

ENBRIDGE GAS INC.

- and -

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**STORAGE SERVICE AGREEMENT**

**[Rate 315 – Gas Storage Service]**

Version 1

**STORAGE SERVICE AGREEMENT  
(Rate 315 – Gas Storage Service)**

**DATE OF AGREEMENT:** <\*>

**PARTIES TO AGREEMENT:** **ENBRIDGE GAS INC.**, an Ontario corporation, hereinafter called the “**Company**”, and

<\*>, hereinafter called the “**Customer**”.

**BACKGROUND**

A. The Company and the Customer have entered into the Companion Service Contract whereby the Customer has agreed to deliver gas to the Company and the Company has agreed to, among other things, re-deliver gas to the Customer.

B. The Customer and the Company desire to enter into an agreement providing, among other things, for the Company to store gas in its storage facilities on behalf of the Customer and to release gas from such storage facilities to the Customer in conjunction with the Companion Service Contract.

**NOW 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 I - 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 Appendices to this Agreement) capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**”, and similar expressions refer to this Storage Service 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.

“**Authorized Injection Quantity Gas**” has the meaning ascribed thereto in Section 7.2.1.

“**Authorized Withdrawal Quantity Gas**” has the meaning ascribed thereto in Section 7.1.1.

“**Bill**” has the meaning ascribed thereto in Section 5.3.

“**Billing Month**” means the period commencing on the first Day of each calendar month and ending on the first Day of the next following calendar month.

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

“**Change of Control**” has the meaning ascribed thereto in the Companion Service Contract.

“**Companion Service Contract**” means a gas delivery agreement between the Company and the Customer regarding the Company’s provision of gas delivery services to one or more Terminal Locations under Rate 300 or Rate 125.

“**Cumulative Imbalance Account**” has the meaning ascribed thereto in the Companion Service Contract.

“**cubic metre**” or “**m<sup>3</sup>**” means that volume of gas which at a temperature of 15 degrees Celsius and at an absolute pressure of 101.325 kilopascals (“**kPa**”) occupies one cubic metre; “**10<sup>3</sup>m<sup>3</sup>**” means one thousand cubic metres.

“**Day**” means a period of 24 consecutive hours, beginning and ending at 1000 hours EST and a Day that is specified by a date shall be the Day which begins at 1000 hours EST on the specified date.

“**Early Termination Date**” has the meaning ascribed thereto in Section 13.2.

“**Effective Date**” means the date of this Agreement as set forth above.

“**EST**” means Eastern Standard Time at Toronto, Ontario; and which, for certainty, includes any adjustment for Daylight Savings Time.

“**Excess Storage Injection Gas**” has the meaning ascribed thereto in Subsection 7.2.2.

“**Excess Storage Withdrawal Gas**” has the meaning ascribed thereto in Subsection 7.1.2.

“**Fuel Ratio Requirement**” means an amount of gas equal to the percentage specified in Rate 315 of the gas injected to or withdrawn from storage by the Customer hereunder at any time.

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

“**Gas Index Price**” has the meaning ascribed thereto in the Companion Service Contract.

“**Gas Transporter/s**” means an entity engaged in the transportation of natural gas in inter-provincial or intra-provincial commerce.

“**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.

“**Initial Term**” means the period from and including the Effective Date to the earliest of:

- (a) 1000 hours EST on the April 1 next following the Effective Date;
- (b) any Early Termination Date; and
- (c) the date fixed by, or determined from, any Order of the OEB as the date for the termination or expiration of this Agreement.

“**Injection Capacity**” means on any Day, the lesser of:

- (a) the Storage Demand, subject to applicable Storage Ratchets, if any; and
- (b) the difference between the Storage Space and the Storage Account Balance on such Day.

“**month**” means a period beginning at 1000 hours EST on the first Day of a calendar month and ending 1000 hours EST, on the first Day of the next succeeding calendar month.

“**NAESB**” means the North American Energy Standards Board or any successor thereto.

“**No-Notice Nominations**” has the meaning ascribed thereto in Section 6.5.

“**No-Notice Storage Service**” means the storage services provided by the Company under this Agreement through its Gas Storage Facilities in order to balance daily deliveries to and from the Customer under the Companion Service Contract.

“**Nomination**” means a No-Notice Nomination or a Storage Nomination.

“**OEB**” means the Ontario Energy Board or any successor thereto.

“**OEB Act**” means the Ontario Energy Board Act, 1998, and all rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards promulgated thereunder from time to time.

“**Party**” means any one of the Company, the Customer, 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.

**“Point of Acceptance”** has the meaning ascribed thereto in the Companion Service Contract.

**“Point of Delivery”** has the meaning ascribed thereto in Section 2.5.

**“Rate 125”** means the Company’s Rate 125 which is set out in the Rate Handbook, and associated rates, charges, terms and conditions established by the Company from time to time as approved by the OEB and in effect at the relevant time.

