



BIOGAS SERVICES AGREEMENT

THIS BIOGAS SERVICES AGREEMENT (“**Agreement**”) is made as of **[INSTRUCTION: Insert effective date of this Agreement]** (the “**Effective Date**”) between **Enbridge Gas Inc.** (“**Company**”), a corporation existing under the laws of Ontario, whose principal place of business is located at 500 Consumers Road, Toronto, ON M2J 1P8 and **[INSTRUCTION: Insert name of counterparty]** (“**Customer**”), a **[INSTRUCTION: Insert type of business organization eg. LP, corporation]** pursuant to and in accordance with the laws of **[INSTRUCTION: Insert jurisdiction]**, whose principal place of business is located at **[INSTRUCTION: Insert business address]**.

BACKGROUND:

- A. Customer **[owns and operates]** a **[INSTRUCTION: describe the type of facility eg. landfill gas upgrading facility, anaerobic digester]** (the “**Facility**”) located at **[INSTRUCTION: describe site – does not need to be a legal description]** (the “**Site**”) that, among other attributes, produces a supply of untreated biogas generated from biomass (the “**Untreated Biogas**”).
- B. In connection with the Facility, Customer desires to obtain and Company desires to provide renewable gas injection services.

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein contained, Company and Customer hereby agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

The words and phrases defined in this Agreement will have the meanings ascribed to them herein, and, unless the context otherwise specifies or requires, for the purposes of this Agreement, including its Appendices, capitalized terms shall have the meanings set out in Appendix A.

1.02 Construction

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Appendices are to Articles of, Sections of and Appendices to this Agreement. In this Agreement, words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing Persons will include individuals, partnerships, associations, trusts, unincorporated organisations and corporations. The term “including” means “including without limiting the generality of the foregoing”. A definition applies to other forms of the word. Except where otherwise expressly provided, all references to currency herein are to the lawful money of Canada. A reference to a statute, whether or not that statute has been defined, includes every amendment to it, every regulation made under it, and any enactment passed in substitution therefor or in replacement thereof. Except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings

are used in accordance with their recognized meanings consistent with good utility practice. The terms “provision” and “provisions” in this Agreement refer to terms, conditions, provisions, covenants, obligations, undertakings, warranties and representations in this Agreement.

1.03 Order of Priority

In the event of any conflict or inconsistency between any of the provisions of the main terms and conditions of this Agreement and the Appendices, the inconsistency will be resolved by reference to the following descending order of priority:

- (a) the Rate Handbook;
- (b) the main terms and conditions of this Agreement (but otherwise excluding the exhibits, appendices and change orders);
- (c) Appendices A, B and D to this Agreement;
- (d) change orders to effect Changes in Services; and
- (e) Appendix C to this Agreement;

The following are the Appendices to this Agreement as of the Effective Date:

Appendix A	–	Definitions
Appendix B	–	Designated Areas
Appendix C	–	Injection Services
Appendix D	–	Site Plan
Appendix E	–	Financial Assurances

1.04 Endorsement Process

Wherever the provisions of this Agreement require or provide for an Endorsement by a Party of or to any action, Persons, document, list, plan or other matter contemplated by this Agreement, this Agreement shall (unless the text expressly states that such Endorsement may be unreasonably or arbitrarily withheld or shall be subject to the sole and/or absolute discretion of the Party providing the Endorsement) be deemed to provide that:

- (a) such Endorsement shall not be unreasonably or arbitrarily withheld or delayed;
- (b) the Party requesting the Endorsement shall make the request for Endorsement in writing (including by electronic communication), accompanied by such documentation or information in sufficient detail as may be reasonably required for the Party requested to provide the Endorsement to provide the Endorsement;
- (c) the Party providing the Endorsement shall, within thirty (30) calendar days after the giving of a notice requesting Endorsement, advise the other Party by notice either that it Endorses or that it withholds its endorsement and in which case it shall set forth, in reasonable detail, its reasons for withholding its endorsement (which reasons may include the insufficiency, determined acting reasonably, of the information or documentation provided); and

- (d) if the responding notice referred to in Subsection 1.04(c) above indicates that the request is not Endorsed, the party requesting Endorsement may elect to satisfy the objections of the approving Party and resubmit such request for Endorsement from time to time and the provision of this Section shall again apply until such time as the Endorsement is obtained.

1.05 **Rate Handbook**

Part III of the Rate Handbook and Rate Schedule 401 are incorporated into this Agreement and form a part hereof. Such Part and Rate Schedule shall be construed using the definitions contained in this Agreement and the terms used therein and not defined in this Agreement shall be construed using the definitions in Part I of the Rate Handbook. For certainty, for purposes of this Agreement, the term “Applicant” as referenced in the Rate Handbook shall mean “Customer” in this Agreement. If there is any conflict between the provisions of this Agreement and the provisions of the Rate Handbook, then the provisions of the Rate Handbook shall prevail.

ARTICLE 2 - PROVISION OF SERVICES

2.01 **Services**

During the Term (as hereinafter defined) of this Agreement, Company will provide Customer and Customer will receive from Company, in accordance with the provisions of this Agreement the following services (the “**Services**”):

- (a) the injection services described in **[INSTRUCTIONS: name relevant Appendices]** entered into between the Parties, substantially in the form attached as Appendix C (the “**Injection Services**”).

2.02 **Equipment**

- (a) The title to all Equipment (including service pipes, meters, regulators, attachments and equipment) placed by Company on Customer’s premises and not sold to Customer shall remain with Company, with right of removal, and no charge shall be made by Customer for use of premises occupied thereby. Customer agrees to be responsible for any loss or damage thereto resulting from wilful or negligent acts of Customer or Customer’s agents or employees or any Person acting under the authority of or with the permission of Customer.
- (b) The Equipment shall be determined by Company in its sole discretion. The Equipment shall generally consist of: a moisture analyzer and gas chromatography, compression, telemetry, metering, odourization and regulator equipment. The Equipment is subject to change in Company’s sole discretion, from time to time. Customer agrees that Sections 2.03 and 7.01(d) of, and Appendix B (Designated Areas) to this Agreement applies in respect of such Equipment.
- (c) The Equipment shall be installed at Customer’s premises in the portion of Customer’s Site as indicated on the Site Plan attached at Appendix D. Customer shall provide such rights in, and access to, Customer’s Site and Facility as may be required by Company for the purposes of performing the Services as further set out in Appendix B (Designated Areas) to the Agreement.

2.03 Metering

All Renewable Gas shall be measured utilizing equipment which conforms to the *Electricity and Gas Inspection Regulations* (SOR/86-131) and applicable specifications issued by Measurement Canada, Government of Canada, as amended from time to time. The measurement unit shall be one cubic meter of gas at a pressure of 101.325 kilopascals (“kPa”) absolute and at a temperature of fifteen (15) degrees Celsius; “10³m³” means one thousand (1000) cubic metres. The average absolute atmospheric (barometric) pressure shall be calculated in accordance with the *Electricity and Gas Inspection Act* and the regulations made thereunder or any other legislation which may succeed the said Act, regardless of variations in actual barometric pressure from time to time. Units set out in SI (metric) are the governing units for the purposes of this Agreement. Units set out in Imperial measurement in parentheses beside their SI (metric) equivalent are for reference only and in the event of a conflict between SI (metric) and Imperial measurement herein, SI (metric) shall prevail.

2.04 Title

Title to Biogas delivered to Company by Customer pursuant to this Agreement shall remain with Customer at all times, regardless of control or possession. For certainty, any purchase of the Biogas by Company from Customer will be the subject of a separate agreement between the Parties.

2.05 Environmental Attributes

Save as otherwise provided in another agreement between the Parties (including any Renewable Gas purchase agreement):

- (a) Company acknowledges and agrees that Customer owns and shall be entitled to retain and register for use, trade and sale any and all attributes related to the Renewable Natural Gas, including but not limited to and all credits, offset credits and/or other rights resulting from the displacement of traditional natural gas with Renewable Gas, including any credit for the reduction or displacement in emissions of greenhouse gases and other pollutants (together with all of the proceeds or benefits therefrom) (collectively, “**Environmental Attributes**”).
- (b) If through operation of law or any other circumstance title to any Environmental Attributes vests in Company, Company shall automatically transfer or otherwise convey such Environmental Attributes to Customer and Customer shall reimburse Company for all costs, if any, incurred by Company in connection with transferring such Environmental Attributes to Customer.

ARTICLE 3 - INTELLECTUAL PROPERTY

3.01 Ownership of Intellectual Property

Customer acknowledges and agrees that Company or licensors of the Company Intellectual Property, as the case may be, will retain and own all right, title and interest, including, without limitation, all Intellectual Property rights, in and to the Company Intellectual Property. Nothing in this Agreement transfers, conveys or confers to Customer any ownership right, title or interest in or to the Company Intellectual Property. Customer acknowledges and agrees that it will not, either

during or after the Term, contest or challenge the ownership of the Company Intellectual Property by Company or licensors of Company.

3.02 Ownership of Improvements

During the Term, Customer and its employees, agents and representatives may give Company notifications of problems, or suggested improvements or other changes with respect to the Services or the Company Intellectual Property (collectively, the “**Improvements**”). The Improvements will be the property of Company, regardless of whether Customer and its employees, agents and representatives acted alone or jointly with Company in developing the Improvements. Customer hereby assigns, at no cost, all rights, title, and interests, including without limitation all Intellectual Property rights therein, in and to the Improvements to Company effective as of the date of the Improvements’ creation, and Company may use such Improvements for any purposes without notice or obligation to account to Customer. Customer will not include in any Improvements any trade-secrets, Confidential Information, or other proprietary information of any third party.

ARTICLE 4 - FEES AND PAYMENT

4.01 Service Fees

In consideration of the provision of the Services, Customer will pay the Service Fees to Company, without any set-off or deductions of any kind. The Service Fees shall be billed to Customer Account, over and above any other fees payable pursuant to the Customer Agreements.

4.02 Invoicing and Payment

Terms applicable to issuing of invoices and the payment thereof, including any late payment charges and any similar terms, in respect of the Services, if any, supplied under this Agreement are as set out in Section D – Bills and Section F – Payment Conditions of Part III of the Rate Handbook.

4.03 Taxes

All fees and payments stated herein are exclusive of all taxes and duties now in force or enacted in the future that may be imposed in connection with this Agreement. Customer will pay all such taxes and duties, including sales, use, excise, personal property, value-added, goods and services, and any other federal, provincial, state or local taxes, withholdings, tariffs, import duties or import license, charges, or like charges and any interest or penalties thereon imposed by a Governmental Authority, but exclusive of taxes based on Company’s net income. Customer will make all payments free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments by Customer hereunder will be Customer’s sole responsibility. Any payments payable under this Agreement to Company that are otherwise subject to the deeming rule in Section 182 of the *Excise Tax Act* (Canada) shall be increased by an amount equal to the amount determined by multiplying any such payments by the applicable rate of GST/HST.

4.04 Remedies in the Event of Failure to Pay

In addition to any other remedies provided in this Agreement, at any time Company shall have the right to set-off an amount overdue, owing and unpaid by Customer to Company against any amount owing to Customer by Company, upon delivering a notice to Customer to that effect.

4.05 Retention of Records

All charts and calculations upon which an Company invoice is based, and Company's books and records insofar as they pertain to measurement and settlement for accounts hereunder, shall be retained by Company for the longer of (i) three (3) years from the date of such invoice, and (ii) the period while any claim which relates to such invoice, and of which Company receives written notice from Customer within such three (3) year period, is outstanding; and shall be available for inspection by Customer on reasonable prior notice during normal office hours of Company.

ARTICLE 5 - REGULATORY REQUIREMENTS

5.01 Ontario Energy Board Act and Regulations

Notwithstanding anything to the contrary herein, the Parties acknowledge that this Agreement may be subject to any rule applicable to Company made by the OEB pursuant to the *Ontario Energy Board Act*, S.O. 1998, Sched. B., s. 44 (the "**OEB Act**") including the *Affiliate Relationships Code for Gas Utilities* dated July 31, 1999, revised December 31, 2004 with effect June 9, 2005 (the "**Code**") as amended from time to time. Customer agrees to provide reasonable commercial efforts to do all such things as are necessary to assist Company to comply with the OEB Act, the Code and all rules applicable to the Company make pursuant to the OEB Act.

5.02 Company's Authorizations and Approvals

During the term of this Agreement, Customer agrees to support and cooperate with, and to not oppose, obstruct or otherwise interfere with in any manner, the efforts of Company to obtain all authorizations and/or exemptions and supplements and amendments thereto necessary for Company to construct, own, operate, and maintain, under Company's proposed regulatory framework, the Equipment and to provide the Services.

5.03 Rate Changes

In the event of any change in any of the rates or charges approved or fixed by the OEB for or in respect of or applicable to this Agreement or any of the services which the Customer is to receive under this Agreement, including retroactive changes, to the extent that such changed rate or charge is ordered by the OEB to be charged to the Customer or a class of customers of the Company that includes the Customer, the changed rate or charge shall be applicable hereunder and shall be applied upon becoming effective, and in accordance with any provisions relating to its application, in accordance with any applicable order of the OEB or Rate Number or Rate Schedule of the Company fixed, approved or authorized by the OEB.

5.04 No Waiver of Company Rights as Distributor

Nothing in this Agreement shall be construed in a manner that prohibits, restricts or in any manner limits, Company's rights and obligations as a rate-regulated distributor of natural gas (a

“**Distributor**”) in accordance with requirements of the OEB Act, the *Public Utilities Act* (Ontario) and any other Applicable Laws that pertain to Company as a Distributor.

5.05 Consent to Affiliate Disclosure

Customer acknowledges that Company may require the support and approval of certain of its Affiliates in order to assess and proceed with this Agreement, and agrees that Company may disclose such information Company has about Customer to Company’s Affiliates as is reasonably necessary to support the activities contemplated by this Agreement. This constitutes written consent as required by the OEB’s *Gas Distribution Access Rule* and *Affiliate Relationships Code for Gas Utilities*.

5.06 Government Regulations

- (a) This Agreement is subject to (i) the maintenance of all Required Orders, and (ii) all Applicable Laws. Each of the Parties shall comply with the terms of all Required Orders applicable to it and shall maintain the same in full force and effect throughout the Term.
- (b) With respect to Required Orders applicable to the Site, each of the Parties have the following responsibilities:
 - (i) subject to Section 5.06(b)(ii), Customer shall obtain all Required Orders that are required in connection with the installation and operation of the Equipment including, but not limited to zoning and by-law approvals, building permits and underground locates, and all approvals that may be required from provincial or federal government departments or regulatory authorities with jurisdiction over the subject matter of this Agreement, other than as expressly provided in this Agreement, and such other Required Orders as relate to the ownership and operation of the Facility and the Site (the “**Customer Acquired Permits**”);
 - (ii) Company shall be responsible for compliance with all Required Orders specifically applicable to the Services as described in Appendix C; and
 - (iii) save as otherwise provided in Appendix C, Customer shall be responsible, at its own cost and expense without any dollar contribution or reimbursement from Company, for any modification(s) to the Site required by any Required Order.

ARTICLE 6 - CONDITIONS PRECEDENT

6.01 Conditions Precedent

The obligations of each of Company and Customer under each Appendix are subject to the conditions precedent set out in Appendix C.

6.02 Operation of Conditions Precedent

- (a) Company and Customer shall each use due diligence and reasonable efforts to satisfy and fulfill the conditions precedent. Company shall notify Customer forthwith in writing of the satisfaction, or in the case of Company conditions precedent that may be waived in whole or in part by Company, the waiver, of each of its conditions precedent.
- (b) If Company concludes that it will not be able to satisfy a condition precedent, Company may, upon written notice to Customer, terminate this Agreement and any related Customer Agreements and upon the giving of such notice, this Agreement and such related Customer Agreements shall be of no further force and effect and each of the Parties shall be released from all further obligations thereunder. Such termination shall be without prejudice to any rights or remedies that a Party may have for breaches of this Agreement prior to such termination and any liability a Party may have incurred before such termination or as a result of such termination shall not thereby be released.

ARTICLE 7 - OBLIGATIONS OF CUSTOMER

7.01 Customer Responsibilities

Customer will:

- (a) separate from this Agreement, enter into and maintain in effect the Facilitating Agreements outlined in Exhibit C7
- (b) provide Company with technical assistance concerning the Site as Company may require, including but not limited to Site drawings;
- (c) construct, commission and operate the Facility in accordance with all authorities having jurisdiction, and to ensure Customer's obligations under this Agreement are met;
- (d) provide Company with notice of any changes to the Site and Facility that may impact the operation of the Equipment or performance of the Services (including changes in locations of utilities and other equipment on each Site, traffic flow patterns);
- (e) provide such access to Customer's Site and Facilities as may be required by Company, for the purposes of performing the Services, as further set out in Appendix B to this Agreement;

- (f) ensure that its personnel (including those of approved sub-contractors), when entering the Designated Areas shall comply with all security policies, regulations or directives relating to the Designated Areas; and
- (g) provide such Customer information, at no additional cost, as Company reasonably requires to carry out the Services in a timely manner and ensure that such Customer information is complete and accurate.

7.02 **Customer's Acts or Omissions**

If Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or Customer Representatives, Company will not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

ARTICLE 8 - GOVERNANCE

8.01 **Cooperation**

Each Party will:

- (a) cooperate with, and cause all of its respective subcontractors to cooperate with, the other Party in all matters relating to the Services and the operation of their respective assets at the Site; and
- (b) respond promptly to any request by the other Party to provide direction, information, approvals, authorizations or decisions, at no additional cost, that are necessary for the other Party to perform their respective obligations under this Agreement.

8.02 **Relationship Managers**

- (a) To facilitate the proper management of the relationship of the Parties in connection with this Agreement, Customer and Company will each designate and make available an employee of the Party whose duties will be to act as primary liaison between Customer and Company for all matters relating to this Agreement (each, a "**Relationship Manager**"). If a designated Relationship Manager is not available due to illness, vacation or other reason, a secondary Relationship Manager will act as the Relationship Manager on a temporary secondary basis. As of the Effective Date of this Agreement, the Relationship Manager (and secondary Relationship Manager) for Customer is as follows:

- (i) Customer Relationship Manager: **[INSTRUCTION: insert name]**
- (ii) Customer Secondary Relationship Manager: **[INSTRUCTION: insert name]**

- (b) The Relationship Managers shall meet no less frequently than on a quarterly basis to manage the relationship between the Parties. Customer and Company agree to

be solely responsible for any costs and expenses that may be incurred by them respectively in connection with the Relationship Manager meetings.

8.03 Site Managers

For each Site at which the Services are provided, each Party shall designate and make available an employee who will act as the Party's respective relationship/project manager at the Site and be responsible for the operation of the Parties' respective assets at the site, and shall be the first point of contact in the event of an emergency at the site (each, a "**Site Manager**"). Customer Site Manager or designee shall be available during all business hours and shall provide or facilitate all access, scheduling and operating and maintenance at Customer's location to support Company as necessary to facilitate the project and the performance of Services.

8.04 Change to Representatives

The actions taken by each Party's Relationship Manager and Site Manager(s) shall be deemed the acts of the Party. Either Party may at any time, upon written notice to the other Party, change their respective Relationship Manager and Site Manager.

ARTICLE 9 - CONFIDENTIAL INFORMATION

9.01 Confidential Information

- (a) Each Party acknowledges that Confidential Information will be exchanged between the Parties pursuant to this Agreement. Each Party will use no less than the same means it uses to protect its own similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the other Party. Each Party agrees that: (i) as between the Parties, such Confidential Information is and shall remain the property of the Disclosing Party; and (ii) it will not disclose or use the Confidential Information of the other Party except for the purposes of this Agreement and as authorized under this Agreement.
- (b) Notwithstanding any other provision of this Agreement, the Recipient of Confidential Information may use or disclose the Confidential Information to the extent that such Confidential Information is: (i) already known by the Recipient without an obligation of confidentiality; (ii) publicly known or becomes publicly known through no unauthorised act of the Recipient; (iii) rightfully received from a third party without any obligation of confidentiality; (iv) independently developed by the Recipient without use of the Confidential Information of the Disclosing Party; or (v) approved (by way of prior written approval) by the Disclosing Party for disclosure.
- (c) The Recipient may disclose Confidential Information of the Disclosing Party if the disclosure is required as a matter of law or by order of a court, Governmental Authority, or arbitral tribunal of competent jurisdiction, provided: (i) the Recipient gives the Disclosing Party reasonable prior notice of such disclosure (to the extent legally permitted); and (ii) that Recipient takes reasonable and lawful actions requested by the Disclosing Party and cooperates with the Disclosing Party to avoid and minimize the extent of such disclosure.

- (d) The Recipient will, and will cause all of its representatives to, safeguard and maintain the Confidential Information of the Disclosing Party in strict confidence and will not, and will cause all such representatives to not, disclose, provide, or make such Confidential Information or any part thereof available in any form or medium to any Person, except to such of its representatives and to other third parties who have a need to access such Confidential Information in order to enable the Recipient to exercise its rights under this Agreement and are bound by and so long as such representatives and third parties are bound by confidentiality obligations at least as stringent as the provisions set out herein.

9.02 Disclosure by Company

The Parties acknowledge and agree that where Company is the Recipient, it shall have the right to retain and disclose certain Confidential Information, as it may determine acting reasonably (the “**Retained Confidential Information**”) is required for use by Company in connection with any regulatory or other governmental proceeding to which it is, or may in the future become, a party, including without limitation submissions to regulatory authorities such as the OEB (collectively referred to herein as the “**Regulatory Proceedings**”), and, in such event, the Parties agree that Company shall not be restricted from disclosure of the Retained Confidential Information where Company determines, acting reasonably, it is necessary or appropriate to do so in connection with any Regulatory Proceedings. Customer hereby acknowledges that any such Retained Confidential Information disclosed in Regulatory Proceedings by Company pursuant to this Section may, as a result of such disclosure, become part of the public record.

9.03 Right to Perform Company Services For Others

Customer recognizes that Company is in the business of providing gas distribution and related services and may perform services similar to the Services for third party customers. Subject to Company’s confidentiality obligations, Company retains the right to use, and nothing will prevent Company from using, any ideas, concepts, methods, processes, know-how, organization, or techniques including, without limitation, any such materials produced by Company to provide the Services, in providing any services to any third parties.

ARTICLE 10 - CHANGE IN SERVICES

10.01 Change Events

- (a) Minor Variations in Services. Company shall have the right, at any time, to make minor variations in the Services that do not involve an adjustment in the Service Fees and are compatible with the design concept of the Equipment.
- (b) Customer Requested Change in Services. In addition to the provisions of subsection (b), Customer may request a Change in Services in writing to Company, subject to Company's sole discretion. In such event, Company shall prepare and submit to Customer a written estimate relating to the proposed Change in Services, including: (i) any projected change in the cost of the performance of the Services and any projected modification of the Service Fees occasioned by such Change in Services and (ii) the effect such Change in Services could be expected to have on the performance of the Equipment.
- (c) Change in Services. If, during the Term, Company encounters the following events, a Change in Services to reflect the extent to which certain events or circumstances increase the cost to Company or the Company's time required for performance of the Services, affect the performance of the Equipment or result in a change to the Equipment, will be implemented:
 - (i) changes in the quality or quantity of Renewable Gas supplied by Customer from the Renewable Gas Specifications; or
 - (ii) as a result of damage to the Equipment due to Customer's negligence or willful misconduct after the Commission Date; or
 - (iii) a suspension or change in the Services as a result of a change in Applicable Law or requirements of a Governmental Authority, or a Latent Site Defect.

10.02 Proceeding with Customer Requested Change in Services

If Customer elects to proceed with a more detailed examination of such proposed Change in Services requested pursuant to Section 10.01(b), within such period as shall be agreed upon by the Parties, Company shall submit to Customer a detailed estimate relating to the contemplated change and Customer shall be responsible for the cost of preparing the detailed estimate. If Customer elects to proceed with the proposed Change in Services, Customer and Company shall agree upon a change order that shall include: (i) an adjustment in the Service Fees for the costs expected to be incurred by Company as a result of such Change in Services less any savings or costs not incurred as a result of such Change in Services, and (ii) an adjustment in other terms of this Agreement, including but not limited to the Performance Requirements as a result of such Change in Services.

ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

11.01 Representations and Warranties of Customer

In addition to any other representations and warranties given to Company under this Agreement, Customer represents and warrants to Company that at the date hereof and at all times during the Term:

- (a) all necessary action has been taken by Customer to authorize the execution, delivery and performance by Customer of this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against Customer in accordance with its terms;
- (b) Customer shall have good and marketable title in and to the Biogas to be delivered to Company and shall be entitled to deliver such Biogas to Company in accordance with the terms of this Agreement, for Company to deliver the Services, free and clear of any adverse claim of any nature of kind whatsoever; and
- (c) Biogas delivered to Company by or for Customer will not be subject to any royalties, taxes (federal and/or provincial) or other charges payable by, or that may become a liability of Company;

and acknowledges and agrees that Company is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement.

11.02 Representations and Warranties of Company

In addition to any other representations and warranties given to Customer under the Agreement, Company represents and warrants to Customer that at the date hereof and at all times during the Term, all necessary action has been taken by Company to authorize the execution, delivery and performance by Company of this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against Company in accordance with its terms, and acknowledges and agrees that Customer is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement.

ARTICLE 12 - DISCLAIMERS

12.01 Disclaimer

- (A) EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT (INCLUDING, FOR CERTAINTY, AN APPENDIX TO THIS AGREEMENT), THE SERVICES ARE PROVIDED "AS IS" AND COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, ENDORSEMENTS, GUARANTEES, OR REPRESENTATIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES, CONDITIONS, ENDORSEMENTS, GUARANTEES, OR REPRESENTATIONS OF SATISFACTORY QUALITY, PERFORMANCE, DURABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE.

- (B) FURTHER, THE SERVICES MAY BE INTERRUPTED OR UNAVAILABLE FOR THE PURPOSES OF PERFORMING MAINTENANCE OR UPGRADES. COMPANY WILL NOT BE RESPONSIBLE FOR: (I) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER; OR (II) SERVICES PROVIDED BY OTHER SERVICE PROVIDERS.

