

## LARGE VOLUME DISTRIBUTION CONTRACT

### BACKGROUND

- A. The Customer requires the delivery of a volume of Gas to its Terminal Location(s) which volume entitles the Customer to the benefits of one of the Company's large volume rates set out in a Rate Schedule.
- B. The Gas to be delivered to the Customer hereunder will be either System Gas or Gas supplied by a gas vendor other than the Company.
- C. If the Gas to be delivered to the Customer hereunder is supplied by a gas vendor other than the Company, the Customer will also have, either directly with the Company or through an Agent, entered into a Gas Delivery Agreement with the Company.
- D. This Agreement provides for the delivery of Gas by the Company to the specified Terminal Location(s) of the Customer, as well as the supply of such Gas where the Customer uses System Gas.
- E. The Parties confirm that in addition to entering into this Agreement they may have entered into or may in future enter 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 a Person authorized to represent the Customer in respect of a Gas Delivery Agreement entered into between the Customer, or such Agent on the Customer's behalf, and the Company.

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

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

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

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

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

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

**“Commencement Date”** means:

- (a) in respect of the first Contract Term of this Agreement, the date identified as such in Schedule “A”; and
- (b) in respect of each following Contract Term, the Expiry Date of the immediately preceding Contract Term.

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

**“Contract Demand”** means:

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

**“Contract Term”** means a period of from twelve (12) to twenty-three (23) months commencing at 10:00:00 a.m. Eastern Standard Time on the Contract Day which is the Commencement Date and ending at 9:59:59 a.m. Eastern Standard Time on the Contract Day which is the Expiry Date.

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

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

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

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

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

**“Enbridge Agreements”** means the Company’s EnTRAC user agreement, gas delivery agreement (both customer and agent form), collection services agreement (both customer and agent form) 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 Parties in connection with the foregoing agreements or this Agreement, or the delivery or distribution of Gas to the Customer, or the construction of the infrastructure for such delivery or distribution, in each case, as amended, restated, supplemented, revised or otherwise modified from time to time.

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

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

**“Expiry Date”** means:

- (a) in respect of the first Contract Term of this Agreement, the date identified as such in Schedule “A”; and
- (b) in respect of each following Contract Term, the date specified in the written agreement of the Customer and the Company for such Contract Term, as contemplated in Section 2.5.2, or as otherwise provided in Section 2.5.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **1.2 Rules of Interpretation**

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

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

## **1.3 Entire Agreement**

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

#### 1.4 Severability

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

#### 1.5 Applicable Law

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

#### 1.6 Handbook

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

For purposes of the calculation of credits pursuant to the Rate Handbook for gas delivered or curtailed pursuant to this Agreement, "**Mean Daily Volume**" or "**MDV**" means the daily average consumption of Gas by the Customer during the Term, and which amount shall be set out in the applicable Schedule "A".

#### 1.7 Schedules

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

Schedule "A" - Particulars of LVDC Services

#### 1.8 Substitution of Agreement

If, and to the extent that, the Company and the Customer have prior to the date hereof entered into an agreement similar to this Agreement (the "**Prior Agreement**") for or in respect of the purchase of Gas by the Customer from the Company, 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 purchased or payments made under or pursuant to, or in reliance on the Prior Agreement.

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

**2.1**            **System Gas**

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

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

**2.2**            **Delivery of Gas**

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

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

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

**2.3**            **Volumes**

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

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

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

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

## 2.4 Rates

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

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

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

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

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

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

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

all as contemplated and provided for in this Agreement.



2.5.2 Renewal – At least thirty (30) days prior to each Expiry Date, the Customer and the Company shall agree on the Rate Number (or Rate Numbers) and the following Expiry Date as well as any changes to any of the other particulars for the services in respect of a Terminal Location set out in the applicable Schedule “A”, applicable to each Terminal Location for the next following Contract Term. If the Customer and the Company are unable to agree thereon at least thirty (30) days prior to the then current Expiry Date, then the current Rate Number (or Rate Numbers), and other particulars set out in the applicable Schedule “A”, shall continue to apply to such Terminal Location for the next following Contract Term, and which Contract Term shall be for a period of twelve (12) months (with the corresponding revised Expiry Date), and so on at the end of each subsequent Contract Term, until such time as the Customer and the Company are able to agree to such changes to the particulars for the services in respect of a Terminal Location.

## **2.6 Priority of Service, Suspension and Curtailment**

2.6.1 Contingency Suspension or 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, the Customer shall, at the direction of the Company, curtail or discontinue use of Gas during the period specified by the Company (by notice to the Customer in accordance with the other terms of this Agreement) so as to safeguard the health and safety of the public. If the Company intends to require the Customer to curtail or discontinue use of Gas pursuant to this Section 2.6.1 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 Customer of the determination and the reasons therefor. If the curtailment or discontinuance of supply is ordered by an authorized Governmental Authority, then the Company shall ensure that the notice to the Customer to curtail or discontinue use is consistent with such order, and that the duration of such curtailment or discontinuance is not longer than that required in such order. Any curtailment or discontinuance shall be effected by the Company in a manner consistent with the then current policy of the Company regarding curtailment or discontinuance of use. The Company shall not be liable for any loss of production or for any damages whatsoever by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

2.6.2 Maintenance Suspension or 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 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 Customer 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 Customer 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.

2.6.3 Compliance - The Customer shall comply with any direction or notice from the Company, made pursuant to this Section 2.6, that such Customer curtail or discontinue its use of Gas supplied or transported by the Company. If the Customer fails to strictly comply with any such direction

or notice, then (A) such failure shall constitute an Event of Default; and (B) in addition to its rights set out in Subsection 8.5.1, the Company shall be entitled to immediately, and without further notice to the Customer suspend the delivery of Gas to the Terminal Location. For certainty, the Customer hereby expressly and irrevocably consents to the Company and its representatives entering onto the property of the Customer, at any time and without notice or any requirement for any further consent, for the purpose of enforcing the Company's rights under this Agreement, including accessing the Company's equipment to physically suspend the delivery of Gas to the Terminal Location.

## **2.7 Billing Effective Date**

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

## **2.8 Authority of Customer**

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

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

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

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

which must be satisfactory to the Company in its sole discretion, acting reasonably, that the representative is authorized to act on behalf of the Customer, and has the authority contemplated in this Section 2.8.

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

### **ARTICLE 3** **BILLING, PAYMENT AND SECURITY**

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

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

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

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

#### **3.2 Security Requirement**

The Customer acknowledges that the Company may, from time to time, establish a security policy regarding the financial security arrangements with which the Customer must comply in order to receive services under this Agreement. If the Company establishes a security policy which is applicable to the Customer, then the Customer shall take such actions as are necessary in order for it to comply with such security policy. If the Customer fails to comply with such security policy, then the Company may refuse to provide services to the Customer under this Agreement until the Customer is in compliance therewith. In establishing any such security policy, the Company shall act reasonably and in the interests of maintaining the integrity of the Company's Gas distribution system and shall apply such security policy consistently to all customers of the Company.

#### **3.3 Statements**

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

### **3.4**            **Errors**

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

### **3.5**            **Retention of Records**

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

### **3.6**            **Withholding**

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

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

The Company is hereby authorized by the Customer, 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 Customer, 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 Customer (including, for certainty, any curtailment credits) under this Agreement or any other Enbridge Agreement, against any and all of the obligations of the Customer 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 Customer may be contingent or unmatured. 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 3.7 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 Customer 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.

**ARTICLE 4**  
**VARIATIONS OF USE AND SERVICE**

**4.1 Unauthorized Overrun Gas**

The Customer acknowledges and agrees that:

- (a) the use of, or deemed taking of, a volume of Unauthorized Overrun Gas will result in the Customer paying a price for such volume of Gas which is likely to be significantly greater than the price payable under this Agreement for Gas which is not Unauthorized Overrun Gas;
- (b) if this Agreement provides for interruptible service, then the use of Unauthorized Overrun Gas may in some circumstances result in the Customer forfeiting its right to be provided with interruptible service; and
- (c) the payment for Unauthorized Overrun Gas shall not relieve the Customer from any other remedy available to the Company against such Customer for breach of this Agreement.

**4.2 Interruptible Service**

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

4.2.2 Compliance - The Customer shall comply with any direction from the Company, made by notice as aforesaid, that such Customer curtail or discontinue its use of Gas supplied or transported by the Company. If the Customer fails to strictly comply with any such direction, then (A) such failure shall constitute an Event of Default; and (B) in addition to its rights set out in Subsection 8.5.1, the Company shall be entitled to immediately, and without further notice to the Customer, suspend the delivery of Gas to the Terminal Location. For certainty, the Customer hereby expressly and irrevocably consents to the Company and its representatives entering onto the property of the Customer, at any time and without notice or any requirement for any further consent, for the purpose of enforcing the Company's rights under this Agreement, including accessing the Company's equipment to physically suspend the delivery of Gas to the Terminal Location.

4.2.3 Meaning of Failure to Comply - For purposes of this Section 4.2, the Customer shall, and shall be deemed to, have failed to strictly comply with a direction given by the Company pursuant to this Section 4.2 if, during the Curtailment Period, the Customer:

- (a) takes:
  - (i) where the Customer is only receiving service to the relevant Terminal Location which is interruptible, any Gas, or
  - (ii) where the Customer is also receiving service to the relevant Terminal Location which is not interruptible, any Gas in excess of the contracted quantity of firm Gas;

at the Terminal Location; or
- (b) fails to deliver Gas to the Company as agreed pursuant to any other Enbridge Agreements.

For certainty, the Company shall be entitled to suspend the delivery of Gas to the Terminal Location pursuant to this Section 4.2 even where the Customer is also receiving service to the relevant Terminal Location which is not interruptible.

4.2.4 Resumption of Service – If the Customer has complied with any direction from the Company given pursuant to this Section 4.2, service will be resumed as soon as possible when the conditions described in Subsection 4.2.1 cease to exist, in the sole discretion of, and following notice of such resumption given to the Customer from, the Company. If the Customer has not complied with any direction from the Company given pursuant to this Section 4.2, service will be resumed as soon as possible when the conditions described in Subsection 4.2.1 cease to exist, in the sole discretion of, and following notice of such resumption given to the Customer from, the Company, if, and only if, the Customer has agreed to be responsible for, and to reimburse the Company for, all of the Company's costs of suspending the delivery of Gas to the Terminal Location and of resuming such delivery (and for this purpose, the Customer's acceptance of the resumption of such delivery of Gas shall be deemed to be the Customer's agreement to reimburse such costs).

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

4.2.6 Application - The provisions of this Section 4.2 shall only apply to a Terminal Location receiving Interruptible Service, and, for certainty, shall apply even where the Customer is also receiving service to the relevant Terminal Location which is not interruptible.

### **4.3 Curtailment Delivered Supply**

4.3.1 Incremental Deliveries - Subject to the terms and conditions of this Section 4.3, during a Curtailment Period, and provided that the Customer is receiving Interruptible Service, the Company may, by notice to the Customer, agree to allow the Customer to deliver to the Company an incremental volume of Gas which the Company is willing to accept from the Customer, in addition to any existing obligation to deliver Gas pursuant to the Gas Delivery Agreement.

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

## **ARTICLE 5**

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

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

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

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

#### **5.2 Examination**

5.2.1 If requested by a Customer, the Company's measurement equipment shall be examined by the Company in the presence of a representative of the Customer, but the Company shall not be required as a matter of routine to examine such equipment more frequently than as may be required by Applicable Laws.

5.2.2 If the measurement equipment is found to be in error by not more than three per cent (3%), the previous recording shall be considered correct but proper adjustments to 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.

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

**5.3 Measurement Criteria**

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

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

**5.4 Equipment**

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

**ARTICLE 6**

**GENERAL RIGHTS AND OBLIGATIONS OF THE PARTIES**

**6.1 Governmental Regulations**

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

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

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

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

**6.2 Suspension of Company's Obligations**

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

- (a) there is a breach or default of any representation, warranty or obligation of the Customer set out in this Agreement, as determined by the Company, in its sole



discretion acting reasonably and where such breach or default affects the integrity of the Company's Gas distribution system;

- (b) any Required Order ceases to be in effect or if the Company has not received an original or true copy of any Required Order which has been requested by the Company; or
- (c) performance of any such obligation would be in contravention of any Applicable Law.

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

### **6.3 Adoption of NAESB Standards**

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

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

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

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

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

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

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

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

## **ARTICLE 7**

### **FORCE MAJEURE**

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

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

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

7.2.1 Initial Notice - Forthwith following a Party becoming or being made aware of an Event of Force Majeure which may impact on any of such Party's obligations, such Party shall notify the other Party of the event and of the manner in which such Party's obligations hereunder will or may be affected; and such Event of Force Majeure shall be deemed to have commenced when it occurred provided notice is given within six (6) hours, and otherwise when such notice is given.

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

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

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

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

### **7.3** Definition

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

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

### **7.4** Limitations

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

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

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

- (a) such Party’s inability to perform the obligation was caused by its lack of finances; or

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

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

## **ARTICLE 8**

### **TERM AND TERMINATION**

#### **8.1**            **Term**

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

#### **8.2**            **Rights of Termination**

8.2.1            Mutual Right to Terminate - Subject to the other provisions of this Article 8, either Party shall have the right to terminate this Agreement effective as of the end of the Contract Day which is the then current Expiry Date, without cause, upon written notice to the other Party given not less than sixty (60) days and not more than one hundred twenty (120) days prior to such Expiry Date.

