

## **ENTRAC USER AGREEMENT SCHEDULE**

### **BACKGROUND**

- A. The Company has established a self-service automated processing system (the “**EnTRAC System**”) for use by its customers to permit them to conduct business with the Company on a more efficient basis.
- B. The EnTRAC User desires to sign on as a user of the EnTRAC System in order to take advantage of the efficiencies offered through the EnTRAC System.
- C. The Parties confirm that in addition to entering into this Agreement they have entered into one or more of the Enbridge Agreements.

**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 EnTRAC User 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.

“**Authorized Personnel**” means those employees, agents, representatives or contractors of the EnTRAC User whom EnTRAC User has notified the Company are authorized to use the EnTRAC System for and on behalf of the EnTRAC User.

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

“**Change Notice**” shall have the meaning ascribed to it in Section 2.3.2.

“**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.

“**Company Data**” shall have the meaning ascribed to it in Section 6.4.1.

“**Confidential Information**” means this Agreement, the EnTRAC System, the User Codes and any information and data included therein or derived therefrom and the form, format, mode or method of compilation, selection, configuration, presentation or expression of such software, and all ideas, designs, business models, databases, drawings, documents, diagrams, patents, patents pending or patented devices, copyrights, trademarks, service marks, formulas, test data, marketing, financial or personnel data, sales information, customer or supplier information, including information provided by such customers or suppliers, or any other information already furnished and to be furnished through the EnTRAC System or made available by one Party to the other, whether in oral, written, graphic or electronic form and other Intellectual Property Rights of such Party, provided, however, that Confidential Information shall not include any data or information which:

- (a) is or becomes publicly available through no fault of the Party to whom disclosure is made;
- (b) is disclosed to a Party by a third party under no obligation of confidentiality to the other Party;
- (c) is independently developed by the receiving Party without reference to the information provided by the disclosing Party;
- (d) is already known or in the possession of the receiving Party prior to receipt of the information from the disclosing Party; or
- (e) is further disclosed with the prior written consent of the disclosing Party.

“**Effective Date**” has the meaning set out in the Master Services Agreement between the Company and the EnTRAC User.

“**Enbridge Agreements**” means the Company’s gas delivery agreement (both customer and agent form), collection services agreement (both customer and agent form), large volume distribution contract and GDAR services agreement, in each case as may be entered into between the Company and the EnTRAC User in connection with the foregoing agreements or this Agreement, in each case, as amended, restated, supplemented, revised or otherwise modified from time to time; and for certainty, shall not include any agreement entered into between the Company and the EnTRAC User with respect to the Company’s open bill program.

“**EnTRAC Services**” means those services provided by the Company through the EnTRAC System from time to time.

“**EnTRAC User’s Contact**” shall have the meaning ascribed thereto in Section 4.2.

“**EnTRAC User Data**” shall have the meaning ascribed to it in Section 6.3.1.

**“Event of Default”** shall have the meaning ascribed to it in Section 7.4.

**“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.

**“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: an act of God, strike, lockout or other industrial disturbance, act of a public enemy, war, blockade, insurrection, riot, epidemic, landslide, earthquake, flood, washout, civil disturbance, explosion, breakage or accident to machinery or equipment required to perform a Party’s obligations under this Agreement relating to the processing of requests for EnTRAC Services, the necessity for making repairs to or alterations of such machinery or equipment which have not been contemplated pursuant to Section 5.2.3, inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party’s obligations under this Agreement and governmental actions, such as necessity for compliance with any Applicable Laws.

**“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.

**“Hours of Support”** means the hours within which the Company provides support to users of the EnTRAC System regarding the use of the EnTRAC System and which hours are stipulated in Section 3.3.2.

**“Intellectual Property Rights”** means (A) any and all proprietary rights anywhere in the world provided under (i) patent law, (ii) copyright law, (iii) trademark law, (iv) design patent or industrial design law, (v) semiconductor chip or mask work law, (vi) trade secret law; or (vii) any other statutory provision or common law principle applicable to this Agreement or the software relating to the EnTRAC System which may provide a right in either (a) ideas, formulae, algorithms, concepts, inventions, technologies, software, data compilations, drawings, specifications, confidential business information, procedures or know-how generally, including trade secret, or (b) the expression or use of such ideas, formulae, algorithms, concepts, inventions technologies, software, data compilations, drawings, specifications, confidential business information, procedures or know-how; and (B) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

**“Party”** means either of the Company or the EnTRAC User, 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.

“**Regular Maintenance Window**” shall have the meaning ascribed to it in Section 5.2.3.

“**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.

“**Scheduled Maintenance Window**” shall have the meaning ascribed to it in Section 5.2.3.

“**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.

“**User Codes**” shall have the meaning ascribed to it in Section 4.5.2.

“**User IDs**” means the user identification codes provided by the EnTRAC User to the Company which, together with a password provided by the Company, permit the EnTRAC User to access the EnTRAC System.

## **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 Person 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 Jurisdiction**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Each Party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of Ontario.

**1.6 Scope**

This Agreement provides the terms and conditions that govern the provision and use of the EnTRAC System by the Company and the EnTRAC User respectively. This Agreement does not provide for any of the terms or conditions relating to the provision of any of the EnTRAC Services.

