efforts to ensure all Contracting Parties are notified by telephone or email or through the NGX Trading System that a Critical NGX Trading System Issue exists;

- (C) if the Critical NGX Trading System Issue extends beyond one hour, use commercially reasonable efforts to advise all Contracting Parties on the status and progress in resolving such Critical NGX Trading System Issue;
  - (D) use commercially reasonable efforts to advise all Contracting Parties when the NGX Trading System will be fully operational; and
  - (E) determine if it is necessary to extend the Trading Day and advise all Contracting Parties through the NGX Trading System and by telephone.
- ii. Upon determining a Non-Critical NGX Trading System Issue exists, Exchange shall:
- (A) determine if the Non-Critical NGX Trading System Issue requires that access to the NGX Trading System be halted;
  - (B) send a message through the NGX Trading System advising all Contracting Parties that a Non-Critical NGX Trading System Issue exists and providing a report on the status; and
  - (C) send a message through the NGX Trading System advising all Contracting Parties when the Non-Critical NGX Trading System Issue will be resolved.
- iii. For clarity, any issues arising in connection with the ICE Trading Platform are not the responsibility of Exchange.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- i. Resolution of NGX Trading System Issues – Exchange shall use commercially reasonable efforts to resolve and correct each Critical NGX Trading System Issue as quickly as possible and, Exchange shall use commercially reasonable efforts to resolve and correct any Non-Critical NGX Trading System issue within a reasonable time under the circumstances.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- j. Network Security – Exchange shall use commercially reasonable efforts to ensure that security systems and procedures designed to prevent unauthorized access to the NGX Trading System and NGX Clearing System through any network connections between the Contracting Party and the NGX Trading System and NGX Clearing System are implemented and maintained. Exchange will monitor the NGX Trading System and NGX Clearing System for and take commercially reasonable steps to prevent fraud and breaches of security. Upon learning of or suspecting any such fraud or breaches of security, that could affect the Contracting Party, Exchange will immediately notify the Contracting Party and take all commercially reasonable steps to remedy the situation, including without limitation halting the Contracting Party's access to the NGX Trading System and NGX Clearing System and withdrawing all of the Contracting Party's Orders from the NGX Trading System.

### 3.4 **NGX Power Auction System**

Exchange may from time to time during the term of this Agreement conduct NGX Power Auctions using the NGX Power Auction System. Any and all resulting Transactions are governed by the terms and conditions of this Agreement.

### 3.5 Open Position Limits

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

### 3.6 Margin Limit

The Contracting Party agrees that Exchange will initially determine the Margin Limit and may vary the Margin Limit from time to time in accordance with the Risk Management Policy by notice to the Contracting Party. In the event the Margin Requirements (as defined in Schedule "C") of the Contracting Party approaches, equals or exceeds the Margin Limit, Exchange will advise the Contracting Party and may request additional Eligible Collateral Support, may cause a Contracting Party Suspension or may invoke the Liquidation Procedure and the Close-out Procedure.

(August 1, 2009)

### 3.7 Trades in Error

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- a. Notice by Contracting Party – Whenever a Contracting Party has entered into a Transaction in error through the NGX Trading System or an Off-Exchange Cleared Transaction has been entered into the NGX Clearing System in error, such Contracting Party may bring such error to the attention of Exchange within ten (10) minutes after such error occurs.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- b. Consequences – In the event a trade in error contemplated by this Section 3.7 is brought to the attention of Exchange (the "Reporting Time") within ten (10) minutes after such error occurs, the following procedure will apply:
- i. Exchange will give notice on the NGX Trading System that a trade in error has been reported and is under investigation;
  - ii. Exchange may cause a General Suspension in respect of the Product which is the subject of the Transaction entered into in error; and
  - iii. Exchange will contact the Contracting Parties who are parties to the Transaction or to any Transaction entered into by Exchange which offsets such obligations (the "Matching Transaction") to determine whether such Contracting Parties will consent to the cancellation of the trade in error, and if such consent is given by all of the Contracting Parties to such Transaction, and Matching Transaction, the Transaction and any Matching

Transaction will be cancelled and notice given on the NGX Trading System as to the cancellation of such Transaction and any Matching Transaction; or

- iv. failing such consent to the cancellation of the trade in error being granted within ten (10) minutes of the Reporting Time, Exchange will be entitled, in its sole discretion, to cancel the Transaction and any Matching Transaction if the price of the trade is higher or lower than the current market price by an amount greater than the Market Price Band.

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- c. Consequences – In the event a trade in error contemplated by this Section 3.7 is brought to the attention of Exchange more than ten (10) minutes after such error occurs, the following procedure will apply:

- i. Exchange may give notice on the NGX Trading System that a trade in error has been reported and is under investigation;
- ii. Exchange may cause a General Suspension in respect of the Product which is the subject of the Transaction entered into in error; and
- iii. Exchange may contact the Contracting Parties who are parties to Transaction or any Matching Transaction relating thereto to determine whether such Contracting Parties will consent to the cancellation of the trade in error, and if such consent is given by all of the Contracting Parties to such Transaction, and any Matching Transaction relating thereto, the Transaction, and any Matching Transaction relating thereto, will be cancelled and notice given on the NGX Trading System as to the cancellation of such Transaction and any Matching Transaction relating thereto. If consent is not given by both Contracting Parties to such Transaction and any Matching Transaction relating thereto, the Transaction and any Matching Transaction relating thereto will not be cancelled and the Transaction and any Matching Transaction relating thereto and any and all resulting Obligations remain valid and binding upon all Contracting Parties to the Transaction and any Matching Transaction relating thereto.

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- d. Liquidated Damages – Without limitation to any other rights or remedies of Exchange under this Agreement or at law, equity or otherwise, in appropriate circumstances determined in the sole discretion of Exchange, Exchange may assess an amount as liquidated damages of \$5,000 payable by the Contracting Party who has entered into the Transaction in error, representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development, reputation and integrity of the business carried on by Exchange.

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

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

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

- a. Appointment – Subject to the concurrence of the Contracting Party to be appointed, Exchange may appoint, and maintain as confidential the identity of, any one or more Contracting Parties as a market maker or liquidity provider in one or more Products in the event that in the opinion of Exchange such appointment will assist in the provision of a fair and orderly market on such terms

and conditions as may be negotiated with any such Contracting Party which are not inconsistent with this Agreement, except in respect of the existence of such additional agreement in respect of such appointment between the Contracting Party and Exchange.

- b. Responsibilities –
  - i. Any Contracting Party appointed as a market maker will agree to use commercially reasonable efforts throughout each Trading Day to post bids and offers that meet the market criteria in certain Products and to submit orders to allow the Products to meet the required market criteria should any Products not be posted with bids and offers within the market criteria. The market criteria for any Product shall be set by Exchange from time to time having regard to the objective of achieving a fair and orderly market; and
  - ii. Any Contracting Party appointed as a liquidity provider will agree to use commercially reasonable efforts to provide target levels of trading volume in certain Products.
- c. Compliance – All activities including the entering into of any Transactions by any Contracting Party pursuant to its role as market maker or liquidity provider as authorized by this Agreement and any such additional agreement in respect of such activities as authorized hereunder will be made in accordance with the provisions of this Agreement and applicable law. Such activities caused by the Contracting Party in its role as market maker or liquidity provider will not be considered by Exchange as any marketing irregularities as described in this Agreement.

### **3.9 Events of Default**

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

- a. Credit Support Default –
  - i. failure by the Contracting Party or any Credit Support Provider to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;
  - ii. the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to Exchange, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all Obligations of the Contracting Party under any Transaction or this Agreement to which such Credit Support Document relates without the written consent of Exchange; or
- b. Misrepresentation – A representation made or repeated or deemed to have been made or repeated by any Credit Support Provider or the Contracting Party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or
- c. Bankruptcy – The Contracting Party or any Credit Support Provider or any Specified Entity; (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any

bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

- d. Merger Without Assumption – The Contracting Party or any Credit Support Provider of the Contracting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as another entity and, at the time of such consolidation, amalgamation, merger or transfer, reorganization, reincorporation or reconstitution:
- i. the resulting, surviving or transferee entity fails to assume all the Obligations of the Contracting Party or the obligations of such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or
  - ii. the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 3.10 Exchange Bankruptcy Event of Default

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

- a. Exchange institutes or becomes subject to a proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, the primary purpose of which is relief from Exchange's creditors, including, without limitation the CCAA, the BIA or the WRA;
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- b. The making by Exchange of any assignment for the general benefit of creditors including, without limitation, any assignment made pursuant to the BIA;

- c. The appointment or taking possession by a receiver, receiver and manager, interim receiver, monitor, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for Exchange or for substantially all of Exchange's assets;
- d. The filing by Exchange of a proposal or a notice of intention to make a proposal under the BIA;
- e. the entry of an order of garnishment, attachment, charging order, execution, warrant, sequestration, levy, third party demand or similar proceedings by any person in respect of any material portion of the assets, property or undertaking of Exchange;

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

## ARTICLE 4 - PHYSICAL TRANSACTIONS AND PHYSICAL PRODUCTS

### 4.1 Physical Gas Products - General

- a. Forms of Physical Gas Products – The forms of Physical Gas Products and a description of such Physical Gas Products which may be made available by Exchange to the Contracting Party from time to time is set forth in the NGX Product List and Schedules "F" or "G".

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- b. Entering into Physical Gas Transactions – Each of Exchange and the Contracting Party, in its respective capacity as the Buyer or the Seller, as the case may be, agrees to be bound by any Physical Gas Transactions entered into by the Contracting Party through the NGX Trading System. Each of Exchange and the Contracting Party agrees to pay the Purchase Amount and any amount of GST and take receipt of gas or deliver gas as may be required pursuant to any such Physical Gas Transactions.

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- c. 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 Physical Gas 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 Physical Gas 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.

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- d. Settlement and Netting of Invoice Amounts – All amounts payable by a Contracting Party under any Physical Gas Transaction are due and are payable and are to be settled pursuant to the terms of this Agreement. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency on account of the Purchase Amount, fees and GST for the Contracting Party, if applicable. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. 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.

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- e. Netting of Obligations to Deliver or Take – All Obligations of Exchange and the Contracting Party to deliver or cause the delivery of the Contract Quantity of gas or take or cause to be taken the Contract Quantity of gas at any Delivery Point will be satisfied by the delivery or taking of the



Contract Quantity to or from Exchange, as the case may be, on a net basis in accordance with this Agreement.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- f. The obligations of the Exchange and Contracting Party under any Physical Gas Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

#### 4.2 Invoices for Physical Gas Transactions

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- b. Terms – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. 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.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 4.3 Physical Oil Products – General

- a. Forms of Physical Oil Products – The forms of Physical Oil Products and a description of such Physical Oil Products which may be made available by Exchange to the Contracting Party from time to time is set forth in the NGX Product List and additional terms and conditions with respect to Physical Oil Transactions are set forth in Schedule "H".

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- b. Entering into Physical Oil Transactions – Each of Exchange and the Contracting Party, in its respective capacity as the Buyer or the Seller, as the case may be, agrees to be bound by any Physical Oil Transactions entered into by the Contracting Party through the NGX Trading System. Each of Exchange and the Contracting Party agrees to pay the Purchase Amount and any amount of GST and take receipt of Oil or deliver Oil at the applicable Delivery Point as may be required pursuant to any such Physical Oil Transactions.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- c. Recourse Against Exchange – Exchange agrees to pay or cause to be paid the Purchase Amount to the Seller, to deliver or cause the delivery at the applicable Delivery Point of the Contract Quantity of Oil (in accordance with the applicable Physical Oil Trading Specifications and the rules and procedures of the applicable Transportation System) to the Buyer and to take or cause to be taken at the applicable Delivery Point the Contract Quantity of Oil from the Seller. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Physical Oil Transactions is solely against Exchange. The Contracting Party will be entitled to the rights of recourse against Exchange set forth under this Agreement in the event of any Failure to Deliver, Failure to Pay or Failure to Take by Exchange. In the event that there is such a Failure to Deliver, Failure to Pay or Failure to Take by Exchange which is not remedied by Exchange within five Business Days and is not the subject matter of Mediation or Arbitration, and there is at that time a Defaulting Party under this Agreement or any other Contracting Party Agreement, Exchange will disclose the name of any such then Defaulting Party to any Contracting Parties affected by any such Failure to Deliver, Failure to Pay or Failure to Take, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- d. Settlement and Netting of Invoice Amounts – All amounts payable by a Contracting Party under any Physical Oil Transaction are due and are payable and are to be settled pursuant to the terms of this Agreement. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency on account of the Purchase Amount, fees and GST for the Contracting Party, if applicable. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. 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.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- e. Netting of Obligations to Deliver or Take – All Obligations of Exchange and the Contracting Party to deliver or cause the delivery of the Contract Quantity of Oil of the same Physical Oil Trading Specifications or take or cause to be taken the Contract Quantity of Oil of the same Physical Oil Trading Specifications at the same Delivery Point for the same Delivery Period will be satisfied by

the delivery or taking of the Contract Quantity to or from Exchange, as the case may be, on a net basis in accordance with this Agreement.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~

- f. The obligations of Exchange and the Contracting Party under any Physical Oil Transaction will be fully performed upon the payment of all amounts by the Buyer and the corresponding Seller.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~

#### 4.4 Invoices for Physical Oil Transactions

- a. Invoices for Physical Oil Transactions – Notwithstanding any other provision of this Agreement, Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice before the Physical Settlement Date for such Physical Oil 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 Physical Oil Transactions, any amounts payable for fees to Exchange and any amounts payable on account of GST.

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

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

(August 1, 2009)

- b. Terms – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions of this Agreement, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the Physical Settlement Date. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange prior to the Physical Settlement Date. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. 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.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~

- c. Final Invoices – The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date will be final and binding, absent manifest error, for all purposes 120

days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.

~~(May 1, 2009 or such later date as may be designated  
by Exchange on notice to the Contracting Parties.)~~

## ARTICLE 5 - RECOURSE AND LIABILITY

### 5.1 Failure to Deliver

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

- i. the reasonable direct costs, claims, expenses and damages suffered or incurred by Exchange as a result of the Seller's failure to deliver the Failure Quantity including, without limitation or duplication, (x) any excess of the cost of obtaining a quantity of gas or Oil, as applicable, equal to the Failure Quantity (adjusted for any quality and transportation differentials with respect to Oil) over that portion of the Purchase Amount that would have been payable with respect to the Failure Quantity (the "Seller Replacement Amount"), (y) the costs or charges, if any, levied by the Transportation System as a result of such Failure to Deliver, and (z) transportation, storage and other costs, if any, related to obtaining the Failure Quantity; plus
- ii. interest from the date of the occurrence of the Failure to Deliver at the Default Rate to and including the date of payment to Exchange of all such amounts; plus,
- iii. liquidated damages of:
  - (A) with respect to Physical Gas Transactions, \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation and integrity of the business carried on by Exchange if (y) the Failure to Deliver occurs during a System Constraint Period, and (z) Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages; and
  - (B) with respect to a Physical Oil Transactions, the greater of:
    - (y) \$5,000; or
    - (z) an amount equal to one percent (1%) of the product of the Contract Price and the Failure Quantity,

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)

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

- b. By Exchange – In the event of a Failure to Deliver by Exchange, Exchange will pay to the Buyer an amount equal to:
- i. the reasonable direct costs, claims, expenses and damages suffered or incurred by the Buyer as a result of Exchange's failure to deliver the Failure Quantity including, without limitation or duplication, (x) any excess of the cost of obtaining a quantity of gas or Oil, as applicable, equal to the Failure Quantity (adjusted for any quality and transportation differentials with respect to Oil) over that portion of the Purchase Amount that would have been payable with respect to the Failure Quantity, (y) the costs or charges levied, if any, by the Transportation System as a result of such Failure to Deliver, and (z) transportation, storage and other costs, if any, related to obtaining the Failure Quantity; plus
  - ii. interest from the date of the occurrence of the Failure to Deliver at the Default Rate to and including the date of payment to the Buyer of all such amounts.

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

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

## 5.2 Failure to Pay

- a. By the Buyer – In the event of a Failure to Pay by the Buyer, the Buyer will pay to Exchange an amount equal to:
- i. the Failure Amount; plus
  - ii. interest from the date of the occurrence of the Failure to Pay at the Default Rate to and including the date of payment to Exchange of all such amounts; plus,
  - iii. in appropriate circumstances determined in the sole discretion of Exchange, an amount as liquidated damages of:
    - (A) with respect to any Failure to Pay relating to a Physical Oil Transaction, the greater of:
      - (y) \$5,000; or
      - (z) an amount equal to one percent (1%) of the amount due and not paid;
    - or
    - (B) with respect to any other Failure to Pay, \$5,000,
- representing the pre-estimated amount of the costs of the investigation and damage suffered by Exchange in respect of injury to the development, reputation and integrity of the business carried on by Exchange.

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

*(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)*

- b. By Exchange – In the event of a Failure to Pay by Exchange that is (i) not rectified by Exchange within one (1) Business Day of the Failure to Pay by Exchange and (ii) not satisfied by payment from the Escrow Agent in respect of a Direction to Pay pursuant to, and as defined in, the Deposit Agreement, Exchange will pay to the Seller an amount equal to:
- i. the Failure Amount; plus
  - ii. interest from the date of the occurrence of the Failure to Pay at the Default Rate to and including the date of payment to the Seller of all such amounts.

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

### 5.3 Failure to Take

- a. By the Buyer – In the event of a Failure to Take by the Buyer, the Buyer will pay to Exchange an amount equal to:
- i. the reasonable direct costs, claims, expenses and damages suffered or incurred by Exchange as a result of the Buyer's failure to take the Failure Quantity including without limitation or duplication, (w) any excess of that portion of the Purchase Amount payable with respect to the Failure Quantity over the proceeds from the sale of the Failure Quantity, if any (the "Buyer Replacement Amount"), (x) the cost of storing or selling a quantity of gas or Oil, as applicable, equal to the Failure Quantity, (y) the costs or charges levied by the Transportation System as a result of such Failure to Take, and (z) transportation, storage and other costs, if any, related to the Failure to Take the Failure Quantity; plus,
  - ii. interest from the date of the occurrence of the Failure to Take at the Default Rate to and including the date of payment to Exchange of all such amounts; plus
  - iii. liquidated damages of:
    - (A) with respect to Physical Gas Transactions, \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation and integrity of the business carried on by Exchange if (y) the Failure to Take occurs during a System Constraint Period, and (z) Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages; and
    - (B) with respect to a Physical Oil Transactions, the greater of:
      - (y) \$5,000; or
      - (z) an amount equal to one percent (1%) of the product of the Contract Price and the Failure Quantity,

if Exchange has determined in its sole discretion that appropriate circumstances exist for the application of such liquidated damages, it being understood and agreed that the liquidated damages contemplated by this Section 5.3(a)(iii)(B) and the liquidated damages contemplated by Section 5.1(a)(iii)(B) shall not be assessed by Exchange more than once with respect to any Linked Deal, Cushing Exchange or Time Trade notwithstanding there may have been a Failure to

Deliver or Failure to Take under more than one Physical Oil Transaction forming such Linked Deal, Cushing Exchange or Time Trade.