ARTICLE 13 - FINANCIAL ASSURANCES

13.01 Requirement for Financial Assurances

Contemporaneously with the execution of this Agreement and at any time during the Term, Company may, upon notice to Customer, require Customer to provide Company, and Customer shall provide if Company so requests, financial assurances in respect of Customer's obligations hereunder in the amount and of the type required by Company (the "**Financial Assurances**"), all in accordance with the terms set out in Appendix E. Such Financial Assurances may consist of an irrevocable letter of credit in a form and from an issuer acceptable to Company and/or such other security as Company may specify. Initially, the Financial Assurances required by Company to be provided by Customer shall be those set out in Appendix E.

13.02 Realization of Financial Assurances

Company shall be entitled to realize upon any Financial Assurances in the manner and to the extent provided for and set out in this Agreement, including Appendix E, and such Financial Assurances.

ARTICLE 14 - INDEMNIFICATION

14.01 Indemnification by Company

Subject to any limitations specifically set out in this Agreement, Company shall save harmless and indemnify Customer, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) incurred by any of them, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct Company or any of Company's employees or agents or any Person acting under the authority of or with the permission of Company. Company further agrees to indemnify and hold Customer, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 14.01.

Upon assuming the defence of any action covered under this Section Company shall keep Customer reasonably informed of the status of the matter, and Company shall make no admission of liability or fault on Customer's part without Customer's prior written permission.

Notwithstanding any other provision in this Agreement, Company shall not be liable to Customer for any loss or damage to Persons or property resulting from Customer's entries upon, occupancy, use, or other activities in the Designated Areas or by any Person not employed or controlled by Company, or as the result of any existing or future condition of the Facility.

14.02 Indemnification by Customer

Subject to any limitations specifically set out in this Agreement, Customer shall save harmless and indemnify Company, its Affiliates, and their directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) incurred by any of them, or in respect of third parties, howsoever caused, resulting from, arising out of or relating to the breach of this Agreement by Customer, the negligence or wilful act, omission or misconduct of Customer or any of Customer's employees or agents or any Person acting under the authority of or with the permission of Customer. Customer further agrees to indemnify and hold Company, its directors, officers, employees and agents harmless from and against any Canadian federal or provincial income taxes resulting from any payment made under this Section 14.02.

Customer further agrees to save harmless and indemnify Company, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) incurred by any of them, howsoever caused, resulting from, arising out of or relating to environmental conditions at the Site that are not related to or arise out of the actions of Company, including without limitation, any and all liability relating to the migration of contaminants and/or pollutants from the Site.

Upon assuming the defence of any action covered under this section Customer shall keep Company reasonably informed of the status of the matter, Customer shall make no admission of liability or fault on Company's part without Company's prior written permission.

ARTICLE 15 - LIMITATION OF LIABILITY

15.01 Limitation of Liability

- (a) IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LOSS SUSTAINED BY CUSTOMER AS A RESULT OF DIRECT PHYSICAL DAMAGE SUSTAINED BY CUSTOMER, INCLUDING REASONABLE COSTS OF REPAIR OR REPLACEMENT. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
- (b) EXCEPT IN RESPECT OF A BREACH OF SECTION 9.01 OR 9.02, IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT OR FAILURE TO REALIZE EXPECTED PROFITS OR SAVINGS, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (c) NO IMPLIED WARRANTY OF MERCHANTABILITY QUALITY, OR OF FITNESS FOR PURPOSE SHALL APPLY AND ALL WARRANTIES IMPLIED BY LAW OR STATUTE ARE SPECIFICALLY DISCLAIMED BY COMPANY.

- (d) Customer shall not be entitled to compensation for any inconvenience, nuisance or discomfort attributable to the execution by Company of its obligations in accordance with the terms of this Agreement.
- (e) Company shall not be liable for and expressly disclaims liability for any loss, damage or injury that directly or indirectly results from or in any manner arises out of or in connection with (i) any breach by Company of any of its obligations under this Agreement that directly or indirectly results from or in any manner arises out of or in connection with any breach by Customer of any of its obligations this Agreement or (ii) any Latent Site Defect that cannot be remedied by a Change in Services.

ARTICLE 16 - TERM AND TERMINATION

16.01 Term and Renewal

- (a) The term of this Agreement will commence on the Effective Date and continue for a term of **[insert number of years]** years commencing from the Commissioning Date (the “**Initial Term**”), unless terminated earlier in accordance with the Agreement (together with all renewals and extension, the “**Term**”).
- (b) Subject to the other provisions of this Agreement and the relevant Appendices, this Agreement may be terminated by Company at any time in accordance with Section 6.02 or Section 16.02 of the Agreement.
- (c) The provisions of the Agreement identified in Section 16.04 requiring performance or fulfilment after the expiration or earlier termination of this Agreement, this Section 16.01, such other provisions as are necessary for the interpretation thereof, and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this Agreement, will survive the expiration or earlier termination of this Agreement.

16.02 Termination

- (a) Customer Event of Default. In addition to any other events set out in this Agreement, the occurrence of any one or more of the following events shall constitute a default by Customer under this Agreement and shall be considered an event of default (a “**Customer Event of Default**”) if such default is not remedied prior to the expiry of the relevant notice period (if any) or the relevant cure period (if any) applicable to such default as hereinafter set out:
 - (i) if Customer fails to make any payment or payments of the Service Fees or any other sums owing under the Agreement, and where such default continues for thirty (30) days after written notice has been issued to Customer by Company stating the nature of the default;
 - (ii) if Customer fails to perform any covenant or obligation that Customer was required to perform under this Agreement and where such default is capable of being cured using reasonable diligence and shall continue