**1.7 Substitution of Agreement**

If, and to the extent that, the Company and the EnTRAC User have prior to the date hereof entered into an EnTRAC user agreement similar to this agreement (the "**Prior Agreement**") for or in respect of the EnTRAC User's access to and use of the EnTRAC System, the Prior Agreement is hereby amended and restated effective as of the coming into force of this Agreement, and thereafter replaced by this Agreement. For certainty, the execution and delivery of this Agreement shall not affect any actions taken under or pursuant to, or in reliance on, the Prior Agreement, including the establishment of any Pool thereunder, each of which shall continue to exist and shall hereafter be subject to the terms and conditions of this Agreement.

**ARTICLE 2**  
**RIGHT TO USE ENTRAC SYSTEM**

**2.1**            **License Grants**

Subject to the terms and conditions of this Agreement, the Company hereby grants to the EnTRAC User a non-exclusive, personal, non-transferable license to use:

- (a)     the EnTRAC System solely for the purpose to enable the EnTRAC User to utilize, access and receive those EnTRAC Services that the EnTRAC User is authorized by the Company to utilize, access or receive pursuant to an agreement with Company in respect of those Services;
- (b)     the User IDs to be used in conjunction with the proper passwords, solely for the purpose of utilizing and accessing the EnTRAC System; and
- (c)     the Company's gas account number associated with each customer.

**2.2**            **Authorized Use**

The EnTRAC User agrees to use (A) the User IDs, (B) the EnTRAC System and (C) the Company's gas account number associated with each customer, for the EnTRAC User's business purposes related to the use of the EnTRAC System.

**2.3**            **Transaction Rules**

2.3.1           Compliance - The EnTRAC User 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 EnTRAC User. The Company acknowledges and agrees that it shall at all times conduct its business relations with the EnTRAC User 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.

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

2.3.3 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 EnTRAC User covenants and agrees to comply with such change or changes forthwith thereafter.

## 2.4 Restrictions Regarding Use

The EnTRAC User shall not use (A) the User IDs, (B) the EnTRAC System or (C) the Company's gas account number associated with each consumer, except as expressly permitted in this Agreement. Without limiting the generality of the foregoing, except as expressly contemplated in Section 2.6 below, the EnTRAC User shall not: (i) use or attempt to use the EnTRAC System for, or for the benefit of, any other Person, unless the EnTRAC User is an authorized agent of such other Person; (ii) process or permit to be processed the data of any other Person, unless the EnTRAC User is an authorized agent of such other Person; (iii) provide the User IDs to any Person other than the Authorized Personnel of the EnTRAC User; or (iv) use any functionality of the EnTRAC System for which the EnTRAC User has not entered into a separate agreement with the Company for the corresponding EnTRAC Service. The EnTRAC User shall not, and shall not permit others to, reverse engineer, decompile, disassemble or translate the EnTRAC System or otherwise attempt to view, display or print the EnTRAC System's software's source code. The EnTRAC User shall not, and shall not attempt to, directly access any other systems of the Company, whether or not they may interface with the EnTRAC System.

## 2.5 Authorized Access

The EnTRAC User acknowledges and agrees that only the Authorized Personnel of the EnTRAC User may access and use the EnTRAC System.

## 2.6 Manager of Other Users

From time to time, an EnTRAC User may be contracted to assist one or more other EnTRAC Users (the "**Other Users**") in the performance of the respective obligations of such Other Users under this Agreement or through the EnTRAC System. The EnTRAC User shall be permitted to use the EnTRAC System for, or for the benefit of, an Other User and to process the data of an Other User, if, and only if: (A) the Other User has executed an EnTRAC User Agreement and a Gas Delivery Agreement (and a Collection Service Agreement, if applicable) with the Company; and (B) the Other User has delivered to the Company: (i) its authorization to permit the EnTRAC User to use the EnTRAC System for the benefit of such Other User, including use by the EnTRAC User of the User Codes of the Other User; and (ii) an indemnification from the Other User in favour of the Company, in form and substance satisfactory to the Company, acting reasonably, for any and all Claims which result from or are related to such use.

## 2.7 Prohibition and Termination or Deemed Acceptance of Terms

The EnTRAC User acknowledges that this Agreement alone does not permit it to effect business transactions on the EnTRAC System, whether relating to the EnTRAC Services or otherwise. The EnTRAC User must sign one or more other agreements with the Company, each relating to one or more of the EnTRAC Services, in order to use the relevant functionality of the EnTRAC System. The EnTRAC User hereby acknowledges and agrees that if the EnTRAC User uses any functionality of the EnTRAC System for which it is not authorized, the Company shall have the right to terminate this Agreement and

the licenses granted hereunder. Further, at the option of the Company, the Company may process any such transactions relating to the functionality for which the EnTRAC User is not authorized, in which event the EnTRAC User shall be deemed to have agreed to all of the terms and conditions set out in the relevant agreement with the Company in respect of that functionality, and the EnTRAC User shall be liable for and obligated to perform all transactions relating to that functionality in accordance with such terms and conditions.