**“Rate 300”** means the Company’s Rate 300 which is set out in the Rate Handbook, and associated rates, charges, terms and conditions established by the Company from time to time as approved by the OEB and in effect at the relevant time.

**“Rate 315”** means the Company’s Rate 315 which is set out in the Rate Handbook, and associated rates, charges, terms and conditions established by the Company from time to time as approved by the OEB and in effect at the relevant time.

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

**“Renewal Term”** has the meaning ascribed thereto in Section 13.1.

**“Required Permit”** means any license, authorization, permit, regulatory consent, credential or similar qualification required by the OEB or under any Applicable Law.

**“Storage Account”** means the record maintained by the Company to account for the net quantity of gas maintained in storage by the Company on behalf of the Customer in accordance with this Agreement.

**“Storage Account Balance”** has the meaning ascribed thereto in Section 7.4.1.

**“Storage Demand”** means the volume of gas (expressed in cubic metres) set out in item 2 of the Chart in Part 1 of Appendix “A”.

**“Storage Nomination”** has the meaning ascribed thereto in Section 6.1.

**“Storage Ratchet”** has the meaning ascribed thereto in Section 3.4.

**“Storage Space”** means the volume of gas storage space (expressed in cubic metres) set out in item 1 of the Chart in Part 1 of Appendix “A”.

**“Supply Overrun Gas”** has the meaning ascribed thereto in the Companion Service Contract.

**“Supply Underrun Gas”** has the meaning ascribed thereto in the Companion Service Contract.

**“Term”** means the Initial Term and all Renewal Terms.

**“Termination Date”** means the date specified in Appendix “A”.

**“Terminal Location”** has the meaning ascribed thereto in the Companion Service Contract.

“**Transfer of Title**” means a transfer of title to gas involving the Customer as contemplated by, and made in accordance with, the “Gas in Storage Title Transfer” set forth on Schedule “H” of the Rate Handbook.

“**Unaccounted For Gas**” means the volume of gas, if any, as contemplated in the Rate Handbook and communicated by the Company to the Customer from time to time, which, in addition to any other gas delivery requirement of the Customer in this Agreement, the Customer must deliver to the Company.

“**UFG Requirement**” means the obligation of the Customer in respect of Unaccounted For Gas, which amount shall be equal to the percentage specified on Appendix “A” of the gas withdrawn from storage hereunder at any time for the purpose of:

- (a) reduction of any Cumulative Imbalance Account imbalance of the Customer, or
- (b) consumption by the Customer at a specified Terminal Location.

“**Winter Months**” means the months of November, December, January, February and March.

“**Withdrawal Capacity**”, on any Day, means the lesser of:

- (a) the Storage Demand, subject to applicable Storage Ratchets, if any; and
- (b) the Storage Account Balance on the relevant Day.

## **1.2 Appendix**

Appendix “A” - Customer Information, is required to complete this Agreement and is incorporated herein by reference and is deemed to be a part hereof and is to be read in conjunction with and subject to this Agreement.

## **1.3 Rate Handbook**

Parts III and IV of the Rate Handbook and all applicable ‘Riders’ in the Rate Handbook are incorporated into this Agreement and form part hereof. Parts III and IV of the Rate Handbook and such ‘Riders’ shall be construed using the definitions in this Agreement and the terms used therein and not otherwise defined in this Agreement shall be construed using the definitions in Part I of the Rate Handbook. For certainty, for the purposes of this Agreement, the term “Applicant” as referenced in the Rate Handbook shall be construed as “Customer”. 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 then in effect shall prevail.

## **1.4 Rules of Interpretation**

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

- (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 number of days or other period within which or following which any act is to be done or step taken, the day which is the reference day in calculating such period shall not be counted in such number of days or other period;
- (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 Appendices and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (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 consistent with good utility practice; and
- (h) if there is any conflict between the provisions of the body of this Agreement and the provisions of Appendix “A”, then the provisions of such Appendix shall prevail.

## **1.5 Entire Agreement**

This Agreement and all Appendices and attachments 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. No additions, deletions or modifications of this Agreement shall be binding on any Party unless made in writing and signed by or on behalf of such Party. For certainty, no oral representations of the Company shall amend or modify this Agreement unless committed to writing and included herein by reference. To the extent that the Company permits the Customer, at the sole discretion and convenience of the Company, to use or employ any practice or procedure that is not specifically contemplated herein, the Customer may not rely on such practice or procedure where the same is not consistent with the terms of this Agreement.

**1.6 Severability**

This Agreement is a general form, intended for use by the Parties in their ongoing relations in Ontario. 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.

**1.7 Governing 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.

**ARTICLE II - BASIC AGREEMENTS**

**2.1 Storage and Delivery of Gas**

On and subject to Rate 315 and the other terms and conditions of this Agreement, during the Term the Customer shall deliver gas to the Company for storage and the Company shall store gas on behalf of, and re-deliver gas from storage to, the Customer.

**2.2 Condition to Obligations**

Notwithstanding the execution of this Agreement by the Parties and any term or provision herein to the contrary, including Section 2.1, it shall be a condition precedent to the respective obligations of the Parties under this Agreement that each of the Parties shall have executed a Companion Service Contract, and that their respective obligations thereunder shall have commenced.

**2.3 Applicable Rate**

Rate 315 is incorporated into this Agreement and forms part of this Agreement. Each of the Parties shall have the rights and obligations which such Party is contemplated to have in the provisions of Rate 315 and Rate 315 shall be construed as though (i) a reference therein to “customer” is a reference to the Customer, (ii) a reference to “Service Contract”, is a reference to this Agreement and (iii) words defined herein have the same meaning when used in Rate 315.



## **2.4 Point of Acceptance**

All gas delivered to the Company by or on behalf of the Customer pursuant to this Agreement shall be delivered at the Point of Acceptance in respect of which the relevant Nomination is made.

## **2.5 Point of Delivery**

All gas delivered to or on behalf of the Customer by the Company pursuant to this Agreement shall be delivered at the point of delivery in respect of which the relevant Nomination is made (the “**Point of Delivery**”).

# **ARTICLE III - STORAGE VOLUMES**

## **3.1 Storage Space**

The volumetric capacity of storage space located at the Gas Storage Facilities which is made available by the Company for the Customer’s use for purposes of this Agreement is the Storage Space.

## **3.2 Maximum Receipt**

The maximum volume of gas the Company is required to receive from the Customer into storage in any Day is the Injection Capacity and in any one hour period shall be one twenty-fourth (1/24<sup>th</sup>) of the Injection Capacity.

## **3.3 Maximum Delivery**

The maximum volume of gas the Company is required to deliver from storage to the Customer in any Day shall be the Withdrawal Capacity and in any one hour period of time shall be one twenty-fourth (1/24<sup>th</sup>) of the Withdrawal Capacity.

## **3.4 Storage Ratchets**

The Company’s obligation to satisfy a Nomination will be subject to applicable storage ratchets which may be established and published by the Company from time to time, as the same may be amended by the Company from time to time (collectively, the “**Storage Ratchets**”). For these purposes, the Company shall be deemed to have published the Storage Ratchets when it posts such Storage Ratchets on the Company’s web site or otherwise makes them generally available to the public. The Company shall notify the Customer of the Storage Ratchets applicable hereunder, from time to time.

## **3.5 Use of Storage Space**

To the extent the Customer does not utilize fully the Storage Space at any time during the Term, the Company shall be entitled, in its sole discretion, to utilize such unused Storage Space for its own purposes or in order to provide storage services to other customers, provided that any such use of the Storage Space by the Company shall not (a) decrease the

Injection Capacity or the Withdrawal Capacity available to the Customer, nor (b) reduce the payment obligations of the Customer with respect to the rates and charges otherwise applicable to the Customer hereunder as set out in this Agreement and Rate 315.

#### **ARTICLE IV - RATES FOR GAS STORAGE SERVICES**

##### **4.1 Applicable Rate**

Subject to the other terms and conditions of this Agreement, the rates and charges for services contracted for by or provided to the Customer hereunder from time to time shall be determined in accordance with Rate 315 in effect at the time the relevant service is rendered. The rates and charges shall be applicable, and the Customer shall be responsible therefor from and after the Effective Date.

##### **4.2 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.

##### **4.3 OEB Directed Changes**

In the event the terms and conditions of this Agreement are changed by order of the OEB, including retroactive changes, such changed terms and conditions shall be deemed to be in effect between the Company and the Customer in accordance with the terms of such order.

##### **4.4 Independence of Rates**

Except as specifically contemplated in this Agreement, the charges applicable hereunder shall be determined and computed in accordance with Rate 315 without regard to any volume of gas contracted to be delivered or delivered under any other numbered rate of the Company or pursuant to any other agreement to which the Company and the Customer are parties, including the Companion Service Contract.

#### **ARTICLE V – FEES, PAYMENT AND BILLING**

##### **5.1 Fees**

The Customer will pay the fees and charges described in Rate 315 for the services provided under this Agreement. Without limiting the foregoing, for certainty, for purposes of calculation of the Injection/Withdrawal Unit Charge set out in Rate 315, the volume of gas shall be:

- (a) the quantity of gas credited to the Storage Account during the applicable Billing Month, which shall be the amount of gas received by the Company at a Point of Acceptance from or on behalf of the Customer as a result of Nominations or otherwise, net of any applicable Fuel Ratio Requirement; and
- (b) the quantity of gas delivered from storage by the Company hereunder, during the applicable Billing Month, to or on behalf of the Customer as a result of Nominations or otherwise, plus any applicable UFG Requirement.

## **5.2 Payment**

Payment terms are as set out in the Rate Handbook and Appendix "A".

## **5.3 Billing**

Bills are issued at the end of each Billing Month in respect of services provided by the Company under this Agreement during the Billing Month (each, a "**Bill**") and are due when rendered.