- unremedied: (i) for a period of thirty (30) days after written notice has been issued to Customer by Company stating the nature of the default; or (ii) such longer period as may be reasonably necessary to cure such failure, provided that Customer has demonstrated that: (1) it is proceeding with all due diligence to cure or cause to be cured such failure, (2) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable time frame acceptable to Company, acting reasonably, and (3) it shall thereafter cure such failure with all due diligence and within the time frame acceptable to Company, acting reasonably;
- (iii) if (i) Customer fails to perform any covenant or obligation that Customer was required to perform under this Agreement, and (ii) such failure has or shall have, or could reasonably be expected to have, an adverse effect on Company's ability to deliver the Services, and (iii) such failure shall continue unremedied following notice thereof (stating the nature of the default) from Company to Customer for: (1) a period of ten (10) days; or (2) such longer period as Company, acting reasonably, may agree; or
 - (iv) if there occurs an event of default, breach or default of Customer under any other Customer Agreement.
- (b) Company Remedies. In the event of a Customer Event of Default, or a Latent Site Defect that cannot be remedied by a Change of Services, then Company shall have the following non-exclusive rights and remedies:
- (i) to suspend performance of all or any of the Services until Customer cures such Customer Event of Default or removes the Latent Site Defect, in which event, Customer shall be liable for all additional costs and expenses incurred by Company arising out of such suspension;
 - (ii) subject to Article 15, recovery of all reasonable costs and expenses incurred by Company in mitigating the Customer Event of Default; and
 - (iii) to terminate this Agreement or the Appendix (or Appendices) to which the Customer Event of Default relates, upon ten (10) days' notice, by delivering a written notice of termination for cause to Customer (a "**Company With Cause Termination Notice**"), specifying the date upon which the Appendix will terminate.
- (c) Company Event of Default. In addition to any other events set out in this Agreement, the occurrence of any one or more of the following events shall constitute a default by Company under this Agreement and shall be considered an event of default (an "**Company Event of Default**") if such default is not remedied prior to the expiry of the relevant notice period (if any) or the relevant cure period (if any) applicable to such default as hereinafter set out:
- (i) if Company fails to perform any covenant or obligation that Company was required to perform under this Agreement and where such default is capable of being cured using reasonable diligence and shall continue unremedied: (i) for a period of thirty (30) days after written notice has been

- issued to Company by Customer stating the nature of the default; or (ii) such longer period as may be reasonably necessary to cure such failure, provided that Company has demonstrated that: (1) it is proceeding with all due diligence to cure or cause to be cured such failure, (2) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable time frame acceptable to Customer, acting reasonably, and (3) it shall thereafter cure such failure with all due diligence and within the time frame acceptable to Customer, acting reasonably; or
- (ii) if (i) Company fails to perform any covenant or obligation that Company was required to perform under this Agreement, and (ii) such failure has or shall have, or could reasonably be expected to have, a material adverse effect on Customer, and (iii) such failure shall continue unremedied following notice thereof (stating the nature of the default) from Customer to Company for: (1) a period of ten (10) days; or (2) such longer period as Customer, acting reasonably, may agree.
- (d) Customer Remedies. In the event of a Company Event of Default then Customer shall have the following non-exclusive rights and remedies:
- (i) subject to Article 14, recovery of all reasonable costs and expenses incurred by Customer in mitigating the Company Event of Default; and
- (ii) to terminate this Agreement upon ten (10) days' notice, by delivering a written notice of termination for cause to Company, specifying the date upon which the Agreement will terminate.
- (e) Termination for Cause by Either Party. This Agreement may be terminated by either Party in the event: (i) a receiver, trustee, administrator, or administrative receiver should be appointed for the Party or its property; (ii) the Party makes an assignment for the benefit of creditors; (iii) any proceedings should be commenced against the Party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings will not be vacated or set aside within fifteen (15) days from the date of commencement thereof; or (iv) the Party should be liquidated or dissolved.
- (f) Termination without Cause by Customer. Customer may, at its sole option, terminate this Agreement upon one hundred twenty (120) days' notice, by delivering a written notice of termination to Company (a "**Without Cause Termination Notice**"), specifying the date upon which this Agreement will terminate.
- (g) Termination due to Regulatory Change. Subject to the other provisions of this Article 16 and in addition to the Company's rights of termination set out elsewhere in this Agreement, the Company shall have the right to terminate this Agreement at any time, without notice, upon the occurrence of a regulatory change established by a Governmental Authority, which causes, results in or requires such termination.

16.03 Effect of Termination

- (a) Upon termination of this Agreement:
 - (i) Company will be entitled to immediately cease providing the Services; and
 - (ii) Customer will forthwith pay to Company all amounts owing under this Agreement, including all Service Fees up to the effective date of termination, and the Termination Charge pursuant to subsection 16.03(b).
- (b) The Termination Charge is payable if any of the following occurs: (i) Company has issued a Company With Cause Termination Notice pursuant to subsection 16.02(b)(iii); (ii) the Customer has issued a Without Cause Termination Notice pursuant to subsection 16.02(f); (iii) Company has provided notice pursuant to subsection 6.02(b); (iv) termination due to an Event of Force Majeure pursuant to Section 18.02; or (v) termination due to regulatory change pursuant to subsection 16.02(g).
- (c) Notwithstanding the termination or expiration of this Agreement, Customer shall permit unimpeded access to the Site by Company, so that Company can undertake any Decommissioning provided for in the relevant Appendices, and Customer shall pay any related Decommissioning costs.

16.04 Survival

The termination of this Agreement will not terminate those obligations and rights of the Parties pursuant to provisions of this Agreement which by their nature and intent are to survive, and such provisions will survive the termination of this Agreement. Without limiting the foregoing, the respective rights and obligations of the Parties under Section 1.02 (Construction), Section 1.03 (Order of Priority), Section 2.052.05 (Environmental Attributes), Article 3 (Intellectual Property), Article 4 (Fees and Payment), Section 5.04 (No Waiver of Company Rights as Distributor), Section 5.05 (Consent to Affiliate Disclosure), Article 9 (Confidential Information), Article 11 (Representations and Warranties), Article 12 (Disclaimers), Article 14 (Indemnification), Article 15 (Limitation of Liability), Section 16.03 (Effect of Termination), Article 17 (Insurance Requirements), Article 18 (General) and this Section 16.04 will survive the termination of this Agreement regardless of when such termination becomes effective. In no event will any termination of this Agreement relieve Customer of the obligation to pay any fees payable to Company accrued under this Agreement.

ARTICLE 17 - INSURANCE REQUIREMENTS

17.01 Required Customer Insurance

- (a) At all times during the Term of the Agreement and for so long thereafter as a claim related to this Agreement is possible under applicable statutes of limitations, Customer shall maintain at its own expense, the insurance coverage outlined below, in each case with insurers having financial security ratings of at least "A-" by AM Best or "A" by Standard & Poor's and which are authorized to do business in Ontario.
- (i) **Commercial General Liability** coverage with a limit of FIVE MILLION DOLLARS (\$5,000,000) each occurrence for bodily injury and property damage arising out of or relating to Customer's activities under this Agreement or at the Sites. The policy shall include contractual liability, cross liability, severability of interests and coverage for limited time element pollution.
 - (ii) **Commercial Auto Liability** covering all vehicles used by Customer at the Sites with a combined single limit of FIVE MILLION DOLLARS (\$5,000,000) for injury or death of one or more Persons or damage to or destruction of property as a result of each accident.
- (b) Subject to the total required amount of insurance for each individual insurance coverage requirement herein, the amounts of insurance specified in the foregoing sections may be satisfied through a combination of primary and excess insurance limits.
- (c) Customer shall ensure that each insurance carrier providing coverage hereunder provides (in each case arranged to provide the maximum benefit to Company), the following:
- (i) The inclusion of "Enbridge Gas Inc." as additional insured in insurance policies under subsection 17.01(a).
 - (ii) Waiver of insurers' rights of recovery, contribution, subrogation, set-off or counterclaim, in favour of Company, in all policies of insurance under this Article 17.
 - (iii) That coverage, in all of Customer's insurance policies (whether such policies are primary, umbrella or excess) under this Article 17 or arising out of or related to this Agreement in any way, shall be written to respond on a primary and non-contributory basis irrespective of any other applicable insurance otherwise available to Company under this Agreement.

- (d) Insurance maintained by Customer shall not be cancelled without thirty (30) days prior written notice being furnished to Company.
- (e) Upon execution of this Agreement, and on an annual basis thereafter until this Agreement is terminated, Customer shall provide to Company (or Company's designated representative) Certificate(s) of Insurance on standard forms regularly accepted in the industry certifying Customer's compliance with this Article 17 and specifically identifying coverage extensions and Endorsements required herein.
- (f) Customer shall require all its subcontractors to provide insurance coverage in accordance with this Article 17. Customer shall ensure that all insurance maintained by its subcontractors providing services to Customer at the Site include a waiver of insurers' rights of recovery, contribution, subrogation, set-off or counterclaim in favor of Company. The failure of any subcontractor to obtain and maintain the required insurance shall not in any way impact the obligations of Customer under this Agreement.

ARTICLE 18 - GENERAL

18.01 Notice

Any notice or other communication to be given under or pursuant to the provisions hereof or in any way concerning this Agreement will be sufficiently given if reduced to writing and delivered to the Person to whom such communication is to be given or sent by courier, facsimile or electronic internet communication, addressed to such Person at the address set forth below or at such other address as may be specified by a Party to the other Party by proper notice under this Agreement:

If to Company:

500 Consumers Road
Toronto, ON M2J 1P8
Attention: ●
Facsimile: ●
Email: ●

If to Customer:

[Insert Customer notice address]

Attention: ●
Facsimile: ●
Email: ●

or at such other address as may be specified therefor by proper notice hereunder. A notice or communication shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or by electronic internet communication. If such day is not a Business Day or if the notice or communication is received after 5:00 PM (at the place of receipt) on any Business Day, the notice or communication shall be deemed to have been sent and received on the immediately following Business Day.

18.02 Force Majeure

Except for the obligation to pay amounts due and owing under this Agreement, if and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by an Event of Force Majeure then, upon giving prompt notice to the other Party, the non-performing, hindered or delayed Party will be excused for such non-performance,

hindrance or delay, as applicable, of those obligations affected by the Event of Force Majeure for as long as such Event of Force Majeure continues and such Party continues to use its reasonable commercial efforts to recommence performance whenever and to whatever extent possible. Notwithstanding any other term of this Section, no Party shall be entitled to, or to claim, the benefit of these provisions pertaining to an Event of Force Majeure if: (i) such Party's inability to perform the obligation was caused by its lack of finances; (ii) such Party's inability to perform the obligation was caused by its deliberate act or inaction; or (iii) such Party failed to provide prompt notice in respect of an Event of Force Majeure.

In the event a Party's performance of obligations hereunder (other than payment obligations) is prevented by an Event of Force Majeure for a period of more than one hundred twenty (120) calendar days, either Party may elect to terminate this Agreement. In such case, Termination Charges will be payable in accordance with subsection 16.03(b).

18.03 Independent Contractor

- (a) Company employees will not be deemed at any time to be employees or servants of Customer and Company is and will remain an independent contractor for all purposes. Unless otherwise agreed to in writing, Company does not undertake to perform any obligation of Customer, whether regulatory or contractual, or to assume any responsibility for Customer's business or operations.
- (b) Company and Customer agree and acknowledge that the relationship between Customer and Company is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between Company and Customer.

18.04 No Waiver of Customer Obligations as Employer

Nothing in this Agreement shall be construed in a manner that amounts to a waiver or derogation or transfer to Company, of any of Customer's obligations as an employer, including (but not limited to) with respect Customer's obligations under the *Occupational Health and Safety Act* (Ontario).

18.05 Use of Company Name and Logo

Customer acknowledges that the name "Enbridge", "Enbridge Gas Inc." and any names, symbols, signs, trademarks and marks denoting and identifying Enbridge Gas Inc., its subsidiaries and affiliates, presently in use or acquired from time to time are the property of Company and shall not be used or displayed by Customer in any manner whatsoever without the prior written authorization of Company. Other than as expressly permitted in this Agreement, Customer shall not use, display or utilize any name, logo, sign, symbol, trademark or mark denoting or implying a relationship or affiliation between Customer and Company for any purpose and shall cease such usage upon completion of this Agreement or upon request of Company. Further, Customer shall return to Company forthwith any documents, signs, forms or records provided to it by Company or acquired by Customer in furtherance of this Agreement, upon termination of this Agreement or upon the request of Company. Customer acknowledges and agrees that this undertaking shall continue in effect subsequent to the termination or expiry of this Agreement.

18.06 Severability

The Parties agree that it is the intention of each Party not to violate any public policy or Applicable Laws. To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent will be severed and deleted or limited so as to give effect to the intent of the Parties insofar as possible and the Parties will use their best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provision and the remainder of this Agreement, as the case may be, will remain binding upon the Parties.

18.07 Assignment

Customer may not, without Company's prior written consent (which may be withheld in Company's sole discretion), assign or transfer this Agreement, or any of its rights or obligations under this Agreement to any third party. Company may assign this Agreement to any third party without the consent of Customer provided that Company notifies Customer in writing of any such assignment.

18.08 Subcontractors

Company may delegate performance of the Services to subcontractors, and Company may disclose to any such subcontractors any information required by them to perform the duties so delegated to them. Company will remain fully liable under this Agreement for the acts and performance by such subcontractors to the same extent as if it was Company itself that had so acted or performed or failed to act or perform, as the case may be, and such work will be deemed to be work performed by Company.

18.09 Waiver and Amendment

No modification, addition to or waiver of any rights, obligations or defaults will be effective unless in writing and signed by the Party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default will not be construed as a waiver of any subsequent right, obligation or default.