## **2.8 Contractual Electronic Relationship**

To the extent permitted by law, the Parties agree that valid and enforceable obligations may be created through the use of the EnTRAC System in respect of the various EnTRAC Services available thereto. The Parties expressly waive any rights to object to the validity of a transaction solely on the grounds that communication between the Parties occurred solely by electronic means.

## **2.9 Company's Set-Off Rights**

The Company is hereby authorized by the EnTRAC User, without demand for payment, and without any other formality, all of which are hereby waived, at any time and from time to time to set off, appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency), cash or other amounts at any time held by the Company, any and all amounts to be remitted by the Company to the EnTRAC User, together with any other obligations (in whatever currency) at any time owing by the Company to or for the credit or the account of the EnTRAC User now or hereafter existing under this Agreement or any Enbridge Agreement against any and all of the obligations of the EnTRAC User to the Company now or hereafter existing under this Agreement or any Enbridge Agreement, irrespective of whether or not the Company has made any demand under this Agreement or any Enbridge Agreement and although such obligations of the EnTRAC User may be contingent or unmatured (and for purposes of this provision, "contingent or unmatured" obligations refers only to the EnTRAC User's deficiency or surplus gas delivery obligation, if any, pursuant to any Enbridge Agreement, and the crystallization thereof as provided therein). Each of the Parties hereto hereby waives, to the extent lawful, any "reasonable period" which may be imposed by a court prior to the exercise of such set-off, appropriation and application. The rights of the Company under this Section 2.9 are in addition to any other rights and remedies (including other rights of setoff, consolidation of accounts and liens) that the Company may have. The Company agrees to promptly notify the EnTRAC User at the time of or forthwith following any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application.

Further, the EnTRAC User is hereby afforded a corresponding right to set off, appropriate and apply, as that provided to the Company above, *mutatis mutandis*.

## **ARTICLE 3 OBLIGATIONS OF THE COMPANY**

### **3.1 User IDs and Provision of Passwords**

3.1.1 Contemporaneously with the delivery to the Company by the EnTRAC User's Contact of the names and all information in respect of the EnTRAC User's Authorized Personnel required by the *Transaction Rules*, including appropriate security clearances and a

unique User ID for each such Authorized Personnel, the Company shall assign and implement an initial unique password for each Authorized Personnel. The Company shall notify the Authorized Personnel of the User ID and initial password assigned to that Authorized Personnel.

- 3.1.2 The Company reserves the right, without prior notice or liability to the EnTRAC User, to disable, invalidate or terminate a particular Authorized Personnel's User ID in the event that the Company determines, in its sole discretion acting reasonably, that the Authorized Personnel is improperly using the EnTRAC System. If the Company disables, invalidates or terminates the User ID of an Authorized Personnel of the EnTRAC User, the Company shall notify the EnTRAC User of such action and the reasons for such action as soon as reasonably possible.

### **3.2 Training**

- 3.2.1 From time to time, the Company shall conduct training sessions for Authorized Personnel on the use of the EnTRAC System. All such training sessions shall be conducted at such times at the discretion of the Company, acting reasonably, and shall be conducted at the Company or at a location stipulated by the Company. EnTRAC User acknowledges and agrees that personnel of other users of the EnTRAC System may be in attendance.

- 3.2.2 The Company shall provide the EnTRAC User timely notice of available training sessions. Upon receipt of such notice, EnTRAC User shall notify the Company at least ten (10) Business Days prior to the date of the training session of the number of Authorized Personnel that the EnTRAC User desires to send to such training. The Company reserves the right to limit the number of Authorized Personnel that the EnTRAC User may send to a training session if a particular training session is oversubscribed.

- 3.2.3 The cost of the training sessions shall be borne by the Company, except that the EnTRAC User shall be responsible for all travel, accommodation and other expenses related to the EnTRAC User's Authorized Personnel attending such training courses.

### **3.3 Support**

- 3.3.1 From time to time, the Company shall provide the EnTRAC User with "Contact Us" instructions and particulars, which the Authorized Personnel may use to obtain support regarding the use of the EnTRAC System. Such "Contact Us" particulars may provide for communication by phone, e-mail, a 'help' button within the EnTRAC System, a URL address and/or such other communication methods as the Company may determine in its sole discretion, acting reasonably. The contact information will also be available at an appropriate screen location in the EnTRAC System. The Company will provide first level support regarding the use of the EnTRAC System through the use of its help desk. The help desk shall be accessible by telephone or e-mail and shall be available during the Hours of Support. The Company shall return any messages left with the help desk as soon as reasonably possible. The EnTRAC User acknowledges that depending on the

problem ticket, calls to the Company's help desk for support services may be routed, at the Company's expense, to a third party for resolution.

- 3.3.2 For the purposes of the help desk, Hours of Support means: (A) with respect to the 'Customer Support' (for technical EnTRAC System problems and password resets), 24 hours a day, 7 days a week; and (B) with respect to 'Business Support' (for EnTRAC System business related inquiries), 8:00 a.m. to 5:00 p.m. (Toronto time) Monday to Friday.

