

**Contract No. M16004**

**M16 TRANSPORTATION CONTRACT**

**BETWEEN**

**UNION GAS LIMITED**

**AND**

**MARKET HUB PARTNERS CANADA L.P.**  
**by its general partner MARKET HUB PARTNERS MANAGEMENT INC.**

**DATED**

**August 9, 2007**

# M16 TRANSPORTATION CONTRACT

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**THIS M16 TRANSPORTATION CONTRACT** (“Contract”) dated as of the 9th day of August, 2007

BETWEEN:

**UNION GAS LIMITED**, a company incorporated under the laws of the Province of Ontario,

(hereinafter referred to as “**Union**”)

- and -

**MARKET HUB PARTNERS CANADA L.P. by its general partner MARKET HUB PARTNERS MANAGEMENT INC.**, a company incorporated under the laws of the Dominion of Canada,

(hereinafter referred to as “**Shipper**”)

**WHEREAS**, Union owns and operates a natural gas transmission system in South-western Ontario, through which Union offers the services as more particularly defined in Article 5.0 herein;

**AND WHEREAS** Union is willing to install, own, operate, and maintain the pipeline and measurement facilities necessary to receive and deliver Shipper's gas;

**AND WHEREAS**, Shipper is a natural gas storage operator in South-western Ontario who is seeking or has obtained permission from the Ontario Energy Board (“**OEB**”) to inject gas into, store gas in and remove gas from the St. Clair Pool gas storage facility located in Lots A and B, Concessions X and XI, Township of St. Clair (geographic Township of Sombra), Ontario (the “**Pool**”);

**AND WHEREAS**, Shipper wishes to retain Union to provide the Services, as set out herein, and Union has agreed, subject to the terms and conditions of this Contract, to provide the Services requested;

**NOW THEREFORE**, this Contract witnesses that, in consideration of the mutual covenants and agreements herein contained, the payment and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## **1.0 ARTICLE 1.0 - INTERPRETATION AND DEFINITIONS**

- 1.01 **Conflict:** In the event of any conflict between the provisions of this Contract and the C1 Rate Schedule or the M16 Rate Schedule, as defined below, the provisions of the C1 Rate Schedule or the M16 Rate Schedule, as the case may be, shall prevail over this Contract, and in the event of a conflict between the C1 Rate Schedule and the M16 Rate Schedule, the M16 Rate Schedule shall prevail.
- 1.02 **Currency:** All reference to dollars in this Contract shall mean Canadian dollars.
- 1.03 **Divisions, Headings and Index:** The division of this Contract into articles, sections and subsections, and the insertion of headings and any table of contents or index provided are for convenience of reference only, and shall not affect the construction or interpretation hereof.

- 1.04 Extended Meaning: Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. The words “herein” and “hereunder” and words of similar import refer to the entirety of this Contract, and not only to the section in which such use occurs.
- 1.05 Industry Usage: Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the transportation, storage, and distribution or sale of natural gas have an accepted meaning shall have that meaning.
- 1.06 Measurements: Units set out in Imperial measurement in parentheses beside their SI (metric) equivalent are for reference only and in the event of a conflict between SI (metric) and Imperial measurement herein, SI (metric) shall prevail.
- 1.07 Definitions: Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in the M16 Rate Schedule and the C1 Rate Schedule, unless the context hereof otherwise clearly requires. The following definitions shall be read and interpreted as though included in the aforementioned:
- a) **“Authorized Overrun”** shall mean the amount by which the Authorized Quantity exceeds the Contract Demand;
  - b) **“Authorized Quantity”** shall have the meaning given thereto in Schedule “B” of the C1 Rate Schedule;
  - c) **“Contract Demand”** shall mean the maximum quantity of gas which Union shall be obligated on a firm or interruptible basis hereunder to be ready to deliver to or receive from the Shipper on any day;
  - d) **“Daily Demand Rate”** shall mean the Monthly Demand Charge contained in Union’s M16 Rate Schedule divided by the number of days in the month for which such rate is being calculated, applied to the firm Contract Demand;
  - e) **“Dehydration Contract”** the agreement dated August 16, 2007 between Union and the Shipper for the dehydration of gas as more fully described in the Dehydration Contract;
  - f) **“Delivery Point”** and **“Receipt Point”** shall mean any one of the points described as follows:
    - i. Dawn (TCPL): At the junction of Union’s and TCPL’s facilities, at or adjacent to Dawn (Facilities)
    - ii. Dawn (Facilities): Union’s Compressor Station site situated in the northwest corner of Lot Twenty-Five (25), Concession II, in the Township of Dawn Euphemia, in the County of Lambton.
    - iii. Custody Transfer Point: That point on the piping system at the Pool Station which is at the Shipper side of the insulating flange on the Union

