

CME INTERROGATORY #10

INTERROGATORY

Issue 1 – New IFRS Deferral Account

Ref: Exhibit C, Tab 1, Schedule 2

In its Natural Gas Forum ("NGF") Report dated March 30, 2005, at page 31, the Board stated that an appropriate balancing of risk and reward in an Incentive Regulation ("IR") Framework will result in a reduced reliance on deferral and variance accounts. In Interrogatory Responses in its Application for 2009 Rates, Union Gas Limited ("Union") stated that:

"Under incentive regulation framework, the expectation is that material cost increases will be dealt with by Z Factors and not Deferral Accounts."

Union's evidence indicated that Canadian accounting authorities initially raised the potential conversion from Canadian Generally Accepted Accounting Principles ("Canadian GAAP") to IFRS during 2006. Union's evidence in its Application indicated that its parent company, Spectra Energy Corp. ("Spectra") engaged Ernst & Young LLP ("E&Y") in October 2007 to assist Spectra, Westcoast Energy Inc. ("WEI") and its subsidiaries and Union to convert their Financial Statements to IFRS. In its Decision with Reasons in Union's 2009 Rates Application, the Board proceeded from the premise that Union's IFRS transition and conversion costs for 2009 must be shown to satisfy the Z Factor criteria in the approved IR Mechanism. Having regard to these circumstances, please provide the following information:

- a) When did EGD's parent company, Enbridge Inc. ("EI"), first become aware of the need to transition and convert to IFRS?
- b) How many companies in the EI group of companies will be transitioning and converting their financial statement reporting to IFRS?
- c) When did EI and/or EGD first retain an external accounting firm to assist them in transitioning and converting to IFRS? Please produce a copy of the initial retainer agreement.
- d) What plans did EI and/or EGD make in the 2007 calendar year for transitioning and converting to IFRS?

Witnesses: K. Culbert  
N. Kishinchandani

- e) How much did EI and/or EGD spend in 2007 with respect to any activities related to the transition and conversion to IFRS?
- f) What plans did EI and/or EGD make with respect to transitioning and converting to IFRS in 2008?
- g) How much did EI and/or EGD spend in 2008 with respect to any activities related to the transition and conversion to IFRS?
- h) What actions are planned with respect to the transition and conversion to IFRS in 2009?
- i) Please provide details of EGD's 2009 budget with respect to activities pertaining to the transition and conversion to IFRS and specify the extent to which any budgeted costs are an allocation of costs expected to be incurred by EI.
- j) Please confirm that the Z Factor mechanism in the Settlement Agreement at Exhibit E1, Tab 1, Schedule 1 is the only mechanism that permits EGD to seek material increases in costs not covered by existing deferral accounts or the Y Factor provisions of the Settlement Agreement.

## RESPONSE

- a) Enbridge Inc. first became aware of the transition to IFRS in May 2007.
- b) There are four business units within the EI group of companies that are planned to be transitioned to IFRS.
- c) Outside consultants were first retained in January 2008 and were used intermittently during 2008. A formal engagement letter between EI and the consultants is yet to be finalized.
- d) In the 2007 fiscal year, EI and EGD made the following plans for their transition to IFRS:
  - a. Preliminary project planning and scoping of work
  - b. Preliminary project charter (governance structure and key risks)
- e) During the fiscal year ending Dec. 31, 2007, EGD incurred approximately \$65,000 relating to the transition and conversion to IFRS. These costs consist of a full-time IFRS resource for part of the year and related travel and training costs for IFRS.

Witnesses: K. Culbert  
N. Kishinchandani

- f) During the 2008 fiscal year, EI and EGD made the following plans for the transition to IFRS:
  - a. Accounting Research and assessment to establish differences between IFRS and Canadian GAAP
  - b. Enterprise wide project planning for IFRS transition
- g) During the fiscal year ending Dec. 31, 2008, EGD incurred approximately \$150,000 relating to the transition and conversion to IFRS. These costs include a full-time IFRS resource, related travel and training for IFRS and incremental consultant costs.
- h) EGD has planned the following activities relating to the transition and conversion to IFRS during the year 2009:
  - a. Completion of Planning and Scoping for transition to IFRS
  - b. Review and Reconfiguration of processes and procedures for accounting & reporting, controls, governance and IT systems in preparation for transition to IFRS
  - c. Commencing the implementation of system changes required for transition to IFRS
- i) EGD's current forecast for such costs in 2009 is approximately \$770,000. These costs are relating to the following activities:
  - a. External Training, Travel & Conferences - \$20,000
  - b. IFRS Employee Resources - \$320,000
  - c. Incremental Consultant Costs - \$430,000

However, the above costs do not include any costs associated with activities relating to system conversion, which have yet to be determined.

- j) EGD does not confirm this notion. Please see the response to BOMA Interrogatory #10 at Exhibit I, Tab 3, Schedule 10.

Witnesses: K. Culbert  
N. Kishinchandani

CME INTERROGATORY #11

INTERROGATORY

Issue 2 – Change in Non-Energy Service Charges

Ref: Exhibit C, Tab 1, Schedule 3

Please confirm that there are no provisions in the Settlement Agreement which permit EGD to increase charges for non-energy services during the term of the Board approved IR Mechanism.

RESPONSE

In the Settlement Agreement (referenced in EB-2007-0615, Exhibit N1, Tab 1, Schedule 1, p. 35, 12.4 Non-Energy Services) it was agreed that:

...miscellaneous, regulated non-energy service charges shall be handled outside the adjustment formula. If Enbridge proposes any changes to miscellaneous non-energy service charges during the term of the IR Plan, it will provide the Board with evidence that supports the change.

The service charges are related to certain customer support and operational services, and are provided by EGD on an as-needed, user-pay basis. The service charges are cost-based and there is no net impact to earnings associated with these service charge increases.

Witnesses: D. Broude  
A. Welburn

CME INTERROGATORY #12

INTERROGATORY

Issue 2 – Change in Non-Energy Service Charges

Ref: Exhibit C, Tab 1, Schedule 3

Please confirm that the increased costs which EGD seeks to recover by increasing some charges for non-energy services do not satisfy the Z Factor criteria in the Settlement Agreement.

RESPONSE

They do not satisfy the Z Factor criteria as the mechanism contemplated in the settlement agreement to deal with any miscellaneous regulatory non-energy service charges is to provide supporting evidence to the Board in a request to increase rates. See the response to VECC Interrogatory #14 (h) at exhibit I, Tab 7, Schedule 14.

Witnesses: D. Broude  
A. Welburn

CME INTERROGATORY #13

INTERROGATORY

Issue 2 – Change in Non-Energy Service Charges

Ref: Exhibit C, Tab 1, Schedule 3

Assume the Board finds that any changes to non-energy service charges cannot be effective before expiry of the term of the IR Mechanism. In this scenario, does EGD seek approval of the increased charges shown at Exhibit C, Tab 1, Schedule 3, page 2; or does EGD wish to reserve the right to seek different increases in non-energy service charges at a later date which is closer to the termination date of the Board approved IR Mechanism for EGD?

RESPONSE

EGD seeks approval to increase charges for the 2009 year to reflect the cost increases. Should there be a significant increase in inflation in the coming years the Company may come forward with further increases in the charges.

Witnesses: D. Broude  
A. Welburn

CME INTERROGATORY #14

INTERROGATORY

Issue 3 - Force Majeure

Ref: Exhibit C, Tab 1, Schedule 4, pages 1 and 2

Please provide a copy of the General Terms and Conditions contained in the Company's service contracts with rate classes other than Rates 1 and 6 and produce copies of the contract forms used for such rate classes.

RESPONSE

Please note that the proposed changes to the Rate Handbook are only meant to apply to Rates 1, 6 and 9. As such, the Company proposes to add the following additional sentence at the beginning of Section O:

"This Section O applies only to gas distribution service under Rates 1, 6 and 9, and does not replace or supercede the terms in any applicable Service Contract."

Attached are the forms of Gas Delivery Agreement and Large Volume Distribution Contracts used by the Company.

Witnesses: A. Kacicnik  
M. Giridhar  
I. MacPherson



ENBRIDGE GAS DISTRIBUTION INC.

**GAS DELIVERY AGREEMENT**

**[for Direct Purchase Customers represented by Agents]**

version 2





## **GAS DELIVERY AGREEMENT**

**THIS GAS DELIVERY AGREEMENT** is made and entered into as of the  
«EffectiveDate»

**A M O N G :**

**ENBRIDGE GAS DISTRIBUTION INC.,**  
a corporation subsisting under the laws of Ontario

(the “**Company**”)

- and -

**EACH PERSON WHO, FROM TIME TO TIME, RECEIVES DELIVERY  
SERVICES UNDER THE TERMS OF THIS AGREEMENT**

(individually, a “**Customer**”; and collectively, the “**Customers**”)

- and -

«**CompanyLegalCorporateName** », [a corporation incorporated  
under the laws of [Ontario], OR [an individual residing in Ontario]  
OR [a partnership established under the laws of [Ontario]

(the “**Agent**”)

## **BACKGROUND**

A. This Agreement provides for the delivery of Gas by the Customers to the Company and for the redelivery of that Gas by the Company to the Customers.

B. The Agent has been duly appointed by each Customer to act on behalf of such Customer in respect of all of such Customer’s rights and obligations under this Agreement.

**THEREFORE IN CONSIDERATION** of the foregoing premises and the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

## **ARTICLE 1** **INTERPRETATION**

### **1.1** **Definitions**

In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement (including the

Schedules hereto) capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

**“Agent”** means the Person appointed as the agent to act for and on behalf of Customers designated as represented by such agent in respect of the rights and obligations of such Customers under this Agreement.

**“Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder”,** and similar expressions refer to this Gas Delivery Agreement, together with all attachments hereto, as the same may be amended or updated from time to time.

**“Applicable Laws”** means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of either of the Parties, from time to time.

**“Banked Gas Account”** has the meaning given to such term in Section 3.1 of this Agreement.

**“Business Day”** means any day on which the Company’s head office in Ontario is open for business as usual.

**“Change Notice”** has the meaning given to such term in Section 2.7.2 of this Agreement.

**“Claim”** means any claim, demand, liability, damage, loss, suit, dispute, civil or criminal litigation, action or cause of action, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review and all costs and expenses relating thereto.

**“Customer”** means a Person who has contracted with the Company for gas delivery service, pursuant to the terms and conditions of this Agreement.

**“Default”** means an event or condition (including an act or omission), the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

**“Event of Default”** has the meaning given to such term in Section 9.4 of this Agreement.

**“Fuel Gas”** means in respect of any Gas to be delivered by a Customer to the Company, the fuel ratio (expressed as a percentage of the volume of such gas) in effect from time to time for Gas transportation service, as established by the relevant Gas Transporter.

**“Gas”** means natural gas and/or residue gas comprised primarily of methane.

**“Gas Transporter”** means a Person, other than the Company, with which the Company or a Customer (or the Agent on a Customer’s behalf) has contracted to transport Gas from or to any Point of Acceptance.

**“Governmental Authority”** means any government, regulatory body or authority, agency, crown corporation, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of Canada or any provincial, regional or local governmental, or other subdivision thereof, whether over the Parties, their facilities, any Gas supply, the sale, purchase or transportation of Gas, or this Agreement or any part hereof.

**“MDV”** means mean daily volume, as a reference to a volume of Gas, determined in accordance with the *Transaction Rules*.

**“Nominations”** has the meaning given to such term in Section 2.4.1 of this Agreement.

**“OEB”** means the Ontario Energy Board, or any successor regulatory entity.

**“Party”** means any one of the Company, a Customer or the Agent, and **“Parties”** means any two or more of them.

**“Person”** means an individual, corporation, partnership, firm, joint venture, syndicate, association, trust, trustee, government, governmental agency, board, tribunal, ministry, commission or department or other form of entity or organization and the heirs, beneficiaries, executors, legal representatives or administrators of an individual, and **“Persons”** has a similar meaning.

**“Personal Information”** means any information that identifies or is associated with an individual and any other information considered to be personal information and which is protected or falls under the purview of applicable privacy legislation.

**“Point of Acceptance”** means a point at which the Company accepts delivery of a supply of Gas from, or in respect of, a Customer pursuant to this Agreement; and for certainty, shall be such location or locations as are established as valid points of receipt of Gas by the relevant Gas Transporter(s), and in each case as selected and identified in a Transaction Request during the submission of a Nomination for the relevant Pool; and for these purposes:

**“Delivery Point”** means an Ontario Point of Acceptance, where acceptance of Gas by the Company is, or is deemed to be, at or inside the Company’s delivery area.

**“Receipt Point”** means a Western Point of Acceptance, where acceptance of Gas by the Company is, or is deemed to be, outside of the Company’s delivery area.

**“Pool”** means a group of one or more Customers who have been associated by the Agent for the purpose of the delivery of Gas by the Customers to the Company and the redelivery of that Gas by the Company to the Customers for a period of time, and has attached to it an identifier, start and end dates, a Point of Acceptance, one or more Terminal Location (generally corresponding to the various Customers in the Pool) and an aggregate MDV.

**“Rate Handbook”** means the Company’s ‘Handbook of Rates and Distribution Services’ as amended, updated or replaced by the Company from time to time with approval from the OEB.

**“Rate Number”** means a numbered rate established by the Company from time to time for one or more category of customer as approved by the OEB and in effect at the relevant time.

**“Rate Schedule”** means the schedule of rates, charges, terms and conditions associated with each Rate Number established by the Company from time to time as approved by the OEB and in effect at the relevant time.

**“Required Orders”** means such grants, permits, licences, registrations, approvals, consents, waivers, variances, exemptions, filings, authorizations, orders and decisions or requirements of or by any Governmental Authority having jurisdiction or control over any of the Parties or any provision hereof, as are from time to time necessary in order that this Agreement and the performance thereof by the Parties be in compliance with all Applicable Laws.

**“System Gas”** means commodity supply Gas provided by the Company pursuant to a Rate Number approved by the OEB.

**“Terminal Location”** means the building, plant or other facility of a Customer at or in which Gas to be delivered pursuant to this Agreement will be used by such Customer.

**“Transaction Request”** means a request from a Customer (or the Agent on the Customer’s behalf), which has been approved or accepted by the Company, for the provision of Gas delivery services offered by the Company pursuant to this Agreement and made by the Customer or the Agent to the Company by any means, including any electronic instructions, which request shall be in the form and shall include such information as may be required by the Company pursuant to the *Transaction Rules*.

**“Transaction Rules”** means the rules, regulations, policies and procedures established by the Company, and amended or updated by the Company from time to time, in respect of the services provided pursuant to this Agreement, among others.

## **1.2            Rules of Interpretation**

In this Agreement the following rules shall apply to the interpretation thereof:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”;
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to

time, and any successor statute thereto, unless otherwise expressly provided;

- (d) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded;
- (e) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency;
- (f) the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (g) except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

### **1.3 Entire Agreement**

This Agreement and all Exhibits, attachments, and addenda contemplated herein or specifically referred to herein constitute the entire agreement among the Parties pertaining to all the matters herein, and supersede all prior agreements, understandings, negotiations, discussions and other communications, whether oral or written, of the Parties.

### **1.4 Severability**

This Agreement is a general form, intended for use by the Parties in their ongoing relations in Canada. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any Applicable Laws, then (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Party or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

### **1.5 Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated as an Ontario contract. For the purpose of any legal actions or proceedings brought by any Party in respect of this Agreement, each Party irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## **1.6 Handbook**

Parts III and IV of the Rate Handbook are incorporated into this Agreement and form a part hereof. Parts III and IV of the Rate Handbook shall be construed using the definitions contained in this Agreement and the terms used therein and not defined in this Agreement shall be construed using the definitions in Part I of the Rate Handbook. For certainty, for purposes of this Agreement, the term “Applicant” as referenced in the Rate Handbook shall mean “Customer” in this Agreement. If there is any conflict between the provisions of this Agreement and the provisions of the Rate Handbook, then the provisions of the Rate Handbook shall prevail.

## **1.7 Schedules**

The Schedules set out below are required to complete this Agreement and are incorporated herein by reference and are deemed to be a part hereof and are to be read in conjunction with and subject to this Agreement.

Schedule “A” - Terms of Assignment of Company Capacity

## **ARTICLE 2** **BASIC AGREEMENTS**

### **2.1 Receipt and Delivery of Gas**

2.1.1 Receipt - On and subject to the terms of this Agreement, during the Term the Company shall receive Gas from the Customers and the Customers shall deliver Gas to the Company.

2.1.2 Point of Acceptance - All Gas delivered to the Company by a Customer pursuant to this Agreement shall be delivered at one or more Point of Acceptance, as selected and identified in a Transaction Request, in accordance with the *Transaction Rules*.

2.1.3 Delivery - On and subject to the terms of this Agreement, during the Term the Company shall deliver Gas to the Customers, at the rates referred to herein.

2.1.4 Delivery at Terminal Location - All Gas delivered to a Customer by the Company pursuant to this Agreement shall be delivered at the outlet of the Company’s metering equipment at each Terminal Location associated with the one or more customer account numbers as selected and identified in a Transaction Request in accordance with the *Transaction Rules*.

### **2.2 Volumes**

2.2.1 Contracted Pool MDV - The contracted Pool MDV is the aggregate volume of expected deliveries of Gas (excluding Fuel Gas) to be made by the Customers in a Pool, at the time the MDV is established for such Pool, divided by the number of days in the contract term of the relevant Pool, all in accordance with the *Transaction Rules*. The Customers in a Pool shall deliver the contracted MDV on each day of the term of the relevant Pool.

2.2.2 Updated Pool MDV - Where the term of a Pool is two (2) years or more, then the contracted Pool MDV shall be automatically updated on each anniversary date of such Pool, based on the contracted MDV for each of the active Terminal Locations in such Pool on that anniversary date, all in accordance with the *Transaction Rules*. Such updated MDV shall thereafter constitute the contracted Pool MDV for such Pool.

2.2.3 Maximum Daily Receipt - The maximum volume of Gas the Company is required to receive from the Customers in a Pool in respect of that Pool in any day is the aggregate of: (A) the contracted Pool MDV; and (B) the volume of Gas in excess of the Gas referred to in Section 2.2.1 which Customers are to deliver to the Company on such day pursuant to one or more Transaction Requests, in connection with the balancing of actual volumes of Gas previously received, or to have been received, from the Customers against the volumes of Gas consumed by such Customers; and in any hour is one-twentieth (1/20th) of such amount.

2.2.4 No Transfer of Volumes - The accounting between the Customers associated with a Pool and the Company for Gas received by the Company from such Customers in respect of such Pool will be on a daily basis with no right in any Party to transfer any Gas as between the days during which the relevant Pool is in effect. For certainty, if the Customers associated with a Pool are deficient in the delivery of the contracted Pool MDV on any day during the term of a Pool, they cannot make-up that deficiency on another day.

2.2.5 Fuel Gas - The Customers shall, on a daily basis, provide the necessary Fuel Gas based on the relevant Gas Transporter's published monthly fuel ratio for the corresponding Receipt Point, when applicable.

## 2.3 Rates

2.3.1 Applicable Rates - Subject to the other terms and conditions of this Agreement, the rates and charges for delivery of Gas to a Customer hereunder in respect of any Terminal Location shall be the Rate Number associated with the applicable Customer and the corresponding Rate Schedule.

2.3.2 Independence of Rates - The rates and charges applicable to the delivery of Gas to a Terminal Location of a Customer shall be determined and computed in accordance with the relevant Rate Schedule without regard to any volume of Gas contracted to be delivered, or delivered, to any other Terminal Location or under any other Rate Schedule or pursuant to any other agreement to which the Company and the Customer are parties.

## 2.4 Nominations

2.4.1 Nominations - In respect of each Pool, the Customer(s) (or the Agent on their behalf) participating in such Pool may, from time to time during the contract term of the Pool, provide to the Company a Transaction Request specifying, among other things, details of the volumes (including the contracted Pool MDV during the relevant periods for such Pool), as well as the relevant Point of Acceptance of the Gas included in such Pool (each, a "**Nomination**"). All Nominations shall be made in accordance with the *Transaction Rules*.



2.4.2 Effective Time of Nomination - Each Nomination shall only be effective from and after the time and date established by the relevant Transaction Request.

2.4.3 Failure to Submit Initial Nomination - If a valid Nomination is not submitted in respect of a Pool prior to any Gas in respect of such Pool beginning to flow, then the Company shall have no obligation to accept deliveries of Gas at the Point of Acceptance, in respect of such Pool.

## 2.5 Assignment of Company Capacity

2.5.1 Request for Assignment - If (1) a Pool is established with an Ontario Point of Acceptance, (2) the Agent, on behalf of any one or more of the Customers who are associated with such Pool, requests the Company assign part of the Company's service entitlement as shipper under the Company's contract with a Gas Transporter, and (3) the Company agrees to make such assignment and the Agent and the Company agree on the volume of Gas to be subject to such assignment, then the terms and conditions of Schedule "A" - Terms of Assignment of Company Capacity shall apply to the Company and the Customers who are associated with such Pool.

2.5.2 Temporary Assignment - If (1) a Pool is established with a Western Point of Acceptance, and (2) the Agent, on behalf of any one or more of the Customers who are associated with such Pool, requests the Company suspend certain Gas deliveries, then (3) the Company shall use reasonable efforts to make available a part of the Company's service entitlement as shipper under the Company's contract with the relevant Gas Transporter in accordance with the *Transaction Rules*, and (4) the terms and conditions of Schedule "A" - Terms of Assignment of Company Capacity shall apply to the Company, the Agent and the Customers who are associated with the relevant Pool, in respect of such suspension.

## 2.6 Priority of Service

In the event of actual or threatened inability to deliver the volume(s) of Gas contracted for under this Agreement to a Terminal Location due to an Event of Force Majeure affecting the Company, or when curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, a Customer shall, at the direction of the Company, curtail or discontinue use of Gas during the period specified by the Company (by notice to the Customer in accordance with the other terms of this Agreement) so as to safeguard the health and safety of the public. If the Company intends to require a Customer to curtail or discontinue use of Gas pursuant to this Section 2.6 as a result of a threatened inability to deliver due to an Event of Force Majeure affecting the Company, then as soon as the Company makes the determination that there is a threatened inability to deliver (which determination will be made in the Company's sole discretion acting reasonably) the Company will notify the relevant Customers of the determination and the reasons therefor. If the curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, then the Company shall ensure that the notice to the Customer to curtail or discontinue use is consistent with such order, and that the duration of such curtailment or discontinuance is not longer than that required in such order. Any curtailment or discontinuance shall be effected by the Company in a manner consistent with the

then current policy of the Company regarding curtailment or discontinuance of use. The Company shall not be liable for any loss of production or for any damages whatsoever by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

## **2.7 Transaction Rules**

2.7.1 Compliance - The Agent and each Customer acknowledges and agrees: (A) that it shall at all times conduct its business relations with the Company in strict compliance with the terms and conditions of this Agreement, including the *Transaction Rules*, as amended from time to time; and (B) that all of such terms and conditions, as amended from time to time, shall be applicable to and binding upon the Agent and each Customer. The Company acknowledges and agrees that it shall at all times conduct its business relations with the Agent and each Customer in strict compliance with the terms and conditions of this Agreement, including the *Transaction Rules*, as amended from time to time. If there is any conflict between the provisions of this Agreement and the provisions of the *Transaction Rules*, the provisions of this Agreement shall prevail.

2.7.2 Changes - The Company may, at any time and from time to time, in its sole discretion acting reasonably and in the interests of maintaining the integrity of the Company's Gas distribution system, make changes to the *Transaction Rules*. All such changes shall become effective on the first day of the month which is not less than thirty-five (35) days following notification to the Agent of the relevant change (the "**Change Notice**"). The Change Notice shall include a brief description of the background to and rationale for each change. To the extent that the Company is able, in its sole discretion, to provide additional notice to the Agent of any proposed changes, in advance of the delivery of the Change Notice, the Company shall endeavour to do so.

2.7.3 Effect of Changes - On the effective date set out in the Change Notice, the change or changes set out therein shall be deemed to be, and shall be and become, a part of this Agreement. The Agent and each Customer covenants and agrees to comply with such change or changes forthwith thereafter.

## **2.8 Authority of, and Dealings with, Agent**

2.8.1 Representations and Warranties - In addition to any other representations and warranties given to the Company under this Agreement, the Agent represents and warrants to the Company, and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in entering into this Agreement, that at the date hereof and at all times during the Term:

- (a) the Agent is and will be the duly appointed agent of each Customer and, in such capacity, is entitled to enter into this Agreement on behalf of each such Customer and to act on behalf of each such Customer under this Agreement; and

- (b) the Company is entitled to rely on anything done or any document signed by the Agent in respect of this Agreement as if the action had been taken or the document had been signed by the relevant Customers individually and/or collectively.

2.8.2 Dealings with Agent - The Company shall be entitled to deal exclusively with the Agent in respect of the rights and obligations of the Customers (individually and/or collectively) under this Agreement.

2.8.3 Proof of Authority - The Company shall have the right, at any time and from time to time, without in any way limiting any of the foregoing, including the representations and warranties of the Agent, to require the Agent to provide the Company proof, which must be satisfactory to the Company in its sole discretion, acting reasonably, that the Agent has been appointed by, and is authorized to act on behalf of, any or all of the Customers, and has the agency authority contemplated in Section 2.8.1.

2.8.4 Deemed Authority - For purposes of this Section 2.8, and without in any way limiting any of the foregoing, the Agent shall be deemed to have a valid and appropriate letter or other document appointing the Agent as the authorized agent of a Customer upon the Agent submitting a Transaction Request in respect of a Customer or associating the Customer's Gas Account with a Pool.

### **ARTICLE 3**

### **VOLUMETRICS**

#### **3.1 Banked Gas Accounts**

The Agent and each Customer acknowledge and agree that there shall be established for each Pool an account to record the volumes of receipt and delivery of Gas in respect of such Pool (each, a “**Banked Gas Account**”), and that the receipt and delivery information of each of the various Customers who, and the various Terminal Location(s) which, are associated with the relevant Pool shall be aggregated for the purposes of determining the balance of the Banked Gas Account of such Pool.

#### **3.2 Banked Gas Balancing**

3.2.1 During the Term of Pool - During the term of a Pool, in order to attempt to balance the actual aggregate volumes of Gas received and delivered in respect of a Pool, the Customers associated with the relevant Pool, or the Agent on their behalf, may take such steps and actions as are set out and provided for in the Rate Handbook and the *Transaction Rules*.

3.2.2 Upon Expiry of Pool – Following the expiry of the term of a Pool, the Customers associated with such Pool, or the Agent on their behalf, may, during the period and in the manner and to the extent set out in the relevant section(s) of the Rate Handbook, take such steps and actions to balance the actual aggregate volumes of Gas received and delivered in respect of such Pool as are set out in such section(s), in accordance with the *Transaction Rules*.

### 3.3 **Responsibility for Deficiency**

The Agent and each Customer acknowledge and agree that: (A) following the expiry of the term of a Pool and on each anniversary date of such Pool (if the term of the Pool is two (2) years or more), the Company will prepare an accounting of the net aggregate Gas received and delivered, and determine the amount of the balance of Gas consumed and not yet received; and (B) each Customer shall be responsible to reimburse the Company for its pro rata share of any deficiency. Such deficiency shall be settled in a manner permitted by the Company and as set out in the Rate Handbook or the *Transaction Rules*. For these purposes, each Customer's pro rata share will be calculated based on the expected Gas deliveries to be made by the Customer pursuant to the Customer's MDV for such Pool at the time such calculation is required to be made.

## **ARTICLE 4**

### **DELIVERY, POSSESSION, TITLE AND COMMINGLING**

#### 4.1 **Possession**

Each Customer who or which is associated with a Pool shall be deemed to be in control and possession of, and responsible for, the relevant Gas that is the subject matter of such Pool (other than Gas purchased from the Company) until it shall have been delivered to or for the account of the Company at the Point of Acceptance, after which the Company shall be deemed to be in control and possession of, and responsible for, such Gas until it is delivered to the Terminal Location, after which such Customer shall be deemed to be in control and possession of, and responsible for, such Gas. Each Customer shall bear the full cost and expense for transporting and delivering such Gas to the Point of Acceptance.

#### 4.2 **Delivery and Title**

4.2.1 **Under Consumption** - The volume of Gas delivered by a Customer to the Point of Acceptance on each day of the term of the relevant Pool (the "**Gas Received**") shall be deemed to have been redelivered to the Terminal Location to the extent of the lesser of: (A) the Gas Received; and (B) the volume of Gas delivered by the Company to the Terminal Location of such Customer on such day (the "**Gas Taken**"), and title to that lesser amount of Gas shall at all times remain in the Customer.

4.2.2 **Over Consumption** - If the volume of Gas Taken exceeds the volume of Gas Received, then title to such Gas Taken in excess of the Gas Received shall remain in the Company to, and pass from the Company to such Customer at, the Terminal Location.

4.2.3 **Title of Customer** - Except as provided in Subsections 4.2.1 or 4.2.2 above, at any particular time a Customer shall have title to, and only to, Gas delivered by or for such Customer to the Point of Acceptance in excess of the volume of Gas Taken during the term of the relevant Pool to the extent of the Customer's pro rata share of the credit balance, if any, at such time in the Banked Gas Account of the relevant Pool. For these purposes, each Customer's pro rata share

will be calculated based on the expected Gas deliveries to be made by the Customer pursuant to the Customer's MDV for such Pool at the time such calculation is required to be made.

#### **4.3 Right to Commingle**

The Company shall have the right to commingle Gas delivered to the Company by or for Customers at the Point of Acceptance with Gas owned by the Company or any other Person or Persons, and the Company shall have the right and full and absolute authority to deal in any manner with all Gas delivered to it, subject to the terms of this Agreement.

#### **4.4 Additional Representations and Warranties of the Customers**

In addition to any other representations and warranties given to the Company under this Agreement, each of the Customers and the Agent represents and warrants to the Company that at the date hereof and at all times during the Term:

- (a) the Customer and the Agent shall have good and marketable title in and to the Gas to be delivered to the Company and shall be entitled to deliver and, where applicable, sell such Gas to the Company in accordance with the terms of this Agreement, free and clear of any adverse claim of any nature or kind whatsoever; and
- (b) Gas delivered to the Company by or for the Customer will not be subject to any royalties, taxes (federal and/or provincial) or other charges payable by, or that may become a liability of, the Company and the purchases by the Company from the Customer contemplated hereby will not result in any liability to the Company for royalties, taxes (federal and/or provincial but not income taxes) or like charges which are applicable before possession of and title to such Gas passes to the Company,

and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement and the acceptance by the Company of all Nominations made by the Customer.

#### **4.5 Representations and Warranties of the Company**

The Company represents and warrants to each of the Customers that at the date hereof and at all times during the Term:

- (a) the Gas delivered to the Terminal Location shall conform to the minimum standards established by the Company for Gas in its distribution system; and
- (b) the Company shall not, and shall not take any action to cause any other Person to, create any lien, encumbrance or other adverse claim upon the Gas delivered by any Customer to the Company hereunder,

and acknowledges that the Customers are relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement.

## **ARTICLE 5**

### **POINT OF ACCEPTANCE - QUALITY AND MEASUREMENTS**

#### **5.1        Quality and Measurements**

5.1.1        Quality - The Agent and each Customer acknowledges and agrees that the quality, pressure and temperature of the Gas delivered by each Customer hereunder shall conform to the minimum standards of the relevant Gas Transporter and such Gas shall otherwise be marketable Gas.

5.1.2        Measurement - For the purpose of determining the volume of Gas delivered to the Company by the Customers, the Parties agree to accept the measurement of the relevant Gas Transporter(s), or as the Gas Transporter and the Company may otherwise agree, and the volume of Gas so determined for a particular day shall be deemed to be the volume of Gas delivered by such Customer to the Company on such day. The standard of measurement and tests for the Gas delivered hereunder shall be in accordance with the contractual arrangements made by the Company with the relevant Gas Transporter(s), or as the Gas Transporter and the Company may otherwise agree, in effect from time to time.

5.1.3        Testing - In the event that either Party should request measuring or testing at any time, the other Party will cooperate fully to obtain such measurement and testing from the relevant Gas Transporter(s), provided that the Party seeking the test shall bear the cost thereof if the contractual arrangements of the Company with the relevant Gas Transporter(s) require payment of such cost.

## **ARTICLE 6**

### **TERMINAL LOCATION - METERING AND EQUIPMENT**

#### **6.1        Metering at Point of Delivery**

6.1.1        Installation - The Company agrees to install, operate and maintain measurement equipment of suitable capacity and design as is required to measure the volume of Gas to be delivered by the Company under this Agreement. The Customers agree to provide, at their own expense, (i) any and all housing reasonably required by the Company for the protection of such measurement equipment and regulating equipment at the Customer's premises used in connection with the delivery of any such Gas, and (ii) if required for the Company's measurement equipment, a continuous supply of electrical power at 110 volts and a non-dedicated, single, voice grade, analog outside telephone line for local and WATTS (800 service) calls. The measurement and regulating equipment shall be installed at such location as the Company may determine, in its discretion acting reasonably; provided that if the Company determines that such equipment should be installed on the Customer's premises, the site shall be

as agreed between the Customer and the Company; and provided further that all installations of equipment must be made in accordance with all applicable safety regulations.

6.1.2 Access - The Company and each Customer shall each have access to and the right to enter the measurement/regulating location at any reasonable time on prior notice to the Customer or the Company, as the case may be, and shall have the right to be present at the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of measurement equipment. Access under this Section is subject to the Party which is accessing the location complying with any specific policies or procedures in respect thereof that are provided to it by the Party permitting such access following the giving of the notice requiring such access.

## **6.2 Examination**

6.2.1 If requested by a Customer, the Company's measurement equipment shall be examined by the Company in the presence of a representative of the Customer, but the Company shall not be required as a matter of routine to examine such equipment more frequently than once in any 9-month period.

6.2.2 If the measurement equipment is found to be in error by not more than three per cent (3%), the previous recording shall be considered correct but proper adjustments to the meter will be made immediately. However, if the error is greater than three per cent (3%), a correction in billing shall be made in accordance with the *Electricity and Gas Inspection Act* and the Regulations made thereunder or any other legislation which may succeed the said Act.

6.2.3 Gas measurement equipment that malfunctions for whatever reason shall be dealt with in accordance with the foregoing subparagraph of this Section 6.2.

## **6.3 Measurement Criteria**

6.3.1 All Gas delivered shall be measured utilizing equipment which conforms to the regulations prescribed in "Departmental Instructions for Inspection of Gas Meters and Auxiliary Devices" dated October 1976, issued by the Department of Customer & Corporate Affairs, Government of Canada, as amended from time to time.

6.3.2 The measurement unit shall be one cubic meter of Gas at a pressure of 101.325 kpa absolute and at a temperature of fifteen (15) degrees Celsius. The average absolute atmospheric (barometric) pressure shall be calculated in accordance with the *Electricity and Gas Inspection Act* and the Regulations made thereunder or any other legislation which may succeed the said Act, regardless of variations in actual barometric pressure from time to time.

## **6.4 Equipment**

The title to all service pipes, meters, regulators, attachments and equipment placed on a Customer's premises and not sold to the Customer shall remain with the Company,

with right of removal, and no charge shall be made by a Customer for use of premises occupied thereby.

## **ARTICLE 7**

### **GENERAL RIGHTS AND OBLIGATIONS OF THE PARTIES**

#### **7.1           Early Termination of Pools**

7.1.1           Right to Terminate a Pool - The Company shall have the right to terminate a Pool at any time prior to the expiry of the term of the Pool if: (A) the Customer or the Agent fails to perform or observe any of its obligations under this Agreement on its part to be observed and performed; and (B) the obligation affects in any way the relevant Pool; and either (C) the failure shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Customer, or its Agent, for a period of five (5) Business Days; or (D) the Company, in its sole discretion acting reasonably, shall determine that the failure: (i) may materially adversely affect the provision of any services by the Company to any other Customer; or (ii) may cause the Company to be in breach of any contractual obligation to any other customer of the Company; and (iii) in either event, cannot be cured in sufficient time.

7.1.2           Effects of Termination of a Pool - Upon the early termination of a Pool pursuant to Section 7.1.1:

- (a)       each of the Customers associated with the Pool: (A) shall revert to System Gas; and (B) may be transferred to another Pool if the Company has received an appropriate Transaction Request; and
- (b)       the Company shall, as soon as reasonably practicable and in any event not later than ninety (90) days following termination of the relevant Pool, prepare and forward to each Customer associated with the terminated Pool, or their Agent, a statement setting out the status of the Banked Gas Account for the Pool; and forthwith following receipt of such statement, the Customer and the Agent shall settle such obligation in a manner permitted by the Company and as set out in the Rate Handbook or the *Transaction Rules*.

7.1.3           No Liability of Company – Provided that the Company has acted in accordance with the material terms of this Agreement, the Company shall have no liability to the Agent, any Customer or to any Person with whom, or for whom, the Agent or any Customer has any contractual or other obligations as a result of the termination of the Pool pursuant to this Section 7.1.

#### **7.2           Governmental Regulations**

7.2.1           This Agreement is subject to (A) the maintenance of all Required Orders, and (B) all Applicable Laws.



7.2.2 Except as provided in Section 7.2.4, each Customer and the Agent shall promptly endeavour to obtain or cause to be obtained all Required Orders. Each Customer and the Agent shall provide true copies of all Required Orders (other than those contemplated in Section 7.2.4) to the Company upon request.

7.2.3 Each Customer and the Agent shall comply with the terms of all Required Orders applicable to them and shall use their best efforts to maintain the same in full force and effect throughout the Term. The Company will comply with all Required Orders applicable to it and will use its best efforts to maintain the same in full force and effect throughout the Term.

7.2.4 The Company shall promptly endeavour to obtain or cause to be obtained all Required Orders as it relates to Gas to be dealt with under this Agreement after it is delivered to the Point of Acceptance until it is delivered to a Terminal Location.

### 7.3 **Suspension of Company's Obligations**

In addition to any other rights the Company may have, the Company shall not be required to perform its obligations hereunder, and shall be entitled to suspend such obligations, at any particular time if:

- (a) there is a breach or default of any representation, warranty or obligation of the Customer or the Agent set out in this Agreement, as determined by the Company, in its sole discretion acting reasonably and where such breach or default affects the integrity of the Company's Gas distribution system;
- (b) any Required Order ceases to be in effect or if the Company has not received an original or true copy of any Required Order which has been requested by the Company; or
- (c) performance of any such obligation would be in contravention of any Applicable Law.

If the Company suspends any of its obligations pursuant to this Section, then it shall deliver a notice to that effect to the relevant Customers, or the Agent, and the reasons therefor. If a Suspension Period continues for more than thirty (30) consecutive days, then the Company may terminate this Agreement, or any one or more affected Pools, by notice to the relevant Customers, or the Agent, given by the Company after the thirtieth (30<sup>th</sup>) day in such Suspension Period, and such termination shall be effective on the later of a date stipulated in such notice and the date on which such notice is received by the Customer, or the Agent. In this Section, "**Suspension Period**" means a period throughout which the Company is not required to perform its obligations hereunder as permitted by this Section.

### 7.4 **Adoption of NAESB Standards**

7.4.1 Acknowledgement of Standards - Each of the Parties acknowledges that the North American Energy Standards Board ("**NAESB**") develops and promotes standards for business

practices and electronic communication of Gas transactions, with a view to simplifying the management of Gas across the entire North American pipeline grid, and that the Gas Industry Standards Board (“**GISB**”) is the wholesale Gas quadrant of NAESB.

7.4.2 Amendment to Conform with Standards - The Agent and each Customer hereby acknowledges that the NAESB may, from time to time, revise or implement standards that conflict with or supplement the provisions of this Agreement. If at any time the Company is required to adopt a recommended standard that conflicts with or supplements the provisions of this Agreement as a result of a Required Order or the imposition of such standards on the Company by any Gas Transporter which necessitates the Company adopting such standards, then the Company shall deliver a notice to the Customer, or its Agent, which specifies such standards and sets out the revisions to this Agreement that are required to accommodate such standards. The Parties agree that on the thirtieth (30<sup>th</sup>) day following the delivery of such notice, or such earlier day that such standards are imposed on the Company, this Agreement shall be deemed to be amended by the incorporation of the revisions set out in such notice.

## 7.5 Force Majeure

7.5.1 Effect of Force Majeure - Subject to the other provisions of this Section 7.5, a Party shall not be liable to the other Party, in respect of such first mentioned Party’s obligations under this Agreement, as a result of the inability of the first mentioned Party to deliver or receive Gas if such inability is caused by an event of Force Majeure. A delay or interruption in the performance by a Party of any of such obligations due to Force Majeure shall suspend the period of performance of such obligation during the continuance of such Force Majeure.

### 7.5.2 Notice and Other Requirements

- (a) Initial Notice - Forthwith following a Party becoming or being made aware of an Event of Force Majeure which may impact on any of such Party’s obligations, such Party shall notify the other Party of the event and of the manner in which such Party’s obligations hereunder will or may be affected; and such Event of Force Majeure shall be deemed to have commenced when it occurred provided notice is given within six (6) hours of the occurrence, and otherwise when such notice is given.
- (b) Efforts to Eliminate - The Party claiming Force Majeure shall, unless such Event of Force Majeure is a strike, lockout or other industrial disturbance, use its best efforts to eliminate such event of Force Majeure.
- (c) Subsequent Notice - The Party claiming Force Majeure shall forthwith give notice to the other Party when such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling its obligation to deliver or receive Gas as contemplated herein.
- (d) Recommencement of Obligations - The Party claiming Force Majeure shall proceed to fulfill such Party’s obligations which are impacted by the

Event of Force Majeure as soon as reasonably possible after such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling such obligations.

- (e) Oral Notice - Any notice under this Section 7.5.2 may be given orally; provided that such notice shall only be effective if it is confirmed the same day in writing by facsimile or as otherwise provided in Section 12.1.

7.5.3 Definition - In this Agreement, “**Force Majeure**” or “**Event of Force Majeure**” means any cause (A) not reasonably within the control of the Party claiming force majeure, and (B) which by exercise of due diligence such Party is unable to prevent or overcome, and includes the following:

- (a) physical events such as an act of God, landslide, earthquake, storm or storm warning such as a hurricane which results in evacuation of an affected area, flood, washout, explosion, breakage or accident to machinery or equipment or lines of pipe used to transport Gas, the necessity of repairs to or alterations of such machinery or equipment or lines of pipe, or inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party’s obligations under this Agreement;
- (b) interruption and/or curtailment of firm transportation by a Gas Transporter;
- (c) acts of others such as strike, lockout or other industrial disturbance, civil disturbance, blockade, act of a public enemy, terrorism, riot, sabotage, insurrections or war, as well as physical damage resulting from the negligence of others; and
- (d) governmental actions, such as necessity for compliance with any Applicable Law.

7.5.4 Force Majeure Declared by Company - In the event a Force Majeure is declared by the Company, the Agent and the Customer will continue to be obligated for all applicable charges relevant to contracted services which continue to be available notwithstanding the Event of Force Majeure and may only be relieved of any applicable charges, if any, relevant to contracted services not available to the Agent or the Customer as a direct result of the Force Majeure. Any related upstream transportation charges would be the Agent’s and the Customer’s sole responsibility.

7.5.5 Force Majeure Declared by Customer - In the event the Force Majeure is declared by the Agent or the Customer, all demand, commodity and service rates and charges in respect of currently effective Nominations or financial obligations otherwise payable under this Agreement will remain payable to the Company. If any Force Majeure occurs at the Customer’s facilities downstream of the Company’s metering equipment at the relevant Terminal Location, the Agent

and the Customer will remain obligated to, if applicable, deliver gas at the Point Acceptance in respect of the then currently effective Nominations.

7.5.6 Additional Effect of Force Majeure - Except as provided in Section 7.5.8, and subject to Section 7.5.7, a Party hereunder shall not be liable to the other Party hereunder for the first mentioned Party's inability to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. In the case of any such inability so caused, then the other Party shall have no claim for damages or specific performance or other right of action against the first mentioned Party.

7.5.7 Limitations - Notwithstanding any other term of this Section 7.5, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances:

- (a) the curtailment of interruptible Gas supply;
- (b) a Force Majeure claimed by a Gas Transporter responsible for the delivery to the Point of Acceptance of Gas for which a Nomination has been accepted by the Company hereunder, if (i) another Gas Transporter is capable of delivering such Gas to the Point of Acceptance (unless the Party has used its best efforts to contract with such other Gas Transporter and has been unable to do so); or (ii) Gas is available in the secondary market from another supplier sufficient to meet the terms of the relevant Nomination;
- (c) economic hardship, including the Agent or Customer's ability to sell Gas at a higher or more advantageous price or to buy Gas at a lower or more advantageous price; or
- (d) the loss or failure of the Customer's Gas supply or depletion of reserves, unless (i) the Force Majeure causing such loss or failure is a result of a natural disaster (such as landslide, earthquake or hurricane) or an act of others (such as terrorism, riot, sabotage, insurrection or war; but not a strike, lockout or other industrial disturbance); and (ii) Gas is not available in the secondary market from another supplier sufficient to meet the terms of the Customer's then current obligations under this Agreement.

7.5.8 Further Limitations - Notwithstanding any other term of this Section 7.5, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure if:

- (a) such Party's inability to perform the obligation was caused by its lack of finances; or
- (b) such Party's inability to perform the obligation was caused by its deliberate act or inaction; or

- (c) such Party failed to comply with Section 7.5.2 in respect of the Event of Force Majeure.

In no event shall any Party be excused from any of its financial responsibilities or obligations under this Agreement, including in respect of any Banked Gas Account, or the settlement thereof.

#### **7.6            Payments by the Company**

If any payment is required to be made by the Company to the Agent or the Customer pursuant to the terms of this Agreement, then such payment shall be processed by the Company and remitted to the Agent or the Customer, as applicable, in accordance with the Company's normal monthly billing practise.

### **ARTICLE 8** **RECORD KEEPING**

#### **8.1            Co-Operation**

The Agent and each Customer acknowledge and agree that (A) as the 'shipper' for purposes of the relevant Gas Transporter(s), the Customer or the Agent may be in possession of information with respect to volumes of Gas delivered to the Company hereunder which may be required by the Company in the preparation of any statement or other document hereunder, and (B) they shall each co-operate with the Company to the extent necessary for the Company to obtain any information not in its possession. Invoices for charges arising hereunder or payments in respect of credits owed by the Company to the Customers from time to time may, in the Company's discretion, be sent to the Agent.

#### **8.2            Errors**

If an error in a statement or other document is discovered, a correcting adjustment shall be made promptly in a subsequent statement in accordance with the *Transaction Rules*. Claims for errors shall be made promptly upon discovery.

#### **8.3            Retention of Records**

All charts and calculations upon which a statement or other document issued to a Customer or the Agent is based, and the Company's books and records which relate solely to measurement and settlement for accounts hereunder, shall be retained by the Company for the longer of (A) three (3) years from the date of the relevant statement or such longer period as the Company determines to retain such records for its own purposes, and (B) the period while any claim which relates to such statement, and of which the Company receives written notice from the Customer within such one-year period, is outstanding; and shall be available for inspection by the Customer on reasonable prior notice during normal office hours of the Company.

#### **8.4            Withholding**

Notwithstanding anything in this Agreement to the contrary, the Company shall have the right to withhold (either by withholding payment or by withholding a credit to which a Customer, and/or the Agent, might otherwise be entitled) an amount owing to a Customer, and/or the Agent, by the Company equal to the amount of money then due, owing and unpaid by such Customer, and/or the Agent, to the Company under this Agreement or, if applicable, under any Large Volume Distribution Contract entered into between the Company and the relevant Customer (the “**Withheld Amount**”). Upon the Company ceasing to be entitled to hold any particular portion of a Withheld Amount the Company shall forthwith pay to such Customer, and/or the Agent, an amount equal to such portion of the Withheld Amount.

### **ARTICLE 9** **TERM AND TERMINATION**

#### **9.1            Term**

Subject to the other terms and conditions of this Agreement, the term of this Agreement (the “**Term**”) shall commence on the date first above written and shall continue until terminated in accordance with the provisions of this Agreement.

#### **9.2            Rights of Termination**

9.2.1            Mutual Right to Terminate - Subject to the other provisions of this Article 9, either the Agent or the Company shall have the right to terminate this Agreement at any time, without cause, upon the earliest date to occur which is both:

- (a)            immediately following the expiry or termination of the last of the Pools established by the Agent pursuant to this Agreement; and
- (b)            not less than sixty (60) days and not more than one hundred twenty (120) days prior written notice to such other Party.

9.2.2            Company’s Right to Terminate - Subject to the other provisions of this Article 9 and in addition to the Company’s rights of termination set out elsewhere in this Agreement, the Company shall have the right to terminate this Agreement:

- (a)            at any time upon the occurrence of an Event of Default; or
- (b)            at any time, without notice, upon the occurrence of a regulatory change established by a Governmental Authority, which causes, results in or requires such termination.