#### **ARTICLE 4** **OBLIGATIONS OF ENTRAC USER**

##### **4.1 System Requirements**

The EnTRAC User shall be responsible to obtain and maintain such computer, network and other equipment, software, including encryption software, and services as required to connect to, and electronically communicate, with the EnTRAC System. The Company shall notify the EnTRAC User of the minimum requirements which must be met to communicate with the EnTRAC System.

##### **4.2 Point of Contact**

The EnTRAC User shall appoint a responsible employee, agent or other representative of the EnTRAC User ("**EnTRAC User's Contact**") to be a point of contact for the Company. Initially, the EnTRAC User's Contact, and their contact particulars, shall be the individual and particulars identified on the signing page of this Agreement. The EnTRAC User's Contact shall have the following responsibilities:

- (a) to provide the Company with the names, addresses, including e-mail addresses, and such other information as required by the Company of each Authorized Personnel to have access to the EnTRAC System;
- (b) to provide updates to the Company of any changes to the Authorized Personnel, including the addition or deletion of any Authorized Personnel;
- (c) to disseminate any information to each of the Authorized Personnel and other necessary employees of the EnTRAC User any information provided by the Company, including the policies and guidelines regarding the use of the EnTRAC System; and
- (d) to act as the point of contact for the Company regarding any issues regarding the use of the EnTRAC System;

##### **4.3 Authorized Personnel**

- 4.3.1 The EnTRAC User acknowledges that prior to the use of the EnTRAC System by each Authorized Personnel, each Authorized Personnel must agree to abide by the terms attached hereto as Exhibit "A", by clicking on the appropriate buttons. If the Authorized

Personnel does not agree to abide by such terms, then the Authorized Personnel will not have access to the EnTRAC System.

- 4.3.2 The EnTRAC User shall be liable for and hereby indemnifies and holds harmless the Company from and against any actions by the Authorized Personnel that is in contravention of the permitted uses of the EnTRAC System pursuant to the terms and conditions contained herein, including if the Authorized Personnel attempts to use the EnTRAC System beyond such Authorized Personnel's security clearance or for any improper purpose; except to the extent that the Company contributed to such actions by its negligence or wilful misconduct.

#### **4.4 Binding Obligations**

- 4.4.1 The EnTRAC User acknowledges and agrees that it shall be responsible for any use of the EnTRAC System by each of the Authorized Personnel and that any actions by an Authorized Personnel may result in a binding obligation of the EnTRAC User with respect to the procurement of any of the EnTRAC Services. EnTRAC User acknowledges and agrees that the Company is relying on the accuracy of the Authorized Personnel in its use of the EnTRAC System and that the Authorized Personnel intends to, and does bind, the EnTRAC User with respect to any transactions transacted by the Authorized Personnel with the Company through the EnTRAC System.

- 4.4.2 In the event that the Authorized Personnel incorrectly inputs or makes an error (in either case, a "mistake") in the use of the EnTRAC System, including the procurement of an EnTRAC Service, the EnTRAC User shall notify the Company as soon as reasonably practicable upon becoming aware of such mistake. The Company shall use commercially reasonable efforts to assist the EnTRAC User to correct or reverse such mistake. Notwithstanding the preceding, the EnTRAC User shall be responsible for the performance of its obligations if the Company is unable to reverse or correct such mistake. The EnTRAC User shall be responsible for, and hereby indemnifies and holds harmless the Company from and against, any liabilities, costs and expenses associated with the mistake and the correction or reversal of such mistake; except to the extent that the Company contributed to such mistake by its negligence or wilful misconduct.

#### **4.5 Passwords**

- 4.5.1 Once an Authorized Personnel receives the initial password from the Company, each Authorized Personnel shall change the password such that it shall be unique and known only to that Authorized Personnel.

- 4.5.2 The EnTRAC User shall control and maintain the security of all User IDs, passwords and any other information provided by the Company for the purpose of accessing the EnTRAC System (collectively referred to as the "**User Codes**"). The EnTRAC User shall, and shall ensure that each Authorized Personnel shall, keep the User Codes strictly confidential and shall not disclose the User Codes to any Person. The EnTRAC User shall be liable for and obligated to perform any transactions conducted using the EnTRAC System where access was made through the use of the User IDs assigned to Authorized

Personnel, whether or not the EnTRAC User sanctioned such transactions. The EnTRAC User shall be solely responsible for, and liable to the Company in respect of, all instructions, commitments and other actions or communications taken under the User Codes. The EnTRAC User shall promptly report to the Company any errors or irregularities in the use of the EnTRAC System or any unauthorized use of any part thereof. The EnTRAC User hereby indemnifies and holds harmless the Company from any Claims made against the Company from a third Person as a result of any improper use of the User Codes, whether or not such use is authorized by the EnTRAC User; except to the extent that the Company contributed to such improper use by its negligence or wilful misconduct.

- 4.5.3 The EnTRAC User's Contact shall notify the Company, in writing on a Business Day, of any User Codes of an Authorized Personnel that the EnTRAC User desires to have terminated.
- 4.5.4 Until the EnTRAC User's Contact has notified the Company of any termination of an Authorized Personnel pursuant to Section 4.5.3 above, the EnTRAC User shall be solely responsible for all authorized or unauthorized usage or activity of the User Codes and the EnTRAC System, including use of any Authorized Personnel who are no longer authorized by the EnTRAC User to use the User Codes and the EnTRAC System, but notification of such has not been provided to the Company.
- 4.5.5 Upon receipt of a notification from the EnTRAC User of a User Code of an Authorized Personnel which the EnTRAC User desires to have terminated, the Company shall take reasonable steps to terminate such User Code as soon as practicable, and in any event not more than two (2) Business Days following receipt of such notification. Notwithstanding the foregoing, the EnTRAC User shall remain responsible for any use of the EnTRAC System, and all actions taken under, through or with the relevant User Code to the extent and as provided for in this Agreement until the earlier of actual termination of such User Code and the expiry of such two (2) Business Days.
- 4.5.6 Any fraudulent, abusive, or otherwise illegal activity or any use of the User Codes and the EnTRAC System in contravention of this Agreement, shall be grounds for termination of the EnTRAC User's use of the EnTRAC System, at the Company's sole discretion and without liability to the EnTRAC User.

## **ARTICLE 5**

### **ENTRAC SYSTEM**

#### **5.1 The Company's Responsibility**

The Company shall be responsible to maintain the computer, local network equipment and other equipment and software necessary to implement and operate the EnTRAC System at the Company's premises. The EnTRAC User acknowledges and agrees that the Company's responsibility ends at the Line of Demarcation and that the Company disclaims any responsibility for any lack of access to the EnTRAC System by the EnTRAC User and any of its Authorized Personnel due to equipment or service failures outside of the Company's responsibility. For the purpose of this Section 5.1, the "**Line of**

**Demarcation**” shall be at that point within the Company’s premises where the EnTRAC System connects to the Internet through a router, patch panel or other communication device.

## **5.2 Hours of Use and Maintenance Windows**

5.2.1 The Company shall use commercially reasonable efforts to ensure that the EnTRAC System is available for use by the EnTRAC User and each of its Authorized Personnel on a “twenty-four by seven” basis, excluding Regular Maintenance Windows and Scheduled Maintenance Windows.

5.2.2 Notwithstanding the provisions of Section 5.2.1, the Company does not warrant and specifically disclaims that the EnTRAC System will be available at all times or will be error or defect free. The Company will notify the EnTRAC User of the existence of any defect which the Company determines, acting reasonably, will have an adverse impact on the EnTRAC User or the EnTRAC User’s use of the EnTRAC System pursuant to this Agreement. The Company will use reasonable efforts to keep the EnTRAC User reasonably informed as to the status of any such defect, and the Company’s efforts to resolve same.

5.2.3 The EnTRAC User acknowledges that the Company shall from time to time establish and post on the EnTRAC System internet portal certain times to perform routine maintenance on the EnTRAC System (the “**Regular Maintenance Windows**”) and that during such times the EnTRAC User and each of its Authorized Personnel will not be able to access the EnTRAC System. In addition, the Company may determine that additional maintenance, which cannot be performed during the Regular Maintenance Windows, will be required. In such event, the Company shall notify, where notification may be conducted via e-mail, internal EnTRAC System broadcast message, link to an URL or other method at the discretion of the Company, the EnTRAC User’s Contact of the date, time and duration of such maintenance (the “**Scheduled Maintenance Windows**”) prior to the commencement of such maintenance.

## **5.3 Processing**

5.3.1 The Company has estimated the necessary capacity and capability of the computer and network equipment and software to operate the EnTRAC System for the EnTRAC User and all other users of the EnTRAC System. Notwithstanding the Company’s estimate, the Company does not warrant and specifically disclaims any throughput processing speeds of the EnTRAC System.

5.3.2 The EnTRAC User acknowledges that certain functions of the EnTRAC System requires batch processing and therefore, not all of the EnTRAC Services available through the use of the EnTRAC System will be real time.

## **5.4 Security**

The Company has implemented commercially reasonable safeguards to frustrate unauthorized access to the EnTRAC System and to any data stored therein, including the

implementation of password protections and firewalls. The EnTRAC User acknowledges that the Company methods and procedures to secure the equipment upon which the EnTRAC System resides and the data contained therein may not prevent unauthorized electronic intruders to access such equipment through the Internet or otherwise. If such unauthorized electronic intruders are able to bypass the Company's firewall and safeguards, such unauthorized electronic intruder may change, delete or otherwise corrupt the contents and data contained in the EnTRAC System, including information and data supplied by the EnTRAC User. In such event, the Company will notify the EnTRAC User of such event where the Company determines, acting reasonably, that such event will have a material adverse impact on the EnTRAC User or the EnTRAC User's use of the EnTRAC System pursuant to this Agreement. Except for the maintenance of appropriate firewalls and safeguards that are designed to frustrate access from unauthorized electronic intruders, the Company shall not be liable to the EnTRAC User, and hereby disclaims responsibility, with respect to any action, destructive or otherwise, by any unauthorized electronic intruder.

## **ARTICLE 6**

### **OWNERSHIP AND USE OF INFORMATION**

#### **6.1 Ownership of EnTRAC System**

The EnTRAC User acknowledges and agrees that, as between the EnTRAC User and the Company, the Company owns all rights, title and interests, including all Intellectual Property Rights, in and to the EnTRAC System, the User IDs, and any training materials and other documentation provided to the EnTRAC User relating to the EnTRAC System. EnTRAC User does not acquire any rights, title or ownership interests of any kind whatsoever, express or implied, in the EnTRAC System, User IDs, training materials or any other documentation provided by the Company relating to the EnTRAC System, other than the licenses granted in this Agreement.

#### **6.2 Consumer Information**

6.2.1 Ownership of Consumer Information – All consumer information (including name and address, gas consumption and payment history) shall not form a part of the EnTRAC User Data or the Company Data. For these purposes, “consumer information” shall mean all data and information about an end-use consumer of gas which data and information is specific to and directly associated with that consumer.

6.2.2 Use of Consumer Information - Each of the Parties acknowledges and agrees that their respective use of consumer information shall be non-exclusive and shall be in compliance with all Applicable Laws. For certainty, use of consumer information by a Party shall include, and be deemed to include, any use by any third-party service provider to such Party (including any Person affiliated with such Party), provided use by such third party is also in compliance with all Applicable Laws.

6.2.3 Release of Consumer Information - Without in any way limiting the foregoing, the EnTRAC User represents and warrants that it has all authorizations and authority necessary or appropriate for the Company to release any consumer information to the EnTRAC User, upon receipt of a request from the EnTRAC User to do so. The EnTRAC User acknowledges and agrees that upon a consumer ceasing to be associated with the

EnTRAC User or the EnTRAC User ceasing to act as an authorized agent of such consumer, the EnTRAC User shall no longer have a right to use such consumer's consumer information and the Company shall have no further obligation to provide the EnTRAC User with access thereto.

### **6.3 EnTRAC User Data**

6.3.1 Ownership of EnTRAC User Data - All information and data which is specific to and directly associated with the EnTRAC User (including gas pool names, price point groups, and banked gas account balances, as well as aggregated data in respect of the EnTRAC User's gas pools) (collectively, the "**EnTRAC User Data**") shall be the sole and exclusive property of the EnTRAC User, and subject to Section 6.3.2 the EnTRAC User shall have the sole and exclusive right to use, sell, license or grant access to the EnTRAC User Data, in its sole discretion.

6.3.2 Use by the Company - The EnTRAC User hereby grants to the Company a non-exclusive, perpetual, irrevocable, royalty-free licence to use the EnTRAC User Data, or any part of the EnTRAC User Data, for the Company's business purposes related to this Agreement and the provision of any EnTRAC Services and any such use by the Company shall be in compliance with the Affiliates Relationship Code for Gas Utilities established by the Ontario Energy Board, if applicable, and all Applicable Laws. For certainty, use of EnTRAC User Data by the Company shall include, and be deemed to include, any use by any third-party service provider to the Company (including any Person affiliated with the Company), provided use by such third party is also in compliance with this Agreement.

### **6.4 Company Data**

6.4.1 Ownership of Company Data - All information and data specific to and directly associated with the Company (including gas account numbers, User IDs, and information and data generated or created by the EnTRAC System (other than EnTRAC User Data), as well as aggregated data in respect of all gas pools in the EnTRAC System) (collectively, the "**Company Data**") shall be the sole and exclusive property of the Company and all rights, title and interests therein shall exclusively vest in the Company.

6.4.2 Use by EnTRAC User - The EnTRAC User acknowledges and agrees that the Company Data is confidential and material to the interests, business and affairs of the Company and that disclosure thereof would be detrimental to the interests, business and affairs of the Company. The EnTRAC User shall not use or authorize any other Person to use any of the Company Data, or any part thereof, for any purpose whatsoever, without the express prior written consent of the Company, except for that Company Data which is necessary for use by the EnTRAC User to effect transactions pursuant to this Agreement or pursuant to other agreements, if any, entered into between the Company and the EnTRAC User while such agreements are in effect, and which Company Data will only be used for those purposes.

**6.5 Compliance with Privacy Laws**

6.5.1 Company Compliance - Without in any way limiting the provisions of Section 6.2, the Company agrees and acknowledges that, with respect to consumer information obtained by the Company from any consumer, whether by reason of the performance by either Party of their respective obligations under this Agreement or otherwise, the Company shall comply with the Company's Privacy Policy posted on its internet web site and all Applicable Laws.

6.5.2 EnTRAC User Compliance - Without in any way limiting the provisions of Sections 4.3 and 6.2, the EnTRAC User agrees and acknowledges that, with respect to consumer information obtained by the EnTRAC User from any consumer, whether by reason of the performance by either Party of their respective obligations under this Agreement or otherwise, the EnTRAC User:

- (a) will not otherwise use or disclose any such consumer information, except as required or permitted by Applicable Laws;
- (b) will establish appropriate policies and procedures to protect all such consumer information from unauthorized use or disclosure and to provide for its destruction as required by Applicable Laws; and
- (c) will implement such policies and procedures thoroughly and effectively.