Injection Expansion Facilities, and which point shall serve as the point of custody transfer;

- g) **“Interconnecting Pipeline”** shall mean a pipeline that directly connects to the Union pipeline system.
- h) **“Pool Quantity”** shall mean the actual daily quantity of gas delivered to or received from Shipper at the Custody Transfer Point;
- i) **“Pool Station”** shall mean the physical location of Union’s measurement and control facilities to the Pool, being Lot A, Concession XI, Township of St. Clair (geographic Township of Sombra);
- j) **“Shipper Quantity”** shall, on any gas day, be equal to the greater of: (i) the Authorized Quantity for that gas day; and (ii) the nomination duly made by Shipper in good faith prior to the nomination deadline for the first nomination window applicable for that gas day; provided that in no event shall the Shipper Quantity exceed the firm Contract Demand;
- k) **“Union’s C1 Rate Schedule”** or **“the C1 Rate Schedule”** or **“C1”** shall mean Union’s C1 Rate Schedule, (including Schedules attached thereto), or such other replacement Rate Schedule which may be applicable to the services provided hereunder as approved by the Ontario Energy Board from time to time;
- l) **Union’s M16 Rate Schedule”** or **“the M16 Rate Schedule”** or **“M16”** shall mean Union’s M16 Rate Schedule, (including Schedules attached thereto), or such other replacement Rate Schedule which may be applicable to the services provided hereunder as approved by the Ontario Energy Board from time to time;
- m) **“Union Injection Expansion Facilities”** shall mean the facilities necessary for Union to provide the Services described in Section 5.01 (a) (1), including without limiting the generality of the foregoing:
  - i. a meter and any associated recording gauges as are necessary;
  - ii. pressure and/or flow control devices, over pressure protection and telemetry equipment as are necessary;
  - iii. piping, fittings, material, filtration facilities, cathodic protection and insulating flanges;

- n) **“Union Withdrawal Expansion Facilities”** shall mean the facilities necessary for Union to provide the Services described in Section 5.01 (a) (2), including without limiting the generality of the foregoing:
  - i. a meter and any associated recording gauges as are necessary;
  - ii. pressure and/or flow control devices, over pressure protection and telemetry equipment as are necessary;
  - iii. a suitable gas odourizing injection facility if Union deems such facility to be necessary; and
  - iv. gas chromatograph, moisture analyzer, piping, fittings, material, filtration facilities, cathodic protection and insulating flanges.

## 2.0 **ARTICLE 2.0 – GENERAL TERMS AND CONDITIONS**

2.01 The General Terms & Conditions for the services provided under this Contract will be those specified in Schedule “A” of the M16 Rate Schedule as may be amended from time to time, and in Article XII of Schedule “A” of the C1 Rate Schedule as may be amended from time to time, and Schedule B of the C1 Rate Schedule, all of which are hereby incorporated into and form an integral part of this Contract. All references to “Customer” or “customer” in Schedule “A” of Union’s M16 Rate Schedule or in Article XII of Schedule “A” of Union’s C1 Rate Schedule shall be deemed to be references to Shipper.

## 3.0 **ARTICLE 3.0 - CONDITIONS PRECEDENT**

3.01 The obligations of Union to provide the Services hereunder are subject to the following conditions precedent, which are for the sole benefit of Union and which may be waived or extended in whole or in part in the manner provided in this Contract:

- (a) Union shall have obtained, in form and substance satisfactory to Union, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders and authorizations, that are required to:
  - i) provide the Services; and,
  - ii) construct the Union Injection Expansion Facilities and the Union Withdrawal Expansion Facilities;
- (b) Union shall have obtained all internal approvals that are necessary or appropriate to:
  - i) provide the Services; and,
  - ii) construct the Union Injection Expansion Facilities and the Union Withdrawal Expansion Facilities;
- (c) Union shall have completed and placed into service:
  - i) the Union Injection Expansion Facilities, and

- ii) the Union Withdrawal Expansion Facilities;
- (d) Shipper shall, on or before August 16, 2007, have provided Union with the requisite security or financial assurances required by Union, acting reasonably, to ensure Shipper's ability to honour the provisions of this Contract. Such security or financial assurances will be in a form and amount acceptable to Union;
- (e) Shipper shall, on or before August 16, 2007, at Shipper's own cost and expense, have obtained a registered lease or freehold ownership in Union's favour for the Union Injection Expansion Facilities and Union Withdrawal Expansion Facilities located at the Pool Station satisfactory to Union and sufficient to provide Union with free uninterrupted access to, from, under and above the Pool Station for a term (and extended terms) identical to this Contract, plus sixty (60) days (such land rights being referred to as the "**Pool Station Land Rights**"), and shall provide Union with a bona fide copy of such agreements prior to Union commencing the construction of the Union Injection Expansion Facilities and Union Withdrawal Expansion Facilities;
- (f) Shipper shall, on or before August 16, 2007, have executed a Hub Contract (the "**Facilitating Agreement**") with Union; and
- (g) Shipper shall, on or before August 16, 2007, have paid any amounts owing pursuant to Section 8.04.

3.02 The obligations of Shipper hereunder 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 in this Contract:

- (a) Shipper shall, on or before August 16, 2007, have entered into the necessary contracts with Union and/or others to facilitate the Services contemplated herein, including contracts for upstream and downstream transportation, and shall specifically have an executed and valid Facilitating Agreement; and shall, as required, have entered into the necessary contracts to purchase the gas quantities handled under this Contract;
- (b) Shipper shall, on or before August 16, 2007, have obtained, in form and substance satisfactory to Shipper, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders and authorizations, that are required from federal, state, or provincial authorities for the gas quantities handled under this Contract; and,
- (c) Shipper shall, on or before August 16, 2007, have obtained all internal approvals that are necessary or appropriate for the Shipper to execute this Contract.

3.03 Union and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfil the conditions precedent specified in Section 3.01(a), (c), (d), (e), (f), (g) and Section 3.02(a) and (b). Each party shall notify the other forthwith in writing of their respective satisfaction or waiver of each condition precedent for such party's benefit. If a party concludes that it will not be able to satisfy a condition precedent that is for its benefit, such party may, upon written notice to the other party, terminate this Contract and upon

the giving of such notice, this Contract 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 Contract prior to such termination and any liability a party may have incurred before such termination shall not thereby be released.

- 3.04 If any of the conditions precedent in Sections 3.01(d), (e), (f), or (g) are not satisfied or waived by the party entitled to the benefit of such condition precedent by the date specified in such Section, then either party may terminate this Contract upon written notice to the other party, in which event this Contract 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 Contract prior to such termination and any liability a party may have incurred before such termination shall not thereby be released.

#### 4.0 **ARTICLE 4.0 - TERM OF CONTRACT**

- 4.01 (a) This Contract shall be effective as of the date of execution hereof; however, the service obligations, terms and conditions hereunder (except for the service obligations, terms and conditions under Section 5.01 (a) (2)) shall commence on August 16, 2007 (such date being known as the “**Commencement Date**”) and shall continue in full force and effect until May 31, 2012 (such period being referred to as the “**Initial Term**”). This Contract will continue in full force and effect beyond the Initial Term, automatically renewing for a period of one year, and every one year thereafter, subject to notice in writing by either party of termination at least two years prior to the expiration thereof.

(b) Notwithstanding anything in Section 4.01 (a), the service obligations, terms and conditions for services under Section 5.01 (a) (2) shall begin the day after the date that the condition precedent in Section 3.01 (c) (ii) is satisfied or waived.

- 4.02 Without limiting the generality of the foregoing, this Contract may be terminated in accordance with Article XII of Schedule “A” of Union's C1 Rate Schedule.
- 4.03 For the purpose of completing a final determination of the actual quantities of gas handled under this Contract, Union shall have the right to amend its statements for a period equal to the time during which the Interconnecting Pipeline retains the right to amend their statements, which period shall not exceed three years from the date of termination of this Contract.

#### 5.0 **ARTICLE 5.0 – SERVICES**

- 5.01 Services: Shipper agrees to the terms and conditions set out herein upon nomination to Union for the provision of the following services (the “**Services**”):

- a) Transportation Services:

Union agrees upon the commencement of service obligations pursuant to Section 4.0 hereunder, on any day, subject to the terms and conditions herein:



- (1) From May 1 to August 15 (the “**Injection Period**”), Union shall transport from the Receipt Point of Dawn (TCPL) or Dawn (Facilities) to the Delivery Point of Custody Transfer Point, on a firm basis, a quantity of gas on any one gas day of up to 9,000 GJ and on an interruptible basis from August 16 to April 30 up to 9000GJ/day;
- (2) From November 1 to March 31 (the “**Withdrawal Period**”), Union shall transport from the Receipt Point of Custody Transfer Point to the Delivery Point of Dawn (TCPL) or Dawn (Facilities), on a firm basis, a quantity of gas on any one gas day of up to 5,000 GJ and on an interruptible basis from November 1 to March 31 of 4000 GJ/day and on an interruptible basis from April 1 to October 31 up to 9000 GJ/day;
- (3) Union agrees that it shall, upon the request of Shipper, use reasonable efforts to transport gas on an overrun basis (any quantities above 9000 GJ/day), if authorized by Union in its sole discretion, up to the station capacity.