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

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

(August 1, 2009)

#### **5.5 Rights of Exchange in Physical Transactions**

On the occurrence of a Default with respect to the Contracting Party, or in the event of a dispute over a Transaction entered into pursuant to Sections 3.1(d) or (e), Exchange will notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy) and thereafter without further notice or formality prescribed by law or otherwise, all of which are hereby waived by the Defaulting Party to the extent permitted by applicable law, may exercise any combination of the rights and remedies contained in this Section 5.5 or Sections 5.6, 8.2 or 8.3 and any rights or remedies under this Agreement or at law, equity or otherwise including, without limitation, its rights to:

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)



- a. pursuant to Subsection 3.2(a) and Schedule "C", request an additional amount of Eligible Collateral Support from the Defaulting Party;

(August 1, 2009)

- b. pursuant to Section 6.6, cause a Contracting Party Suspension for a period, which may be in excess of the period during which the Defaulting Party is in Default, or permanently;

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- c. declare any amounts for Oil or gas delivered, or any unpaid Invoices immediately due and payable and to withhold payments under this Agreement (including, without limitation, under any Transaction) and withhold such payments as if paid or provided to Exchange as Collateral;

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- d. notwithstanding Section 3.4. of Section "H", suspend deliveries of Oil to Contracting Party or takes of Oil from Contracting Party under one or more Physical Transactions, by amending the applicable notices of shipment, reallocating volumes or otherwise;

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- f. terminate any Transaction, or declare immediately payable or to be performed any Obligations in respect of any Physical Transaction, any NGX Liquidation Transaction or this Agreement and, in connection therewith, exercise any of the following rights:

- i. pursuant to Section 3.2(d) or Section 8.3, Set-Off, in whole or in part (including by entering into Offsetting Transactions), any Obligations payable or to be performed by Exchange (to the Defaulting Party or to any Contracting Party Affiliate of the Defaulting Party) against Obligations payable or to be performed by the Defaulting Party (or by any Contracting Party Affiliate of the Defaulting Party) to Exchange, which Obligations may extend to periods beyond the periods during which the Contracting Party is in Default;
- ii. demand payment under or in respect of, sell, realize upon, use or drawdown the Collateral and apply such Collateral to the Contracting Party's Obligations; or
- iii. terminate this Agreement by notice to the Defaulting Party to be effective upon the date of receipt or deemed receipt (which notice may be the same as that delivered under this Section 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.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

For the purpose of converting any sum in any currency into Canadian Dollars, the rate used for converting such currency into Canadian Dollars shall be the actual rate Exchange obtained from Exchange's Principal Banker when converting into Canadian Dollars. Any such amounts which are

immediately due and payable, but would have been payable at a future date except for the provisions of this Section 5.5, will be discounted to present value. The rate of interest used in discounting to present value shall be determined by Exchange in a commercially reasonable manner. Exchange will forthwith issue an Invoice reflecting all amounts due and payable by the Defaulting Party.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

## 5.6 Liquidation Procedure

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- a. any NGX Liquidation Transactions will be treated as allocated to the Defaulting Party's account;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- b. Exchange hereby agrees that the Defaulting Party will, for the purposes of determining Exchange's damages, be deemed to have performed its Obligations to deliver or take gas or Oil, as applicable, under all NGX Liquidation Transactions allocated to its account and under that portion or all of its Physical Transactions, which are offset by such NGX Liquidation Transactions (any such transaction entered under Section 5.6(b) or Section 8.3(b), an "Offsetting Transaction");

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- c. for the purposes of determining Exchange's damages, Exchange will Set-Off any and all such amounts that are owed to the Defaulting Party against any and all such amounts that are owed or deemed to be owed by such Defaulting Party under the Offsetting Transactions to arrive at a single net settlement amount payable to or by the Defaulting Party, which shall be immediately due and payable. For clarity, without limitation to any other rights of Exchange under this Agreement, such net settlement amount shall include, without limitation, an amount as liquidated damages representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation, and integrity of the business carried on by Exchange, where Exchange has determined, in its sole discretion, that appropriate circumstances exist for such liquidated damages.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- d. Exchange will forthwith provide the Defaulting Party with an Invoice for the Offsetting Transactions setting forth the amounts owed to or by the Defaulting Party and the net settlement amount due to or from the Defaulting Party;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- f. Exchange shall pay any net settlement amount owed to the Defaulting Party with respect to the Offsetting Transactions and upon such payment, shall assume all of the rights of the Defaulting Party under the Offsetting Transactions.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 5.7 Full Satisfaction

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 5.8 Limitations on Liability

- a. Electronic System – Except in instances where there has been a finding of wilful or wanton misconduct on the part of Exchange, neither Exchange, its affiliates or service providers, nor the agents, directors, officers, employees and representatives of Exchange, its affiliates or service providers shall be liable to the Contracting Party, for any losses, damages, costs or expenses arising from any failure, defect, or malfunction in, or any fault in delivery, delay, omission, suspension, inaccuracy, termination, entry of data on behalf of either Exchange or Contracting Party or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to access all or part of the ICE Trading Platform, the NGX Trading System or the NGX Clearing System or any Services, including, without limitation, the taking of verbal or instant messaging instructions and/or the entering of any Order into the NGX Trading System or ICE Trading Platform, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise. Without limitation to the foregoing, Contracting Party shall assume, and shall release and waive Exchange from, all liability, loss or damage arising or suffered at any time and from time to time in connection with any Transactions entered into by or on behalf of the Contracting Party by personnel other than Authorized Representatives.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- b. Personnel – Except in cases where there has been a finding of wilful or wanton misconduct, neither Exchange nor its respective agents, directors, officers and employees shall be liable to the Contracting Party, for any losses, damages, costs or expenses arising from an act, omission or error by Exchange, whether performed for the Contracting Party or to be performed by Exchange, in respect of any Transactions, but not including any act or omission by Exchange which constitutes a Failure to Pay, Failure to Deliver or Failure to Take by Exchange, in the case of a Transaction; or an act or omission by Exchange, whether performed for the Contracting Party or to be performed by Exchange, in respect of any matter relating to the ICE Trading Platform, NGX Trading System or NGX Clearing System.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- c. **Liability of the Contracting Party** – The Contracting Party and its agents, directors, officers and employees shall not be liable to Exchange or any of the other Contracting Parties for any claims, including third party claims, demands, liabilities, losses, damages, costs or expenses arising from:
- i. any failure, defect or malfunction in, or any fault in delivery, delay, omission, suspension, inaccuracy or termination or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to access all or part of the NGX Trading System, NGX Clearing System or any support services, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise; nor
  - ii. an act or omission of Exchange, whether performed for the Contracting Party or to be performed by Exchange in respect of any Transactions, or in respect of any matter relating to the NGX Trading System or NGX Clearing System,

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

- d. **Time Limits** – Any reference in respect of any dispute in respect of a claim for wilful or wanton misconduct in respect of the matters described in Sections 5.8(a) or (b), respectively, must be referred to Mediation within 60 days of the Contracting Party becoming aware of such event and if not settled by Mediation must be referred to Arbitration within 30 days of conclusion of the Mediation in order for the Contracting Party to be entitled to bring any claim against Exchange.
- e. **Limit of Liability** – The aggregate liability of Exchange shall be limited to an aggregate amount of \$10,000 for a single claim and an aggregate amount of \$1,000,000 for all claims of Contracting Parties on a single day and where if all claims cannot be satisfied for a single day because of the dollar limitation on recoveries, all such claims shall be limited to a pro rata share of the maximum per day amount. This limit of liability does not apply to the liability of Exchange for a Failure to Pay, Failure to Deliver or Failure to Take, in the case of a Transaction, and in respect of Exchange's agreement to indemnify the Contracting Party for infringement as set forth in Section 3.3(c).

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- f. **Warranty of Fitness** – Other than as expressly provided in Section 5.8(a), Exchange hereby expressly disclaims any warranty, express or implied, in respect of all or any part of the NGX Trading System or NGX Clearing System or any of the Services, notwithstanding anything contained in this Agreement or any Schedule including, without limitation, any warranty in respect of merchantability or fitness for a particular purpose or use.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- g. **No Indemnification** – For greater certainty, the limitations of liability of Exchange set forth in this Section 5.8 shall not be construed as implying or requiring any indemnification by the Contracting Party of any of the other Contracting Parties.

## 5.9 No Indirect Damages

Other than as specifically set forth in this Agreement, in no event shall Exchange, the Contracting Party or any of the other Contracting Parties be liable under this Agreement or any Transaction

for any special, consequential or indirect damages or claims, including without limitation, loss of profits or revenues, cost of capital or claims of any of the other Contracting Parties' suppliers or customers against the Contracting Party or other Contracting Parties arising out of any Failure to Deliver, Failure to Take or Failure to Pay or any other matter for which liability may be assessed under this Agreement.

#### **5.10 GST on Damages**

If either Buyer, Seller or Exchange (the "Payor") is required to make a payment, or reduce or extinguish, without payment, all or part of the amount of a debt or obligation to or for the benefit of the other party (the "Other Party") as a consequence of a Failure to Deliver, Failure to Pay or Failure to Take (the "Forfeiture Amount"), and:

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

#### **5.11 Deposit Agreement**

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

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

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

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

- i. a statement indicating the passage of five (5) Business Days;
- ii. if Mediation, a statement from the mediator as to the passage of twenty (20) days from the initiation of Mediation or a joint direction from the Contracting Party and Exchange as to the resolution of the Mediation; or
- iii. if Arbitration, a statement from the Arbitrator or the Arbitral Tribunal, as the case may be, as to the decision in respect of the matter.

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

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

#### **5.12 Indices**

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

- a. Early Termination – In the event that there occurs and is continuing an Exchange Bankruptcy Event of Default, the Contracting Party, in addition to any remedies it may have at law or in equity or otherwise under this Agreement or under any Transaction, may, on no less than twenty (20) days notice to Exchange (the "Early Termination Notice Date"), designate a day no earlier than the Early Termination Notice Date and no later than sixty (60) days after becoming aware of such Exchange Bankruptcy Event of Default, as an early termination date (the "Early Termination Date"). On the Early Termination Date, all outstanding Transactions (collectively the "Terminated Transactions") shall be terminated.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

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

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

owing by the Contracting Party (the "Termination Notice"). To the extent that the Contracting Party is owed a Net Termination Payment by Exchange, Exchange shall pay the Net Termination Payment to the Contracting Party as soon as practicable, making commercially reasonable efforts to pay such Net Termination Payment within ten (10) Business Days of receipt by the Contracting Party of the Termination Notice regarding such calculation. To the extent that the Contracting Party owes a Net Termination Payment to Exchange, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Termination Notice. In the event that Exchange has not provided a Termination Notice to the Contracting Party within the five (5) day period set forth above, the Contracting Party shall have the right to calculate its Gains or Losses, as the case may be, for the Terminated Transactions, by determining a Price for each such Terminated Transaction, such Price being a good faith commercially reasonable representation of market value, which value may be disputed in good faith.

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~



## ARTICLE 6 - SUSPENSION OR TERMINATION

### 6.1 Code of Conduct: Prohibitions

The Contracting Party agrees that it will not: (a) engage in any act of fraud, bad faith, extortion, dishonest conduct, or material misstatement, or any other unlawful activity including, without limitation, in respect of any information provided to Exchange or matter pertaining to the performance of any Transaction or in any other dealing with Exchange or the other Contracting Parties; (b) manipulate or attempt to manipulate prices of any Product offered by Exchange, including, without limitation, by spreading inaccurate, reporting false transactions or any other act designed or intended to manipulate the price for any Product offered by Exchange; or (c) commit any act, or do anything, which is, or could foreseeably be, in substance, detrimental to the interests, welfare or integrity of the ICE Trading Platform, NGX Trading System or NGX Clearing System.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 6.2 Consequences of Breach of Code of Conduct

If the Contracting Party commits any act prohibited by Section 6.1, Exchange may in addition to any other rights or remedies it may have under this Agreement or under law, equity or otherwise, cause a Contracting Party Suspension by notice to the Contracting Party for a period, which Contracting Party Suspension may be for a period in excess of the period during which the Contracting Party is in default or continues to commit such act, or permanently and which Contracting Party Suspension will be effective on the later of the date of receipt of the notice or the date set forth in the notice. In addition, Exchange may, in its sole discretion, charge an amount as liquidated damages equal to \$5,000 representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development, reputation and integrity of the business carried on by Exchange.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 6.3 General Suspension

Exchange, in its sole discretion, may, but is not obligated to, cause a General Suspension for such period as it believes necessary or advisable if Exchange believes any of the following events or conditions are occurring or have occurred: (a) any manipulative activity or activity aimed at manipulation of prices, without limitation by spreading inaccurate information, reporting false transactions or otherwise performing any other act designed or intended to manipulate the price for gas, or any circumstance or circumstances that might improperly affect the performance of Transactions; (b) matters affecting the safety or welfare of personnel, or that may have a severe, adverse effect on the building where Exchange is located; (c) fires, bomb threats, substantial inclement weather, power failures and communication breakdowns; (d) any event which constitutes, or may in the opinion of Exchange constitute, a force majeure event, as defined in Schedules "F", "G" or "H"; (e) any circumstances that cause Exchange host computers to be taken off-line; (f) any matter that, in the opinion of Exchange, detrimentally affects the Regulatory Approvals of Exchange in respect of its performance of this Agreement; or (g) the entering into of a Physical Transaction or Swap Transaction in error or outside the Market Price Band.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

#### **6.4 Consequences of General Suspension**

The consequences of a General Suspension will be that Exchange may refuse access to the NGX Trading System and/or NGX Clearing System by the Contracting Parties for any or all Products. The Contracting Party must perform its Obligations to make delivery or take receipt of gas and Oil under the applicable Physical Transactions during any period of General Suspension. Exchange will use its commercially reasonable efforts to provide alternative trading capabilities within three Business Days in the event that access to the NGX Trading System and/or NGX Clearing System cannot be resumed.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

#### **6.5 Procedures on General Suspension**

In the event of a General Suspension, Exchange would immediately notify all Contracting Parties as to the reason and expected duration of the General Suspension by phone, fax, email or if possible by access through the NGX Trading System. All communications by Exchange with Contracting Parties would be undertaken by phone, with fax confirmations until such time as access to the NGX Trading System is resumed or alternative trading facilities are available.

#### **6.6 Contracting Party Suspension**

In addition to its rights under this Agreement or under law, equity or otherwise including, without limitation, Section 6.2, Exchange, in its sole discretion exercised in a commercially reasonable manner, may cause a Contracting Party Suspension for such periods as it believes necessary or advisable if Exchange believes any of the following events or conditions are occurring or have occurred in respect of: (a) marketing irregularities, including any marketing irregularities caused by the Contracting Party whether, directly or indirectly, alone or in association with others, including, but not limited to any manipulative activity or activity aimed at manipulation of prices, including, without limitation, by spreading inaccurate information, reporting false transactions, or otherwise performing any other act designed or intended to manipulate the price for gas or Oil, or any circumstance or circumstances that might improperly affect the performance of Transactions; (b) financial condition, including any material adverse change in the financial condition of the Contracting Party or an affiliate or any person providing credit support for the Contracting Party each as determined in the sole discretion of Exchange, or Failure to Provide Eligible Collateral Support with Exchange when requested to do so; (c) detrimental effect, including circumstances which make the continued access to the NGX Trading System by the Contracting Party detrimental to the existence of an orderly market for gas or Oil, or otherwise detrimentally affects the interests, welfare or integrity of the NGX Trading System or NGX Clearing System; (d) regulatory approvals, including any matter which may, as determined in the sole discretion of Exchange, detrimentally affect the Regulatory Approvals of the Contracting Party in respect of its performance of this Agreement or (e) the occurrence of a Failure to Deliver, Failure to Pay, Failure to Take, Event of Default, a Swap Party's Default, an Option Party's Default or Failure to Provide Eligible Collateral Support.

(August 1, 2009)

#### **6.7 Consequences of Contracting Party Suspension**

Without limitation to its rights under Section 6.2, in the event that Exchange causes a Contracting Party Suspension, Exchange will provide notice to such Contracting Party and the Contracting Party will not be entitled to enter into some or all Transactions, as identified in such notice, after receipt of such notice. Upon the occurrence of a Contracting Party Suspension, Exchange may exercise any of the rights under Section 5.5 or Section 8.2, with references to the "Defaulting Party" deemed to be references to the suspended Contracting Party, as well as any other rights or remedies granted under this Agreement or under law, equity or otherwise.

(May 1, 2000 or such later date as may be designated  
by Exchange on notice to the Contracting Parties)

## **6.8 Surveillance and Compliance**

- a. **Right to Investigate** – Exchange will designate a person or persons to carry out such investigations, examine such documents and do such other things as are reasonably necessary or advisable to verify compliance by all Contracting Parties with this Agreement; to review any matter which has resulted in, or may result in, Exchange causing a Contracting Party Suspension; to monitor all activities in respect of the entering into and performance of Transactions through the NGX Trading System; and provide an opportunity for the Contracting Party to be heard in respect of the matters in question, if desirable, and Exchange may make a finding in respect of such matters which it will make available in writing to the Contracting Party.
- b. **Cooperation of the Contracting Party** – The Contracting Party agrees to provide copies if requested of its documents and records directly related to its activities pursuant to this Agreement and agrees to cause a person under the control or direction of the Contracting Party who is reasonably knowledgeable in respect of the activities of the Contracting Party under this Agreement to be available by phone or at the offices of Exchange in Calgary at a reasonable time and for a reasonable period in respect of any such investigations.

## ARTICLE 7 - TAXES

### 7.1 GST

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

### 7.2 Tax Legislation

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

### 7.3 Taxes

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

## ARTICLE 8 - SWAP PRODUCTS AND OPTION PRODUCTS

### 8.1 Swap Products and Option Products - General

- a. Forms of Swap Products and Option Products – The forms of Swap Products and Option Products and a description of such Swap Products and Option Products which may be made available by Exchange to the Contracting Party from time to time are set forth in the NGX Product List and Schedule "E".
- b. Entering into Swap Transactions – Each of Exchange and the Contracting Party, each in its capacity as the Fixed Price Payer or the Floating Price Payer, as the case may be, agrees to be bound by any Swap Transactions as: (i) entered into by the Contracting Party through the NGX Trading System; or (ii) entered into the NGX Clearing System. Each of Exchange and the Contracting Party agrees to pay the Swap Clearing Amount as may be required pursuant to any such Swap Transaction.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- c. Entering into Option Transactions – Each of Exchange and the Contracting Party, each in its capacity as the Option Buyer or Option Seller, as the case may be, agrees to be bound by any Option Transactions as: (i) entered into by the Contracting Party through the NGX Trading System; or (ii) entered into the NGX Clearing System including, but not limited to, the terms of any applicable Underlying Transaction and any associated payment or other obligations if such Option Transaction is exercised giving effect to an Underlying Transaction. The Option Buyer agrees to pay the Option Premium Amount as may be required pursuant to any such Option Transactions.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- d. Recourse Against Exchange – Exchange agrees to pay the Swap Clearing Amount, if any, to the Contracting Party in respect of a Swap Transaction and Exchange agrees to pay the Option Premium Amount to the Option Seller in respect of an Option Transaction, each case to the extent required under the terms applicable to such Swap Transaction or Option Transaction. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Swap Transactions or Option Transactions is against Exchange and agrees that in the event of an Exchange Default, the Contracting Party is entitled to all rights at law except as specifically limited by this Agreement. Without limitation of the foregoing, in the event that there is an Exchange Default which is not remedied by Exchange within five Business Days and is not the subject matter of Mediation or Arbitration, and there is at that time a Defaulting Swap Party or Defaulting Option Party under this Agreement or any other Contracting Party Agreement, Exchange will disclose the name of any such Defaulting Swap Party or Defaulting Option Party to any Contracting Parties affected by such Exchange Default, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- e. Performance of Swap Transactions – The Obligations of Exchange and the Contracting Party under any Swap Transaction will be fully performed upon the payment of all amounts by the Fixed Amount Payer and the corresponding Floating Amount Payer under any such Swap Transaction.

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- g. Settlement and Netting of Invoice Amounts – All amounts payable by the Contracting Party or Exchange under any Swap Transaction or Option Transaction are due and are payable and are to be settled pursuant to Section 8.4. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-Off the amounts payable or receivable in the same currency on account of the Swap Clearing Amount and fees for the Contracting Party. The Contracting Party and Exchange will be obligated to pay or entitled to receive, as the case may be, only such net amounts. On the Swap Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange.

## 8.2 Rights of Exchange

On the occurrence of a Default with respect to a Contracting Party or in the event of a dispute over a Transaction entered into pursuant to Sections 3.1(d) or (e), Exchange will notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy), and thereafter without further notice or formality prescribed by law or otherwise, all of which are hereby waived by the Defaulting Party to the extent permitted by applicable law, may exercise any combination of the rights and remedies contained in this Section 8.2 or Sections 5.5, 5.6 or 8.3 and any rights or remedies under this Agreement or at law, equity or otherwise including, without limitation, its rights to:

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- a. pursuant to Subsection 3.2(a) and Schedule "C", request an additional amount of Eligible Collateral Support from the Defaulting Party;

(August 1, 2009)

- b. pursuant to Section 6.6, cause a Contracting Party Suspension for a period, which may be in excess of the period during which the Defaulting Party is in Default, or permanently;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- c. declare any amounts for Oil or gas delivered, or any unpaid Invoices immediately due and payable and to withhold payments under this Agreement (including, without limitation, under any Transaction) and withhold such payments as if paid or provided to Exchange as Collateral;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- d. notwithstanding Section 3.4. of Section "H", suspend deliveries of Oil to the Contracting Party or takes of Oil from the Contracting Party under one or more Physical Transactions, by amending the applicable notices of shipment, reallocating volumes or otherwise;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- f. terminate any Transaction, or declare immediately payable or to be performed any Obligations in respect of any Physical Transaction, any Swap Transaction, Option Transaction, NGX Close-out Transaction or this Agreement and, in connection therewith, exercise any of the following rights:

- i. pursuant to Section 3.2(d) or Section 8.3, Set-Off, in whole or in part (including by entering into Offsetting Transactions), any Obligations payable or to be performed by Exchange (to the Defaulting Party or to any Contracting Party Affiliate of the Defaulting Party) against Obligations payable or to be performed by the Defaulting Party (or by any Contracting Party Affiliate of the Defaulting Party) to Exchange, which Obligations may extend to periods beyond the periods during which the Contracting Party is in Default;
- ii. demand payment under or in respect of, sell, realize upon, use or drawdown the Collateral and apply such Collateral to the Contracting Party's Obligations; or
- iii. terminate this Agreement by notice to the Defaulting Party to be effective upon the date of receipt or deemed receipt (which notice may be the same as that delivered under this Section 8.2 or under Section 8.3 or 5.5); provided, this Agreement shall remain in effect for Transactions entered into prior to the date of termination until all Obligations to Exchange in respect of such Transactions have been paid and performed.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

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

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



(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- a. any NGX Close-out Transactions will be treated as allocated to the Defaulting Party's account;
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- b. Exchange hereby agrees that the Defaulting Party will, for the purposes of determining Exchange's damages, be deemed to have performed its Obligations to pay the Swap Clearing Amount in the case of a Swap Transaction, or to pay the Option Premium Amount and/or Option Settlement Amount in the case of an Option Transaction, under all NGX Close-out Transactions allocated to its account and under that portion or all of its Swap Transactions or Option Transactions, as the case may be, which are offset by such NGX Close-out Transactions;
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- c. for the purposes of determining Exchange's damages, Exchange will Set-Off any and all such amounts that are owed or deemed to be owed to the Defaulting Party against any and all such amounts that are owed or deemed to be owed by such Defaulting Party under the Offsetting Transactions to arrive at a single net settlement amount payable to or by the Defaulting Party which shall be immediately due and payable; for clarity, without limitation to any other rights of Exchange under this Agreement, such net settlement amount shall include, without limitation, an amount as liquidated damages representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation, and integrity of the business carried on by Exchange, where Exchange has determined, in its sole discretion, that appropriate circumstances exist for the application of such liquidated damages;
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- d. Exchange will forthwith provide the Defaulting Party with an Invoice for the Offsetting Transactions setting forth the amounts owed to or by the Defaulting Party and the net settlement amount due to or from the Defaulting Party;
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- e. payment to Exchange of any net settlement amount owed by the Defaulting Party shall be deemed to satisfy all of its Obligations with respect to the Offsetting Close-out Transactions; and
- (May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)
- f. Exchange shall pay any net settlement amount owed to the Defaulting Party with respect to the Offsetting Transactions and upon such payment, shall assume all of the rights of the Defaulting Party under the Offsetting Transactions.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

#### 8.4 Invoices for Swap Transactions and Option Transactions

- a. Invoices for Swap 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 Swap Transaction to be settled in the current 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 Swap Transactions and any amount payable for fees to Exchange under the Fee Schedule. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Swap 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 amount payable to or receivable by the Contracting Party and Exchange.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~

- b. 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.
- c. Terms for Swap 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 Swap Settlement Date (in the case of Swap Transactions) and 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 Swap 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.
- ~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties.)~~
- d. Corrections to the Invoice – In the event that the Floating Price for any Swap Transaction or Option Transaction is corrected by the publication from which such indices is derived for settlement of such Swap Transaction after a Swap 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 Swap Clearing Amount within two (2) Business Days of being advised of such change to the Floating Price. The correcting Invoices will be due and payable within five (5) Business Days of their issuance on terms as outlined in Section 8.4(b).
- e. Final Invoices – The Contracting Party and Exchange agree that any Invoice on any Swap Settlement Date or Premium Payment Date will be final and binding, absent manifest error, for all purposes 120 days after such Swap 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.

## ARTICLE 9 - MISCELLANEOUS

### 9.1 Term

- a. Term – This Agreement will continue in full force and effect unless and until terminated by Exchange pursuant to the terms of this Agreement or by Exchange or the Contracting Party under this Section 9.1.
  - b. Termination – In addition, and without limitation, to any other rights of termination granted under this Agreement, either the Contracting Party or Exchange may give notice of termination to the other at any time and this Agreement will be terminated as of the effective date in such notice on the condition that such date is no earlier than one Business Day following receipt or deemed receipt of such notice or, where there is no effective date, then at the end of the period ending eight weeks after receipt of such notice (the "Termination Date"), provided that:
    - i. this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement, as determined in the sole discretion of Exchange; and
    - ii. the Contracting Party will not be entitled to enter into any Transactions after the Termination Date.
- (June 8, 2009)
- c. Contrary to Law – In the event that the participation by any Contracting Party pursuant to this Agreement constitutes a violation of any law or regulation applicable to such Contracting Party, either Contracting Party or Exchange will be entitled to give notice of termination to Exchange or Contracting Party, respectively, and this Agreement will be terminated on receipt of such notice, provided that this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement.
  - d. Revisions – In the event that revisions are made to this Agreement, the Contracting Party will be entitled for a period of ten Business Days after the effective date of such revision to give notice of termination to Exchange and this Agreement will be terminated on receipt of such notice, provided that:
    - i. this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and otherwise under this Agreement; and
    - ii. the Contracting Party will not be entitled to enter into any Transactions after such date of receipt of such notice by Exchange except to offset, in whole or in part, the Obligations of the Contracting Party under any Transactions.
  - e. Consequences of Termination – Upon termination of this Agreement by Exchange pursuant to the terms of this Agreement or otherwise under this Section 9.1:
    - i. any Transactions will continue to be governed by the provisions of this Agreement relating to such Transactions as at the effective date of termination;
    - ii. any Collateral will be returned or credited to the Contracting Party when all of its Obligations under all of its Transactions are fully performed, subject to the other terms of the Agreement relating to Set-Off or application of the Collateral; and

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

## 9.2 Notices

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

Suite 2330, 140 - 4th Avenue S.W.  
Calgary, Alberta  
T2P 3N3

Attention: President  
Telefax: (403) 974-1719

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

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

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

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

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

## 9.3 Interest on Payments in Arrears

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

(Canada), the corresponding rate of interest applicable to a 366-day year would be the stipulated rate multiplied by 366 and divided by 365.

#### 9.4 Relationship of Parties

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

#### 9.5 Trading Information

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- a. to any Contracting Party in the manner and subject to the terms and conditions described in this Agreement; or

- b. if the information is or becomes public through no breach of this Agreement by Exchange; or
- c. as may be required by law or any regulatory authority to be disclosed, or as may be disclosed in the course of securing, or pursuant to any order, consent or approval signifying any Regulatory Approvals.

#### **9.6 Assignment**

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

#### **9.7 General**

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

**SCHEDULE "A" – FEE SCHEDULE<sup>1</sup>**

**Subscription Fees - Monthly<sup>2</sup>**

Subscription Fee per month – Contracting Party	\$1,500
Subscription Fee per month – Contracting Party Affiliate, netted account	\$750
Subscription Fee per month – Contracting Party Affiliate, non-netted account	\$750

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

NGX AB-NIT Yesterday Fixed Price	CAD/GJ	\$0.0025
All other Canadian Dollar Products	CAD/GJ	\$0.0011
ATCO Yesterday Fixed Price	CAD/GJ	\$0.0025
All other US Dollar Products	USD/MMBtu	\$0.0011
<i>Location and Calendar Spreads:</i>		
All Canadian Dollar Products	CAD/GJ (One-leg only)	<del>\$0.00</del> + <u>\$0.00055</u>
All U.S. Dollar Products	USD/MMBtu (One-leg only)	<del>\$0.00</del> + <u>\$0.00055</u>

**Transaction and Bilateral Transaction Fees—Oil**

<u>Canadian Delivery Point – cleared</u>	<u>CAD/barrel</u>	\$0.03
<u>Canadian Delivery Point – Bilateral</u>	CAD/barrel	<u>\$0.01</u>
<u>United States Delivery Point – cleared</u>	<u>USD/barrel</u>	<u>\$0.01</u>
<u>United States Delivery Point – Bilateral</u>	USD/barrel	\$0.005
<u>Swaps Cushing Exchanges</u>	USD/barrel	<del>\$0.00</del> + <u>\$0.0025</u>

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

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

<sup>1</sup> Note that all fees are subject to rebates as published from time to time on the Exchange's Website.

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

All other Products	CAD/GJ	\$0.0011
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**Transaction and Bilateral Transaction Fees – Electricity Swap Transactions**

Alberta Electricity and Heat Rate	CAD/MWh	\$0.02
Ontario Electricity and Heat Rate	CAD/MWh	\$0.02
EPCOR RRO	CAD/MWh	\$250 per 1% lot
ENMAX RRO – LFM	CAD/MWh	\$312.50 per 1% lot

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

Alberta – (Fixed and Alberta-Basis Swap) Put and Call and Straddle Options	CAD/GJ	\$0.0011
<u>Alberta Straddle Options</u>	<u>DAD/GJ/leg</u>	<u>\$0.00055</u>

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

Henry Hub	USD/MMBtu	\$0.003
All other US Delivery Points	USD/MMBtu	\$0.002

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

<u>United States Delivery Point</u>	<u>USD/barrel</u>	<u>\$0.01</u>
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**Clearing Fees – Swap Transactions at Canadian Delivery Points (Gas)**

Location and Calendar Spreads in Natural Gas Swap Products	USD/MMBtu (One leg only)	\$0.0011
NGX AB-NIT Fixed for Floating	CAD/GJ	\$0.0011
All other Natural Gas Swap Products	USD/MMBtu	\$0.0011

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

(This Schedule "A" has been amended as of May 1, October 21, 2009 or such later dates may be designated by Exchange on notice to the Contracting Parties)



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

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

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

(May 1, 2009 or such later date as may be designated  
by Exchange on notice to the Contracting Parties)

### **2. MEDIATION PROCEDURE**

- a. Notice - The party (Exchange for the purpose of this Schedule "B" being regarded as a single party) initiating mediation shall provide written notice of that request to the other party, including a summary of the dispute. A management level or more senior employee of each party must meet and discuss a settlement within 3 days after notice to mediate has been issued. The place of any mediation procedure shall be in Calgary, Alberta.
- b. Appoint Mediator - If the parties are unable to agree on settlement of the dispute they shall appoint a mediator within 7 days of the notice to mediate being received by the parties. If the parties are unable to agree on a mediator then either party may apply to have the mediator appointed by the Court of Queen's Bench of Alberta.
- c. Points of Issue - Within 3 days after a mediator has been selected, each party shall submit a written statement outlining the points at issue to the mediator and to the other party. The mediator may conduct the proceedings in any manner considered appropriate, taking into account the circumstances of the case, any desires expressed by the parties, and the desire for a speedy resolution of the dispute. The mediator may communicate with the parties orally or in writing and may meet with the parties together or individually. The mediator may make proposals for a settlement, but such proposals need not be in writing nor will such proposals be binding on the parties until they have agreed in writing to accept and be bound by the terms of that proposal.
- d. Mediator In Future Proceedings - The mediator shall not act as a representative or witness of either party or otherwise participate in any arbitration or judicial proceedings related to a dispute that was the subject of the mediation.

- e. Disclosure - Statements made by either party or the mediator in the course of the mediation proceedings (including, without limitation, the pre-mediation meeting between senior employees for each party) shall not be disclosed to any third party and shall not be introduced by the other party or parties in arbitration or judicial proceedings, whether or not those proceedings relate to the dispute that was the subject of the mediation.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

### 3. **ARBITRATION PROCEDURE**

- a. Any dispute, claim or controversy between Exchange and the Contracting Party arising out of, relating to, or in connection with, this Agreement and this Schedule "B" shall be finally settled by arbitration administered by the International Chamber of Commerce (the "ICC") and conducted in accordance with the ICC rules of arbitration (the "ICC Rules of Arbitration") in effect at the time of the arbitration. The place of arbitration shall be New York City and the proceedings shall be conducted in the English language. Capitalized terms used in this section and not otherwise defined herein shall have the meanings specified in the ICC Rules of Arbitration.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- b. The arbitration shall be conducted by three arbitrators (each individually an "Arbitrator" and collectively, the "Arbitral Tribunal"). Each party shall nominate one Arbitrator within thirty (30) days after delivery of the Request for Arbitration. In the event a party fails to nominate an Arbitrator, upon request of either party, such Arbitrator shall instead be appointed by the ICC within thirty (30) days of receiving such request. The two Arbitrators appointed in accordance with the above provisions shall nominate the third Arbitrator within thirty (30) days of their appointment. If the first two appointed Arbitrators fail to nominate a third Arbitrator, then, upon request of either party, the third Arbitrator shall be appointed by the ICC within thirty (30) days of receiving such request. The third Arbitrator shall serve as Chairman of the Arbitral Tribunal.

- c. The Award rendered by the Arbitrators shall be final and binding on the parties.

- d. By agreeing to arbitration, the parties do not intend to deprive any court of competent jurisdiction, as specified in paragraph (e) below, of its ability to issue any form of provisional remedy, including but not limited to a preliminary injunction or attachment in aid of the arbitration, or order any interim or conservatory measure. A request for such provisional remedy or interim or conservatory measure by a party to a court shall not be deemed a waiver of this agreement to arbitrate.

- e. For the limited purposes of either compelling arbitration and/or enforcing this paragraph (e), confirming and/or enforcing any arbitral award, and/or seeking provisional remedies in aid of arbitration pursuant to paragraph (d) above, each party hereby irrevocably consents to the jurisdiction of the following courts: (i) the courts of the Province of Alberta, (ii) the Supreme Court of the State of New York sitting in the Borough of Manhattan and the United States District Court for the Southern District of New York, (iii) the courts in any jurisdiction in which the assets or property of either party is located, or (iv) any other court of competent jurisdiction. In such case, each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action or proceeding.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- f. In the event of a conflict or inconsistency between the provisions of this Schedule and any other provisions of this Agreement, as in effect at any time, the provisions of this Schedule shall govern.

~~(May 1, 2009 or such later date as may be designated  
by Exchange on notice to the Contracting Parties)~~

## SCHEDULE "C" - RISK MANAGEMENT POLICY

### 1. DEFINITIONS

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

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

- a. "Approved Financial Institution" means any bank approved by Exchange with long-term, unsecured, unsubordinated debt (not supported by third party credit enhancement) with at least one credit rating of at least:
  - i. "A" from Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; or
  - ii. "A2" from Moody's Investors Service, Inc.,or their respective successors;
- b. "Available Margin" means, for any Contracting Party, the difference between the value of the Collateral provided by such Contracting Party and available to Exchange and the Margin Requirement for such Contracting Party, each as calculated hereunder;
- c. "Current Month Accounts Net Payable" means, for a Contracting Party, the accounts payable owing by Exchange to such Contracting Party less the accounts receivable owing by such Contracting Party to Exchange pursuant to all Physical Gas Transactions delivered to date during that current month;
- d. "Initial Margin" means, for each Contracting Party, an amount established by Exchange from time to time based on the applicable Initial Margin Rate for each Product and the aggregate of all Net Open Positions of such Contracting Party;
- e. "Initial Margin Rate" means, for each Product, an amount established by Exchange from time to time as published by Exchange on Exchange's Website;
- f. "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;
- g. "Margin Requirement" means, for each Contracting Party, an amount equal to the sum of the Previous Month Accounts Net Payable, Current Month Accounts Net Payable, Swap Settlement Net Payable, Option Premium Amounts, Initial Margin and Variation Margin for such Contracting Party, as calculated hereunder;
- h. "Market Price" means, in respect of any Product, the price reflecting the current market conditions as determined by Exchange;
- i. "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.
- j. "Option Premium Amount" has the meaning ascribed thereto in Section 1.2(xxxx) of the Terms and Conditions and is calculated in accordance with Schedule "E";

- k. "Previous Month Accounts Net Payable" means, for a Contracting Party, the accounts payable owing by Exchange to such Contracting Party less the accounts receivable owing by such Contracting Party to Exchange pursuant to all Physical Transactions delivered during the previous calendar month;
- l. "Recognized Banking Holiday" means any Business Day that is recognized by major Canadian and/or United States banks as a holiday;
- m. "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;
- n. "Swap Settlement Net Payable" means, for a Contracting Party, the total Swap Clearing Amounts owing by Exchange to such Contracting Party, less the total Swap Clearing Amounts owing to Exchange by such Contracting Party; and
- o. "Variation Margin" means, in respect of every Product for each Trading Day, a reasonable estimate of the market value of such Product as determined by Exchange, in its sole discretion, considering the reasonable estimation of the current market value using internal and external sources for each Product. Should the Contracting Party dispute such determination, Exchange will investigate and determine, in its sole discretion, whether or not a recalculation should be undertaken and will advise the Contracting Party of its decision as soon as reasonably practicable.

(May 1, 2009 or such later date as may be designated  
by Exchange on notice to the Contracting Parties)

2. **INITIAL MARGIN RATES**

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

3. **DETERMINATION OF MARGIN LIMITS**

- a. Exchange will determine the Margin Limit for each Contracting Party based on Collateral provided by such Contracting Party and available to Exchange in the form and as valued by Exchange pursuant to this Schedule "C".
- b. In the event that a Contracting Party wishes to increase its Margin Limit with Exchange, the Contracting Party will be required to provide additional Eligible Collateral Support with Exchange.

(August 1, 2009)

4. **UNSECURED CREDIT**

Exchange will not provide unsecured credit to any Contracting Party.

5. **ACTIVATION**

- a. Prior to any Contracting Party being activated to trade on the NGX Trading System and/or NGX Clearing System, the Contracting Party must 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.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- c. Exchange will confirm to the Contracting Party once it believes the Contracting Party and, if applicable, its Credit Support Provider has satisfied the Minimum Qualification Requirement and any other requirements under this Section 5 or otherwise under this Agreement.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- d. A Contracting Party will be activated on the NGX Trading System and/or NGX Clearing System by Exchange after all pre-requisite requirements have been satisfied under this Section 5 or otherwise under this Agreement and once Exchange has received Collateral which will be used to establish a Margin Limit for that Contracting Party.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- e. Exchange reserves the right to apply order size limits for each Contracting Party.
- f. At the discretion of Exchange, certain Contracting Parties will be allowed to sell only certain Physical Gas 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.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- g. Exchange will activate designated persons for trading in specific Products on the NGX Trading System and/or NGX Clearing System based on instructions from the Administrator, and access by the Contracting Party to the applicable Transportation System pursuant to Section 2.6 of the Terms and Conditions.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

6. **VALUATION OF COLLATERAL**

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- a. with respect to each letter of credit constituting Eligible Collateral Support, the undrawn portion of such letter of credit available to Exchange; provided that, no value shall be allocated to such letter of credit as and from 20 calendar days prior to the expiry of such letter of credit;

(August 1, 2009)

- b. with respect to cash, or interest bearing instruments contemplated by Section 3.2(k) of the Terms and Conditions, the full amount of cash or the face value of the instrument, as applicable;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- c. with respect to Previous Month Accounts Net Payable, the amount of such Contracting Party's Previous Month Accounts Net Payable; provided that, no positive value shall be allocated for such Contracting Party for such Previous Month Accounts Net Payable after the 20th day of the current month;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- d. with respect to Current Month Accounts Net Payable, the amount of such Contracting Party's Current Month Accounts Net Payable;

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- e. with respect to Swap Settlement Net Payable, the amount of such Contracting Party's Swap Settlement Net Payable; provided that, no positive value shall be allocated for such Contracting Party for such Swap Settlement Net Payable after the last calendar day of the month immediately preceding the month when such Swap Settlement Net Payable is to be paid; and

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

- f. 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.

~~(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)~~

## 7. **DAILY MARGIN LIMIT MONITORING**

- a. During each Trading Day, Exchange will monitor the Margin Requirement of each Contracting Party.
- b. If the Margin Requirement for a Contracting Party is equal to or greater than eighty percent (80%) of such Contracting Party's Margin Limit, Exchange will advise the Contracting Party and may request that additional Eligible Collateral Support be provided to Exchange.

(August 1, 2009)

- c. If the Margin Requirement for a Contracting Party is equal to or greater than ninety percent (90%) of such Contracting Party's Margin Limit, Exchange may halt such Contracting Party from entering orders for Products which will increase its Margin Requirement until the Contracting Party provides additional Eligible Collateral Support to the satisfaction of Exchange.

(August 1, 2009)

- d. If the Margin Requirement for a Contracting Party is equal to or greater than ninety-five percent (95%) of such Contracting Party's Margin Limit, and Exchange does not have sufficient Collateral with respect to such Contracting Party, Exchange will be entitled to, without limitation to any of its other rights or remedies, invoke the Liquidation Procedure pursuant to Section 5.6 of the Terms and Conditions and the Close-out Procedure pursuant to Section 8.3 of the Terms and Conditions.

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

- e. If the Available Margin for a Contracting Party is less than:
- (i) with respect to a Contracting Party that transacts in Option Products, \$2,000,000;
  - (ii) with respect to a Contracting Party that does not transact in Option Products, but transacts in Electricity Products and/or Oil Products, \$1,000,000; or
  - (iii) with respect to a Contracting Party that does not transact in either Option Products, Electricity Products or Oil Products, \$500,000,

Exchange will advise the Contracting Party and may request that additional Eligible Collateral Support be posted with Exchange.

(August 1, 2009)

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

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

(August 1, October 21, 2009)

- b. A Contracting Party may request a return of Eligible Collateral Support in the form of cash it has provided to Exchange as Collateral ("Cash Collateral") if:
- (i) its Margin Requirement is less than eighty percent (80%) of the value of the Collateral that it has provided and is available to Exchange, all as calculated hereunder (the "Minimum Collateral Amount"); and
  - (ii) no Default has occurred with respect to such Contracting Party.

Upon such a request, Exchange agrees to return an amount of Cash Collateral equal to the lesser of:

- (iii) the full amount of such Cash Collateral; or
- (iv) 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.

(August 1, 2009)

## 9. **RISK TO EXCHANGE**

Notwithstanding any provision of this Agreement, Exchange reserves the right at any time to: (a) decline to enter into any Transactions which, in Exchange's sole determination, increases the credit exposure or adds additional risk of loss to or otherwise affects the risk profile of Exchange; or (b) take any other reasonable actions to preserve the



integrity and security of Exchange, the NGX Trading System and/or the NGX Clearing System (including, without limitation, making a request of a Contracting Party for additional Eligible Collateral Support), as determined in the sole discretion of Exchange.

(August 1, 2009)

**10. SETTLEMENT**

Exchange will settle all Transactions in accordance with this Agreement and 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.

**11. AFFILIATE NETTING**

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

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

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

(May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

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

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

## SCHEDULE "D" – NGX PRODUCT LIST

### DEFINITIONS

"A2(PSu)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Petro-Canada Products and Suncor Inc, or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A3(BEF)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by BP Canada Energy Trading Company Ltd., EnCana Crude Oil Marketing and Flint Hills Resources Ltd, or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A3(EIF)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by EnCana Crude Oil Marketing, Imperial Oil Limited and Flint Hills Resources Ltd., or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A3(FShI)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Flint Hills Resources Ltd., Shell Canada Limited and Imperial Oil Limited, or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A3(PShF)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Petro-Canada Products, Shell Canada Limited and Flint Hills Resources Ltd., or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A3(ShFB)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Shell Canada Limited, Flint Hills Resources Ltd. and BP Canada Energy Trading Company Ltd., or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A4(FHIB)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Flint Hills Resources Ltd., Husky Oil Limited, Imperial Oil Limited and BP Canada Energy Trading Company Ltd., or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A4(IFSuSh)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Imperial Oil Limited, Flint Hills Resources Ltd., Suncor Inc. and Shell Canada Limited, or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A4(IPShSu)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Imperial Oil Limited, Petro-Canada Products, Shell Canada Limited and Suncor Inc., or their successors or reasonable replacements, as determined by Exchange, from time to time;

"A5(IFPSuSh)" means, with respect to a Crude Type and Delivery Point, the simple average of the postings for such Crude Type and Delivery Point by Imperial Oil Limited, Flint Hills Resources Ltd., Petro-Canada Products, Suncor Inc. and Shell Canada Limited, or their successors or reasonable replacements, as determined by Exchange, from time to time;

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

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

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

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

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

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

"CMA" is defined in Section 10(l) of Schedule "E";

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

"DNS" is defined in Section 10(b) to Schedule "E";

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

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

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

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

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

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

"IF" means Platts Inside FERC;

"LD1" means an index published in Platts Gas Daily;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"WTI" has the same meaning as "WTI Index" as found in Section 10(ttt) of Schedule "E";

"XpF" is defined in Section 10(bbb) of Schedule "E";

"Xti3" is defined in Section 10(ccc) of Schedule "E";

"XtiF" is defined in Section 10(ddd) of Schedule "E"; and

"XtiB" is defined in Section 10(eee) of Schedule "E".

### **CRUDE TYPES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"WTI" is defined in Appendix 2 to Schedule "H"; and

"WTS" is defined in Appendix 2 to Schedule "H".

### **PRODUCT TYPES**

BS	Physical Basis
FP	Fixed Price
ID	Physical Index
FP Spread	Fixed Price Spread
BS Spread	Physical Basis Spread
DBS	Daily Basis Swap
FP Swap	Fixed Swap
BS Swap	Basis Swap
ID Swap	Index Swap

(This Schedule "D" has been amended as of August 1, 2009)

## **SCHEDULE "E" - NATURAL GAS, OIL AND ELECTRICITY SWAPS AND OPTIONS**

### **1. SWAP AND OPTION PRODUCT AVAILABILITY**

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

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

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

### **3. CALCULATION PERIODS FOR SWAP PRODUCTS**

- a. Natural Gas and Oil Swaps - The Calculation Period is equal to the number of days in the Swap Transaction starting on the Effective Date and ending on the Period End Date.
- b. Electricity Swaps - The Calculation Period is equal to the number of hours in the applicable Electricity Swap Product starting on the Effective Date and ending on the Period End Date.

### **4. DETERMINATION OF SWAP CLEARING AMOUNTS FOR SWAP CONTRACTS**

- a. Calculation of Fixed Amount:

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

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

- b. Calculation of Floating Amount:

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

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

- c. Calculation of Swap Clearing Amount:

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

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

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

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

- a. Calculation of Option Premium Amount:

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

b. Description of Option Exercise Conditions:

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

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

c. Effect of Option Exercise:

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

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

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

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

- iii. the Underlying Price becomes the Floating Price in respect of the Alberta-Fixed or Alberta-Basis Swap; and
- iv. the Strike Price becomes the Fixed Price in respect of the Alberta-Fixed or Alberta-Basis Swap.

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

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

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

#### **6. SWAP INVOICES AND OPTION INVOICES**

Invoices for the Swap Clearing Amounts and Option Premium Amounts will be determined in accordance with this Schedule "E" and Section 8.4 of the Terms and Conditions. Invoices will be due and payable as follows:

- a. Swap Transactions - in accordance with the Swap Settlement Date
- b. Options - Option Premium Amount - in accordance with the Option Premium Payment Date; with respect to the Underlying Transaction, if the respective Option Transaction is exercised on the applicable Option Exercise Date, Invoicing will occur as per the Underlying Transaction.

(August 1, 2009)

#### **7. LIABILITY**

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

#### **8. ALL OR NOTHING OIL SWAP TRANSACTIONS**

In connection with any Swap Transactions entered on the Oil Trading Platform, the "All or Nothing" designation on the Oil Trading Platform must be selected by a Contracting Party if it wishes to purchase or sell only the full notional quantity of the amount offered by such Contracting Party. Otherwise, such offer to purchase or sell such notional quantity of Oil shall be matched with a corresponding offer to sell or purchase the notional quantity of



Oil notwithstanding that the proposed Contract Quantities are not the same, and the proposed Contract Quantity for the matched offers shall be the lesser of the two Contract Quantities. In such circumstance and in the event that a Contracting Party's matched Contract Quantity is less than the Contract Quantity offered to be bought or sold by the Contracting Party, the Contracting Party's offer shall remain in effect in accordance with its terms with respect to the residual Contract Quantity.

**9. INTERPRETATION**

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

**10. DEFINITIONS**

- a. "Alberta Electric System Operator" or "AESO" means the Alberta Electric System Operator (formerly known as Power Pool of Alberta), a not-for-profit corporation established under the *Electric Utilities Act* (Alberta);
- b. "Alberta Electricity Floating Price" or "AEFP" means the actual hourly price of Electricity as published (in final, not forecast form) by the AESO in the table entitled "Actual/Forecast" reported for the applicable day in the column for "Actual Posted Pool Price" and in the rows for the applicable Calculation Period, on the AESO internet web page currently located at [ets.aeso.ca](http://ets.aeso.ca); provided that such Alberta Electricity Floating Price shall be corrected to reflect any "Pool Price Errors" as may be posted on such web page, or otherwise communicated, from time to time by the Power Pool of Alberta;
- c. "Alberta Extended Off-Peak" means the eight (8) hour periods for each day starting at 2300 MPT and ending at 0700 MPT (HE 2400 to HE 0700 inclusive);
- d. "Alberta Extended Peak" means the sixteen (16) hour periods for each day starting at 0700 MPT and ending at 2300 MPT (HE 0800 to HE 2300 inclusive);
- e. "Alberta Flat" means the periods on each calendar day as follows:
  - i. in the case of a Sunday on and from which time is to be one hour in advance of mountain standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of mountain standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2500 inclusive); and
- f. for all other calendar days, the twenty-four (24) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive);
- g. "Alberta Off-Peak" means the periods as follows:
  - i. in the case of a Sunday on and from which time is to be one hour in advance of mountain standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of mountain standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2500 inclusive);

- iii. for all other Sundays, the twenty-four (24) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive);
- iv. for each NERC Holiday, the twenty-four (24) hour period starting at 0000 MPT and ending at 2400 MPT (HE0100 to HE2400 inclusive); and
- v. for each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday which is not NERC Holiday, the seven (7) hour period starting at 0000 MPT and ending at 0700 MPT (HE0100 to HE0700 inclusive); and the one (1) hour period starting at 2300 MPT and ending at 2400 MPT (HE2400);
- h. "Alberta Peak" means the sixteen hour (16) periods for each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday which is not a NERC Holiday, starting at 0700 MPT and ending at 2300 MPT (HE0800 to HE2300 inclusive);
- i. "Alberta Super Peak" means the six (6) hour periods for each day starting at 1600 MPT and ending at 2200 MPT (HE1700 to HE2200 inclusive);
- j. "BBtu" means billions (10<sup>9</sup>) British thermal units;
- k. "Calculation Period" means the number of days in the term of a natural gas or Oil Swap Transaction, or the number of days in the term of the Underlying Transaction if natural gas Option Transaction; and the number of hours in the term of an electricity Swap Transaction;
- l. "CMA" means the simple average of the daily settlement price for light, sweet crude oil as traded on and published by the U.S. Provider for the prompt month contract trading during the applicable Delivery Period at Cushing, Oklahoma;
- m. "Cherrywood Transformer Station" means the 500kV transformer station currently owned by Hydro One Networks Inc. located at 2275 Fairport Road North in Pickering, Ontario;
- n. "Crude 3-Day Index Calculation Period" means, with respect to a delivery month, the last three Trading Days immediately prior to and including the Trading Day in which the Crude Contract Expiry Time occurs for such delivery month;
- o. "Crude Contract Expiry Time" means, with respect to a delivery month, the time of the close of trading on the Trading Day immediately prior to the Crude Notice of Shipment Date for such delivery month;
- p. "Crude Full Index Calculation Period" means, with respect to a delivery month, the period commencing on the first Trading Day of each calendar month immediately prior to the delivery month and ending on the Trading Day on which the Crude Contract Expiry Time for that delivery month occurs;
- q. "Crude Notice of Shipment Date" means, with respect to a delivery month, the due date and time for initial notice of shipments for such delivery month as stated from time to time in the Forecast Reporting Calendar;
- r. "Crude Type" means, for a Swap Transaction, the types and categories of Oil contemplated to be the Notional Quantity for such Swap Transaction as further specified on the Oil Trading Platform;
- s. "Currency Conversion" means the currency conversion for converting Canadian dollars to US dollars as published on the Bank of Canada's website;
- t. "DNS" means the closing daily settlement price for light, sweet crude oil for the applicable delivery month as traded on and published by the U.S. Provider as at the date of the applicable Transaction, as further described in Appendix 2 to Schedule "H";

- u. "Effective Date" means in respect of a Swap Transaction, the first day of the term specified in any Swap Product pursuant to this Schedule "E";
- v. "Energy Conversion Rate" means the energy conversion rate for GJ and MMBtu as published by the Gas Industry Standards Board;
- w. "ENMAX" means ENMAX Energy Corporation;
- x. "ENMAX RRO – LFM" means a product that covers a percentage of ENMAX's regulated rate option load that is to be settled as a financial swap using ENMAX LFM plus the trade differential price against the AEFPP with respect to consumed volume. The minimum size for ENMAX RRO – LFM electricity swap is 1.0% of ENMAX's regulated rate option load;
- y. "EPCOR" means EPCOR Energy Inc. and EPCOR Energy Alberta Inc.;
- z. "EPCOR RRO" means a product that covers a percentage of EPCOR's Regulated Rate Option load that is to be settled as a financial swap against the Alberta Electricity Floating Price with respect to consumed volume plus 4.16%, which is a constant value to allow for transmission loss, for each applicable hour. The minimum order size for an EPCOR RRO Electricity Swap is 1.0% of EPCOR's Regulated Rate Option Load;
- aa. "EPT" means Eastern prevailing time;
- bb. "Fixed Amount" means an amount payable by the Fixed Price Payer on the Swap Settlement Date to be determined by reference to the Fixed Price, Notional Quantity and Calculation Period for the applicable Swap Product as specified in the NGX Product List;
- cc. "Fixed Price" means the fixed price as negotiated electronically for the applicable Swap Product as specified in the NGX Product List and agreed to by Exchange and the Contracting Party upon entering into the Swap Transaction;
- dd. "Fixed Price Payer" means the party which is obligated to make payments in respect of the Swap Transaction of amounts calculated by reference to the Fixed Price, Notional Quantity and Calculation Period, as the case may be;
- ee. "Floating Amount" means an amount payable by the floating price Payer on the Swap Settlement Date determined by reference to the Floating Price, Notional Quantity and Calculation Period for the applicable Swap Product as specified in the NGX Product List;
- ff. "Floating Price" means the floating price for the applicable Swap Product as specified in the NGX Product List;
- gg. "Floating Price Payer" means the party which is obligated to make payments from time to time in respect of the Swap Transaction of amounts calculated by reference to the Floating Price, Notional Quantity and Calculation Period, as the case may be;
- hh. "Forecast Reporting Calendar" means the forecast reporting calendar published from time to time by the Crude Oil Logistics Committee, or its successor, or any reasonable replacement thereof as determined by Exchange from time to time;
- ii. "GigaJoule" or "GJ" means 1,000,000,000 Joules;
- jj. "Heat Rate" means a measure of generating station thermal efficiency, generally expressed in GJ per net MWh. It is computed by dividing the total GJ content of fuel burned for electric generation by the resulting net MWh generation;

- kk. "Hour Ending" or "HE" means the period ending that hour, e.g. HE1100 means the time starting 10:00:00 and ending at 10:59:59 hours;
- ll. "Hourly Ontario Electricity Price" or "HOEP" means the Hourly Ontario Electricity Price as published by IESO on their website. In the event that Locational Marginal Pricing is introduced in the Ontario electricity market or Exchange determines, in its sole discretion acting reasonably, that the HOEP is no longer the applicable reference to determine the Floating Price Description for the Ontario Electricity Swap Products, the Floating Price Description for the Ontario Electricity Swap Products shall be the hourly price paid by a Load Facility at the nodal, zonal or other price reference location on the IESO-controlled Grid that is either at, includes or is closest to the Cherrywood Transformer Station;
- mm. "IESO" means the Ontario Independent Electricity System Operator, a not-for-profit entity established by the Government of Ontario;
- nn. "Joule" means that amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;
- oo. "Megawatt" or "MW" means one million (1,000,000) Watts;
- pp. "Megawatt-hour" or "MWh" means one megawatt of electricity for one hour;
- qq. "Month" means a calendar month;
- rr. "MMBtu" means millions (10<sup>6</sup>) British thermal units;
- ss. "MPT" means Mountain prevailing time;
- tt. "NERC" means the North American Electricity Reliability Council or any successor organization thereto;
- uu. "NERC Holiday" means such additional off-peak days as published by NERC on its internet website in a table called "Additional Off-peak Days (aka holidays) for Eastern and Western Interconnections";
- vv. "Notional Quantity" means the quantity of gas, electricity or oil agreed to by Exchange and the Contracting Party upon entering into a Swap Transaction, which forms the basis of settlement for the Swap Transaction and is referred to in the respective Swap Confirmation as the Notional Quantity;
- ww. "OTP 3-Day Index" means the price indices calculated as specified in the OTP Index Guide over the Crude 3-Day Calculation Period for the Crude Type for each Delivery Period;
- xx. "OTP Full Index" means the price indices calculated as specified in the OTP Index Guide over the Crude Full Index Calculation Period for the Crude Type for each Delivery Period;
- yy. "OTP Index" means any OTP 3-Day Index or OTP Full Index as specified for the applicable Swap Transaction;
- zz. "OTP Index Guide" means the price index guide of Exchange relating to physical and financial Oil transactions entered through the Oil Trading Platform and the manner in which each OTP Index is to be generated, available on the NGX Trading System;
- aaa. "OTP Posting Index (3-Day)" or "Xp3" means a price index calculated by Exchange over the applicable Crude 3-Day Calculation Period from the postings of designated posters, as further specified in this Agreement and in the OTP Index Guide, for the applicable Crude Type;

- bbb. "OTP Posting Index (Full)" or "XpF" means a price index calculated by Exchange over the applicable Crude Full Index Calculation Period from the price postings of designated posters, as further specified in this Agreement and in the OTP Index Guide, for the applicable Crude Type;
- ccc. "OTP WTI Index (3-Day)" or "Xti3" means a price index calculated by Exchange over the applicable Crude 3-Day Calculation Period from basis differentials from CMA, as further specified in this Agreement and in the OTP Index Guide, for the applicable Crude Type;
- ddd. "OTP WTI Index (Full)" or "XtiF" means a price index calculated over the applicable Crude Full Index Calculation Period from basis differentials from CMA, as further specified in this Agreement and in the OTP Index Guide, for the applicable Crude Type;
- eee. "OTP WTI Index (BalMO)" or "XtiB" means a price index applicable to a given trade date, calculated from the day after trade until the end of the applicable Crude Full Index Calculation Period from basis differentials from CMA, as further specified in this Agreement and in the OTP Index Guide, for the applicable Crude Type;
- fff. "Ontario – Flat" means the periods on each calendar day as follows:
- i. in the case of a Sunday on and from which time is to be one hour in advance of eastern standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of eastern standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2500 inclusive); and
  - iii. for all other calendar days, the twenty-four (24) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2400 inclusive);
- ggg. "Ontario Extended Off-Peak" means the seven (7) hour period for each day starting at 0000 EPT and ending at 0700 EPT (HE0100 to HE0700 inclusive); and the one (1) hour period starting at 2300 EPT and ending at 2400 EPT (HE2400);
- hhh. "Ontario Extended Peak" means the sixteen hour (16) periods for each day, starting at 0700 EPT and ending at 2300 EPT (HE0800 to HE2300 inclusive)
- iii. ~~ggg.~~ "Ontario On-Peak" means the sixteen hour (16) periods for each Monday, Tuesday, Wednesday, Thursday and Friday which is not a NERC Holiday, starting at 0700 EPT and ending at 2300 EPT (HE0800 to HE2300 inclusive);
- iii. ~~hhh.~~ "Ontario Off-Peak" means the periods as follows:
- i. in the case of a Sunday on and from which time is to be one hour in advance of eastern standard time (second Sunday in March), the twenty-three (23) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2300 inclusive);
  - ii. in the case of a Sunday on and from which time is no longer to be one hour in advance of eastern standard time (first Sunday in November), the twenty-five (25) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2500 inclusive);
  - iii. for all other Saturdays and Sundays, the twenty-four (24) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2400 inclusive);

- iv. for each NERC Holiday, the twenty-four (24) hour period starting at 0000 EPT and ending at 2400 EPT (HE0100 to HE2400 inclusive); and
  - v. for each Monday, Tuesday, Wednesday, Thursday and Friday which is not NERC Holiday, the seven (7) hour period starting at 0000 EPT and ending at 0700 EPT (HE0100 to HE0700 inclusive); and the one (1) hour period starting at 2300 EPT and ending at 2400 EPT (HE2400);
- ~~kkk.~~ ~~iii.~~-"Option Exercise Conditions" means, for any Option Transaction, the option exercise conditions specified in this Schedule "E";
- ~~lll.~~ ~~jjj.~~-"Option Exercise Date" means the day on which a Option Transaction is either deemed to be exercised or deemed to expire depending on the Option Exercise Conditions or Option Expiry Conditions, as the case may be, having been met, which date is specified for each Option Transaction as the date the Underlying Price is established by Exchange;
- ~~mmm.~~ ~~kkk.~~-"Option Expiry Conditions" means, for any Option Transaction, the failure of any or all Option Exercise Conditions to have been met on the respective Option Exercise Date, in which case such Option Transaction shall be deemed to have expired with no further opportunity for the Underlying Transaction to become effective;
- ~~nnn.~~ ~~lll.~~-"Option Premium Price" means the price per unit negotiated between the Option Buyer and the Option Seller for any Option Transaction;
- ~~ooo.~~ ~~mmmm.~~-"Period End Date" means, in respect of a Swap Transaction, the last day during the term specified in any Swap Product pursuant to this Schedule "E";
- ~~ppp.~~ ~~rrrr.~~-"PPT" means Pacific prevailing time;
- ~~qqq.~~ ~~oooo.~~-"Strike Price" means, in respect of an Option Product, the price negotiated between the Option Buyer and the Option Seller that will constitute the price against which the Underlying Price for that Product will be measured on the applicable Option Exercise Date which measurement forms the basis for determining whether the respective Option Exercise Conditions have been met for that particular Option Product;
- ~~rrr.~~ ~~pppp.~~-"Swap Transaction Date" means the date upon which a Contracting Party enters into a Swap Transaction;
- ~~sss.~~ ~~qqqq.~~-"TeraJoule" or "TJ" means 1,000,000,000,000 Joules and is equal to 1,000 GJ;
- ~~ttt.~~ ~~rrrr.~~-"U.S. Provider" is defined in the OTP Index Guide;
- ~~uuu.~~ ~~ssss.~~-"Underlying Price" means, in respect of an Option Product, the price to be measured against the relevant Strike Price on the applicable Option Exercise Date, as set forth in the NGX Product List, which measurement forms the basis for determining whether the respective Option Exercise Conditions have been met for that particular Option Product;
- ~~vvv.~~ ~~ttt.~~-"Watt" means the power that produces energy at the rate of one (1) Joule per second; and
- ~~www.~~ ~~uuuu.~~-"WTI Index" means, as applicable, CMA or DNS.

(This Schedule "E" has been amended as of August 1, 2009; October 21, 2009)

## SCHEDULE "F" – PHYSICAL GAS – CANADIAN DELIVERY POINTS

### 1. PRODUCT AVAILABILITY

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

### 2. RELATIONSHIP TO AGREEMENT

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

### 3. LOCATION SPREADS

Location Spread Products are available as listed in the NGX Product List. The Location Spread Product allows Buyers and Sellers to transact simultaneously at the Delivery Points by electronically negotiating an acceptable Daily Contract Quantity and Location Price.

- a. The Buyer of the Location Spread Product will be the Buyer of a Location Spread Transaction at the first Delivery Point for purchase of the Contract Quantity at that Delivery Point; and will be the Seller of a Location Spread Transaction for the sale of the Contract Quantity at the second Delivery Point;
- b. The Seller of the Location Spread Product will be the Seller of a Location Spread Transaction for the sale of the Contract Quantity at the first Delivery Point; and will be the Buyer of a Location Spread Transaction for the purchase of the Contract Quantity at the second Delivery Point;
- c. A force majeure event at the first Delivery Point may reduce the Obligations of Exchange and Contracting Party under the Location Spread Transaction at the first Delivery Point pursuant to this Schedule but will not effect the Obligations of Exchange and the Contracting Party under the Location Spread Transaction at the second Delivery Point;
- d. A force majeure event at the second Delivery Point may reduce the Obligations of Exchange and the Contracting Party under the Location Spread Transaction at the second Delivery Point pursuant to this Schedule but will not affect the Obligations of Exchange and the Contracting Party under the Location Spread Transaction at the first Delivery Point;
- e. The Purchase Price for the second Delivery Point Location Spread Transaction will be the most recently transacted Purchase Price, or in the absence of a current Trading Day Transaction, the Settlement Price for the previous Trading Day in the respective AB-NIT Product for AB-NIT Location Spread Products or Union-Dawn for Niagara, Chippawa, Iroquois, St. Clair or Union-Dawn Location Spread Products;
- f. The Purchase Price for the first Delivery Point Location Spread Transaction will be the most recently transacted Purchase Price, or in the absence of a current Trading Day transaction, the Settlement Price for the previous Trading Day in the respective AB-NIT Product for AB-NIT Location Spread Products or Union-Dawn for Niagara, Chippawa, Iroquois, St. Clair or Union-Dawn Location Spread Products plus the Location Price;
- g. All other Obligations with respect to each Location Spread Transaction will be as outlined in this Schedule.

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

- a. Notice of Deliveries - At any time prior to delivery, Exchange may give notification to the Contracting Party of total Daily Contract Quantities due for receipt or delivery, and may request verification from the Contracting Party that the Contracting Party has an active Title Transfer, MTT, services contract or pipeline agreement account, as applicable, with appropriate pipeline operators for services at each Delivery Point at which the Contracting Party transacts, such account being at all times in good standing and, in the case of the Empress Delivery Points, that it holds all necessary entitlements to deliver gas on TCPL Alberta System or receive gas on the TCPL Canadian Mainline System, as applicable, on a firm basis (and not on an interruptible basis).
- b. Verification of Deliveries - Within 24 hours of any request by Exchange, the Contracting Party will verify its capacity to take or deliver the Daily Contract Quantities for each Delivery Day.
- c. Remedial Actions by Contracting Party – If the Contracting Party does not verify its capacity to take or deliver the total Daily Contract Quantities for any Delivery Day in accordance with paragraph b., the Contracting Party shall continue to be entitled to complete such verifications or to enter into a Physical Gas Transaction to offset, in whole or in part, its delivery or receipt obligations until 15:00 on the second Business Day prior to such Delivery Day.
- d. Remedial Actions by Exchange if verifications in accordance with paragraph b. are not given by the Contracting Party - By 15:00 on the second Business Day prior to such Delivery Day, the orders of the Contracting Party which the Contracting Party has entered for the purchase or sale of gas may be eliminated and Exchange may enter into Physical Gas Transactions to offset, in whole or in part, delivery or receipt obligations, which in the opinion of Exchange may not be performed, in accordance with the Liquidation Procedure as provided in Section 5.5 of the Terms and Conditions.

#### 5. **DELIVERY PROCEDURES**

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

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

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

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

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



On each Trading Day, Exchange will submit Title Transfer Nominations for the delivery or take of gas under all Physical Gas Transactions at the applicable Delivery Point entered into through the Trading System before 11:30 CST on each Trading Day as follows:

- a. both Exchange and the Contracting Parties will convert the Daily Contract Quantities under each Physical Gas Transaction from MMBtu to GigaJoules in accordance with the conversion factor as published in the TCPL Terms and Conditions, and round such quantities to the nearest GigaJoule;
- b. both Exchange and the Contracting Parties will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each Delivery Day for all Physical Gas Transactions to determine a net Daily Contract Quantity at the applicable Delivery Point;
- c. Exchange will submit Title Transfer Nominations to TCPL via NRG Highway before 12:00 CST for all net Daily Contract Quantities of gas to be delivered or to be taken on each Delivery Day at the applicable Delivery Point. The Title Transfer Nomination will also include a unique package number, Contracting Party mnemonic and beginning and end date; and
- d. Any Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the applicable Delivery Point will acknowledge the Title Transfers Nominations submitted by Exchange before 14:00 CST via NRG Highway.

#### C. UNION-DAWN AND PARKWAY DELIVERY POINTS

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

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

#### D. SPECTRA DELIVERY POINTS

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

- a. each Contracting Party will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each Gas Day for all Physical Gas Transactions to determine a net Daily Contract Quantity at the Spectra Delivery Points;

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

E. ATCO DELIVERY POINTS

Exchange will submit Title Transfers to Atco Pipelines for the delivery or receipt of gas under all Physical Gas Transactions at the Atco North Delivery Point or Atco South Delivery Point as follows:

- a. for all Yesterday Products - Before 0930 MPT on each day, Exchange will for each Contracting Party, aggregate all the DCQs for delivery and aggregate all the DCQs in the Atco North Yesterday Contract or the Atco South Yesterday Contract as applicable. Exchange will submit a Title Transfer for all net deliveries and net receipts in GJs, Contracting Party's account number, with a start and end date of yesterday;
- b. for all Same Day Products - Before 1400 MPT on each day, Exchange will for each Contracting Party, aggregate all of the DCQs for delivery and aggregate all of the DCQs for receipt in the Same Day Physical Gas Transactions. Exchange will submit a Title Transfer for all net deliveries and net receipts in GJs, Contracting Party's account number and with a start and end date of today;
- c. for all other Physical Gas Transactions - After Exchange's close of business on each day, Exchange will for each Contracting Party aggregate all of the DCQs for delivery tomorrow and aggregate all of the DCQs for receipt tomorrow in the Physical Gas Transactions. Exchange will submit Title Transfer for all net deliveries and net receipts in GJs with the Contracting Party's account number with a start and an end date of tomorrow.

F. TEP DELIVERY POINTS

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

- a. for all Same Day Products - Before 1400 MPT on each day, Exchange will for each Contracting Party, aggregate all of the DCQs for delivery and aggregate all of the DCQs for receipt in the Same Day Physical Gas Transactions. Exchange will submit a Title Transfer for all net deliveries and net receipts in GJs with the Contracting Party's account number and with a start and end date of today;
- b. for all other Physical Gas Transactions - After Exchange's close of business on each day, Exchange will for each Contracting Party aggregate all of the DCQs for delivery tomorrow and aggregate all of the DCQs for receipt tomorrow in the Physical Gas Transactions. Exchange will submit Title Transfer for all net deliveries and net receipts in GJs with the Contracting Party's account number with a start and an end date of tomorrow.

**6. PERFORMANCE OF THE PHYSICAL GAS TRANSACTIONS**

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

The Physical Gas Transactions at the applicable Delivery Point will be performed as follows:

By the Contracting Party:

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

By Exchange:

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

B. EMPRESS DELIVERY POINTS

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

**7. PROCEDURES ON FAILURE OF PERFORMANCE**

A. AB-NIT, ATCO AND TEP DELIVERY POINTS

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

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

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

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

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

**8. TITLE**

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

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

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

- a. If it is the Seller -
  - i. it has the full right and authority to sell gas;
  - ii. it owns and has title to gas, or irrevocable authority to sell gas;
  - iii. gas delivered to the Buyer shall be free from all royalty payments, Liens or encumbrances whatsoever;
  - iv. it has all necessary rights and entitlements for the delivery of gas on the applicable pipeline on a firm basis (and not on an interruptible basis); and
  - v. has an account with the applicable pipeline that is, at all times, in good standing with sufficient inventory to deliver the total DCQ sold on a firm basis under its Physical Gas Transactions for each Gas Day.
- b. If it is the Buyer -
  - i. it has the full right and authority to purchase gas;
  - ii. it has all necessary rights and entitlements for the receipt of gas on the applicable pipeline on a firm basis (and not on an interruptible basis); and
  - iii. it has a TCPL account in good standing with sufficient capacity to take the total DCQ purchased on a firm basis under its Physical Gas Transactions for each Gas Day.

**10. LIABILITY**

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

**11. FORCE MAJEURE**

A. AB-NIT DELIVERY POINT

- a. A force majeure event will exist in the event:
  - i. of a declared force majeure by TCPL; or

- ii. that TCPL has caused a curtailment of the volume of gas which may be accepted by TCPL for delivery on the TCPL Alberta System,

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

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

#### B. EMPRESS DELIVERY POINTS

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

#### C. UNION-DAWN AND PARKWAY DELIVERY POINTS

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

#### D. EASTERN CANADA DELIVERY POINTS

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

E. SPECTRA DELIVERY POINTS

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

F. ATCO DELIVERY POINTS

- a. A force majeure event will exist in the event:
- i. of a declared force majeure by Atco Pipelines; or
  - ii. that Atco Pipelines has caused a curtailment of the volume of gas which may be accepted by Atco Pipelines for delivery on the Atco North or Atco South Transportation Systems, which has the result of reducing the volume of gas which may be accepted by Atco Pipelines for delivery to the Atco North or Atco South Transportation Systems by 25% or more, and reducing by 25% or more the aggregate of all obligations under Physical Gas Transactions for all Contracting Parties which can be delivered or received; or

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

#### G. TEP DELIVERY POINTS

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

### 12. PROCEDURES ON FORCE MAJEURE EVENT

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

- a. Investigation - Exchange will, in consultation with the applicable pipeline, make a determination of whether a force majeure event exists and an estimate of its probable duration.
- b. Physical Gas Transactions - All Contracting Parties with Physical Gas Transactions for any of the Physical Gas Products for which access to the Trading System may be closed will be asked to provide confirmable estimates of the volume of gas that could be delivered or taken in respect of such obligations under such Physical Gas Transactions in order to ascertain available supply and available demand and as to any preferable alternative arrangements which may affect available supply or available demand.



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

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

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

**13. INVOICE AMOUNTS**

**A. AB-NIT DELIVERY POINTS**

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

- a. For gas delivered or received by multiplying the following:

- i. the portion of the Contract Quantity of gas delivered or taken at the AB-NIT Delivery Point for each Delivery Day of the given Month under all Basis Alberta Physical Gas Transactions and all AB-NIT US\$ and NGX AB-NIT Same Day Index 5A US Products for a given Month expressed in MMBtu's; times
  - ii. the Purchase Price, expressed in U.S. dollars per MMBtu for all Basis Alberta Physical Gas Transactions and AB-NIT U.S.\$ and NGX AB-NIT Same Day Index 5A US Products for such Month; plus
  - iii. the portion of the Contract Quantity of gas delivered or taken at the intra Alberta Delivery Point for each Delivery Day of the given Month under all NGX AB-NIT Same Day Index 2A Transactions, NGX AB-NIT Same Day Index 4A Transactions and NGX AB-NIT Same Day Index 5A Transactions for a given Month expressed in GJs; times
  - iv. Purchase Price, expressed in dollars per GJ for all NGX AB-NIT Same Day Index 2A Transactions, NGX AB-NIT Same Day Index 4A Transactions and NGX AB-NIT Same Day Index 5A Transactions for such Month; plus
- b. All fees as outlined in Schedule "A" of this Agreement; plus
  - c. Any fees charged to Exchange by TCPL for the Title Transfers pertaining to the delivery of gas under all such Physical Gas Transactions; plus
  - d. Any applicable taxes pursuant to Article 7 of this Agreement.

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

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

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

**14. INTERPRETATION**

- a. All times referred to herein are to Central Standard Time ("CST") except for the Atco North and Atco South Delivery Points, which are Mountain Prevailing Time ("MPT").
- b. The currency of all amounts of money referred to herein for each Delivery Point are as outlined in the NGX Product List.

- c. Capitalized words and phrases used in this Schedule and not defined in this Schedule will have the same meaning as set forth in this Agreement.

**15. DEFINITIONS**

- a. "AB-NIT Delivery Point" means a notional point in Alberta where gas on the TCPL Alberta System can be transferred between TCPL customer accounts utilizing title transfers;
- b. "Atco North Delivery Point" means a notional point in Alberta on the Atco North Transportation System where gas can be transferred between Atco Pipelines customer accounts utilizing Nominations;
- c. "Atco North Transportation System" means Atco Pipelines intraprovincial gas pipeline system located in Alberta as described in the Atco Pipelines Agreements;
- d. "Atco Pipelines" means the trade name for Atco Gas and Pipelines Ltd.;
- e. "Atco Pipelines Agreements" means the Atco Pipelines Transportation Agreement, the Atco Customer use Agreement and the Atco Pipelines Transmission Transportation Service Agreements;
- f. "Atco South Delivery Point" means a notional point in Alberta on the Atco South Transportation System where gas can be transferred between Atco Pipelines customer accounts utilizing Nominations;
- g. "Atco South Transportation System" means Atco Pipelines intraprovincial gas pipeline system located in Alberta as described in the Atco Pipelines Agreements;
- h. "Basis Products" and "Basis Physical Transactions", respectively, means those Physical Gas Products and Physical Gas Transactions where the formula for the calculation of the Purchase Price is determined at the time of entering into the Physical Gas Transaction and is based on the Henry Futures Settlement Price;
- i. "BBTU" means billions ( $10^9$ ) British thermal units;
- j. "CGPR" means Canadian Gas Price Reporter, published by Enerdata Ltd., or its successor;
- k. "Chippawa Delivery Point" means the interconnection between TCPL Canadian Mainline System and Empire near Chippawa, Ontario;
- l. "Duke" means Duke Energy Gas Transmission;
- m. "Duke BC Pipeline" means the gas pipeline operated by Duke in the Province of British Columbia, formerly called the Westcoast Energy Inc. Pipeline;
- n. "Duke Terms and Conditions" means the General Terms and Conditions of the Westcoast Energy Inc. Pipeline Tariff as amended, restated or replaced from time to time;
- o. "Eastern Canada Delivery Points" collectively, means the Chippawa Delivery Point, Niagara Delivery Point, Iroquois Delivery Point, St. Clair Delivery Point and the Emerson Great Lakes Delivery Point;
- p. "Emerson Great Lakes Delivery Point" means the interconnection between TCPL Canadian Mainline System and Great Lakes near Emerson, Manitoba;
- q. "Empire" means Empire State Pipeline Company;
- r. "Empress Delivery Point" means the interconnection between the TCPL Alberta System and the TCPL Canadian Mainline System at Empress, Alberta;

- s. "Fixed Price Products" and "Fixed Price Physical Transactions" means those Physical Gas Products and Physical Gas Transactions where the Purchase Price is fixed at the time of entering into the Fixed Price Physical Gas Transaction;
- t. "gas" means natural gas meeting the specifications in the TCPL Terms and Conditions as then in effect at the time of delivery of gas in respect of the AB-NIT Delivery Point;
- u. "Gas Daily" means a publication entitled Platts Gas Daily published by Platts, a division of The McGraw-Hill Companies, Inc.;
- v. "Gas Day" means a period of twenty-four (24) consecutive hours beginning and ending at 9:00 a.m. Central Clock Time;
- w. "GigaJoule" or "GJ" means 1,000,000,000 ( $10^9$ ) Joules;
- x. "Great Lakes" means Great Lakes Transmission Company;
- y. "Henry Futures Settlement Price" is defined in the NGX Price Index Methodology Guide;
- z. "IGTS" means Iroquois Gas Transmission Company;
- aa. "Index Products" and "Index Physical Transactions", respectively, means those Physical Gas Products and Physical Gas Transactions where the formula for the calculation of the price of gas is determined at the time of entering into the Physical Gas Transaction and is based on the NGX Union-Dawn Day Ahead Index;
- bb. "Iroquois Delivery Point" means the interconnection between TCPL Canadian Mainline System and IGTS, also referred to as Waddington;
- cc. "Joule" means that amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;
- dd. "Location Products" means those Physical Gas Products where the formula for calculation of the Purchase Price is determined at the time of entering into a Physical Gas Transaction and is based on the Henry Futures Settlement Price;
- ee. "Location Price" means the price agreed to for the receipt of gas by the Buyer and the delivery of gas by the Seller, which when added to the previous day Settlement Price in the equivalent AB-NIT Product for AB-NIT Location Spread Products or Union-Dawn for Niagara, Chippawa, Iroquois, St. Clair or Union-Dawn Location Spread Products, forms the Purchase Price for the Location Spread Transaction, plus any applicable GST;
- ff. "Location Spread Product" means a Physical Gas Product which facilitates the simultaneous entering into as Buyer on the one hand and Seller on the other of two otherwise equivalent Physical Gas Transactions at two different Delivery Points, the particulars of which are further described in this Schedule "F";
- gg. "Location Spread Transaction" means a Physical Gas Transaction in respect of a Location Spread Product, entered into by the Buyer or Seller as the case may be, from time to time through the NGX Trading System or ICE Trading Platform, as applicable, for the purchase or sale of such Product;
- hh. "MMBtu" means 1,000,000 ( $10^6$ ) British thermal units;
- ii. "Month" means a month commencing on the first Gas Day of the calendar month and ending on the first Gas Day of the next calendar month;

- jj. "MPT" means mountain prevailing time;
- kk. "MTT" means TCPL Multiple Title Transfer account as defined in the TCPL Terms and Conditions;
- ll. "Name Change Nomination" means a nomination for the transfer of gas as defined in the applicable pipelines services contract;
- mm. "NGX AB-NIT Day Ahead Index" means, for gas delivered for the NGX AB-NIT Day Ahead Product, as defined in the NGX Product List, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- nn. "NGX AB-NIT Month Ahead Products" and "NGX AB-NIT Month Ahead Transactions" are those Physical Gas Products and Physical Gas Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Month Ahead Physical Gas Transaction and is based on the NGX AB-NIT Month Ahead Index (7A);
- oo. "NGX AB-NIT Month Ahead Index (7A)" means, for gas delivered during the delivery Month for all NGX AB-NIT Month Ahead Products, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- pp. "NGX AB-NIT Same Day Index (2A)" means, for gas delivered under all Daily Index 2A Physical Gas Transactions, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- qq. "NGX AB-NIT Same Day Index 2A Product" and "NGX AB-NIT Same Day Index 2A Transactions" means those Physical Gas Products and Physical Gas Transactions, where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 2A Transaction and is based on the NGX AB-NIT Same Day Index (2A);
- rr. "NGX AB-NIT Same Day Index (4A)" means, for gas delivered for the Daily Index 4A Physical Gas Transaction, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- ss. "NGX AB-NIT Same Day Index 4A Product" and "NGX AB-NIT Same Day Index 4A Transaction" means those Physical Gas Products and Physical Gas Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 4A Transaction and is based on the NGX AB-NIT Same Day Index (4A);
- tt. "NGX AB-NIT Same Day Index (5A)" means, for gas delivered for the Daily Index 5A Physical Gas Transactions, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- uu. "NGX AB-NIT Same Day Index 5A Product" and "NGX AB-NIT Same Day Index 5A Transaction" means those Physical Gas Products and Physical Gas Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 5A Transaction and is based on the NGX AB-NIT Same Day Index (5A);
- vv. "NGX AB-NIT Same Day Index (5A) in the US" means, for gas delivered for the Daily Index 5A US Physical Gas Transactions, the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's;
- ww. "NGX AB-NIT Same Day Index 5A US Product" and "NGX AB-NIT Same Day Index 5A US Transaction" means those Physical Gas Products and Physical Gas Transactions where the formula for calculation of the Purchase Price is determined at the time of entering into a NGX AB-NIT Same Day Index 5A US Transaction and is based on the NGX AB-NIT Same Day Index (5A) in the US;

- xx. "NGX AB-NIT Spectra Station #2 Day Ahead Index" means the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published on each Business Day on Exchange's Website;
- yy. "NGX Index Methodology Guide" means a document published by Exchange on Exchange's Website that provides descriptions of methodology for determining and definitions of price indices;
- zz. "NGX Union-Dawn Day Ahead Index" means the daily weighted average price the average price as determined by Exchange in accordance with the NGX Price Index Methodology Guide and published each Business Day on Exchange's Website;
- aaa. "Niagara Delivery Point" means the interconnection between TCPL Canadian Mainline System and TGP near Niagara Falls, Ontario;
- bbb. "'Nomination" means a request in electronic or other written form for gas to flow as defined in the Atco Pipelines Agreement;
- ccc. "Northwest Pipeline System" means the gas pipeline operated by Northwest Pipeline Corporation which interconnects with the Duke BC Pipeline;
- ddd. "NRG Highway" means the online nomination system operated by TCPL;
- eee. "Settlement Price" means as defined in Schedule "C" – Risk Management Policy;
- fff. "Spectra Delivery Points" collectively, means the Spectra Huntingdon Delivery Point and the Spectra Station #2 Delivery Point;
- ggg. "Spectra Huntingdon Delivery Point" means a location on the Duke BC Pipeline near the interconnection with Northwest Pipeline System, referred to as the Huntingdon Pool in the Duke Terms and Conditions;
- hhh. "Spectra Station #2 Delivery Point" means a location on the Duke BC Pipeline at Compressor Station No. 2 near Chetwynd, British Columbia;
- iii. "Spot Day" means the next Gas Day;
- jjj. "St. Clair Delivery Point" means a location on the TCPL Canadian Mainline System near St. Clair, Ontario and as defined in the TCPL Terms and Conditions;
- kkk. "TCPL" means TransCanada Pipelines Limited;
- lll. "TCPL Alberta System" means TCPL's intraprovincial pipeline system located in Alberta, formerly known as NOVA Gas Transmission Ltd.;
- mmm. "TCPL Canadian Mainline System" means TCPL's interprovincial pipeline system;
- nnn. "TCPL Terms and Conditions" means the General Terms and Conditions of the Gas Transportation Tariff of TCPL Alberta System;
- ooo. "TEP Delivery Point" means TransGas Transfer Point 3602 for Title Transfers;
- ppp. "TeraJoule" or "TJ" means 1,000,000,000,000 (10<sup>12</sup>) Joules and is equal to 1,000 GJ;
- qqq. "TGP" means Tennessee Gas Pipeline Company;

- rrr. "Title Transfer" means the notification of inventory transfers sent to TCPL directing TCPL to transfer gas between a Contracting Party's TCPL account and Exchange's TCPL account, as described in Appendix "C" of the TCPL Terms and Conditions;
- sss. "Title Transfer Nominations" means the nomination for the transfer of gas into or from MTT account as defined in the TCPL Terms and Conditions;
- ttt. "TransGas" means TransGas Limited;
- uuu. "Union" means Union Gas Limited;
- vvv. "Union-Dawn Delivery Point" means the Union's Compressor Station site situated in the northwest corner of Lot 25, Concession II in the Township of Dawn in the County of Lambton;
- www. "Union General Terms" means the General Terms & Conditions of the Rate Schedules of Union as amended, restated or replaced from time to time;
- xxx. "Union Parkway Delivery Point" means the junction of Union's and TCPL's facilities, at or adjacent to Union's facilities situated in Part Lot 9 and Part Lot 10, Concession IX, New Survey, Town of Milton, Regional Municipality of Halton; and
- yyy. "Union Services Contract" means the Interruptible Service Delivery Point Contract between Union and each of the Contracting Parties, which includes the provision by Union of the Name Change Service.

**16. APPOINTMENT OF AGENT**

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

(This Schedule "F" has been amended as of May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

**SCHEDULE "G" – PHYSICAL GAS – U.S. DELIVERY POINTS WITH  
MEDIATED DELIVERY NOMINATIONS**

**1. PRODUCT AVAILABILITY**

This Schedule "G" contains clearing and settlement provisions for all Physical Gas Products offered at U.S. Delivery Points with mediated delivery nominations that are listed on the NGX Product List and designated as cleared through the NGX Clearing System.

**2. LOCATION SPREADS**

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

**3. RELATIONSHIP TO AGREEMENT**

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

**4. PRE-DELIVERY PROCEDURES**

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

**5. DELIVERY PROCEDURES**

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

- a. Each Contracting Party will offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken by it on each day for all Physical Gas Transactions to determine a net Daily Contract Quantity at each of the U.S. Delivery Points;



- b. each Contracting Party with a net Daily Contract Quantity to be delivered or to be taken at the U.S. Delivery Points will submit Title Transfers before 11:30 a.m. for the net Daily Contract Quantity to the applicable U.S. Delivery Point Operator;
- c. Exchange will, for each Contracting Party, offset the Daily Contract Quantities due for delivery against the Daily Contract Quantities due to be taken on each day for all Physical Gas Transactions to determine a net Daily Contract Quantity at each of the U.S. Delivery Points;
- d. Exchange will submit Title Transfers to the applicable U.S. Delivery Point Operator for all net Daily Contract Quantities of gas to be delivered or to be taken at the applicable U.S. Delivery Point, before 11:30 a.m.; and
- e. any Contracting Party with net Daily Contract Quantities to be delivered to or to be taken from Exchange at the U.S. Delivery Points will submit rankings to the U.S. Delivery Point Operator in accordance with the Transportation General Terms and Conditions published by the applicable U.S. Delivery Point Operator Gas Tariff.

**6. PERFORMANCE OF THE PHYSICAL GAS TRANSACTIONS**

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

By the Contracting Party:

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

By Exchange:

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

**7. PROCEDURES ON FAILURE OF PERFORMANCE**

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

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

iii. Exchange may exercise any of its rights under Section 5.5 of the Terms and Conditions.

**8. TITLE**

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

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

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

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

**10. LIABILITY**

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

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

#### 11. **FORCE MAJEURE**

- a. A force majeure event may be declared by Exchange at one of the U.S. Delivery Points if a U.S. Delivery Point Operator or U.S. Pipeline Operator declares a force majeure event or materially curtails, interrupts or prorates firm transportation services for a material number of Contracting Parties. Exchange also reserves the right to declare a force majeure if an event (including, but not limited to, a strike, lockout, national emergency, governmental action or act of God) occurs that materially affects the ability of a material number of Contracting Parties to meet their Obligations and that is beyond the control of the Contracting Parties.

For clarity, Exchange will not declare a force majeure to the extent performance is affected by any of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in path, firm transportation is also curtailed; (ii) the failure of a Contracting Party to take commercially reasonable efforts to remedy a transportation, supply or market access issue including, but not limited to, changing upstream or downstream pipelines and/or corresponding supplies or markets; (iii) the economic hardship of a Contracting Party, including, but not limited to, the Seller's ability to sell gas at a better price than the Purchase Price or the Buyer's ability to purchase gas at a better price than the Purchase Price or a regulatory authority disallowing, either in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of the Buyer's market or the Buyer's ability to use or resell gas purchased hereunder; or (v) the loss or failure of the Seller's gas supply or depletion of reserves.

- b. On any day that a force majeure event is declared at one of the U.S. Delivery Points, the Contracting Party's obligation to take or deliver gas pursuant to all Physical Gas Transactions at that U.S. Delivery Point shall be reduced by the same percentage as the curtailment, interruption or allocation for that day. Any Physical Gas Products affected by the force majeure event may be halted from trading for the duration of the force majeure event.

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

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

- d. Further Notice - Exchange will promptly advise the affected Contracting Parties of any material changes to the Force Majeure Declaration.

**13. INVOICE AMOUNTS**

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

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

**14. INTERPRETATION**

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

**15. DEFINITIONS**

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

- h. "NGX Index Methodology Guide" means a document published by Exchange on Exchange's Website that provides descriptions of methodology for determining and definitions of price indices;
- i. "Title Transfers" means a nomination for the transfer of gas as defined in the applicable U.S. Delivery Point Operator's Tariff as outlined in the NGX Product List;
- j. "U.S. Delivery Point Operator" means the applicable U.S. Delivery Point Operator at each Delivery Point as outlined in the NGX Product List and "U.S. Delivery Point Operators" refers to them all collectively;
- k. "U.S. Delivery Points" means all of the Delivery Points listed in the NGX Product List that are designated as utilizing the mediated delivery nomination mechanism outlined in this Schedule "G";
- l. "U.S. Pipeline Operator" means the applicable U.S. Pipeline Operator at each Delivery Point as outlined in the NGX Product List and "U.S. Pipeline Operators" refers to them all collectively.

(This Schedule "G" has been amended as of May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

## SCHEDULE "H" – PHYSICAL OIL TRANSACTIONS

### 1. PRODUCT AVAILABILITY

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

### 2. RELATIONSHIP TO AGREEMENT

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

### 3. TITLE, DELIVERIES AND TAKES

#### 3.1 Deliveries and Takes

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

#### 3.2 Title and Risk

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

(June 8, 2009)

3.3 Equalization, Adjustment and Conversion

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

3.4 Delivery Procedures

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

3.5 Representations and Warranties

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

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

3.6 Disclaimer

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

### 3.7 Exemptions

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

## 4. **FORCE MAJEURE**

### 4.1 Additional Definitions

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

- (a) "Base Forecast" means, with respect to a delivery month, the last forecast by the operator of a Single Source Supply Stream issued prior to the Notice of Shipment Date for that delivery month of the volume of Oil to be available for shipment from that Single Source Supply Stream during that delivery month;
- (b) "Force Majeure" means, subject to Section 4.2, the occurrence of a Force Majeure Event that constitutes a Major System Disruption and prevents a party from delivering or taking Oil in accordance with this Agreement;
- (c) "Force Majeure Event" means any event that is within the following exclusive list of events: earthquakes, floods and landslides; civil disturbances, sabotage, acts of public enemies, war, blockades, insurrections and riots; epidemics; acts of God; acts of any government or other authority or statutory undertaking including, without limitation, any adoption of, or any change in, any Regulation; an inability to obtain or a curtailment of electric power, water or fuel; strikes, lockouts or other labour disruptions; fires and explosions; breakdowns or failures of pipe, plant, machinery or equipment, and contamination or poisoning of catalyst and/or solvent or biological treatment facilities; other events recognized as events of "force majeure" by Transmission Systems; and Transmission System service reductions of general application to shippers announced following the commencement of the applicable delivery month;
- (d) "Major System Disruption" means any Force Majeure Event that Exchange, acting reasonably, determines:
  - (i) has or will have a material, adverse affect on the ability, generally, of Buyers and Sellers to deliver or take Oil at a particular Delivery Point; or
  - (ii) results in the production, processing or delivery of Oil from a Single Source Supply Stream in volumes less than those set forth in the Base Forecast for a particular delivery month;
- (e) "Notice of Shipment" means the document customarily filed by a shipper with the operator of a Transportation System identifying all receipts, transfers and dispositions relating to the shipper's movements of Oil during a specific delivery month;
- (f) "Notice of Shipment Date" means, with respect to a delivery month, the due date and time generally accepted by industry for the filing of initial Notice of Shipment for such delivery month;
- (g) "Revised Forecast" means, with respect to a delivery month, a revision of the Base Forecast for that delivery month issued by the operator of a Single Source Supply Stream;



- (h) "Single Source Supply Stream" means a source of Oil designated as such by Exchange pursuant to Section 4.6(a); and
- (i) "Syncrude Project" means the project currently operated by Syncrude Canada Ltd. for the mining, extraction and upgrading of bitumen from the Athabasca oil sands, including, without limitation, the plant and facilities of Syncrude Canada Ltd. located at Mildred Lake, Alberta and any current or future expansions thereof.

#### 4.2 Exclusions from Force Majeure

For further certainty, Force Majeure does not include:

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

#### 4.3 Limitations on Force Majeure

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

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

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

#### 4.4 Notice of Force Majeure Event

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

- (a) determine if a Major System Disruption is or is likely to occur and, accordingly, whether Force Majeure applies in the circumstances; and

- (b) promptly notify the Contracting Party giving such notice and any other affected Contracting Party of such determination.

#### 4.5 Effect of Force Majeure

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

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

#### 4.6 Single Source Supply Stream

- (a) Exchange hereby designates the Syncrude Project as a Single Source Supply Stream. In addition, Exchange, acting reasonably, may from time to time designate other fields, projects, facilities, gathering systems, pipelines or other sources of Oil as a Single Source Supply Stream. Any designation of a source of Oil as a Single Source Supply Stream by Exchange pursuant to this Section 4.6(a) may be revoked at any time by Exchange. Notwithstanding the foregoing, no designation of a source of Oil as a Single Source Supply Stream or the revocation of such designation shall apply to a Physical Oil Transaction entered into prior to the making of the designation or the revocation thereof, as the case may be.
- (b) Where Force Majeure applies in respect of the delivery of Oil from a Single Source Supply Stream, Exchange shall upon receipt of the Revised Forecast for that Single Source Supply Stream determine, acting reasonably, the maximum amount by which Contract Quantities under Physical Oil Transactions for the delivery of Oil to Exchange from that Single Source Supply Stream may be reduced during the applicable portion of the Delivery Period to which the Revised Forecast relates, such reduction to be calculated as the percentage difference (expressed as a positive number) between the volumes specified in the Base Forecast and the volumes specified in the Revised Forecast ("Cut Back Portion"). In such circumstances, Seller under a Physical Oil Transaction for the delivery to Exchange of Oil from the affected Single Source Supply Stream may, subject to the limitations set out in Section 4.3, elect by notice to Exchange to reduce the Contract Quantity to be delivered during the applicable portion of the Delivery Period by an amount not exceeding the Cut Back Portion ("Revised Contract Quantity"). If the operator of the Single Source Supply Stream issues one or more further Revised Forecasts, Exchange shall in each such case determine, acting reasonably, the maximum amount by which Contract Quantities under Physical Oil Transactions for the delivery of Oil to Exchange from that Single Source Supply Stream may be further reduced during the applicable portion of the Delivery Period to which such Revised Forecast relates, such further reduction to be calculated as the percentage difference (expressed as a positive number) between the volumes specified in the Revised Forecast and the volumes specified in the immediately preceding Revised Forecast ("Incremental Cutback Portion"). In each such case, Seller under a Physical Oil Transaction for the delivery of Oil to Exchange from that Single Source Supply Stream may, subject to the limitations set forth in Section 4.3, elect by notice to Exchange to reduce the Revised Contract Quantity to be delivered during the applicable portion of the Delivery Period by a further amount not exceeding the Incremental Cutback Portion. For greater certainty, no such election shall have the effect of reinstating Seller's right to deliver Contract Quantities

reduced by virtue of one or more prior elections made by Seller pursuant to this Section 4.6(b).

- (c) If, as a result of the occurrence of a Force Majeure Event or additional Force Majeure Events, curtailment of the delivery of Oil from a Single Source Supply Stream extends to one or more delivery months during a Delivery Period subsequent to the delivery month in which a Force Majeure Event first occurred, the process set forth in Section 4.6(b) for determining the Cut Back Portion, Incremental Cut Back Portions and Revised Contract Quantities for each such subsequent delivery month during the Delivery Period shall apply.
- (d) Revised Contract Quantities determined by Exchange in accordance with Section 4.6(b) shall be evidenced in the revised Notice of Shipment documents provided by Exchange to the applicable Transportation System.
- (e) To the extent that the provisions of this Section 4.6 conflict with any other provisions of this Article 4, the provisions of this Section 4.6 shall govern and prevail.

#### 4.7 Termination for Continuing Force Majeure

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

#### 4.8 Disputing the Occurrence of Force Majeure

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

#### 4.9 Extended Definition of Force Majeure

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

### 5. Linked Deals, Time Trades and Matching of Offers

#### 5.1 Linked Deals

A Contracting Party may enter Physical Oil Transactions as Linked Deals with the same or a different Delivery Point for each of the proposed linked Physical Oil Transactions, as long as one or more of the following variable contractual terms of each of the Physical Oil Transactions is different: Crude Type, Delivery Period, Contract Volume or Contract Price.

5.2 Time Trades

A Time Trade consists of a simultaneous offer to purchase and sell Oil by a Contracting Party whereby the Delivery Point and the total monthly volume (barrels per month) are the same but the Delivery Periods are different. The Contract Price for a Time Trade is to be selected by the Contracting Party from the price options menu on the Oil Trading Platform and will be the same for both the offer to purchase and the offer to sell forming part of the Time Trade.

5.3 All of Nothing Designation

Other than with respect to Linked Deals, Cushing Exchanges or Time Trades, the "All or Nothing" designation on the Oil Trading Platform must be selected by a Contracting Party if it wishes to purchase or sell only the full quantity of the amount offered by such Contracting Party. Otherwise, such offer to purchase or sell Oil shall be matched with a corresponding offer to sell or purchase Oil notwithstanding that the proposed Contract Quantities are not the same, and the proposed Contract Quantity for the matched offers shall be the lesser of the two Contract Quantities. In such circumstance and in the event that a Contracting Party's matched Contract Quantity is less than the Contract Quantity offered to be bought or sold by the Contracting Party, the Contracting Party's offer shall remain in effect in accordance with its terms with respect to the residual Contract Quantity.

5.4 Entering Linked Deals, Cushing Exchanges and Time Trades

There shall be no matching of offers to purchase or sell Oil pursuant to Linked Deals, Cushing Exchanges, or Time Trades. A Contracting Party wishing to enter such Physical Oil Transactions with respect to any such offer created by another Contracting Party (as electronically displayed on the Oil Trading Platform) may do so by utilizing the "System Hit" function on the Oil Trading Platform.

(This Schedule "H" has been implemented as of May 1, 2009 or such later date as may be designated by Exchange on notice to the Contracting Parties)

## APPENDIX 1 TO SCHEDULE "H"

### CANADIAN TRADING SPECIFICATIONS

1. Physical Oil Trading Specifications may be revised by Exchange from time to time in accordance with this Agreement. Accordingly, for purposes of entering Physical Oil Transactions, the Physical Oil Trading Specifications electronically displayed on the NGX Trading System shall govern.
2. In addition to the definitions in Section 1.2 of the Terms and Conditions, Schedule "D", Schedule "E" and this Schedule "H", the capitalized words and phrases that are defined below have application only to Canadian Instruments, with their derived variations having corresponding meanings.
  - (a) "Adjusted Sales Price" means, with respect to a Physical Oil Transaction, the Contract Price for such transaction adjusted in accordance with these Physical Oil Trading Specifications to produce the actual proceeds of sale for the applicable Physical Oil Transaction;
  - (b) "Canadian Instruments" means Canadian domiciled Physical Oil Transactions;
  - (c) "Contract Expiry Time" means, with respect to a delivery month, the time of the close of trading on the Trading Day immediately prior to the Notice of Shipment Date for such delivery month;
  - (d) "Crude Type" means the types and categories of Oil described as such below;
  - (e) "Forecast Reporting Calendar" is defined in Section 10(hh) of Schedule "E";
  - (f) "Full Index Calculation Period" means, with respect to a delivery month, the period commencing on the first Trading Day of each calendar month immediately prior to the delivery month and ending on the Trading Day on which the Contract Expiry Time for that delivery month occurs;
  - (g) "Notice of Shipment Date" means, with respect to a delivery month, the due date and time for initial notice of shipments for such delivery month as stated from time to time in the Forecast Reporting Calendar;
  - (h) "OTP Full Index" is defined in Section 10(xx) of Schedule "E";
  - (i) "OTP Index" is defined in Section 10(yy) of Schedule "E";
  - (j) "OTP Index Guide" is defined in Section 10(zz) of Schedule "E";
  - (k) "OTP Posting Index (Full)" or "XpF" is defined in Section 10(bbb) of Schedule "E";
  - (l) "OTP WTI Index (Full)" or "XtiF" is defined in Section 10(ddd) of Schedule "E";
  - (m) "Shorted Party" means the Contracting Party or Exchange, as applicable, that has or will receive Oil quantities from the other party that are less than the requirements under any single Linked Deal or Time Trade, due to Force Majeure; and
  - (n) "Shorted Quantity" means the quantity shortfall of Oil that was required to be delivered by the other party under any single Linked Deal or Time Trade, due to Force Majeure.

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

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

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

The abbreviations used in Table I below are as follows:

**(a) Delivery Point**

Cromer or Cro – at the outlet of the Transportation System selected  
 Edmonton or Edm – at the outlet of the Transportation System selected  
 Hardisty or Har – at the outlet of the Transportation System selected  
 Kerrobert or Ker – at the outlet of the Transportation System selected  
 Milk River or MR – at the outlet of the Transportation System selected

**(b) Transportation Systems**

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

Transportation Systems
Pembina
Rainbow
Rimbey
Trans Mountain Terasen (TMPL)
Westspur

## (c) Crude Type

Product Code	Product	Product Code	Product
AHS	Albian Heavy Sour	PEM	TMPL, Pembina Sweet
BR	Bow River	PSO	TMPL, Peace Sour
C5	Condensate	SHE	Edmonton High Sulphur Sour
CAL	Central Alberta	SLE	Edmonton Low Sulphur Sour
CLK	Cold Lake	SO	Sour
LLB	Lloyd Blend	SW	Sweet
LLK	Lloyd Blend Kerrobert	SYN	Syncrude
LSB	Light Sour Blend	RBW	TMPL, Rainbow Sweet
M	Midale	WCB	Western Canadian Blend
MSO	Mixed Sour Blend	WH	Wabasca
MSW	Mixed Sweet Blend	WCS	Western Canada Select
PCR	TMPL, Peace River Sweet		

4. The Oil Trading Platform requires that the Delivery Period (referred to as Month or Term on the Oil Trading Platform) be completed by selecting from amongst various specific delivery months and multiple month terms as shown on the Oil Trading Platform.
5. The Oil Trading Platform requires that Contract Quantities (referred to as "Volume" on the Oil Trading Platform) be entered in increments of 100m<sup>3</sup> with a minimum of 100m<sup>3</sup> for each Physical Oil Transaction.
6. The Contract Price for each Physical Oil Transaction must be entered on the Oil Trading Platform either as a "Fixed Price" or as an "Index Price" (these price options are referred to as "Price Types" on the Oil Trading Platform).
7. Fixed Prices must be entered in \$U.S. per barrel in increments of \$U.S.0.01. Several pricing options are available for Index Prices under either a posting option, a WTI Index option, or an OTP Index option; in each case a differential (referred to as "Diff" on the Oil Trading Platform) may be entered on the Oil Trading Platform in \$U.S. per barrel in increments of \$U.S.0.01.
8. Available posting options are customized for the applicable Crude Type (see Table I) and include both monthly averages of individual postings and unweighted averages of groups of postings in Canadian Dollars per cubic metre, plus/minus a differential in \$U.S. per barrel. The abbreviations for the posters as follows:

BP or B	–	BP Canada Energy Trading Company Ltd.
EnCana or E	–	EnCana Crude Oil Marketing
Flint or F	–	Flint Hills Resources Ltd
Husky or H	–	Husky Oil Limited
IOL or I	–	Imperial Oil Limited
PCI or P	–	Petro-Canada Products
Shell or Sh	–	Shell Canada Limited
Sun or Su	–	Suncor Inc.

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

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

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

9. All pricing options described above are subject to equalization as described below.
10. Unless the Contracting Party selects the "All or Nothing" designation for a Physical Oil Transaction, a Physical Oil Transaction may occur notwithstanding that the proposed Contract Quantities are not the same. The "All or Nothing" designation prevents a Physical Oil Transaction from occurring if it has been selected by the party that has proposed the greater of the proposed Contract Quantities.
11. The Force Majeure provisions as specified in Article 4 of Schedule "H" shall be applicable to Canadian Instruments except for Linked Deals or Time Trades. In the event that quantity imbalances occur as a result of a Force Majeure event on a Linked Deal or Time Trade, the Shorted Party shall have the following remedies available and shall use commercial reasonable efforts to rectify these imbalances.
  - (a) For Time Trades, the Shorted Party may elect to reduce the Contract Quantity to be delivered by the Shorted Party by an amount equal to the Shorted Quantity ("Offset Quantity"). For Linked Deals the Shorted Party may elect to reduce the Contract Quantity to be delivered by the percentage equal to the Shorted Quantity divided by the original Contract Quantity to be received by the Shorted Party ("Proportional Offset Quantity"). The Offset Quantities and Proportional Offset Quantities will thereafter be deemed to become, and will be recognized as, Force Majeure quantities as contemplated in Article 4 of Schedule "H".
  - (b) In the event the Shorted Quantity is known prior to the 25<sup>th</sup> of the month immediately preceding the applicable delivery month of the Delivery Period, the Shorted Party can elect to take the Shorted Quantities in the month immediately following the applicable delivery month of the Delivery Period.
  - (c) In the event the Shorted Quantity is not confirmed until or after the 25<sup>th</sup> of the month immediately preceding the applicable delivery month of the Delivery Period, the Shorted Party can elect to take the Shorted Quantities in the delivery month that is two months following the applicable delivery month of the Delivery Period.
  - (d) In the event that options (b) and (c) above are not commercially feasible, the Shorted Party may require the other party to deliver to the Shorted Party, as soon as practicable, the Crude Type as delivered by the Shorted Party under the subject Physical Oil Transaction, in an amount equal to the Offset Quantity or Proportional Offset Quantity as applicable.

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

12. The following governs when Table I indicates that equalization is applicable.
  - (a) The Contract Price under each posting option is a base price applicable to the Delivery Point and Crude Type selected, whose reference quality is stipulated by the posters. The Contract Price under each WTI Index and Fixed Price option is a base price applicable to the quality of a common stream as specified in Table I (e.g. Enbridge MSW, Enbridge



SHE). To arrive at the Adjusted Sales Price, the Contract Price shall therefore be adjusted to reflect a quality equalization, in accordance with the procedures set out by the Equalization Steering Committee established by the Canadian Association of Petroleum Producers, or any successor thereto. See Table I for stream quality adjustments. "WADF" refers to the most recent available weighted average differential factor published by the applicable Transportation System for the Crude Type.

- (b) No adjustments shall be made for transportation differentials, except as outlined in Table I below.
  - (c) All necessary conversions of volumes of Oil shall be made at standard reference conditions at 6.29287 barrels per cubic metre except for heavy oil (i.e. LLK, LLB, BR, WCB, and WH), which shall be at 6.2898105 barrels per cubic metre.
  - (d) The Adjusted Sales Price for the volume of Oil delivered shall be paid in Canadian currency. All such conversions of currency shall be calculated to the nearest cent using the average of the Bank of Canada daily noon exchange spot rates (to four decimal places) for the appropriate period.
13. The net amount indicated on each Invoice shall be due on or before the applicable Physical Settlement Date.
14. All payments shall be made in immediately payable funds in Canadian currency by wire transfer or in such other manner as the parties may agree.

TABLE I – CRUDE TYPES, PRICING AND EQUALIZATION

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
Cromer (Cro)	Enbridge	LSB (Light Sour Blend)	XpF	<sup>1</sup> OTP LSB A5(IFPSuSh) Posting Index (Full) at Cromer	Convert to .5/825, deduct Enbridge LSB WADF	
"	"	"	A5(IFPSuSh)4(IFSuSh)	Average of (10) Imperial, Flint, PCI, Sun, Shell) postings at Cromer	Convert to .5/825, deduct Enbridge LSB WADF	
"	"	"	XtiF	<sup>1</sup> OTP LSB WTI Index (Full)	No equalization	Enbridge LSB @ Cro
"	"	"	WTI	EMA Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge LSB @ Cro
Cromer (Cro)	Westspur	LSB (Light Sour Blend)	XpF	<sup>1</sup> OTP LSB A5(IFPSuSh) Posting Index (Full) at Cromer	Convert to .5/825, deduct Westspur LSB WADF	
"	"	"	A5(IFPSuSh)4(IFSuSh)	Average of (10) Imperial, Flint, PCI, Sun, Shell) postings at Cromer	Convert to .5/825, deduct Westspur LSB WADF	
"	"	"	XtiF	<sup>1</sup> OTP LSB WTI Index (Full)	Add Enbridge LSB WADF and deduct Westspur LSB WADF	Enbridge LSB @ Cro
"	"	"	WTI	EMA Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge LSB WADF and deduct Westspur WADF	Enbridge LSB @ Cro
Cromer (Cro)	Westspur	M (Midale)	XpF	<sup>1</sup> OTP M A4(EFShSu) Posting Index (Full) at Cromer	<sup>2</sup> Convert to .5/825 deduct Westspur Midale WADF	
"	"	"	A4(EFShSu)	Average of (Encana, Flint, Shell, Suncor) Postings at Cromer	<sup>2</sup> Convert to .5/825 deduct Westspur Midale WADF	
"	"	"	XtiF	<sup>1</sup> OTP M WTI Index (Full)	<sup>2</sup> Add Enbridge Midale WADF and deduct Westspur Midale WADF	Enbridge M @ Cro

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	<sup>2</sup> Add Enbridge Midale WADF and deduct Westspur Midale WADF	Enbridge M @ Cro
Edmonton (Edm)	Alberta Oilsands (AOSPL)	SYN (Syncrude)	A4(1PSuSh3/ISuSh)	Average of (PCI, Imperial, Suncor, Shell) par postings (40° API and 0.3% wt. sulphur) at Edmonton	No equalization	
"	"	"	XtiF	<sup>1</sup> OTP SYN WTI Index (Full)	No equalization	Enbridge SYN @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge SYN @ Edm
Edmonton (Edm)	Bonnie Glen	SO (Sour)	A2(PSu)	Average of (PCI, Suncor) light sour postings at Edmonton	Convert to .5/825, deduct Bonnie Glen sour WADF	
<u>Edmonton (Edm)</u>	<u>Bonnie Glen</u>	<u>SO (Sour)</u>	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Bonnie Glen Sour @ Edm
Edmonton (Edm)	Bonnie Glen	SW (Sweet)	XpF	<sup>1</sup> OTP SW A4(1PSuSh3/ISuSh) Posting Index (Full) at Edmonton	Convert to .5/825, deduct Bonnie Glen Sweet WADF	
"	"	"	A4(1PSuSh3/ISuSh)	Average of (PCI, Imperial, Suncor, Shell) par postings at Edmonton	Convert to .5/825, deduct Bonnie Glen Sweet WADF	
"	"	"	XtiF	<sup>1</sup> OTP SW WTI Index (Full)	Add MSW WADF and deduct Bonnie Glen Sweet WADF	Enbridge MSW @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Bonnie Glen Sweet WADF	Enbridge MSW @ Edm
Edmonton (Edm)	Central Alberta (Central Ab)	CAL (Central Alberta)	A3(PSHf)	Average of (PCI, Shell, Flint) Central Alberta postings at Edmonton	Convert to .5/825, deduct Central Alberta WADF	

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Central Alberta @ Edm
Edmonton (Edm)	Cold Lake (CLP)	CLK (Cold Lake)	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Edm
Edmonton (Edm)	Enbridge	AHS (Albian Heavy Sour Synthetic)	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Edm
Edmonton (Edm)	Enbridge	SHE (Edmonton High Sulfur Sour)	A2(PSu)	Average of (PCI, Suncor) light sour postings at Edmonton	Convert to .5/825, deduct Enbridge SHE WADF	
<u>Edmonton (Edm)</u>	<u>Enbridge</u>	<u>SHE (Edmonton High Sulfur Sour)</u>	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge SHE @ Edm
Edmonton (Edm)	Enbridge	SLE (Edmonton Low Sulfur Sour)	A3(PShF)	Average of (PCI, Shell, Flint) Central Alberta postings at Edmonton	Convert to .5/825, deduct Enbridge SLE WADF	
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge SLE @ Edm
Edmonton (Edm)	Enbridge	SW (Sweet)	XpF	<sup>1</sup> OTP SW A4( <del>PSuSh</del> 3( <del>ISuSh</del> )) Posting Index (Full) at Edmonton	Convert to .5/825, deduct Enbridge MSW WADF	

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	A4(IPSuSh3)(ISuSh)	Average of (IOI, PCImperial, Suncor, Shell) par postings at Edmonton	Convert to .5/825, deduct Enbridge MSW WADF	
"	"	"	XtiF	<sup>1</sup> OTP SW WTI Index (Full)	No equalization	Enbridge MSW @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Enbridge MSW @ Edm
Edmonton (Edm)	Federated	C5 (Condensate)	XpF	<sup>4</sup> OTP C5 A3(ShFB) Posting Index (Full) at Edmonton.	Convert to .2/750 by adding Enbridge C5 WADF, deduct Federated C5 WADF	
"	"	"	A3(ShFB)	Average of (Shell, Flint, BP) C5 postings at Edmonton	Convert to .2/750 by adding Enbridge C5 WADF, deduct Federated C5 WADF	
<u>Edmonton (Edm)</u>	<u>Federated</u>	<u>C5 (Condensate)</u>	XtiF	<sup>1</sup> OTP C5 WTI Index (Full)	Add Enbridge C5 WADF and deduct C5 Federated WADF	Enbridge C5 @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct C5 Federated WADF	Enbridge C5 @ Edm
Edmonton (Edm)	Federated	SW (Sweet)	XpF	<sup>1</sup> OTP SW A4(IPSuSh3)(ISuSh) Posting Index (Full) at Edmonton	Convert to .5/825, deduct Federated SW WADF	
"	"	"	A4(IPSuSh3)(ISuSh)	Average of (IOI, PCImperial, Suncor, Shell) par postings at Edmonton	Convert to .5/825, deduct Federated SW WADF	
"	"	"	XtiF	<sup>1</sup> OTP SW WTI Index (Full)	Add MSW WADF and deduct SW Federated WADF	Enbridge MSW @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct SW Federated WADF	Enbridge MSW @ Edm

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
Edmonton (Edm)	Fort Saskatchewan (Fort Sask)	C5 (Condensate)	<del>XpF</del> <u>XtiF</u>	<sup>1</sup> OTP C5 A3(ShFB) Posting WTI Index (Full) at Edmonton	Convert to .2/750 by adding <del>Enbridge C5 WADF</del> and deduct Fort Sask C5 WADF	<u>Enbridge C5 @ Edm</u>
"	"	"	<del>A3(ShFB)</del>	Average of (Shell, Flint, BP) C5 postings at Edmonton	Convert to .2/750 by adding <del>Enbridge C5 WADF</del> , deduct Fort Sask C5 WADF	
"	"	"	<del>XtiF</del>	<sup>1</sup> OTP C5 WTI Index (Full)	Add <del>Enbridge C5 WADF</del> and deduct Fort Sask C5 WADF	<u>Enbridge C5 @ Edm</u>
"	"	"	<u>WTI</u>	<u>CMA</u> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Fort Sask C5 WADF	<u>Enbridge C5 @ Edm</u>
Edmonton (Edm)	Peace	C5 (Condensate)	<del>XpF</del>	<sup>1</sup> OTP C5 A3(ShFB) Posting Index (Full) at Edmonton	Convert to .2/750 by adding <del>Enbridge C5 WADF</del> , deduct Peace C5 WADF	
"	"	"	<del>A3(ShFB)</del>	Average of (Shell, Flint, BP) C5 postings at Edmonton	Convert to .2/750 by adding <del>Enbridge C5 WADF</del> , deduct Peace C5 WADF	
<u>Edmonton (Edm)</u>	<u>Peace</u>	<u>C5 (Condensate)</u>	<u>XtiF</u>	<sup>1</sup> OTP C5 WTI Index (Full)	Add Enbridge C5 WADF and deduct Peace C5 WADF	<u>Enbridge C5 @ Edm</u>
"	"	"	<u>WTI</u>	<u>CMA</u> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Peace C5 WADF	<u>Enbridge C5 @ Edm</u>
Edmonton (Edm)	Peace	SQ (Sour)	<del>A2(PSu)</del>	Average of (PCI, Suncor) light sour postings at Edmonton	Convert to .5/825, deduct <del>Peace Sour WADF</del>	
<u>Edmonton (Edm)</u>	<u>Peace</u>	<u>SQ (Sour)</u>	<u>WTI</u>	<u>CMA</u> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	<u>Peace Sour @ Edm</u>
Edmonton (Edm)	Peace	SW (Sweet)	<del>XpF</del>	<sup>1</sup> OTP SW A4( <del>PSu</del> ) <del>3(1SuSh)</del> Posting Index (Full) at Edmonton	Convert to .5/825, deduct Peace Sweet WADF	