9.2.3            Agent’s Right to Terminate - Subject to the other provisions of this Article 9, the Agent shall have the right to terminate the obligations of a particular Customer (but only that Customer’s obligations) under this Agreement if the Company fails to perform or observe any of

its obligations under this Agreement on its part to be observed or performed for such Customer and such failure shall continue unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the affected Customer or the Agent to the Company. For certainty, termination of a Customer's obligations under this Section shall not relieve any Party from any payment obligation to any other Party under this Agreement.

### **9.3                    Effects of Termination**

9.3.1                Obligations of the Parties - Upon the termination of this Agreement (other than pursuant to Section 9.2.3), whether at the expiry of the Term or for any reason prior thereto:

- (a) every Pool established hereunder and in respect of which the relevant Customer is associated, shall forthwith be terminated, and each of the Customers shall: (A) revert to System Gas; or (B) if the Company has received an appropriate Transaction Request, be transferred to another Pool; and
- (b) the Company shall, as soon as reasonably practicable and in any event not later than ninety (90) days following termination, prepare and forward to each Customer, or their Agent, a statement setting out the status of the Banked Gas Account for each such Pool; and forthwith following receipt of such statement, the Customer or its Agent shall settle such obligations in a manner permitted by the Company and as set out in the Rate Handbook or the *Transaction Rules*;

provided that, notwithstanding any provision of the Rate Handbook or the *Transaction Rules* to the contrary, if this Agreement is terminated as a result of an Event of Default set out in Section 9.4.1(c), (d) or (e), then settlement of such obligation shall be effected by payment made by the Customer or the Agent immediately following delivery of such statement.

9.3.2                Survival on Termination - All provisions of this Agreement which by their terms are required to survive in order to permit the settlement in full of the obligations referred to in Section 9.3.1(b) as contemplated therein, shall survive the termination of this Agreement and continue in full force and effect in accordance with the terms of this Agreement for such period. Without limiting the foregoing, the following provisions shall so survive: Article 8 - Record Keeping; Section 9.3.1 - Obligations on Termination; Article 10 - Indemnity, Disclaimers and Limitations; and Section 12.8 - Confidentiality.

### **9.4                    Events of Default**

9.4.1                Events of Default - In addition to any other events set out in this Agreement, the occurrence of any one or more of the following events shall constitute a Default by a Customer or the Agent under this Agreement and shall be considered an event of default (an "**Event of Default**") if such Default is not remedied prior to the expiry of the relevant notice period (if any) or the relevant cure period (if any) applicable to such Default as hereinafter set out:

- (a) if a Customer, or the Agent, fails to perform or observe any of its obligations under this Agreement (except as specifically provided in Section 9.4.1(b)) on its part to be observed and performed and such failure shall continue unremedied for a period of thirty (30) days following the earlier to occur of: (a) notice thereof (giving particulars of the failure in reasonable detail) from the Company to such Customer, or the Agent; or (b) knowledge by such Customer, or the Agent, of the occurrence of such failure to perform or observe such obligation, provided that the Company has notified such Customer, or the Agent, forthwith after the Company becomes aware of such failure to perform or observe such obligation; or
- (b) if a Customer, or the Agent, fails to deliver the contracted MDV on any day of the term of the relevant Pool (as required pursuant to Section 2.2.1), and the Company is unable, using its normal commercial efforts, to cure such failure on the same day by securing Gas in the secondary market sufficient to meet the amount of the deficiency;
- (c) if a Customer, or the Agent, files a petition in bankruptcy, makes application or files a petition seeking any re-organization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of such Customer, or the Agent, or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against such Customer, or the Agent, and is not stayed, otherwise enjoined or discharged within fifteen (15) Business Days; or
- (d) if any execution, distress or other enforcement process, whether by court order or otherwise, which would have a material adverse effect on the financial viability of a Customer, or the Agent, becomes enforceable against any property of such Customer, or the Agent; or
- (e) if a Customer, or the Agent, ceases carrying on business in the ordinary course, commits any act of bankruptcy under *The Bankruptcy and Insolvency Act* or is wound up;

provided that each of the above-noted Events of Default has been inserted for the benefit of the Company and may be waived by the Company in whole or in part at any time by notice to the Customer, or the Agent, the Company may extend the period for the remediation of any such Event of Default (if any), provided that the Customer, or the Agent, is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Company that the steps being taken by the Customer, or the Agent, are likely to satisfy the Event of Default within a reasonable period of time.



9.4.2 Exception - Notwithstanding the provisions of Section 9.4.1, if the Event of Default relates to or affects only one Customer in a Pool and there is more than one Customer associated with the relevant Pool, then the Event of Default shall not result in a termination of this Agreement, or the affected Pool or Pools, if the Event of Default shall be remedied to the satisfaction of the Company in its sole discretion.

## **9.5 Rights and Remedies on an Event of Default**

9.5.1 Rights and Remedies of the Company - Upon the occurrence of an Event of Default, the Company may do any one or more of the following as the Company, in its sole and absolute discretion, may determine:

- (a) the Company may terminate this Agreement in accordance with the provisions of this Article 9;
- (b) the Company may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (c) the Company may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

9.5.2 Rights and Remedies of the Customer - Upon the occurrence of the event contemplated in Section 9.2.3, the Customer may do any one or more of the following as the Customer, in its sole and absolute discretion, may determine:

- (a) the Customer may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (b) the Customer may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

## **ARTICLE 10 INDEMNITY, DISCLAIMERS AND LIMITATIONS**

### **10.1 Indemnity by Agent/Customer**

Subject to any limitations specifically set out in this Agreement, the Agent and each Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Company, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Agent and such Customer, respectively, or any of such Customer's employees or agents or any Person acting under the authority of or with the permission of such Customer, including the Agent. The Agent and each Customer further agrees to indemnify and hold the Company, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 10.1.

## **10.2 Indemnity by Company**

Subject to any limitations specifically set out in this Agreement, the Company shall save harmless and indemnify the Agent, the Customer, their respective directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Customer, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Company or any of the Company's employees or agents or any Person acting under the authority of the Company. The Company further agrees to indemnify and hold the Customer, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 10.2.

## **10.3 Limitations**

Notwithstanding any other provision of this Agreement, the liability of each Party, and their respective shareholders, directors, officers, employees and agents, to another Party, whether founded in tort or breach of contract or otherwise, shall be limited to the loss sustained by such other Party as a result of direct physical damage sustained by such other Party, including reasonable costs of repair or replacement. Without limitation, a Party shall not be liable for any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties. In no event shall a Party be liable for any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

# **ARTICLE 11** **DISPUTE RESOLUTION**

## **11.1 Dispute Resolution Principle**

This Article 11 establishes a framework and procedure under which the Parties shall, in good faith, use their reasonable efforts to resolve most disputes that arise under this Agreement (in each case, a “**Dispute**”) without resort to litigation. In the event of any Dispute arising between the Parties, unless otherwise provided herein, the Parties shall use reasonable commercial efforts to settle such Dispute in the manner set out in Section 11.2. For certainty, such Disputes shall not include the ability of either Party to terminate this Agreement in accordance with the provisions hereof.

## **11.2 Dispute Resolution Mechanism**

11.2.1 Notice of Dispute - A Party claiming that a Dispute has arisen must give written notice (a “**Dispute Notice**”) to the other Party specifying the nature of the dispute, the relief sought and the basis for the relief sought.

11.2.2 Meeting between Operations Personnel - Within seven (7) Business Days of receipt of a Dispute Notice, the Parties must commence the process of attempting to resolve the Dispute by referring such Dispute to a meeting between the Manager, Strategic and Key

Accounts (or the successor position thereof), on behalf of the Company, and an equivalent or similar manager on behalf of the Agent, (the “**Operations Personnel**”) for discussion and resolution. The Operations Personnel shall consult, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to both Parties.

11.2.3 Meeting between Senior Representatives - If a Dispute is not resolved to the mutual satisfaction of the Parties by the Operations Personnel within twelve (12) Business Days after the Dispute Notice has been delivered the Dispute shall be referred to the Parties' respective senior representatives (in the case of the Company, the Vice-President, Operations (or the successor position thereof); and in the case of the Agent, an equivalent or similar senior manager of the Agent) (the “**Senior Representatives**”) for resolution. The Parties shall cause their respective Senior Representatives to meet as soon as possible in an effort to resolve the dispute.

11.2.4 Non-Binding Mediation - If the Dispute is not resolved by the Senior Representatives to the mutual satisfaction of the Parties within twenty (20) Business Days after delivery of the Dispute Notice, then the Parties may agree to refer the Dispute to a private mediator agreed to between them. The Parties and the mediator shall conduct the mediation in accordance with procedures agreed to between them and all third-party costs (including those of the mediator) shall be shared equally by the Parties. There shall be no obligation of a Party to agree on a mediator or any procedures therefore, other than to act in good faith.

### 11.3 Alternative Resolution

If the Dispute is still not resolved to the mutual satisfaction of the Parties within sixty (60) days after delivery of the Dispute Notice, then either Party may require the Dispute to be resolved by litigation or such other legal means as are available to such Party, provided the Party seeking legal remedy has pursued resolution of the Dispute as contemplated in Section 11.2.

## ARTICLE 12 GENERAL

### 12.1 Notice

All notices, directions, documents of any nature required or permitted to be given by one Party to the other pursuant to this Agreement (in each case, a “**Notice**”) shall be in writing and shall be delivered personally or by courier or sent by facsimile as follows:

- (a) in the case of the Company, to it at:  
Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York ON M2J 1P8  
Fax Number: (416) 495-5657  
Attention: Manager, Contract Support and Compliance

- (b) in the case of the Agent or any Customer, to the Agent's legal contact at the address set out below following the signature of the representatives of the Agent,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 12.1. A notice may be delivered by electronic internet communication provided the Parties have agreed in writing in advance to do so and have established in writing their respective addresses for such communication. A Notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or by electronic internet communication. If such day is not a Business Day or if the Notice is received after ordinary office hours (at the time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day.

#### **12.2 Time of the Essence**

Time is of the essence of this Agreement and of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

#### **12.3 Further Acts**

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

#### **12.4 Amendment**

This Agreement may be amended only by written agreement of the Parties.

#### **12.5 Waiver**

Except as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

#### **12.6 Assignment**

The Agent may not sell, assign or transfer any of its interest in or rights or obligations under this Agreement, in whole or in part without the prior written approval of the Company, which approval will not be unreasonably withheld or delayed.

## **12.7            Enurement and Binding Effect**

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns and be binding upon the parties hereto and their respective successors and permitted assigns.

## **12.8            Confidentiality**

As a result of the business relations between the Parties pursuant to this Agreement, a Party (the “**Receiving Party**”) may acquire confidential information regarding the business and affairs of another Party (the “**Disclosing Party**”). The disclosure of any of such confidential information to competitors of the Disclosing Party or to the general public could be detrimental to the interests of the Disclosing Party. All such confidential information acquired or obtained by the Receiving Party will not be used by the Receiving Party, or disclosed to others (other than directors, officers, employees, representatives and agents of the Receiving Party who require same with respect to the fulfillment of such Party’s obligations under this Agreement), either directly or indirectly, unless the Disclosing Party provides its prior written consent. The foregoing obligations shall remain until such time as the confidential information (i) becomes public through no fault or act of the Receiving Party, or (ii) is furnished to the Receiving Party without restriction on disclosure, or (iii) is required to be disclosed by the Receiving Party pursuant to a Required Order.

## **12.9            Agreement Transition**

Prior to the effective date of this Agreement, the Parties may have entered into a Gas Delivery Agreement similar to this Agreement. In such event, the Parties agree that this Agreement shall constitute an amended and restated Agreement which will supersede the currently executed Gas Delivery Agreement and which currently executed Gas Delivery Agreement will be of no further force or effect hereafter. Further, all of the rights and obligations of each of the Parties arising under or pursuant to such currently executed Gas Delivery Agreement shall hereafter be governed by and in accordance with the terms of this Agreement.

## **12.10          Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

[end of text]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the year and date first above written.

**ENBRIDGE GAS DISTRIBUTION INC.**

By: \_\_\_\_\_

Name: Nizam Ali

Title: Manager, Strategic & Key Accounts

By: \_\_\_\_\_

Name: Ian Macpherson

Title: Manager, Contract Relationships

**«CompanyLegalCorporateName »:**

name: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**Legal Contact Information and  
Address for Service of Agent:**

Legal Contact:

Name: «LegalContactName» \_\_\_\_\_

Position/Title: «LegalContactPositionTitle» \_\_\_\_\_

Department: «LegalContactDept» \_\_\_\_\_

Business Phone No.: «LegalContactBusPhoneNo» \_\_\_\_\_

Fax No: «LegalContactFaxNo» \_\_\_\_\_

E-Mail Address: «LegalContactEMailAddress» \_\_\_\_\_

Mailing Address:

«LegalContactEMailAddress» \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Courier Address:

«CompanyCourierAddress» \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Note: this is the 'legal contact' for purposes of Section 12.1



Schedule "A"

**TERMS AND CONDITIONS OF ASSIGNMENT OF COMPANY CAPACITY**

The Company is a party to a contract with TransCanada PipeLines Limited ("TCPL") in respect of the firm transportation service to the Company's delivery area (the "**FT-Contract**").

The Company has agreed to assign part of the Company's service entitlement as shipper under the FT-Contract (an "**Assignment**") pursuant to Section 2.5, and subject to the terms and conditions of this Schedule "A".

1. Each Assignment shall commence and terminate in accordance with the *Transaction Rules*. During the operative term of each Assignment, the Company assigns to the Agent, and the Agent accepts from the Company, a part of the Company's service entitlement as shipper under the FT-Contract equal to that number of gigajoules per day (the "**Assigned Volume**") as arises pursuant to the relevant Transaction Request from the Agent, together with the corresponding rights and obligations of the Company as shipper under the FT-Contract and under the Firm Service (FT) Toll Schedule and the General Terms and Conditions contained in the relevant Gas Transporter's Transportation Tariff, filed with the National Energy Board, as same may be hereafter revised or superseded (collectively, the "**FT Tariff**").
2. During the operative term of each Assignment, the Agent shall perform and observe the covenants and obligations of the Company as shipper contained in the FT-Contract and the FT Tariff insofar as they pertain to the Assigned Volume, to the same extent as the Agent would be obligated so to do were the Agent a party to the FT-Contract, as shipper, with a service entitlement thereunder equal to the Assigned Volume.
3. Each Assignment shall be in full force and effect in accordance with the *Transaction Rules*, and subject paragraph 4 hereof, shall be operative for a term equal to: (A) in the case of an Assignment made pursuant to Section 2.5.1, the period during which the relevant Pool is and remains in full force and effect; or (B) in the case of an Assignment made pursuant to Section 2.5.2, the duration of such Pool suspension request; provided that the operative term of each Assignment shall not extend beyond the operative term of the relevant FT-Contract, as same may be renewed or otherwise extended by the Company in accordance with the FT Tariff and TCPL's contractual practice and procedure in that regard.
4. In the event that the Agent does not comply with paragraph 2 hereof, the Company shall have the right to terminate the relevant Assignment by following the termination procedure set forth in the FT Tariff as if the Company were TCPL, the Agent were the Shipper and the relevant Assignment were the FT-Contract for this purpose.



5. The Company will request TCPL to acknowledge each Assignment and to treat the Agent as shipper with a service entitlement under the FT-Contract equal to the Assigned Volume during the operative term of the relevant Assignment. The Agent hereby consents to such request and to such treatment, and for this purpose the Agent declares that all notices, nominations, requests, invoices, and other written communications may be given by TCPL to the Agent in accordance with Section 12.1(b) of the Gas Delivery Agreement.
6. The Agent acknowledges that the Company will not seek TCPL's consent to an Assignment and that the Company accordingly is and will remain obligated to TCPL to perform and observe the covenants and obligations of shipper that are contained in the FT-Contract and the FT Tariff in regard to the Assigned Volume insofar as TCPL is concerned. Consequently, the Agent shall indemnify the Company for and hold the Company harmless from all charges that TCPL may be entitled to collect from the Company under the assigned portion of the FT-Contract and the FT Tariff in regard to the Assigned Volume in the event that the Agent fails to pay TCPL.
7. The Agent shall be entitled to sub-assign all or part of the service entitlement applicable to the Assigned Volume, together with the corresponding rights and obligations under the FT-Contract and the FT Tariff, to a third party by assigning all or part of its rights and obligations under this Assignment; provided that, in the light of the Company's continuing obligation to TCPL and the Agent's indemnity to the Company in that regard pursuant to paragraph 6, no such assignment shall be made, or relieve the Agent of its obligations to the Company hereunder, without the Company's prior written consent, which shall not be unreasonably withheld.
8. Notwithstanding anything to the contrary herein set forth or implied, the Company reserves and retains for itself exclusively the option or right to renew or otherwise extend the operative term of the FT-Contract in accordance with the FT Tariff and TCPL's contractual practice and procedure in that regard.
9. This Assignment and the rights and obligations of the parties hereunder are subject to all valid and applicable present and future laws, rules, regulations, and orders of any governmental or regulatory authority having jurisdiction or control over the parties hereto or either of them, or over the FT-Contract, the FT Tariff, and the assignment or sub-assignment of the service entitlement thereunder.
10. The Agent acknowledges that the Company has made available to it a true copy of the FT-Contract and declares that it has (or will obtain directly from TCPL) a copy of the FT Tariff.





**DRAFT: February 15, 2006**

[Enbridge logo]

ENBRIDGE GAS DISTRIBUTION INC.

**GAS DELIVERY AGREEMENT**

**[for Direct Purchase Customers representing themselves]**

version 2  
November 30, 2005

## **GAS DELIVERY AGREEMENT**

**THIS GAS DELIVERY AGREEMENT** is made and entered into as of the <> day of <> , 20<>

**B E T W E E N :**

**ENBRIDGE GAS DISTRIBUTION INC.,**  
a corporation subsisting under the laws of Ontario

(the “**Company**”)

- and -

<>, a corporation incorporated under the laws of [**Ontario**]

(the “**Customer**”)

### **BACKGROUND**

A. This Agreement provides for the delivery of Gas by the Customer to the Company and for the redelivery of that Gas by the Company to the Customer.

**THEREFORE IN CONSIDERATION** of the foregoing premises and the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

### **ARTICLE 1** **INTERPRETATION**

#### **1.1** **Definitions**

In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement (including the Schedules hereto) capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**”, and similar expressions refer to this Gas Delivery Agreement, together with all attachments hereto, as the same may be amended or updated from time to time.

“**Applicable Laws**” means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of either of the Parties, from time to time.

**“Banked Gas Account”** has the meaning given to such term in Section 3.1 of this Agreement.

**“Business Day”** means any day on which the Company’s head office in Ontario is open for business as usual.

**“Change Notice”** has the meaning given to such term in Section 2.7.2 of this Agreement.

**“Claim”** means any claim, demand, liability, damage, loss, suit, dispute, civil or criminal litigation, action or cause of action, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review and all costs and expenses relating thereto.

**“Default”** means an event or condition (including an act or omission), the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

**“Event of Default”** has the meaning given to such term in Section 9.4 of this Agreement.

**“Fuel Gas”** means in respect of any Gas to be delivered by a Customer to the Company, the fuel ratio (expressed as a percentage of the volume of such gas) in effect from time to time for Gas transportation service, as established by the relevant Gas Transporter.

**“Gas”** means natural gas and/or residue gas comprised primarily of methane.

**“Gas Transporter”** means a Person, other than the Company, with which the Company or the Customer has contracted to transport Gas from or to any Point of Acceptance.

**“Governmental Authority”** means any government, regulatory body or authority, agency, crown corporation, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of Canada or any provincial, regional or local governmental, or other subdivision thereof, whether over the Parties, their facilities, any Gas supply, the sale, purchase or transportation of Gas, or this Agreement or any part hereof.

**“MDV”** means mean daily volume, as a reference to a volume of Gas, determined in accordance with the *Transaction Rules*.

**“Nomination”** has the meaning given to such term in Section 2.4.1 of this Agreement.

**“OEB”** means the Ontario Energy Board, or any successor regulatory entity.

**“Party”** means any one of the Company or the Customer, and **“Parties”** means both of them.

**“Person”** means an individual, corporation, partnership, firm, joint venture, syndicate, association, trust, trustee, government, governmental agency, board, tribunal, ministry, commission or department or other form of entity or organization and the heirs, beneficiaries, executors, legal representatives or administrators of an individual, and **“Persons”** has a similar meaning.

**“Personal Information”** means any information that identifies or is associated with an individual and any other information considered to be personal information and which is protected or falls under the purview of applicable privacy legislation.

**“Point of Acceptance”** means a point at which the Company accepts delivery of a supply of Gas from, or in respect of, a Customer pursuant to this Agreement; and for certainty, shall be such location or locations as are established as valid points of receipt of Gas by the relevant Gas Transporter(s), and in each case as selected and identified in a Transaction Request during the submission of a Nomination for the relevant Pool; and for these purposes:

**“Delivery Point”** means an Ontario Point of Acceptance, where acceptance of Gas by the Company is, or is deemed to be, at or inside of the Company’s delivery area.

**“Receipt Point”** means a Western Point of Acceptance, where acceptance of Gas by the Company is, or is deemed to be, outside of the Company’s delivery area.

**“Pool”** means a pool which has been established by the Customer for the purpose of the delivery of Gas by the Customer to the Company and the redelivery of that Gas by the Company to the Customer for a period of time, and has attached to it an identifier, start and end dates, a Point of Acceptance, one or more Terminal Location and an aggregate MDV.

**“Rate Handbook”** means the Company’s ‘Handbook of Rates and Distribution Services’ as amended, updated or replaced by the Company from time to time with approval from the OEB.

**“Rate Number”** means a numbered rate established by the Company from time to time for one or more category of customer as approved by the OEB and in effect at the relevant time.

**“Rate Schedule”** means the schedule of rates, charges, terms and conditions associated with each Rate Number established by the Company from time to time as approved by the OEB and in effect at the relevant time.

**“Required Orders”** means such grants, permits, licences, registrations, approvals, consents, waivers, variances, exemptions, filings, authorizations, orders and decisions or requirements of or by any Governmental Authority having jurisdiction or control over any of the Parties or any provision hereof, as are from time to time necessary in order that the Agreement and the performance thereof by the Parties be in compliance with all Applicable Laws.

**“System Gas”** means commodity supply Gas provided by the Company pursuant to a Rate Number approved by the OEB.

**“Terminal Location”** means the building, plant or other facility of a Customer at or in which Gas to be delivered pursuant to this Agreement will be used by such Customer.

**“Transaction Request”** means a request from a Customer, which has been approved or accepted by the Company, for the provision of Gas delivery services offered by the Company pursuant to

this Agreement and made by the Customer to the Company by any means, including any electronic instructions, which request shall be in the form and shall include such information as may be required by the Company pursuant to the *Transaction Rules*.

**“Transaction Rules”** means the rules, regulations, policies and procedures established by the Company, and amended or updated by the Company from time to time, in respect of the services provided pursuant to this Agreement, among others.

## **1.2            Rules of Interpretation**

In this Agreement the following rules shall apply to the interpretation thereof:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”;
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded;
- (e) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency;
- (f) the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (g) except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

## **1.3            Entire Agreement**

This Agreement and all Exhibits, attachments, and addenda contemplated herein or specifically referred to herein constitute the entire agreement among the Parties pertaining to all the matters herein, and supersede all prior agreements, understandings, negotiations, discussions and other communications, whether oral or written, of the Parties.



#### **1.4            Severability**

This Agreement is a general form, intended for use by the Parties in their ongoing relations in Canada. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any Applicable Laws, then (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Party or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **1.5            Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated as an Ontario contract. For the purpose of any legal actions or proceedings brought by any Party in respect of this Agreement, each Party irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### **1.6            Handbook**

Parts III and IV of the Rate Handbook are incorporated into this Agreement and form a part hereof. Parts III and IV of the Rate Handbook shall be construed using the definitions contained in this Agreement and the terms used therein and not defined in this Agreement shall be construed using the definitions in Part I of the Rate Handbook. For certainty, for purposes of this Agreement, the term “Applicant” as referenced in the Rate Handbook shall mean “Customer” in this Agreement. If there is any conflict between the provisions of this Agreement and the provisions of the Rate Handbook, then the provisions of the Rate Handbook shall prevail.

#### **1.7            Schedules**

The Schedules set out below are required to complete this Agreement and are incorporated herein by reference and are deemed to be a part hereof and are to be read in conjunction with and subject to this Agreement.