Such Bill shall show, in respect of the Billing Month to which it relates:

- (a) a record of the volume of daily injections to, and withdrawals from, the Storage Account during the Billing Month;
- (b) the Storage Account Balance at the end of the Billing Month; and
- (c) the amount payable by the Customer pursuant to this Agreement,

all as calculated by the Company in accordance with this Agreement.

## **5.4 Errors**

If an error is discovered by the Company or the Customer in a Bill, an adjustment to correct the same shall be made in a subsequent Bill. The Customer must notify the Company of any error in a Bill within three (3) years from the date of the relevant Bill, failing which the Customer shall be precluded from making a claim regarding the error.

## **5.5 Retention of Records**

All charts and calculations upon which a Bill is based, and the Company's books and records insofar as they pertain 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 such Bill, and (B) the period while any claim which relates to such Bill, and of which the Company receives written notice from the Customer within such three-year period, is outstanding; and shall be available for inspection by the Customer on reasonable prior notice during normal office hours of the Company.

## **5.6 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 the Customer to the Company (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. In addition, at any time the Company shall have the right to set-off an amount due, owing and unpaid by the Customer to the Company under this Agreement or the Companion Service Contract against any amount owing to the Customer by the Company, upon delivering a notice to the Customer to that effect.

## **5.7 Pooled Nominations**

In the event that the Customer shall avail itself of the storage services contemplated hereby in respect of more than one Terminal Location, it may elect to receive either a separate bill with respect to the storage service charges contemplated hereby for each of its Terminal Locations, or a single consolidated bill with respect to storage injections and withdrawals for all of its Terminal Locations subject hereto. The Customer shall notify the Company as to its preferred billing format within ten (10) Business Days of the date hereof. If the Customer has not opted for a single consolidated bill, in the event of a pooled Nomination as contemplated by Rate 315, for billing purposes the Company shall pro-rate the volume of gas under such Nomination amongst the various Terminal Locations of the Customer subject hereto based on the relative value of Storage Demand for each such Terminal Location.

## **5.8 Taxes Applicable**

Rates and charges do not include any goods and services taxes or any other taxes (whether existing as of the date of this Agreement or imposed after the date of this Agreement) which may be payable by the Customer, and such taxes remain the responsibility of the Customer.

## **ARTICLE VI - NOMINATIONS**

### **6.1 Storage Service Nominations**

The Customer may elect, in accordance with the nomination terms set out in Rate 315, and otherwise in accordance with the nomination terms set out in the Companion Services Contract, (collectively, the “**Nomination Terms**”) to nominate gas (a “**Storage Nomination**”) to be delivered to the Company for storage or received by the Customer from storage on the next Day. Storage Nominations must be made in advance of the requested Day of gas flow in accordance with the Nomination Terms. In order for the Customer to inject or withdraw intended quantities of gas it must gross up its Storage Nominations to account for the Fuel Ratio Requirement and any applicable UFG Requirement.

## **6.2**            **Acceptance**

Acceptance by the Company of any Storage Nomination from the Customer shall be subject to the other terms and provisions of this Agreement, and is contingent upon the confirmation and actual delivery of the gas from the relevant Gas Transporter/s.

## **6.3**            **Nomination Requirements**

To qualify for contractual entitlements a Storage Nomination must be submitted in accordance with the terms of Rate 315, and otherwise in accordance with the terms of this Agreement and the Companion Service Contract.

## **6.4**            **Maximum Nominations**

The Customer shall not at any time submit and, except as specifically contemplated in this Section 6.4, in no event shall the Company be required to accept, a Storage Nomination which is for an amount of gas in excess of the Storage Demand. For certainty, if the Customer desires to submit a Storage Nomination which is for any amount of gas in excess of the Storage Demand, it must obtain the prior written approval of the Company, which approval is in the sole discretion of the Company and may be arbitrarily withheld. The acceptance of gas in excess of such limitation shall not act as a continuing or future waiver of such limitation, nor require the Company to receive gas in excess of the Storage Demand in the future.

## **6.5**            **No-Notice Storage Service**

For purposes of No-Notice Storage Service, the Customer hereby grants the Company the exclusive right to use Authorized Withdrawal Quantity Gas and Authorized Injection Quantity Gas to apply against any daily imbalance resulting from the actual gas consumption of the Customer under the Companion Service Contract, and the Company shall apply such injections and withdrawals (each a “**No-Notice Nomination**”) to its calculation of the Storage Account Balance. No-Notice Storage Service shall be available on any Day in respect of any volume of gas up to the Withdrawal Capacity less any Storage Nomination, or, up to the Injection Capacity less any Storage Nomination, as applicable. Where the Customer serves multiple Terminal Locations pursuant to this Agreement, the relevant Terminal Location in respect of which a withdrawal No-Notice Nomination is made shall also constitute the Point of Delivery for purposes hereof. In order for the Company to provide the requisite quantities necessary to address such imbalances (subject to the limitations herein), it shall be entitled to gross up No-Notice Nominations to account for applicable UFG Requirements and/or Fuel Ratio Requirements.

## **ARTICLE VII – DISTRIBUTION IMBALANCES AND STORAGE ACCOUNT**

### **7.1**            **Supply Overrun Gas**

7.1.1           Authorized Withdrawal Quantity Gas – To the extent gas nominated to be delivered by the Customer on any Day under the Companion Service Contract constitutes Supply Overrun Gas, such excess gas shall, up to a maximum of the Withdrawal Capacity, be classified

as '**Authorized Withdrawal Quantity Gas**' eligible for No-Notice Storage Service in accordance with Section 6.5 hereof.

7.1.2 Excess Storage Withdrawal Gas - On such Day, any remaining volumes of Supply Overrun Gas in excess of the Withdrawal Capacity shall be classified as '**Excess Storage Withdrawal Gas**'.

## 7.2 Supply Underrun Gas

7.2.1 Authorized Injection Quantity Gas - To the extent gas nominated for delivery to the Customer on any Day under the Companion Service Contract constitutes Supply Underrun Gas, such excess gas up to a maximum of the Injection Capacity shall be classified as '**Authorized Injection Quantity Gas**' eligible for No-Notice Storage Service in accordance with Section 6.5 hereof.

7.2.2 Excess Storage Injection Gas - On such Day, any remaining volumes of Supply Underrun Gas in excess of the Injection Capacity shall be classified as '**Excess Storage Injection Gas**'.

## 7.3 Implications of Excess Storage Gas

7.3.1 Excess Storage Withdrawal Gas - In any instance of the occurrence, use of, or deemed taking of, a volume of Excess Storage Withdrawal Gas, the Customer shall pay the rates and charges for such gas as set out in the Companion Service Contract. The Customer further agrees that it has no right to withdraw Excess Storage Withdrawal Gas pursuant to this Agreement and that payment therefor shall not relieve it from any other remedy available to the Company against the Customer for breach of this Agreement.

7.3.2 Excess Storage Injection Gas - In any instance of the delivery of a volume of Excess Storage Injection Gas, the Customer shall pay the rates and charges for such gas as set out in the Companion Service Contract. The Customer further agrees that it has no right to inject Excess Storage Injection Gas into storage pursuant to this Agreement and that payment therefor shall not relieve it from any other remedy available to the Company against the Customer for breach of this Agreement.

## 7.4 Storage Account

7.4.1 Maintenance of Storage Account - The Company shall establish and maintain on behalf of the Customer the Storage Account. The "**Storage Account Balance**" shall be equal to: (a) the total quantity of gas delivered to the Company by or on behalf of the Customer (net of the Fuel Ratio Requirement) in accordance with this Agreement, less (b) the total quantity of gas delivered by the Company to or on behalf of the Customer (plus the Fuel Ratio Requirement and any UFG Requirement) in accordance with this Agreement. The Storage Account Balance represents the net volume of gas held by the Company on behalf of the Customer.

7.4.2 Pooling of Storage Gas -As contemplated by Section 7.4.1, all gas stored by the Customer with the Company pursuant to this Agreement (including No-Notice Nominations resulting from imbalances at multiple Terminal Locations) shall be contributed to a single

Storage Account, and such aggregate capacity shall be, subject to the limitations set forth herein, available for Nominations hereunder in connection with any valid Companion Service Contract and any Terminal Location subject thereto.

7.4.3 Debits and Credits to Storage Account - Authorized Withdrawal Quantity Gas shall be debited to the Storage Account and Authorized Injection Quantity Gas shall be credited to the Storage Account. In no event, and at no time, may the Customer establish a negative Storage Account Balance. For certainty, the Customer may not make Storage Nominations or utilize the No-Notice Storage Service if the effect of doing so would be to establish a negative Storage Account Balance. The Company shall not incur any liability whatsoever to the Customer or to any other Person for inadvertent delivery of any gas (as a result of manual error(s) on its part or otherwise and notwithstanding that the Company may have accepted a Nomination from the Customer therefor) which results in, or has the effect of causing, a negative Storage Account Balance.

7.4.4 Transfer of Storage Account Balance - At any time during the Term the Customer may request a Transfer of Title with respect to some or all of its Storage Account Balance, subject to the limitation that any such transferred amount shall not be in excess of Storage Demand.

7.4.5 Carry Forward of Storage Account Balance - The Customer shall be entitled, if this Agreement has been renewed, to carry forward a positive Storage Account Balance as of the expiry of the Term without the Company's prior authorization, provided that such carry forward quantity shall not exceed the Storage Space established under such renewed agreement. In the event that the Customer does not intend to renew this Agreement, it shall give notice in writing at least sixty (60) days in advance at the end of the Term that it will not be renewing this Agreement and in such notice shall advise the Company of its plans to dispose of any positive Storage Account Balance as of the date of giving such notice.

## **ARTICLE VIII - DELIVERY, POSSESSION, TITLE AND COMMINGLING**

The Parties agree that Article VIII of the Companion Service Contract shall apply, *mutatis mutandis*, to gas allocated to the storage services under this Agreement.

## **ARTICLE IX - CURTAILMENT AND SUSPENSION**

### **9.1 Contingency Curtailment**

In the event of actual or threatened inability to deliver the volume(s) of gas contracted for under this Agreement to the Terminal Location due to an event of Force Majeure affecting the Company, or when curtailment or discontinuance of supply is ordered by a 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). The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

## **9.2 Maintenance Curtailment**

The Company shall be entitled to limit Storage Demand in certain situations, such as major maintenance or construction projects affecting its facilities which may impact the Company's ability to meet the Customer's requirements, or the Company's obligations, set out in this Agreement. In such event, except in cases of emergency, upon providing notice of its intention to limit injection and withdrawal rights in accordance with Rate 315, which notice shall include the Company's best estimate of the duration and extent of such limitations, the Company shall have the right to reduce Storage Demand over and above applicable Storage Ratchets in whole or in part. 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. In situations where the Company so limits injection and withdrawal rights, the Company shall proportionately reduce the appropriate charges under Rate 315 based on the number of days the limitation is in effect and the difference between the Storage Demand, and the quantity of gas actually available for withdrawal or injection hereunder on such days. Such prorating shall not affect any other contracts or agreement for services between the Company and the Customer.

## **9.3 Physical Suspension of Service**

If the Company, in its sole discretion acting reasonably, determines that it is necessary to reduce the load on any gas transmission or distribution pipeline to protect the safety or security of any of its other customers or the integrity of all or any part of the Company's gas distribution system; or there occurs an Event of Default or as otherwise contemplated in Article XII, then the Company shall have the right to curtail, or completely suspend, service under this Agreement in whole or in part for such period of time as is necessary to address such interruption, interference or other necessity, in the sole discretion of the Company acting reasonably. If such a determination is made by the Company, then the Company shall notify the Customer forthwith of the extent and timing of the service curtailment or suspension and the Customer shall comply with such curtailment or suspension requirement. If the Customer fails to comply with the terms of the curtailment or suspension notice, then the Company shall have the right, without any further notification to the Customer, to implement the Company's then standard shut-down protocol to effect a complete shut-down of the delivery of gas under the Companion Service Contract and the provision of services under this Agreement. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer as a consequence of the exercise of any of such rights by the Company.

## **ARTICLE X - REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS**

### **10.1 Representations and Warranties of the Customer**

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



- (a) the quality, pressure and temperature of the gas delivered by or on behalf of the Customer hereunder shall conform to the minimum standards of the Gas Transporter/s and such gas shall otherwise be marketable gas; and
- (b) all necessary action has been taken by the Customer to authorize the execution, delivery and performance by the Customer of this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against the Customer in accordance with its terms.

## **10.2 Adoption of NAESB Standards**

10.2.1 Acknowledgement of Standards - Each of the Parties acknowledges and agrees that the 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.

10.2.2 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 it becomes necessary for the Company to adopt a recommended standard that conflicts with or supplements the provisions of this Agreement, it shall deliver a notice to the Customer which specifies such standard and sets out the revisions to this Agreement that are necessary to accommodate such standard. The Parties agree that on the thirtieth (30th) day following the delivery of such notice, this Agreement shall be deemed to be amended by the incorporation of the revisions set out in such notice.

## **10.3 Energy Conversion**

Gas delivered to the Customer hereunder shall be converted from energy to volume at the rate published in the Rate Handbook.

## **ARTICLE XI - FORCE MAJEURE**

The Parties agree that the Force Majeure provisions of the Companion Service Contract shall apply, *mutatis mutandis*, for all purposes of this Agreement.

## **ARTICLE XII- EVENTS OF DEFAULT AND REMEDIES**

### **12.1 Events of Default**

In addition to any other event set out in this Agreement which is deemed to be an Event of Default, the occurrence of any one or more of the following events shall be considered an event of default (an “**Event of Default**”):

- (a) if the Customer fails to make any payment due hereunder within thirty (30) days of the due date thereof (whether due in the ordinary course or by acceleration or otherwise);

- 
- (b) if the Companion Service Contract expires, or is terminated for any reason whatsoever;
  - (c) if the Customer:
    - (i) fails to perform, observe or comply with any of its other covenants or obligations under this Agreement or any other agreement now or hereafter entered into with the Company, or if any representation or warranty made in this Agreement is or proves to be incorrect or misleading in any material respect at the time made or deemed to have been made (or repeated), and such failure or incorrectness is not remedied within thirty (30) days after written notice of such failure or incorrectness is given to the Customer; or
    - (ii) fails to perform, observe or comply with any particular covenant or obligation under this Agreement, or if any representation or warranty made in this Agreement is or proves to be incorrect or misleading in any material respect at the time made or deemed to have been made (or repeated), on more than three (3) occasions in any twelve (12) consecutive calendar month period, notwithstanding that it remedies each such failure or incorrectness within the applicable cure period, if any, provided for; provided that the Company has given a notice of each such failure or incorrectness to the Customer;
  - (d) if the Customer, or any of its directors, officers, employees, agents or other representatives, as applicable, fails to obtain or maintain any applicable Required Permit which affects, or which the Company determines acting reasonably may affect, the safety or security of any of the Company's other customers or the integrity of all or any part of the Company's gas distribution system and such Required Permit is not reinstated, obtained or otherwise brought into good standing within thirty (30) days of such failure, provided that during such period prior to the reinstatement, obtaining or otherwise bringing into good standing of such Required Permit, the Company shall be entitled to exercise its rights under Section 12.2(a); or if the Customer, or any of its directors, officers, employees, agents or other representatives, as applicable, fails to obtain or maintain any other applicable Required Permit and such Required Permit is not reinstated, obtained or otherwise brought into good standing within thirty (30) days after written notice of such failure is given to the Customer;
  - (e) if the Customer (i) is dissolved; (ii) admits in writing that it is insolvent or its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes, or has instituted against it, any proceeding (whether by way of petition, assignment, notice of motion or otherwise)

seeking a judgment of bankruptcy or any other relief under any bankruptcy, insolvency or reorganization or relief from creditors law whether the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) (as amended, supplemented or replaced from time to time), or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it and not consented to by it, such proceeding or petition is not dismissed, discharged or vacated in each case within thirty (30) days of the institution or presentation thereof against it; (v) has a resolution passed for its winding up, official management or liquidation; (vi) seeks or becomes subject to or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, receiver-manager, trustee, custodian or similar official for it or for all or substantially all its assets or the Terminal Location and, in the case of any such appointment not sought by it and not consented to by it, such appointment remains in effect for a period of thirty (30) days; (vii) has a secured party take possession of all or substantially all its assets or the Terminal Location and maintain such possession for a period of thirty (30) days; (viii) causes or is subject to any event with respect to it which, under applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive) and, in the case of any such event not caused by it and not consented to by it, such event continues for a period of thirty (30) days; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

- (f) if any execution, distress, attachment, sequestration or other enforcement process, whether by court order or otherwise, which would have a material adverse affect on the financial viability of the Customer becomes enforceable against any property of the Customer and such execution, distress, attachment, sequestration or other process or judgment or order shall continue unsatisfied (or shall not have been vacated or discharged) for a period of fifteen (15) consecutive days; or
- (g) if the Customer ceases carrying on business in the ordinary course;

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 its sole discretion in whole or in part at any time by notice to the Customer, and the Company may, in its sole discretion, extend the period for the cure 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 cure the Event of Default within a reasonable period of time.

## **12.2 Remedies Upon Event of Default**

Upon the occurrence of an Event of Default, the Company may, at its sole option, do any one or more of the following:

- (a) suspend any or all of the services or obligations of the Company or rights of the Customer under this Agreement provided that such suspension shall not relieve the Customer of the obligation to pay all rates and charges under this Agreement during such suspension;
- (b) exercise any of the rights and remedies of a secured party under this Agreement and under any law then in effect;
- (c) exercise its rights of set-off against any and all property of the Customer in the possession of the Company or its agents;
- (d) establish an Early Termination Date in accordance with Section 13.2 and terminate this Agreement; and/or
- (e) exercise any other rights or remedies the Company has at law, including bringing an action at law as may be necessary or advisable in order to recover damages and costs.

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

In addition to any other rights or remedies the Company may have under this Agreement or otherwise, the Company shall not be required to provide the services or perform its obligations hereunder, and shall be entitled to suspend such services and obligations, at any particular time, if performance thereof would be in contravention of any Applicable Law. If the Company suspends its obligations pursuant to this Section 12.3 and such suspension continues for more than ninety (90) consecutive days, then the Parties shall meet to consider and to discuss in good faith and settle whether the Agreement should be terminated or whether the Company should further suspend its obligations, and the effect of same. For certainty, if the Parties determine to terminate this Agreement, then the Parties shall in good faith determine what termination charges, if any, the Customer shall pay to the Company.

## **ARTICLE XIII - TERM AND TERMINATION**

### **13.1 Term**

Subject to the terms and conditions of this Agreement, this Agreement shall be effective for the Initial Term, and thereafter shall be renewed for successive one year terms (each a “**Renewal Term**”) commencing at the start of the Day on April 1 in each year and ending at the end of the Day on the next following March 31, provided that in order for this Agreement to so renew in each year:

- (a) at the time of such renewal, the Customer must be in compliance with all of its obligations hereunder; and

- (b) at least nine (9) months prior to such renewal, the Parties must have agreed in writing to a new Storage Space for such Renewal Term.

### **13.2 Termination**

If an Event of Default occurs at any time during the Term, the Company may, in its discretion, establish a date which shall be not less than five (5) Business Days after delivery of notice to the Customer (an “**Early Termination Date**”) on which this Agreement shall terminate, provided that no such notice is required in the event that the Customer defaults by reason of an Event of Default described in Subsections 12.1(e), 12.1(f) or 12.1(g).

### **13.3 Disposition of Storage Account Balance at Termination or Expiry**

Upon the termination or expiry of this Agreement, any volume of gas in storage pursuant to this Agreement (for certainty, the Storage Account Balance) which shall not be carried forward by the Customer in accordance with Section 7.4.5, shall be either withdrawn by the Customer or transferred by the Customer by way of a Transfer of Title within five (5) Business Days of such date of termination (as applicable). Upon completion of such five (5) day period, the Customer shall sell any remaining gas constituting such residual Storage Account Balance to the Company, forthwith upon receipt of a notice from the Company in respect thereof, for an amount calculated pursuant to the formula set out in Part 4 of Appendix “A”. Any disposition by the Customer contemplated by this Section 13.4 (other than dispositions to the Company contemplated herein) shall be made in accordance with the volumetric and other limitations set forth in this Agreement.

### **13.4 Effects of Termination**

Upon the termination of this Agreement, whether at the expiry of the Term or for any reason prior thereto, the Customer shall forthwith pay all amounts due and owing to the Company pursuant to the terms of this Agreement; and all provisions of this Agreement relating to payments required hereunder shall continue after termination until all such payments have been fully satisfied.

## **ARTICLE XIV - DISPUTE RESOLUTION**

The Parties agree that the Dispute Resolution provisions of the Companion Service Contract shall apply, *mutatis mutandis*, for all purposes of this Agreement.

## **ARTICLE XV - GENERAL**

### **15.1 Notice or Communication**

Except as otherwise expressly provided in this Agreement, all notices, directions, authorizations, and other communications of any nature required or permitted to be given hereunder by one Party to the other (in each case, a “**Notice**”) shall be given in the manner set forth in the Companion Service Contract.

## 15.2 Confidentiality

“**Confidential Information**” means any information relating to the terms or performance of this Agreement disclosed by one Party (the “**Disclosing Party**”) to the other (the “**Receiving Party**”), whether prior to or after the execution of this Agreement, relating to the business and operations of the Disclosing Party or any of its affiliates (as that term is defined in the *Business Corporations Act* (Ontario)) and the terms and conditions and performance of this Agreement. Neither Party shall disclose any Confidential Information to any other Person (other than such Party’s officers, directors, consultants, employees, lenders, counsel, accountants and other professional advisors and prospective purchasers of any of the rights under this Agreement, all on a need-to-know basis and all of whom have agreed, or by the nature of their retainer, engagement or employment are required, to keep such information confidential on similar terms, and for whose breach such Party shall be liable to the other Party), except with the consent of the Disclosing Party or in order to comply with the provisions of any Applicable Law. Further, the Receiving Party shall not use any Confidential Information except in the fulfillment of its rights and obligations under this Agreement. Each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation, provided that all monetary damages shall be limited to actual direct damages and a breach of this section, in and of itself, shall not give rise to a right to suspend performance under, or terminate this Agreement.

## 15.3 Limitation of Liability

15.3.1 Company’s Liability - The liability of the Company, and its shareholders, directors, officers, employees and agents, whether founded in tort or breach of contract or otherwise, shall:

- (a) be limited to the loss sustained by the Customer as a result of direct physical damage sustained by the Customer, including reasonable costs of repair and replacement;
- (b) exclude any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties; and
- (c) exclude any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

15.3.2 Customer’s Liability - Except in respect of any payment or indemnification obligations of the Customer hereunder, the liability of the Customer, and its shareholders, directors, officers, employees and agents, whether founded in tort or breach of contract or otherwise, shall:

- (a) be limited to the loss sustained by the Company as a result of direct physical damage sustained by the Company, including reasonable costs of repair and replacement;

- (b) exclude any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties; and
- (c) exclude any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

#### **15.4 Survival**

Notwithstanding the termination of this Agreement:

- (a) the provisions of Section 15.2 shall survive for ten (10) years;
- (b) the provisions of Section 15.3 shall survive indefinitely;
- (c) the Customer and the Company shall maintain records applicable to this Agreement for a period of six (6) years following termination; and
- (d) the Customer shall fulfill all payment and other obligations hereunder, including in respect of the Customer's Storage Account Balance obligations as provided hereunder.

#### **15.5 Assignment**

This Agreement shall be binding upon the Parties and their respective successors and assigns. The Customer may not assign this Agreement or any of its rights or obligations hereunder in whole or in part without the prior written consent of the Company, provided that such consent shall not be unreasonably withheld. For certainty, it is the intention of the Parties that their respective rights and entitlements hereunder are to accrue to the benefit of the Parties only, and not to any of their respective agents or to any third party beneficiary.

#### **15.6 Change of Control**

There shall be no Change of Control of the Customer other than in accordance with the Companion Service Contract.

#### **15.7 Execution of Documents**

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

[end of text]

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto, as of the day and year first above written.

**ENBRIDGE GAS INC.**

**<INSERT FULL LEGAL NAME OF CUSTOMER>**

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

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

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

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