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

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

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

#### **8.3**            **Effects of Termination**

8.3.1            Obligations of the Parties - Upon the termination of this Agreement for any reason the Company shall, as soon as reasonably practicable and in any event not later than ninety (90) days following termination, prepare and forward to the Customer, a statement setting out the status of the

Customer's account in respect of each Terminal Location identified and set out in Schedule "A" and the Customer's obligation thereunder, if any; and forthwith following receipt of such statement, the Customer shall settle such obligation pursuant to Section 3.1; provided that, notwithstanding any provision in the Rate Handbook to the contrary, if this Agreement is terminated as a result of an Event of Default set out in Section 8.4(b), (e) or (f), then settlement of such obligation shall be effected by payment made by the Customer immediately following delivery of such statement.

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

#### **8.4 Events of Default**

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

- (a) if the Customer fails to perform or observe any of its obligations under this Agreement on its part to be observed and performed and such failure shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Customer for a period of thirty (30) days; or
- (b) if the Customer fails to comply with any direction or notice given by the Company to curtail or discontinue its use of Gas as provided in Section 2.6; or
- (c) if the Customer is receiving Interruptible Service to a Terminal Location and the Customer fails to comply with any direction given by the Company to curtail or discontinue its use of Gas as provided in Section 4.2; or
- (d) if the Customer files a petition in bankruptcy, makes application or files a petition seeking any re-organization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of the Customer, or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the Customer and is not stayed, otherwise enjoined or discharged within fifteen (15) Business Days; or
- (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 the Customer becomes enforceable against any property of the Customer; or

- (f) if the Customer ceases carrying on business in the ordinary course, commits any act of bankruptcy under *The Bankruptcy and Insolvency Act* or is wound up; or
- (g) if there occurs an 'Event of Default' of the Customer under any other Enbridge Agreement (as defined in the relevant Enbridge Agreement);

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

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

8.5.1 Rights and Remedies of the Company - Upon the occurrence of an Event of Default, in addition to any other rights it may have pursuant to the terms of this Agreement, 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 suspend the performance of any or all of the Company's obligations under this Agreement, including the delivery of Gas to the Terminal Location;
- (b) the Company may terminate this Agreement in accordance with the provisions of this Article 8;
- (c) the Company may bring any action at law as may be necessary or advisable in order to recover damages and costs; or
- (d) the Company may exercise any of its other rights and remedies provided for hereunder or which are otherwise available to it.

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

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

**ARTICLE 9**  
**DISPUTE RESOLUTION**

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

This Article 9 establishes a framework and procedure under which the Parties shall, in good faith, use their reasonable efforts to resolve most disputes that arise under this Agreement (in each case, a “**Dispute**”) without resort to litigation. In the event of any Dispute arising between the Parties, unless otherwise provided herein, the Parties shall use reasonable commercial efforts to settle such Dispute in the manner set out in Section 9.2. For certainty, such Disputes shall not include the ability of either Party to terminate this Agreement in accordance with the provisions hereof. Further, under no circumstance shall the initiation of this dispute resolution procedure prohibit, restrict, delay, suspend or otherwise limit the Company’s ability to exercise any of its rights under Section 8.5.1(a).

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

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

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

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

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

**9.3**            **Alternative Resolution**

If the Dispute is still not resolved to the mutual satisfaction of the Parties within sixty (60) days after delivery of the Dispute Notice, then either Party may require the Dispute to be resolved by litigation or

such other legal means as are available to such Party, provided the Party seeking legal remedy has pursued resolution of the Dispute as contemplated in Section 9.2.

**ARTICLE 10**  
**GENERAL**

**10.1**            **Notice**

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

- (a)        in the case of the Company, to it at:
  - Enbridge Gas 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 Customer, to its legal contact at the address set out in the Short Form of Large Volume Distribution Contract,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 10.1. Notice may be delivered by electronic internet communication provided the Parties have agreed in writing in advance to do so and have established in writing their respective addresses for such communication. A Notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or electronic internet communication. If such day is not a Business Day or if the Notice is received after ordinary office hours (at the time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day.

Notwithstanding the foregoing, any Notice given by the Company pursuant to Section 4.2 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 Customer’s legal contact at the fax number or e-mail address, as applicable, set out below following the signature of the representatives of the Customer.

**10.2**            **Indemnity by Customer**

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



**10.3 Indemnity by Company**

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

**10.4 Limitations**

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

**10.5 Time of the Essence**

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

**10.6 Further Acts**

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

**10.7 Amendment**

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

**10.8 Waiver**

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

**10.9**            **Assignment**

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

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

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

**10.11**           **Confidentiality**

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