Schedule “A” -            Terms of Assignment of Company Capacity

### **ARTICLE 2** **BASIC AGREEMENTS**

#### **2.1            Receipt and Delivery of Gas**

2.1.1            Receipt - On and subject to the terms of this Agreement, during the Term the Company shall receive Gas from the Customer and the Customer shall deliver Gas to the Company.

2.1.2 Point of Acceptance - All Gas delivered to the Company by the Customer pursuant to this Agreement shall be delivered at one or more Point of Acceptance, as selected and identified in a Transaction Request, in accordance with the *Transaction Rules*.

2.1.3 Delivery - On and subject to the terms of this Agreement, during the Term the Company shall deliver Gas to the Customer, at the rates referred to herein.

2.1.4 Delivery at Terminal Location - All Gas delivered to a Customer by the Company pursuant to this Agreement shall be delivered at the outlet of the Company's metering equipment at each Terminal Location, as selected and identified in a Transaction Request, in accordance with the *Transaction Rules*.

## 2.2 Volumes

2.2.1 Contracted Pool MDV - The contracted Pool MDV is the aggregate volume of expected deliveries of Gas (excluding Fuel Gas) to be made by the Customer in respect of a Pool, at the time the MDV is established for such Pool, divided by the number of days in the contract term of the relevant Pool, all in accordance with the *Transaction Rules*. The Customer shall deliver the contracted MDV on each day of the term of the relevant Pool.

2.2.2 Updated Pool MDV - Where the term of a Pool is two (2) years or more, then the contracted Pool MDV shall be automatically updated on each anniversary date of such Pool, based on the contracted MDV for each of the active Terminal Locations in such Pool on that anniversary date, all in accordance with the *Transaction Rules*. Such updated MDV shall thereafter constitute the contracted Pool MDV for such Pool.

2.2.3 Maximum Daily Receipt - The maximum volume of Gas the Company is required to receive from the Customer in respect of a Pool in any day is the aggregate of: (A) the contracted Pool MDV; and (B) the volume of Gas in excess of the Gas referred to in Section 2.2.1 which the Customer is to deliver to the Company on such day pursuant to one or more Transaction Requests, in connection with the balancing of actual volumes of Gas previously received, or to have been received, from the Customer against the volumes of Gas consumed by the Customer; and in any hour is one-twentieth (1/20th) of such amount.

2.2.4 No Transfer of Volumes - The accounting between the Customer and the Company for Gas received by the Company from the Customer in respect of a Pool will be on a daily basis with no right in any Party to transfer any Gas as between the days during which the relevant Pool is in effect. For certainty, if the Customer is deficient in the delivery of the contracted Pool MDV or any day during the term of a Pool, it cannot make-up that deficiency on another day.

2.2.5 Fuel Gas - The Customer shall, on a daily basis, provide the necessary Fuel Gas based on the relevant Gas Transporter's published monthly fuel ratio for the corresponding Receipt Point, when applicable.

## 2.3 Rates

2.3.1 Applicable Rates - Subject to the other terms and conditions of this Agreement, the rates and charges for delivery of Gas to a Customer hereunder in respect of any Terminal Location shall be the Rate Number associated with the Customer and the corresponding Rate Schedule.

2.3.2 Independence of Rates - The rates and charges applicable to the delivery of Gas to a Terminal Location of the Customer shall be determined and computed in accordance with the relevant Rate Schedule without regard to any volume of Gas contracted to be delivered, or delivered, to any other Terminal Location or under any other Rate Schedule or pursuant to any other agreement to which the Company and the Customer are parties.

## 2.4 Nominations

2.4.1 Nominations - In respect of each Pool, the Customer may, from time to time during the contract term of the Pool, provide to the Company a Transaction Request specifying, among other things, details of the volumes (including the contracted Pool MDV during the relevant periods for such Pool), as well as the relevant Point of Acceptance of the Gas included in such Pool (each, a “**Nomination**”). All Nominations shall be made in accordance with the *Transaction Rules*.

2.4.2 Effective Time of Nomination - Each Nomination shall only be effective from and after the time and date established by the relevant Transaction Request.

2.4.3 Failure to Submit Initial Nomination - If a valid Nomination is not submitted in respect of a Pool prior to any Gas in respect of such Pool beginning to flow, then the Company shall have no obligation to accept deliveries of Gas at the Point of Acceptance, in respect of such Pool.

## 2.5 Assignment of Company Capacity

2.5.1 Request for Assignment - If (1) a Pool is established with an Ontario Point of Acceptance, (2) the Customer requests the Company assign part of the Company’s service entitlement as shipper under the Company’s contract with a Gas Transporter, and (3) the Company agrees to make such assignment and the Customer and the Company agree on the volume of Gas to be subject to such assignment, then the terms and conditions of Schedule “A” - Terms of Assignment of Company Capacity shall apply to the Company and the Customer in respect of such Pool.

2.5.2 Temporary Assignment - If (1) a Pool is established with a Western Point of Acceptance, and (2) the Customer requests the Company suspend certain Gas deliveries, then (3) the Company shall use reasonable efforts to make available a part of the Company’s service entitlement as shipper under the Company’s contract with the relevant Gas Transporter in accordance with the *Transaction Rules*, and (4) the terms and conditions of Schedule “A” -

Terms of Assignment of Company Capacity shall apply to the Company and the Customer, in respect of such suspension.

## **2.6 Priority of Service**

In the event of actual or threatened inability to deliver the volume(s) of Gas contracted for under this Agreement to a Terminal Location due to an Event of Force Majeure affecting the Company, or when curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, the Customer shall, at the direction of the Company, curtail or discontinue use of Gas during the period specified by the Company (by notice to the Customer in accordance with the other terms of this Agreement) so as to safeguard the health and safety of the public. If the Company intends to require a Customer to curtail or discontinue use of Gas pursuant to this Section 2.6 as a result of a threatened inability to deliver due to an Event of Force Majeure affecting the Company, then as soon as the Company makes the determination that there is a threatened inability to deliver (which determination will be made in the Company's sole discretion acting reasonably) the Company will notify the Customer of the determination and the reasons therefor. If the curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, then the Company shall ensure that the notice to the Customer to curtail or discontinue use is consistent with such order, and that the duration of such curtailment or discontinuance is not longer than that required in such order. Any curtailment or discontinuance shall be effected by the Company in a manner consistent with the then current policy of the Company regarding curtailment or discontinuance of use. The Company shall not be liable for any loss of production or for any damages whatsoever by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

## **2.7 Transaction Rules**

**2.7.1 Compliance** - The Customer acknowledges and agrees: (A) that it shall at all times conduct its business relations with the Company in strict compliance with the terms and conditions of this Agreement, including the *Transaction Rules*, as amended from time to time; and (B) that all of such terms and conditions, as amended from time to time, shall be applicable to and binding upon the Customer. The Company acknowledges and agrees that it shall at all times conduct its business relations with the Customer in strict compliance with the terms and conditions of this Agreement, including the *Transaction Rules*, as amended from time to time. If there is any conflict between the provisions of this Agreement and the provisions of the *Transaction Rules*, the provisions of this Agreement shall prevail.

**2.7.2 Changes** - The Company may, at any time and from time to time, in its sole discretion acting reasonably and in the interests of maintaining the integrity of the Company's Gas distribution system, make changes to the *Transaction Rules*. All such changes shall become effective on the first day of the month which is not less than thirty-five (35) days following notification to the Customer of the relevant change (the "**Change Notice**"). The Change Notice shall include a brief description of the background to and rationale for each change. To the extent that the Company is able, in its sole discretion, to provide additional notice to the Customer

of any proposed changes, in advance of the delivery of the Change Notice, the Company shall endeavour to do so.

2.7.3 Effect of Changes - On the effective date set out in the Change Notice, the change or changes set out therein shall be deemed to be, and shall be and become, a part of this Agreement. The Customer covenants and agrees to comply with such change or changes forthwith thereafter.

## **2.8 No Agency**

2.8.1 Representations and Warranties - The Customer represents and warrants to the Company, and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in entering into this Agreement, that at the date hereof and at all times during the Term:

- (a) the Customer is not and will not be acting, or purporting to act, as agent of any other Person with respect to any of the gas delivery services of the Company under this Agreement; and
- (b) the Customer is and will be the direct or indirect owner of, or has and will have direct or indirect control over, each of the Terminal Locations which is or will be the subject of a Transaction Request pursuant to this Agreement.

2.8.2 Proof of Status - The Company shall have the right, at any time and from time to time, without in any way limiting the foregoing representations and warranties of the Customer, to require the Customer to provide the Company proof, which must be satisfactory to the Company in its sole discretion, acting reasonably, that the Company has the status contemplated in Section 2.8.1.

## **ARTICLE 3 VOLUMETRICS**

### **3.1 Banked Gas Accounts**

The Customer acknowledges and agrees that there shall be established for each Pool an account to record the volumes of receipt and delivery of Gas in respect of such Pool (each, a “**Banked Gas Account**”), and that the receipt and delivery information, regardless of the number or location of the Terminal Location(s) associated with such Pool, shall be aggregated for the purposes of determining the balance of the Banked Gas Account of such Pool.

### **3.2 Banked Gas Balancing**

3.2.1 During the Term of Pool - During the term of a Pool, in order to attempt to balance the actual aggregate volumes of Gas received and delivered in respect of a Pool, the

Customer may take such steps and actions as are set out and provided for in the Rate Handbook and the *Transaction Rules*.

3.2.2 Upon Expiry of Pool - Following the expiry of the term of a Pool, the Customer may, during the period and in the manner and to the extent set out in the relevant section(s) of the Rate Handbook, take such steps and actions to balance the actual aggregate volumes of Gas received and delivered in respect of such Pool as are set out in such section(s) in accordance with the *Transaction Rules*.

### 3.3 Responsibility for Deficiency

The Customer acknowledges and agrees that: (A) following the expiry of the term of a Pool and on each anniversary date of such Pool (if the term of the Pool is two (2) years or more), the Company will prepare an accounting of the net aggregate Gas received and delivered, and determine the amount of the balance of Gas consumed and not yet received; and (B) the Customer shall be responsible to reimburse the Company for any deficiency. Such deficiency shall be settled in a manner permitted by the Company and as set out in the Rate Handbook or the *Transaction Rules*.

## ARTICLE 4 DELIVERY, POSSESSION, TITLE AND COMMINGLING

### 4.1 Possession

The Customer shall be deemed to be in control and possession of, and responsible for, the relevant Gas that is the subject matter of each Pool (other than Gas purchased from the Company) until it shall have been delivered to or for the account of the Company at the Point of Acceptance, after which the Company shall be deemed to be in control and possession of, and responsible for, such Gas until it is delivered to the Terminal Location, after which the Customer shall be deemed to be in control and possession of, and responsible for, such Gas. The Customer shall bear the full cost and expense for transporting and delivering such Gas to the Point of Acceptance.

### 4.2 Delivery and Title

4.2.1 Under Consumption - The volume of Gas delivered by a Customer to the Point of Acceptance on each day of the term of the relevant Pool (the “**Gas Received**”) shall be deemed to have been redelivered to the Terminal Location to the extent of the lesser of: (A) the Gas Received; and (B) the volume of Gas delivered by the Company to the Terminal Location of such Customer on such day (the “**Gas Taken**”), and title to that lesser amount of Gas shall at all times remain in the Customer.

4.2.2 Over Consumption - If the volume of Gas Taken exceeds the volume of Gas Received, then title to such Gas Taken in excess of the Gas Received shall remain in the Company to, and pass from the Company to such Customer at, the Terminal Location.

4.2.3 Title of Customer - Except as provided in Subsections 4.2.1 or 4.2.2 above, at any particular time the Customer shall have title to, and only to, Gas delivered by or for the Customer to the Point of Acceptance in excess of the volume of Gas Taken during the term of the relevant Pool to the extent of the credit balance, if any, at such time in the Banked Gas Account of the relevant Pool.

#### **4.3 Right to Commingle**

The Company shall have the right to commingle Gas delivered to the Company by or for Customers at the Point of Acceptance with Gas owned by the Company or any other Person or Persons, and the Company shall have the right and full and absolute authority to deal in any manner with all Gas delivered to it, subject to the terms of this Agreement.

#### **4.4 Additional Representations and Warranties of the Customer**

In addition to any other representations and warranties given to the Company under this Agreement, the Customer represents and warrants to the Company that at the date hereof and at all times during the Term:

- (a) the Customer shall have good and marketable title in and to the Gas to be delivered to the Company and shall be entitled to deliver and, where applicable, sell such Gas to the Company in accordance with the terms of this Agreement, free and clear of any adverse claim of any nature or kind whatsoever; and
- (b) Gas delivered to the Company by or for the Customer will not be subject to any royalties, taxes (federal and/or provincial) or other charges payable by, or that may become a liability of, the Company and the purchases by the Company from the Customer contemplated hereby will not result in any liability to the Company for royalties, taxes (federal and/or provincial but not income taxes) or like charges which are applicable before possession of and title to such Gas passes to the Company,

and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement and the acceptance by the Company of all Nominations made by the Customer.

#### **4.5 Representations and Warranties of the Company**

The Company represents and warrants to the Customer that at the date hereof and at all times during the Term:

- (a) the Gas delivered to the Terminal Location shall conform to the minimum standards established by the Company for Gas in its distribution system; and

- (b) the Company shall not, and shall not take any action to cause any other Person to, create any lien, encumbrance or other adverse claim upon the Gas delivered by any Customer to the Company hereunder,

and acknowledges that the Customer is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement.

## ARTICLE 5 POINT OF ACCEPTANCE - QUALITY AND MEASUREMENTS

### 5.1 Quality and Measurements

5.1.1 Quality - The Customer acknowledges and agrees that the quality, pressure and temperature of the Gas delivered by the Customer hereunder shall conform to the minimum standards of the relevant Gas Transporter and such Gas shall otherwise be marketable Gas.

5.1.2 Measurement - For the purpose of determining the volume of Gas delivered to the Company by the Customer, the Parties agree to accept the measurement of the relevant Gas Transporter(s), or as the Gas Transporter and the Company may otherwise agree, and the volume of Gas so determined for a particular day shall be deemed to be the volume of Gas delivered by such Customer to the Company on such day. The standard of measurement and tests for the Gas delivered hereunder shall be in accordance with the contractual arrangements made by the Company with the relevant Gas Transporter(s), or as the Gas Transporter and the Company may otherwise agree, in effect from time to time.

5.1.3 Testing - In the event that either Party should request measuring or testing at any time, the other Party will cooperate fully to obtain such measurement and testing from the relevant Gas Transporter(s), provided that the Party seeking the test shall bear the cost thereof if the contractual arrangements of the Company with the relevant Gas Transporter(s) require payment of such cost.

## ARTICLE 6 TERMINAL LOCATION - METERING AND EQUIPMENT

### 6.1 Metering at Point of Delivery

6.1.1 Installation - The Company agrees to install, operate and maintain measurement equipment of suitable capacity and design as is required to measure the volume of Gas to be delivered by the Company under this Agreement. The Customer agrees to provide, at its own expense, (i) any and all housing reasonably required by the Company for the protection of such measurement equipment and regulating equipment at the Customer's premises used in connection with the delivery of any such Gas, and (ii) if required for the Company's measurement equipment, a continuous supply of electrical power at 110 volts and a non-dedicated, single, voice grade, analog outside telephone line for local and WATTS (800 service) calls. The measurement and regulating equipment shall be installed at such location as the



Company may determine, in its discretion acting reasonably; provided that if the Company determines that such equipment should be installed on the Customer's premises, the site shall be as agreed between the Customer and the Company; and provided further that all installations of equipment must be made in accordance with all applicable safety regulations.

6.1.2 Access - The Company and the Customer shall each have access to and the right to enter the measurement/regulating location at any reasonable time on prior notice to the Customer or the Company, as the case may be, and shall have the right to be present at the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of measurement equipment. Access under this Section is subject to the Party which is accessing the location complying with any specific policies or procedures in respect thereof that are provided to it by the Party permitting such access following the giving of the notice requiring such access.

## **6.2 Examination**

6.2.1 If requested by a Customer, the Company's measurement equipment shall be examined by the Company in the presence of a representative of the Customer, but the Company shall not be required as a matter of routine to examine such equipment more frequently than once in any 9-month period.

6.2.2 If the measurement equipment is found to be in error by not more than three per cent (3%), the previous recording shall be considered correct but proper adjustments to the meter will be made immediately. However, if the error is greater than three per cent (3%), a correction in billing shall be made in accordance with the *Electricity and Gas Inspection Act* and the Regulations made thereunder or any other legislation which may succeed the said Act.

6.2.3 Gas measurement equipment that malfunctions for whatever reason shall be dealt with in accordance with the foregoing subparagraph of this Section 6.2.

## **6.3 Measurement Criteria**

6.3.1 All Gas delivered shall be measured utilizing equipment which conforms to the regulations prescribed in "Departmental Instructions for Inspection of Gas Meters and Auxiliary Devices" dated October 1976, issued by the Department of Customer & Corporate Affairs, Government of Canada, as amended from time to time.

6.3.2 The measurement unit shall be one cubic meter of Gas at a pressure of 101.325 kpa absolute and at a temperature of fifteen (15) degrees Celsius. The average absolute atmospheric (barometric) pressure shall be calculated in accordance with the *Electricity and Gas Inspection Act* and the Regulations made thereunder or any other legislation which may succeed the said Act, regardless of variations in actual barometric pressure from time to time.

## 6.4 Equipment

The title to all service pipes, meters, regulators, attachments and equipment placed on a Customer's premises and not sold to the Customer shall remain with the Company, with right of removal, and no charge shall be made by a Customer for use of premises occupied thereby.

## ARTICLE 7 GENERAL RIGHTS AND OBLIGATIONS OF THE PARTIES

### 7.1 Early Termination of Pools

7.1.1 Right to Terminate a Pool - The Company shall have the right to terminate a Pool at any time prior to the expiry of the term of the Pool if: (A) the Customer fails to perform or observe any of its obligations under this Agreement on its part to be observed and performed; and (B) the obligation affects in any way the relevant Pool; and either (C) the failure shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Customer for a period of five (5) Business Days; or (D) the Company, in its sole discretion acting reasonably, shall determine that the failure: (i) may materially adversely affect the provision of any services by the Company to any other Customer; or (ii) may cause the Company to be in breach of any contractual obligation to any other customer of the Company; and (iii) in either event, cannot be cured in sufficient time.

7.1.2 Effects of Termination of a Pool - Upon the early termination of a Pool pursuant to Section 7.1.1:

- (a) the Customer: (A) shall revert to System Gas; and (B) may be transferred to another Pool if the Company has received an appropriate Transaction Request; and
- (b) the Company shall, as soon as reasonably practicable and in any event not later than ninety (90) days following termination of the relevant Pool, prepare and forward to the Customer a statement setting out the status of the Banked Gas Account for the Pool; and forthwith following receipt of such statement, the Customer shall settle such obligation in a manner permitted by the Company and as set out in the Rate Handbook or the *Transaction Rules*.

7.1.3 No Liability of Company - Provided that the Company has acted in accordance with the material terms of this Agreement, the Company shall have no liability to the Customer or to any Person with whom, or for whom, the Customer has any contractual or other obligations as a result of the termination of the Pool pursuant to this Section 7.1.

## **7.2 Governmental Regulations**

7.2.1 This Agreement is subject to (A) the maintenance of all Required Orders, and (B) all Applicable Laws.

7.2.2 Except as provided in Section 7.2.4, the Customer shall promptly endeavour to obtain or cause to be obtained all Required Orders. The Customer shall provide true copies of all Required Orders (other than those contemplated in Section 7.2.4) to the Company upon request.

7.2.3 The Customer shall comply with the terms of all Required Orders applicable to it and shall use its best efforts to maintain the same in full force and effect throughout the Term. The Company will comply with all Required Orders applicable to it and will use its best efforts to maintain the same in full force and effect throughout the Term.

7.2.4 The Company shall promptly endeavour to obtain or cause to be obtained all Required Orders as it relates to Gas to be dealt with under this Agreement after it is delivered to the Point of Acceptance until it is delivered to a Terminal Location.

## **7.3 Suspension of Company's Obligations**

In addition to any other rights the Company may have, the Company shall not be required to perform its obligations hereunder, and shall be entitled to suspend such obligations, at any particular time if:

- (a) there is a breach or default of any representation, warranty or obligation of the Customer set out in this Agreement, as determined by the Company, in its sole discretion acting reasonably and where such breach or default affects the integrity of the Company's Gas distribution system;
- (b) any Required Order ceases to be in effect or if the Company has not received an original or true copy of any Required Order which has been requested by the Company; or
- (c) performance of any such obligation would be in contravention of any Applicable Law.

If the Company suspends any of its obligations pursuant to this Section, then it shall deliver a notice to that effect to the Customer and the reasons therefor. If a Suspension Period continues for more than thirty (30) consecutive days, then the Company may terminate this Agreement, or any one or more affected Pools, by notice to the relevant Customers given by the Company after the thirtieth (30<sup>th</sup>) day in such Suspension Period, and such termination shall be effective on the later of a date stipulated in such notice and the date on which such notice is received by the Customer. In this Section, "**Suspension Period**" means a period throughout which the Company is not required to perform its obligations hereunder as permitted by this Section.

## **7.4            Adoption of NAESB Standards**

7.4.1            Acknowledgement of Standards - Each of the Parties acknowledges and agrees that the North American Energy Standards Board (“**NAESB**”) develops and promotes standards for business practices and electronic communication of Gas transactions, with a view to simplifying the management of Gas across the entire North American pipeline grid, and that the Gas Industry Standards Board (“**GISB**”) is the wholesale Gas quadrant of NAESB.

7.4.2            Amendment to Conform with Standards - The Customer hereby acknowledges that the NAESB may, from time to time, revise or implement standards that conflict with or supplement the provisions of this Agreement. If at any time the Company is required to adopt a recommended standard that conflicts with or supplements the provisions of this Agreement as a result of a Required Order or the imposition of such standards on the Company by any Gas Transporter which necessitates the Company adopting such standards, then the Company shall deliver a notice to the Customer which specifies such standards and sets out the revisions to this Agreement that are required to accommodate such standards. The Parties agree that on the thirtieth (30<sup>th</sup>) day following the delivery of such notice, or such earlier day that such standards are imposed on the Company, this Agreement shall be deemed to be amended by the incorporation of the revisions set out in such notice.

## **7.5            Force Majeure**

7.5.1            Effect of Force Majeure - Subject to the other provisions of this Section 7.5, a Party shall not be liable to the other Party, in respect of such first mentioned Party’s obligations under this Agreement, as a result of the inability of the first mentioned Party to deliver or receive Gas if such inability is caused by an event of Force Majeure. A delay or interruption in the performance by a Party of any of such obligations due to Force Majeure, shall suspend the period of performance of such obligation during the continuance of such Force Majeure.

### **7.5.2            Notice and Other Requirements**

- (a)            Initial Notice - Forthwith following a Party becoming or being made aware of an Event of Force Majeure which may impact on any of such Party’s obligations, such Party shall notify the other Party of the event and of the manner in which such Party’s obligations hereunder will or may be affected; and such Event of Force Majeure shall be deemed to have commenced when it occurred provided notice is given within six (6) hours of the occurrence, and otherwise when such notice is given.
- (b)            Efforts to Eliminate - The Party claiming Force Majeure shall, unless such Event of Force Majeure is a strike, lockout or other industrial disturbance, use its best efforts to eliminate such event of Force Majeure.
- (c)            Subsequent Notice - The Party claiming Force Majeure shall forthwith give notice to the other Party when such Event of Force Majeure has been

eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling its obligation to deliver or receive Gas as contemplated herein.

- (d) **Resumption of Obligations** - The Party claiming Force Majeure shall proceed to fulfill such Party's obligations which are impacted by the Event of Force Majeure as soon as reasonably possible after such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling such obligations.
- (e) **Oral Notice** - Any notice under this Section 7.5.2 may be given orally; provided that such notice shall only be effective if it is confirmed the same day in writing by facsimile or as otherwise provided in Section 12.1.

**7.5.3 Definition** - In this Agreement, "**Force Majeure**" or "**Event of Force Majeure**" means any cause (A) not reasonably within the control of the Party claiming force majeure, and (B) which by exercise of due diligence such Party is unable to prevent or overcome, and includes the following:

- (a) physical events such as an act of God, landslide, earthquake, storm or storm warning such as a hurricane which results in evacuation of an affected area, flood, washout, explosion, breakage or accident to machinery or equipment or lines of pipe used to transport Gas, the necessity of repairs to or alterations of such machinery or equipment or lines of pipe, or inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party's obligations under this Agreement;
- (b) interruption and/or curtailment of firm transportation by a Gas Transporter;
- (c) acts of others such as strike, lockout or other industrial disturbance, civil disturbance, blockade, act of a public enemy, terrorism, riot, sabotage, insurrections of war, as well as physical damage resulting from the negligence of others; and
- (d) governmental actions, such as necessity for compliance with any Applicable Law.

**7.5.4 Force Majeure Declared by Company** - In the event a Force Majeure is declared by the Company, the Customer will continue to be obligated for all applicable charges relevant to contracted services which continue to be available notwithstanding the Event of Force Majeure and may only be relieved of any applicable charges, if any, relevant to contracted services not available to the Customer as a direct result of the Force Majeure. Any related upstream transportation charges would be the Customer's sole responsibility.

7.5.5 Force Majeure Declared by Customer - In the event the Force Majeure is declared by the Customer, all demand, commodity and service rates and charges in respect of currently effective Nominations or financial obligations otherwise payable under this Agreement will remain payable to the Company. If any Force Majeure occurs at the Customer's facilities downstream of the Company's metering equipment at the relevant Terminal Location, the Customer will remain obligated to, if applicable, deliver gas at the Point Acceptance in respect of the then currently effective Nominations.

7.5.6 Additional Effect of Force Majeure - Except as provided in Section 7.5.8, and subject to Section 7.5.7, a Party hereunder shall not be liable to the other Party hereunder for the first mentioned Party's inability to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. In the case of any such inability so caused, then the other Party shall have no claim for damages or specific performance or other right of action against the first mentioned Party.

7.5.7 Limitations - Notwithstanding any other term of this Section 7.5, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances:

- (a) the curtailment of interruptible Gas supply;
- (b) a Force Majeure claimed by a Gas Transporter responsible for the delivery to the Point of Acceptance of Gas for which a Nomination has been accepted by the Company hereunder, if (i) another Gas Transporter is capable of delivering such Gas to the Point of Acceptance (unless the Party has used its best efforts to contract with such other Gas Transporter and has been unable to do so); or (ii) Gas is available in the secondary market from another supplier sufficient to meet the terms of the relevant Nomination;
- (c) economic hardship, including the Customer's ability to sell Gas at a higher or more advantageous price or to buy Gas at a lower or more advantageous price; or
- (d) the loss or failure of the Customer's Gas supply or depletion of reserves, unless (i) the Force Majeure causing such loss or failure is a result of a natural disaster (such as landslide, earthquake or hurricane) or an act of others (such as terrorism, riot, sabotage, insurrection or war; but not a strike, lockout or other industrial disturbance); and (ii) Gas is not available in the secondary market from another supplier sufficient to meet the terms of the Customer's then current obligations under this Agreement.

7.5.8 Further Limitations - Notwithstanding any other term of this Section 7.5, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure if:

- (a) such Party's inability to perform the obligation was caused by its lack of finances; or
- (b) such Party's inability to perform the obligation was caused by its deliberate act or inaction; or
- (c) such Party failed to comply with Section 7.5.2 in respect of the Event of Force Majeure.

In no event shall the Customer be excused from any of its financial responsibilities or obligations under this Agreement, including in respect of any Banked Gas Account, or the settlement thereof.

## **7.6            Payments by the Company**

If any payment is required to be made by the Company to the Customer pursuant to the terms of this Agreement, then such payment shall be processed by the Company and remitted to the Customer, as applicable, in accordance with the Company's normal monthly billing practise.

# **ARTICLE 8** **RECORD KEEPING**

## **8.1            Co-Operation**

The Customer acknowledges and agrees that (A) as the 'shipper' for purposes of the relevant Gas Transporter(s), the Customer may be in possession of information with respect to volumes of Gas delivered to the Company hereunder which may be required by the Company in the preparation of any statement or other document hereunder, and (B) they shall each co-operate with the Company to the extent necessary for the Company to obtain any information not in its possession.

## **8.2            Errors**

If an error in a statement or other document is discovered, a correcting adjustment shall be made promptly in a subsequent statement in accordance with the *Transaction Rules*. Claims for errors shall be made promptly upon discovery.

## **8.3            Retention of Records**

All charts and calculations upon which a statement or other document issued to the Customer is based, and the Company's books and records which relate solely to measurement and settlement for accounts hereunder, shall be retained by the Company for the longer of (A) three (3) years from the date of the relevant statement or such longer period as the Company determines to retain such records for its own purposes, and (B) the period while any claim which relates to such statement, and of which the Company receives written notice from

the Customer within such one-year period, is outstanding; and shall be available for inspection by the Customer on reasonable prior notice during normal office hours of the Company.

#### **8.4            Withholding**

Notwithstanding anything in this Agreement to the contrary, the Company shall have the right to withhold (either by withholding payment or by withholding a credit to which the Customer might otherwise be entitled) an amount owing to the Customer by the Company equal to the amount of money then due, owing and unpaid by the Customer to the Company under this Agreement or, if applicable, under any Large Volume Distribution Contract entered into between the Company and the Customer (the “**Withheld Amount**”). Upon the Company ceasing to be entitled to hold any particular portion of a Withheld Amount the Company shall forthwith pay to the Customer an amount equal to such portion of the Withheld Amount.

### **ARTICLE 9** **TERM AND TERMINATION**

#### **9.1            Term**

Subject to the other terms and conditions of this Agreement, the term of this Agreement (the “**Term**”) shall commence on the date first above written and shall continue until terminated in accordance with the provisions of this Agreement.

#### **9.2            Rights of Termination**

9.2.1            Mutual Right to Terminate - Subject to the other provisions of this Article 9, either Party shall have the right to terminate this Agreement at any time, without cause, upon the earliest date to occur which is both:

- (a)            immediately following the expiry or termination of the last of the Pools established by the Customer pursuant to this Agreement; and
- (b)            not less than sixty (60) days and not more than one hundred twenty (120) days prior written notice to the other Party.

9.2.2            The Company’s Right to Terminate - Subject to the other provisions of this Article 9 and in addition to the Company’s rights of termination set out elsewhere in this Agreement, the Company shall have the right to terminate this Agreement:

- (a)            at any time upon the occurrence of an Event of Default; or
- (b)            at any time, without notice, upon the occurrence of a regulatory change established by a Governmental Authority, which causes, results in or requires such termination.



9.2.3 Customer's Right to Terminate - Subject to the other provisions of this Article 9, the Customer shall have the right to terminate this Agreement if the Company fails to perform or observe any of its obligations under this Agreement on its part to be observed or performed and such failure shall continue unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Customer to the Company. For certainty, termination of this Agreement under this Section shall not relieve any Party from any payment obligation to any other Party under this Agreement.

### 9.3 Effects of Termination

9.3.1 Obligations of the Parties - Upon the termination of this Agreement, whether at the expiry of the Term or for any reason prior thereto:

- (a) every Pool established hereunder shall forthwith be terminated and the Customer shall: (A) revert to System Gas; or (B) if the Company has received an appropriate Transaction Request, be transferred to another Pool; and
- (b) the Company shall, as soon as reasonably practicable and in any event not later than ninety (90) days following termination, prepare and forward to the Customer, a statement setting out the status of the Banked Gas Account for the Customer and each such Pool; and forthwith following receipt of such statement, the Customer shall settle such obligations in a manner permitted by the Company and as set out in the Rate Handbook or the *Transaction Rules*;

provided that, notwithstanding any provision of the Rate Handbook or the *Transaction Rules* to the contrary, if this Agreement is terminated as a result of an Event of Default set out in Section 9.4(c), (d) or (e), then settlement of such obligation shall be effected by payment made by the Customer immediately following delivery of such statement.

9.3.2 Survival on Termination - All provisions of this Agreement which by their terms are required to survive in order to permit the settlement in full of the obligations referred to in Section 9.3.1(b) as contemplated therein, shall survive the termination of this Agreement and continue in full force and effect in accordance with the terms of this Agreement for such period. Without limiting the foregoing, the following provisions shall so survive: Article 8 - Record Keeping; Section 9.3.1 - Obligations on Termination; Article 10 - Indemnity, Disclaimers and Limitations; and Section 12.8 - Confidentiality.

### 9.4 Events of Default

In addition to any other events set out in this Agreement, the occurrence of any one or more of the following events shall constitute a Default by a Customer under this Agreement and shall be considered an event of default (an "**Event of Default**") if such Default is not remedied prior to the expiry of the relevant notice period (if any) or the relevant cure period (if any) applicable to such Default as hereinafter set out:

- (a) if the Customer fails to perform or observe any of its obligations under this Agreement (except as specifically provided in Section 9.4(b)) on its part to be observed and performed and such failure shall continue unremedied for a period of thirty (30) days following the earlier to occur of: (a) notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Customer; or (b) knowledge by the Customer of the occurrence of such failure to perform or observe such obligation, provided that the Company has notified the Customer forthwith after the Company becomes aware of such failure to perform or observe such obligation;
- (b) if the Customer fails to deliver the contracted MDV on any day of the term of the relevant Pool (as required pursuant to Section 2.2.1), and the Company is unable, using its normal commercial efforts, to cure such failure on the same day by securing Gas in the secondary market sufficient to meet the amount of the deficiency;
- (c) if the Customer files a petition in bankruptcy, makes application or files a petition seeking any re-organization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of the Customer, or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the Customer and is not stayed, otherwise enjoined or discharged within fifteen (15) Business Days; or
- (d) if any execution, distress or other enforcement process, whether by court order or otherwise, which would have a material adverse effect on the financial viability of the Customer becomes enforceable against any property of the Customer; or
- (e) if the Customer ceases carrying on business in the ordinary course, commits any act of bankruptcy under *The Bankruptcy and Insolvency Act* or is wound up;

provided that each of the above-noted Events of Default has been inserted for the benefit of the Company and may be waived by the Company in whole or in part at any time by notice to the Customer, the Company may extend the period for the remediation of any such Event of Default (if any), provided that the Customer is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Company that the steps being taken by the Customer are likely to satisfy the Event of Default within a reasonable period of time.

## **9.5 Rights and Remedies on an Event of Default**

9.5.1 Rights and Remedies of the Company - Upon the occurrence of an Event of Default, the Company may do any one or more of the following as the Company, in its sole and absolute discretion, may determine:

- (a) the Company may terminate this Agreement in accordance with the provisions of this Article 9;
- (b) the Company may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (c) the Company may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

9.5.2 Rights and Remedies of the Customer - Upon the occurrence of the event contemplated in Section 9.2.3, the Customer may do any one or more of the following as the Customer, in its sole and absolute discretion, may determine:

- (a) the Customer may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (b) the Customer may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

## **ARTICLE 10 INDEMNITY, DISCLAIMERS AND LIMITATIONS**

### **10.1 Indemnity by Customer**

Subject to any limitations specifically set out in this Agreement, the Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Company, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Customer or any of such Customer's employees or agents or any Person acting under the authority of or with the permission of such Customer. The Customer further agrees to indemnify and hold the Company, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 10.1.

### **10.2 Indemnity by Company**

Subject to any limitations specifically set out in this Agreement, the Company shall save harmless and indemnify the Customer, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Customer, howsoever caused, resulting from, arising out of or relating to the negligence or

wilful misconduct of the Company or any of the Company's employees or agents or any Person acting under the authority of the Company. The Company further agrees to indemnify and hold the Customer, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 10.2.

### **10.3      Limitations**

Notwithstanding any other provision of this Agreement, the liability of each Party, and their respective shareholders, directors, officers, employees and agents, to another Party, whether founded in tort or breach of contract or otherwise, shall be limited to the loss sustained by such other Party as a result of direct physical damage sustained by such other Party, including reasonable costs of repair or replacement. Without limitation, a Party shall not be liable for any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties. In no event shall a Party be liable for any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

## **ARTICLE 11 DISPUTE RESOLUTION**

### **11.1      Dispute Resolution Principle**

This Article 11 establishes a framework and procedure under which the Parties shall, in good faith, use their reasonable efforts to resolve most disputes that arise under this Agreement (in each case, a “**Dispute**”) without resort to litigation. In the event of any Dispute arising between the Parties, unless otherwise provided herein, the Parties shall use reasonable commercial efforts to settle such Dispute in the manner set out in Section 11.2. For certainty, such Disputes shall not include the ability of either Party to terminate this Agreement in accordance with the provisions hereof.

### **11.2      Dispute Resolution Mechanism**

11.2.1      Notice of Dispute - A Party claiming that a Dispute has arisen must give written notice (a “**Dispute Notice**”) to the other Party specifying the nature of the dispute, the relief sought and the basis for the relief sought.

11.2.2      Meeting between Operations Personnel - Within seven (7) Business Days of receipt of a Dispute Notice, the Parties must commence the process of attempting to resolve the Dispute by referring such Dispute to a meeting between the Manager, Strategic and Key Accounts (or the successor position thereof), on behalf of the Company, and an equivalent or similar manager on behalf of the Customer, (the “**Operations Personnel**”) for discussion and resolution. The Operations Personnel shall consult, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to both Parties.

11.2.3 Meeting between Senior Representatives - If a Dispute is not resolved to the mutual satisfaction of the Parties by the Operations Personnel within twelve (12) Business Days after the Dispute Notice has been delivered the Dispute shall be referred to the Parties' respective senior representatives (in the case of the Company, the Vice-President, Operations (or the successor position thereof); and in the case of the Customer, an equivalent or similar senior manager of the Customer) (the "**Senior Representatives**") for resolution. The Parties shall cause their respective Senior Representatives to meet as soon as possible in an effort to resolve the dispute.

11.2.4 Non-Binding Mediation - If the Dispute is not resolved by the Senior Representatives to the mutual satisfaction of the Parties within twenty (20) Business Days after delivery of the Dispute Notice, then the Parties may agree to refer the Dispute to a private mediator agreed to between them. The Parties and the mediator shall conduct the mediation in accordance with procedures agreed to between them and all third-party costs (including those of the mediator) shall be shared equally by the Parties. There shall be no obligation of a Party to agree on a mediator or any procedures therefore, other than to act in good faith.

### 11.3 Alternative Resolution

If the Dispute is still not resolved to the mutual satisfaction of the Parties within sixty (60) days after delivery of the Dispute Notice, then either Party may require the Dispute to be resolved by litigation or such other legal means as are available to such Party, provided the Party seeking legal remedy has pursued resolution of the Dispute as contemplated in Section 11.2.

## ARTICLE 12 GENERAL

### 12.1 Notice

All notices, directions, documents of any nature required or permitted to be given by one Party to the other pursuant to this Agreement (in each case, a "**Notice**") shall be in writing and shall be delivered personally or by courier or sent by facsimile as follows:

- (a) in the case of the Company, to it at:  
Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York ON M2J 1P8  
Fax Number: (416) 495-5657  
Attention: Manager, Contract Support and Compliance
- (b) in the case of the Customer, to it's legal contact at the address set out below following the signature of the representatives of the Customer,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 12.1. A Notice may be delivered by electronic internet communication provided the Parties have agreed in writing in advance to do so and have

established in writing their respective addresses for such communication. A Notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or by electronic internet communication. If such day is not a Business Day or if the Notice is received after ordinary office hours (at the time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day.

## **12.2            Time of the Essence**

Time is of the essence of this Agreement and of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

## **12.3            Further Acts**

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

## **12.4            Amendment**

This Agreement may be amended only by written agreement of the Parties.

## **12.5            Waiver**

Except as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

## **12.6            Assignment**

The Customer may not sell, assign or transfer any of its interest in or rights or obligations under this Agreement, in whole or in part without the prior written approval of the Company, which approval will not be unreasonably withheld or delayed.

## **12.7            Enurement and Binding Effect**

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns and be binding upon the parties hereto and their respective successors and permitted assigns.

## **12.8**      **Confidentiality**

As a result of the business relations between the Parties pursuant to this Agreement, a Party (the “**Receiving Party**”) may acquire confidential information regarding the business and affairs of another Party (the “**Disclosing Party**”). The disclosure of any of such confidential information to competitors of the Disclosing Party or to the general public could be detrimental to the interests of the Disclosing Party. All such confidential information acquired or obtained by the Receiving Party will not be used by the Receiving Party, or disclosed to others (other than directors, officers, employees, representatives and agents of the Receiving Party who require same with respect to the fulfillment of such Party’s obligations under this Agreement), either directly or indirectly, unless the Disclosing Party provides its prior written consent. The foregoing obligations shall remain until such time as the confidential information (i) becomes public through no fault or act of the Receiving Party, or (ii) is furnished to the Receiving Party without restriction on disclosure, or (iii) is required to be disclosed by the Receiving Party pursuant to a Required Order.

## **12.9**      **Agreement Transition**

Prior to the effective date of this Agreement, the Parties may have entered into a Gas Delivery Agreement similar to this Agreement. In such event, the Parties agree that this Agreement shall constitute an amended and restated Agreement which will supersede the currently executed Gas Delivery Agreement and which currently executed Gas Delivery Agreement will be of no further force or effect hereafter. Further, all of the rights and obligations of each of the Parties arising under or pursuant to such currently executed Gas Delivery Agreement shall hereafter be governed by and in accordance with the terms of this Agreement.

## **12.10**      **Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

[end of text]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the year and date first above written.

**ENBRIDGE GAS DISTRIBUTION INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

|                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>CUSTOMER:</b></p> <p>name: _____</p> <p>By: _____<br/>Name:<br/>Title:</p> <p>By: _____<br/>Name:<br/>Title:</p> | <p><b>Legal Contact Information and Address for Service of Customer:</b></p> <p><u>Legal Contact:</u></p> <p>Name: _____</p> <p>Position/Title: _____</p> <p>Department: _____</p> <p>Business Phone No.: _____</p> <p>Fax No: _____</p> <p>E-Mail Address: _____</p> <p><u>Mailing Address:</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p><u>Courier Address:</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Note: this is the 'legal contact' for purposes of Section 12.1</p> |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



Schedule "A"

**TERMS AND CONDITIONS OF ASSIGNMENT OF COMPANY CAPACITY**

The Company is a party to a contract with TransCanada PipeLines Limited ("TCPL") in respect of the firm transportation service to the Company's delivery area (the "**FT-Contract**").

The Company has agreed to assign part of the Company's service entitlement as shipper under the FT-Contract (an "**Assignment**") pursuant to Section 2.5, and subject to the terms and conditions of this Schedule "A".

1. Each Assignment shall commence and terminate in accordance with the *Transaction Rules*. During the operative term of each Assignment, the Company assigns to the Customer, and the Customer accepts from the Company, a part of the Company's service entitlement as shipper under the FT-Contract equal to that number of gigajoules per day (the "**Assigned Volume**") as arises pursuant to the relevant Transaction Request from the Customer, together with the corresponding rights and obligations of the Company as shipper under the FT-Contract and under the Firm Service (FT) Toll Schedule and the General Terms and Conditions contained in the relevant Gas Transporter's Transportation Tariff, filed with the National Energy Board, as same may be hereafter revised or superseded (collectively, the "**FT Tariff**").
2. During the operative term of each Assignment, the Customer shall perform and observe the covenants and obligations of the Company as shipper contained in the FT-Contract and the FT Tariff insofar as they pertain to the Assigned Volume, to the same extent as the Customer would be obligated so to do were the Customer a party to the FT-Contract, as shipper, with a service entitlement thereunder equal to the Assigned Volume.
3. Each Assignment shall be in full force and effect in accordance with the *Transaction Rules*, and subject to paragraph 4 hereof, shall be operative for a term equal to: (A) in the case of an Assignment made pursuant to Section 2.5.1, the period during which the relevant Pool is and remains in full force and effect; or (B) in the case of an Assignment made pursuant to Section 2.5.2, the duration of such Pool suspension request; provided that the operative term of each Assignment shall not extend beyond the operative term of the relevant FT-Contract, as same may be renewed or otherwise extended by the Company in accordance with the FT Tariff and TCPL's contractual practice and procedure in that regard.
4. In the event that the Customer does not comply with paragraph 2 hereof, the Company shall have the right to terminate the relevant Assignment by following the termination procedure set forth in the FT Tariff as if the Company were TCPL, the Customer were the Shipper and the relevant Assignment were the FT-Contract for this purpose.

5. The Company will request TCPL to acknowledge each Assignment and to treat the Customer as shipper with a service entitlement under the FT-Contract equal to the Assigned Volume during the operative term of the relevant Assignment. The Customer hereby consents to such request and to such treatment, and for this purpose the Customer declares that all notices, nominations, requests, invoices, and other written communications may be given by TCPL to the Customer in accordance with Section 12.1(b) of the Gas Delivery Agreement.
6. The Customer acknowledges that the Company will not seek TCPL's consent to an Assignment and that the Company accordingly is and will remain obligated to TCPL to perform and observe the covenants and obligations of shipper that are contained in the FT-Contract and the FT Tariff in regard to the Assigned Volume insofar as TCPL is concerned. Consequently, the Customer shall indemnify the Company for and hold the Company harmless from all charges that TCPL may be entitled to collect from the Company under the assigned portion of the FT-Contract and the FT Tariff in regard to the Assigned Volume in the event that the Customer fails to pay TCPL.
7. The Customer shall be entitled to sub-assign all or part of the service entitlement applicable to the Assigned Volume, together with the corresponding rights and obligations under the FT-Contract and the FT Tariff, to a third party by assigning all or part of its rights and obligations under this Assignment; provided that, in the light of the Company's continuing obligation to TCPL and the Customer's indemnity to the Company in that regard pursuant to paragraph 6, no such assignment shall be made, or relieve the Customer of its obligations to the Company hereunder, without the Company's prior written consent, which shall not be unreasonably withheld.
8. Notwithstanding anything to the contrary herein set forth or implied, the Company reserves and retains for itself exclusively the option or right to renew or otherwise extend the operative term of the FT-Contract in accordance with the FT Tariff and TCPL's contractual practice and procedure in that regard.
9. This Assignment and the rights and obligations of the parties hereunder are subject to all valid and applicable present and future laws, rules, regulations, and orders of any governmental or regulatory authority having jurisdiction or control over the parties hereto or either of them, or over the FT-Contract, the FT Tariff, and the assignment or sub-assignment of the service entitlement thereunder.
10. The Customer acknowledges that the Company has made available to it a true copy of the FT-Contract and declares that it has (or will obtain directly from TCPL) a copy of the FT Tariff.



ENBRIDGE GAS DISTRIBUTION INC.

**LARGE VOLUME DISTRIBUTION CONTRACT**



## **LARGE VOLUME DISTRIBUTION CONTRACT**

**THIS LARGE VOLUME DISTRIBUTION CONTRACT** is made and entered into as of the «Document\_date\_Agreement»

between:

**ENBRIDGE GAS DISTRIBUTION INC.,**  
a corporation subsisting under the laws of Ontario

(the “**Company**”)

- and -

«**LEGAL\_NAME**», a corporation incorporated under the laws of  
**[Ontario]**

(the “**Customer**”)

### **BACKGROUND**

A. The Customer requires the delivery of a volume of Gas to its Terminal Location(s) which volume entitles the Customer to the benefits of one of the Company's large volume rates set out in a Rate Schedule.

B. The Gas to be delivered to the Customer hereunder will be either System Gas or Gas supplied by a gas vendor other than the Company.

C. If the Gas to be delivered to the Customer hereunder is supplied by a gas vendor other than the Company, the Customer will also have, either directly with the Company or through an Agent, entered into a Gas Delivery Agreement with the Company.

D. This Agreement provides for the delivery of Gas by the Company to the specified Terminal Location(s) of the Customer, as well as the supply of such Gas where the Customer uses System Gas.

**THEREFORE IN CONSIDERATION** of the foregoing premises and the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1        Definitions**

In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement (including the Schedules hereto) capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

**“Agent”** means a Person authorized to represent the Customer in respect of a Gas Delivery Agreement entered into between the Customer, or such Agent on the Customer's behalf, and the Company.

**“Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder”,** and similar expressions refer to this Large Volume Distribution Contract, together with all attachments hereto, as the same may be amended or updated from time to time.

**“Anniversary Date”** means the date identified as such in Schedule “A”.

**“Applicable Laws”** means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of either of the Parties, from time to time.

**“Applicable Rates”**, in respect of a Terminal Location, means the Primary Rate and the Secondary Rate (if any) for such Terminal Location; and, when used without reference to a Terminal Location, “Applicable Rates” means all Primary Rates and Secondary Rates (if any) for all Terminal Locations identified and set out in Schedule “A”.

**“Billing Effective Date”** means the date identified as such in Schedule “A”.

**“Business Day”** means any day on which the Company’s head office in Ontario is open for business as usual.

**“Claim”** means any claim, demand, liability, damage, loss, suit, dispute, civil or criminal litigation, action or cause of action, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review and all costs and expenses relating thereto.

**“Commencement Date”** means the date identified as such in Schedule “A”.

**“Contract Day”** means a 24 hour period commencing at 10:00 a.m. Eastern Standard Time.

**“Contract Demand”** means:

- (a) in the case of the Primary Rate for a Terminal Location, the Primary Rate Contract Demand; and
- (b) in the case of the Secondary Rate for a Terminal Location, the Secondary Rate Contract Demand.

**“Contract Year”** means a period of twelve (12) months commencing at 10:00 a.m. Eastern Standard Time on the Anniversary Date and ending at 10:00 a.m. Eastern Standard Time on the next following Anniversary Date.

**“Curtailement”** and **“Curtailement Period”** have the respective meanings given to such terms in Section 4.2 of this Agreement.

**“Curtailement Notice Period”** means the notice to be provided to the Customer by the Company in the event of a Curtailement, as set out in Schedule “A” for a Terminal Location.

**“Default”** means an event or condition (including an act or omission), the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

**“Delivery Pressure”** means the pressure, measured in kilopascals, at which the Gas is to be delivered hereunder to a Terminal Location as identified and set out for such Terminal Location in Schedule “A”.

**“Demand Overrun Gas”** means any volume of Gas taken by the Customer on a Day at the Terminal Location which exceeds the Contract Demand.

**“Estimated Annual Volume”** means, in the case of the Primary Rate for a Terminal Location, the Primary Rate Estimated Annual Volume, and, in the case of the Secondary Rate for a Terminal Location, the Secondary Rate Estimated Annual Volume.

**“Event of Default”** has the meaning given to such term in Section 8.4 of this Agreement.

**“Gas”** means natural gas and/or residue gas comprised primarily of methane.

**“Gas Transporter”** means a Person, other than the Company, with which the Company or the Customer has contracted to transport Gas from or to any location.

**“Governmental Authority”** means any government, regulatory body or authority, agency, crown corporation, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of Canada or any provincial, regional or local governmental, or other subdivision thereof, whether over the Parties, their facilities, any Gas supply, the sale, purchase or transportation of Gas, or this Agreement or any part hereof.

**“Hourly Demand”** means, in the case of the Primary Rate for a Terminal Location, the Primary Rate Hourly Demand, and, in the case of the Secondary Rate for a Terminal Location, the Secondary Rate Hourly Demand.

**“Interruptible Service”** means gas service which is subject to Curtailment or discontinuance in accordance with this Agreement.

**“OEB”** means the Ontario Energy Board, or any successor regulatory entity.

**“Party”** means any one of the Company or the Customer, and **“Parties”** means both of them.

**“Person”** means an individual, corporation, partnership, firm, joint venture, syndicate, association, trust, trustee, government, governmental agency, board, tribunal, ministry, commission or department or other form of entity or organization and the heirs, beneficiaries, executors, legal representatives or administrators of an individual, and **“Persons”** has a similar meaning.

**“Personal Information”** means any information that identifies or is associated with an individual and any other information considered to be personal information and which is protected or falls under the purview of applicable privacy legislation.

**“Primary Rate”**, in respect of a Terminal Location, means the Rate Number set out in Schedule “A” for such Terminal Location.

**“Primary Rate Contract Demand”**, in respect of a Terminal Location, means the volume of Gas identified as such in Schedule “A” for such Terminal Location.

**“Primary Rate Hourly Demand”**, in respect of a Terminal Location, means the volume of Gas identified as such in Schedule “A” for such Terminal Location.

**“Primary Rate Multiplier”**, in respect of a Terminal Location, means the number identified as such in Schedule “A” for such Terminal Location.

**“Rate Handbook”** means the Company’s ‘Handbook of Rates and Distribution Services’ as amended, updated or replaced by the Company from time to time with approval from the OEB.

**“Rate Number”** means a numbered rate established by the Company from time to time for one or more category of service as approved by the OEB and in effect at the relevant time.

**“Rate Schedule”** means the schedule of rates, charges, terms and conditions associated with each Rate Number established by the Company from time to time as approved by the OEB and in effect at the relevant time.

**“Required Orders”** means such grants, permits, licences, registrations, approvals, consents, waivers, variances, exemptions, filings, authorizations, orders and decisions or requirements of or by any Governmental Authority having jurisdiction or control over any of the Parties or any provision hereof, as are from time to time necessary in order that this Agreement and the performance thereof by the Parties be in compliance with all Applicable Laws.

**“Secondary Rate”**, in respect of a Terminal Location, means the Rate Number identified as such in Schedule “A” for such Terminal Location.



**“Secondary Rate Contract Demand”**, in respect of a Terminal Location, means the volume of Gas identified as such in Schedule “A” for such Terminal Location.

**“Secondary Rate Hourly Demand”**, in respect of a Terminal Location, means the volume of Gas identified as such in Schedule “A” for such Terminal Location.

**“Secondary Rate Multiplier”**, in respect of a Terminal Location, means the number identified as such in Schedule “A” for such Terminal Location.

**“System Gas”** means commodity supply Gas provided by the Company pursuant to a Rate Number approved by the OEB.

**“Terminal Location”** means the building, plant or other facility of a Customer at or in which Gas to be delivered pursuant to this Agreement will be used by such Customer.

**“Unauthorized Overrun Gas”** has the meaning given to such term in the Rate Handbook.

## **1.2            Rules of Interpretation**

In this Agreement the following rules shall apply to the interpretation thereof:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”;
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded;
- (e) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency;
- (f) the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and

- (g) except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

### **1.3 Entire Agreement**

This Agreement and all Exhibits, attachments, and addenda contemplated herein or specifically referred to herein constitute the entire agreement among the Parties pertaining to all the matters herein, and supersede all prior agreements, understandings, negotiations, discussions and other communications, whether oral or written, of the Parties.

### **1.4 Severability**

This Agreement is a general form, intended for use by the Parties in their ongoing relations in Canada. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any Applicable Laws, then (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Party or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

### **1.5 Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated as an Ontario contract. For the purpose of any legal actions or proceedings brought by any Party in respect of this Agreement, each Party hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### **1.6 Handbook**

Part III of the Rate Handbook is and each of the Rate Schedules are incorporated into this Agreement and form a part hereof. Such Part and Rate Schedules shall be construed using the definitions contained in this Agreement and the terms used therein and not defined in this Agreement shall be construed using the definitions in Part I of the Rate Handbook. For certainty, for purposes of this Agreement, the term "Applicant" as referenced in the Rate Handbook shall mean "Customer" in this Agreement. If there is any conflict between the provisions of this Agreement and the provisions of the Rate Handbook, then the provisions of the Rate Handbook shall prevail.

### **1.7 Schedules**

The Schedules set out below are required to complete this Agreement and are incorporated herein by reference and are deemed to be a part hereof and are to be read in conjunction with and subject to this Agreement.

Schedule "A" - Particulars of LVDC Services

**ARTICLE 2**  
**BASIC AGREEMENTS**

**2.1 System Gas**

2.1.1 Use of System Gas - At all times during the Term when the Customer is not a party to a valid Gas Delivery Agreement with the Company (whether directly with the Company or through an Agent), except during periods of Curtailment or discontinued service pursuant to an order of the Company or a Governmental Authority or Force Majeure, the Customer will use, at each of its Terminal Location(s), System Gas to satisfy the Customer's Gas requirements.

2.1.2 Purchase of System Gas - On and subject to the terms of this Agreement, including the applicable Rate Number referred to in the applicable Schedule "A" and described in the corresponding Rate Schedule, during the periods identified in Section 2.1.1, the Customer shall purchase the Gas delivered by the Company hereunder to each Terminal Location, at the rates and charges referred to herein.

**2.2 Delivery of Gas**

2.2.1 Delivery - On and subject to the terms of this Agreement, during the Term the Company shall deliver Gas to the Customer, at the rates and charges referred to herein.

2.2.2 Delivery at Terminal Location - All Gas delivered to a Customer by the Company pursuant to this Agreement shall be delivered at the outlet of the Company's metering equipment at each Terminal Location identified and set out in the applicable Schedule "A".

2.2.3 Delivery Pressure - The Company agrees to deliver Gas at the outlet of the Company's metering equipment of each such Terminal Location at the relevant Delivery Pressure.

**2.3 Volumes**

2.3.1 Estimated Annual Volume - The Customer estimates that the Gas requirements for each Terminal Location and upon which this Agreement is based shall be the Estimated Annual Volume for such Terminal Location.

2.3.2 Maximum Daily Volume - The maximum volume of Gas the Company is required to deliver to the Customer in any Contract Day shall not exceed the Contract Demand of all Terminal Locations identified and set out in all Schedule "A" then applicable, and in any hour shall not exceed the Hourly Demand of all Terminal Locations identified and set out in all Schedule "A" then applicable.

2.3.3 Minimum Annual Volume - The minimum annual volume of Gas applicable to a Terminal Location shall be the minimum annual volume identified and set out in all Schedule "A" then applicable.

2.3.4 Minimum Volume Multiplier - The multiplier applicable in the determination of any minimum annual volume used for purposes of calculating any applicable minimum bill payable by a Customer, as contemplated in the Rate Handbook (or as agreed by the Parties where the Rate Handbook does not so contemplate), in respect of service to a Terminal Location shall be the Primary Rate Multiplier for such Terminal Location in the case of the Primary Rate, and the Secondary Rate Multiplier for such Terminal Location in the case of the Secondary Rate.

## 2.4 Rates

2.4.1 Applicable Rates - Subject to the other terms and conditions of this Agreement, the rates and charges for the purchase, if applicable, and for the delivery of Gas to a Customer hereunder in respect of each Terminal Location shall be the Rate Number and the provisions of the corresponding Rate Schedule, as identified and set out in the applicable Schedule "A", as amended or renewed from time to time.

2.4.2 Independence of Rate Schedules - The rates and charges applicable to the delivery of Gas to a Terminal Location of the Customer shall be determined and computed in accordance with the relevant Rate Schedule without regard to any volume of Gas contracted to be delivered, or delivered, to any other Terminal Location or under any other Rate Schedule or pursuant to any other agreement to which the Company and the Customer are parties.

2.4.3 Primary and Secondary Rates - If Gas is delivered under this Agreement to a Terminal Location pursuant to more than one Rate Number, the volume of Gas delivered to the Customer at such Terminal Location shall consist, firstly, of deliveries under the Primary Rate up to the Primary Rate Contract Demand, and, secondly, of deliveries under the Secondary Rate up to the Secondary Rate Contract Demand for such Terminal Location.

2.4.4 Rate Changes - In the event of any change in any of the rates or charges approved or fixed by the OEB for or in respect of or applicable to this Agreement or any of the services which the Customer is to receive under this Agreement, including retroactive changes, to the extent that such changed rate or charge is ordered by the OEB to be charged to the Customer or a class of customers of the Company that includes the Customer, the changed rate or charge shall be applicable hereunder and shall be applied upon becoming effective, and in accordance with any provisions relating to its application, in accordance with any applicable order of the OEB or rate number or schedule of the Company fixed, approved or authorized by the OEB.

## 2.5 Schedule "A" - Particulars of LVDC Services

2.5.1 Multiple Schedules - The parties acknowledge and agree that and confirm it is their intention that:

- (a) a separate Schedule "A" will be agreed to between them for each Terminal Location to which the Company will deliver Gas pursuant to this Agreement;
- (b) no Gas will be required to be delivered to a Terminal Location for which a Schedule "A" has not been agreed to; and
- (c) during the Term, the Customer may from time to time identify additional Terminal Locations to which Gas is to be delivered pursuant to this Agreement and, provided a Schedule "A" for such Terminal Location is agreed to between the Customer and the Company in respect thereof, the Company will deliver such Gas;

all as contemplated and provided for in this Agreement.

2.5.2 Annual Renewal - Each Contract Year, on or prior to the Anniversary Date, the Customer and the Company shall agree on the Rate Number (or Rate Numbers) as well as any changes to any of the other particulars for the services in respect of a Terminal Location set out in the applicable Schedule "A", applicable to each Terminal Location for the next following Contract Year. If the Customer and the Company are unable to agree thereon prior to the Anniversary Date, then the then current Rate Number (or Rate Numbers), and other particulars, shall continue to apply to such Terminal Location for the next following Contract Year.

## 2.6 Priority of Service

In the event of actual or threatened inability to deliver the volume(s) of Gas contracted for under this Agreement to a Terminal Location due to an Event of Force Majeure affecting the Company, or when curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, the Customer shall, at the direction of the Company, curtail or discontinue use of Gas during the period specified by the Company (by notice to the Customer in accordance with the other terms of this Agreement) so as to safeguard the health and safety of the public. If the Company intends to require the Customer to curtail or discontinue use of Gas pursuant to this Section 2.6 as a result of a threatened inability to deliver due to an Event of Force Majeure affecting the Company, then as soon as the Company makes the determination that there is a threatened inability to deliver (which determination will be made in the Company's sole discretion acting reasonably) the Company will notify the Customer of the determination and the reasons therefor. If the curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, then the Company shall ensure that the notice to the Customer to curtail or discontinue use is consistent with such order, and that the duration of such curtailment or discontinuance is not longer than that required in such order. Any curtailment or discontinuance shall be effected by the Company in a manner consistent with the then current policy of the Company regarding curtailment or discontinuance of use. The Company shall not be liable for any loss of production or for any damages whatsoever by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

## 2.7 **Billing Effective Date**

If the Customer and the Company agree, prior to the entering into of this Agreement, then the Company shall be deemed to have delivered Gas to each Terminal Location at the Applicable Rate from and after the Billing Effective Date to the Commencement Date, and the Company shall adjust the Customer's statements and payment obligations hereunder accordingly. For certainty, the Customer shall only be deemed to have received the benefit of the Delivery Charge and, if applicable, the System Sales Gas Supply Charge during such period, and no other terms or conditions of the Applicable Rate shall apply or be deemed to apply to the Customer in that period.

## 2.8 **Authority of Customer**

2.8.1 **Representations and Warranties** - In addition to any other representations and warranties given to the Company under this Agreement, the Customer represents and warrants to the Company, and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in entering into this Agreement, that at the date hereof and at all relevant times during the Term:

- (a) the Customer will exercise its rights and fulfill its obligations under this Agreement either itself or by or through one or more representatives of the Customer (it being the intention of the Customer that, for purposes of this Agreement, there shall be a representative of the Customer for each Terminal Location);
- (b) each such representative of the Customer is authorized and entitled to agree with the Company on the Schedule "A" for the Terminal Location of which they are the representative and to act on behalf of the Customer under this Agreement in respect of such Terminal Location; and
- (c) the Company is entitled to rely on anything done or any document signed or approved by the representative of the Customer in respect of such Terminal Location, including the corresponding Schedule "A", as if the action had been taken or the document had been signed or approved by the Customer.

2.8.2 **Dealings with Representatives** - The Company shall be entitled to deal exclusively with the representative of the Customer for a Terminal Location in respect of the rights and obligations of the Customer under this Agreement in respect of such Terminal Location.

2.8.3 **Proof of Authority** - The Company shall have the right, at any time and from time to time, without in any way limiting any of the foregoing, including the representations and warranties of the Customer, to require the Customer, or any of its representatives, to provide the Company proof, which must be satisfactory to the Company in its sole discretion, acting

reasonably, that the representative is authorized to act on behalf of the Customer, and has the authority contemplated in this Section 2.8.

2.8.4 Deemed Authority - For purposes of this Section 2.8, and without in any way limiting any of the foregoing, each representative shall be deemed to have valid and appropriate authority from the Customer upon the representative submitting a Schedule "A" in respect of a Terminal Location.

### **ARTICLE 3**

#### **BILLING, PAYMENT AND SECURITY**

#### **3.1 Payment and Terms**

3.1.1 Payment - The Customer agrees to pay the rates and charges applicable to the services and System Gas, if any, supplied under this Agreement. Without limiting the foregoing, the Customer acknowledges that such rates and charges may include an administrative charge, a minimum bill amount per month, a penalty for late payment and charges for Unauthorized Overrun Gas, as applicable pursuant to Section 2.4.1.

3.1.2 Billing Assumption - In applying, calculating and billing the rates and charges applicable to service to any Terminal Location in respect of any period, the Company shall be entitled to do so on the basis that the volume of Gas delivered in the period to the Terminal Location was delivered in equal volumes on each Contract Day in the period.

3.1.3 Terms - Terms applicable to issuing of invoices and the payment thereof, including any late payment charges and any similar terms, in respect of the services and System Gas, if any, supplied under this Agreement are as set out in the Rate Handbook.

#### **3.2 Security Requirement**

The Customer acknowledges that the Company may, from time to time, establish a security policy regarding the financial security arrangements with which the Customer must comply in order to receive services under this Agreement. If the Company establishes a security policy which is applicable to the Customer, then the Customer shall take such actions as are necessary in order for it to comply with such security policy. If the Customer fails to comply with such security policy, then the Company may refuse to provide services to the Customer under this Agreement until the Customer is in compliance therewith. In establishing any such security policy, the Company shall act reasonably and in the interests of maintaining the integrity of the Company's Gas distribution system and shall apply such security policy consistently to all customers of the Company. Without limiting the ability of the Company to revise such security policy in the manner contemplated in this Section, such security policy in effect at the date of this Agreement is attached as Exhibit 1 to this Agreement.

### 3.3 Statements

The Company shall periodically, and in any event not less than monthly, deliver to the Customer a statement in respect of each of the Terminal Locations identified and set out in Schedule "A". Such statement shall show, in respect of the period to which the statement relates, the volume of Gas delivered to the Terminal Location as determined by the Company in accordance with its practices.

### 3.4 Errors

If an error in a statement or other document is discovered, a correcting adjustment shall be made promptly in a subsequent statement in accordance with the Company's then current policies and procedures. Claims for errors shall be made promptly upon discovery.

### 3.5 Retention of Records

All charts and calculations upon which a statement or other document issued to the Customer is based, and the Company's books and records which relate solely to measurement and settlement for accounts hereunder, shall be retained by the Company for the longer of (A) three (3) years from the date of the relevant statement or such longer period as the Company determines to retain such records for its own purposes, and (B) the period while any claim which relates to such statement, and of which the Company receives written notice from the Customer within such one-year period, is outstanding; and shall be available for inspection by the Customer on reasonable prior notice during normal office hours of the Company.

### 3.6 Withholding

Notwithstanding anything in this Agreement to the contrary, the Company shall have the right to withhold (either by withholding payment or by withholding a credit to which the Customer might otherwise be entitled) an amount owing to the Customer by the Company equal to the amount of money then due, owing and unpaid by such Customer, and/or the Agent, to the Company under this Agreement or, if applicable, under any Gas Delivery Agreement entered into between the Company and the relevant Customer (the "**Withheld Amount**"). Upon the Company ceasing to be entitled to hold any particular portion of a Withheld Amount the Company shall forthwith pay to the Customer, an amount equal to such portion of the Withheld Amount.

## ARTICLE 4 VARIATIONS OF USE AND SERVICE

### 4.1 Unauthorized Overrun Gas

The Customer acknowledges and agrees that:

- (a) the use of, or deemed taking of, a volume of Unauthorized Overrun Gas will result in the Customer paying a price for such volume of Gas which is



likely to be significantly greater than the price payable under this Agreement for Gas which is not Unauthorized Overrun Gas;

- (b) if this Agreement provides for interruptible service, then the use of Unauthorized Overrun Gas may in some circumstances result in the Customer forfeiting its right to be provided with interruptible service; and
- (c) the payment for Unauthorized Overrun Gas shall not relieve the Customer from any other remedy available to the Company against such Customer for breach of this Agreement.

## **4.2 Interruptible Service**

4.2.1 Curtailment - If the Customer receives service to a Terminal Location under an interruptible Applicable Rate, then during periods of peak demand or for other causes which necessitate reducing the load on any Gas transmission or distribution pipeline, such service shall be subject to curtailment or discontinuance of use by the Company upon notice being given by the Company to the Customer by telephone, electronic or other communication device or in person for not less than the Curtailment Notice Period. In exercising its right to curtail pursuant to this Section, the Company shall have sole discretion provided it acts reasonably and in the interests of maintaining the integrity of the Company's Gas distribution system. For purposes of this Agreement, each such interruption may be referred to as a "**Curtailment**", and the period during which a Curtailment is in effect may be referred to as the "**Curtailment Period**".

4.2.2 Compliance - The Customer shall comply with any request of the Company, made by notice as aforesaid, that such Customer curtail or discontinue its use of Gas supplied or transported by the Company.

4.2.3 Resumption of Service - Service will be resumed as soon as possible when the conditions described in Subsection 4.2.1 cease to exist, in the sole discretion of the Company.

4.2.4 Appropriateness of Curtailment - The Customer acknowledges and agrees that it can accommodate any total or partial interruption of Gas service by the Company as contemplated in this Section 4.2 and that the Company shall have no liability for any loss arising from any such interruption of Gas service, provided that the Company has acted in accordance with the material terms of this Agreement.

4.2.5 Application - The provisions of this Section 4.2 shall only apply to a Terminal Location receiving Interruptible Service.

## **4.3 Curtailment Delivered Supply**

4.3.1 Incremental Deliveries - Subject to the terms and conditions of this Section 4.3, during a Curtailment Period, and provided that the Customer is receiving Interruptible Service, the Company agrees to allow the Customer to deliver to the Company and the Company is

willing to accept from the Customer an incremental volume of Gas, in addition to any existing obligation to deliver Gas pursuant to the Gas Delivery Agreement.

4.3.2 Delivery Requirements - All such deliveries shall be made and completed in accordance with the terms of the Company's Curtailment Delivered Supply Standard Terms and Conditions and the firm transportation Rate 300 Rate Schedule. The Customer acknowledges that it has had an adequate opportunity to review such Standard Terms and Conditions and Rate Schedule, and agrees that it shall comply therewith.

## **ARTICLE 5**

### **TERMINAL LOCATION - METERING AND EQUIPMENT**

#### **5.1 Metering at Point of Delivery**

5.1.1 Installation - The Company agrees to install, operate and maintain measurement equipment of suitable capacity and design as is required to measure the volume of Gas to be delivered by the Company under this Agreement. The Customer agrees to provide, at its own expense, (i) any and all housing reasonably required by the Company for the protection of such measurement equipment and regulating equipment at the Customer's premises used in connection with the delivery of any such Gas, and (ii) if required for the Company's measurement equipment, a continuous supply of electrical power at 110 volts and a non-dedicated, single, voice grade, analog outside telephone line for local and WATTS (800 service) calls. The measurement and regulating equipment shall be installed at such location as the Company may determine, in its discretion acting reasonably; provided that if the Company determines that such equipment should be installed on the Customer's premises, the site shall be as agreed between the Customer and the Company; and provided further that all installations of equipment must be made in accordance with all applicable safety regulations.

5.1.2 Access - The Company and the Customer shall each have the right to enter the measurement/regulating location at any reasonable time on prior notice to the Customer or the Company, as the case may be, and shall have the right to be present at the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of measurement equipment. Access under this Section is subject to the Party which is accessing the location complying with any specific policies or procedures in respect thereof that are provided to it by the Party permitting such access following the giving of the notice requiring such access.

#### **5.2 Examination**

5.2.1 If requested by a Customer, the Company's measurement equipment shall be examined by the Company in the presence of a representative of the Customer, but the Company shall not be required as a matter of routine to examine such equipment more frequently than once in any 9-month period.

5.2.2 If the measurement equipment is found to be in error by not more than three per cent (3%), the previous recording shall be considered correct but proper adjustments to the meter will be made immediately. However, if the error is greater than three per cent (3%), a correction

in billing shall be made in accordance with the *Electricity and Gas Inspection Act* and the Regulations made thereunder or any other legislation which may succeed the said Act.

5.2.3 Gas measurement equipment that malfunctions for whatever reason shall be dealt with in accordance with the foregoing subparagraph of this Section 5.2.

### **5.3 Measurement Criteria**

5.3.1 All Gas delivered shall be measured utilizing equipment which conforms to the regulations prescribed in "Departmental Instructions for Inspection of Gas Meters and Auxiliary Devices" dated October 1976, issued by the Department of Customer & Corporate Affairs, Government of Canada, as amended from time to time.

5.3.2 The measurement unit shall be one cubic meter of Gas at a pressure of 101.325 kpa absolute and at a temperature of fifteen (15) degrees Celsius. The average absolute atmospheric (barometric) pressure shall be calculated in accordance with the *Electricity and Gas Inspection Act* and the Regulations made thereunder or any other legislation which may succeed the said Act, regardless of variations in actual barometric pressure from time to time.

### **5.4 Equipment**

The title to all service pipes, meters, regulators, attachments and equipment placed on a Customer's premises and not sold to the Customer shall remain with the Company, with right of removal, and no charge shall be made by a Customer for use of premises occupied thereby.

