

PRECEDENT AGREEMENT

THIS PRECEDENT AGREEMENT ("Precedent Agreement") made as of the ____ day of _____, 20__

BY AND BETWEEN:

ENBRIDGE GAS DISTRIBUTION INC. an Ontario corporation
 ("**Transporter**")

- and -

_____, a _____ ("**Shipper**")

Transporter and Shipper may sometimes be referred to separately as "**Party**" or jointly as "**Parties**" in this Precedent Agreement.

WITNESSES THAT, WHEREAS:

- A. Transporter owns and operates a natural gas transmission system in south-western Ontario, through which Transporter offers firm transportation services;
- B. As part of Transporter's GTA Project, Transporter intends to own, build and operate certain facilities (which are referred to in Transporter's application (EB-2012-0451) to the Ontario Energy Board (the "**OEB**") for the GTA Project as being "Segment A") (the "**Facilities**"), which Facilities include a pipeline connecting the Parkway West gate station to a new interconnect at the Albion Road gate station (the "**Albion Pipeline**"), all proposed to be in service by November 1, 2015;
- C. Transporter has, in an Open Season conducted by it, invited potential shippers to commit to contracting for capacity on the Albion Pipeline and the Shipper has, in such process, indicated its desire to make a firm commitment, subject to certain conditions precedent set forth herein, to contract for capacity on the Albion Pipeline.
- D. This Precedent Agreement is executed as evidence of Shipper's request for firm transportation service on the Albion Pipeline as well as Shipper's acknowledgement that Transporter requires the benefit of certain conditions precedent to the Service Agreement, defined below;

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- E. Shipper acknowledges that Transporter is relying on Shipper's commitments and obligations set forth in this Precedent Agreement in order to own, build and operate the Facilities and in support of the application by Transporter for approval of the Facilities, including the Albion Pipeline, by the OEB;
- F. Shipper agrees to enter into a service agreement whereby Transporter will provide service and Shipper will receive service in Ontario in accordance with and in the form included in Transporter's proposed Rate 332 Service on the Albion Pipeline, (such service agreement shall be referred to herein as the "**Service Agreement**"); and
- G. Shipper agrees to enter into a financial backstopping agreement (the "**Financial Backstopping Agreement**") associated with this Precedent Agreement and the Service Agreement whereby Shipper agrees to be liable to and indemnify Transporter for the costs to develop and construct the Facilities subject to and as further as provided for pursuant to the terms and conditions of the Financial Backstopping Agreement.
- H. Unless otherwise defined herein, terms that are defined in Transporter's General Terms and Conditions comprising part of the Tariff for Rate 332 Service on the Albion Pipeline as such service is contemplated in Transporter's handbook designated as the "Handbook of Rates and Distribution Services" are used in this Precedent Agreement with the respective meanings that are ascribed to such terms therein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Transporter and Shipper agree as follows:

1. **Effective Date and Term.** This Precedent Agreement shall become effective as of the date first stated above and shall remain in effect until the earlier of: (a) all of the conditions precedent in Section 3 have been satisfied or waived by the Party claiming the benefit thereof, or (b) either Transporter or Shipper exercises their respective termination rights pursuant to this Precedent Agreement.
2. **Firm Transportation Services.** Shipper agrees that it will execute the Service Agreement necessary to satisfy Shipper's firm transportation requirements under the

terms set forth below and in the form included in Transporter's proposed Rate 332 Service for FT Service. Shipper shall be responsible for all charges, pursuant to Transporter's Rate 332 for FT Service as set forth in Transporter's tariff for Rate 332 Service (the "**Tariff**"), as applicable.

3. Conditions Precedent.

- (a) The obligations of Transporter to provide the Service (as such term is defined in the Tariff) are subject to the following conditions precedent, which are for the sole benefit of Transporter and which may be waived or extended in whole or in part in the manner provided for in this Precedent Agreement:
 - (i) Transporter shall have obtained, in form and substance satisfactory to Transporter, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders, and authorizations that are required to:
 - A. construct and operate the Facilities; and
 - B. provide the Services,under a regulatory framework satisfactory to Transporter, in its sole discretion;
 - (ii) Transporter shall have obtained all internal approvals (by the dates noted below) that are necessary or appropriate to provide the Services and to construct and operate the Facilities no later than [*Insert proposed approval date*];
 - (iii) Transporter shall have completed and placed into service the Facilities;
 - (iv) Transporter, where applicable, shall have received from Shipper an executed Financial Backstopping Agreement; and
 - (v) Shipper shall have executed the Service Agreement.