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	A4(IPSuSh3( ISuSh)	Average of (Imperial, Suncor, Shell) par postings at Edmonton	Convert to .5/825, deduct Peace Sweet WADF	
"	"	"	XtiF	<sup>1</sup> OTP SW WTI Index (Full)	Add MSW WADF and deduct Peace Sweet WADF	Enbridge MSW @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Peace Sweet WADF	Enbridge MSW @ Edm
Edmonton (Edm)	Pembina	C5 (Condensate)	<del>XpF</del>	<sup>1</sup> OTP C5 A3(ShFB) Posting Index (Full) at Edmonton	Convert to .2/750 by adding Enbridge C5 WADF, deduct Pembina C5 WADF	
"	"	"	A3(ShFB)	Average of (Shell, Flint, BP) C5 postings at Edmonton	Convert to .2/750 by adding Enbridge C5 WADF, deduct Pembina C5 WADF	
Edmonton (Edm)	Pembina	C5 (Condensate)	XtiF	<sup>1</sup> OTP C5 WTI Index (Full)	Add Enbridge C5 WADF and deduct Pembina C5 WADF	Enbridge C5 @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Pembina C5 WADF	Enbridge C5 @ Edm
Edmonton (Edm)	Pembina	SW (Sweet)	XpF	<sup>1</sup> OTP SW A4(IPSuSh3( ISuSh) Posting Index (Full) at Edmonton	Convert to .5/825, deduct Pembina Sweet WADF	
"	"	"	A4(IPSuSh3( ISuSh)	Average of (Imperial, Suncor, Shell) par postings at Edmonton	Convert to .5/825, deduct Pembina Sweet WADF	
"	"	"	XtiF	<sup>1</sup> OTP SW WTI Index (Full)	Add MSW WADF and deduct Pembina Sweet WADF	Enbridge MSW @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Pembina Sweet WADF	Enbridge MSW @ Edm

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
Edmonton (Edm)	Rainbow	SW (Sweet)	XpF	<sup>1</sup> OTP SW A4( <del>IPSuSh3</del> ISuSh) Posting Index (Full) at Edmonton	Convert to .5/825, deduct Rainbow Sweet WADF	
"	"	"	A4( <del>IPSuSh3</del> ISuSh)	Average of ( <del>Imperial</del> , Suncor, Shell) par postings at Edmonton	Convert to .5/825, deduct Rainbow Sweet WADF	
"	"	"	XtiF	<sup>1</sup> OTP SW WTI Index (Full)	Add MSW WADF and deduct Rainbow Sweet WADF	Enbridge MSW @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add MSW WADF and deduct Rainbow Sweet WADF	Enbridge MSW @ Edm
Edmonton (Edm)	Rainbow	WH (Wabasca)	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Edm
Edmonton (Edm)	Rimbey	C5 (Condensate)	XpF	<sup>4</sup> OTP C5 A3( <del>ShFB</del> ) Posting Index (Full) at Edmonton	Convert to .2/750 by adding Enbridge C5 WADF, deduct Rimbey C5 WADF	
"	"	"	A3( <del>ShFB</del> )	Average of (Shell, Flint, BP) C5 postings at Edmonton	Convert to .2/750 by adding Enbridge C5 WADF, deduct Rimbey C5 WADF	
Edmonton (Edm)	Rimbey	C5 (Condensate)	XtiF	<sup>1</sup> OTP C5 WTI Index (Full)	Add Enbridge C5 WADF and deduct Rimbey WADF	Enbridge C5 @ Edm
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	Add Enbridge C5 WADF and deduct Rimbey WADF	Enbridge C5 @ Edm
Hardisty (Har)	Cold Lake (CLP)	CLK (Cold Lake)	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	



Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	WTI	<u>CMA</u> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream @ Har
Hardisty (Har)	Gibson	BR (Bow River)	A3(EIF)	Average of (Encana, <del>IOI</del> Imperial, Flint) BR posting at Hardisty	No equalization	
"	"	"	WTI	<u>CMA</u> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream
Hardisty (Har)	Gibson	<u>SOLE</u> (Sour Lloyd Echo)	<u>A34(FSHHIB)</u>	Average of (Flint, Shell, <del>IOI</del> ) MSO Husky, Imperial, BP) LLB posting at Hardisty <sup>4</sup>	Flint - Stream postings, No Equalization and no transportation. Shell - Convert to 5/825, deduct Gibson Sour WADF, IOL - Add SHE Sour WADF, deduct Gibson Sour WADF	
"	"	"	WTI	<u>CMA</u> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Gibson Hardisty Light @ Har Stream
Hardisty (Har)	Husky <u>Gibson</u>	<u>LLBLG</u> (Lloyd Blend <u>Gibson</u> )	<u>XpFA4(FHIB)</u>	<sup>1</sup> OTP LLB A4(FHIB) Posting Index (Full) Average of (Flint, Husky, Imperial, BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	
"	"	"	WTI	Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream
<u>Hardisty (Har)</u>	<u>Gibson</u>	<u>SO (Sour)</u>	<u>A3(FSH)</u>	Average of (Flint, Shell, Imperial) MSO posting at Hardisty	Flint - No Equalization, Shell - Convert to 5/825, deduct Gibson Sour WADF, IOL - Add SHE Sour WADF, deduct Bibson Sour WADF	

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	<u>WTI</u>	<u>Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.</u>	<u>No equalization</u>	<u>Gibson Hardisty Light @ Har</u>
<u>Hardisty (Har)</u>	<u>Husky</u>	<u>LLB (Lloyd Blend)</u>	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	
"	"	"	<u>WTI</u>	<u>Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.</u>	No equalization	Stream
Hardisty (Har)	Husky	WCB (Western Canadian Blend)	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	Stream postings, No Equalization and no transportation.	
"	"	"	<u>WTI</u>	<u>Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.</u>	Stream	Stream
Hardisty (Har)	Husky	WCS (Western Canadian Select)	XpF	<sup>1</sup> OTP WCS A3(BEF) Posting Index (Full) at Hardisty	No equalization	
"	"	"	A3(BEF)	Average of (BP, Encana, Flint) WCS posting at Hardisty.	No equalization	
"	"	"	XtiF	<sup>1</sup> OTP WCS WTI Index (Full)	No equalization	Stream
"	"	"	<u>WTI</u>	<u>Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.</u>	No equalization	Stream
Kerrobot (Ker)	Manito/ Enbridge	LLK (Lloyd Blend Kerrobot)	A4(FHIB)	Average of (Flint, Husky, <del>Imperial</del> , BP) LLB posting at Hardisty <sup>4</sup>	<sup>3</sup> Stream postings, No Equalization. Hardisty postings adjusted to Kerrobot utilizing the applicable Enbridge Tariff for the month of delivery.	

Delivery Point	Transportation System	Crude Type	System Price Abbr.	Price Option Description	Equalization	Common Stream Reflected
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	<sup>3</sup> No Equalization	Stream
Milk River (MR)	Bow River South (Bow South)	BR (Bow River)	A3(EIF)	Average of (Encana, <del>IOI-Imperial</del> , Flint) BR posting at Hardisty	Add Gibson Hardisty WADF and subtract Milk River <u>Bow South</u> WADF, no transportation	
"	"	"	WTI	<del>CMA</del> Calendar average of New York Mercantile Exchange WTI settlement prices for the applicable delivery months in \$U.S./bbl.	No equalization	Stream

## Notes:

<sup>1</sup> OTP Index Pricing (XpF and XtiF) options are only available for Crude Type listed Types posted in the "OTP Index Report—the daily index price report published on the Oil Trading Platform."

— "OTP Index Pricing options are only available on Off Exchange Transactions."

<sup>2</sup> Based on ~~Transportation System~~ pipeline operational policy, Exchange reserves the right to deliver a portion or all of a traded volume to the International Boundary near North Portal Saskatchewan (Enbridge Pipelines (North Dakota) Inc.). All applicable adjustments for transportation and quality will be applied in such cases.

<sup>3</sup> Based on Manito pipeline operational policy, non-Manito shippers are not allowed to trade volumes in the Manito system. Any transaction involving a non-~~manito~~ Manito shipper will be deemed to occur in the Enbridge system, and may require scheduling adjustments. Please contact Plains Pipelines, Darren Amberson, Pipeline Administration @ 403-298-2193 for further information.

<sup>4</sup> Imperial and Husky and IOI-LLB postings for LLB at Hardisty are private postings.

(October 21, 2009)

## APPENDIX 2 TO SCHEDULE "H"

### UNITED STATES TRADING SPECIFICATIONS

1. Physical Oil Trading Specifications may be revised by Exchange from time to time in accordance with this Agreement. Accordingly, for purposes of entering Physical Oil Transactions, the Physical Oil Trading Specifications electronically displayed on the NGX Trading System shall govern.
2. In addition to the definitions in Section 1.2 of the Terms and Conditions, Schedule "D", Schedule "E" and this Schedule "H", the capitalized words and phrases that are defined below have application only to U.S. Instruments, with their derived variations having corresponding meanings.
  - (a) "Argus" means the publications and industry pricing references as provided by Argus Media Ltd.;
  - (b) "Shorted Party" means the Contracting Party or Exchange, as applicable, that has or will receive Oil quantity from the Counterparty that are less than the requirements under any single Linked Deal, Cushing Exchange or Time Trade, due to Force Majeure;
  - (c) "Shorted Quantity" means the quantity shortfall of Oil that was required to be delivered by the other party under any single Linked Deal, Cushing Exchange or Time Trade, due to Force Majeure;
  - (d) "U.S. Instruments" means United States domiciled Physical Oil Transactions; and
  - (e) "U.S. Provider" is defined in Section 10(qqq) of Schedule "E".

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

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

The abbreviations used in Table I below are as follows:

- (a) **Delivery Point**

Clovelly or CLV-	in the Louisiana Offshore Oil Port ("LOOP") storage facility
Cushing or CSH-	in the terminal storage facilities
Midland or MID-	in the terminal storage facilities
St James or STJ-	at the Capline receipt point as documented by Oil Distribution Services ("ODS")

Houma or HMA- at the Shell Transportation System receipt point as documented by ODS

**(b) Transportation Systems**

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

**(c) Crude Type**

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

All Crude Types transacted are of common stream quality and meet the specification established by the corresponding Transportation System.

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

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

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

The abbreviations for the posters as follows:

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

Available WTI Index options are:

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

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

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

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

9. Unless the Contracting Party selects the "All or Nothing" designation for a Physical Oil Transaction, a Physical Oil Transaction may occur notwithstanding that the proposed Contract Quantities are not the same. The "All or Nothing" designation prevents a Physical Oil Transaction from occurring if it has been selected by the party that has proposed the greater of the proposed Contract Quantities.
10. All Cushing Exchanges entered into imply an equal quantity of Domestic Sweet ("DSW") crude oil at Cushing in the Teppco terminal. The price indices selected from the price options menu for these transactions will be the same for both the delivery and receipt of the Crude Types. The differential quoted against the indices will adjust for location and quality differences for the exchanged Crude Type.
11. Where available, Cushing Exchanges allow Buyers and Sellers to transact simultaneously at one of the eligible locations ("Exchange Locations") shown in Table I and Cushing. Cushing Exchanges will be available for trading on the Oil Trading Platform on each Trading Day for all Physical Oil Products indicated in Table I.
  - (a) The Buyer of the Cushing Exchange will have entered into a Physical Oil Transaction for receipt of the Contract Quantity at Cushing;
  - (b) The Buyer of the Cushing Exchange will have entered into a Physical Oil Transaction for the delivery of the Contract Quantity at the Exchange Location;
  - (c) The Seller of the Cushing Exchange will have entered into a Physical Oil Transaction for delivery of the Contract Quantity at Cushing;

- (d) The Seller of the Cushing Exchange will have entered into a Physical Oil Transaction for receipt of the Contract Quantity at the Exchange Location;
  - (e) The Settlement Price for the Cushing Exchange will be the Contract Prices (fixed price differential) as agreed; and
  - (f) All other Obligations will be as outlined in this Appendix 2 and this Agreement.
12. The Force Majeure provisions as specified in Article 4 of Schedule "H" shall be applicable to U.S. Instruments except as follows: Linked Deals, Cushing Exchanges or Time Trades. In the event that quantity imbalances occur as a result of a Force Majeure event on a Linked Deal, Cushing Exchange or Time Trade, the Shorted Party shall have the following remedies available and shall use commercial reasonable efforts to rectify these imbalances:
- (a) For Cushing Exchanges and Time Trades, the Shorted Party may elect to reduce the Contract Quantity to be delivered by the Shorted Party by an amount equal to the Shorted Quantity ("Offset Quantity"). For Linked Deals the Shorted Party may elect to reduce the Contract Quantity to be delivered by the percentage equal to the Shorted Quantity divided by the original Contract Quantity to be received by the Shorted Party ("Proportional Offset Quantity"). The Offset Quantities and Proportional Offset Quantities will thereafter be deemed to become, and will be recognized as, Force Majeure quantities as contemplated in Article 4 of Schedule "H".
  - (b) In the event the Shorted Quantities are known prior to the 20<sup>th</sup> of the month immediately preceding the applicable delivery month of the Delivery Period, the Shorted Party can elect to take the Shorted Quantities in the month immediately following the applicable delivery month of the Delivery Period;
  - (c) In the event the Shorted Quantity are not confirmed until or after the 20<sup>th</sup> of the month immediately preceding the applicable delivery month of the Delivery Period, the Shorted Party can elect to take the Shorted Quantities in the delivery month that is two months following the applicable delivery month of the Delivery Period;
  - (d) In the event that options (b) and (c) above are not commercially feasible, the Shorted Party may require the other party to deliver to the Shorted Party, as soon as practicable, the Crude Type as delivered by the Shorted Party under the subject Physical Oil Transaction, in an amount equal to the Offset Quantity or Proportional Offset Quantity as applicable.
- All remedial transactions above will take place using the same Physical Oil Trading Specifications and terms as contemplated in the subject Physical Oil Confirmation, except as specifically provided for above.
13. The net amount indicated on each Invoice shall be due on or before the applicable Physical Settlement Date.
14. All payments shall be made in immediately payable funds in United States currency by wire transfer or in such other manner as the parties may agree.
15. Delivery months begin at 7:00 a.m. on the first day of the calendar month and end at 7:00 a.m. on the first day of the following calendar month.

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

<b>Delivery Point</b>	<b>Transportation System</b>	<b>Crude Type</b>	<b>System Price Abbr.</b>	<b>Price Option Description</b>	<b>Equalization</b>
Clovelly	LOOP	MARS	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ARG</b>	Argus Average quoted price for MARS.	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Cushing	Enbridge	DSW (Domestic Sweet)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ARG</b>	Argus Average quoted price for WTI.	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Cushing	Enbridge	WCS (Western Canadian Select)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization



<b>Delivery Point</b>	<b>Transportation System</b>	<b>Crude Type</b>	<b>System Price Abbr.</b>	<b>Price Option Description</b>	<b>Equalization</b>
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Cushing	Enbridge	WTS (West Texas Sour)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Cushing	Teppco	DSW (Domestic Sweet)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ARG</b>	Argus Average quoted price for WTI.	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Cushing	Teppco	WCS (Western Canadian Select)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization

<b>Delivery Point</b>	<b>Transportation System</b>	<b>Crude Type</b>	<b>System Price Abbr.</b>	<b>Price Option Description</b>	<b>Equalization</b>
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Cushing	Teppco	WTS (West Texas Sour)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Houma	Shell	EUG (Eugene Island)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Houma	Shell	POS (Poseidon)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization

<b>Delivery Point</b>	<b>Transportation System</b>	<b>Crude Type</b>	<b>System Price Abbr.</b>	<b>Price Option Description</b>	<b>Equalization</b>
"	"	"	<b>ARG</b>	Argus Average quoted price for POS	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Midland	Teppco	WTI (West Texas Intermediate)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ARG</b>	Argus Average quoted price for WTI Midland.	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization
Midland	Teppco	WTS (West Texas Sour)	<b>DNS</b>	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	<b>CMA</b>	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	<b>ARG</b>	Argus Average quoted price for WTS.	No equalization
"	"	"	<b>ConPhil</b>	Individual price postings for WTI 40°	No equalization
"	"	"	<b>\$U.S.</b>	Fixed Price	No equalization

<b>Delivery Point</b>	<b>Transportation System</b>	<b>Crude Type</b>	<b>System Price Abbr.</b>	<b>Price Option Description</b>	<b>Equalization</b>
St. James	Capline (ODS)	LLS (Light Louisiana Sweet)	DNS	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	CMA	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	ARG	Argus Average quoted price for LLS.	No equalization
"	"	"	ConPhil	Individual price postings for WTI 40°	No equalization
"	"	"	\$U.S.	Fixed Price	No equalization
St. James	Capline (ODS)	EUG (Eugene Island)	DNS	DNS settlement price for the applicable delivery month(s).	No equalization
"	"	"	CMA	CMA settlement prices for the applicable delivery month(s).	No equalization
"	"	"	ARG	Argus Average quoted price for Eugene Island.	No equalization
"	"	"	ConPhil	Individual price postings for WTI 40°	No equalization
"	"	"	\$U.S.	Fixed Price	No equalization

## SCHEDULE "I" – BILATERAL TRANSACTIONS

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

### 1. QUALIFICATION, ACCESS AND ENABLING

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

### 2. CONFIRMATIONS

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

(August 1, 2009)

### 3. CANCELLED BILATERAL TRANSACTIONS

In the event that a Contracting Party has entered into a Bilateral Transaction in error, Exchange will not cancel the Bilateral Transaction in error until such time that Exchange has been notified that both Contracting Parties to the Bilateral Transaction in error have consented to the cancellation of the Bilateral Transaction in error. If such consent cannot be reached by both Contracting Parties to the Bilateral Transaction by the earlier of: (i) 120 minutes following the entering of the Bilateral Transaction; or (ii) 60 minutes following the close of trading on the NGX Trading System on the Trading Day on which the Bilateral Transaction was entered, the Bilateral Transaction will continue in full force and effect.

### 4. INVOICES

- a. Notwithstanding any other provision of this Agreement, Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon

request with) an Invoice on or before the 15<sup>th</sup> day of each calendar month for physical gas Bilateral Transactions during the prior calendar month and before the Physical Settlement Date for physical oil Bilateral Transactions during the prior calendar month, setting forth any amounts payable for fees to Exchange and any amounts payable on account of GST.

- b. Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions hereof, the amount of the Invoice owed by the Contracting Party to Exchange will be due and payable on the Physical Settlement Date. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-off the amounts payable or receivable in the same currency. The Contracting Party will be obligated to pay or entitled to receive only such net amounts. On the Physical Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange. Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least five Business Days prior to the Physical Settlement Date with respect to physical gas Bilateral Transactions and prior to the Physical Settlement Date with respect to physical Oil Bilateral Transactions. Payments by the Contracting Party will be made payable to Exchange and may be made by wire payment or electronic funds transfer. The Contracting Party shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.
- c. The Contracting Party and Exchange agree that any Invoice payable on any Physical Settlement Date with respect to a Bilateral Transaction will be final and binding, absent manifest error, for all purposes 120 days after such Physical Settlement Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.

5. **GENERAL**

- a. In addition to this Schedule I, the following Terms and Conditions and Schedules of this Agreement apply to a Bilateral Transaction: Sections 3.1 (a, b, c, f, g, and i); Section 3.3 (a, b, c, h, i, and j); Sections 3.9, 3.10, 5.8, 5.9, 5.12 and 5.13; and Schedules "A", "B", Section 9 of Schedule "C" and Schedule "D" (which, together with this Schedule I, are the "Bilateral Provisions").
- b. With respect to a Bilateral Transaction, in the event that there is a conflict between the Bilateral Provisions and the bilateral agreement directly between the Contracting Parties who are parties to such Bilateral Transaction, the Bilateral Provisions shall govern.
- c. Once the Contracting Party receives a Confirmation from the NGX Trading System that a Bilateral Transaction has occurred, the clearing and settlement of the Bilateral Transaction is governed solely by the terms and conditions of the bilateral agreement directly between the Contracting Parties who are parties to such Bilateral Transaction.

(This Schedule "I" has been implemented as of August 1, 2009)