b) Limitations: Notwithstanding anything in Section 5.01(a) hereof:

- i. The firm service parameters in Section 5.01 (a)(1) and 5.01 (a)(2) are subject to compliance with the terms hereof, in particular the pressure restrictions of Section 9.0;
- ii. Union shall under no circumstances be required to authorize delivery on any day, a quantity of gas in excess of the Contract Demand or in any hour a quantity of gas in excess of 5% of the Authorized Quantity;
- iii. Shipper shall use reasonable best efforts to nominate a quantity of gas less than or equal to the maximum quantity of gas Shipper expects it can deliver or receive in any gas day;
- iv. Union shall under no circumstances be required to authorize a nomination that is greater than the maximum station capacity. The station is designed to have a maximum capacity of 28,000 GJ/day at a design pressure of 2413 kPag (350 Psig) (as measured at the Custody Transfer Point);
- v. Union shall under no circumstances be required to authorize a nomination (which for greater clarity, shall include any nomination for firm Contract Demand) for transportation of gas from the Receipt Point of Custody Transfer Point to the Delivery Point of Dawn(TCPL) or Dawn(Facilities) on any day that is greater than the forecasted consumption (by Union, acting reasonably) for the Dawn West distribution system for that day.

c) Balancing Service:

Union and Shipper recognize that on any day the receipt of gas by Union and the delivery of gas by Union may not always be exactly equal. The difference between the Pool Quantity and Authorized Quantity will be handled as though it was delivered to or received from Union at Dawn under the Facilitating Agreement. Shipper further acknowledges that it is impractical for Shipper to nominate the Pool Quantity. Union shall calculate the Pool Quantity on a post-flow basis.

- 5.02 Accounting for Service: All quantities of gas handled by Union shall be accounted for on a daily basis.
- 5.03 Commingling: Union shall have the right to commingle the quantity of gas referenced herein with gas owned by Union or gas being stored and/or transported by Union for third parties.

## 6.0 **ARTICLE 6.0 - FORCE MAJEURE**

- 6.01 An event of force majeure on Union's system will excuse the failure to deliver gas by Union or the failure to accept gas by Union hereunder, and both parties shall be excused from performance of their obligations hereunder, except for payment obligations, to the extent of and for the duration of the force majeure. Such cause or circumstances affecting the performance of this Contract shall not relieve either party from its obligations to make payments of amounts due hereunder. Force majeure shall mean acts of God, or of the Queen's enemies, strikes, lockouts, labour troubles, earthquakes, fire, revolution, wars, riots, epidemics, insurrections, explosions, breakage or accidents to machinery or pipelines, the necessity for making repairs to or alterations of machinery or lines of pipe, inability to obtain materials, interference of any civil or military authority of any government, state or municipality whatsoever, or the unforeseen reduction in natural gas usage of the Dawn West distribution system , regardless of the duration of such unforeseen reduction, or any other cause, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party claiming relief hereunder and which, by the exercise of due diligence, such party is unable to prevent or overcome.
- 6.02 Neither party shall be entitled to the benefit of the provisions of Section 6.01 under any or all of the following circumstances:
  - a) to the extent that the failure was caused by the gross negligence of the party claiming force majeure; or
  - b) to the extent that the failure was caused by the party claiming force majeure having failed to remedy the condition and remove the cause or circumstances in a reasonable manner, and to resume the performance of such covenants or obligations, with all reasonable dispatch.
- 6.03 In the event that either the Shipper or Union is rendered unable, in whole or in part, by force majeure, to perform or comply with any obligation or condition of this Contract, such party shall give notice and full particulars of such force majeure to the other party as soon as possible after the occurrence of the cause relied on and subject to the provisions of this Contract. The party claiming force majeure shall give notice to the other party as soon as possible after the force majeure condition has been remedied, to the effect that

the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of the suspended covenants or obligations under this Contract.

- 6.04 If on any gas day Union fails to receive or deliver the Shipper Quantity by reason of force majeure on Union's system, then for that gas day Union shall credit to Shipper's invoice an amount equal to the applicable Daily Demand Rate, multiplied by the difference between the Shipper Quantity and the Pool Quantity.
- 6.05 It is understood and agreed that the obligation to settle strikes and lockouts shall be entirely within the discretion of the party whose labour force is on strike, and that Section 6.02 (b) shall not require the settlement of strikes or lockouts by acceding to the demands of any opposing person when such course is inadvisable in the discretion of the party whose labour force is on strike.
- 6.06 An event of force majeure, as contemplated under Section 6.01, upstream or downstream of Union's system, shall not relieve Shipper of any charges payable under Article 8.0.