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- (b) The obligations of Shipper under the Service Agreement are subject to the following conditions precedent, which are for the sole benefit of Shipper, and which may be waived or extended in whole or in part in the manner provided for in this Precedent Agreement:

[Shipper Conditions Accepted by Transporter]

- (c) Transporter and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfill the conditions precedent, if applicable, specified in Section 3(a) and the conditions precedent specified in Section 3(b) (if any). Each Party shall notify the other forthwith in writing of the satisfaction or waiver of each condition precedent for such Party's benefit. Subject to Section 3(e), if a Party concludes that it will not be able to satisfy a condition precedent that is for its benefit, that Party may, upon written notice to the other Party, terminate this Precedent Agreement and the Service Agreement and upon the giving of such notice, this Precedent Agreement and the Transportation Agreement shall be of no further force and effect and each of the Parties shall be released from all further obligations hereunder.
- (d) Subject to Section 3(e), if any of the conditions precedent in Section 3(a)(iv) and (v) are not satisfied or waived by Transporter, by *[Insert Date]*, (or if any of the conditions precedent in Section 3(b) are not satisfied or waived by the Shipper, by *[Insert Date]*), then either Party may, upon written notice to the other Party, terminate this Precedent Agreement and the Service Agreement and upon the giving of such notice, this Precedent Agreement and the Service Agreement shall be of no further force or effect and each of the Parties shall be released from all further obligations hereunder.
- (e) In the event of termination of the Precedent Agreement and Service Agreement pursuant to Sections 3(c) or 3(d) herein, then (i) such termination shall be without prejudice to any rights or remedies that a Party may have for breaches of this Precedent Agreement and the Service Agreement prior to such termination and any liability a Party may have incurred before such termination shall not thereby

be released; and (ii) any obligations and any liabilities that the Shipper may have incurred or be liable for pursuant to the Financial Backstopping Agreement shall not thereby be released, affected or diminished.

4. **Transporter's Authorizations and Approvals.** During the term of this Precedent Agreement, Shipper agrees that it will and that it will cause its affiliates to support and cooperate with, and to not oppose, obstruct or otherwise interfere with in any manner, the efforts of Transporter to obtain all authorizations and/or exemptions and supplements and amendments thereto necessary for Transporter to construct, own, operate, and maintain, under Transporter's proposed regulatory framework, the Facilities, including the Albion Pipeline, and to provide the Service contemplated in the Service Agreement and to perform its obligations as contemplated by this Precedent Agreement; provided however, that Shipper's obligations in this regard shall not obligate Shipper to support any aspect of Transporter's efforts to the extent that it is not reasonable or prudent for Shipper to do so having regard to any material adverse impact Transporter's efforts may have on Shipper. In the event that Shipper does not support any aspect of Transporter's efforts to obtain all authorizations and/or exemptions and supplements and amendments thereto necessary for Transporter to construct, own, operate, and maintain, under Transporter's proposed regulatory framework, the Facilities, including the Albion Pipeline, Transporter may, subject to Section 3(e), upon written notice to Shipper, terminate this Precedent Agreement and the Service Agreement and upon the giving of such notice, this Precedent Agreement and the Service Agreement shall be of no further force and effect and each of the Parties shall be released from all further obligations hereunder except as provided in Section 3(e).

5. **Allocation of Capacity in the Event of Partial Completion of Facilities**

If Facilities are required to satisfy any Services,

- (a) then to the extent such Facilities are only partially completed and placed in service by the Commencement date or at any time thereafter, then any firm capacity available on such partially completed Facilities (the "**Partial Expansion Capacity**") will be allocated in accordance with this Section 5 to all Service

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Agreements: (a) which require the same Facilities for the Maximum Daily Volume; and (b) under which all conditions precedent have been satisfied or waived except for such conditions precedent that relate to the completion and placing in service of the Facilities.

- (b) Such allocation shall be made on the basis of highest economic value based on the net present value calculated on the proposed per unit rate and the proposed term of the Service Agreement without regard to the proposed quantity requested.
- (c) If pursuant to this Section, a Service Agreement is allocated any portion of Partial Expansion Capacity, then the conditions precedent that relate to the completion and placing in service of the Facilities shall be deemed to have been waived such that the Term under the Service Agreement will commence. If a Service Agreement is not allocated the entirety of the Maximum Daily Volume under such Service Agreement, then such Maximum Daily Volume shall be deemed to be such lower allocated amount (and for greater certainty, the Term shall nevertheless be deemed to have commenced) until such time as the Service Agreement is allocated additional Partial Expansion Capacity pursuant to this Section or until the entirety of the Facilities are completed and placed in service.
- (d) The procedure contemplated by this Section will be applicable from time to time on each occasion that the Facilities are incrementally completed and placed in service.

6. **Limitation of Damages.** The Parties hereto agree that neither Party shall be liable to the other Party for any punitive, special, exemplary, indirect, incidental or consequential damages (including, without limitation, loss of profits or business interruptions) arising out of or in any manner related to this Precedent Agreement, and without regard to the cause or causes thereof or the sole, concurrent or contributory negligence (whether active or passive), strict liability (including, without limitation, strict statutory liability and strict liability in tort) or other fault of either Party. The immediately preceding sentence specifically protects each Party against such punitive, exemplary, indirect, incidental or consequential damages even if with respect to the negligence, gross negligence, willful

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misconduct, strict liability or other fault or responsibility of such Party, and all rights to recover such damages or profits are hereby waived and released. Notwithstanding the foregoing, in no event shall this Section 6 herein limit or exclude any costs that the Shipper may incur or be liable for pursuant to the Financial Backstopping Agreement.

7. **Modification or Waiver.** No modification or waiver of the terms and provisions of this Precedent Agreement may be made except by the execution of a written amendment to this Precedent Agreement. The waiver by any Party of a breach or violation of any provision of this Precedent Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation thereof.

8. **Supersedes Other Agreements.** This Precedent Agreement, Service Agreement (including the terms of the Tariff) and the Financial Backstopping Agreement reflect the whole and entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the Parties with respect to the subject matter hereof.

9. **Notices.** Notices under this Precedent Agreement must be sent,

If to Transporter:

Enbridge Gas Distribution Inc.
500 Consumers Road
North York, ON M2J 1P8
Attention: Director, Energy Supply and Policy
Facsimile: (416) 498-3816

If to Shipper:

[●]

Any Party may change its address by written notice to that effect to the other Party. Notices given under this Section are deemed to have been effectively given upon receipt, if mailed via prepaid overnight mail by a reputable carrier or if delivered by courier. Notices sent by mail will be deemed effectively given on the third (3rd) business day

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following the day when the notice properly addressed and postpaid is placed in the Canadian mail. It is expressly understood and agreed, however, that any notices must first be delivered by facsimile or other similar means, and if mailed or sent by courier, must be mailed or sent by courier as soon as practicable thereafter.

10. **Governing Law.** This Precedent Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and each of the parties shall attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
11. **No Third Party Beneficiaries.** This Precedent Agreement shall not create any rights in third parties, and no provision of this Precedent Agreement shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the Parties.
12. **No Drafting Presumption.** No presumption shall operate in favor of or against any Party as a result of any responsibility that any Party may have had for drafting this Precedent Agreement.
13. **Recitals.** The recitals and representations appearing first above are hereby incorporated in and made a part of this Precedent Agreement.
14. **Counterparts.** This Precedent Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.
15. **In Service Timing.** Notwithstanding anything in this Precedent Agreement or the Service Agreement, Shipper agrees that it shall have no cause of action or claims against Transporter if the in-service date for the Facilities is later than the date stated in the recitals. This Section 15 is intended to survive the termination of this Precedent Agreement.
16. **Definitions.** Capitalized terms used in this Precedent Agreement shall have the meaning given those terms in the Tariff, unless defined herein.

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- 17. **Assignment.** The Parties hereto shall not assign this Precedent Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. This Precedent Agreement shall be binding upon and shall enure to the benefit of the Parties hereto and their permitted successors and assigns. In no event will the assignment of this Precedent Agreement be permitted unless the Service Agreement and the Financial Backstopping Agreement are also assigned to the same permitted assignee.

- 18. **Conflict.** For the period that this Precedent Agreement is in effect, in the event of any conflict between the provisions of the main body of this Precedent Agreement and the Service Agreement, the provisions of the main body of this Precedent Agreement shall prevail over the Service Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Precedent Agreement to be duly executed by their duly authorized officers effective as of the date first written above.

ENBRIDGE GAS DISTRIBUTION INC. [COUNTERPARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title: