

ENBRIDGE GAS DISTRIBUTION INC.

- and -

[COUNTERPARTY]

GAS STORAGE SERVICE AGREEMENT

Unregulated Storage Service
[No New Infrastructure]

January 2013

CONTRACT NO.: UTEC-XXXX-X

GAS STORAGE SERVICE AGREEMENT

DATE OF AGREEMENT: [INSERT DATE]

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

BACKGROUND

- A. The Company operates a natural gas storage system in southwestern Ontario.
- B. The Customer and the Company desire to enter into an agreement providing, among other things, for the Company to store gas on behalf of the Customer and to release gas from such storage to the Customer.

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 Appendix “A”) capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

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

“**Applicable Law**” 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 Excess Gas**” has the meaning ascribed thereto in Section 6.4.

“**Bill**” has the meaning ascribed thereto in Section 4.3.

“**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.

“**Commencement Date**” means the date specified as such in Part 6 of Appendix “A”.

“**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 and Section 13.3.

“**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.

“**Financial Assurances**” has the meaning ascribed thereto in Section 11.1.

“**Force Majeure**” has the meaning ascribed thereto in Section 10.1.

“**Fuel Ratio Requirement**” means an amount of gas equal to 0.73% of the gas injected to, or withdrawn from, storage by or on behalf of the Customer, or such other amount as may be established by the Company from time to time.

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

“**Gas Index Price**” means the daily price (in U.S.\$/MMBtu) published in the Gas Daily, a Platts Publication, for that day under the Column “mid-point”, for the Dawn, Ontario point, or, in the event that such publication is discontinued, an equivalent industry publication acceptable to the Parties, acting reasonably.

“**Gas Transporter**” means any of Union, TCPL, Vector, Niagara or their respective successors and “**Gas Transporter Facilities**” means the actual pipeline system of the relevant Gas Transporter.

“**GJ**” means gigajoule.

“**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.

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

- (a) the Injection Demand, subject to any applicable Storage Ratchets, and
- (b) the difference between the Storage Capacity and the Storage Account Balance on the relevant Day.

“Injection Demand” means the quantity of gas set forth in item 2 of the chart in Part 1 of Appendix “A”.

“Interest Charge” means interest on the amount of the Infrastructure Costs (such amount being the amount at the end of the preceding month), at the Interest Rate, calculated and compounded monthly.

“Interest Rate” means the minimum commercial lending rate per annum published by the Toronto Dominion Bank, as determined on a monthly basis, on the first business day of the month.

“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.

“Niagara” means Niagara Gas Transmission Limited.

“Nomination” means a request for transportation by the Company or the Customer made to a Gas Transporter of the quantity of gas that the Customer wishes to flow into or from storage by that Gas Transporter’s Facilities on the date specified, which Nomination shall be in accordance with the policies and procedures established by the Company from time to time.

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

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

“Party” means any one of the Company, or 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 Appendix “A”.

“Point of Delivery” has the meaning ascribed thereto in Appendix “A”.

“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.

“**Regulated Storage Contract**” means an agreement with the Company for gas storage service pursuant to the Rate Handbook.

“**Required Permit**” means any license, authorization, permit, regulatory consent, credential or similar qualification required 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 5.1.

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

“**Storage Capacity**” means the quantity of storage space set forth in item 1 of the chart in Part 1 of Appendix “A”.

“**TCPL**” means TransCanada PipeLines Limited.

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

- (a) 1000 EST on the next day following the Termination Date, and
- (b) any Early Termination Date.

“**Termination Date**” means the date specified as such in Part 6 of Appendix “A”.

“**Transfer of Title**” has the meaning ascribed thereto in Section 5.3.4.

“**Union**” means Union Gas Limited.

“**Vector**” means Vector Pipeline Limited Partnership.

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

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

“**Withdrawal Demand**” means the quantity of gas set forth in item 3 of the chart in Part 1 of Appendix “A”.

1.2 Appendix

Appendix “A” 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 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 any of the Appendices to this Agreement, then the provisions of the relevant Appendix shall prevail.

1.4 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.

1.5 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 Law, 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.

1.6 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 either 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; provided that, where any Person has guaranteed the obligations of the Customer under this Agreement, the Company shall also have the right to commence any legal actions or proceedings against such guarantor in any other jurisdiction the Company considers appropriate.

ARTICLE II - BASIC AGREEMENTS

2.1 Storage and Delivery of Gas

On the 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 Conditions to Obligations of the Company

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 obligations of the Company under this Agreement (other than the obligation set out in Section 16.2, which obligation shall be binding upon execution of this Agreement) that the Company shall have received:

- (a) all necessary internal and external approvals required in connection with this Agreement and the services to be provided hereunder; and

(b) the Financial Assurances.

2.3 Non-fulfilment of Conditions and Commencement Date

The Company, in respect of Section 2.2(a), and the Customer, in respect of Section 2.2(b), shall use due diligence and commercially reasonable efforts to satisfy and fulfil the conditions precedent set forth in Section 2.2 above. If the Company concludes that it will not be able to waive or satisfy a condition precedent that is for its benefit by **[INSERT DATE]** (the “**Conditions Precedent Date**”), the Company may, upon written notice to the Customer, terminate this Agreement and upon the giving of such notice, other than as expressly set forth herein, this Agreement shall be of no further force and effect and each of the Parties shall be released from all further obligations hereunder, provided that, any rights or remedies that a Party may have for breaches of this Agreement prior to such termination shall not thereby be released, and any liability a Party may have incurred before such termination shall not thereby be released.

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.

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.

ARTICLE III - STORAGE QUANTITIES

3.1 Storage Capacity

The amount of storage capacity (measured in GJ) which shall be held available by the Company for the Customer’s use for purposes of this Agreement is, subject to the other terms and conditions of this Agreement, the Storage Capacity.

3.2 Maximum Receipt

The maximum quantity 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 is one twenty-fourth ($1/24^{\text{th}}$) of the Injection Capacity.

3.3 Maximum Delivery

The maximum quantity 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 is one twenty-fourth ($1/24^{\text{th}}$) of the Withdrawal Capacity.

3.4 Storage Ratchets

The Company's obligation to satisfy a Nomination is subject to any storage ratchets set out in Part 1 of Appendix "A" (the "**Storage Ratchets**").

ARTICLE IV – FEES, PAYMENT AND BILLING

4.1 Fees

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 the rates and charges specified in Appendix "A". The charges shall be applicable, and the Customer shall be responsible therefor, from and after the Commencement Date.

4.2 Payment

Payment terms are as set out in Appendix "A".

4.3 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**").

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

- (a) a record of the quantity of daily injections to, and withdrawals from, the Storage Account for such Billing Month;
- (b) the Storage Account Balance at the end of the Billing Month;
- (c) the Fuel Ratio Requirement for such Billing Month; and
- (d) the amount payable by the Customer in accordance with this Agreement for such Billing Month,

as calculated by the Company in accordance with this Agreement.

4.4 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.

4.5 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.

4.6 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.

4.7 Company's Set-Off Rights

4.7.1 Upon the occurrence of an Event of Default of the Customer, 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 under this Agreement, against any and all of the obligations of the Customer to the Company now or hereafter existing under this Agreement, irrespective of whether or not the Company has made any demand under this Agreement and although such obligations of the Customer may be contingent or unmatured.

4.7.2 In addition to the foregoing, upon the occurrence of an Event of Default of the Customer and upon not less than forty-eight (48) hours notice to the Customer, the Company may appropriate and apply such quantity of the Customer's gas in storage under this Agreement as may be necessary to reduce or settle any or all of the obligations of the Customer to the Company referenced in Section 4.7.1; and for these purposes, the Customer shall transfer and assign, and be deemed to automatically transfer and assign without any further action by the Customer, to the Company, such quantity of gas on the date specified in such notice. For purposes of this Section 4.7.2, the value of the Customer's gas that is deemed to be assigned to the Company hereunder shall be the Gas Index Price for the day the gas is deemed assigned to the Company. Any conversions from U.S. currency to Canadian currency which are necessary for purposes of this Section 4.7.2 shall be done at the closing rate for the preceding Business Day published by the Bank of Canada.

4.7.3 Each of the Parties 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 4.7 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.

4.8 Taxes Applicable

Rates and charges do not include any goods and services taxes, harmonized sales 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 V – STORAGE ACCOUNT

5.1 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) in accordance with this Agreement.

The Storage Account Balance represents the net quantity of gas held by the Company on behalf of the Customer.

5.2 Debits and Credits to Storage Account – The quantity of gas received from the Customer at the Point of Acceptance (net of the Fuel Ratio Requirement, as applicable) shall be credited to the Storage Account and any quantity of gas delivered by the Company to the Customer at the Point of Delivery (plus the Fuel Ratio Requirement, as applicable) shall be debited to the Storage Account. In no event, and at no time, shall the Company be obligated to receive any quantity of gas in excess of the Injection Capacity, nor to deliver any quantity of gas in excess of the Withdrawal Capacity. For certainty, the Company shall not be obligated to deliver any quantity of gas if doing so would result in a negative Storage Account Balance.

5.3 Transfer of Title

5.3.1 Where the Company is also providing storage service to the Customer pursuant to a Regulated Storage Contract, the Customer may, in accordance with the terms and conditions hereof, elect to initiate transfers of gas between the storage service under such Regulated Storage Contract and the storage service provided hereunder.

5.3.2 The Customer may, in accordance with the terms and conditions hereof, elect to initiate transfers of gas between the storage service hereunder and the storage service under a Regulated Storage Contract entered into by any third party.

5.3.3 The Customer may, in accordance with the terms and conditions hereof, elect to initiate transfers of gas between the storage service provided under an “unregulated” storage service agreement between the Company and a third party (where such agreement is on terms and conditions substantially similar to the terms and conditions hereof) and the storage service provided hereunder.

5.3.4 Transfers pursuant to Sections 5.3.1, 5.3.2 and/or 5.3.3 (each, a “**Transfer of Title**”) will be provided on a firm basis up to the quantity of gas that is equivalent to the more restrictive firm withdrawal and injection parameters of the two parties involved in the transfer. Proposed transfers in excess of such limitations must be approved in advance by the Company, acting in its sole discretion. Where the Customer requests a transfer between two storage services that have like services, each party to the transfer shall pay to the Company the administration charge set forth in Appendix “A” for each such transaction. Without limiting the foregoing, any Transfer of Title shall be subject to the withdrawal, injection and other applicable charges specified in the respective storage contracts of the parties to such transfer.

5.4 Disposition of Storage Account Balance - Upon the termination or expiry of this Agreement, for any reason, any quantity of gas in storage pursuant to this Agreement (for certainty, the Storage Account Balance) shall be either withdrawn by the Customer or transferred by the Customer by way of a Transfer of Title within five (5) days of such date of termination or expiry (as applicable). If the Customer does not withdraw or transfer such residual Storage Account Balance prior to the expiry of such five (5) day period, then immediately following the expiry of such five (5) day period, the Customer shall sell, and shall be deemed to sell, any remaining gas constituting such residual Storage Account Balance to the Company, upon receipt of a notice from the Company in respect thereof, for an amount which is equal to:

- (a) the quantity of remaining gas constituting such residual Storage Account Balance; multiplied by
- (b) a rate which is eighty per cent (80%) of the average price of gas during such five (5) day period based on the Gas Index Price.

Any disposition by the Customer contemplated by this Section 5.4 (other than dispositions to the Company contemplated herein) shall be made in accordance with the quantity and other limitations set forth in this Agreement. Any conversions from energy to volume which are necessary for purposes of this Section 5.4 shall be done at the rate published in the Rate Handbook. Any conversions from U.S. currency to Canadian currency which are necessary for purposes of this Section 5.4 shall be done at the closing rate for the preceding Business Day published by the Bank of Canada.

ARTICLE VI - NOMINATIONS

6.1 Storage Service Nominations - The Customer may elect, in accordance with the nomination terms set out from time to time in Appendix “A” (the “**Nomination Terms**”), to make a Nomination in respect of gas to be delivered to the Company for storage or received by the Customer from storage in accordance with the Nomination Terms. In order for the Customer to inject or withdraw intended quantities it must gross up its Nominations to account for applicable Fuel Ratio Requirements.

6.2 Changes to Nomination Terms - The Company shall have the right, in its sole discretion, upon thirty (30) days prior notice to the Customer, to change the Nomination Terms by delivering a notice to the Customer setting out the changed Nomination Terms and Part 2 of Appendix “A” shall automatically be amended accordingly.

6.3 Acceptance - Acceptance by the Company of any 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 amount of gas from or to the relevant Gas Transporter.

6.4 Maximum Nominations - The Customer shall not, at any time, submit a Nomination which is for an amount of gas in excess of the Injection Capacity or the Withdrawal Capacity, or the hourly restrictions relating thereto, as applicable. Notwithstanding the foregoing, if the Customer desires to submit a Nomination for injection or withdrawal of an amount of gas in excess of the Injection Capacity or the Withdrawal Capacity, or the hourly restrictions related thereto, it may do so upon receipt of prior written authorization of the Company, which authorization shall be in the sole discretion of the Company. Any such authorized excess quantity of gas shall be considered “**Authorized Excess Gas**” for billing purposes. The acceptance of gas in excess of such limitations shall not act as a continuing or future waiver of such limitations, nor require the Company to receive gas in excess of the Injection Capacity or to deliver gas in excess of the Withdrawal Capacity, as applicable, in the future.

ARTICLE VII - DELIVERY, POSSESSION, TITLE AND COMMINGLING

7.1 Possession - The Customer shall be deemed to be in control and possession of, and responsible for, gas that is the subject matter of this Agreement (other than gas purchased from the Company) until it shall have been delivered to or for the account of the Company at the Point of Acceptance, after which the Company shall be deemed to be in control and possession of, and responsible for, such gas until it is delivered to the Point of Delivery, after which the Customer shall be deemed to be in control and possession of, and responsible for, such gas. The Customer shall bear the full cost and expense for transporting and delivering, as well as the full and complete liability and responsibility for, such gas to the Point of Acceptance and shall bear full and complete liability and responsibility for gas that is delivered to the Point of Delivery. Upon accepting custody of the gas at the Point of Acceptance, the Company shall bear full and complete liability and responsibility for gas until it is delivered to the Point of Delivery.

7.2 Delivery and Title - At any particular time the Customer shall have title to, and only to, the quantity of gas delivered by or for the Customer to the Point of Acceptance and not

withdrawn or disposed of by the Customer pursuant to this Agreement to the extent of the Storage Account Balance. For certainty, the Customer has no right to the gas storage space made available to it hereunder, but only to the gas storage service within the parameters, terms and conditions set out in this Agreement.

7.3 Right to Commingle - The Company and the Customer recognize that the gas delivered hereunder will be from a commingled stream of gas and will be carried to the Point of Acceptance through the facilities of one or more Gas Transporters. The Company shall have the right to commingle gas delivered to the Company by or for the Customer at the Point of Acceptance with gas owned by the Company or any other Person or Persons, and the Company shall have the right and full and absolute authority to deal in any manner with all gas delivered to it.

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

7.5 Measurement - For the purpose of determining the quantity of gas delivered to the Company by the Customer, the Parties agree to accept the measurement of the relevant Gas Transporter, or as the Gas Transporter and the Company may otherwise agree, and the quantity of gas so determined for a particular Day, subject to adjustments in accordance herewith, shall be deemed to be the quantity of gas delivered by the Customer to the Company on such Day. The standard of measurement and tests for the gas delivered hereunder shall be in accordance with the contractual arrangements made by the Company with the relevant Gas Transporter, or as the Gas Transporter and the Company may otherwise agree, in effect from time to time.

7.6 Testing - The Company agrees, in its arrangements with the Gas Transporter, to obtain measuring and/or testing in a manner and at an interval which is in compliance with the practice of the relevant Gas Transporter. In the event that either Party should request measuring or testing at any time, the other Party will cooperate fully to obtain such measurement and testing from the relevant Gas Transporter, provided that the Party seeking the test shall bear the cost thereof if the contractual arrangements with the relevant Gas Transporter require payment of the cost.

ARTICLE VIII - CURTAILMENT AND SUSPENSION

8.1 Contingency Curtailment

In the event of actual or threatened inability to accept or deliver the quantities of gas contracted for under this Agreement 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 its use of the storage service 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 or as a consequence of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

8.2 Maintenance Curtailment

The Company shall be entitled to limit or reduce the Storage Capacity or limit the Customer's injection or withdrawal rights in certain situations, such as major maintenance or construction projects affecting its facilities, which may impact the Company's ability to meet the Company's obligations set out in this Agreement. In such event, except in cases of emergency, upon providing ten (10) days notice of its intention to limit injection and withdrawal rights, 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 the maximum daily amounts set out in Section 3.2 and Section 3.3 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. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer by reason or as a consequence of the exercise of any such rights by the Company. 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 or reduces the Storage Capacity or limits the Customer's injection or withdrawal rights, the Company may, in its sole discretion, proportionately reduce the appropriate charges applicable hereunder based on the number of days the limitation is in effect and the difference between the maximum daily amounts set out in Section 3.2 and Section 3.3 and the quantity of gas actually available for withdrawal or injection hereunder on such Days.

8.3 Other Curtailment or Physical Suspension

If the Company, in its sole discretion acting reasonably, determines that it is necessary to limit or reduce the Storage Capacity or limit the Customer's injection or withdrawal rights to protect the safety or security of the public, including any of its other customers, or the integrity of all or any part of the storage facilities or equipment of the Company, or there occurs an Event of Default or as otherwise contemplated in Section 12.1, 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. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer by reason or as a consequence of the exercise of any of such rights by the Company.

ARTICLE IX - REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

9.1 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) 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;
- (b) the Customer shall have good and marketable title in and to the gas to be delivered to the Company and shall be entitled to deliver and, where applicable, sell such gas to the Company in accordance with the terms of this Agreement, free and clear of any adverse claim of any nature or kind whatsoever; and
- (c) gas delivered to the Company by or for the Customer will not be subject to any royalties, taxes (federal and/or provincial) or other charges payable by, or that may become a liability of, the Company and the purchases by the Company from the Customer contemplated hereunder will not result in any liability to the Company for royalties, taxes (federal and/or provincial but not income taxes) or like charges which are applicable before possession of and title to such gas passes to the Company,

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

9.2 Indemnity by Customer - The Customer shall save harmless and indemnify the Company and its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Company or of the Company to any third parties, howsoever caused, resulting from, arising out of or relating to:

- (a) the Customer failing to deliver gas to the Point of Acceptance for which a Nomination has been provided to the Company, to the extent that such failure to deliver results in an interruption or interference with the Company's ability to provide services to any other customer of the Company; or
- (b) an adverse claim of any nature being asserted against the title to gas delivered by the Customer to the Company; or
- (c) the negligence or wilful misconduct of the Customer, or any of the Customer's directors, officers, employees, agents, representatives or any Person acting under the authority of or with the permission of the Customer.

9.3 Adoption of NAESB Standards

9.3.1 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.

9.3.2 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 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, or such earlier date 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.

ARTICLE X - FORCE MAJEURE

10.1 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 for making 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;
- (d) failure or malfunction of any storage equipment or facilities of the Company except to the extent that the failure or malfunction was caused by the sole or contributory negligence of the Company; and
- (e) governmental actions, such as necessity for compliance with any Applicable Law.

10.2 Effect of Force Majeure - Subject to the other provisions of this Article X, 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 as contemplated herein 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.

10.3 Notice and Other Requirements

10.3.1 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 of the occurrence, and otherwise when such notice is given.

10.3.2 Efforts to Eliminate - The Party claiming Force Majeure shall, unless such Event of Force Majeure is a strike or lockout, use reasonable efforts to promptly eliminate such event of Force Majeure.

10.3.3 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.

10.3.4 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.

10.3.5 Oral Notice – Any notice under this Section 10.3 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 15.1.

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

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

10.6 Additional Effect of Force Majeure - Except as provided in Section 10.7, and subject to Section 10.8, a Party hereunder shall not be liable to the other Party hereunder for the first mentioned Party's inability to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. In the case of any such inability so caused, then the other Party shall have no claim for damages or specific performance or other right of action against the first mentioned Party.

10.7 Limitations – Notwithstanding any other term of this Article X, 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 10.3 in respect of the Event of Force Majeure.

Without in any way limiting any of the foregoing, the settlement of any strike or lockout 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.

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

in the secondary market from another supplier sufficient to meet the terms of the Customer’s then current obligations under this Agreement.

ARTICLE XI - FINANCIAL ASSURANCES

11.1 Requirement for Financial Assurances - At all times during the Term, the Customer shall maintain assurances of creditworthiness and other financial assurances as set out below and in Appendix “A” (collectively, the “**Financial Assurances**”). The Customer shall either:

- (a) maintain credit ratings that are no lower than any of the minimum credit ratings set forth in the table below; or
- (b) if the Customer does not have a credit rating that meets the minimum credit ratings set out in the table below, have and maintain a guarantee in favour of the Company, in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Company and in form and substance acceptable to the Company in its sole discretion, from a guarantor that maintains credit ratings that are no lower than any of the minimum credit ratings set forth in the table below and who is otherwise acceptable to the Company, in its sole discretion, acting reasonably.

<u>Agency</u>	<u>Minimum Credit Rating</u>
Moody’s Investor Services	Baa3
Standard & Poor’s	BBB-
Dominion Bond Rating Service	BBB(low)

At the sole discretion of the Company, and based on information provided by the Customer, equivalent or alternative assurances of creditworthiness or other financial assurances may be accepted. For certainty, the Company will only consider and accept alternative assurances of creditworthiness or other financial assurances that will satisfy the Customer’s obligations hereunder.

11.2 Adjustment of Financial Assurances - If the Company determines, in its sole discretion, acting reasonably, that:

- (a) the Customer’s credit rating has fallen below one or more of the minimum credit ratings set forth above, or has otherwise become impaired or unsatisfactory; or

- (b) the Financial Assurances no longer provide adequate security for the performance of the Customer's obligations arising under this Agreement (including that the credit rating of the guarantor, if any, has fallen below one or more of the minimum credit ratings set forth above); or
- (c) the Company otherwise determines that it is necessary to obtain Financial Assurances, including further or additional Financial Assurances, from the Customer,

then, within three (3) days after the date that the Company provides notice to the Customer of such determination, the Customer shall, at its own expense, deliver to the Company one or more of the following Financial Assurances, as required by the Company, in an amount determined by the Company as sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Company under this Agreement and otherwise provide adequate security for the performance of the Customer's obligations under this Agreement:

- (i) prepayment;
- (ii) a letter of credit in favour of the Company, in a form and from an institution acceptable to the Company;
- (iii) a guarantee, in a form and from a third party acceptable to the Company; and/or
- (iv) such other collateral security, including security agreements over assets of the Customer, in a form acceptable to the Company.

If such additional, increased or modified Financial Assurances are not provided to the Company within the specified period, the Customer shall thereupon be deemed to be in default under this Agreement and the Company shall, in addition to any of its other rights hereunder, thereafter have the option to terminate this Agreement in accordance with the terms hereof.

11.3 Realization of Financial Assurances - The Company shall be entitled to realize upon any Financial Assurances in the manner and to the extent provided for and set out in this Agreement, including Appendix "A", and such Financial Assurances.

11.4 Use of Security - The Company has the right to use, set-off, appropriate, apply and realize the Financial Assurances, or any part of it, provided to the Company by the Customer upon there occurring an Event of Default of the Customer under this Agreement by doing any one or more of the following: (i) taking possession of the security and any cash deposits by any method permitted by law; (ii) setting off or otherwise dealing with the security and any cash deposits; (iii) drawing on letters of credit; (iv) demanding payment on guarantees; (v) exercising any and all of the rights and remedies granted pursuant to the *Personal Property Security Act* (Ontario) and any other applicable legislation, or otherwise available at law or in equity; and (vi) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Customer. No right, power or remedy of the Company (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such

rights, powers and remedies may from time to time be exercised independently or in combination. The Customer shall remain liable for all obligations, indebtedness and liabilities owing by it to the Company that are outstanding following realization of all or any part of the security.

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 a Party fails to make any payment due hereunder within fifteen(15) days of the due date thereof (whether due in the ordinary course or by acceleration or otherwise);
- (b) if a Party:
 - (i) fails to perform, observe or comply with any of its other covenants or obligations 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), and such failure or incorrectness is not remedied within thirty (30) days following the earlier to occur of: (a) notice thereof (giving particulars of the failure in reasonable detail) from the non-defaulting Party to the defaulting Party; or (b) knowledge by the non-defaulting Party of the occurrence of such failure to perform or observe such obligation, provided that the non-defaulting Party has notified the defaulting Party forthwith after the non-defaulting Party becomes aware of such failure to perform or observe such obligation; 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 non-defaulting Party has given a notice of each such failure or incorrectness to the defaulting Party;
- (c) if a Party (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 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 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;

- (d) 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 a Party becomes enforceable against any property of the Party 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
- (e) if a Party 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 Parties and may be waived by the non-defaulting Party in its sole discretion in whole or in part at any time by notice to the defaulting Party, and the non-defaulting Party may, in its sole discretion, extend the period for the cure of any such Event of Default (if any), provided that the defaulting Party is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the non-defaulting Party that the steps being taken by the defaulting Party are likely to cure the Event of Default within a reasonable period of time.

12.2 Remedies Upon Event of Default

12.2.1 Remedies of the Company - Upon the occurrence of an Event of Default by the Customer, 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 the 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) use, liquidate, realize or exercise all or any part of any Financial Assurances then held by or for the benefit of the Company;
- (d) exercise its rights of set-off against the Customer;
- (e) establish an Early Termination Date in accordance with Section 13.2 and terminate this Agreement; and/or
- (f) 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.

12.2.2 Remedies of the Customer - Upon the occurrence of an Event of Default by the Company, the Customer may, at its sole option, do any one or more of the following.

- (a) suspend any or all obligations of the Customer or rights of the Company under this Agreement and such suspension shall relieve the Customer of the obligation to pay all rates and charges under this Agreement during such suspension;
- (b) establish an Early Termination Date in accordance with Section 13.2 and terminate this Agreement; and/or
- (c) exercise any other rights or remedies the Customer 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 amount of the Termination Charge the Customer shall pay to the Company.

ARTICLE XIII - TERM AND TERMINATION

13.1 Term of Agreement

Subject to the other terms and conditions of this Agreement, this Agreement shall be effective for the Term.

13.2 Termination by Company

Upon the occurrence of an Event of Default of the Customer 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(c), 12.1(d) or 12.1(e).

13.3 Termination by Customer

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

13.4 Effects of Termination

In addition to any other effects set out in this Agreement, including the obligations of the Customer pursuant to Section 5.4, 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. If the Agreement is terminated pursuant to Section 13.3 because of an Event of Default of the Company, then the Customer is not liable for any charges from the date of the Company’s default, including Monthly Demand Charges.

13.5 Termination Charge

13.5.1 Amount of Termination Charge - If an Early Termination Date has been established, either by the Company pursuant to Section 13.2 or by the Customer pursuant to

Section 13.3 (other than as a result of an Event of Default of the Company), the Customer shall pay to the Company, within ten (10) Business Days of receipt of an invoice from the Company therefor, an amount (the “**Termination Charge**”) equal to any non-recoverable costs or expenses incurred by the Company as a direct result of such termination, including decommissioning costs, to a maximum amount of not more than twenty-four (24) months of Contract Value as agreed to by the Parties.

13.5.2 Calculation of Contract Value - For the purposes of this Article XIII, the “**Contract Value**” shall mean an amount of money calculated by multiplying the number of months in the Term times the Monthly Demand Charge set out in Appendix “A”.

13.5.3 Use of Security - If the Customer fails to pay the Termination Charge in full when required to do so pursuant to the terms of Section 13.5.1, the Company may, in its sole discretion, use the Financial Assurances then held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer.

13.5.4 Liquidated Damages - The Parties agree that the Termination Charge constitutes liquidated damages that is a reasonable estimate of the damages or loss suffered by the Company as a consequence of early termination and is not a penalty.

ARTICLE XIV - DISPUTE RESOLUTION

14.1 Dispute Resolution Principle - This Article XIV establishes a framework and procedure under which the Parties shall, in good faith, use their reasonable efforts to resolve most disputes, claims, questions or differences arising out of or in connection with 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 14.2. For certainty, such Disputes shall not include the ability of either Party to terminate this Agreement in accordance with the provisions hereof.

14.2 Dispute Resolution Mechanism

14.2.1 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.

14.2.2 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, Storage Development (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.

14.2.3 Meeting between Senior Representatives - If a Dispute is not resolved to the mutual satisfaction of the Parties by the Operations Personnel within twelve (12) Business Days after the Dispute Notice has been delivered the Dispute shall be referred to the Parties' respective senior representatives (in the case of the Company, the Vice-President, Gas Supply (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.

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

14.3 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 14.2.

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 in writing and shall be delivered personally to an officer or other responsible employee of the addressee or sent by courier, electronic mail, or by facsimile to the applicable addressee as follows:

- (a) in the case of the Company, to it at:

Courier Address:	Enbridge Gas Distribution Inc. 500 Consumers Road North York ON M2J 1P8
Nominations:	Gas Nominations Direct: Fax Number: 780-420-8533 Attention: Gas Nominations email: sms@enbridge.com
Billing and Payment:	Billing Direct: (416) 495-6785 Fax Number: (416) 495-6163 Attention: Manager, Storage Development

Emergency/Shut-Down:	Emergency Toll Free: 1 (888) 565-3364 Gas Control Direct: (780) 420-8853 Fax Number: (780) 420-8533 Attention: Gas Control email: gasctrl@enbridge.com
Legal and Other:	Legal Direct: (416) 495-5891 Fax Number: (416) 495-5994 Attention: Law Department

(b) in the case of the Customer, to it at the address set out in Part 7 of Appendix “A”,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 15.1. 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 1700 EST (at the time of place of receipt) on any Business Day, the Notice shall be deemed to have been sent and received on the next following Business Day. The Company shall not be required to accept any communication from a third party which is sent on the Customer’s behalf unless the Customer has provided the Company in advance with an authorization in form acceptable to the Company authorizing such third party to act as agent for the Customer and to send communications hereunder on the Customer’s behalf.

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 exclude:

- (a) any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties; and
- (b) 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 indemnity 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 exclude:

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

15.4 Survival

Notwithstanding the expiry or termination of this Agreement for any reason:

- (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 Storage Account Balance obligations as provided hereunder and any obligations of the Customer pursuant to Section 2.4, and the Company shall have a continuing right to enforce against all Financial Assurances.

15.5 Assignment

This Agreement shall be binding upon the Parties and their respective successors and assigns. The Customer shall not assign this Agreement or any of its respective 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 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.

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

ENBRIDGE GAS DISTRIBUTION INC.

[COUNTERPARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

APPENDIX “A”

1. CONTRACT PARAMETERS

Storage Capacity [GJ] (item 1)	Injection Demand [GJ] (item 2)	Withdrawal Demand [GJ] (item 3)
XXXXXX	XXXXXX	XXXXXX

(a) Point of Delivery Pressure - In no event shall the Company be obligated to deliver or accept gas pursuant to this Agreement at a pressure which:

- (i) exceeds any maximum allowable operating pressure; or
- (ii) is below any minimum allowable operating pressure

prescribed or recommended by the Company, any Governmental Authority or any Gas Transporter/s.

(b) Point of Acceptance - means the interconnection between Enbridge Tecumseh Gas Storage and Union.

(c) Point of Delivery - means the interconnection between Enbridge Tecumseh Gas Storage and Union.

(d) Storage Ratchets – storage and delivery of gas by the Company on behalf of the Customer shall be subject to the following limitations:

- (i) [AS DETERMINED BY COMPANY AND CUSTOMER]

2. NOMINATION TERMS

Standard Nomination Windows

Gas Day Nomination Cycles	Nomination deadline (EDT)	Effective Time on Gas Day (EST)
Timely Nom*	12:00 (noon) Day Prior	10:00
Evening Nom*	18:30 Day Prior	10:00
Intraday 1*	10:30 Gas Day	18:00
Intraday 2*	17:30 Gas Day	22:00

* Deadlines are ½ hour prior to NAESB nomination windows to allow for processing by the Company.

The Company may also, in its sole discretion, make additional nomination windows available to the Customer from time to time, provided that the use of such additional nomination windows will not adversely affect any contractual right or obligation which the Company may have with the relevant Gas Transporter. In such event, the Company will provide to the Customer notice of such additional nomination windows, together with any terms or conditions of use thereof.

3. BILLING AND PAYMENT

- (a) Billing Period – Bills shall be issued at the end of each Billing Month in respect of all services provided by the Company and all costs and charges payable under this Agreement (including the Monthly Demand Charge, Commodity Charge and Authorized Excess Charge), during the Billing Month.
- (b) Payment Period - Payment in full of all bills rendered as contemplated in clause 3(a) above is due and shall be paid by Customer not more than seventeen (17) days following the date on which the relevant bill is rendered.
- (c) Interest - Any amount to be remitted by the Customer under this Agreement and which is not remitted on or before the relevant due date shall thereafter bear interest at the Interest Rate from the date of the relevant bill, compounded monthly, until the amount, and all interest thereon, has been paid in full.

4. FEES AND CHARGES

The Customer agrees to pay the Company the following for the storage services provided under this Agreement:

- (a) Monthly Demand Charge: A Monthly Demand Charge of \$XXXXXX per month, subject to adjustment by the Company ... [TBD].
- (b) Commodity Charge: A charge equal to the "Commodity Charge Rate" times:
 - (i) the quantity of gas injected or withdrawn from storage hereunder pursuant to a valid Nomination, plus
 - (ii) the Fuel Ratio Requirement.
- (c) Authorized Excess Charge: A charge equal to the Authorized Excess Rate times:
 - (i) the quantity of gas constituting Authorized Excess Gas, plus
 - (ii) the Fuel Ratio Requirement, provided that the Company shall charge the Fuel Ratio Requirement only on gas injected into storage by or on behalf of the Customer, and not on gas withdrawn from storage.

- (d) Transfer of Title Charge: A charge of \$25 per transaction for any transfer of gas in accordance with Section 5.3 of the Agreement, subject to adjustment by the Company from time to time.

For purposes of this Appendix "A" the **Commodity Charge Rate** shall be \$0.01/GJ, subject to (i) adjustments equivalent to any adjustments made to the Company's Rate 330 (as set out in the Rate Handbook), or, in the event such Rate 330 is no longer applicable, a reasonable equivalent thereof, and (ii) adjustments made as a result of storage service related costs which are imposed on the Company from time to time by upstream or downstream service providers.

For purposes of this Appendix "A" the **Authorized Excess Rate** shall be \$0.10/GJ, subject to adjustment by the Company from time to time.

5. FINANCIAL ASSURANCES

- (a) Financial Assurances - Pursuant to Section 11.1 of the Agreement and subject to Section 11.2, this Agreement shall be supported by the Guarantee issued by **[NAME OF GUARANTOR]** (the "**Guarantor**") dated XXXXX on behalf of the Customer and in favour of the Company, as such may be amended from time to time.
- (b) Realization on Financial Assurances - In addition to any other rights in respect thereof set out in the Agreement, the Company has the right to use, set-off, appropriate, apply and realize all or any part of the Financial Assurances then held by or for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of the Customer or the Guarantor:
- (i) in respect of any claim for indemnity made by the Company pursuant to Section 9.2, and in respect of which the Customer does not dispute the claim or the claim is the subject of a final and binding arbitration decision made pursuant to Article 14; or
- (ii) if any Financial Assurance then held by or for the benefit of the Company will terminate or expire or otherwise be of no further force or effect, or is to be increased in amount, after a specified date, and at least ten (10) days prior to such date such Financial Assurance is not renewed or extended and increased, if applicable.

6. COMMENCEMENT AND TERMINATION DATES

- (a) Commencement – The Commencement Date shall be **XXXXXX**.
- (b) Termination – The Termination Date shall be 1000 hours EST on **XXXXXX**.

7. COMMUNICATIONS

Communications to the Customer shall be directed as follows:

Courier Address:	XXXXXX
Nominations:	XXXXXX
Billing and Payment:	XXXXXX
Legal and Other:	XXXXXX

8. ACKNOWLEDGMENT

Each of the Customer, the Company and the Guarantor acknowledges and agrees that this Appendix "A" forms an integral part of, is required to complete, and is incorporated by reference into, the Gas Storage Service Agreement entered into between them.

ENBRIDGE GAS DISTRIBUTION INC.

[COUNTERPARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title: