

GAS DELIVERY AGREEMENT (AGENT) SCHEDULE

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.
- 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:

"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.

“Enbridge Agreements” means the Company’s EnTRAC user agreement, collection services agreement, large volume distribution contract and GDAR services agreement, in each case as may be entered into between the Parties (as applicable) and any other agreement entered into between the Company and the Agent (either on its own behalf or on behalf of any of the Customers) 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 Agent (either on its own behalf or on behalf of any of the Customers) or between the Company and Customer with respect to the Company’s open bill program.

“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, any one of the Customers or the Agent, and **“Parties”** means all 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, will be either (i) 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) (ii) a ‘Dawn Point of Acceptance’ (where acceptance of Gas by the Company is, or is deemed to be, at Dawn); or (iii) a ‘Western Point of Acceptance’ (where acceptance of Gas by the Company is, or is deemed to be, at Empress).

“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

1.8 **Substitution of Agreement**

If, and to the extent that, the Company and the Agent have prior to the date hereof entered into a gas delivery agreement similar to this Agreement (the "**Prior Agreement**") for or in respect of the delivery of Gas by the Customers (or any one or more of them) to the Company and for the redelivery of that Gas by the Company to any such Customers, 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 action taken, gas deliveries or payments made 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
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 calculated 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 - The contracted Pool MDV shall be automatically updated in the manner and to the extent set out in 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 Point of Acceptance, 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 or a Dawn 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 and Curtailment

2.6.1 Contingency Curtailment - 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 2.6.1 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.

2.6.2 Maintenance Curtailment - The Company may be required from time to time to perform maintenance or construction to its facilities which may impact the Company's ability to meet one or more of the Customers' requirements, or the Company's obligations, set out in this Agreement. In such event, except in cases of emergency, the Company shall provide the relevant Customers with reasonable notice of the suspension of service (in light of the circumstances relating to the suspension) in accordance with the other terms of this Agreement. For certainty, in cases of emergency no prior notice or consultation by the Company shall be required to perform any required maintenance or construction, provided the Company shall use reasonable efforts to inform the relevant Customers of the nature, extent and timing of such emergency. In all cases, the Company shall use reasonable efforts to limit the extent and duration of any service interruption hereunder.

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, in its sole discretion and without any notice to any Party, 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 volume of Gas delivered by or for a Customer to the Point of Acceptance on each day of the term of the relevant Pool is referred to as the “**Gas Delivered**”, and the volume of Gas delivered by the Company to the Terminal Location of such Customer on such day is referred to as the “**Gas Taken**”). The Agent and each Customer acknowledge and agree that there shall be established for each Pool an account to record the volumes of Gas Delivered and Gas Taken 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 Delivered and Gas Taken 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 Delivered and Gas Taken in respect of such Pool as are set out in such section(s), in accordance with the *Transaction Rules*.

3.3 Deficiency of Gas

3.3.1 Determination of Deficiency – Following the expiry of the term of a Pool and on each anniversary date of such Pool, the Company will, and from time to time during the currency of the Pool, the Company may, prepare an accounting of Gas Delivered and Gas Taken. The amount by which the Gas Taken in respect of such Pool exceeds the Gas Delivered in respect of such Pool is referred to as the “**Deficiency**”.

3.3.2 Responsibility for Deficiency – Each Customer shall be responsible to reimburse the Company for its pro rata share of any Deficiency. The Agent shall be jointly and severally responsible with each of the Customers to reimburse the Company for any Deficiency. The Company may enforce its rights hereunder and under any Enbridge Agreements against the Agent or any applicable Customer and is not obliged to enforce any of such rights first against a Customer. 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.

3.3.3 Crystallization of Deficiency – This Agreement and each of the Enbridge Agreements into which any of the Parties have entered with the Company are related documents and each forms an integral part of the others, and they are all closely connected. At any time, the Company may provide the Agent or any one or more of the Customers notice in writing advising the Agent and such Customers

of the liquidated sum owing in respect of the Deficiency at such time. Notwithstanding the previous sentence, whether or not the Company provides such a notice to the Agent or any Customers, the Agent and any Customers shall be deemed to be notified of the liquidated sum owing in respect of the Deficiency (A) automatically upon an Event of Default described in Subsections 9.4.1(d), (e) or (f), and (B) at such time as the Company provides the Agent with notice of its intention to do so upon an Event of Default described in Subsections 9.4.1(a) or (b). For purposes of this Agreement, the phrase 'liquidated sum owing in respect of the Deficiency' means the amount owing to the Company at the relevant time by the Agent and any Customers, calculated as:

- (a) the Deficiency, multiplied by
- (b) either
 - (i) for Pools with a Western Point of Acceptance, one hundred twenty percent (120%) of the average price over the contract year, based on the published index price for the Monthly AECO/NIT supply adjusted for Nova's AECO to Empress transportation tolls and compressor fuel costs,
 - (ii) for Pools with an Ontario Point of Acceptance, one hundred twenty percent (120%) of the average price over the contract year, based on the published index price for the Monthly AECO/NIT supply adjusted for Nova's AECO to Empress transportation tolls and compressor fuel costs, plus the Company's average transportation cost from the Western Point of Acceptance to the Ontario Point of Acceptance over such contract year, or
 - (iii) for Pools with a Dawn Point of Acceptance, one hundred twenty percent (120%) of the average price over the contract year, based on the published index price for the Monthly AECO/NIT supply adjusted for Nova's AECO to Empress transportation tolls and compressor fuel costs, plus the Company's average transportation cost from the Western Point of Acceptance to the Ontario Point of Acceptance over such contract year, and less the Company's average transportation cost from the Dawn Point of Acceptance to the Ontario Point of Acceptance over such contract year.

3.4 Surplus of Gas

3.4.1 Determination of Surplus – In connection with the preparation by the Company of an accounting of Gas Delivered and Gas Taken as contemplated in Section 3.3.1 in respect of a Pool, the amount by which the Gas Delivered in respect of such Pool exceeds the Gas Taken in respect of such Pool is referred to as the "**Surplus**".

3.4.2 Deemed Trust – At all times the Surplus shall be held in trust by all of the Parties for the benefit of the Company for the purposes provided herein. To the extent there are any obligations owing by the Agent or any Customer to the Company hereunder or under any Enbridge Agreement (collectively, the "**Obligations**"), then such amount of the Surplus (together with title thereto) necessary to offset the Obligations (such amount being based on the liquidated value of the Surplus determined in

accordance with Section 3.4.3), shall be forthwith paid, transferred or delivered to the Company as contemplated in Section 7.7, and the Agents and the relevant Customers shall be deemed to have irrevocably transferred such amount of the Surplus to the Company for such purpose. In addition, neither the Agent nor the applicable Customer shall be entitled to the Surplus nor be permitted to exercise any right of set-off it may now or hereafter have in respect of same until such time as the Obligations have been repaid or otherwise satisfied in full. For certainty, the Company shall not have any right in or to the balance of the Surplus (if any), once the forgoing provisions of this Section have been effected, and such balance shall be held in trust by all of the Parties for the benefit of the Agent or the relevant Customer.

3.4.3 Crystallization of Surplus – This Agreement and each of the Enbridge Agreements into which any of the Parties have entered with the Company are related documents and each forms an integral part of the others, and they are all closely connected. At any time, the Company may provide the Agent or any one or more of the Customers notice in writing advising the Agent and such Customers of the liquidated value of the Surplus at such time. Notwithstanding the previous sentence, whether or not the Company provides such a notice to the Agent or any Customers, the Agent and any Customers shall be deemed to be notified of the liquidated value of the Surplus (A) automatically upon an Event of Default described in Subsections 9.4.1(d), (e) or (f), and (B) at such time as the Company provides the Agent with notice of its intention to do so upon an Event of Default described in Subsections 9.4.1(a) or (b). For purposes of this Agreement, the phrase ‘liquidated value of the Surplus’ means the then current value of the Surplus at the relevant time, calculated as:

- (a) the Surplus, multiplied by
- (b) either
 - (i) for Pools with a Western Point of Acceptance, eighty percent (80%) of the average price over the contract year, based on the published index price for the Monthly AECO/NIT supply adjusted for Nova’s AECO to Empress transportation tolls and compressor fuel costs, less the Company’s average transportation cost from the Western Point of Acceptance to the Ontario Point of Acceptance over such contract year,
 - (ii) for Pools with an Ontario Point of Acceptance, eighty percent (80%) of the average price over the contract year, based on the published index price for the Monthly AECO/NIT supply adjusted for Nova’s AECO to Empress transportation tolls and compressor fuel costs, or
 - (iii) for Pools with a Dawn Point of Acceptance, eighty percent (80%) of the average price over the contract year, based on the published index price for the Monthly AECO/NIT supply adjusted for Nova’s AECO to Empress transportation tolls and compressor fuel costs, less the Company’s average transportation cost from the Dawn Point of Acceptance to the Ontario Point of Acceptance over such contract year.

3.5 Additional Definition

For certainty, the phrase “the published index price for the Monthly AECO/NIT supply adjusted for Nova’s AECO to Empress transportation tolls and compressor fuel costs” shall have the meaning commonly understood in the gas supply industry.

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 Gas Delivered shall be deemed to have been redelivered to the Terminal Location to the extent of the lesser of: (A) the Gas Delivered; and (B) the Gas Taken, and, subject to Section 3.4, title to that lesser amount of Gas shall at all times remain in the Customer.

4.2.2 Over Consumption - If the Gas Taken exceeds the Gas Delivered, then title to such Gas Taken in excess of the Gas Delivered 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 Section 3.4, Subsections 4.2.1 and 4.2.2 and Section 7.7, at any particular time a Customer shall have title to, and only to, Gas Delivered in excess of the 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 as may be required by Applicable Laws.

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 or replacement of, as appropriate, the measurement equipment will be made immediately. However, if the error is greater than three per cent (3%), in addition to proper adjustments to or replacement of, as appropriate, the measurement equipment, 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 (30th) 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.

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 (30th) 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. For these purposes, only the Agent on behalf of the Customers, and no Customer directly, shall have the right to provide notice of the occurrence of an Event of Force Majeure.

- (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 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.

7.7 Company's Set-Off Rights

The Company is hereby authorized by each of the other Parties hereto, 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) or security, including any cash or other amounts at any time held by the Company, and any and all amounts to be remitted by the Company to the Agent or any one or more of the Customers, 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 Agent or any of the Customers now or hereafter existing under this Agreement or any Enbridge Agreement against any and all of the obligations of the Agent or any one or more of Customers 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 Agent or such Customers may be contingent or unmatured (and for purposes of this provision, "contingent or unmatured" obligations refers only to the Agent's or any of the Customers' 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 7.7 are in addition to 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 Agent 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 Agent is hereby afforded a corresponding right to set off, appropriate and apply, as that provided to the Company above, *mutatis mutandis*; and for certainty, only the Agent on behalf of the Customers, and no Customer directly, shall have such right to set off, appropriate and apply.

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*; and for certainty, the Company shall have the right to deal with any such obligation in any manner set out or referred to in this Agreement;

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(d), (e) or (f), 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: (i) notice thereof (giving particulars of the failure in reasonable detail) from the Company to such Customer, or the Agent; or (ii) 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 such failure shall continue unremedied (and for certainty, a failure can only be remedied before the end of the relevant day) following: (i) the sending by the Company to such Customer, or the Agent, of notice of the failure, provided that such notice is sent not less than two (2) hours prior to the close of the second (2nd) NAESB nomination window for such day; or (ii) knowledge by such Customer, or the Agent, of the occurrence of such failure; and provided that if a

Customer, or the Agent, nominates to deliver the contracted MDV on any day and then changes or otherwise amends any of its nominations for such day and as a result fails to deliver the contracted MDV for the relevant day, then such failure shall be deemed to be a failure for purposes of Subsection 9.4.1(c) regardless of whether the Company sends a notice as contemplated in (b)(i) above; or

- (c) 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) on three (3) separate occasions in any consecutive twelve (12) month period in respect of each of which failure the Company has provided a notice to such Customer, or the Agent, pursuant to Subsection 9.4.1(b), regardless of whether any of such failures have been remedied as provided in Subsection 9.4.1(b); or
- (d) 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
- (e) 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
- (f) 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; or
- (g) if there occurs an 'Event of Default' of the Agent, or any Customer, under any other Enbridge Agreement (as defined in the relevant Enbridge Agreement);

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 suspend any one or more of its obligations under this Agreement;
- (c) the Company may bring any action at law as may be necessary or advisable in order to recover damages and costs; and/or
- (d) the Company may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it, including pursuant to Sections 3.3, 3.4 and 7.7.

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. For these purposes, only the Agent on behalf of the Customers, and no Customer directly, shall have the right to initiate the application of, and the rights and obligations of the Customers under, this Article 11.

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, Key Accounts & Vendor Relationships (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 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 Agent or any Customer, to the Agent’s legal contact at the address set out in the Master Services Agreement between the Company and 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.

Notwithstanding the foregoing, any Notice given by the Company pursuant to Section 9.4.1(b) shall be deemed to have been sent and received on the date and at the time of transmission if sent by facsimile or e-mail to the Agent's legal contact at the fax number or e-mail address, as applicable, set out below following the signature of the representatives of the Agent.

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**

Neither the Agent (on its own behalf or on behalf of any Customer) or any Customer may 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. For certainty, the Company shall have no obligation to approve any assignment which does not assign all of the interest herein and rights and obligations hereunder and which is not in respect of the Agent and all Customers.

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.

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.