**ARTICLE 7**  
**TERM AND TERMINATION**

**7.1 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.

**7.2 Rights of Termination**

7.2.1 Mutual Right to Terminate - Subject to the other provisions of this Article 7 either Party shall have the right to terminate this Agreement at any time, without cause, upon not less than sixty (60) days prior written notice to the other Party.

7.2.2 The Company's Right to Terminate - Subject to the other provisions of this Article 7, 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.

**7.3**            **Effects of Termination**

7.3.1           Obligations of the Parties - Upon the termination of this Agreement for any reason:

- (a)        the EnTRAC User shall immediately discontinue use of the EnTRAC System;
- (b)        the EnTRAC User shall immediately destroy and shall require all Authorized Personnel to destroy all copies of the User Codes in its and their possession; and
- (c)        the Company shall disable, invalidate and terminate all of the EnTRAC User's Authorized Personnel's User IDs.

7.3.2           No Liability of the Company - The Company shall have no liability to the EnTRAC User or to any Person with whom, or for whom, the EnTRAC User has any contractual or other obligations (including any customer or consumer) as a result of the termination of this Agreement in accordance with its terms.

7.3.3           Survival on Termination - The following provisions of this Agreement shall survive the termination of this Agreement and continue in full force and effect in accordance with the terms of this Agreement: Section 2.8 [Contractual Electronic Relationship]; Section 4.3 [Authorized Personnel], Section 4.4 [Binding Obligations]; Article 6 [Ownership and Use of Information]; Section 7.3 [Effects of Termination]; Article 8 [Indemnity, Disclaimers and Limitations] and Section 10.9 [Confidentiality].

**7.4**            **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 the EnTRAC User 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 EnTRAC User 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 EnTRAC User for a period of thirty (30) days; or
- (b)        if the EnTRAC User attempts or succeeds in de-compiling or reverse engineering all or any part of the software that makes up the EnTRAC System or otherwise infringes on any of the Intellectual Property Rights of the Company; or
- (c)        if the EnTRAC User 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 EnTRAC User, or

any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the EnTRAC User 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 EnTRAC User becomes enforceable against any property of the EnTRAC User; or
- (e) if the EnTRAC User ceases carrying on business in the ordinary course, commits any act of bankruptcy under *The Bankruptcy and Insolvency Act* or is wound up; or
- (f) if there occurs an 'Event of Default' of the EnTRAC User under any other Enbridge Agreement (as defined in the relevant Enbridge Agreement);

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 EnTRAC User, the Company may extend or provide a period for the remediation of any such Event of Default (if any), provided that the EnTRAC User is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Company that the steps being taken by the EnTRAC User are likely to satisfy the Event of Default within a reasonable period of time.

#### **7.5 Rights and Remedies of the Company on an Event of Default**

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 7;
- (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.

### **ARTICLE 8 INDEMNITY, DISCLAIMERS AND LIMITATIONS**

#### **8.1 Intellectual Property Indemnity**

The Company shall promptly defend at its own expense any Claim, brought against the EnTRAC User to the extent such Claim alleges that the EnTRAC System infringes any Canadian or United States Intellectual Property Rights of a third Person, and will indemnify and pay all damages which by

final judgment or settlement may be assessed against the EnTRAC User on account of such infringement, provided that the Company is given:

- (a) prompt written notice of the Claim or of any allegations or circumstances known to the EnTRAC User which could result in a Claim;
- (b) all reasonable information and assistance from the EnTRAC User which the Company may require to defend the Claim;
- (c) sole control of the defence of the Claim, and all negotiations for its settlement or compromise thereof; and
- (d) that the alleged infringement does not result from any non-permitted uses, alterations, modifications or enhancements carried out by the EnTRAC User, Authorized Personnel or on its behalf by a third Person.

If such Claim has occurred, or in the Company's opinion is likely to occur, the EnTRAC User agrees to permit the Company at its option and expense, either to procure for the EnTRAC User the right to continue using the EnTRAC System or modify the same so that it becomes non-infringing without loss of functionality, or if none of the foregoing alternatives is reasonably available and at the Company's discretion, discontinue the use of the EnTRAC System and terminate this Agreement. The foregoing states the entire obligations of the Company with respect to any infringement of Intellectual Property Rights of any third Person.

## **8.2 Disclaimers**

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE ENTRAC SYSTEM, INCLUDING ITS OPERATION, CAPABILITY OR AVAILABILITY AND INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT THE ENTRAC SYSTEM WILL MEET ENTRAC USER'S NEEDS OR WILL BE ERROR FREE.

## **8.3 Indemnity by EnTRAC User**

Subject to any limitations specifically set out in this Agreement, the EnTRAC User 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 EnTRAC User or any of the EnTRAC User's employees or agents or any Person acting under the authority of or with the permission of the EnTRAC User. The EnTRAC User 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 8.3.

## **8.4 Indemnity by Company**

Subject to any limitations specifically set out in this Agreement, the Company shall save harmless and indemnify the EnTRAC User, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the EnTRAC User,

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 EnTRAC User, 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 8.4.

## **8.5**            **Limitations**

8.5.1            General Limitation – 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.

8.5.2            Limitations of Company - OTHER THAN WITH RESPECT TO SECTIONS 2.4, 4.3.2, 4.4.2, 4.5.2, 4.5.5 and 8.3, NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY SCHEDULE HERETO, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION RELATED TO THIS AGREEMENT BY THE COMPANY AGAINST THE ENTRAC USER OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS, OR AGENTS WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, INCLUDING CLAIMS ARISING FROM A BREACH BY THE ENTRAC USER OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER OR NOT A FUNDAMENTAL BREACH), THE COMPANY'S EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AND ANY FURTHER USE OF THE ENTRAC SYSTEM.

8.5.3            Limitations of EnTRAC User - OTHER THAN WITH RESPECT TO SECTIONS 8.1 and 8.4, NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY SCHEDULE HERETO, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION RELATED TO THIS AGREEMENT BY THE ENTRAC USER AGAINST THE COMPANY OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS, OR AGENTS WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, INCLUDING CLAIMS ARISING FROM A BREACH BY THE COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER OR NOT A FUNDAMENTAL BREACH), THE ENTRAC USER'S EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AND ANY FURTHER USE OF THE ENTRAC SYSTEM.

## **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: (A) may include: (i) any decision relating to Force Majeure; or (ii) the obligations of either Party hereunder; and (B) 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, Key Accounts & Vendor Relationships, on behalf of the Company, and an equivalent or similar manager, on behalf of the EnTRAC User, (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; and in the case of the EnTRAC User, an equivalent or similar senior manager of the EnTRAC User) (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 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.

## **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**”), other than any Notice pursuant to Section 4.2, 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 Inc.  
                    500 Consumers Road  
                    North York ON M2J 1P8  
                    Fax Number: (416) 495-5657  
                    Attention: Manager, Key Accounts & Vendor Relationships
  
- (b)        in the case of the EnTRAC User, to it at the address set out in the Master Services Agreement between the Company and the EnTRAC User,

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

**10.2**        **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.

**10.3**        **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.

**10.4**        **Amendment**

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

**10.5**            **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.

**10.6**            **Assignment**

The EnTRAC User 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.

**10.7**            **Force Majeure**

A Party shall not be liable to the other Party as a result of the inability of the first mentioned Party to perform any of its obligations hereunder if such inability is caused by an event of Force Majeure. A delay or interruption in the performance by either Party of any of its obligations under this Agreement due to Force Majeure, shall extend the period of performance of such obligation by such number of days as the Parties may mutually agree. Forthwith following a Party becoming or being made aware of an event of Force Majeure which may impact on any of its obligations under this Agreement, 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.

**10.8**            **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.

**10.9**            **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.

**Exhibit "A"**

**TERMS OF USE BY AUTHORIZED PERSONNEL**

BY CLICKING ON THE "ACKNOWLEDGE" BUTTON BELOW, YOU ACKNOWLEDGE THE FOLLOWING:

1. You represent that you have been designated by your employer as an "Authorized Personnel" to use the EnTRAC System on behalf of your employer. As an Authorized Personnel and for so long that you remain an Authorized Personnel of your employer you may use the EnTRAC System in the manner and for the uses as directed by your employer.
2. You represent that you are using the EnTRAC System solely for the purpose to access and receive those EnTRAC Services that your employer is authorized by the Company to receive and for your employers benefit and for no other purpose whatsoever, and will use the EnTRAC System in accordance with any and all policies and guidelines that may be provided by Enbridge from time to time, which may be published on the EnTRAC System.
3. You acknowledge that your employer has signed an EnTRAC User Agreement, which contains terms and conditions relating to the use of the EnTRAC System by your employer and each Authorized Personnel designated by your employer, including you. It is your responsibility and the responsibility of your employer to ensure that you are familiar with such terms and conditions.
4. Any fraudulent, abusive, or otherwise illegal activity or any use of the User Codes or the EnTRAC System in contravention of the EnTRAC User Agreement, shall be grounds for termination or deactivation of your User ID and your use of the EnTRAC System, at the Company's sole discretion and without liability to you.
5. You acknowledge and agree that the Company owns all rights title and interests and all intellectual property rights, including copyright, trademark, and all other proprietary rights in and to intellectual property that may exist in and to the EnTRAC System, the User IDs, and any training materials and other documentation provided to you by the Company relating to the EnTRAC System. You do not acquire any rights, title or ownership interests of any kind whatsoever, express or implied, in the EnTRAC System, User IDs, training materials or any other documentation provided by the Company relating to the EnTRAC System, other than the right to use such materials in accordance with the terms herein. You further acknowledge that all of Enbridge's obligations and liabilities in respect of any use of the EnTRAC System are contained in the EnTRAC User Agreement.

**BY CLICKING THE "ACKNOWLEDGE" BUTTON BELOW, YOU AGREE THAT: (1) you are the Authorized Personnel to whom the Company has sent the User ID to access this system; (2) you have read the terms stated above; (3) you understand the terms stated above; and (4) you agree to abide by all the terms of the EnTRAC User Agreement referred to above.**

Acknowledge

Decline