## 7.0 **ARTICLE 7.0 -SERVICE CURTAILMENT**

- 7.01 **Capacity Sharing:** Where requests for interruptible Services hereunder exceed the capacity available for such Service, Union will authorize nominations from shippers and allocate capacity as per Union's procedures and policies and shippers shall be so advised. Any interruptible Services provided herein are subordinate to any and all firm services supplied by Union.
- 7.02 **Capacity Procedures:** Union reserves the right to change its procedures and policies for sharing interruptible capacity and will provide Shipper with two months notice of any such change.
- 7.03 **Maintenance:** Union's facilities from time to time may require maintenance or construction. In the event that such event occurs and in Union's sole opinion, acting reasonably, may impact its ability to meet Shipper's requirements, Union shall provide at least ten days notice to the Shipper, except in the case of emergencies. In the event the maintenance impacts Union's ability to meet Shipper's requirements, Union shall not be liable for any damages and shall not be deemed to be in breach of the Contract. To the extent that Union's ability to receive or deliver gas is impaired, Demand Charge Relief shall be calculated and credited to Shipper's invoice in accordance with Section 6.04 hereof. Union shall use reasonable efforts to determine a mutually acceptable period during which such maintenance or construction will occur and also to limit the extent and duration of any impairments. Union will endeavour to schedule and complete the maintenance and construction, that can be scheduled and completed, and which would normally be expected to impact on Union's ability to meet its obligations of any contract year, during the period from April 1 through to October 31.
- 7.04 Intentionally deleted.
- 7.05 **Shipper's Facilities:** Shipper shall complete and maintain a plan which depicts Shipper's production storage facilities including all emergency shut off valves and emergency equipment and provide a copy to Union upon Union's request. Shipper shall provide to

Union the names and telephone numbers of those persons whom Union may contact in the event of an emergency situation arising within the Shipper's facilities.

## 8.0 **ARTICLE 8.0 - CHARGES AND RATES**

- 8.01 The charges and rates to be billed by Union and paid for by the Shipper for the Services provided under this Contract will be those specified in Union's M16 Rate Schedule for Transportation Services for Shippers located west of Dawn.
- 8.02 Prices exclude any applicable Goods and Services Tax or other taxes, royalties or levies imposed currently or subsequent to the commencement of this Contract.
- 8.03 Set Off: If Shipper shall, at any time, be in arrears under any of its payment obligations to Union under this Contract, then Union shall be entitled to reduce the amount payable by Union to Shipper under this Contract or any other contract by an amount equal to the amount of such arrears or other indebtedness to Union. In addition to the foregoing remedy, Union may, upon forty-eight (48) hours verbal notice, take possession of any or all of Shipper's gas under this Contract which shall be deemed to have been assigned to Union, to reduce such arrears to Union.
- 8.04 Aid to Construction: Shipper agrees to reimburse Union for the cost of the Union Injection Expansion Facilities and the Union Withdrawal Expansion Facilities ("**Aid to Construction**"). Such Aid to Construction shall include any and all costs, expenses, amounts, damages, obligations, or other liabilities (whether of a capital or operating nature, and whether incurred before or after the date of this Contract) actually paid by Union (including amounts paid to affiliates for services rendered in accordance with the Affiliate Relationships Code as established by the OEB) in connection with or in respect of satisfying the conditions precedent set out in Section 3.01 (including without limitation the construction and placing into service of the Union Injection Expansion Facilities and the Union Withdrawal Expansion Facilities, the obtaining of all governmental, regulatory and other third party approvals, and the obtaining of rights of way) whether resulting from Union's negligence or not, except for any costs that have arisen from the gross negligence, fraud, or wilful misconduct of Union.

The Aid to Construction is estimated to be \$500,000 but the parties agree that this figure is an estimate only and the actual Aid to Construction may be higher or lower.

Shipper shall pay to Union \$95,843.31 (the "**First Payment**") at the time of the execution of this Contract and shall pay an amount every month as invoiced by Union starting one month after the payment of the First Payment until the Aid to Construction is paid in full. In the event Union has incurred costs, as set out herein, relative to the construction, installation or connection of the gas metering station prior to being notified by Shipper of Shipper's intention to terminate this Contract, Shipper shall promptly remit to Union such actual costs on presentation to Shipper of an invoice for the same from Union.

GST will be applied to all amounts to be paid under this Section. Shipper warrants and represents that no payment to be made by Shipper under this Contract is subject to any withholding tax.

8.05 Any amounts due and payable by Shipper to Union under this Contract shall, if not paid by the due date thereof, be subject to interest pursuant to Article IX of Schedule A of the M16 Rate Schedule.

**9.0 ARTICLE 9.0 – PRESSURES**

9.01 Union may in its sole discretion at any time vary the Dawn West distribution system pipeline pressure within the range 345 kPag (50 psig) and 1379 kPag (200psig). Union may in its sole discretion at any time vary the Sombra-Bickford NPS10 pipeline pressure within the range 1034 kPag (150 psig) and 9308 kPag (1440 psig).

9.02 Transportation to the Pool: Notwithstanding anything in Section 5.01, Union shall under no circumstance be obligated to authorize a nomination or transport any quantity of gas under this Contract to the Delivery Point of the Custody Transfer Point if: (a) the pressure at the Custody Transfer Point is greater than 6550 kPag (950 Psig); or (b) the pressure of deliveries at the Receipt Point of Dawn (TCPL) or Dawn (Facilities) is less than 4,825 kPag (700 Psig).

9.03 Transportation to Dawn: Notwithstanding anything in Section 5.01, Union shall under no circumstance be obligated to authorize a nomination or transport any quantity of gas under this Contract to the Delivery Point of Dawn (TCPL) or Dawn (Facilities) if the pressure at the Custody Transfer Point is less than 1379kPag (200 Psig). For deliveries to the Delivery Point Dawn (TCPL), deliveries by Union shall be made at Union’s prevailing line pressure which shall be in accordance with the agreement between Union and TCPL. For deliveries to the Delivery Point Dawn (Facilities), deliveries by Union shall be made at a pressure of not greater than 4,825 kPag (700 Psig).

9.04 Under no circumstances shall Union be obligated to receive or deliver gas hereunder at pressures exceeding the maximum allowable operating pressures prescribed under any applicable governmental regulations; nor shall Union be required to make any physical deliveries which its existing facilities cannot accommodate or that exceed the Delivery Pressure as Union may set from time to time.

**10.0 ARTICLE 10.0 – MEASUREMENT, QUALITY, AND OPERATION**

10.01 For Services provided pursuant to Article 5.0 hereof:

a) The quality of the gas and the measurement of the gas to be received by Union and delivered to Shipper, or delivered by Shipper to Union hereunder is to be of a merchantable quality and in accordance with the quality standards and measurement standards as set out by Union in Schedule “A” of Union’s M16 Rate Schedule, except that if the water content exceeds the lower of:

- i) 65 mg of water per cubic metre; and
- ii) the maximum water content set out in Article II of Schedule A of the M16 Rate Schedule;

then Union at Unions sole discretion may either:

- a) refuse to accept gas until such time as the gas is proven to be in compliance with this section or;
    - b) accept the gas subject to Shippers obligations under the Dehydration Contract;
  - b) Union may odourize or deliver odourized gas under this Contract;
  - c) Shipper shall not deliver gas to Union with a level of mercaptan sulphur greater than the lesser of :
    - i) 1 milligram per cubic metre; and
    - ii) the maximum mercaptan sulphur level set out in Article II of Schedule A of the M16 Rate Schedule;
  - d) Upon request by Union, Shipper shall obtain measurement of the total quantity and gross heating value of the gas to be received by Union hereunder from the upstream transporter(s) (or Union where applicable). Such measurement shall be done in accordance with established practices between Union and the upstream transporter(s) (or Union where applicable);
  - e) Shipper shall if requested by Union monitor the mercaptan sulphur content of the gas delivered to Union under this Contract and shall provide at no cost to Union a continuous signal quantifying the mercaptan sulphur content in milligrams per cubic metre.
- 10.02 In the event of an error in metering or a meter failure (such error or failure being determined through check measurement, custody transfer measurement by Union or any other available method), then Shipper, upon Union's request, shall enforce its rights as shipper under its contracts with the upstream transporter(s) (or Union where applicable) to remedy such error or failure, including enforcing any inspection and/or verification rights and procedures.
- 10.03 All of the Union Injection Expansion Facilities and Union Withdrawal Expansion Facilities shall remain the property of Union. Union shall be entitled to remove said equipment at any time within a period of sixty (60) days from any termination or expiry of this Contract. Shipper shall take all necessary steps to ensure Union may enter Pool Station to remove such equipment for a period of sixty (60) days after termination or expiry of this Contract.
- 10.04 Shipper shall, at Shipper's own cost and expense:
- a) obtain the Pool Station Land Rights; and
  - b) furnish, install, set, and maintain suitable pressure and quantity control equipment and such additional equipment as required on Shipper's delivery system, to protect against the over pressuring of Union's facilities as set out in Article 9.0, protect Union from receiving gas not meeting the quality specification as set out in Section 10.01, and to limit the daily flow of gas to the corresponding parameters as set out in Section 5.01 herein.

- 10.05 Shipper shall within thirty (30) days of the delivery of an invoice by Union, reimburse Union for any actual costs reasonably incurred by Union for any repair, replacement, relocation, or upgrading of any meter station or any Union Injection Expansion Facilities or Union Withdrawal Expansion Facilities requested by Shipper, or as required by law or by duly constituted regulatory body, or through good engineering practice. Union shall be responsible for any costs incurred by Union to correct an error made by Union.
- 10.06 Operation and Maintenance. Subject to Section 10.05, each party shall be fully responsible for the continued operation, maintenance, repair and replacement of its respective facilities. Both parties agree to maintain cathodic protection on their respective facilities.
- 10.07 The Total Heating Value of the gas shall be determined by Union by means of a gas chromatograph or by any other means if mutually agreed upon by the parties. The energy content of the gas transported through the pipeline shall be calculated by multiplying the gas volume by the Total Heating Value. The Total Heating Value of the gas shall be determined hourly and the total energy content of the gas transported through the pipeline shall be calculated daily.
- 10.08 The moisture content shall be determined by Union by means of a moisture analyzer or by any other means if mutually agreed upon by the parties.
- 10.09 Inspection: Each party shall inspect its facilities as required by industry standards or by the appropriate regulatory body.
- 10.10 Each party shall decide, in its sole discretion, whether its facilities need to be repaired or replaced. In the event that repair or replacement is needed, the party undertaking such work will, to the extent possible, give the other party 60 days notice and will ensure that the work be done in a manner so as to minimize the amount of time the Pipeline has restricted flows.
- 10.11 Union and Shipper agree that Union's measurement equipment shall be used for custody transfer metering and billing purposes, notwithstanding any secondary measurement which Shipper may provide.

#### 11.0 **ARTICLE 11.0 - NOMINATIONS**

- 11.01 Nominations shall be pursuant to Schedule "B" of Union's C1 Rate Schedule, as the same may be amended from time to time.

#### 12.0 **ARTICLE 12.0 - SHIPPER'S REPRESENTATIONS AND WARRANTIES**

- 12.01 Shipper warrants that it will, at the time of delivery of the gas to Union:
- a) possess a valid order to inject gas into, store gas in and remove gas from the Pool; and,

- b) have good and valid title or legal authority to all gas delivered by it under this Contract, free and clear of all liens, encumbrances and claims. Shipper will indemnify Union and save Union harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, licence fees or any charges thereon, which are applicable before the possession of gas passes to Union.

12.02 Shipper's Warranty: Shipper warrants that it will, if required, maintain, or have maintained on its behalf, such certificates, permits, licences and authorizations from regulatory bodies or other governmental agencies in the U.S.A. and Canada, as the case may be, as are necessary to enable Shipper, or others designated by Shipper, to deliver to Union at the Receipt Point the quantities of gas to be handled by Union under this Contract. Shipper further warrants that it shall maintain the necessary contracts with Union and/or others to facilitate the Services contemplated herein to a point which is located outside of Union's system and franchise area.

12.03 Financial Representations: Shipper represents and warrants that the financial assurances and representations provided to Union at the commencement of this Contract (if any) shall remain in place until the Aid to Construction is paid in full. In addition, should Union, acting reasonably, solely determine that Shipper's financial condition warrants such, Shipper shall within fourteen (14) days of receipt of such notice by Union, obtain and provide to Union an additional letter of credit or other security in the form reasonably required by Union (the "Security") equivalent to one year of demand charges hereunder, in favour of Union, in order to fulfil Shipper's payment obligations hereunder. In the event that Shipper does not provide to Union such Security, Union may deem a default under the Default and Termination provisions of Article XII of the Schedule "A" of Union's C1 Rate Schedule.

### 13.0 **ARTICLE 13.0 - MISCELLANEOUS PROVISIONS**

13.01 Assignment: Shipper may not assign this Contract without the written consent of Union and, if required, the approval of the OEB. Should Union consent to the assignment, and if OEB approval is needed, Union will apply for OEB approval with all costs of the application to be paid by Shipper.

13.02 Notices: Subject to the express provisions of this Contract, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer or other responsible employee of the addressee or sent by registered mail, charges prepaid, or by facsimile or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened, or during any actual, postal strike or other disruption of the postal service. Any communication personally delivered shall be deemed to have been validly and effectively received on the date of such delivery. Any communication so sent by facsimile or other means of telecommunication shall be deemed to have been validly and effectively received on the business day following the day on which it is sent. Any communication so sent by mail shall be deemed to have



been validly and effectively received on the seventh business day following the day on which it is postmarked.

Communications to the parties hereto shall be directed as follows:

**IF TO SHIPPER:**

Notices: Market Hub Partners Canada L.P.  
P.O. Box 2001  
50 Keil Drive North  
Chatham, Ontario,  
N7M 5M1  
Attention: Vice President, MHP Canada  
Telephone: (519) 436-4577  
Facsimile: (519) 358-4449

Nominations: Attention: Gas Management Services, Union Gas Limited  
Telephone: (519) 436-4545  
Facsimile: (519) 436-4635

Field/Emergency: MHP Operations  
Telephone: (519) 683-4468 ext 233  
Telephone: (519) 365-0510

**IF TO UNION:**

Notices: Union Gas Limited  
50 Keil Drive North  
Chatham, Ontario,  
N7M 5M1  
Attention: Director, Business Development  
Telephone: (519) 436-4527  
Facsimile: (519) 436-4643

Nominations: Attention, Manager, Gas Control  
Telephone: (519) 436-4545  
Facsimile: (519) 436-4635

Notwithstanding the above, nominations shall be made by facsimile or other recorded electronic means, subject to execution of the "Agreement for Use of the Secured Portion of Union Gas Limited's Website," or such other agreement, satisfactory to Union, and will be deemed to be received on the same day and same time as sent. Each party may from time to time change its address for the purpose of this Section by giving notice of such change to the other party in accordance with this Section.

- 13.03 Law of Contract: Union and Shipper agree that this Contract is made in the Province of Ontario and that, subject to Article X of Schedule "A" of the M16 Rate Schedule, the courts of the Province of Ontario shall have jurisdiction in all matters contained herein. The parties further agree this Contract shall be construed in accordance with the laws of the Province of Ontario.

13.04 Possession of Gas:

- a) Union accepts no responsibility for any gas prior to such gas being delivered to Union at the Receipt Point or after its delivery by Union at the Delivery Point. As between the parties hereto, Union shall be deemed to be in control and possession of and responsible for all such gas from the time that such gas enters Union's system until such gas is delivered to Shipper.
- b) Shipper agrees that Union is not a common carrier and is not an insurer of Shipper's gas, and that Union shall not be liable to Shipper or any third party for loss of gas in Union's possession, except to the extent such loss is caused entirely by Union's negligence or wilful misconduct.

13.05 Entire Contract: This Contract constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. This Contract supersedes any prior or contemporaneous agreements, understandings, negotiations or discussions, whether oral or written, of the parties in respect of the subject matter hereof.

13.06 Time of Essence: Time shall be of the essence hereof.

13.07 Counterparts: This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an originally executed copy, and it shall not be necessary in making proof of this Contract to produce all of such counterparts.

13.08 Amendments and Waivers: Subject to Article XV of Union's M16 Rate Schedule, no amendment or waiver of any provision of this Contract nor consent to any departure by either party hereto shall in any event be effective unless the same shall be in writing and signed by each of the Shipper and Union and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which it was given. No failure on the part of Shipper or Union to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under this Contract shall operate as a waiver thereof. Despite the foregoing, any of the Sections of this Contract (each such Section or portion thereof to be known as a "**Contract Transition Provision**") shall be deemed to be superceded and deleted if a provision dealing with substantially the same matter is added to Union's M16 Rate Schedule or Union's C1 Rate Schedule and such provision is expressed to supercede and replace such Contract Transition Provision, all without the necessity of further notice, action, or documentation.

13.09 Severability: If any provision hereof is invalid or unenforceable in any jurisdiction, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intention of the parties as nearly as possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of any provision in any other jurisdiction.

13.10 General Liability: The liability of the parties hereunder is limited to direct damages only and all other remedies or damages are waived. In no event shall either party be liable for consequential, incidental, punitive, or indirect damages, in tort, contract or otherwise.

**THIS CONTRACT SHALL BE BINDING UPON** and shall enure to the benefit of the parties hereto and their respective successors and permitted and lawful assigns.

**IN WITNESS WHEREOF** this Contract has been properly executed by the parties hereto by their duly authorized officers as of the date first above written.

**UNION GAS LIMITED**

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

Title: \_\_\_\_\_

**MARKET HUB PARTNERS CANADA L.P. by  
its general partner MARKET HUB  
PARTNERS MANAGEMENT INC.**

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

Title: \_\_\_\_\_

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