

**PARKWAY TO ALBION KING'S NORTH TRANSPORTATION SERVICE TARIFF  
OF  
ENBRIDGE GAS DISTRIBUTION INC.**

**RATE 332 SERVICE**

**EFFECTIVE JULY 14, 2016**

ENBRIDGE GAS DISTRIBUTION INC.  
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## 1 DEFINITIONS AND INTERPRETATION

- 1.1 Except where the context necessarily requires otherwise or where expressly stated otherwise, the following terms shall be construed to have the meaning described herein when such terms are used in these General Terms and Conditions, the Rate 332 Schedule, a Service Schedule, a Service Agreement, a Service Index, or a Service Request Form:

"Albion" means the facility which includes the Delivery Point located on the east side of Indian Line Road, South of Albion Road, West of Highway 427 and abutting the East/West line of Canadian National Railway, in the City of Toronto, Ontario.

"Albion EGD" means the interconnection between the Albion Pipeline and Transporter's gas distribution system at Albion.

"Albion EGD Flow" means the quantity of gas that flows into Transporter's gas distribution system at Albion EGD.

"Albion EGD Flow Entitlement" means, on any Day, the amount of capacity on the Albion Pipeline available for Transporter's own use for gas distribution purposes, determined by subtracting from the total capacity of the Albion Pipeline the aggregate of all FT Service Agreement Maximum Daily Quantities and any AOS.

"Albion Pipeline" means the pipeline owned and operated by Transporter to transport gas from the Receipt Point to the Delivery Point.

"Albion Pipeline Capacity" means, for any period, the maximum quantity of gas that Transporter can receive, transport, and deliver by means of the

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Albion Pipeline under the prevailing operating conditions during such period.

"Albion Pipeline Expansion Facilities" means, at any time, any pipeline or related facilities, or both, that Transporter would have to construct and operate in order to increase the Albion Pipeline Capacity beyond the Albion Pipeline Capacity at such time.

"Albion King's North" means Transporter's delivery flange at the interconnection with the TransCanada facilities at Albion, also defined as the "Delivery Point".

"Authorized Overrun Service" or "AOS" means, on any Day, the provision of Service for any unused capacity on the Albion Pipeline to an FT Shipper for quantities of gas in excess of such FT Shipper's Maximum Daily Quantity.

"Business Day" means any day excluding a Saturday, a Sunday, and a statutory holiday under the laws of Canada and the Province of Ontario.

"Confirmation(s)" means a notice given by Transporter to Shipper scheduling Service for any Day, either by confirming Shipper's nomination(s) for the Day or by specifying a lower level of Service.

"Central Clock Time" and the symbol "CCT" mean the clock time, standard or daylight-saving, in the Central Time Zone.

"Central Standard Time" and the symbol "CST" mean standard time in the Central Time Zone.

"Credit Rating Agency" means any one of Moody's, S&P or DBRS.

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"cubic metre" and the symbol "m<sup>3</sup>" means the volume of gas that, when dry and at a temperature of 15 degrees Celsius and under an absolute pressure of 101.325 kilopascals, will fill a space of one cubic metre; and the symbol "10<sup>3</sup>m<sup>3</sup>" means 1 000 cubic metres.

"Daily Contract Demand Charge" means the demand charge applicable to FT Service as set forth in the Rate 332 Schedule.

"day" means a calendar day and the term "Day" means a period of 24 consecutive hours beginning, and ending, at 0900 Central Standard Time; the reference date for any Day is the date on which the 24 consecutive hour period begins.

"DBRS" means DBRS Limited, DBRS, Inc., or DBRS Ratings Limited, as the case may be, or any of their successor agencies.

"Delivery Point" means Albion King's North.

"Dispute" has the meaning given to it in Section 16.1.

"Dispute Notice" has the meaning given to it in Section 16.2.

"E&GI Act" means the *Electricity and Gas Inspection Act* (Canada) and all applicable regulations, specifications, and procedures made or approved thereunder, as amended from time to time, and any superseding statute, regulations, specifications, or procedures.

"Financial Assurances" means any of the following:

- (a) a Letter of Credit in favour of Transporter for the Required Amount;
- (b) a Guarantee in favour of Transporter for the Required Amount; or

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- (c) such other collateral security, including security agreements over assets of the Shipper, in a form acceptable to the Transporter, in its sole discretion.

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

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

"FT Service" means firm Service under the Rate 332 Schedule.

"FT Service Agreement" means a Service Agreement for FT Service.

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"FT Service Schedule" means the Service Schedule applicable to FT Service.

"FT Shipper" means a Shipper that has contracted for FT Service on the Albion Pipeline.

"gas" has the meaning ascribed to the term in the OEB Act.

"gigajoule" and the symbol "GJ" mean 1 000 000 000 joules.

"gross heating value" means the total megajoules obtained by the complete combustion of one cubic metre of gas and air under conditions where the combustion reaction is at a constant absolute pressure of 101.325 kPa; the gas is free of all water vapour; the gas, the air, and the products of combustion are at a temperature of 15 degrees Celsius; and the water formed by the combustion reaction is condensed to a liquid state.

"Guarantee" means an unconditional written and irrevocable guarantee from a Person that has a credit rating from a Credit Rating Agency equal to or better than the Investment Grade Ratings, in form and substance acceptable to Transporter, acting reasonably. To the extent such Person is rated by more than one Credit Rating Agency, all such Person's credit ratings must be equal to or better than the Investment Grade Credit Ratings for each such Credit Rating Agency.

"Initial Open Season" has the meaning given to it in Section 4 of the FT Service Schedule.

"Initial Term" has the meaning given to it in Section 4 of a Service Agreement.

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"In-Service Date" means, for any Service Agreement, the date of the first Day in which Transporter is capable of providing Service to Shipper under such Service Agreement.

"Interconnecting Pipeline(s)" shall mean, as the context requires, Union Gas, the owner and operator of the pipeline at the Receipt Point and/or TransCanada, the owner and operator of the pipeline at King's North.

"Investment Grade Credit Rating" means the long-term, senior unsecured, non-credit enhance and non-implied debt ratings assigned by any of the following agencies:

Credit Rating Agency	Minimum Credit Rating
Moody's	Baa3
S&P	BBB-
DBRS	BBB (low)

"joule" means the amount of work done by a force of one newton moving an object through a distance of one metre.

"King's North" means the interconnection point between the facilities of Transporter and TransCanada at Albion.

"kPa" means kilopascals (1 000 pascals) of gauge pressure, unless absolute pressure is specified.

"Letter of Credit" means an irrevocable standby letter of credit issued by a Qualifying Bank and in form and substance satisfactory to Transporter, acting reasonably.

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"Losses" means any and all damages, claims, losses, expenses, liabilities, injuries, fines, penalties, settlements, awards, judgements, or other costs whatsoever (including costs as between a solicitor and his client).

"Maximum Daily Quantity" means, for any FT Service Agreement, the level of Service set out as the Maximum Daily Quantity in the applicable Service Index.

"megajoule" and the symbol "MJ" mean 1 000 000 joules.

"month" means a calendar month and the term "Month" means the period beginning on the first day of a month, at 0900 Central Standard Time, and ending on the first day of the next month at the same time.

"Moody's" means Moody's Investor Service, Inc. or its successor agency.

"NAESB" means the North American Energy Standards Board.

"nomination(s)" means Shipper's notice(s) to Transporter requesting Service for any Day, using a format approved by Transporter that calls for Shipper to provide such information as Transporter may require, acting reasonably, in order to provide such Service to Shipper.

"Nomination Cycle" means each nomination cycle for which Shipper makes its nominations for Service on the Albion Pipeline in accordance with Section 9 of these General Terms and Conditions.

"OEB" means the Ontario Energy Board and any superseding regulatory or governmental authority.

"OEB Act" means the *Ontario Energy Board Act, 1998*, the applicable regulations made thereunder, and the applicable regulatory instrument(s)

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made or issued by the OEB, as amended from time to time, and any superseding statute, regulations, or regulatory instrument(s).

"Open Season" has the meaning given to the term "open season" in section 1.2.1 of STAR.

"Operating Agreement" means the Operating Agreement(s) with/among TransCanada, Union Gas and Transporter to provide for *inter alia* pressure control and operational balancing of the Albion Pipeline between the Receipt Point and the Delivery Point.

"Parkway Enbridge Gas Transmission" or "Parkway EGT" means Transporter's receipt flange that interconnects with the Union Gas facilities located immediately west of Highway 407, south of Derry Road, in the Town of Milton, Ontario, also defined as the "Receipt Point".

"party" means, as the context so requires, Transporter or a Shipper, and "parties" means, as the context so requires, Transporter and such Shipper.

"Person" means any natural person, sole proprietorship, corporation, partnership (general or limited, including master limited), limited liability company, trust, joint venture, joint stock company, government authority, unincorporated association, unincorporated syndicate, unincorporated organization, or other entity or association, and, where the context requires, any of the foregoing in its capacity as trustee, executor, administrator or other legal representative.

"Qualifying Bank" means the Canadian or United States office of a commercial bank organized under the laws of Canada or the United States of America, or a political subdivision thereof, or a foreign bank with a branch office located in Canada or the United States of America and, in

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either case, having a long-term, senior unsecured non-credit enhanced and non-implied debt rating of "A" or higher by S&P and "A2" or higher by Moody's.

"Rate 332 Schedule" means, at any time, the version of Rate Number 332 – Parkway to Albion King's North Transportation Service set forth in Transporter's handbook designated as the "Handbook of Rates and Distribution Services" that is in effect at the time.

"Receipt Point" means Parkway EGT.

"Renewal Notice" has the meaning given to such term in Section 6.1 of the FT Service Schedule.

"Renewal Right" means that right of an FT Shipper to renew its Service Agreement, as such right of renewal is set forth in Article 6 of the FT Service Schedule.

"Renewal Term" has the meaning given to it in Section 6.1 of the FT Service Schedule.

"Required Amount" means at any time, in respect of a Shipper required to provide a Letter of Credit or Guarantee:

- (a) that is issued for an FT Service Agreements with a term of one (1) year in accordance with the FT Service Schedule, in an amount equal to Transporter's reasonable estimate of all rates, tolls, charges or other amounts payable to Transporter for a period of seventy (70) days of Service to such Shipper; and
- (b) that is issued for all other FT Service Agreements other than the FT Service Agreements described in subsection (a) above, in an amount

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equal to Transporter's reasonable estimate of all rates, tolls, charges or other amounts payable to Transporter for a period of twelve (12) months of Service to such Shipper;

"S&P" means Standard & Poor's Financial Services LLC (a division of the The McGraw-Hill Companies, Inc.) or its successor agency.

"Service" means the receipt of gas from Shipper, or for Shipper's account, at the Receipt Point and the transport and delivery of gas to Shipper, or for Shipper's account, at the Delivery Point all in accordance with the terms of the Tariff and the Service Agreement and referred to in the Rate 332 Schedule as "Parkway to Albion King's North Transportation Service".

"Service Agreement" means an agreement between Transporter and Shipper in the form of the applicable standard form Service Agreement for Service appended to and forming part of a Service Schedule.

"Service Availability Date" means, for any Service Agreement, the later of (a) the date specified as the Service Availability Date in the applicable Service Index and (b) the In-Service Date.

"Service Index" means, for any Service Agreement, the Service Index attached to the Service Agreement and any superseding Service Index.

"Service Request Form" means the request form to be submitted by a prospective Shipper to request Service pursuant to Article 2 of these General Terms and Conditions, the form of which is attached to these General Terms and Conditions as Appendix 1.

"Service Schedule" means a schedule setting forth terms applicable to a certain type of Service on the Albion Pipeline and includes the FT Service Schedule.

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"Service Termination Date" means, for any Service Agreement, the latest of (a) the date set out as the Service Termination Date in the applicable Service Index, and (b) the date specified in the most recent Renewal Notice for such Service Agreement, as the Service Termination Date.

"Shipper" means a party entitled to receive Service from Transporter in accordance with a Service Agreement.

"Shipper's account" means receipts or deliveries of gas, as the case may be, by a Person acting on behalf of Shipper as an agent or otherwise.

"STAR" means the *Storage and Transportation Access Rule* that was made by the OEB on December 9, 2009 with an effective date of June 16, 2010, as it may be amended from time, and any superseding rule.

"Tariff" means the Service Schedules and applicable standard form Service Agreements, these General Terms and Conditions and the Rate 332 Schedule, as amended and approved by the OEB from time to time.

"terajoule" and the symbol "TJ" mean 1 000 000 000 000 joules.

"Term" means, for any Service Agreement, the Initial Term and any Renewal Terms, if applicable.

"Transporter" means Enbridge Gas Distribution Inc.

"TransCanada" means TransCanada PipeLines Limited.

"Unaccounted for Gas" or "UFG" has the meaning given to it in Section 10.2.

"Union Gas" means Union Gas Limited.

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"Union Gas Q&M Rules" means the terms and conditions that are approved by the OEB or that are otherwise in effect governing the quality and the measurement of gas received by Union Gas at Dawn.

"Year" means a calendar year with 365 days or 366 days, as applicable.

- 1.2 If any provision of the Tariff or a Service Agreement is or becomes invalid, illegal, or incapable of performance or operation, in whole or in part, the remaining provisions thereof shall not be affected thereby. In lieu of the invalid, unlawful, or inoperative provision, the Tariff and the Service Agreement shall be applied or interpreted in a reasonable manner that, insofar as is legally permissible, comes as close as possible to the application or interpretation that the parties intended or would have intended according to the sense and purpose of the Tariff and the Service Agreement, had they known of the invalidity, illegality, or inoperativeness at the time that the Service Agreement was executed and delivered.
- 1.3 The division of the Tariff into articles and sections, the provision of tables of contents, and the insertion of captions are for reference only and shall not affect the construction or interpretation thereof.
- 1.4 If there is any conflict between the provisions of a Service Schedule and these General Terms and Conditions, the provisions of the Service Schedule shall prevail.
- 1.5 Words importing the singular number include the plural and vice versa.
- 1.6 Words importing the masculine gender include the feminine and neuter genders.

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- 1.7 If a word is defined in the Tariff, a derivative of that word shall have a corresponding meaning.

## **2 REQUESTS FOR SERVICE**

- 2.1 The following provisions shall apply to requests for and allocation of FT Service:
- (a) Transporter shall allocate Albion Pipeline Capacity in accordance with Article 4 of the FT Service Schedule. A prospective Shipper may submit a request for FT Service to Transporter using a Service Request Form or a bid form provided by Transporter in an Open Season.
  - (b) Following the application of the provisions of Article 4 of the FT Service Schedule, Transporter shall give any prospective Shipper that has been allocated Albion Pipeline Capacity a notice to that effect, together with an FT Service Agreement executed by Transporter.
  - (c) On the first Day of the Month, or such other Day as set out in the FT Service Agreement, following the time when the prospective Shipper has executed and delivered the FT Service Agreement and has satisfied the availability provisions of Article 2 of the FT Service Schedule, Transporter shall provide FT Service to Shipper under the Rate 332 Schedule, the FT Service Agreement and the FT Service Schedule.

## **3 QUALITY SPECIFICATIONS**

- 3.1 Shipper covenants to ensure that the gas delivered to Transporter by Shipper, or for Shipper's account, at the Receipt Point shall conform to

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the minimum quality specifications prescribed by the Interconnecting Pipelines whose facilities are located at the Receipt Point and the Delivery Point, as the case may be.

- 3.2 If the gas received by Transporter from Shipper, or for Shipper's account, fails at any time to conform to the quality specifications in Section 3.1, then Transporter will notify Shipper of such deficiency and thereupon may at its option suspend the receipt of such gas pending correction by Shipper of any deficiency in quality. If Shipper fails to remedy any such deficiency promptly, Transporter may, in its sole discretion, accept such gas and may make changes necessary to bring such gas into conformity with the foregoing specifications, in which event Transporter shall be reimbursed by the Shipper for any reasonable expense incurred by Transporter in this regard. Transporter reserves the right to waive any or all of the quality specifications in Section 3.1, in a not unduly discriminatory manner, if it is determined by Transporter in its sole discretion that such waiver can be granted without, in any way, jeopardizing the integrity of its system.
- 3.3 Transporter shall have the right to commingle Shipper's gas with other gas in the Albion Pipeline. Accordingly, Shipper's gas shall be subject to such changes in gross heating value as may result from such commingling and, notwithstanding any other provision herein, Transporter shall be under no obligation to deliver at the Delivery Point to Shipper, or for Shipper's account, gas with a gross heating value identical to that of Shipper's gas as received by Transporter at the Receipt Point.

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#### 4 MEASUREMENT

- 4.1 The unit of gas delivered to Transporter shall be a megajoule, gigajoule or terajoule. The unit of gas delivered by Transporter shall be a megajoule, gigajoule, terajoule, cubic meter (m<sup>3</sup>) or one thousand cubic metres (10<sup>3</sup>m<sup>3</sup>) in Transporter's sole discretion.
- 4.2 The volume and energy amounts of the gas received or delivered by Transporter shall be determined as follows:
- (a) The gas volumes and energy amounts shall be computed in accordance with the E&GI Act or, if such specification is not set out therein, in accordance with the industry accepted standards.
  - (b) The gas volumes and energy amounts delivered to or by Transporter shall be determined by the measurement equipment designated in Article 5.
  - (c) Measurements received from or delivered to Interconnecting Pipelines shall be in accordance with established practices or Operating Agreements between Transporter and the Interconnecting Pipelines.

#### 5 MEASURING EQUIPMENT

- 5.1 All gas delivered by Shipper, or for Shipper's account at the Receipt Point will be measured by meters and related equipment that are owned and operated by Union Gas at the Receipt Point, and Transporter and Shipper agree to accept that metering for the purpose of determining the volume, quantity and composition of gas delivered to Transporter by Shipper, or for Shipper's account and the standard of measurement and

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tests for the gas delivered to Transporter at the Receipt Point shall be in accordance with the following:

- (a) the volume, the quantity, and the gas composition of receipts by Transporter from Shipper, or for Shipper's account for any period shall be deemed to be equivalent to the volume, the quantity, and the gas composition of the corresponding deliveries by Union Gas for Shipper, or for Shipper's account, at the Receipt Point during the period and measured by Union Gas in accordance with the Union Gas Q&M Rules.
- (b) all such measurements (including corrections thereof) shall be binding on Transporter and Shipper.

5.2 Transporter will install and operate meters and related equipment as required to measure gas for custody transfer purposes at the Delivery Point. All gas delivered by Transporter at the Delivery Point will be measured using Transporter's measuring equipment in accordance with Sections 5.4 and 5.5.

5.3 All meters and measuring equipment installed by Transporter at the Delivery Point for the determination of gross heating value or relative density, or both, shall be approved pursuant to, and installed and maintained in accordance with, the E&GI Act. Notwithstanding the foregoing, however, all installation of equipment applying to or affecting deliveries of gas at the Delivery Point shall be made in such manner as to permit an accurate determination of the volume and quantity of gas delivered and ready verification of the accuracy of measurement. Care shall be exercised by Transporter in the installation, maintenance, and operation of pressure regulating

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equipment so as to prevent any inaccuracy in the determination of the volume or quantity of gas delivered at the Delivery Point.

- 5.4 The accuracy of Transporter's measuring equipment shall be verified by Transporter at reasonable intervals as may be appropriate for such equipment and, if requested, in the presence of representatives of Shipper, but Transporter shall not be required to verify the accuracy of such equipment more frequently than once in any Month. In the event either Transporter or Shipper shall notify the other that it desires a special test of any measuring equipment, they shall both co-operate to secure a prompt verification of the accuracy of such equipment. The expense of any such special test, if called for by Shipper, shall be borne by Shipper if the measuring equipment is found to be in error by not more than 2%. If upon test any measuring equipment is found to be in error by not more than 2%, the previous readings of such equipment shall be considered accurate in computing deliveries of gas at the Delivery Point but such equipment shall be adjusted at once to register accurately. If for the period since the last preceding test, it is determined that any measuring equipment shall be found to be inaccurate by an amount exceeding 2% at a recording corresponding to the average hourly rate of flow for such period then the previous readings of measurement equipment and/or instruments utilized shall be corrected to zero error for any period that is known definitely but, in any case where the period is not known or agreed upon, such correction shall be for a period extending over 50% of the time elapsed since the date of the last test.

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- 5.5 In the event a meter is out of service, or registering inaccurately, the volume or quantity of gas delivered shall be determined by the most equitable method. Such methods shall include but not be limited to:
- (a) mathematical calculations and comparisons including prevailing ratio with a parallel meter;
  - (b) the use of Shipper's check measuring equipment (if any); and
  - (c) comparison to deliveries under similar conditions when the meter was registering accurately.
- 5.6 Transporter shall preserve for a period of at least six years all test data, charts, and other similar records.
- 5.7 Subject to receipt of approval from the Transporter, in its sole discretion, acting reasonably, Shipper may install, maintain, and operate, at its own expense, such check measuring equipment as desired; provided that such equipment shall be so installed and operated so as not to interfere with the operation of Transporter's measuring equipment on the Albion Pipeline.
- 5.8 The measuring equipment installed by Transporter or Shipper, together with any building erected by it for such equipment, shall be and remain the property of the party that installed such equipment. Transporter or Shipper, as the case may be, shall nevertheless have the right to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring or checking the measurement of the receipt of gas at the Delivery Point. The records from such measuring equipment shall remain the property

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of their owner, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification subject to return within 10 days after receipt thereof.

## **6 BILLING AND PAYMENT**

- 6.1 On or before the 15th day of each month (or the next Business Day if such day is not a Business Day), Transporter shall provide Shipper with an invoice of the amount payable by Shipper for the preceding Month as determined pursuant to Shipper's Service Agreement. Each invoice shall provide such information in respect of Service provided in the preceding Month as Shipper may request (acting reasonably). Shipper shall pay each invoice in Canadian funds to a depository designated by Transporter via electronic funds transfer on or before the 25th day of each month (or the next Business Day if such day is not a Business Day).
- 6.2 Shipper shall have the right to examine at any reasonable time the books, records, and accounts of Transporter to verify any amount payable by Shipper to Transporter for Service under Shipper's Service Agreement; provided that Shipper must exercise its right to verify an amount payable and complete its examination within six months following the end of the Year in respect of which such amount is payable, following which Shipper will have no further recourse to contest the amount payable.
- 6.3 Should Shipper fail to pay all of the amount of any invoice as herein provided when such amount is due, interest on the unpaid portion of the invoice shall accrue at a rate per annum equal to the minimum commercial lending rate of The Toronto-Dominion Bank in effect from

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time to time, from the due date until the date of payment. If such failure to pay continues for 10 days after payment is due, in addition to any other remedy Transporter may have under Shipper's Service Agreement, the Tariff, at law or in equity, Transporter may suspend Service to Shipper thereunder until such amount is paid.

- 6.4 Transporter shall not be entitled to suspend further delivery of gas pursuant to Section 6.3 if Shipper in good faith:
- (a) disputes the amount of any such bill or part thereof within such 10 day period after payment is due;
  - (b) provides Transporter with a written notice including a full description of the reasons for the dispute, together with copies of supporting documents; and
  - (c) pays to Transporter the full amount of any such bill pending resolution of such dispute.

Any good faith billing dispute shall be subject to dispute resolution set forth in Article 16 of these General Terms and Conditions.

- 6.5 In the event that Shipper does not pay the full amount due Transporter in accordance with this Article 6, Transporter, without prejudice to any other rights or remedies it may have, shall have the right to withhold or set off payment or credit of any amounts of monies due or owing by Transporter to Shipper pursuant to any other agreements between the parties for services regulated by the OEB or National Energy Board, against any and all amounts of monies due or owing by Shipper to Transporter.

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- 6.6 In the event it is found that, at any time, Shipper has been overcharged or undercharged for Service and Shipper has paid the invoice containing such overcharge or undercharge, the following procedure will apply:
- (a) Transporter will refund the amount of any such overcharge together with interest on such amount at a rate per annum equal to the minimum commercial lending rate of The Toronto-Dominion Bank, calculated from the time such overcharge was paid to the date of the refund. If such refund is made by means of credit on an invoice from Transporter to Shipper, the date of the refund shall be the date upon which the bill reflecting such credit is payable by Shipper to Transporter; or
  - (b) Shipper will pay the amount of any such undercharge without interest; provided that a claim therefor must be made within 30 days from the date of discovery of such undercharge. Interest shall accrue on such amount not paid within 30 days at a rate per annum equal to the minimum commercial lending rate of The Toronto-Dominion Bank.

## **7 PRIORITY AND CURTAILMENT OR INTERRUPTION OF SERVICE**

- 7.1 Transporter shall have the right to curtail, interrupt or not to schedule part or all of Service, in whole or in part, at any time for reasons of Force Majeure or when, in Transporter's sole discretion, acting reasonably, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs under the circumstances, including for such periods as may reasonably be required for the purpose of accomplishing any planned repairs, maintenance,

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replacement or other upgrading, or other work related to the Albion Pipeline. Transporter may also interrupt Service to any Shipper to the extent of the failure by the upstream Interconnecting Pipeline to deliver such Shipper's gas at the Receipt Point or the failure by a downstream Interconnecting Pipeline to be able to receive such Shipper's gas at the Delivery Point.

- 7.2 Transporter shall provide all affected Shippers notice of any curtailment or interruption as is reasonable in the circumstance, provided that in the case of planned repairs, maintenance, replacement or other upgrading, such notice shall be given at least ten days prior to the commencement of such planned work and indicate the schedule for such planned work and the likely degree of curtailment or interruption. Transporter shall use reasonable efforts to determine a mutually acceptable period during which such planned maintenance, replacement or other upgrading will occur and also to limit the extent and duration of any curtailment or interruption. Transporter will endeavour to schedule and complete the maintenance, replacement or other upgrading, which would normally be expected to impact on Transporter's ability to provide Service, during the period from April 1 through to November 1.
- 7.3 Service to Shippers shall be curtailed, interrupted, or not scheduled in the following order:
- (a) AOS will be curtailed, interrupted, or not scheduled first, *pro rata*, based on the ratio of each FT Shipper's Maximum Daily Quantity to the aggregate of Maximum Daily Quantities of all FT Shippers; and

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(b) FT Service (other than AOS) and Albion EGD Flow Entitlement will be curtailed, interrupted, or not scheduled last, *pro rata*, based on the ratio of each FT Shipper's Maximum Daily Quantity or Transporter's Albion EGD Flow Entitlement to the aggregate of the Maximum Daily Quantities of all FT Shippers and Transporter's Albion EGD Flow Entitlement.

7.4 The daily quantity of gas nominated by Shipper will be monitored by Transporter to ensure delivery by and to Shipper at rates of flow that are as nearly constant as possible, however, Transporter shall use reasonable efforts to take receipt of gas on any day at an hourly rate of flow up to one twentieth (1/20) of the quantity received for that day. Transporter shall have the right to limit Services when on any day the cumulative hourly imbalance between receipts and deliveries exceeds one twentieth (1/20) of the quantity handled for that day for each applicable Service.

## **8 FORCE MAJEURE**

8.1 Subject to the other provisions of this Article 8, Transporter and Shipper shall not be liable to the other party, in respect of its inability to perform its obligations under the Service Agreement including the Tariff caused by an event of Force Majeure. Subject to the other provisions of this Article 8, 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.

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8.2 Notice and Other Requirements

- (a) 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 under the Tariff, 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 as soon as reasonably practicable of the occurrence, and otherwise when such notice is given.
- (b) Efforts to Eliminate - The party claiming Force Majeure shall, unless such Event of Force Majeure is a strike, lockout or other industrial disturbance, blockade, act of public enemy, terrorism, riot, sabotage and insurrections of war, use its best efforts to eliminate such event of Force Majeure.
- (c) 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.
- (d) 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.

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- (e) Oral Notice - Any notice under this Section 8.2 may be given orally; provided that such notice shall only be effective if it is confirmed the same day in writing by facsimile or as otherwise provided in Article 18.
- 8.3 In the event a Force Majeure is declared by the Transporter, the Shipper will continue to be obligated for all applicable charges relevant to Service which continue to be available notwithstanding the Event of Force Majeure and shall only be relieved of any applicable charges, if any, relevant to Service not available to the Shipper as a result of the Force Majeure. For any Day, Transporter shall determine such relief by multiplying the Daily Contract Demand Charge by the difference between the quantity of gas actually delivered by Transporter during such Day and the quantity of gas that Shipper in good faith nominated on such Day and reflect such reduction in the monthly invoice. Any related upstream transportation charges would be the Shipper's sole responsibility.
- 8.4 In the event the Force Majeure is declared by the Shipper or is in respect of any circumstance that does not directly affect the ability of Transporter to provide Service, notwithstanding anything to the contrary in the Tariff or the Service Agreement, Shipper's obligation to pay the applicable charges for Service in accordance with Section 5 of its Service Agreement shall not be excused or suspended for such period that the Force Majeure is subsisting, and such obligation to pay shall continue without abatement.
- 8.5 Except as provided in Section 8.4 and 8.6, a party hereunder shall not be liable to the other party hereunder for failure to perform its obligations hereunder if such inability is caused by an Event of Force

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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.

- 8.6 Notwithstanding anything to the contrary set forth in this Article 8, 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;
  - (b) such party's inability to perform is as a result of a change in market or economic conditions that renders performance of the obligations of the party claiming force majeure uneconomical or disadvantageous;
  - (c) such party's inability to perform the obligation was caused by its deliberate act or inaction;
  - (d) such party failed to comply with Section 8.2 in respect of the Event of Force Majeure.

## **9 NOMINATIONS AND SCHEDULING**

- 9.1 To the extent not in conflict with the other provisions of this Article 9, Transporter and Shipper hereby adopt the standards for business practices and electronic communication of gas transactions developed by NAESB, as may be amended from time to time (the "NAESB Standards"), for the purpose of making and accepting nominations for Service. To the extent of any conflict between the NAESB Standards and this Tariff, terms of this Tariff shall prevail. In the event that Shipper is an Interconnecting Pipeline, an Operating Agreement may

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also set out any special conditions for nominations and scheduling and, in that case, the Operating Agreement shall govern in the case of any conflict with the Tariff; provided that any disputes, remedies or any other relevant circumstance regarding such conditions for nominations and scheduling as provided for in an Operating Agreement will be addressed and managed in accordance with the provisions of the Tariff, unless otherwise agreed to by Transporter and such Shipper in such Operating Agreement.

- 9.2 Transporter will provide Shipper prior to any Day with the following Nomination Cycle, and corresponding Confirmations, for Service during the Day according to the following timeline:

<i>Nomination Cycle</i>	<i>Nomination Time</i>	<i>Confirmation Time</i>
Timely	1300 CCT	1700 CCT
Evening	1800 CCT	2100 CT

Transporter will schedule Service for any Day, under the Nomination Cycle, to commence effective at 0900 hours Central Standard Time on the Day.

- 9.3 Transporter will also provide Shipper during any Day with the following two Nomination Cycles, and corresponding Confirmations, for Service on the same Day according to the following timeline:

<i>Nomination Cycle</i>	<i>Nomination Time</i>	<i>Confirmation Time</i>
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Intra-Day 1	1000 CCT	1300 CCT
Intra-Day 2	1430 CCT	1730 CCT
Intra-Day 3	1900 CCT	2200 CCT

Transporter will schedule Service during any Day to commence effective at the following times during the Day:

<i>Nomination Cycle</i>	<i>Effective Time</i>
Intra-Day 1	1400 CST
Intra-Day 2	1800 CST
Intra-Day 3	2200 CST

- 9.4 For any Day in which Shipper wishes Transporter to provide Service, Shipper shall give Transporter a fully completed nomination in any of the Nomination Cycles for the Day. Shipper may thereafter give Transporter a Nomination for such Service in any subsequent Nomination Cycle for the Day in accordance with Section 9.2 or 9.3, or both, at Shipper's option.
- 9.5 For any month, Shipper may give a fully completed nomination to Transporter for two or more days for the Timely Cycle that can be in effect until the end of such month. Shipper may thereafter change the nomination for the second or any subsequent Day specified in the original nomination by giving Transporter a new nomination in the corresponding Nomination Cycle for the Day.

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- 9.6 Each nomination shall be given by electronic means or facsimile in accordance with the applicable timeline specified in Sections 9.2 and 9.3. Shipper shall not give Transporter more than one nomination for a single Service Agreement in any Nomination Cycle, for Service. Shipper shall not give Transporter a single nomination for two or more Service Agreements.
- 9.7 Transporter shall accept Shipper's nomination for Service in the Nomination Cycle for any Day by giving Shipper a Confirmation that schedules Shipper's nomination for the Day, subject to Article 7. Each Confirmation shall be given by electronic means or facsimile in accordance with the applicable timelines specified in Section 9.2.
- 9.8 Transporter may accept Shipper's nomination for Service in any subsequent Nomination Cycle for Shipper's Maximum Daily Quantity or AOS, in whole or in part, or reject it entirely based on the operating conditions that Transporter anticipates, acting reasonably, will prevail on the Albion Pipeline during the Day. Transporter shall give Shipper a Confirmation that schedules the accepted Service for the Day or, if none is accepted, a Confirmation that schedules a nil quantity of gas for the Day. Each Confirmation pursuant to this Section 9.8 shall be given by facsimile or electronic means in accordance with the applicable timelines specified in Sections 9.2 and 9.3.

## **10 IMBALANCES AND UNACCOUNTED FOR GAS**

- 10.1 The parties acknowledge and agree that on any Day, actual receipts and deliveries of gas by Transporter may not always be exactly equal. In that circumstance, Transporter will cooperate with the Interconnecting

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Pipelines in order to balance as nearly as possible such receipts and deliveries in accordance with any Operating Agreement(s).

- 10.2 On each Day, Transporter shall measure the Albion EGD Flow and shall determine the difference, if any, between the quantity of gas delivered by Union Gas to Parkway EGT for Transporter and the aggregate amount of the actual quantity of gas that flowed through the Delivery Point and Albion EGD and any linepack changes that occurred within the Albion Pipeline (“**Unaccounted for Gas**” or “**UFG**”).
- 10.3 In accordance with the prevailing operating conditions on the Albion Pipeline, Transporter may from time to time provide notice to each FT Shipper of Transporter’s forecast for Shipper’s proportionate share of UFG, not to exceed 0.6% of the quantity of gas that was scheduled by Transporter for Shipper on the applicable Day, based on the ratio of each Shipper's quantity of gas that was scheduled by Transporter on the applicable Day to the aggregate of scheduled quantities of gas for all FT Shippers and Transporter’s Albion EGD Flow for such Day. Shipper shall deliver to Transporter the quantity of gas set out in such notice within the time period specified.

## **11 RECEIPT AND DELIVERY PRESSURES**

- 11.1 All gas tendered by or on behalf of Shipper to Transporter at the Receipt Point shall be at Transporter’s prevailing pressure, or at such pressure as set out in any Operating Agreement between Transporter and the applicable Interconnecting Pipeline.
- 11.2 All gas tendered by or on behalf of Transporter to Shipper at the Delivery Point shall be at the downstream Interconnecting Pipeline’s

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prevailing pressure, or at such pressure as set out in any Operating Agreement between Transporter and the applicable Interconnecting Pipeline.

- 11.3 Under no circumstances shall Transporter be obligated to receive or deliver gas hereunder at pressures exceeding the maximum allowable operating pressures prescribed under any applicable governmental regulations; nor shall Transporter be required to make any physical deliveries or to accept any physical receipts which its existing facilities cannot accommodate.

## **12 CONTROL AND POSSESSION OF GAS**

- 12.1 Shipper warrants that it has good and marketable title to, or legal authority to, and has the right to deliver, the gas that is delivered by Shipper, or for Shipper's account, and received by Transporter under the Service Agreement. Shipper shall indemnify and save harmless Transporter against all claims, actions, or damages arising from any adverse claims by any Person claiming an ownership interest in or entitlement to the gas so delivered to Transporter, in the manner contemplated by Article 15.
- 12.2 Transporter accepts no responsibility for any gas prior to such gas being delivered to Transporter at the Receipt Point or after its delivery by Transporter at the Delivery Point. As between Transporter and Shipper, Transporter shall be deemed to be in control and possession of and responsible for all such gas from the time that such gas enters the Albion Pipeline at the Receipt Point until such gas exits the Albion Pipeline at the Delivery Point.

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- 12.3 Shipper accepts responsibility for any gas after such gas being received by Shipper at the Delivery Point. As between Transporter and Shipper, Shipper shall be deemed to be in control and possession of and responsible for all such gas from the time that such gas exits the Albion Pipeline at the Delivery Point. Shipper represents and warrants that it has retained a downstream service provider having sufficient capacity to be able to receive such Shipper's gas at the Delivery Point on terms consistent with the Services hereunder.
- 12.4 Shipper agrees that Transporter is not a common carrier and is not an insurer of Shipper's gas, and that Transporter shall not be liable to Shipper or any third party for loss of gas in Transporter's possession, except to the extent such loss is caused entirely by Transporter's negligence or wilful misconduct.

### **13 FINANCIAL ASSURANCES**

- 13.1 At all times during the term of its Service Agreement, the Shipper shall maintain creditworthiness or provide Financial Assurances as set out in this Article 13. To be deemed creditworthy, the Shipper shall either:
- (a) maintain credit ratings from at least one Credit Rating Agency that is equal to or better than the Investment Grade Credit Rating for such Credit Rating Agency. To the extent a Shipper is rated by more than one Credit Rating Agency, all such Shipper's credit ratings must be equal to or better than the Investment Grade Credit Ratings for each such Credit Rating Agency; or
  - (b) if the Shipper does not meet the requirements in subsection 13.1(a), have and maintain a Financial Assurance in an amount consistent with the Required Amount.

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At the sole discretion of the Transporter, and based on information provided by the Shipper, Transporter may elect to evaluate Shipper or Shipper's guarantor for alternative creditworthiness or other financial assurances may be accepted. For certainty, the Transporter will only consider and accept alternative creditworthiness or other Financial Assurances that will secure amounts determined by Transporter in an amount consistent with the Required Amount (based on the type of financial assurance that is to be provided).

- 13.2 If the Transporter determines, in its sole discretion, acting reasonably, that:
- (a) one or more of the Shipper's credit ratings has fallen below one or more of the Investment Grade Credit Ratings, or has otherwise become impaired or unsatisfactory;
  - (b) the Financial Assurances no longer provide adequate security for the Required Amount (including, to the extent Shipper has provided a Guarantee, that one or more of its guarantor's credit ratings has fallen below one or more of the Investment Grade Credit Ratings, or has otherwise become impaired or unsatisfactory); or
  - (c) the Transporter otherwise determines that it is necessary to obtain replacement or further or additional Financial Assurances from the Shipper that will secure amounts determined by Transporter in an amount consistent with the Required Amount (based on the type of Financial Assurance that is to be provided),

then, within four (4) Business Days after the date that the Transporter provides notice to the Shipper of such determination, the Shipper shall,

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at its own expense, deliver to the Transporter one or more replacement increased or additional Financial Assurances, as required by the Transporter that will secure amounts determined by Transporter in an amount consistent with the Required Amount (based on the type of Financial Assurance that is to be provided). If such replacement, increased or additional Financial Assurances are not provided to the Transporter within the specified period, the Shipper shall thereupon be deemed to be in default under the Service Agreement including the Tariff and the Transporter shall, in addition to any of its other rights hereunder, thereafter have the option to terminate the Service Agreement including the Tariff in accordance with the terms hereof.

- 13.3 The Transporter shall be entitled to realize upon any Financial Assurances in the manner and to the extent provided for and set out in the Service Agreement including the Tariff and such Financial Assurances.
- 13.4 Upon the failure on the part of the Shipper to pay when due any amounts owing pursuant to the terms of the Service Agreement (including the payment of any damages, if any, arising pursuant to the terms thereof), the Transporter has the right to realize or call on the Financial Assurances, or any part of it, provided to the Transporter by the Shipper by doing any one or more of the following, depending on the type of Financial Assurance provided by Shipper: (a) taking possession of the security and any cash deposits by any method permitted by law; (b) setting off or otherwise dealing with the security and any cash deposits; (c) drawing on the Letter of Credit; (d) demanding payment on any Guarantee; (e) exercising any and all of the rights and remedies granted pursuant to the *Personal Property Security*

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*Act* (Ontario) and any other applicable legislation, or otherwise available at law or in equity; and (f) 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 Shipper. No right, power or remedy of the Transporter (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 Shipper shall remain liable for all obligations, indebtedness and liabilities owing by it to the Transporter that are outstanding following realization of all or any part of the security.

- 13.5 In addition to any other rights in respect thereof set out in Section 13.4 above, the Transporter has the right to realize on all or any part of the Financial Assurances then held by or for the benefit of the Transporter free from any claim of set-off or otherwise or right of any nature whatsoever of the Shipper or the guarantor under any Guarantee (if applicable):
- (a) in respect of any claim for indemnity made by the Transporter pursuant to Section 15, and in respect of which the Shipper does not dispute the claim or the claim is the subject of a judgment issued by a Court of competent jurisdiction and all applicable appeal periods have expired; or
  - (b) if any Financial Assurance then held by or for the benefit of the Transporter will terminate or expire or otherwise be of no further force or effect, or is to be increased in amount, after a specified

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date, and at least thirty (30) days prior to such date such Financial Assurance is not renewed or extended and increased, if applicable.

## **14 DEFAULT AND TERMINATION**

- 14.1 If either Transporter or Shipper fails to perform any of its material obligations under or to otherwise comply materially with the provisions of the Service Agreement or the Tariff, then the other party may treat such failure as a default and may, subject to Section 14.2 below, elect to terminate the Service Agreement by giving the party in default a notice to that effect, briefly describing the default.
- 14.2 If such a notice is given, the party in default will have thirty (30) days in which to remedy the default. If the party in default remedies the default within the 30-day period, then such notice shall be deemed to be withdrawn and the Service Agreement shall continue in full force and effect. If the party in default does not remedy the default within the 30-day period, then the Service Agreement shall thereupon terminate, provided, however, that if during such 30-day period the defaulting party has commenced remedying the default and is continuing diligently and in good faith its efforts to remedy such default, the entitlement of the non-defaulting party to terminate the Service Agreement will be suspended until the earlier of the cessation by the defaulting party of such efforts and the date which is six (6) Months after the date of the notice of default. Any such termination shall be without prejudice to any remedy to which the party not in default may be entitled for breach of the Service Agreement.
- 14.3 No waiver by either Transporter or Shipper of any one or more defaults by the other in performance of any provisions of the Service Agreement

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shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character. Transporter may waive compliance with provisions of the Service Agreement so long as such is done in a manner that would not be unjustly discriminatory.

## 15 INDEMNIFICATION

15.1 In the case of Transporter and a Shipper, each party will:

- (a) be liable to the other party, its affiliates and each of their respective directors, officers, contractors, agents and employees, for all Losses which they may sustain, pay or incur, and in addition,
- (b) indemnify and save harmless the other party, its affiliates and each of their respective directors, officers, contractors, agents and employees, from all actions, causes of action, proceedings, demands and Losses, which may be brought against, suffered, paid, incurred or made against them,

resulting from any breach of the Service Agreement or the Tariff, any breach of any applicable laws as a result of acts undertaken or omissions made pursuant to the Service Agreement or the Tariff or any tortious act or omission or negligence or wilful default in connection with the Service Agreement or the Tariff on the part of the indemnifying party or of its directors, officers, contractors, suppliers, agents or employees. An act or omission by an indemnifying party will be deemed not to result in liability or a right to indemnity hereunder if that act or omission is done or omitted pursuant to the prior electronic or written instruction of the party asserting liability or seeking indemnity.

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15.2 Notwithstanding Section 15.1:

- (a) Transporter and Shipper shall have no liability for, nor any obligation to indemnify and save harmless the other from, any Losses that are indirect, special, or consequential in nature; and
- (b) In the event the party requesting indemnification fails to provide reasonably prompt notification to the indemnifying party after being served any claim, suit, or action for or in respect of which indemnification is to be claimed, then, to the extent that the indemnifying party is materially prejudiced by such failure, the indemnifying party shall be relieved of its obligations under this Article 15.

15.3 Upon a party providing notice to an indemnifying party of a claim, suit, or action for or in respect of which indemnification is to be claimed, the indemnifying party shall be entitled to participate in any such suit or action and, to the extent that the indemnifying party may wish to do so, to assume the defence thereof with counsel satisfactory to the notifying party, acting reasonably. Thereafter, the indemnifying party will not be liable for any legal or other expenses incurred by the notifying party in connection with the defence thereof. The indemnifying party shall not be liable to indemnify the notifying party on account of any settlement of any claim, suit, or action agreed to without the consent of the indemnifying party.

## **16 DISPUTE RESOLUTION**

16.1 This Article 16 establishes a framework and procedure under which the parties shall, in good faith, use their reasonable efforts to resolve disputes, claims, questions or differences arising out of or in connection

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with the Tariff or an Operating 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 16.2.

#### 16.2 Dispute Resolution Mechanism

- (a) 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.
- (b) 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 Director, Energy, Supply and Policy (or the successor position thereof), on behalf of the Transporter, and an equivalent or similar manager on behalf of the Shipper, (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.
- (c) 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 Transporter, the Vice-President Energy Supply and Business Support (or the successor position thereof); and in the case of the Shipper, an equivalent or similar senior manager of the Shipper) (the "Senior Representatives") for resolution. The parties shall

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cause their respective Senior Representatives to meet as soon as possible in an effort to resolve the dispute.

- (d) 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, but are not obligated, 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.

- 16.3 If the Dispute is still not resolved to the mutual satisfaction of the parties within thirty (30) Business Days after delivery of the Dispute Notice, then either party may refer the Dispute to be resolved by litigation or such other legal means (such as by way of an application to the OEB, if applicable) as are available to such party, provided the party seeking legal remedy has pursued resolution of the Dispute as contemplated in Section 16.2.

## 17 NOTICES

- 17.1 Except as otherwise provided in the Tariff, any request, demand, statement, or bill, or any notice (collectively "a notice") which either party desires to give to the other, must be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally, by courier or by electronic mail or facsimile and will be considered duly delivered to the party to whom it is sent at the time of

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its delivery if personally delivered or if sent by facsimile or electronic mail during normal business hours, or on the day following transmittal thereof if sent by courier (provided that in the event normal courier service, electronic mail or facsimile service shall be interrupted by a cause beyond the control of the parties hereto, then the party sending the notice shall utilize any service that has not been so interrupted or shall personally deliver such notice) to the other party at the address set forth below. Each party shall provide notice to the other of any change of address for the purposes hereof.

(i) If to Transporter:

Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York, ON M2J 1P8  
Attention: VP Energy Supply and Business Support  
Facsimile: 416-498-3816

With a copy to:

Attention: Law Department  
Facsimile: 416-495-5802

(ii) Shipper: At the address set out in the Service Index of a Service Agreement.

Routine communications, including monthly statements, will be considered duly delivered when mailed electronically or by registered, certified or ordinary mail.

## 18 INCORPORATION OF DOCUMENTS

18.1 These General Terms and Conditions are incorporated in and are part of all Service Schedules and Service Agreements.

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- 18.2 These General Terms and Conditions, the Service Schedules and all Service Agreements are subject to the provisions of all valid present and future laws, rules, regulations and orders of any legislative body or duly constituted authority now or hereafter having jurisdiction over the subject matter thereof.

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**APPENDIX 1 - SERVICE REQUEST FORM**

TO: ENBRIDGE GAS DISTRIBUTION INC.  
 500 Consumers Road  
 North York, Ontario  
 M2J 1P8

\_\_\_\_\_ ("**Service Applicant**") hereby requests Service on the Albion Pipeline and provides the following information relative to this Service Request:

1. Information on Service Applicant:

(a) Delivery Address: \_\_\_\_\_  
 \_\_\_\_\_

(b) Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_

(c) Service Request: \_\_\_\_\_  
 Electronic: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

(d) Nominations and Confirmations: \_\_\_\_\_  
 Electronic: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

(e) Invoices: \_\_\_\_\_  
 Electronic: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

(f) Other: \_\_\_\_\_  
 Electronic: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

2. Class of Service Requested: FT Service

3. Service Availability Date: \_\_\_\_\_

4. Service Termination Date: \_\_\_\_\_

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- 5. Maximum Daily Quantity: \_\_\_\_\_ GJ or TJ
- 6. Receipt Point: Parkway EGT
- 7. Delivery Point: Albion King's North
- 8. Service Applicant agrees, by submitting this Service Request Form, to abide by the terms and conditions of (a) the Tariff for Rate 332 Service, including the applicable Service Schedule, the General Terms and Conditions, and the applicable Service Agreement (per the standard form); and (b) the Rate 332 Schedule.
- 9. This Service Request is submitted  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
on behalf of Service Applicant by:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

**2 - FT SERVICE SCHEDULE**

ENBRIDGE GAS DISTRIBUTION INC.  
FT SERVICE SCHEDULE  
Rate 332 Service

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Appendix 1 – Form of FT Service Agreement

ENBRIDGE GAS DISTRIBUTION INC.  
FT SERVICE SCHEDULE  
Rate 332 Service

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## 1 INTRODUCTION

- 1.1 The terms used herein that are set forth in Article 1 of the General Terms and Conditions shall be construed to have the meaning described therein, unless otherwise defined in this Service Schedule.
- 1.2 The General Terms and Conditions, as amended from time to time, are applicable to this Service Schedule and are hereby made a part hereof. If there is any conflict between the provisions of this Service Schedule and the General Terms and Conditions, the provisions of this Service Schedule shall prevail. This Service Schedule is incorporated into and made part of any Service Agreement for FT Service. If there is any conflict between the provisions of this Service Schedule and a Service Agreement, the provisions of the Service Agreement shall prevail.

## 2 AVAILABILITY

- 2.1 FT Service is available to Shippers for the following Initial Terms:
- (a) at least fifteen (15) years or such other term specified by Transporter in an Open Season for: (A) Service Agreements entered into for the purpose of commercially supporting construction of the initial facilities for the Albion Pipeline; and (B) for Service Agreements where Albion Pipeline Expansion Facilities are required; or
  - (b) at least five (5) years for Service Agreements pertaining to use of Albion Pipeline Capacity that was: (A) previously offered by Transporter in an Open Season but was not awarded; and (B) previously awarded by Transporter in an Open Season and becomes available; or

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FT SERVICE SCHEDULE  
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- (c) at least one (1) year for Service Agreements pertaining to Albion Pipeline Capacity that was not previously offered by Transporter in an Open Season and not created upon construction of the initial facilities for the Albion Pipeline or construction of Albion Pipeline Expansion Facilities.
- 2.2 Any Shipper will be eligible to receive Service pursuant to this Service Schedule if Shipper has entered into an FT Service Agreement with Transporter for FT Service pursuant to this Service Schedule, subject to the conditions precedent set forth in Section 2.3 below and, if applicable, such other conditions precedent as may be established by Transporter in any Open Season.
- 2.3 Acceptance by Transporter of an executed FT Service Agreement from a Shipper is subject to the satisfaction by the Shipper of the following conditions precedent for the benefit of the Transporter:
- (a) Shipper having provided Transporter with adequate assurances, in Transporter's discretion, acting reasonably, that arrangements have been made whereby the upstream Interconnecting Pipeline will deliver gas nominated by Shipper, or for Shipper's account, at the Receipt Point;
- (b) Shipper having provided Transporter with adequate assurances, in Transporter's discretion, acting reasonably, that arrangements have been made whereby the downstream Interconnecting Pipeline will receive and transport gas delivered by Transporter to Shipper, or for Shipper's account, at the Delivery Point; and
- (c) Shipper having provided Transporter with Financial Assurances if required by Transporter pursuant to Article 13 of the General Terms and Conditions.

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FT SERVICE SCHEDULE  
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**3 APPLICABILITY AND CHARACTER OF SERVICE**

- 3.1 This Service Schedule applies to all Service provided by Transporter to Shipper pursuant to a Service Agreement referred to in Section 2.1.
- 3.2 Subject to the Tariff and Shipper's Service Agreement, Service under this Service Schedule on any Day consists of:
- (a) the receipt of gas from Shipper, or for Shipper's account, at the Receipt Point according to Transporter's applicable Confirmation(s) for the Day, up to Shipper's Maximum Daily Quantity, plus AOS allocated to Shipper, if any;
  - (b) the transportation of gas received pursuant to Subsection (a) above on the Albion Pipeline; and
  - (c) the delivery of a quantity of gas equal to the quantity of gas received by Transporter pursuant to Subsection (a) above to Shipper, or for Shipper's account, at the Delivery Point.
- 3.3 Each FT Shipper may nominate quantities for a Day in excess of such Shipper's Maximum Daily Quantity which excess volume or energy amount nomination shall be for AOS. Capacity available for AOS will vary daily depending upon Shipper nominations for FT Service, the Albion EGD Flow and the capability of Transporter to provide transportation on the Albion Pipeline. Notwithstanding anything herein to the contrary, the provision of AOS on any Day shall be subject to the sole discretion of the Transporter.
- 3.4 Subject to Section 3.3, Shipper may nominate for AOS in accordance with Article 9 of the General Terms and Conditions. Each FT Shipper will be allocated AOS, equal to the lesser of:

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- (a) a pro rata portion of AOS according to the ratio of such FT Shipper's Maximum Daily Quantity to the aggregate of Maximum Daily Quantities of all FT Shippers; and
  - (b) the AOS nominated by such Shipper.
- 3.5 Nominations shall be made, and may be changed or otherwise adjusted, and confirmed in accordance with Article 9 of the General Terms and Conditions.
- 3.6 Service hereunder for any Shipper shall not be subject to suspension, curtailment or interruption, except as provided in the Tariff.
- 3.7 In addition to and not in substitution for any other remedies that may be available to Transporter, Transporter is entitled to refuse service hereunder if, and for so long as, Shipper is in default under any Service Agreement or under the Tariff (including this Service Schedule).

#### 4 CAPACITY ALLOCATION

- 4.1 Subject to Section 4.2 of this FT Service Schedule, the following procedures for allocating Albion Pipeline Capacity shall apply to requests or bids for FT Service:
- (a) Transporter shall issue an Open Season to offer and allocate to eligible bidders the capacity of the initial facilities constructed for the Albion Pipeline (“**Initial Open Season**”).

Following conclusion of the Initial Open Season:

- (b) if requests for FT Service cannot be met through existing capacity such that the only way to satisfy the requests for FT Service would require the construction of Albion Pipeline Expansion Facilities,

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Transporter shall issue an Open Season and allocate any such new capacity to eligible bidders;

- (c) if requests for FT Service can be met through Albion Pipeline Capacity that was: (i) previously awarded by Transporter in an Open Season and is becoming available, or (ii) not previously offered by Transporter in an Open Season, Transporter shall issue an Open Season and allocate any such capacity to eligible bidders; and
  - (d) if requests for FT Service can be met through Albion Pipeline Capacity that was previously offered by Transporter in an Open Season but was not awarded, then Transporter shall evaluate each request on a first-come, first-served basis. If two or more requests for FT Service are received at the same time, Transporter shall offer a proportional share of available capacity to each prospective Shipper that submitted a request.
- 4.2 Capacity requests for FT Service shall be awarded in order of highest to lowest economic value based upon the net present value of the proposed per-unit rate and the proposed term of the Service Agreement without regard to the proposed quantity or volume.
- 4.3 Transporter shall conduct any Open Season in accordance with the terms and conditions prescribed by the OEB either in STAR or otherwise.
- 4.4 Notwithstanding anything in the Tariff to the contrary, Transporter shall not be obligated to apply to the OEB for any authorization or otherwise to construct and operate any Albion Pipeline Expansion Facilities in order to provide Service to prospective Shipper(s).

ENBRIDGE GAS DISTRIBUTION INC.  
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**5 ASSIGNMENT**

- 5.1 Transporter may assign its entire interest in a Service Agreement to any Person, without relieving Transporter of its obligations under such Service Agreement (unless consented to by the Shipper, which consent shall not be unreasonably withheld), in connection with an arrangement whereby such Person acquires the Albion Pipeline, and such Person shall thereby have the rights and be subject to the obligations of the assigning party under such Service Agreement.
- 5.2 Shipper may, upon notice to Transporter, assign some or all of its interest in a Service Agreement up to Shipper's Maximum Daily Quantity:
- (a) to an affiliate; provided that until and unless the affiliate provides Financial Assurance in accordance with Article 13 of the General Terms and Conditions, Shipper shall not be relieved of its obligations under such Service Agreement; or
  - (b) to a third party; provided that such assignment shall require the prior written consent of Transporter, such consent not to be unreasonably withheld or delayed, and shall be conditional upon the third party assignee providing, amongst other things, Financial Assurances in accordance with Article 13 of the General Terms and Conditions.

Any such assignment will be for the full rights and obligations under the Service Agreement as it relates to the assigned capacity, but may be for some or all of the remaining term.

ENBRIDGE GAS DISTRIBUTION INC.  
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**6 RENEWAL RIGHT**

- 6.1 Shipper has the right (the "**Renewal Right**") of extending the existing Service Termination Date for successive periods of at least twelve (12) months (the "**Renewal Term**") and maintaining or reducing the existing Maximum Daily Quantity during any Renewal Term provided that Transporter receives a notice from Shipper electing to exercise the Renewal Right and setting out the extended Service Termination Date and the applicable Maximum Daily Quantity (the "**Renewal Notice**") no less than twenty four (24) months before the existing Service Termination Date; and
- 6.2 If Transporter receives a timely notice from Shipper electing to exercise the Renewal Right, and if Shipper meets the availability provisions of Article 2, Transporter will prepare a superseding Service Index for the Service Agreement that will be effective as of the commencement of the Renewal Term and in which the Maximum Daily Quantity and the Service Termination Date will be as specified in the Renewal Notice.

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FT SERVICE SCHEDULE  
Rate 332 Service

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APPENDIX 1 – FORM OF FT SERVICE AGREEMENT

No. FT-\_\_\_\_\_

**FT SERVICE AGREEMENT  
(Rate 332 Service)**

**This AGREEMENT for SERVICE** under the **FT SERVICE SCHEDULE**  
made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**BY AND BETWEEN:**

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

- and -

\_\_\_\_\_, a \_\_\_\_\_ ("Shipper")

**WITNESSES THAT, WHEREAS:**

A. Terms that are defined in Transporter's Tariff for Rate 332 Service on its Albion Pipeline as such service is contemplated in Transporter's handbook designated as the "Handbook of Rates and Distribution Services" are used in this Service Agreement with the respective meanings that are ascribed to such terms therein.

B. Shipper has requested that Transporter transport, and Transporter has agreed to transport quantities of gas on the Albion Pipeline that are tendered by or on behalf of Shipper to Transporter at the Receipt Point to the Delivery Point in accordance with and subject to the terms and conditions of this Service Agreement.

**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:

ENBRIDGE GAS DISTRIBUTION INC.  
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EB-2016-0028  
(Standard Form)

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1. **Tariff Incorporated.** The Rate 332 Schedule, the FT Service Schedule and the General Terms and Conditions, which collectively comprise the Tariff are all by reference made a part of this Service Agreement and Service hereunder shall be subject to the provisions thereof, all of which is hereby acknowledged and confirmed by Shipper. Transporter shall notify Shipper at any time that Transporter files with the OEB proposed revisions to the Tariff and shall provide Shipper with a copy of such revisions.

2. **Schedules.** The FT Service Index attached to this Service Agreement is hereby made part of this Service Agreement.

3. **Service.** Subject to the provisions of this Service Agreement and the Tariff, Transporter shall, from and after the Service Availability Date, provide Shipper with FT Service for the Maximum Daily Quantity set forth in the FT Service Index attached hereto. Under no circumstances shall Transporter be required to transport gas in excess of the Maximum Daily Quantity. Transporter may in its sole discretion transport gas in excess of the Maximum Daily Quantity, as AOS, on an interruptible basis determined in accordance with the Tariff.

4. **Term.** The initial term (the "Initial Term") of this Service Agreement shall be for the period set forth in the FT Service Index attached hereto beginning on the Service Availability Date and terminating, subject to the provisions hereof, on the Service Termination Date. Shipper shall have the right to extend the Service Agreement past the Initial Term in accordance with Article 6 of the FT Service Schedule.

5. **Payment of Contract Demand Charges.** For each Month during the Term, Shipper shall pay to Transporter the sum of:

(a) the product of: (i) the Daily Contract Demand Charge; (ii) the Maximum Daily Quantity; and (iii) 365/12.

(b) the product of: (i) the Daily Contract Demand Charge; (ii) 1.2; and (iii) the sum of Shipper's quantities that were Confirmed by Transporter for AOS in such Month.

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The obligation to pay the amount calculated in Section 5(a) shall apply and continue for the entire Term regardless of the quantity of Shipper's gas that is actually transported by Transporter, and is not subject to abatement under any circumstances, except as specifically provided for in the Tariff. Transporter shall invoice Shipper for its payment obligations in accordance with Article 6 of the General Terms and Conditions.

6. **Upstream/Downstream Arrangements.** Shipper shall make timely arrangements for gas supply and for transportation service upstream of the Receipt Point and downstream of the Delivery Point. Shipper shall obtain all necessary governmental authorizations in this regard. Shipper acknowledges that Transporter is relying upon this covenant and agrees that, if any such arrangements are not in effect on the Service Availability Date and thereafter during the Term, Shipper will not thereby be relieved of its obligation to pay pursuant to Section 5 of this Service Agreement.

7. **No action against Transporter.** Shipper shall not bring an action against Transporter for Transporter's refusal to provide Service hereunder in the event that any transporter operating upstream of the Receipt Point or downstream of the Delivery Point, as the case may be, fails to deliver or receive gas to or from Shipper, or for Shipper's account, unless such failure was directly caused by Transporter's breach of the Service Agreement or Tariff, negligence or wilful default.

8. **Nominations and Scheduling.** Nominations and Confirmations shall be given in accordance with Article 9 of the General Terms and Conditions.

9. **Authorities.** This Service Agreement is subject to all valid legislation with respect to the subject matters hereof, either provincial or federal, and to all valid present and future decisions, orders, rules, and regulations of all duly constituted governmental authorities having jurisdiction.

10. **Representations and Warranties of Transporter.** Transporter represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction of its formation or incorporation and has all requisite legal power and authority to execute this

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Service Agreement and carry out the terms, conditions and provisions hereof; (b) this Service Agreement constitutes the valid, legal and binding obligation of Transporter, enforceable in accordance with the terms hereof; (c) there are no actions, suits or proceedings pending or, to Transporter's knowledge, threatened against or affecting Transporter before any court or government authority that might materially adversely affect the ability of Transporter to meet and carry out its obligations under this Service Agreement; and (d) the execution and delivery by Transporter of this Service Agreement has been duly authorized by all requisite corporate action.

11. **Representations and Warranties Shipper.** Shipper represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction of its formation or incorporation, as applicable, and has all requisite legal power and authority to execute this Service Agreement and carry out the terms, conditions and provisions hereof; (b) this Service Agreement constitutes the valid, legal and binding obligation of Shipper, enforceable in accordance with the terms hereof; (c) there are no actions, suits or proceedings pending or, to Shipper's knowledge, threatened against or affecting Shipper before any court or government authority that might materially adversely affect the ability of Shipper to meet and carry out its obligations under this Service Agreement; and (d) the execution and delivery by Shipper of this Service Agreement has been duly authorized by all requisite corporate or partnership action, as applicable.

12. **Affected Rights Upon Termination.** Nothing in this Service Agreement shall be deemed to create any rights or obligations between the parties hereto after the Service Termination Date, except that termination of this Service Agreement shall not relieve either party of the obligation to correct any gas imbalances or of the obligation to pay any amount due hereunder.

13. **Governing Law and Attornment.** This Service Agreement and the Tariff shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Neither party shall institute any action, suit or other proceeding with respect to any matter arising under or out of this Service Agreement other than

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FT SERVICE AGREEMENT  
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(Standard Form)

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at the OEB, if applicable, or in the Superior Court of Justice in the Judicial Centre of Toronto. In that regard, subject to the dispute resolution procedures set forth in Article 17 of the General Terms and Conditions each party hereby irrevocably attorns to the jurisdiction of the OEB, if applicable, and such Court in the event of any such action, suit or other proceeding by the other party.

14. **Execution and Delivery.** This Service Agreement may be executed in counterparts and may be delivered by facsimile or other electronic means, each of which shall be considered an original but both of which, when taken together, shall constitute one and the same agreement.

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Service Agreement as of the day, month, and year first written above.

**TRANSPORTER:**

**ENBRIDGE GAS DISTRIBUTION INC.**

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

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

**SHIPPER:**

\_\_\_\_\_

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

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

ENBRIDGE GAS DISTRIBUTION INC.  
APPENDIX 1 - FORM OF FT SERVICE AGREEMENT  
Rate 332 Service

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**ENBRIDGE GAS DISTRIBUTION INC.**  
**FT SERVICE INDEX**  
**(Rate 332 Service)**

Shipper: \_\_\_\_\_

Date of Service Agreement: \_\_\_\_\_

Number of Service Agreement: \_\_\_\_\_

Date of Service Index: \_\_\_\_\_

Maximum Daily Quantity: \_\_\_\_\_ GJ or TJ

Service Availability Date: \_\_\_\_\_

Service Termination Date: \_\_\_\_\_

Receipt Point: Parkway EGT

Delivery Point: Albion King's North

Notices to Transporter: Enbridge Gas Distribution Inc.

(i) Delivery Address: 500 Consumers Road  
North York, Ontario  
M2J 1P8

(ii) Mailing Address: P.O. Box 650  
Scarborough, Ontario  
M1K 5E3

(iii) Nominations and  
Confirmations: Operations Analyst  
Electronic: sms@enbridge.com  
Facsimile: (780) 420-8533  
Telephone: (780) 420-8850

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**ENBRIDGE GAS DISTRIBUTION INC.  
FT SERVICE INDEX  
(Rate 332 Service)**

(iv) Invoices: Subsidiary Clerk, Internal Reporting  
Electronic: parker.morton@enbridge.com  
Facsimile: (416) 753-7451  
Telephone: (416) 495-5354

(v) Other: Director, Energy Supply & Policy  
Electronic: jamie.leblanc@enbridge.com  
Facsimile: (416) 495-5241  
Telephone: (416) 498-3816

Notices to Shipper: \_\_\_\_\_

(i) Delivery Address: \_\_\_\_\_  
\_\_\_\_\_

(ii) Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

(iii) Nominations and \_\_\_\_\_

Confirmations: Electronic: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(iv) Invoices: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(v) Other: \_\_\_\_\_  
Electronic: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_