

**RATE M17  
GENERAL TERMS & CONDITIONS**

**I. DEFINITIONS**

Capitalized terms not defined herein shall have the meaning given to them in the associated M17 Transportation Agreement or M17 Rate Schedule, as applicable, and except where the context expressly requires or states another meaning, the following terms, when used in these General Terms & Conditions and in any contract into which these General Terms & Conditions are incorporated, shall be construed to have the following meanings:

"**Authorized Overrun**" shall mean the amount by which Shipper exceeds its Contract Demand; provided such exceedance is not incurred during a period of interruption;

"**Available Capacity**" shall mean at any time, Enbridge's remaining available capacity to provide Transportation Services;

"**Average Heat Value**" means the average forecasted heating value of all gas to be received by Enbridge for the applicable Delivery Area for the applicable period.

"**Business Day**" shall mean any day, other than Saturday, Sunday or any days on which national banks in the Province of Ontario are authorized to close;

"**Contract**" shall refer to the Contract to which these General Terms & Conditions shall apply, and into which they are incorporated;

"**Contract Year**" shall mean a period of three hundred and sixty-five (365) consecutive days; provided however, that any such period which contains a date of February 29 shall consist of three hundred and sixty-six (366) consecutive days, commencing on November 1 of each year; except for the first Contract Year which shall commence on the Commencement Date and end on the first October 31 that follows such date;

"**cricondentherm hydrocarbon dewpoint**" shall mean the highest hydrocarbon dewpoint temperature on the phase envelope;

"**cubic metre**" shall mean the volume of gas which occupies one cubic metre when such gas is at a temperature of 15 degrees Celsius, and at a pressure of 101.325 kilopascals absolute;

"**Day**" shall mean a period of twenty-four (24) consecutive hours beginning at 10:00 a.m. Eastern Clock Time. The reference date for any Day shall be the calendar date upon which the twenty-four (24) hour period shall commence;

"**delivery**" shall mean any gas that is delivered by Enbridge into Shipper's possession, or to the possession of Shipper's agent;

"**Delivery Area**" shall mean the area in which the applicable Shipper Delivery Point(s) is/are located;

"**Eastern Clock Time**" shall mean the local clock time in the Eastern Time Zone on any Day;

"**Expansion Facilities**" shall mean any new facilities to be constructed by Enbridge in order to provide Transportation Services;

"**firm**" shall mean service not subject to curtailment or interruption except under Articles XI, XII and XVIII herein;

"**Firm Hourly Quantity**" means the maximum quantity of gas that may flow during any hourly period;

"**gas**" shall mean gas as defined in the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Sch. B, as amended, supplemented or re-enacted from time to time;

## SCHEDULE "A"

"**gross heating value**" shall mean the total heat expressed in megajoules per cubic metre (MJ/m<sup>3</sup>) produced by the complete combustion at constant pressure of one (1) cubic metre of gas with air, with the gas free of water vapour and the temperature of the gas, air and products of combustion at standard temperature and all water formed by the combustion reaction condensed to the liquid state;

"**hydrocarbon dewpoint**" shall mean temperature at a specific pressure where hydrocarbon vapour condensation begins;

"**Interconnect Operating Agreement**" shall mean the interconnect operating agreement between Shipper and Enbridge required to facilitate the Transportation Services;

"**Interconnecting Pipeline**" shall mean a transportation pipeline that directly connects to the Enbridge pipeline system; provided however, that an interconnection to Enbridge's pipeline system for the purposes of receiving Transportation Services shall not classify Shipper as having an Interconnecting Pipeline.

"**Interruptible Service HUB Contract**" shall mean a contract between Shipper and Enbridge under which Enbridge provides interruptible HUB service;

"**interruptible service**" or "**Interruptible**" shall mean service subject to curtailment or interruption, after notice, at any time;

"**joule**" (J) shall mean the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force. The term "**megajoule**" (MJ) shall mean 1,000,000 joules. The term "**gigajoule**" (GJ) shall mean 1,000,000,000 joules;

"**Limited Balancing Agreement**" shall mean the limited balancing agreement between Shipper and Enbridge required to facilitate the Transportation Services;

"**m<sup>3</sup>**" shall mean cubic metre of gas and "**10<sup>3</sup>m<sup>3</sup>**" shall mean 1,000 cubic metres of gas;

"**Month**" shall mean the period beginning at 10:00 a.m. Eastern Clock Time on the first day of a calendar month and ending at 10:00 a.m. Eastern Clock Time on the first day of the following calendar month;

"**NAESB**" shall mean North American Energy Standards Board;

"**OEB**" means the Ontario Energy Board;

"**pascal**" (Pa) shall mean the pressure produced when a force of one (1) newton is applied to an area of one (1) square metre. The term "**kilopascal**" (kPa) shall mean 1,000 pascals;

"**receipt**" shall mean any gas that is delivered into Enbridge's possession, or the possession of Enbridge's agent;

"**Shipper**" shall have the meaning as defined in the Contract, and shall also include Shipper's agent(s);

"**specific gravity**" shall mean density of the gas divided by density of air, with both at a temperature of 15 degrees Celsius, and at a pressure of 101.325 kilopascals absolute;

"**Taxes**" shall mean any tax (other than tax on income or tax on property), duty, royalty, levy, license, fee or charge not included in the charges and rates as per the applicable rate schedule (including but not limited to charges under any form of cap and trade, carbon tax, or similar system) and that is levied, assessed or made by any governmental authority on the gas itself, or the act, right, or privilege of producing, severing, gathering, storing, transporting, handling, selling or delivering gas under the Contract;

"**TCPL**" means TransCanada PipeLines Limited;

"**Unauthorized Overrun**" shall mean any amount in excess of the Contract Demand consumed during a period of interruption;

"**Wobbe Number**" shall mean gross heating value of the gas divided by the square root of its specific gravity.

**II. GAS QUALITY**

1. Natural Gas: The minimum gross heating value of the gas delivered to/by Enbridge hereunder, shall be thirty-six (36) megajoules per cubic metre. The maximum gross heating value of the gas delivered to/by Enbridge hereunder shall be forty point two (40.2) megajoules per cubic metre. The gas to be delivered hereunder to Enbridge may be a commingled supply from Shipper's gas sources of supply. The gas to be delivered by Enbridge may be a commingled supply from Enbridge's sources of gas supply; provided, however, that helium, natural gasoline, butane, propane and other hydrocarbons, except methane, may be removed prior to delivery to Shipper. Further, Enbridge may subject, or permit the subjection of, the gas to compression, dehydration, cooling, cleaning and other processes.
2. Freedom from objectionable matter: The gas to be delivered to/by Enbridge hereunder,
  - a. shall be commercially free from bacteria, sand, dust, gums, crude oils, lubricating oils, liquids, chemicals or compounds used in the production, treatment, compression or dehydration of the gas or any other objectionable substance in sufficient quantity so as to render the gas toxic, unmerchantable or cause injury to, or interference with, the proper operation of the lines, regulators, meters or other appliances through which it flows,
  - b. shall not contain more than seven (7) milligrams of hydrogen sulphide per cubic metre of gas, nor more than four hundred and sixty (460) milligrams of total sulphur per cubic metre of gas,
  - c. shall not contain more than five (5) milligrams of mercaptan sulphur per cubic metre of gas,
  - d. shall not contain more than two point zero (2.0) mole percent of carbon dioxide in the gas,
  - e. shall not contain more than zero point four (0.4) mole percent of oxygen in the gas,
  - f. shall not contain more than zero point five (0.5) mole percent of carbon monoxide in the gas,
  - g. shall not contain more than four point zero (4.0) mole percent of hydrogen in the gas,
  - h. shall not contain more than sixty-five (65) milligrams of water vapour per cubic metre of gas,
  - i. shall not have a cricondenthem hydrocarbon dewpoint exceeding minus eight (-8) degrees Celsius,
  - j. shall have Wobbe Number from forty seven point five (47.5) megajoules per cubic metre of gas to fifty one point fourty six (51.46) megajoules per cubic metre of gas, maximum of one point five (1.5) mole percent of butane plus (C4+) in the gas, and maximum of four point zero (4.0) mole percent of total inerts in the gas in order to be interchangeable with other Interconnecting Pipeline gas.
3. Non-conforming Gas: In addition to any other right or remedy of a party, each party shall be entitled to refuse to accept delivery of any gas which does not conform to any of the specifications set out in this Article II.
4. Quality of Gas Received: The quality of the gas to be received by Enbridge hereunder is to be of a merchantable quality and in accordance with the quality standards as set out by Enbridge in this Article II, but, Enbridge will also accept gas of a quality as set out in any other Interconnecting Pipeline's general terms and conditions, provided that all Interconnecting Pipelines accept such quality of gas. In addition to any other right or remedy of a party, each party shall be entitled to refuse to accept delivery of any gas which does not conform to any of the specifications set out in herein.

**III. MEASUREMENTS**

1. Transportation, and/or Unit: The unit of the gas delivered to Enbridge shall be a gigajoule. The unit of gas transported by Enbridge shall be a gigajoule. The unit of gas delivered by Enbridge shall be a gigajoule or a cubic metre (m<sup>3</sup>) or one thousand cubic metres (10<sup>3</sup>m<sup>3</sup>), at Enbridge's discretion.

2. Determination of Volume and Energy:

- a. The volume and energy amounts determined under the Contract shall be determined in accordance with the Electricity and Gas Inspection Act (Canada), RSC 1985, c E-4- (the "Act") and the Electricity and Gas Inspection Regulations, SOR 86/131 (the "Regulations"), and any documents issued under the authority of the Act and Regulations and any amendments thereto.
- b. The supercompressibility factor shall be determined in accordance with either the "Manual for Determination of Supercompressibility Factors for Natural Gas" (PAR Project NX-19) published in 1962 or with American Gas Association Transmission Measurement Committee Report No. 8, Nov. 1992, at Enbridge's discretion, all as amended from time to time.
- c. The volume and/or energy of the gas delivered to/by Enbridge hereunder shall be determined by the measurement equipment designated in Article VII herein.
- d. Upon request by Enbridge, Shipper shall obtain measurement of the total quantity of gas received by Enbridge hereunder from the Interconnecting Pipeline. Such measurement shall be done in accordance with established practices between Enbridge and the Interconnecting Pipeline.
- e. Where there is no site specific energy measurement, Enbridge's Average heat Value will be used to convert volumes to energy.

IV. RECEIPT POINT AND DELIVERY POINT

1. Unless otherwise specified in the Contract, the point or points of receipt and point or points of delivery for all gas to be covered hereunder shall be on the outlet side of the measuring stations located at or near the point or points of connection specified in the Contract, where possession of the gas changes from one party to the other as per Schedule "C".

V. POSSESSION OF AND RESPONSIBILITY FOR GAS

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

VI. FACILITIES ON SHIPPER'S PROPERTY

1. Construction and Maintenance: Enbridge may construct, maintain and operate on Shipper's property at the Delivery Point a measuring station properly equipped with a meter or meters and any other necessary measuring equipment for properly measuring the gas delivered under the Contract. Shipper will grant to Enbridge a lease and/or rights-of-way over property of Shipper as required by Enbridge to install such facilities and to connect same to Enbridge's pipeline.
2. Entry: Enbridge, its servants, agents and each of them may at any reasonable time on notice (except in cases of emergency) to Shipper or his duly authorized representative enter Shipper's property for the purpose of constructing, maintaining, removing, operating and/or repairing station equipment.

3. Property: The said station and equipment will be and remain the property of Enbridge notwithstanding it is constructed on and attached to the realty of Shipper, and Enbridge may remove it upon termination of the Contract and will do so if so requested by Shipper.

**VII. MEASURING EQUIPMENT**

1. Metering by Enbridge: Enbridge will install and operate meters and related equipment as required and in accordance with the Act and Regulations referenced in Article III herein.
2. Metering by Others: In the event that all or any gas delivered to/by Enbridge hereunder is measured by a meter that is owned and operated by an Interconnecting Pipeline, then Enbridge and Shipper agree to accept that metering for the purpose of determining the volume and energy of gas delivered to/by Enbridge on behalf of the Shipper. The standard of measurement and tests for the gas delivered to/by Enbridge hereunder shall be in accordance with the general terms and conditions as incorporated in that Interconnecting Pipeline company's gas tariff as approved by its regulatory body.
3. Check Measuring Equipment: Shipper may install, maintain and operate, at the Delivery Point such check measuring equipment as desired, provided that such equipment shall be so installed as not to interfere with the operation of Enbridge's measuring equipment at or near the Delivery Point, and shall be installed, maintained and operated in conformity with the same standards and specifications applicable to Enbridge's metering facilities.
4. Rights of Parties: The measuring equipment installed by either party, together with any building erected by it for such equipment, shall be and remain its property. However, Enbridge and Shipper shall 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 deliveries of gas by Enbridge under the Contract. Either party will give the other party reasonable notice of its intention to carry out the acts herein specified. The records from such measuring equipment shall remain the property of its 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 ten (10) days after receipt thereof.
5. Calibration and Test of Measuring Equipment: The accuracy of Enbridge's measuring equipment shall be verified by Enbridge at reasonable intervals, and if requested, in the presence of representatives of Shipper, but Enbridge shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period. In the event either party notifies the other that it desires a special test of any measuring equipment, the parties shall 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 tested is found to be in error by not more than two per cent (2%). If, upon test, any measuring equipment is found to be in error by not more than two per cent (2%), previous recordings of such equipment shall be considered accurate in computing receipts and deliveries of gas, but such equipment shall be adjusted at once to record as near to absolute accuracy as possible. If the test conducted shows a percentage of inaccuracy greater than two percent (2%), the financial adjustment, if any, shall be calculated in accordance with the Act and Regulations, as may be amended from time to time and in accordance with any successor statutes and regulations.
6. Preservation of Metering Records: Enbridge and Shipper shall each preserve for a period of at least six (6) years all test data, and other relevant records.
7. Error in Metering or Meter Failure at Delivery Point

In the event Enbridge's meter is out of service, or registered inaccurately, the volume or quantity of gas shall be determined by Enbridge as follows:

- a. by using the registration of any check meter or meter, if installed and accurately registering; or, in the absence of a. then;
- b. by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or in the absence of both a. and b., then;

c. by estimating the quantity of gas delivered during periods under similar conditions when the meter was registering accurately.

**VIII. BILLING**

1. Monthly Billing Date: Enbridge shall render bills on or before the tenth (10<sup>th</sup>) day of each month for all Transportation Services furnished during the preceding Month. Such charges may be based on estimated quantities, if actual quantities are unavailable in time to prepare the billing. Enbridge shall provide, in a succeeding Month's billing, an adjustment based on any difference between actual quantities and estimated quantities, without any interest charge. If presentation of a bill to Shipper is delayed after the tenth (10<sup>th</sup>) day of the month, then the time of payment shall be extended accordingly, unless Shipper is responsible for such delay.
2. Right of Examination: Both Enbridge and Shipper shall have the right to examine at any reasonable time the books, records and charts of the other to the extent necessary to verify the accuracy of any statement, chart or computation made under or pursuant to the provisions of the Contract.
3. Amendment of Statements: For the purpose of completing a final determination of the actual quantities of gas handled in any of the Transportation Services to Shipper, the parties shall have the right to amend their statement for a period equal to the time during which the Interconnecting Pipeline retains the right to amend its statements, which period shall not exceed three (3) years from the date of termination of the Contract.

**IX. PAYMENTS**

1. Monthly Payments: Shipper shall pay the invoiced amount directly into Enbridge's bank account as directed on the invoice on or before the twentieth (20<sup>th</sup>) day of each month. If the payment date is not a Business Day, then payment must be received in Enbridge's account on the first Business Day preceding the twentieth (20<sup>th</sup>) day of the month.
2. Remedies for Non-payment: Should Shipper fail to pay all of the amount of any bill as herein provided when such amount is due,
  - a. Shipper shall pay to Enbridge interest on the unpaid portion of the bill accruing at a rate per annum equal to the minimum commercial lending rate of Enbridge's principal banker in effect from time to time from the due date until the date of payment; and,
  - b. If such failure to pay continues for thirty (30) days after payment is due, Enbridge, in addition to any other remedy it may have under the Contract, may suspend Services until such amount is paid. Notwithstanding such suspension, all demand charges shall continue to accrue hereunder as if such suspension were not in place.

If Shipper in good faith disputes the amount of any such bill or part thereof Shipper shall pay to Enbridge such amounts as it concedes to be correct. At any time thereafter, within twenty (20) days of a demand made by Enbridge, Shipper shall furnish financial assurances satisfactory to Enbridge, guaranteeing payment to Enbridge of the amount ultimately found due upon such bill after a final determination. Such a final determination may be reached either by agreement, arbitration decision or judgement of the courts, as may be the case. Enbridge shall not be entitled to suspend Services because of such non-payment unless and until default occurs in the conditions of such financial assurances or default occurs in payment of any other amount due to Enbridge hereunder.

Notwithstanding the foregoing, Shipper is not relieved from the obligation to continue its deliveries of gas to Enbridge under the terms of any agreement, where Shipper has contracted to deliver specified quantities of gas to Enbridge.

3. Billing Adjustments: If it shall be found that at any time or times Shipper has been overcharged or undercharged in any form whatsoever under the provisions of the Contract and Shipper shall have actually paid the bills containing such overcharge or undercharge, Enbridge shall refund the amount of any such overcharge and interest shall accrue from and including the first day of such overcharge as paid to the date of refund and shall be calculated but not compounded at a rate per annum determined each day during the calculation period to be equal to the minimum commercial lending rate of Enbridge's principal banker, and the Shipper shall pay the amount of any such undercharge, but without interest. In the event Enbridge renders

a bill to Shipper based upon measurement estimates, the required adjustment to reflect actual measurement shall be made on the bill next following the determination of such actual measurement, without any charge of interest. In the event an error is discovered in the amount billed in any statement rendered by Enbridge, such error shall be adjusted by Enbridge. Such overcharge, undercharge or error shall be adjusted by Enbridge on the bill next following its determination (where the term "**bill next following**" shall mean a bill rendered at least fourteen (14) days after the day of its determination), provided that claim therefore shall have been made within three (3) years from the date of the incorrect billing. In the event any refund is issued with Shipper's bill, the aforesaid date of refund shall be deemed to be the date of the issue of bill.

4. Taxes: In addition to the charges and rates as per the applicable rate schedules and price schedules, Shipper shall pay all Taxes which are imposed currently or subsequent to the execution of the Contract by any legal authority having jurisdiction and any amount in lieu of such Taxes paid or payable by Enbridge.
5. Set Off: If Shipper shall, at any time, be in arrears under any of its payment obligations to Enbridge under the Contract, then Enbridge shall be entitled to reduce the amount payable by it to Shipper under the Contract, or any other contract, by an amount equal to the amount of such arrears or other indebtedness to Enbridge. In addition to the foregoing remedy, Enbridge may, upon forty-eight (48) hours verbal notice, to be followed by written notice, take possession of any or all of Shipper's gas in Enbridge's possession, which shall be deemed to have been assigned to Enbridge, to reduce such arrears or other indebtedness to Enbridge. Such gas shall be valued at the Day price for gas at Dawn as listed in Canadian Gas Price Reporter (or equivalent) for the Day of set off.

**X. ARBITRATION**

If and when any dispute, difference or question shall arise between the parties hereto touching the Contract or anything herein contained, or the construction hereof, or the rights, duties or liabilities of the parties in relation to any matter hereunder, the matter in dispute shall be submitted and referred to arbitration within ten (10) days after written request of either party. Upon such request each party shall appoint an arbitrator, and the two so appointed shall appoint a third. A majority decision of the arbitrators shall be final and binding upon both parties. In all other respects the provisions of the Arbitration Act, 1991, or any act passed in amendment thereof or substitution therefore, shall apply to each such submission. Operations under the Contract shall continue, without prejudice, during any such arbitration and the costs attributable to such arbitration shall be shared equally by the parties hereto.

**XI. FORCE MAJEURE**

1. Definition: The term "**force majeure**" as used herein shall mean acts of God, strikes, lockouts or any other industrial disturbance, acts of the public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, inability to obtain materials, supplies, permits or labour, any laws, orders, rules, regulations, acts or restraints of any governmental body or authority (civil or military), any act or omission that is excused by any event or occurrence of the character herein defined as constituting force majeure, any act or omission by parties not controlled by the party having the difficulty and any other similar cases not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.
2. Notice: In the event that either the Shipper or Enbridge is rendered unable, in whole or in part, by force majeure, to perform or comply with any obligation or condition of the Contract, such party shall give notice and full particulars of such force majeure in writing delivered by hand, fax or other direct written electronic means to the other party as soon as possible after the occurrence of the cause relied on and subject to the provision of this Article.
3. Exclusions: Neither party shall be entitled to the benefit of the provisions of force majeure hereunder if any or all of the following circumstances prevail: the failure resulting in a condition of force majeure was caused by the negligence of the party claiming suspension; the failure was caused by the party claiming suspension where such party failed to remedy the condition by making all reasonable efforts (short of litigation, if such remedy would require litigation); the party claiming suspension failed to resume the performance of such condition obligations with reasonable dispatch; the failure was caused by lack of funds; the party claiming suspension did not, as soon as possible after determining, or within a period within which

it should acting reasonably have determined, that the occurrence was in the nature of force majeure and would affect its ability to observe or perform any of its conditions or obligations under the Contract, give to the other party the notice required hereunder.

4. Notice of Remedy: The party claiming suspension shall likewise give notice as soon as possible after the force majeure condition is remedied, to the extent that the same has been remedied, and that such party has resumed or is then in a position to resume the performance of the obligations and conditions of the Contract.
5. Obligation to Perform: An event of force majeure on Enbridge's system will excuse the failure to deliver gas by Enbridge or the failure to accept gas by Enbridge 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.
6. Upstream or Downstream Force Majeure: An event of force majeure upstream or downstream of Enbridge's system shall not relieve Shipper of any payment obligations.
7. Delay of Firm Transportation Services: Despite Article XI herein, if Enbridge is prevented, by reason of an event of force majeure on Enbridge's system from delivering gas on the Day or Days upon which Enbridge has accepted gas from Shipper, Enbridge shall thereafter make all reasonable efforts to deliver such quantities as soon as practicable and on such Day or Days as are agreed to by Shipper and Enbridge. If Enbridge accepts such gas on this basis, Shipper shall not receive any demand charge relief as contemplated under Article XI herein.
8. Demand Charge Relief for Firm Transportation Services: Despite Article XI herein, if on any Day Enbridge fails to accept gas from Shipper by reason of an event of force majeure on Enbridge's system and fails to deliver the quantity of gas nominated hereunder by Shipper up to the firm Contract Demand for that Contract, then for that Day the Monthly Demand Charge shall be reduced by an amount equal to the applicable Daily Demand Rate, as defined in this paragraph, multiplied by the difference between the quantity of gas actually delivered by Enbridge during such Day and the quantity of gas which Shipper in good faith nominated on such Day. The term "**Daily Demand Rate**" shall mean the Monthly Demand Charge or equivalent pursuant to the M17 Rate Schedule divided by the number of days in the month for which such rate is being calculated.
9. Proration of Firm Transportation Services: If, due to the occurrence of an event of force majeure as outlined above, the capacity for gas deliveries by Enbridge is impaired, it will be necessary for Enbridge to curtail Shipper's gas receipts to Enbridge hereunder, via proration based on utilization of such facilities for the Day. This prorating shall be determined by multiplying the capability of such facilities as available downstream of the impairment on the Day, by a fraction where the numerator is Shipper's nominated firm quantity and the denominator is the total of all such nominated firm quantities for nominated services and planned consumption for in-franchise customers on the Day. For the purposes of this Article XI, firm services shall mean all firm services provided by Enbridge to in-franchise customers and ex-franchise shippers.

**XII. DEFAULT AND TERMINATION**

In case of the breach or non-observance or non-performance on the part of either party hereto of any covenant, proviso, condition, restriction or stipulation contained in the Contract (but not including herein failure to take or make delivery in whole or in part of the gas delivered to/by Enbridge hereunder occasioned by any of the reasons provided for in Article XI herein) which has not been waived by the other party, then and in every such case and as often as the same may happen, the non-defaulting party may give written notice to the defaulting party requiring it to remedy such default and in the event of the defaulting party failing to remedy the same within a period of thirty (30) days from receipt of such notice, the non-defaulting party may at its sole option declare the Contract to be terminated and thereupon the Contract shall be terminated and be null and void for all purposes other than and except as to any liability of the parties under the same incurred before and subsisting as of termination. The right hereby conferred upon each party shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

**XIII. AMENDMENT**



Subject to Article XV herein and the ability of Enbridge to amend the applicable rate schedules and price schedules, with the approval of the OEB (if required), no amendment or modification of the Contract shall be effective unless the same shall be in writing and signed by each of the Shipper and Enbridge.

**XIV. NON-WAIVER AND FUTURE DEFAULT**

No waiver of any provision of the Contract shall be effective unless the same shall be in writing and signed by the party entitled to the benefit of such provision and then such waiver 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 Enbridge to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under the Contract shall operate as a waiver thereof.

**XV. LAWS, REGULATIONS AND ORDERS**

The Contract and the respective rights and obligations of the parties hereto are subject to all present and future valid laws, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction and the Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency which affects any of the provisions of the Contract.

**XVI. *intentionally blank***

**XVII. RENEWALS**

Contracts with an Initial Term of five (5) years or greater will continue in full force and effect beyond the Initial Term, automatically renewing for a period of one (1) year, and every one (1) year thereafter. Shipper may reduce the Contract Demand or terminate the Contract with notice in writing by Shipper at least two (2) years prior to the expiration thereof.

**XVIII. SERVICE CURTAILMENT**

1. Right to Curtail: Enbridge shall have the right to curtail or not to schedule part or all of Transportation Services, in whole or in part, on all or a portion of its pipeline system at any time for reasons of force majeure or when, in Enbridge sole discretion, acting reasonably, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its pipeline system. Enbridge shall provide Shipper such notice of such curtailment as is reasonable under the circumstances. If due to any cause whatsoever Enbridge is unable to receive or deliver the quantities of Gas which Shipper has requested, then Enbridge shall order curtailment by all Shippers affected and to the extent necessary to remove the effect of the disability. Enbridge has a priority of service policy to determine the order of service curtailment. In order to place services on the priority of service list, Enbridge considers the following business principles: appropriate level of access to core services, customer commitment, encouraging appropriate contracting, materiality, price and term, and promoting and enabling in-franchise consumption.

The Priority ranking for all services utilizing Enbridge's storage, transmission and distribution system as applied to both in-franchise and ex-franchise services are as follows; with number 1 having the highest priority and the last interrupted.

1. Firm In-franchise Transportation and Distribution services and firm Ex-franchise services (Note 1)
2. In-franchise Interruptible Distribution services
3. C1/M12 IT Transport and IT Exchanges with Take or Pay rates
4. Balancing (Hub Activity) < = 100 GJ/d; Balancing (Direct Purchase) < = 500 GJ/d; In-franchise distribution authorized overrun (Note 3)
5. C1/M12 IT Transport and IT Exchanges at premium rates
6. C1/M12/M17 Overrun < = 20% of CD (Note 4)
7. Balancing (Direct Purchase) > 500 GJ/d
8. Balancing (Hub Activity) > 100 GJ/d; C1/M12 IT Transport and IT Exchanges

9. C1/M12/M17 Overrun > 20% of CD
10. C1/M12 IT Transport and IT Exchanges at a discount
11. Late Nominations

Notes:

1. Nominated services must be nominated on the NAESB Timely Nomination Cycle otherwise they are considered to be late nomination and are therefore interruptible.
2. Higher value or more reliable IT is contemplated in the service and contract, when purchase at market competitive prices.
3. Captures the majority of customers that use Direct Purchase balancing transactions.
4. Captures the majority of customers that use overrun.

2. Capacity Procedures: Enbridge reserves the right to change its procedures for sharing interruptible capacity and will provide Shipper with two (2) months prior notice of any such change.
3. Maintenance: Enbridge's facilities from time to time may require maintenance or construction. If such maintenance or construction is required, and in Enbridge's sole opinion, acting reasonably, such maintenance or construction may impact Enbridge's ability to meet Shipper's requirements, Enbridge shall provide at least ten (10) days' notice to Shipper, except in the case of an emergency. In the event the maintenance impacts Enbridge's ability to meet Shipper's requirements, Enbridge shall not be liable for any damages and shall not be deemed in breach of the Contract. To the extent that Enbridge's ability to accept and/or deliver Shipper's gas is impaired, the Monthly Demand Charge shall be reduced in accordance with Article XI Section 8 and available capacity allocated in accordance with Article XI Section 9 herein.

Enbridge 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. Enbridge will endeavour to schedule and complete the maintenance and construction, which would normally be expected to impact on Enbridge's ability to meet Shipper's requirements, during the period from April 1 through to November 1.

**XIX. SHIPPER'S REPRESENTATIONS AND WARRANTIES**

1. Shipper's Warranty: Shipper warrants that it will, if required, maintain, or have maintained on its behalf, all external approvals including the governmental, regulatory, import/export permits and other approvals or authorizations that are required from any federal, state or provincial authorities for the gas quantities to be handled under the Contract. Shipper further warrants that it shall maintain in effect the Facilitating Agreement, Interconnect Operating Agreement and Limited Balancing Agreement.
2. Financial Representations: Shipper represents and warrants that the financial assurances (including the Initial Financial Assurances and Security) (if any) shall remain in place throughout the term hereof, unless Shipper and Enbridge agree otherwise. Shipper shall notify Enbridge in the event of any change to the financial assurances throughout the term hereof. Should Enbridge have reasonable grounds to believe that Shipper will not be able to perform or continue to perform any of its obligations under the Contract as a result of one of the following events ("**Material Event**");
  - a. Shipper is in default, which default has not been remedied, of the Contract or is in default of any other material contract with Enbridge or another party; or,
  - b. Shipper's corporate or debt rating falls below investment grade according to at least one nationally recognized rating agency; or,
  - c. Shipper ceases to be rated by a nationally recognized agency; or,
  - d. Shipper has exceeded credit available as determined by Enbridge from time to time,

then Shipper shall within fourteen (14) days of receipt of written notice by Enbridge, obtain and provide to Enbridge a letter of credit or other security in the form and amount reasonably required by Enbridge (the "**Security**"). The Security plus the Initial Financial Assurances shall not exceed twelve (12) months of Monthly Demand Charges (in accordance with Article IX

herein) multiplied by Contract Demand. In the event that Shipper does not provide to Enbridge such Security within such fourteen (14) day period, Enbridge may deem a default under the Default and Termination provisions of Article XII herein.

In the event that Shipper in good faith, reasonably believes that it should be entitled to reduce the amount of or value of the Security previously provided, it may request such a reduction from Enbridge and to the extent that the Material Event has been mitigated or eliminated, Enbridge shall return all or a portion of the Security to Shipper within fourteen (14) Business Days after receipt of the request.

**XX. MISCELLANEOUS PROVISIONS**

1. Permanent Assignment: Shipper may assign the Contract to a third party ("**Assignee**"), up to the Contract Demand, (the "**Capacity Assigned**"). Such assignment shall require the prior written consent of Enbridge and release of obligations by Enbridge for the Capacity Assigned from the date of assignment. Such consent and release shall not be unreasonably withheld and shall be conditional upon the Assignee providing, amongst other things, financial assurances as per Article XXI herein. Any such assignment will be for the full rights, obligations and remaining term of the Contract as relates to the Capacity Assigned.
2. Temporary Assignment: Shipper may, upon notice to Enbridge, assign all or a part of its service entitlement under the Contract (the "**Assigned Quantity**") and the corresponding rights and obligations to an Assignee on a temporary basis for not less than one calendar month. Such assignment shall not be unreasonably withheld and shall be conditional upon the Assignee executing a Facilitating Agreement. Notwithstanding such assignment, Shipper shall remain obligated to Enbridge to perform and observe the covenants and obligations contained herein in regard to the Assigned Quantity to the extent that Assignee fails to do so.
3. Title to Gas: Shipper represents and warrants to Enbridge that Shipper shall have good and marketable title to, or legal authority to deliver to Enbridge, all gas delivered to Enbridge hereunder. Furthermore, Shipper hereby agrees to indemnify and save Enbridge harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of claims of any or all third parties to such gas or on account of Taxes, or other charges thereon.
4. Limited Balancing Agreement and Interconnect Operating Agreement: Shipper shall be required to have a Limited Balancing Agreement and Interconnect Operating Agreement with Enbridge to enable the provision of Transportation Services, such agreement to expire no earlier than the day the Contract expires.

**XXI. PRECONDITIONS TO TRANSPORTATION SERVICES**

This Article XXI is only applicable if Enbridge and Shipper have not entered into a precedent agreement related to the Transportation Services.

1. Enbridge Conditions: The obligations of Enbridge to provide Transportation Services hereunder are subject to the following conditions precedent, which are for the sole benefit of Enbridge and which may be waived or extended in whole or in part in the manner provided in the Contract:
  - a. Enbridge shall have obtained, in form and substance satisfactory to Enbridge, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders and authorizations, that are required to provide the Transportation Services;
  - b. Enbridge shall have obtained all internal approvals that are necessary or appropriate to provide the transportation Services;
  - c. Enbridge shall have received from Shipper the requisite financial assurances reasonably necessary to ensure Shipper's ability to honour the provisions of the Contract (the "**Initial Financial Assurances**"). The Initial Financial Assurances, if required, will be as determined solely by Enbridge; and,

- d. Shipper and Enbridge shall have entered into the Interruptible Service HUB Contract or equivalent (the "**Facilitating Agreement**"), a Limited Balancing Agreement and an Interconnect Operating Agreement.
2. Shipper Conditions: 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 the Contract:
    - a. Shipper shall, as required, have entered into the necessary contracts with Enbridge and/or others to facilitate the Transportation Services contemplated herein, including contracts for upstream and downstream transportation, and shall specifically have an executed and valid Facilitating Agreement, Interconnect Operating Agreement and Limited Balancing Agreement; and shall, as required, have entered into the necessary contracts to purchase the gas quantities handled under the Contract;
    - b. Shipper shall 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 the Contract; and,
    - c. Shipper shall have obtained all internal approvals that are necessary or appropriate for the Shipper to execute the Contract.
  3. Satisfaction of Conditions: Enbridge and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfil the conditions precedent specified in this Article XXI Section 1 a, c, and d and Section 2 a and b. Each party shall notify the other forthwith in writing of the 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 the Contract and upon the giving of such notice, the Contract shall be of no further force and effect and each of the parties shall be released from all further obligations thereunder.
  4. Non-Satisfaction of Conditions: If any of the conditions precedent in this Article XXI Section 1 c or Section 2 are not satisfied or waived by the party entitled to the benefit of that condition by the Conditions Date as such term is defined in the Contract, then either party may, upon written notice to the other party, terminate the Contract and upon the giving of such notice, the 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 the Contract prior to such termination and any liability a party may have incurred before such termination shall not thereby be released.