



**ENBRIDGE GAS INC  
MARKET PRICE SERVICE SCHEDULE (MPSS)  
SCHEDULE A - GENERAL TERMS AND CONDITIONS**

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I. **DEFINITIONS**

Except where the context expressly requires or states another meaning, the following terms, when used in these General Terms and Conditions and in any Contract shall be construed to have the meanings set out below. Capitalized terms not defined herein shall have the meaning set out in the Contract.

“**Authorized Overrun**” shall mean the amount by which Shipper’s Authorized Quantity exceeds Maximum Daily Injection Demand or Maximum Daily Withdrawal Demand, provided such exceedance is not incurred during a period of interruption;

“**Authorized Quantity**” shall have the meaning given thereto in Article XX;

“**Balancing Account**” shall mean the gas balance held by Enbridge for Shipper, or owed by Shipper to Enbridge, at any or all points on the Service Hub, and shall equal the quantity of gas received by Enbridge for Shipper’s account minus the quantity of gas delivered to Shipper by Enbridge at that point. Where the Balancing Account is zero or a positive number, Enbridge is deemed to be providing a Parking Service for Shipper; and, where the Balancing Account is a negative number, Enbridge is deemed to be providing a Loan Service for Shipper;

“**Balancing Service**” shall mean either an interruptible or firm Parking Service or an interruptible or firm Loan Service, as the case may be, and shall be so defined depending on the quantity of gas held or owed by Enbridge on behalf of Shipper in the Balancing Account;

“**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 any Contract to which these General Terms and Conditions shall apply and into which they are incorporated;

“**cricondenthem 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;

“**Daily Firm Quantity**” shall, on any Day, mean the firm portion of the Maximum Daily Injection Demand if Shipper has nominated injections into the Storage Account for that Day, or the firm portion of the Maximum Daily Withdrawal Demand if Shipper has nominated withdrawals from the Storage Account for that Day;

“**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 Point**” shall mean any point(s) defined in the Contract where Enbridge shall deliver gas to Shipper;

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

“**Enbridge**” shall mean Enbridge Gas Inc.;

“**Facilitating Agreements**” shall refer to a contract with Enbridge that is related to the Transportation Services and is required in order to obtain another service, including without limiting the generality of the foregoing:

- a. an Interruptible Service Hub Contract;
- b. a Limited Balancing Agreement;

- c. an Interconnect Operating Agreement; or
- d. a Dehydration Contract.

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

“**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 and shall include RNG;

“**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;

“**Hourly Injection Quantity**” shall mean the Maximum Daily Injection Demand divided by 20.

“**Hourly Withdrawal Quantity**” shall mean the Maximum Daily Withdrawal Demand divided by 20.

“**hydrocarbon dewpoint**” shall mean the temperature at a specific pressure where hydrocarbon vapour condensation begins;

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

“**Interruptible Service Hub Contract**” shall mean an interruptible service hub contract between Shipper and Enbridge pursuant to which Enbridge provides interruptible gas transportation, exchange, balancing and name change services;

“**Interconnecting Pipeline**” shall mean a pipeline system that directly connects to the Enbridge pipeline system;

“**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;

“**Loan Service**” shall mean a service whereby Enbridge delivers a quantity of gas (such quantity to be known as the “**Loaned Quantity**”) to Shipper at a Delivery Point and debits Shipper’s Balancing Account accordingly, and an equal quantity of gas is subsequently returned by Shipper to Enbridge at that same point, at which time the Shipper’s Balancing Account is credited accordingly;

“**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;

“**Name Change Service**” shall mean an administrative service whereby Enbridge acknowledges for Shipper a change in title of a gas quantity from Shipper to a third party at a Delivery or Receipt Point;

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

“**Parking Service**” shall mean a service whereby Enbridge receives a quantity of gas (such quantity to be known as the “**Parked Quantity**”) from Shipper at a Receipt Point and credits Shipper’s Balancing Account accordingly, and an equal quantity of gas is subsequently returned by Enbridge to Shipper at that same point, at which time the Shipper’s Balancing Account is debited accordingly;



“**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;

“**Receipt Point**” shall mean any point(s) defined in the Contract where Enbridge shall receive gas from Shipper;

“**RNG**” or “**Renewable Natural Gas**” shall mean biogas that has been conditioned or upgraded to a quality meeting the Renewable Gas Specification;

“**Renewable Gas Specification**” means the RNG standards or requirements established by Enbridge, as amended from time to time;

“**Service Hub**” shall mean Enbridge's transmission and underground storage facilities, and points of interconnection of those facilities with the facilities of any other company's gas pipeline;

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

“**Shipper Quantity**” shall, on any gas day, be equal to the greater of: (i) the Authorized Quantity for that Day; and (ii) the nomination duly made by Shipper in good faith prior to the nomination deadline for the first nomination window applicable for that Day; provided that in no event shall the Shipper Quantity exceed the Daily Firm Quantity;

“**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;

“**Storage Account**” shall mean the gas balance held by Enbridge for Shipper and shall equal the quantity of gas received by Enbridge for Shipper's account minus the quantity of gas delivered to Shipper by Enbridge. Where the Storage Account is zero or a positive number, Enbridge is deemed to be providing a Storage Service, as defined in the Contract, for Shipper;

“**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 or any other payment contemplated under the Contract;

“**TransCanada**” means TransCanada PipeLines Limited;

“**Unauthorized Overrun**” shall have the meaning as set forth in Article XX herein;

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

## II. **GAS QUALITY**

1. a. 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.
- b. Renewable Natural Gas: Specifically with the respect to RNG, the established quality specifications will be

further defined in the Contract.

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) molar percent by volume of carbon dioxide in the gas,
  - e. shall not contain more than zero point four (0.4) molar percent by volume of oxygen in the gas,
  - f. shall not contain more than zero point five (0.5) molar percent by volume of carbon monoxide in the gas,
  - g. shall not contain more than four point zero (4.0) molar percent by volume 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 or minus eighteen (-18) degrees Fahrenheit,
  - j. shall have Wobbe Number from forty-seven point fifty (47.50) megajoules per cubic metre of gas to fifty-one point forty-six (51.46) megajoules per cubic metre of gas, maximum of one point five (1.5) mole percent by volume of butane plus (C4+) in the gas, and maximum of four point zero (4.0) mole percent by volume 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.
  - a. In the event that the quality of the gas does not conform or if Enbridge, acting reasonably, suspects the quality of the gas may not conform to the specifications herein, then Shipper shall, if so directed by Enbridge acting reasonably, forthwith carry out, at Shipper's cost, whatever field testing of the gas quality as may be required to ensure that the quality requirements set out herein are met, and to provide Enbridge with a certified copy of such tests. If Shipper does not carry out such tests forthwith, Enbridge may conduct such test and Shipper shall reimburse Enbridge for all costs incurred by Enbridge for such testing.
  - b. If Shipper's gas fails at any time to conform to the requirements of this Article II, Enbridge, in addition to its other remedies, may refuse to accept delivery of gas at the Receipt Points hereunder until such deficiency has been remedied by Shipper. Each Party agrees to notify the other verbally, followed by written notification, of any such deficiency of quality.
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 herein.

5. Delivery of Gas to an Exchange Point: The quality of gas to be delivered to an Exchange Point is to be of a merchantable quality and in accordance with the quality standards as set out by the third party pipeline operator of the facility at the Exchange Point.

### III. MEASUREMENTS

1. Storage, Transportation, and/or Sales Unit: The unit of the gas delivered to Enbridge shall be a megajoule or a gigajoule. The unit of gas transported or stored by Enbridge shall be a megajoule or a gigajoule. The unit of gas delivered by Enbridge shall be a megajoule, a gigajoule, 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.

### IV. RECEIPT POINT AND DELIVERY POINT

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.

### 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. Title to the gas shall not transfer to Enbridge when it takes possession of the gas, or at any other time, unless the parties specifically agree otherwise, such as, including without limitation, under Article IX Section 5 herein.
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.
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.



## VI. FACILITIES ON SHIPPER'S PROPERTY

Except under those conditions where Enbridge is delivering to TransCanada for TransCanada or Shipper at Parkway (TCPL), or to an Interconnecting Pipeline, or where otherwise specified in the Contract, the following will apply:

1. Construction and Maintenance: Enbridge, at its own expense 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 redelivered 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 at its own expense 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 or by an upstream or downstream transporter (the "**Transporter**") whose facilities may or may not interconnect with Enbridge's, 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 or Transporter's gas tariff as approved by its regulatory body.
3. Check Measuring Equipment: Shipper may install, maintain and operate, at the delivery or redelivery point, at its own expense, 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 to/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 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 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 percent (2%). If, upon testing, any measuring equipment is found to be in error by not more than two percent (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 of Interconnecting Pipeline(s): In the event of an error in metering or a meter failure, (such error or failure being determined through check measurement by Enbridge or any other available method), then Shipper shall enforce its rights as Shipper with the Interconnecting Pipeline(s) to remedy such error or failure including enforcing any inspection and/or verification rights and procedures.

## 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 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 under the Contract, 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 their 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 bill 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 equal to 1.5% per month or 18% per annum (for an approximate effective rate of 19.56% per annum) multiplied by the total of all unpaid charges will be added to the bill if the full payment is not received by the due date (the "**Interest Rate**") 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 plus interest at the Interest Rate in the case of further non-payment hereunder as if such suspension were not in place.

Shipper shall not be entitled to dispute all or any portion of any amounts owing to Enbridge, including any amounts pursuant to any bill, unless and until Shipper has paid in full such amounts to Enbridge. If Shipper in good faith disputes the amount of any such bill or part thereof Shipper shall nevertheless pay the full amount of the bill and will notify Enbridge within thirty (30) days following delivery of such bill of the amount disputed and the reasons why Shipper disputes that portion of the bill including supporting documentation acceptable in industry practice to support the amount paid or





disputed. A final determination may be reached either by agreement, arbitration decision or judgement of the courts, as may be the case.

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.

Shipper shall make reasonable efforts to eliminate/minimize the withholding tax related to the fees/payments paid to Enbridge, including but not limited to requesting from Enbridge the relevant documentation necessary to determine the appropriate withholding, if any, for tax purposes. In the event taxes are withheld from the fees/payment paid by Shipper, Shipper shall remit such withheld taxes to the applicable taxing authority and Shipper will provide Enbridge, after the calendar year end, Enbridge's Federal Form 1042-S and a comparable state/international form, if applicable, within the applicable statutory time frame.

5. Set Off: If either party shall, at any time, be in arrears under any of its payment obligations to the other party under the Contract, then the party not in arrears shall be entitled to reduce the amount payable by it to the other party in arrears under the Contract, or any other contract, by an amount equal to the amount of such arrears or other indebtedness to the other party. 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 under the Contract or any enhancement to the Contract, which shall be deemed to have been assigned to Enbridge, to reduce such arrears or other indebtedness to Enbridge.

## X. DISPUTE RESOLUTION

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 (a "**Dispute**"), the matter in dispute shall be resolved in the manner set out in Article X.

- a. The 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 following delivery 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 Services S&T Sales (or the successor position thereof), on behalf of Enbridge, 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 a 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 Enbridge, the Vice-President Energy Services (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 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.
- e. 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 Article X

## XI. FORCE MAJEURE

- 1. Definition: The term "**force majeure**" as used herein shall mean any event beyond the reasonable control of the party to a Contract claiming suspension, whether or not foreseeable and which by the exercise of reasonable due diligence such Party is unable to prevent or overcome, including, without limitation: 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).
- 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: Subject to the remainder of this Section XI, each party to a Contract will be relieved of its obligations under such Contract during the period of time and to the extent performance of such obligations that are not possible due to an event of force majeure. Neither party shall be entitled to the benefit of the provisions of force majeure hereunder if any or all of the following circumstances are preventing a party's performance or compliance (or the resumption of such performance or compliance) with any obligation or condition of the Contract: the failure resulting in a condition of force majeure was caused by the negligence of the party claiming suspension or as a result of breach of the Contract; 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 economic hardship, lack of funds, deteriorated financial circumstances, change in commodity prices, interests rates, financial markets, or the lack of market for product or the availability of a more attractive market; the party claiming suspension did not, as soon as reasonably 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 Force Majeure: The party to a Contract claiming suspension as a result of an event of force majeure shall



keep the other party reasonably apprised of the event of force majeure, the steps the affected party is taking to end or mitigate the force majeure event, and when the force majeure is anticipated to end. During an event of force majeure, the affected party shall use reasonable efforts to limit the impacts to the other party and to resume its performance under the Contract as soon as practicable. 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. Delayed Receipts and Deliveries: Despite Article XI herein, if Enbridge is prevented, by reason of an event of force majeure on Enbridge's system from receiving or delivering gas on the Day or Days upon which Enbridge has accepted gas from Shipper, Enbridge shall thereafter make all reasonable efforts to receive or deliver such quantities as soon as practicable and on such Day or Days as are agreed to by Shipper and Enbridge. If Enbridge receives or delivers such gas on this basis, Shipper shall not receive any demand charge relief as contemplated under Article XI herein.
8. Demand Charge Relief: Despite Article XI herein, if on any Day Enbridge fails to receive or delivery of 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 received or 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 applicable Rate Schedule divided by the number of days in the month for which such rate is being calculated.
9. Curtailment: If, due to the occurrence of an event of force majeure or other operational constraint on Enbridge's system or on any facilities upstream or downstream of Enbridge's System, howsoever caused as outlined above, the capacity for gas deliveries and/or receipts by Enbridge is impaired on all or a portion of Enbridge's system, it will be necessary for Enbridge to curtail Shipper's gas deliveries and/or receipts to Enbridge hereunder, via proration based on utilization of such facilities for the Day on such portion of Enbridge's system affected the applicable event. This prorating shall be determined by multiplying the capability of such facilities as available downstream of the impairment on the Day on such portion of Enbridge's system affected by the applicable event, 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 such portion of Enbridge's system affected by the applicable event 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: (i) ten (10) days from receipt of such notice in the case of a failure on the part of Shipper to make a payment within the time periods required hereunder (a "**Payment Default**"); or (ii) thirty (30) days from receipt of such notice in the case of a default other than a Payment Default, the non-defaulting party may at its sole option, exercise any of the following remedies immediately upon giving notice to the defaulting party:



- a. to suspend the non-defaulting party's performance under the Contract, provided that notwithstanding such suspension, all demand charges shall continue to accrue plus interest at the Interest Rate in the case of further non-payment hereunder as if such suspension were not in place;
- b. to withhold or continue to withhold any amounts owed to the defaulting party under the Contract (whether or not yet invoiced or due) and set off against such withheld amounts any amounts owed the non-defaulting party under the Contract (whether or not yet invoiced or due;) or
- c. 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. Each of the aforementioned remedies are non-exclusive remedies, and the non-defaulting party may elect to exercise one of more of such remedies, as applicable.

**XIII. AMENDMENT**

Subject to Article XV herein and the ability of Enbridge to amend the Market Price Service Schedule, general terms and conditions and price schedules, no amendment or modification of the Contract, except for an Interruptible Service Hub 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. RESERVED FOR FUTURE USE**

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**XVII. RESERVED FOR FUTURE USE**

*Intentionally Blank*

**XVIII. SERVICE CURTAILMENT**

- 1. Capacity Sharing: Where requests for interruptible service hereunder exceed the capacity available for such services, Enbridge will allocate capacity as per Enbridge's procedures and policies and shippers shall be so advised. Any interruptible service provided herein is subordinate to any and all firm services supplied by Enbridge and is subordinate to Enbridge's own operational or system requirements.
- 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. In the event that such event occurs, 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, that can be scheduled and completed, and 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
  - a. has the right, power, authority, legal capacity, and competence to enter into the Contract and to perform all of its obligations thereunder;
  - b. the Contract has been duly executed and delivered and is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy or similar laws affecting enforcement of creditors' rights generally;
  - c. the transactions contemplated by the Contract do not and will not result in a violation of any of the terms or provisions of any applicable laws or any agreement to which it is a party or by which it is bound;
  - d. 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; and
  - e. shall maintain in effect the Facilitating Agreements.
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. NOMINATIONS**

1. For Storage Services or Services required on any Day under the Contract, Shipper shall provide Enbridge with details regarding the quantity of gas it desires to be handled at the applicable Receipt Point(s) and/or Delivery Point(s), and such additional information as Enbridge determines to be necessary (a “**Nomination**”).
2. All Nominations shall be submitted by electronic means via Enerline. Enbridge, in its sole discretion, may amend or modify the nominating procedures or Enerline at any time. Nominations shall be submitted so as to be received by Enbridge in accordance with timelines established by Enbridge, which reflect the NAESB standard nomination cycles. Enbridge will accept all Nominations on each of the nomination cycles. Nominations made after the applicable deadline shall not be accepted except at the sole discretion of Enbridge. The nomination cycle timelines are posted on Enbridge’s website and the nomination deadlines are provided in Enerline.
3. Enbridge shall determine whether or not all or any portion of the Nomination will be scheduled at each nomination cycle. With respect to each nomination cycle, in the event Enbridge determines that it will not schedule such Nomination, Enbridge shall advise Shipper of the reduced quantity (the “**Quantities Available**”) for Storage Services or Services at the applicable points as outlined in each nomination cycle. After receiving such advice from Enbridge, but no later than one half hour after the Quantities Available deadline as outlined in each nomination cycle, Shipper shall provide a revised nomination (“**Revised Nomination**”) to Enbridge which shall be no greater than the Quantity Available. If such Revised Nomination is not provided within the time allowed as required above or such Revised Nomination is greater than the Quantities Available, then the Revised Nomination shall be deemed to be the Quantities Available. If the Revised Nomination (delivered with the time allowed as required above) is less than the Quantity Available, then such lesser amount shall be the Revised Nomination.
4. For Shippers electing firm all day storage service, nominations shall be provided to Enbridge’s Gas Management Services as outlined in the Contract.
5. For Storage Services or Services requiring Shipper to provide compressor fuel in kind, the nominated fuel requirements will be calculated by rounding to the nearest whole GJ.
6. All Timely Nominations shall have rollover options. Specifically, Shippers shall have the ability to nominate for several days, months or years, provided the Nomination start date and end date are both within the term of the Contract.
7. Nominations received after the nomination deadline shall, if accepted by Enbridge, be scheduled after Nominations received before the nomination deadline.
8. All Storage Services or Services are required to be nominated in whole Gigajoules (GJ).
9. To the extent Enbridge is unable to complete a Nomination confirmation due to inaccurate, untimely or incomplete data involving an Interconnecting Pipeline entity, Enbridge shall undertake reasonable efforts to confirm the transaction on a non-discriminatory basis until such time that the transaction is adequately verified by the parties, or until such time that Enbridge determines that the Nomination is invalid at which time the Enbridge shall reject the Nomination.





10. That portion of a Shipper's Nomination or Revised Nomination, as set out in paragraphs 1 and 3 above, which Enbridge shall schedule for Storage Services or Services hereunder, shall be known as Shipper's "**Authorized Quantity**".
11. If on any day the actual quantities handled by Enbridge, for each of the Storage Services or Services authorized, exceed Shipper's Authorized Quantity, and such excess was caused by either Shipper's incorrect nomination or by its delivering or receiving too much gas, then the amount by which the actual quantities handled for each of the Storage Services or Services exceed Shipper's Authorized Quantity shall be deemed "**Unauthorized Overrun**".
12. The daily quantity of gas nominated by Shipper will be delivered by Shipper at rates of flow that are as nearly constant as possible, however, Enbridge shall use reasonable efforts to take receipt of gas on any day at an hourly rate of flow up to one twentieth (1/20<sup>th</sup>) of the quantity received for that day. Enbridge shall have the right to limit Storage Services or Services when on any day the cumulative hourly imbalance between receipts and deliveries exceeds one twentieth (1/20<sup>th</sup>) of the quantity handled for that day, for each applicable Storage Service or Services.
13. The parties hereto recognize that with respect to Storage Services or Services, on any day, receipts of gas by Enbridge and deliveries of gas by Enbridge may not always be exactly equal, but each party shall cooperate with the other in order to balance as nearly as possible the quantities transacted on a daily basis, and any imbalances arising shall be allocated to the Facilitating Agreement and shall be subject to the respective terms and charges contained therein, and shall be resolved in a timely manner.
14. Shipper may designate via Enerline access request form, a third party as agent for purposes of providing a Nomination, and for giving and receiving notices related to Nominations, and Enbridge shall only accept nominations from the agent. Any such designation, if acceptable to Enbridge, shall be effective following the receipt and processing of the written notice and will remain in effect until revoked in writing by Shipper.
15. Where Shipper's Nomination for any day has been accepted by Enbridge and it is subsequently determined that Shipper's Storage Account had exceeded either the Maximum Storage Balance (the "**Excess Storage Balance**") or withdrawn a quantity of gas in excess of its quantities in Shipper's Storage Account (the "**Drafted Storage Balance**"), Shipper agrees to take immediate steps to rectify this situation within ten (10) days of notice of such by Enbridge. Should Shipper fail to obtain a zero (0) Excess Storage Balance or Drafted Storage Balance, as the case may be, during that ten (10) day period, then Enbridge shall automatically extend the period of time from the day that such balance should have been brought to zero (0) for an "**Extension Period**" or additional Extension Period(s), as may be required, of up to ten (10) days each, at rates and under terms as set out in paragraph 16 following. During any Extension Period, Shipper shall use due diligence to either take delivery of the Excess Storage Balance gas quantities from or return the Drafted Storage balance gas quantities to Enbridge promptly.
16. The charges payable on all quantities in the Shipper's Excess Storage Balance or Drafted Storage Balance, and for any quantities outstanding at the start of an Extension Period, will be equal to either the MPSS Overrun of Maximum Storage Balance Rates or Drafted Storage Balance Rates, as the case may be, and shall be calculated from the first day that either of these accounts become utilized. Enbridge, during any Extension Period, may upon forty-eight (48) hours verbal notice to Shipper (to be followed in writing), either take possession of Shipper's gas in storage (which shall be immediately forfeited to Enbridge without further recourse), or replace the outstanding gas at Shipper's expense (which will include, all costs to replace such gas, plus a charge equal to 25% of such cost).