## **ARTICLE 6** **GENERAL RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **6.1 Governmental Regulations**

6.1.1 This Agreement is subject to (A) the maintenance of all Required Orders, and (B) all Applicable Laws.

6.1.2 The Customer shall promptly endeavour to obtain or cause to be obtained all Required Orders. The Customer shall provide true copies of all Required Orders to the Company upon request.

6.1.3 The Customer shall comply with the terms of all Required Orders applicable to it and shall use its best efforts to maintain the same in full force and effect throughout the Term. The Company will comply with all Required Orders applicable to it and will use its best efforts to maintain the same in full force and effect throughout the Term.

6.1.4 The Company shall promptly endeavour to obtain or cause to be obtained all Required Orders as it relates to Gas to be dealt with under this Agreement.

## 6.2 Suspension of Company's Obligations

In addition to any other rights the Company may have, the Company shall not be required to perform its obligations hereunder, and shall be entitled to suspend such obligations, at any particular time if:

- (a) there is a breach or default of any representation, warranty or obligation of the Customer set out in this Agreement, as determined by the Company, in its sole discretion acting reasonably and where such breach or default affects the integrity of the Company's Gas distribution system;
- (b) any Required Order ceases to be in effect or if the Company has not received an original or true copy of any Required Order which has been requested by the Company; or
- (c) performance of any such obligation would be in contravention of any Applicable Law.

If the Company suspends any of its obligations pursuant to this Section, then it shall deliver a notice to that effect to the Customer and the reasons therefor. If a Suspension Period continues for more than thirty (30) consecutive days, then the Company may terminate this Agreement by notice to the Customer given by the Company after the thirtieth (30<sup>th</sup>) day in such Suspension Period, and such termination shall be effective on the later of a date stipulated in such notice and the date on which such notice is received by the Customer. In this Section, "**Suspension Period**" means a period throughout which the Company is not required to perform its obligations hereunder as permitted by this Section.

## 6.3 Adoption of NAESB Standards

6.3.1 Acknowledgement of Standards - Each of the Parties acknowledges that the North American Energy Standards Board ("**NAESB**") develops and promotes standards for business practices and electronic communication of Gas transactions, with a view to simplifying the management of Gas across the entire North American pipeline grid, and that the Gas Industry Standards Board ("**GISB**") is the wholesale Gas quadrant of NAESB.

6.3.2 Amendment to Conform with Standards - The Customer hereby acknowledges that the NAESB may, from time to time, revise or implement standards that conflict with or supplement the provisions of this Agreement. If at any time the Company is required to adopt a recommended standard that conflicts with or supplements the provisions of this Agreement as a result of a Required Order or the imposition of such standards on the Company by any Gas Transporter which necessitates the Company adopting such standards, then the Company shall deliver a notice to the Customer which specifies such standards and sets out the revisions to this Agreement that are required to accommodate such standards. The Parties agree that on the thirtieth (30<sup>th</sup>) day following the delivery of such notice, or such earlier day that such standards are imposed on the Company, this Agreement shall be deemed to be amended by the incorporation of the revisions set out in such notice.

#### **6.4            Payments by the Company**

If any payment is required to be made by the Company to the Customer pursuant to the terms of this Agreement, then such payment shall be processed by the Company and remitted to the Customer in accordance with the Company's normal monthly billing practise.

#### **6.5            Representations and Warranties of the Company**

The Company represents and warrants to the Customer that at the date hereof and at all times during the Term:

- (a)     the Gas delivered to the Terminal Location shall conform to the minimum standards established by the Company for Gas in its distribution system; and
- (b)     the Company shall have good and marketable title in and to the Gas to be delivered to the Customer and shall be entitled to deliver and, where applicable, sell such Gas to the Customer in accordance with the terms of this Agreement, free and clear of any adverse claim of any nature or kind whatsoever,

and acknowledges that the Customer is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement.

### **ARTICLE 7** **FORCE MAJEURE**

#### **7.1            Effect of Force Majeure**

Subject to the other provisions of this Article 7, a Party shall not be liable to the other Party, in respect of such first mentioned Party's obligations under this Agreement (other than the obligations to make payment of money then due) as a result of the inability of the first mentioned Party to deliver or receive Gas if such inability is caused by an Event of Force Majeure. A delay or interruption in the performance by a Party of any of such obligations due to Force Majeure shall suspend the period of performance of such obligation during the continuance of such Force Majeure. If any curtailment or discontinuance of service resulting from an Event of Force Majeure continues for any period in excess of twenty-four (24) hours, then the minimum bill charge payable by the Customer shall, upon the request of the Customer, be reasonably adjusted.

#### **7.2            Notice and Other Requirements**

7.2.1        Initial Notice - Forthwith following a Party becoming or being made aware of an Event of Force Majeure which may impact on any of such Party's obligations, such Party shall notify the other Party of the event and of the manner in which such Party's obligations hereunder will or may be affected; and such Event of Force Majeure shall be deemed to have commenced

when it occurred provided notice is given within six (6) hours, and otherwise when such notice is given.

7.2.2 Efforts to Eliminate - The Party claiming Force Majeure shall, unless such Event of Force Majeure is a strike, lockout or other industrial disturbance, use its best efforts to eliminate such event of Force Majeure.

7.2.3 Subsequent Notice - The Party claiming Force Majeure shall forthwith give notice to the other Party when such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling its obligation to deliver or receive Gas as contemplated herein.

7.2.4 Resumption of Obligations - The Party claiming Force Majeure shall proceed to fulfill such Party's obligations which are impacted by the Event of Force Majeure as soon as reasonably possible after such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling such obligations.

7.2.5 Oral Notice - Any notice under this Section 7.2 may be given orally; provided that such notice shall only be effective if it is confirmed the same day in writing by facsimile or as otherwise provided in Section 10.1.

### 7.3 Definition

In this Agreement, "**Force Majeure**" or "**Event of Force Majeure**" means any cause (A) not reasonably within the control of the Party claiming force majeure, and (B) which by exercise of due diligence such Party is unable to prevent or overcome, and includes the following:

- (a) physical events such as an act of God, landslide, earthquake, storm or storm warning such as a hurricane which results in evacuation of an affected area, flood, washout, explosion, breakage or accident to machinery or equipment or lines of pipe used to transport Gas, the necessity of repairs to or alterations of such machinery or equipment or lines of pipe, or inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party's obligations under this Agreement;
- (b) interruption and/or curtailment of firm transportation by a Gas Transporter;
- (c) acts of others such as strike, lockout or other industrial disturbance, civil disturbance, blockade, act of a public enemy, terrorism, riot, sabotage, insurrections or war, as well as physical damage resulting from the negligence of others; and

- (d) governmental actions, such as necessity for compliance with any Applicable Law.

## **7.4 Limitations**

7.4.1 Limitations - Notwithstanding any other term of this Article 7, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances:

- (a) the curtailment of interruptible Gas supply;
- (b) economic hardship, including the Customer's ability to sell Gas at a higher or more advantageous price or to buy Gas at a lower or more advantageous price; or
- (c) the loss or failure of the Customer's Gas supply or depletion of reserves.

7.4.2 Further Limitations - Notwithstanding any other term of this Article 7, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure if:

- (a) such Party's inability to perform the obligation was caused by its lack of finances; or
- (b) such Party's inability to perform the obligation was caused by its deliberate act or inaction; or
- (c) such Party failed to comply with Section 7.2 in respect of the Event of Force Majeure.

Without in any way limiting any of the foregoing, the settlement of strikes or lockouts shall be entirely within the discretion of the Party affected. In no event shall any Party be excused from any of its financial responsibilities or obligations under this Agreement.

## **ARTICLE 8 TERM AND TERMINATION**

### **8.1 Term**

Subject to the other terms and conditions of this Agreement, the term of this Agreement (the "**Term**") shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement.

### **8.2 Rights of Termination**

8.2.1 Mutual Right to Terminate - Subject to the other provisions of this Article 8, either Party shall have the right to terminate this Agreement effective as of the Anniversary Date,

without cause, upon written notice to the other Party given not less than sixty (60) days and not more than one hundred twenty (120) days prior to the next following Anniversary Date.

8.2.2 The Company's Right to Terminate - Subject to the other provisions of this Article 8 and in addition to the Company's rights of termination set out elsewhere in this Agreement, the Company shall have the right to terminate this Agreement:

- (a) at any time upon the occurrence of an Event of Default; or
- (b) at any time, without notice, upon the occurrence of a regulatory change established by a Governmental Authority, which causes, results in or requires such termination.

8.2.3 Customer's Right to Terminate - Subject to the other provisions of this Article 8, the Customer shall have the right to terminate this Agreement if the Company fails to perform or observe any of its obligations under this Agreement on its part to be observed or performed and such failure shall continue unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Customer to the Company. For certainty, termination under this Section shall not relieve either Party from any payment obligation to the other Party under this Agreement.

### **8.3 Effects of Termination**

8.3.1 Obligations of the Parties - Upon the termination of this Agreement for any reason the Company shall, as soon as reasonably practicable and in any event not later than ninety (90) days following termination, prepare and forward to the Customer, a statement setting out the status of the Customer's account in respect of each Terminal Location identified and set out in Schedule "A" and the Customer's obligation thereunder, if any; and forthwith following receipt of such statement, the Customer shall settle such obligation pursuant to Section 3.1; provided that, notwithstanding any provision in the Rate Handbook to the contrary, if this Agreement is terminated as a result of an Event of Default set out in Section 8.4(b), (c) or (d), then settlement of such obligation shall be effected by payment made by the Customer immediately following delivery of such statement.

8.3.2 Survival on Termination - All provisions of this Agreement which by their terms are required to survive in order to permit the settlement in full of the obligations referred to in Section 8.3.1 as contemplated therein, shall survive the termination of this Agreement and continue in full force and effect in accordance with the terms of this Agreement for such period. Without limiting the foregoing, the following provisions shall so survive: Section 3.5 - Retention of Records; Section 8.3.1 - Obligations on Termination; and Sections 10.2, 10.3 and 10.4 - Indemnity and Limitations.

### **8.4 Events of Default**

In addition to any other events set out in this Agreement, the occurrence of any one or more of the following events shall constitute a Default by a Customer under this



Agreement and shall be considered an event of default (an “**Event of Default**”) if such Default is not remedied prior to the expiry of the relevant notice period (if any) or the relevant cure period (if any) applicable to such Default as hereinafter set out:

- (a) if the Customer fails to perform or observe any of its obligations under this Agreement on its part to be observed and performed and such failure shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Customer for a period of thirty (30) days; or
- (b) if the Customer files a petition in bankruptcy, makes application or files a petition seeking any re-organization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of the Customer, or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the Customer and is not stayed, otherwise enjoined or discharged within fifteen (15) Business Days; or
- (c) if any execution, distress or other enforcement process, whether by court order or otherwise, which would have a material adverse effect on the financial viability of the Customer becomes enforceable against any property of the Customer; or
- (d) if the Customer ceases carrying on business in the ordinary course, commits any act of bankruptcy under *The Bankruptcy and Insolvency Act* or is wound up;

provided that each of the above-noted Events of Default have been inserted for the benefit of the Company and may be waived by the Company in whole or in part at any time by notice to the Customer, the Company may extend the period for the remediation of any such Event of Default (if any), provided that the Customer is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Company that the steps being taken by the Customer are likely to satisfy the Event of Default within a reasonable period of time.

## **8.5 Rights and Remedies on an Event of Default**

8.5.1 Rights and Remedies of the Company - Upon the occurrence of an Event of Default, the Company may do any one or more of the following as the Company, in its sole and absolute discretion, may determine:

- (a) the Company may terminate this Agreement in accordance with the provisions of this Article 8;

- (b) the Company may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (c) the Company may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

8.5.2 Rights and Remedies of the Customer - Upon the occurrence of the event contemplated in Section 8.2.3, the Customer may do any one or more of the following as the Customer, in its sole and absolute discretion, may determine:

- (a) the Customer may terminate this Agreement in accordance with the provisions of this Article 8;
- (b) the Customer may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (c) the Customer may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

## **ARTICLE 9**

### **DISPUTE RESOLUTION**

#### **9.1 Dispute Resolution Principle**

This Article 9 establishes a framework and procedure under which the Parties shall, in good faith, use their reasonable efforts to resolve most disputes that arise under this Agreement (in each case, a “**Dispute**”) without resort to litigation. In the event of any Dispute arising between the Parties, unless otherwise provided herein, the Parties shall use reasonable commercial efforts to settle such Dispute in the manner set out in Section 9.2. For certainty, such Disputes shall not include the ability of either Party to terminate this Agreement in accordance with the provisions hereof.

#### **9.2 Dispute Resolution Mechanism**

9.2.1 Notice of Dispute - A Party claiming that a Dispute has arisen must give written notice (a “**Dispute Notice**”) to the other Party specifying the nature of the dispute, the relief sought and the basis for the relief sought.

9.2.2 Meeting between Operations Personnel - Within seven (7) Business Days of receipt of a Dispute Notice, the Parties must commence the process of attempting to resolve the Dispute by referring such Dispute to a meeting between the Manager, Strategic and Key Accounts (or the successor position thereof), on behalf of the Company, and an equivalent or similar manager on behalf of the Customer, (the “**Operations Personnel**”) for discussion and resolution. The Operations Personnel shall consult, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to both Parties.

9.2.3 Meeting between Senior Representatives - If a Dispute is not resolved to the mutual satisfaction of the Parties by the Operations Personnel within twelve (12) Business Days after the Dispute Notice has been delivered the Dispute shall be referred to the Parties' respective senior representatives (in the case of the Company, the Vice-President, Operations (or the successor position thereof); and in the case of the Customer, an equivalent or similar senior manager of the Customer) (the "**Senior Representatives**") for resolution. The Parties shall cause their respective Senior Representatives to meet as soon as possible in an effort to resolve the dispute.

9.2.4 Non-Binding Mediation - If the Dispute is not resolved by the Senior Representatives to the mutual satisfaction of the Parties within twenty (20) Business Days after delivery of the Dispute Notice, then the Parties may agree to refer the Dispute to a private mediator agreed to between them. The Parties and the mediator shall conduct the mediation in accordance with procedures agreed to between them and all third-party costs (including those of the mediator) shall be shared equally by the Parties. There shall be no obligation of a Party to agree on a mediator or any procedures therefor, other than to act in good faith.

### 9.3 Alternative Resolution

If the Dispute is still not resolved to the mutual satisfaction of the Parties within sixty (60) days after delivery of the Dispute Notice, then either Party may require the Dispute to be resolved by litigation or such other legal means as are available to such Party, provided the Party seeking legal remedy has pursued resolution of the Dispute as contemplated in Section 9.2.

## ARTICLE 10 GENERAL

### 10.1 Notice

All notices, directions, documents of any nature required or permitted to be given by one Party to the other pursuant to this Agreement (in each case, a "**Notice**") shall be in writing and shall be delivered personally or by courier or sent by facsimile as follows:

- (a) in the case of the Company, to it at:  
Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York ON M2J 1P8  
Fax Number: (416) 495-5657  
Attention: Manager, Contract Support and Compliance
- (b) in the case of the Customer, to it's legal contact at the address set out below following the signature of the representatives of the Customer,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 10.1. Notice may be delivered by electronic internet communication provided the Parties have agreed in writing in advance to do so and have established in writing their respective addresses for such communication. A Notice shall be

deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or electronic internet communication. If such day is not a Business Day or if the Notice is received after ordinary office hours (at the time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day.

## **10.2            Indemnity by Customer**

Subject to any limitations specifically set out in this Agreement, the Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Company, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Customer or any of the Customer's employees or agents or any Person acting under the authority of or with the permission of the Customer. The Customer further agrees to indemnify and hold the Company, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 10.2.

## **10.3            Indemnity by Company**

Subject to any limitations specifically set out in this Agreement, the Company shall save harmless and indemnify the Customer, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Customer, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Company or any of the Company's employees or agents or any Person acting under the authority of or with the permission of the Company. The Company further agrees to indemnify and hold the Customer, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 10.3.

## **10.4            Limitations**

Notwithstanding any other provision of this Agreement, the liability of each Party, and their respective shareholders, directors, officers, employees and agents, to another Party, whether founded in tort or breach of contract or otherwise, shall be limited to the loss sustained by such other Party as a result of direct physical damage sustained by such other Party, including reasonable costs of repair or replacement. Without limitation, a Party shall not be liable for any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties. In no event shall a Party be liable for any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

## **10.5            Time of the Essence**

Time is of the essence of this Agreement and of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

## **10.6**            **Further Acts**

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

## **10.7**            **Amendment**

This Agreement may be amended only by written agreement of the Parties.

## **10.8**            **Waiver**

Except as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

## **10.9**            **Assignment**

The Customer may not sell, assign or transfer any of its interest in or rights or obligations under this Agreement, in whole or in part without the prior written approval of the Company, which approval will not be unreasonably withheld or delayed.

## **10.10**           **Enurement and Binding Effect**

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns and be binding upon the parties hereto and their respective successors and permitted assigns.

## **10.11**           **Confidentiality**

As a result of the business relations between the Parties pursuant to this Agreement, a Party (the "**Receiving Party**") may acquire confidential information regarding the business and affairs of another Party (the "**Disclosing Party**"). The disclosure of any of such confidential information to competitors of the Disclosing Party or to the general public could be detrimental to the interests of the Disclosing Party. All such confidential information acquired or obtained by the Receiving Party will not be used by the Receiving Party, or disclosed to others (other than directors, officers, employees, representatives and agents of the Receiving Party who require same with respect to the fulfillment of such Party's obligations under this Agreement), either directly or indirectly, unless the Disclosing Party provides its prior written consent. The foregoing obligations shall remain until such time as the confidential information (i) becomes public through no fault or act of the Receiving Party, or (ii) is furnished to the Receiving Party

without restriction on disclosure, or (iii) is required to be disclosed by the Receiving Party pursuant to a Required Order.

#### **10.12      Agreement Transition**

Prior to the effective date of this Agreement, the Parties may have entered into a Large Volume Distribution Contract similar to this Agreement. In such event, the Parties agree that this Agreement shall constitute an amended and restated Agreement which will supersede the currently executed Large Volume Distribution Contract and which currently executed Large Volume Distribution Contract will be of no further force or effect hereafter. Further, all of the rights and obligations of each of the Parties arising under or pursuant to such currently executed Large Volume Distribution Contract shall hereafter be governed by and in accordance with the terms of this Agreement.

#### **10.13      Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

[end of text]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the year and date first above written.

**ENBRIDGE GAS DISTRIBUTION INC.**

By: \_\_\_\_\_  
 Name: Andrew Welburn  
 Title: Manager, Contract Relationships

By: \_\_\_\_\_  
 Name: Brenda Vari  
 Title: Manager, EnTRAC Financials

**«LEGAL\_NAME»**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

|                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>CUSTOMER:</b></p> <p><b>Legal Contact Information and Address for Service of Customer:</b></p> <p><u>Legal Contact:</u></p> <p><u>Name:</u> _____</p> <p><u>Position/Title:</u> _____</p> <p><u>Department:</u> _____</p> <p><u>Business Phone No.:</u> _____</p> <p><u>Fax No:</u> _____</p> <p><u>E-Mail Address:</u> _____</p> | <p><u>Mailing Address:</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p><u>Courier Address:</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Note: this is the 'legal contact' for purposes of Section 10.1</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|





## **Exhibit 1**

### **Customer Account Security Policy**

#### **Large Volume Distribution Customers**

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Revision Date: November 30, 2005

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#### **BACKGROUND**

The Company may require, from any customer or contracting parties, a security or guarantee for payment of bills.

“Any Corporation, before supplying any public utility to any person or to any building or premises, or as a condition of continuing to supply the utility, may require any consumer to give reasonable security for the payment of the proper charges therefor or for carrying the public utility into the building or premises.” (Public Utilities Act R.S.O. 1990, C. P52, S. 50(4))

Such a security or guarantee shall be in an amount determined and required by the Company to secure the payment of previous or estimated future utility charges, in accordance with this Account Security Policy.

#### **10.14 Determination of Security Requirements**

The Company may, but is not obligated to, require security from the Customer.

The factors which the Company will take into consideration in determining whether or not security is required from a particular Customer include payment history and credit rating of the Customer.

In general, new or additional security will only be required from the following Customers:

- (a) all new Customers without established good payment records with the Company;
- (b) all Customers in arrears who do not have adequate security on file;
- (c) as a condition of restoring service to a Customer whose gas supply is disconnected for non-payment of outstanding bills; or

- (d) if a Customer's payment history and/or credit rating have changed such that the Company determines, acting reasonably, that the Customer's ability to make payment and perform under the Applicable Agreement has been impaired or will be impaired in the future.
- (e) Should the Company determine that security is required, the security shall be governed by the requirements of this Account Security Policy.

### **10.15 Determination of Security Requirements**

The minimum and maximum amount of security to be provided by a Customer will be determined by the Company in the following manner:

#### **10.15.1 for Customers purchasing both gas distribution services and gas commodity from the Company:**

- (a) the minimum security amount will be calculated by dividing the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the Contract Year by 3, rounded to the nearest \$100; and
- (b) the maximum security amount shall not exceed the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the four months in the Contract Year having the highest estimated charges;

#### **10.15.2 for Customers purchasing only gas distribution services from the Company (other than as contemplated in Subsection 2(c) below):**

- (a) the minimum security amount will be the sum of:
  - (i) the amount calculated by dividing the sum of the Company's estimate of the Customer's gas distribution charges for the Contract Year by 3, rounded to the nearest \$100, plus
  - (ii) the Company's maximum estimated debit banked gas account applicable to the Customer for the relevant Contract Year, valued at the Applicable Rate; and
- (b) the maximum security amount shall not exceed the sum of:
  - (i) the Company's estimate of the Customer's gas distribution charges for the four months in the Contract Year having the highest estimated charges, plus
  - (ii) the Company's maximum estimated debit banked gas account applicable to the Customer for the relevant Contract Year, valued at the Applicable Rate; and

**10.15.3 for Customers purchasing only gas distribution services from the Company, where the Company is providing gas distributor consolidated billing services to the Customer or the Customer's agent/gas supplier:**

- (a) the minimum security amount will be calculated by dividing the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the Contract Year by 3, rounded to the nearest \$100; and
- (b) the maximum security amount shall not exceed the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the four months in the Contract Year having the highest estimated charges.

The minimum amounts identified in this Section may be increased if the Company determines, in its sole discretion acting reasonably, that, as a result of the Customer's payment history or credit rating, the risk of non-payment is excessive.

**10.16 Allowable Forms of Security**

The form of security shall be:

- (a) irrevocable letter of credit;
- (b) cash deposit;
- (c) pre-payment; or,
- (d) a combination of the above,

at the discretion of the Customer.

At its discretion, the Company may accept some other form of security, including a parental guarantee. Prior to acceptance of any form of security and prior to the processing of any service transaction request submitted to it by the Customer, the Company will review and satisfy itself as to the enforceability of the applicable security documents.

**10.17 Interest on Cash Deposits**

Interest shall accrue monthly on security provided in the form of a cash deposit. The interest rate shall be the Company's short term cost of debt associated with the Company's Ontario Energy Board approved rates. The interest accrued shall be paid out at least once every 12 months, or on return or realization of the security, whichever comes first

**10.18 Reductions to the Maximum Security Amount**

The Customer's maximum security amount as calculated pursuant to Section 2 shall be reduced in accordance with the calculations set out in this Section 5.

Where a Customer has an established credit rating from a third-party credit agency, the security adjustment set out in Subsection 5(a) shall apply, and in all other circumstances the security adjustment set out in Subsection 5(b) shall apply. For certainty, the reductions in a Customer's maximum security amount contemplated in Subsection 5(a) and Subsection 5(b) are not cumulative.

#### 10.18.1 **Credit Rating Adjustment**

The Customer's credit rating will be used to reduce the maximum security amount under section 2, in accordance with Table 1 - Credit Rating Adjustment Table. If the Customer is only able to provide the credit rating of its parent company, the reduction to the Customer's maximum security amount shall be 50% of that indicated in Table 1 - Credit Rating Adjustment Table; provided that the Customer has provided security in the form of a parental guarantee.

**Table 1 - Credit Rating Adjustment Table**

| Credit Rating<br>(applying Standard & Poor's terminology) | Allowable Reduction of<br>Maximum Security Amount |
|-----------------------------------------------------------|---------------------------------------------------|
| AAA- and above (or equivalent)                            | 20%                                               |
| AA-, AA, AA+ (or equivalent)                              | 15%                                               |
| A-, from A and A+ to below AA (or equivalent)             | 10%                                               |
| BBB-, from BBB and BBB+ to below A (or equivalent)        | 5%                                                |
| below BBB- (or equivalent)                                | 0%                                                |

#### 10.18.2 **Good Payment History Adjustment**

The length of time the Customer has maintained a good payment history with the Company or with another company in Canada shall reduce the maximum security amount under Section 2 in accordance with Table 2 - Good Payment History Adjustment Table. Despite the foregoing, the Company shall only consider the Customer's good payment history with another company in Canada where the Customer provides the Company with a reference letter from the Customer's previous company confirming the Customer's good payment history for the relevant period.

**Table 2 - Good Payment History Adjustment Table**

| Operating History in Canada                                                                                            | Allowable Reduction of<br>Maximum Security Amount |
|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| all payments owing by the Company were received on or before the due date for 5 years or more                          | 15%                                               |
| all payments owing by the Company were received on or before the due date for more than 2 years but less than 5 years  | 10%                                               |
| all payments owing by the Company were received on or before the due date for more than 1 year 1 but less than 2 years | 5%                                                |
| all payments owing by the Company were received on or before the due date for less than 1 year                         | 0%                                                |

Notwithstanding any other provision of this Account Security Policy, in no event shall the Company be obligated to reduce the amount of security it requires from a Customer below the minimum amount of security provided for in Section 2 of this Policy.

#### **10.19 Frequency and Timing for Updating Security Arrangements**

The Company may review the security arrangements and recalculate the Customer's maximum security amount at any time, but shall do so no less than once annually. As a result of these reviews, the amount of security shall be revised upwards or downwards if the maximum security amount applicable to the Customer has changed.

The Customer shall provide to the Company any increase in the value of security required by the Company within thirty (30) days of the Company giving written notice to the Customer of the change in the value of required security.

The Company shall provide to the Customer any decrease in the value of security required by the Company, plus applicable interest, within thirty (30) days of the Company giving written notice to the Customer of the change in the value of required security.

Where regardless of the Customer's maximum security amount, where the Company determines that all or a part of the security is no longer required, the Company shall provide to the Customer the value of the security that is no longer required, plus applicable interest, within thirty (30) days of the Company giving written notice to the Customer of the change in the value of required security.

#### **10.20 Realization of Security**

The Company reserves the right realize the security provided to it by the Customer upon the Customer failing to meet any of its financial obligations set out in the applicable Agreement.

---





«Legal\_name»  
Attn:«Contact\_first\_name» «Contact\_second\_name»  
«Contact\_mailing\_address\_line\_1»  
«Contact\_mailing\_address\_line\_2»







CME INTERROGATORY #15

INTERROGATORY

Issue 3 - Force Majeure

Ref: Exhibit C, Tab 1, Schedule 4, pages 1 and 2

Please provide copies of the documents pertaining to Rates 1 and 6 which are referenced in paragraph 5 of Exhibit C, Tab 1, Schedule 4 at page 2, which are stated to lack a limitation on liability provision.

RESPONSE

The general terms and conditions for Rates 1 and 6 are set out in Part III of the Rate Handbook. No other documents are referenced in this part of the evidence.

Witnesses: A. Kacicnik  
M. Giridhar  
I. MacPherson

CME INTERROGATORY #16

INTERROGATORY

Issue 3 - Force Majeure

Ref: Exhibit C, Tab 1, Schedule 4, pages 1 and 2

Please provide details of any occasions, within the last twenty (20) years, when an event of *force majeure* has been claimed by either EGD or any of its customers served on Rates 1 and 6.

RESPONSE

Although the terminology “force majeure” has not normally been used for instances involving interruption of gas service for EGD’s Rate 1 and 6 customers, there have been thousands of instances of this nature within the last twenty years. It would not be practicable to set out the details of these instances.

For example, in 2008 EGD experienced over 1700 third party hits to its distribution system. The vast majority of these hits (approx. 1460 in 2008) are to service lines (small pipes connecting the customer to the gas main), each of which would normally cause an interruption of service to one or more distribution customers (often Rate 1 or 6). The remaining hits creating gas supply disruptions occur when the larger distribution system mains are damaged by excavators. These mains damages generally impact greater numbers of customers.

While it is impossible to describe all such events in detail, there are any number of potential causes for service disruption resulting from events occurring in proximity to gas mains, meters, and regulator stations that may disrupt service. Examples from EGD and other gas utilities include cave-ins due to sink holes or water erosion under paved surfaces, water main breaks, severe storm/floods, and construction damage to large diameter pipe.

Witnesses: A. Kacicnik  
M. Giridhar  
I. MacPherson

CME INTERROGATORY #17

INTERROGATORY

Issue 3 - Force Majeure

Ref: Exhibit C, Tab 1, Schedule 4, pages 1 and 2

Please describe how the revisions EGD is proposing to the *force majeure* provisions of contracts serving Rates 1 and 6 alter the current allocation of risk as between EGD and the customers.

RESPONSE

Enbridge doesn't believe the current allocation of risk as between EGD and customers is changed by this provision in any material way, as EGD believes that determination of liability in a damages claim would follow the principles proposed in the Rate Handbook revisions. That is, EGD should not be held liable for any damages related to interrupted service, except those caused by EGD's negligence.

Witnesses: A. Kacicnik  
M. Giridhar  
I. MacPherson

CME INTERROGATORY #18

INTERROGATORY

Issue 3 - Late Payment Penalty Changes

Ref: Exhibit C, Tab 1, Schedule 4, pages 2 and 3

How many service contracts for unbundled services contain payment terms that are different from those provisions in the General Terms and Conditions?

RESPONSE

The payment terms as set out in the service contracts for Rate 125 and Rate 300 use EGD's standard General Terms and Conditions for demand charges, direct purchase administration, and Authorized Demand Overrun charges. These service contracts provide the Company flexibility for determining the payment terms for Unauthorized Supply Overrun/Underrun gas and Unauthorized Demand Overrun gas charges.

Witnesses: J. Collier  
A. Kacicnik

CME INTERROGATORY #19

INTERROGATORY

Issue 3 - Late Payment Penalty Changes

Ref: Exhibit C, Tab 1, Schedule 4, pages 2 and 3

Has EGD contacted, in writing, each of the customers whose contract terms will be affected by the amendments proposed in paragraph 8 of Exhibit C, Tab 1, Schedule 4 at page 3? If so, then have any of the affected customers informed EGD, in writing, that they oppose the proposed changes? If none of the affected customers have been contacted in writing, then please explain why EGD has not communicated, in writing, with each of the affected customers to seek their consent to the proposed amendments.

RESPONSE

As noted in the proposed new wording for "Payment Conditions" found at Exhibit B, Tab 3, Schedule 2, page 6 of 9, no customer's existing service contract terms will be affected by these amendments.

Witnesses: J. Collier  
A. Kacicnik

CME INTERROGATORY #20

INTERROGATORY

Issue 3 - Late Payment Penalty Changes

Ref: Exhibit C, Tab 1, Schedule 4, pages 2 and 3

Will any of the proposed changes to the penalty provisions of some existing contracts have the effect of reducing risks EGD currently faces under the existing penalty regime? If so, then please provide details of the extent to which the risks EGD faces will be reduced and the risks customers face will be increased.

RESPONSE

There is no change to the risks faced by EGD. Please also see the response to CME's Interrogatory #19 at Exhibit I, Tab 4, Schedule 19.

Witnesses: J. Collier  
A. Kacicnik



CME INTERROGATORY #21

INTERROGATORY

Issue 5 – Revision to the GDAR IVA Fee

Ref: Exhibit C, Tab 1, Schedule 6

At Exhibit C, Tab 1, Schedule 6, page 3, paragraph 8, it is stated that "Gas vendors unanimously supported the flat fee per transaction proposal". In the context of this statement, please provide the following information:

- a) Is the on-bill charge of 30¢ per transaction agreed to by all those who will be paying the charge?
- b) If not, then please point to the provisions of the Settlement Agreement which operate to permit EGD to change the IVA charge.

RESPONSE

- a) The 30 cents per transaction was agreed to by the majority of vendors represented in a consultative conference call in the fall of 2008. It is only the vendor community that can process IVA and who are subject to the fee. Enbridge received no opposition to the proposal in the conference call. The proposal was positively received and there has been no dissenting feedback.
- b) The fee change must be approved by the Board as per the GDAR agreement Settlement as quoted at Exhibit C, Tab 1, Schedule 6, page 1 of the evidence. Board approval is required as in Item 2 of that evidence page. See also section 12.4.1 of the IR Settlement Agreement which sets out the process for addressing non-energy service charges during the IR Term (Exhibit E, Tab, 1 Schedule 1, p.35)

Witnesses: I. Macpherson  
B. Vari

CME INTERROGATORY #22

INTERROGATORY

Issue 6 – In-Franchise Title Transfer ("ITT") Fee

Ref: Exhibit C, Tab 1, Schedule 7

In Exhibit C, Tab 1, Schedule 7 at page 7, it is stated that "In the Spring of 2008, the Company consulted with interested parties to discuss the continuance of the ITT Service between pools with dissimilar points of acceptance" and that "interested parties agreed that the exchanges between dissimilar pools was a valuable load balancing service and should continue". In the context of these statements, please provide the following information:

- a) Any documents the Company has in its possession pertaining to the consultation to which the Company refers, including details of those present at the consultation; and
- b) The amount the Company currently charges for ITT Service compared to the 2.5¢/Gj the Company now proposes.

RESPONSE

- a) The vendor/customer agent community was consulted on the issue in the spring of 2008.

There was agreement among those present that Enbridge had to maintain the load balancing options currently in use for pool contracts with different points of acceptance. Enbridge indicated that a fee would likely be required to handle the additional work that would result.

There was a presentation made at the April 2008 Enbridge Vendor meeting. In attendance were representatives from Direct Energy, OESC, Superior Energy, Universal Energy, IntegrysEnergy, Riterate, SeminoleGas, TheTeamLtd, Summit Energy, Shell, Comsatec, EnergyAdvantage, and ECNG.

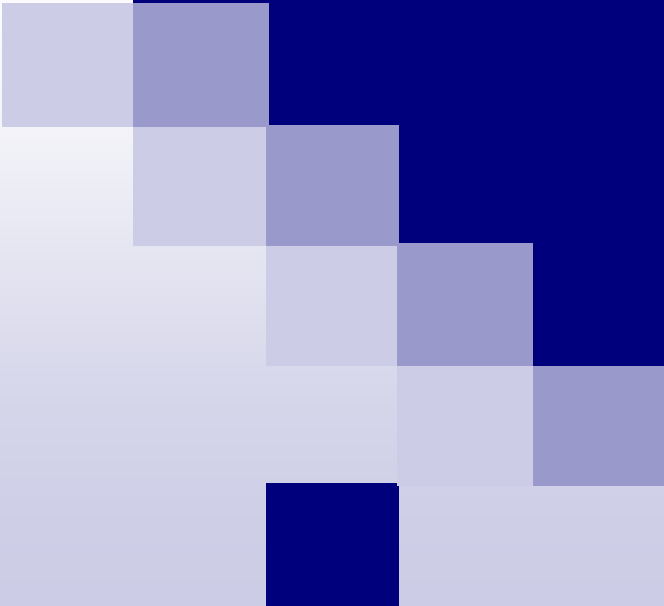
Attached is the presentation made at the vendor meeting. It is in powerpoint so do know how to include here.

Witnesses: I. Macpherson  
B. Vari

There was also a Customer meeting in June 2008 where the ITT fee was presented and why the service was needed. There was a wide cross section of customers at that meeting where a similar presentation was made to that of the vendor meeting.

- b) Under the current operating conditions, there is no fee charged for these services.

Witnesses: I. Macpherson  
B. Vari

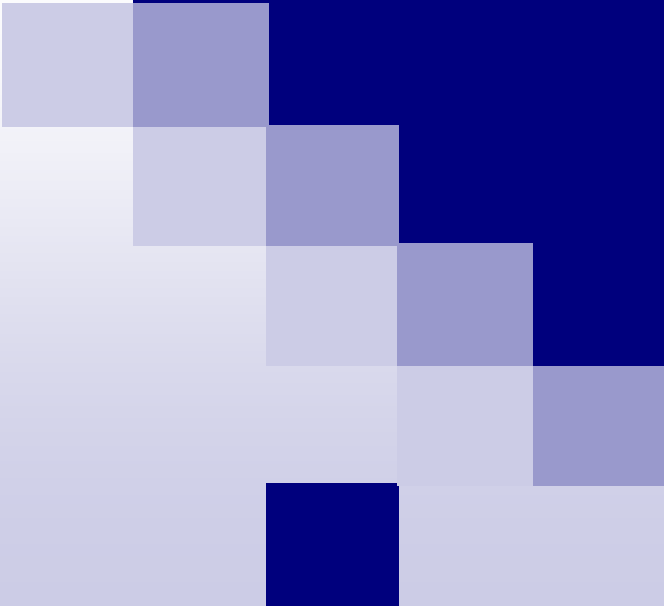


# *Welcome*

*Vendor Meeting - April 10, 2008*

# AGENDA

|               |                      |                    |
|---------------|----------------------|--------------------|
| ■ 10:00-10:10 | Welcome              | Ian Macpherson     |
| ■ 10:10-10:40 | Incentive Regulation | Rick Campbell      |
| ■ 10:40-11:10 | Gas Supply           | Melonie Ghirdhar   |
| ■ 11:10-12:00 | CIS Impact to EnTRAC | Avery Rhijnsburger |
| ■ 12:00-12:45 | <i>LUNCH BREAK</i>   |                    |
| ■ 12:45-1:10  | Toll Credits         | Ian Macpherson     |
| ■ 1:10- 1:30  | New Rate Ready       |                    |
|               | Billing Options      | Breda Vari         |
| ■ 1:30-1:45   | Q & A                |                    |
| ■ 1:45- 2:00  | Closing Remarks      | Ian Macpherson     |



# Transportation Toll Charges Cost Matrix

# Regular Deliveries- bring in gas

**OTS** Paid a transportation Credit

- **WTS** No transportation credit paid
- **Unbundled** No transportation credit paid

**CURRENTLY**

# Regular Deliveries- bring in gas

- **OTS** No transportation credit paid
- **WTS** No transportation credit paid
- **Unbundled** No transportation credit paid

**POST CIS**



# ETT'S

## GAS OUT:

- **OTS** Charge back transportation credit
- **WTS** Charge back weighted average cost of transportation
- **Unbundled** no transportation adjustment

## GAS IN:

- **OTS** transportation credit is paid
- **WTS** weighted average cost of transportation is paid
- **Unbundled** No transportation adjustment

**CURRENTLY**

# ETT'S

## GAS OUT:

**OTS** No transportation  
adjustment

## GAS IN:

**OTS** No transportation  
adjustment

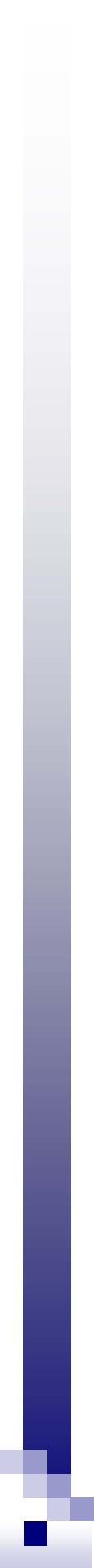
- **WTS** Charge weighted  
average cost of  
transportation

- **WTS** Remit weighted  
average cost of  
transportation

- **Unbundled** No  
transportation adjustment

- **Unbundled** No  
transportation adjustment

## POST CIS



# LOAD BALANCING Authorized Make Ups

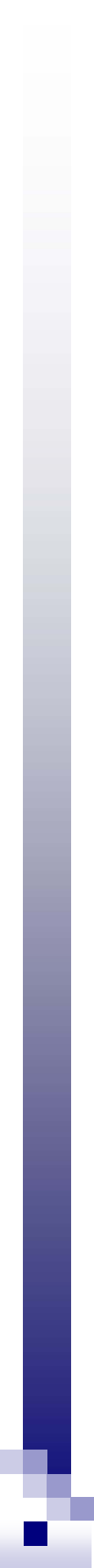
- Additional Supply
- **OTS** transportation credit is paid
- **WTS** No transportation adjustment

**CURRENTLY**

# LOAD BALANCING Authorized Make Ups

- Additional Supply
  - OTS No transportation adjustment
  - **WTS** No transportation adjustment
- \* Assumes receipt at regulat point of delivery**

POST CIS

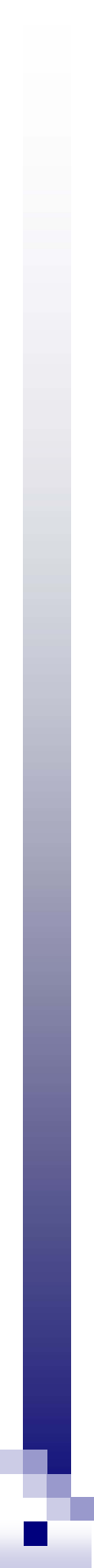


# LOAD BALANCING Authorized Suspensions

## Suspended Volume

- **OTS** No transportation adjustment
- **WTS** No transportation adjustment

**Current State**



# LOAD BALANCING Authorized Suspensions

## Suspended Volume

- **OTS** No transportation adjustment
- **WTS** No transportation adjustment

POST CIS

# BGA Disposition-Terminates Long, EGD Gas Purchases

## EnTRAC Purchases

- **OTS** Purchased at 80% of average yearly published price @ AECO less the WACT
- **WTS** Purchased at 80% of average yearly published price @ AECO

**Current State**

# BGA Disposition-Terminates Long, EGD Gas Purchases

## EnTRAC Purchases

- **OTS** Purchased at 80% of average yearly published price @ AECO less the WACT
- **WTS** Purchased at 80% of average yearly published price @ AECO

POST CIS



# BGA- DISPOSITION: Terminates SHORT, EGD Gas Sale

## EnTRAC Sells

- OTS Sold at 120% of average yearly published price @ AECO
- WTS Sold

Current State

CME INTERROGATORY #23

INTERROGATORY

Issue 6 – In-Franchise Title Transfer ("ITT") Fee

Ref: Exhibit C, Tab 1, Schedule 7

Using the current billing system, which calls for the Company to pay a transportation credit to customers with an Ontario point of acceptance, please provide an illustration, with a supporting bill, to show how the Company currently accommodates and charges for ITT transactions between a customer with a Western Canada point of acceptance and a customer with an Ontario point of acceptance.

RESPONSE

Under the current billing system, every Enbridge gas customer has the transportation amount included in the gas bill presentment line item "Delivery Charge" for Mass Market Customers and line item "Load Balancing Charge" for LVB customers.

Since Enbridge collects these transportation payments for all customers, there is a need to compensate the vendors/customers, who have delivered their gas to the Ontario point of acceptance and have also been charged transportation on their Enbridge bill. Through a T-service credit process, this compensation activity takes place over the pool contract term to keep everyone whole.

Should the vendor/customer title transfer the volumes between Ontario point of acceptance and Western point of acceptance, Enbridge can handle the financial issues automatically through adjustments to the compensation process already in place.

Witnesses: I. Macpherson  
B. Vari

CME INTERROGATORY #24

INTERROGATORY

Issue 6 – In-Franchise Title Transfer ("ITT") Fee

Ref: Exhibit C, Tab 1, Schedule 7

Please explain how the adoption of the new billing system, which will show upstream transportation as a separate charge on the bill, prevents the Company from continuing to provide and charge what it currently charges for ITT service involving transactions between a customer with a Western Canada point of acceptance and a customer with an Ontario point of acceptance. What is it about the format of the new bill that requires the current regime to be changed?

RESPONSE

Please see response to IGUA Interrogatory #5 at Exhibit I, Tab 11, Schedule 5.

The new billing system is able to identify the point of acceptance for each customer that it bills. Where Enbridge provides transportation to customers from the point of acceptance being Western, the bill will show a new bill line/charge of "Transportation to you".

Where the customer/vendor contracts to have their gas transportation provided by Enbridge as a Western pool, the transportation will be paid to Enbridge per the line above.

Where the vendor contracts to have their gas delivered to an Ontario point of acceptance, Enbridge will not charge the vendor's customer for transportation as a line item on the Enbridge part of the bill. Instead a line will be added for a transportation charge in the vendor section of the bill. This transportation amount collected from the customer will be remitted to the vendor on a monthly basis – similar to the process in place for the commodity that the vendor has in its billing section.

The format change on the bill is that there will be a unique line transportation line item shown only for Western customers. OTS customers will not have any transportation charged or shown as a line item in their bills.

Witnesses: I. Macpherson  
B. Vari

CME INTERROGATORY #25

INTERROGATORY

Issue 7 – Firm Capacity on Upstream Transportation

Ref: Exhibit C, Tab 1, Schedule 8  
Exhibit C, Tab 1, Schedule 10

In Exhibit C, Tab 1, Schedule 10, page 2, it is stated that,

"EGD is proposing to direct its efforts to increase firm transport to the franchise predominantly to the smaller volume customers who receive their supply and transport from agents/marketers/brokers. These customers already pay for firm upstream transport (albeit reflective of EGD's firm transport portfolio, rather than their agents' transport arrangements) through their Board approved delivery charges."

Having regard to these statements:

- a) Please provide illustrations of how much small to medium sized manufacturers served on Rate 100 and Rate 110, who acquire direct purchase gas from a marketer at an Ontario point of acceptance, pay for firm upstream transport.
- b) In particular, please show the flow of funds between the end-use customer, EGD and the marketer (where EGD is collecting payments due to the marketer), and specify whether it is EGD, the customer, or the marketer that retains any difference between the amount the customer is paying for firm upstream transport and the price the marketer is paying for upstream transport.
- c) Please provide information showing the approximate spreads between the price for firm and interruptible upstream transport on TransCanada PipeLines ("TCPL") over the period January 1, 2008, to February 28, 2009.
- d) Is it the end-use customer or the marketer that is primarily exposed to EGD for a marketer's failure to deliver?
- e) How many times in the past ten (10) years, and in what amounts, has EGD made claims against smaller direct purchase customers for their marketer's failure to deliver?

Witnesses: M. Giridhar  
K. Irani

## RESPONSE

- a. The following is an outline of the current flow of charges from EGD's perspective, for Ontario ABC arrangements, including medium sized manufacturers who may contract on Rates 100/110. Please note that EGD cannot comment on the financial arrangements between the agent and their customer:
- i. EGD charges the customer the weighted average cost of EGD contracted FT transportation on TCPL, Alliance and Vector pipelines. The derivation of these charges includes the cost of the transportation credit, (ii) below, to the agent.
  - ii. EGD credits the agents TCPL's FT toll to the Eastern Zone.
- b. Please see a) above. Please note that this arrangement will be replaced when the new CIS system is implemented in 2009.
- c. TransCanada's IT tolls are a biddable service with no demand charges, and have a floor bid price which is 110% of the FT toll.
- d. The signatory (counterparty to EGD) to the Service Agreement ("SA")<sup>1</sup> which governs the arrangement between EGD and the customer for service will bear the responsibility for a failure to deliver.
- e. EGD was able to extract data for the last seven years and is presented below.

| DELIVERY SHORTFALL AND PENALTY |                     |
|--------------------------------|---------------------|
| YEAR                           | PENALTY(\$)         |
| 2002                           | 1,116.93            |
| 2003                           | 8,433.74            |
| 2004                           | 4,492.95            |
| 2005                           | 45,465.71           |
| 2006                           | 5,311.17            |
| 2007                           | 1,460.42            |
| 2008                           | 718,208.02          |
| <b>TOTAL</b>                   | <b>\$784,488.94</b> |

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<sup>1</sup> GDAR section 3.2.1, a gas distributor shall enter into a Service Agreement, in a form approved by the Ontario Energy Board, with each Gas Vendor who provides, or advises the gas distributor that it intends to provide, gas supply service to consumers in the gas distributors' franchise area.

Witnesses: M. Giridhar  
K. Irani

CME INTERROGATORY #26

INTERROGATORY

Issue 7 – Firm Capacity on Upstream Transportation

Ref: Exhibit C, Tab 1, Schedule 8  
Exhibit C, Tab 1, Schedule 10

Assume the Board finds that the changes EGD is proposing cannot become effective before the term of EGD's currently approved IR Mechanism expires. Under this assumption, what action, if any, will EGD take in connection with its gas supply planning to assure system reliability for the duration of the currently approved IR Mechanism?

RESPONSE

EGD would seek Board approval to acquire additional firm transportation capacity to address its system reliability concerns under peak day conditions. EGD would incorporate these costs into its gas costs budget for the remainder of the current IR term and seek recovery through an additional charge applicable to Ontario Transportation service customers.

Witnesses: M. Giridhar  
K. Irani