

Natural Gas Exchange Inc.
Rule Amendment Submission 2014-01
March 28, 2014

1. The text of the amended provisions in the CPA is appended as Attachment A. Additions are underlined and deletions are struck through.
2. The date of intended implementation for these amendments is April 14, 2014.
3. Attached, please find a certification that: (a) these rule (CPA) amendments comply with the Commodity Exchange Act (the “Act”), and the Commission’s regulations thereunder; and (b) concurrent with this submission, NGX posted on its website: (i) a notice of pending certification of the CPA amendments with the Commission; and (ii) a copy of this submission.
4. A concise explanation and analysis of the operation, purpose, and effect of each of the amendments appears below.
5. There were no opposing views expressed regarding these amendments.
6. Confidential treatment is not requested.

CONCISE EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE, AND EFFECT OF THE RULE AMENDMENT AND ITS COMPLIANCE WITH APPLICABLE PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION’S REGULATIONS THEREUNDER

Pursuant to Commission Rule 40.6(a)(7)(vi), the following is a concise explanation and analysis of the operation, purpose, and effect of the CPA amendments.

1. NGX is amending its CPA to clarify that in the case of an undisputed NGX default, the CPA provides for a “qualifying master netting agreement.”¹ This provision is in accordance with

¹ “Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,” 78 *Fed. Reg.* 62018, 62167 (Oct. 11, 2013) (“Qualifying master netting agreement is a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

the relevant requirements in Basel III relating to the capital computational calculation that certain NGX clearing members must make.²

For that purpose, NGX is amending sections 1.2(bbb), 1.2(yyyyyyy), 4.7, 5.11, 5.13, 5.14, 8.1(d), 8.4(g), and 9.1(b)(A) of the CPA to clarify the circumstances under which Contracting Parties can exercise their right to, and the rights and obligations of NGX in respect to, set-off and close-out provisions consistent with the definition of a “qualifying master netting agreement.” Specifically, NGX is amending the CPA to:

- (a) clarify that set off and netting procedures, which are equivalent to a “qualifying master netting agreement,” are available to Contracting Parties in the event of an “Unremedied Exchange Default” (Sections 5.13 and 9.1(b)(A));
- (b) clearly define what constitutes an “Unremedied Exchange Default” (Section 1.2(yyyyyyy)), and make other conforming changes (Sections 1.2(bbb) and 8.1(d));
- (c) indicate that a Contracting Party is entitled to file a demand with the escrow agent, in accordance with NGX’s “Deposit Agreement,” in the event of an “Unremedied Exchange Default” (Section 5.11);
- (d) clarify that a Contracting Party may make early payments, which may be set-off against amounts owed by NGX to the Contracting Party (Sections 4.7 and 8.4(g)); and
- (e) clarify the relationship between NGX’s netting provisions and the operation of the clearinghouse netting provisions of Section 404 of the Federal Deposit Insurance Exchange Improvement Act of 1991 (Section 5.14).

The purpose of these provisions is to clarify the process under which a clearinghouse would set-off, net and terminate its obligations to its clearing members in the event of an insolvency or default by the clearinghouse. These amendments only apply to NGX’s financial obligations under default, they do not affect NGX’s obligations with respect to physical settlement or delivery. These amended provisions are in accord with the rules of other DCOs, as recently amended.

2. A second, unrelated rule change requires Contracting Parties to represent that they have appropriate risk management policies and procedures in accordance with Principle 3 of the PFMI. NGX’s regulatory Recognition Order, issued by the Alberta Securities Commission, requires NGX to comply with the PFMI as a condition of its registration as a clearing agency

(2) The agreement provides the [BANK] the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs ...”).

² *Id.*

under section 67 of the Alberta Securities Act. And in accordance with Principle 3³ of the PFMIs, NGX is amending section 2.6(h) to require Contracting Parties to represent that they (a) have appropriate risk management policies; and (b) will provide NGX with an annual certification to that effect, upon request. This requirement is not inconsistent with any requirement under Part 39 of the Commission's rules.⁴

These changes are appended as Attachment A; additions are underlined and deletions are struck through.

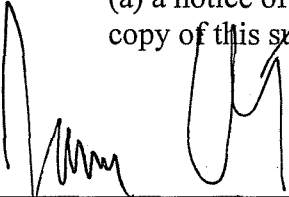
³ Committee on Payment and Settlement Systems Technical Committee of the International Organization of Securities Commissions, "Principles for Financial Market Infrastructures," (April 2012), at 32 ("Principle 3 ... An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks 1. An FMI should have risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by the FMI. Risk-management frameworks should be subject to periodic review. 2. An FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI ...).

⁴ Commission Rule 39.13(h)(5) requires a DCO to adopt rules requiring its clearing members "to maintain current written risk management policies and procedures. . . ."

CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE ACT, 7 U.S.C. §7A-2 AND COMMODITY FUTURES TRADING COMMISSION RULE 40.6, 17 C.F.R. §40.6

I hereby certify that:

- (1) the amended provisions of the "Contracting Party Agreement" comply with the Commodity Exchange Act, and the Commodity Futures Trading Commission's regulations thereunder; and
- (2) concurrent with this submission, Natural Gas Exchange Inc. posted on its website:
 - (a) a notice of pending certification of these rules with the Commission; and
 - (b) a copy of this submission.



By: **James Oosterbaan**
Title: **President & CEO**
Date: **Natural Gas Exchange Inc.**
March 28, 2014

- tt. “Delivery Point” means, for a Physically Settled Futures Transaction, the location at which the parties to such Transaction have agreed to transfer title to, deliver and take the gas, Physical Power or Oil subject to such Transaction, being the transfer point as designated by the applicable Transportation System or, in the case of a Physically Settled Power Futures Transaction, by the applicable Transmission Provider, for the Delivery Point;
- uu. “Disciplinary Committee” has the meaning set out in Section 6.2;
- vv. “Deposit Agreement” means the agreement amended and restated as of December 11, 2008 between Exchange and the Escrow Agent;
- ww. “Eligible Collateral Support” has the meaning ascribed thereto in Section 3.3(a);
- xx. “Escrow Agent” means the trustee under the Deposit Agreement;
- yy. “Event of Default” means the occurrence of any of the events set forth in Section 3.9;
- zz. “Exchange” means Natural Gas Exchange Inc., a body corporate with offices, and carrying on business, in Calgary, Alberta and any successors thereto;
- aaa. “Exchange Bankruptcy Event of Default” means the occurrence of any of the events set forth in Section 3.10;
- bbb. “Exchange Default” means the failure by Exchange to perform any of its Obligations in respect of any ~~Swap Transaction or Option Transaction~~ Transaction with the Contracting Party that is not an Unremedied Exchange Default;
- ccc. “Exchange Letter of Credit” means the letter of credit provided for the benefit of Contracting Parties who have entered into Futures Transactions, which has been deposited with the Escrow Agent pursuant to the provisions of the Deposit Agreement;
- ddd. “Exchange of Futures for Related Product Confirmation” means the notification by Exchange as to any EFRP Transaction entered into by the Contracting Party which will include particulars of the EFRP Transaction;
- eee. “Exchange of Futures for Related Product Transactions” or “EFRP Transactions” has the meaning set out in Section 3.2(f);
- fff. “Exchange’s Principal Banker” means The Toronto-Dominion Bank;
- ggg. “Exchange’s Website” means a site owned and maintained by Exchange available on the internet at www.ngx.com;
- hhh. “Excise Tax Act” means the *Excise Tax Act* (Canada);
- iii. “Execution Page” means the execution page executed and delivered by the Contracting Party and Exchange pursuant to which the Contracting Party becomes a party to this Agreement;
- jjj. “Failure Amount” means the difference between the amount payable on any Invoice and the amount actually paid on account of any such Invoice;

~~yyyyyy~~. “Unremedied Exchange Default” means:

- (A) an Exchange Failure to Pay that has not been remedied by payment to the Contracting Party by Exchange or the Escrow Agent, as the case may be, pursuant to this Agreement and the Deposit Agreement; or
- (B) an Exchange Failure to Pay resulting from an Exchange Failure to Take or Exchange Failure to Deliver that has not been remedied by payment to the Contracting Party by Exchange or the Escrow Agent, as the case may be, pursuant to this Agreement and the Deposit Agreement, and that is not otherwise:
 - (I) the subject matter of an Exchange Notice Not to Pay, as defined in the Deposit Agreement; or
 - (II) the subject matter of Mediation or Arbitration between Exchange and the Contracting Party; or
 - (III) the result or effect of a Force Majeure event,

and that remains unpaid on the thirtieth (30th) day following the date of the Exchange Failure to Pay;

(April 14, 2014 or such other date as may be designated by the Exchange upon notice to the Contracting Parties)

~~zzzzzz~~. ~~xxxxxxx~~. “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;

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

~~bbbbbbbb~~. ~~zzzzzz~~. “Variation Margin” has the meaning ascribed thereto in Schedule “C”.

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”.

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.

2.5 Representations Repeated

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

2.6 Additional Representations of the Contracting Party

Each Contracting Party represents and warrants that:

- a. **Access to Transportation System.** To the extent it wishes to be entitled to enter into Physically Settled Futures Transactions, the Contracting Party has and will at all times have access to capacity on the Transportation Systems, or, in the case of a Physically Settled Futures Power Transaction, the Transmission Provider, to allow the Contracting Party to perform its Obligations under all Physically Settled Futures Transactions.
- b. **Business Related.** With respect to each Transaction based upon the price of a commodity, on the date such Transaction is entered into, it will be entering into such Transaction in conjunction with a line of its business (including financial intermediation services) or the financing of a line of its business.
- c. **Intent to take delivery and mitigate risk.**
 - (A) ~~i-~~With respect to each transaction in a Forward Product which is entered into through NGX Trading System, it will be entering into the Forward Transaction intending for the transaction to be physically settled; and
 - (B) ~~ii-~~With respect to each transaction in a Forward Product involving an Exchange of Futures for Related Product Transaction, including ICE Transactions, it will have entered into the transaction with the intent for the transaction to be physically settled.
- d. **U.S. Status.** The Contracting Party has consulted the *Commodity Exchange Act* (United States) and the regulations of the Commodity Futures Trading Commission and to the extent required by U.S. law, the Contracting Party is an "eligible contract participant" with respect to any swap submitted to NGX.
- e. **Accredited Investor.** If resident in the Province of Ontario, the Contracting Party is, and will be, at all times during the term of this Agreement an "accredited investor" as defined in National Instrument 45-106 that is a corporation, partnership, organization, trust or other business entity.
- f. **Principal.** The Contracting Party is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction and any other documentation relating to this Agreement that it is required by the Agreement to deliver, as principal and not as agent or in any other capacity, fiduciary or otherwise.
- g. **NAFTA.** The Contracting Party, when entering into a Physically Settled Futures Transaction or Forward Transaction as Seller, represents and warrants that natural gas or Oil delivered, or to be delivered, from or at a Canadian Delivery Point shall be wholly obtained or produced in North

America and qualifies as an originating good pursuant to Annex 401 of the North American Free Trade Agreement with the exception of Oil product types CLK, WCS and AHS as more particularly set forth in Appendix 1 to Schedule "H" (the "Exception Products"). Exception Products may not qualify as an originating good pursuant to Annex 401 of the North American Free Trade Agreement.

- h. **Risk Management Policies, Procedures and Practices.** The Contracting Party represents and warrants that it has sufficient and satisfactory risk management policies, procedures and practices in place to address both financial and operational risks in its organisation, and will provide to Exchange, if requested, an annual certification attesting to same.

(April 14, 2014, or such other date as may be designated by the Exchange upon notice to the Contracting Parties)

2.7 No Reliance

In connection with the negotiation of, the entering into, and the confirming of the execution of this Agreement, any Credit Support Document to which it is party, each Transaction and any other documentation relating to this Agreement that it is required by this Agreement to deliver: (a) the other party hereto or thereto is not acting as a fiduciary or financial, investment or commodity trading advisor for it; (b) it is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the other party hereto or thereto other than the representations expressly set forth in this Agreement, in such Credit Support Document, or in any Confirmation; (c) the other party hereto or thereto has not given to it (directly or indirectly through any other person) any assurance or guaranty whatsoever as to the merits (either legal, regulatory, tax, financial, accounting or otherwise) of this Agreement, such Credit Support Document, such Transaction or such other documentation; (d) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and trading decisions (including, without limitation, decisions regarding the suitability of any Transaction pursuant to this Agreement) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party hereto or thereto; (e) it is entering into this Agreement, such Credit Support Document, such Transaction and such other documentation with a full understanding of all the terms, conditions and risk (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; and (f) it is a sophisticated investor.

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

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

4.7 Early Payment of Invoices

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

(April 14, 2014 or such other date as the Exchange may designate upon notice to the Contracting Parties)

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 Failure to Pay Resulting from a Failure to Deliver, Failure to Take or Exchange Default – The Contracting Party will be entitled in the event of an Exchange Failure to Pay resulting from an Failure to Take, 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.

(April 14, 2014 or such other date as may be designated by the Exchange upon notice to the Contracting Parties)

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:

- (A) ~~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;
- (B) ~~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;
- (C) ~~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

~~(D)~~ ~~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:

~~(A)~~ ~~i-~~a statement indicating the passage of five (5) Business Days;

~~(B)~~ ~~ii-~~if Mediation is agreed to, 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

~~(C)~~ ~~iii-~~if Arbitration is agreed to, a statement from the Arbitrator or the Arbitral Tribunal, as the case may be, as to the decision in respect of the matter.

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

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

5.12 Indices

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

failure of publisher of such indices to establish settlement prices or report settlement prices for their contracts at a fair, proper or correct amount.

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

- a. Early Termination – In the event that there occurs and is continuing an Unremedied Exchange Default or Exchange Bankruptcy Event of Default, the Contracting Party, in addition to any remedies it may have at law or in equity or otherwise under this Agreement or under any Transaction, may, on no less than five (5) days notice to Exchange (the “Early Termination Notice Date”), designate a day no earlier than the Early Termination Notice Date and no later than sixty (60) days after becoming aware of such Unremedied Exchange Default or Exchange Bankruptcy Event of Default, as an early termination date (the “Early Termination Date”). On the Early Termination Date, all outstanding Transactions (collectively the “Terminated Transactions”) shall be terminated.
- b. Remedies Upon Early Termination – If the Terminated Transactions are terminated by the Contracting Party pursuant to Section 5.13(a), Exchange shall in good faith calculate in a commercially reasonable manner: (i) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic benefit to it, if any, resulting from the termination of the Terminated Transactions (the “Gains”); and (ii) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic loss to it, if any, resulting from the termination of the Terminated Transactions (the “Losses”). Gains and Losses shall be determined, for each Terminated Transaction, by reference to relevant market information which shall consist of the arithmetic average (the “Calculation”) of market quotations (“Prices”) provided by the five (5) Contracting Parties who:
- (i) with respect to Terminated Transactions that are Physically Settled Oil Futures Transactions (collectively, “Oil Products”), have traded the highest overall volume of Oil Products listed on the NGX Trading System ;
 - (ii) with respect to Terminated Transactions that are Physically Settled Gas Futures Transactions, Options contemplating the delivery of gas or Options or for which the notional quantity is gas (collectively, “Gas Products”), have traded the highest overall volume of Gas Products listed on the NGX Trading System;
 - (iii) with respect to Terminated Transactions that are Physically Settled Power Futures Transactions, have traded the highest overall volume of Physically Settled Power Futures Products listed on the NGX Trading System; or
 - (iv) with respect to Terminated Transactions that are transactions in Financially Settled Futures for which the notional quantity is financial power (collectively, “Financial Power Products”), have traded the highest overall volume of Financial Power 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”). (For clarity, the Set-Off and netting of all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under this Agreement shall be deemed to be equivalent to a single master netting agreement.) To the extent that the Contracting Party is owed a Net Termination Payment by Exchange, Exchange shall pay the Net Termination Payment to the Contracting Party as soon as practicable, making commercially reasonable efforts to pay such Net Termination Payment within ten (10) Business Days of receipt by the Contracting Party of the Termination Notice regarding such calculation. To the extent that the Contracting Party owes a Net Termination Payment to Exchange, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Termination Notice. In the event that Exchange has not provided a Termination Notice to the Contracting Party within the five (5) day period set forth above, the Contracting Party shall have the right to calculate its Gains or Losses, as the case may be, for the Terminated Transactions, by determining a Price for each such Terminated Transaction, such Price being a good faith commercially reasonable representation of market value, which value may be disputed in good faith.

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

- c. A Contracting Party’s rights under this Section 5.13 supersede its right to voluntarily terminate this Agreement in accordance with the terms set out herein. For greater certainty, an affected Contracting Party cannot exercise its voluntary right to terminate this Agreement if an Exchange Failure to Deliver, Exchange Failure to Take, Exchange Failure to Pay or Exchange Default has occurred which, with the giving of notice or the lapse of time or both, would constitute an Unremedied Exchange Default or Exchange Bankruptcy Event of Default.
- d. ~~e.~~ Exchange’s Right to Cause Early Termination of all Agreements and Transactions – The Contracting Party acknowledges that Exchange has entered into Contracting Party Agreements with other Contracting Parties and, pursuant thereto, Exchange is, from time to time, party to Transactions with such other Contracting Parties. The Contracting Party acknowledges and agrees that, in the event it or one or more other Contracting Parties designates an Early Termination Date (the “Triggering Early Termination Date”) pursuant to this Agreement or one or more of the other Contracting Party Agreements, Exchange shall immediately become entitled, in its sole discretion, to designate an Early Termination Date under any one or more of this Agreement and the other Contracting Party Agreements. If Exchange does so, Exchange may designate an Early Termination Date for any or all such terminations which is the same day or is a day later than the Triggering Early Termination Date, in Exchange’s sole discretion. In the event that Exchange does designate one or more Early Termination Dates following the Triggering Early

Termination Date, all the other provisions of this Section 5.13 shall apply thereto *mutatis mutandis*.

5.14 Interpretation in relation to the U.S. Federal Deposit Insurance Exchange Improvement Act of 1991, as amended (“FDICIA”)

- a. The Exchange intends that certain provisions of Section 5.13 be interpreted in relation to certain terms (identified by quotation marks) that are defined in FDICIA, as follows:
- (A) The Exchange is a “clearing organization.”
 - (B) An obligation of a Contracting Party to make a payment to the Exchange, or of the Exchange to make a payment to a Contracting Party, subject to a netting contract, is a “covered clearing obligation” and a “covered contractual payment obligation.”
 - (C) An entitlement of a Contracting Party to receive a payment from the Exchange, or of the Exchange to receive a payment from a Contracting Party, subject to a netting contract, is a “covered contractual payment entitlement.”
 - (D) The Exchange is a “member,” and each Contracting Party is a “member.”
 - (E) The amount by which the covered contractual payment entitlements of a Contracting Party or the Exchange exceed the covered contractual payment obligations of such Contracting Party or the Exchange after netting under a netting contract is its “net entitlement.”
 - (F) The amount by which the covered contractual payment obligations of a Contracting Party or the Exchange exceed the covered contractual payment entitlements of such Contracting Party or the Exchange after netting under a netting contract is its “net obligation.”
 - (G) This Agreement, including Section 5.13, is a “netting contract.”

(April 14, 2014 or such other date as may be designated by the Exchange upon notice to the Contracting Parties)

ARTICLE 8 – FINANCIALLY SETTLED FUTURES PRODUCTS AND OPTION PRODUCTS

8.1 Financially Settled Futures Products, and Option Products - General

- a. Forms of Financially Settled Futures Products, and Option Products – The forms of Financially Settled Futures Products and Option Products and a description of such Products which may be made available by Exchange to the Contracting Party from time to time are set forth in the NGX Product List and Schedule “E”. Financially Settled Futures Products are Futures Products which can be settled only by the payment of a Cash Settlement Amount and are required to be cleared on NGX Clearing System.
- b. Entering into Financially Settled Futures Transactions – Each of Exchange and the Contracting Party, agrees to be bound by any Financially Settled Futures Transactions as: (i) entered into by the Contracting Party through the NGX Trading System; or (ii) entered into the NGX Clearing System through the Exchange of Futures for Related Product provision of Section 3.2(f). Each of Exchange and the Contracting Party agrees to pay the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount as may be required pursuant to any such Financially Settled Futures Transactions.
- c. Entering into Option Transactions – Each of Exchange and the Contracting Party, each in its capacity as the Option Buyer or Option Seller, as the case may be, agrees to be bound by any Option Transactions as: (i) entered into by the Contracting Party through the NGX Trading System; or (ii) entered into the NGX Clearing System including, but not limited to, the terms of any applicable Underlying Futures Transaction and any associated payment or other obligations if such Option Transaction is exercised giving effect to an Underlying Transaction. The Option Buyer agrees to pay the Option Premium Amount as may be required pursuant to any such Option Transactions.
- d. Recourse Against Exchange – Exchange agrees to pay the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount, if any, to the Contracting Party in respect of a Financially Settled Futures Transaction and Exchange agrees to pay the Option Premium Amount to the Option Seller in respect of an Option Transaction, each case to the extent required under the terms applicable to such Financially Settled Futures Transaction or Option Transaction. The Contracting Party and Exchange hereby agree that the recourse of the Contracting Party in respect of any Financially Settled Futures Transactions or Option Transactions is against Exchange and agrees that in the event of an Exchange Default, the Contracting Party is entitled to all rights at law except as specifically limited by this Agreement. Without limitation of the foregoing, ~~in the event that there is an Exchange Default which is not remedied by Exchange within five Business Days and is not the subject matter of Mediation or Arbitration~~ Unremedied Exchange Default, and there is at that time a Defaulting Financially Settled Futures Party or Defaulting Option Party under this Agreement or any other Contracting Party Agreement, Exchange will disclose the name of any such Defaulting Financially Settled Futures Party or Defaulting Option Party to any Contracting Parties affected by such Exchange Default, including the Contracting Party; provided however that any such disclosure by Exchange will not relieve Exchange of its liability to the recipient of the disclosure.
- e. Performance of Financially Settled Futures Transactions – The settlement obligations of Exchange and the Contracting Party under any Financially Settled Futures Transaction will be fully performed upon the payment of all amounts by the Fixed Amount Payer and the corresponding Floating Amount Payer under any such Financially Settled Futures Transaction.

- f. Performance of Option Transactions – The Obligations of Exchange and the Contracting Party under any Option Transaction will be fully performed upon the payment of all amounts by the Option Buyer under any such Option Transaction up to and including the Option Exercise Date (as defined in Schedule “E”), at which time, if the relevant Option Exercise Conditions have been met, the Obligations of Exchange and the Contracting Party in association with any Underlying Transaction become effective, which Obligations will be fully performed upon the payment of all amounts by the respective parties to such Underlying Transactions.
- g. Settlement and Netting of Invoice Amounts – All amounts payable by the Contracting Party or Exchange under any Financially Settled Futures Transaction or Option Transaction are due and are payable and are to be settled pursuant to Section 8.4. In determining the net amounts payable or receivable on each Invoice by the Contracting Party, Exchange will Set-Off the amounts payable or receivable in the same currency on account of the Cash Settlement Amount, MTM Settlement Amount and Daily Financially Settled Futures Settlement Amount, as applicable, and fees for the Contracting Party. The Contracting Party and Exchange will be obligated to pay or entitled to receive, as the case may be, only such net amounts. The Contracting Party shall be responsible for any and all wire transfer fees applied or deducted by the Exchange’s bank relating to the receipt, deposit or transfer of amounts payable by the Contracting Party. On the Financially Settled Futures Settlement Date, Exchange will not remit any amounts payable from Exchange to the Contracting Party until all amounts payable from the Contracting Party to Exchange have been received by Exchange.

8.2 Rights of Exchange

On the occurrence, or upon Exchange becoming aware, of a Default with respect to a Contracting Party or in the event of a dispute over a Transaction entered into pursuant to Sections 3.2(f) or (f), Exchange will notify the Defaulting Party (except that no notice is required where such Defaulting Party becomes insolvent or is unable to pay its debts or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy), and thereafter without further notice or formality prescribed by law or otherwise, all of which are hereby waived by the Defaulting Party to the extent permitted by applicable law, may exercise any combination of the rights and remedies contained in this Section 8.2 or Sections 5.5, 5.6 or 8.3 and any rights or remedies under this Agreement or at law, equity or otherwise including, without limitation, its rights to:

- a. pursuant to Section 3.3(a) and Schedule “C”, request an additional amount of Eligible Collateral Support from the Defaulting Party;
- b. pursuant to Section 6.4, cause a Contracting Party Suspension for a period, which may be in excess of the period during which the Defaulting Party is in Default, or permanently;
- c. declare any amounts for Oil or gas delivered, , any amounts of Physical Power scheduled for delivery, or any unpaid Invoices immediately due and payable and to withhold payments under this Agreement (including, without limitation, under any Transaction) and withhold such payments as if paid or provided to Exchange as Collateral;
- d. notwithstanding Section 3.4. of Schedule “H”, suspend deliveries of Oil to the Contracting Party or takes of Oil from the Contracting Party under one or more Physically Settled Futures Transactions, by amending the applicable notices of shipment, reallocating volumes or otherwise;
- e. with respect to Physically Settled Power Futures Transactions, cancel or amend any schedules to deliver or take Physical Power from Contracting Party by amending its schedule in the Transmission Provider system;

- c. for the purposes of determining Exchange's damages, Exchange will Set-Off any and all such amounts that are owed or deemed to be owed to the Defaulting Party against any and all such amounts that are owed or deemed to be owed by such Defaulting Party under the Offsetting Transactions to arrive at a single net settlement amount payable to or by the Defaulting Party which shall be immediately due and payable; for clarity, without limitation to any other rights of Exchange under this Agreement, such net settlement amount shall include, without limitation, an amount as liquidated damages representing the pre-estimated amount of the costs of investigation and damage suffered by Exchange in respect of injury to the development of, reputation, and integrity of the business carried on by Exchange, where Exchange has determined, in its sole discretion, that appropriate circumstances exist for the application of such liquidated damages;
- d. Exchange will forthwith provide the Defaulting Party with an Invoice for the Offsetting Transactions setting forth the amounts owed to or by the Defaulting Party and the net settlement amount due to or from the Defaulting Party;
- e. payment to Exchange of any net settlement amount owed by the Defaulting Party shall be deemed to satisfy all of its Obligations with respect to the Offsetting Close-out Transactions; and
- f. Exchange shall pay any net settlement amount owed to the Defaulting Party with respect to the Offsetting Transactions and upon such payment, shall assume all of the rights of the Defaulting Party under the Offsetting Transactions.

8.4 Invoices for Financially Settled Futures Products and Option Products

- a. Invoices for Financially Settled Futures Transactions other than Daily Financially Settled Futures Transactions – Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) an Invoice on the second Business Day of each calendar month in respect of each Financially Settled Futures Transaction to be settled in the prior calendar month that are payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each amount payable or receivable in respect of any Obligations under any Financially Settled Futures Transactions and any amount payable for fees to Exchange under the Fee Schedule. Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the Cash Settlement Date that has been requested in accordance with the Risk Management Policy and will hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange. The payment or receipt by the Contracting Party of such net amount in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange.
- b. Invoices for Daily Financially Settled Futures Transactions– Exchange will post on Exchange's Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) Invoices in respect of Daily Financially Settled Futures Transactions as follows:
 - (A) ~~i~~–for the MTM Settlement Amounts, an Invoice prior to the commencement of, or on, the Business Day following the day each MTM Settlement Amount is determined as set forth in Schedule "E", that is payable in the same currency, setting forth a net amount owing by or to the Contracting Party itemizing and applying Set-off to each amount payable or receivable in respect of any Obligations under all Daily Financially Settled Futures Transactions;

- (B) ~~ii~~-an Invoice on the second Business Day of each calendar month in respect of Daily Financially Settled Futures Transactions mark-to-market settled in the prior calendar month and that are payable in the same currency, setting forth the Daily Financially Settled Futures Settlement Amounts for that month and any net amount payable for fees to Exchange under the Fee Schedule; and
- (C) ~~iii~~-Exchange will also be entitled to deduct an amount equal to any shortfall in the provision by the Contracting Party of Collateral as at the MTM Settlement Date and the Cash Settlement Date that has been requested in accordance with the Risk Management Policy and will hold such amount as Collateral until any such shortfall has been rectified to the satisfaction of Exchange

The payment or receipt by the Contracting Party of such net MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts in accordance with this Agreement to or from Exchange will constitute full satisfaction of the payment or receipt of any settlement amount payable to or receivable by the Contracting Party and Exchange with respect to a Daily Financially Settled Futures Settlement Transaction once all such amounts in respect of the applicable Term have been paid, unless a Daily Financially Settled Futures Settlement Transaction has been fully offset as determined in the sole discretion of Exchange, in which case full satisfaction of the applicable settlement amounts shall occur once all MTM Settlement Amounts, and if applicable, all Daily Settlement Amounts, have been paid (or received) as the case may be, in respect of all settlement amounts incurred up to and including the date of full offset.

- c. Invoices for Option Transactions – Exchange will post on Exchange’s Website for sole access by the Contracting Party (or will provide the Contracting Party, upon request, with) Invoices in respect of each Option Transaction as follows:
 - (A) ~~i~~-for the Option Premium Amount, on the Business Day following the transaction date of the Option Transaction; and
 - (B) ~~ii~~-any other invoices become applicable only if the relevant Option Exercise Conditions have been met, Invoices shall be issued and payable as per the associated Underlying Transaction that has become effective on such exercise.
- d. Terms for Financially Settled Futures Transactions and Option Transactions – Subject to any amount hereunder becoming due and payable at an earlier time pursuant to the provisions, the amount of the Invoice owed by the Contracting Party to Exchange or to the Contracting Party by Exchange will be due and payable on the MTM Settlement Date and Cash Settlement Date (in the case of Daily Financially Settled Futures Transactions), the Cash Settlement Date (in the case of all other Financially Settled Futures Transactions) and the Premium Payment Date (in the case of Option Transactions). Any items on any Invoice disputed by any Contracting Party will be noted to Exchange at least one Business Day prior to the Settlement Date or Premium Payment Date, as the case may be. Payments by the Contracting Party will be made payable to Exchange and will be made by wire payment or electronic funds transfer. The Contracting Party shall notify Exchange of its banking information and represents and warrants that the information provided to Exchange is accurate and current. Exchange is entitled to accept this information via email or facsimile. Late payments will bear interest after the due date at the Default Rate to and including the date of payment to Exchange or the Contracting Party, as the case may be, of all such amounts. Interest will be payable only on the amount of any Invoice remaining unpaid from time to time.

- e. Corrections to the Invoice – In the event that the prices for any Financially Settled Futures Transaction or Option Transaction is corrected by the publication from which such indices is derived for settlement of such Transaction after a Cash Settlement Date, Exchange will post on Exchange’s Website for sole access by the Contracting Party (or will issue to the Contracting Party, upon request) a correcting Invoice to reflect the corrected Cash Settlement Amount or Daily Financially Settled Futures Settlement Amount within two (2) Business Days of being advised of such change. The correcting Invoices will be due and payable within five (5) Business Days of their issuance on terms as outlined in Section 8.4(b).
- f. Final Invoices – The Contracting Party and Exchange agree that any Invoice on any Cash Settlement Date, MTM Settlement Date or Premium Payment Date will be final and binding, absent manifest error, for all purposes 120 days after such Settlement Date, MTM Settlement Date or Premium Payment Date unless the Contracting Party has then advised Exchange of any error in, or dispute in respect of, such Invoice.
- g. Early Payment of Invoices - A Contracting Party may, if desired, make payment to Exchange prior to the applicable Settlement Date, and such funds, when received, will be applied against that Contracting Party’s Invoice amounts, or may be Set-off against amounts then owed by NGX to the Contracting Party in accordance with Section 3.3(d) of this Agreement.

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- h. ~~g.~~ Return of Retained Settlement Amounts – A Contracting Party may instruct Exchange to retain payables of MTM Settlement Amounts and Daily Financially Settled Futures Settlement Amounts (“Retained Settlement Amounts”) owing by Exchange to the Contracting Party. Retained Settlement Amounts will be deposited by Exchange in an interest bearing bank account at Exchange’s Principal Banker separate from the corporate funds of Exchange or its affiliates or subsidiaries, and separate from the Eligible Collateral Support of the Contracting Parties and the funds of any other Contracting Party. A Contracting Party may request a return of any such Retained Settlement Amounts if no Default has occurred with respect to such Contracting Party. Upon such a request, Exchange agrees to return the relevant Retained Settlement Amounts on the next Business Day or, if the next Business Day is a Recognized Banking Holiday, then on the first Business Day that is not a Recognized Banking Holiday, following such request. Daily interest earned on such Retained Settlement Amounts will be remitted to the Contracting Party quarterly unless otherwise requested by the Contracting Party, acting reasonably, or unless all such Retained Settlement Amounts have been returned to the Contracting Party or applied, at the Contracting Party’s request, to invoice settlement prior to the quarter. Exchange shall not be liable to the Contracting Party for any loss incurred as a result of any such depositing of Retained Settlement Amounts, and the Contracting Party shall be bound by the accounts and records of Exchange in determining and allocating the amount of any loss or any interest earned.

ARTICLE 9 - MISCELLANEOUS

9.1 Term

- a. Term – This Agreement will continue in full force and effect unless and until terminated by Exchange pursuant to the terms of this Agreement or by Exchange or the Contracting Party under this Section 9.1.
- b. Termination – In addition, and without limitation, to any other rights of termination granted under this Agreement, either the Contracting Party or Exchange may give notice of termination to the other at any time and this Agreement will be terminated as of the effective date in such notice on the condition that such date is no earlier than one Business Day following receipt or deemed receipt of such notice or, where there is no effective date, then at the end of the period ending eight weeks after receipt of such notice (the “Termination Date”), provided that:

(A) ~~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 and, for clarity, until any outstanding Invoices of the Contracting Party are deemed paid and settled, as determined in the sole discretion of Exchange; and

(April 14, 2014 or such other date as may be designated by the Exchange upon notice to the Contracting Parties)

(B) ~~ii.~~ the Contracting Party will not be entitled to enter into any Transactions after the Termination Date.

- c. Contrary to Law – In the event that the participation by any Contracting Party pursuant to this Agreement constitutes a violation of any law or regulation applicable to such Contracting Party, either Contracting Party or Exchange will be entitled to give notice of termination to Exchange or Contracting Party, respectively, and this Agreement will be terminated on receipt of such notice, provided that this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement.
- d. Revisions – In the event that revisions are made to this Agreement, the Contracting Party will be entitled for a period of ten Business Days after the effective date of such revision to give notice of termination to Exchange and this Agreement will be terminated on receipt of such notice, provided that:

(A) ~~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

(B) ~~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:

(A) ~~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;