18.10 Entire Agreement

This Agreement and, appendices, exhibits, attachments, and addenda contemplated herein or specifically referred to herein constitute the entire agreement among the Parties pertaining to all the matters herein, and supersede all prior agreements, understandings, negotiations, discussions and other communications, whether oral or written, of the Parties. Unless otherwise agreed to in writing by the Parties, Customer's use of the Services will be governed by the provisions of this Agreement and the relevant Appendices thereto, and nothing contained in any purchase order, letter or other instrument will in any way modify, vary, change or add any provision hereto.

18.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the Parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods (1980) does not apply.

18.12 Further Assurances

Each of the Parties hereto will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement and to establish and protect the rights, interests and remedies intended to be created in favour of the other Party.

18.13 Publicity

Customer's engagement of Company to perform Services will be deemed to constitute Customer's permission for Company to use Customer as a reference in marketing the products and services of Company unless Customer specifically revokes this permission in writing. In no event will either Party publicize or disclose to any third party either the price or the provisions of this Agreement without the consent of the other Party.

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18.14 Counterparts and Delivery

This Agreement may be signed in counterparts, each of which will be deemed to be an original, but all of which taken together, will constitute one and the same instrument. This Agreement may be delivered by electronic transmission, including by email or by facsimile transmission, and if so delivered, this Agreement will be, for all purposes, effective as if the Parties had executed and delivered a manually executed copy of this Agreement. Each Party undertakes to provide the other with a copy of this Agreement bearing original signatures upon request.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the Effective Date.

ENBRIDGE GAS INC.

[INSTRUCTION: Insert legal name of Customer]

By: _____
Authorized Signatory

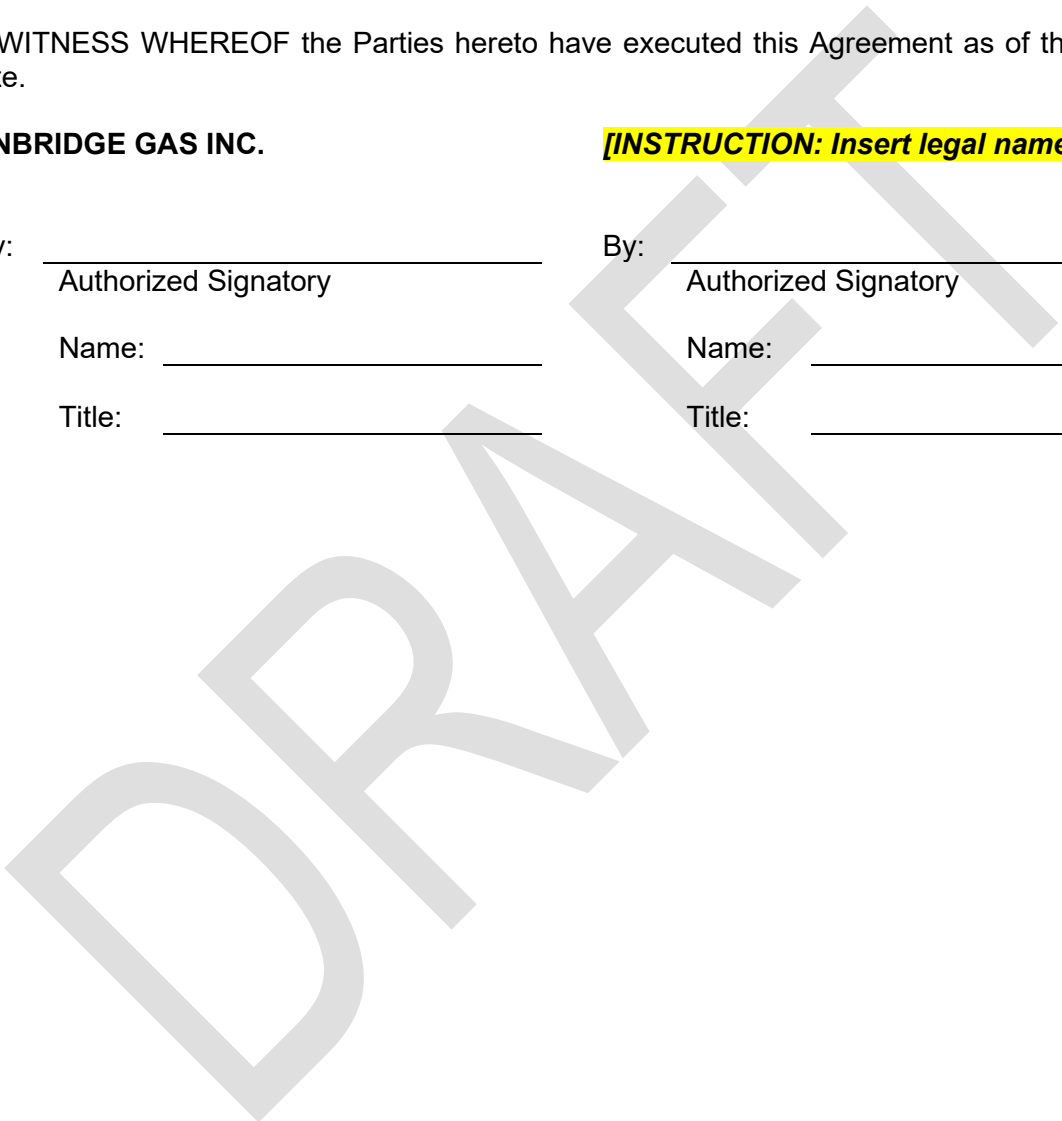
By: _____
Authorized Signatory

Name: _____

Name: _____

Title: _____

Title: _____



APPENDIX A
to the Biogas Services Agreement between
ENBRIDGE GAS INC. and
[INSTRUCTION: insert legal name of Customer]

dated ●

DEFINITIONS

Pursuant to Section 1.01 of the Agreement the following terms shall have the meanings set out below:

- (a) **“Affiliate”** means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person by virtue of: (i) the ownership or direction of voting securities of the other Person; (ii) a written agreement or trust instrument; (iii) being the general partner or controlling the general partner of the other Person, or (iv) being the trustee of the other Person;
- (b) **“Agreement”** has the meaning ascribed thereto in the recitals;
- (c) **“Appendix”** and **“Appendices”** means an appendix or multiple appendices to this Agreement;
- (d) **“Applicable Laws”** means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of either of the Parties, from time to time;
- (e) **“Biogas”** means biogas generated from biomass, including Untreated Biogas, Untreated Biogas that has been upgraded and conditioned but does not meet the Renewable Gas Specification, and Renewable Gas;
- (f) **“Business Day”** means any day on which Company’s head office in Ontario is open for business as usual;
- (g) **“Change in Services”** means an adjustment to the Service Fees or other affected provisions of the relevant Appendix or Appendices, effected by a change order entered into between the Parties;
- (h) **“Company”** has the meaning ascribed thereto in the recitals;
- (i) **“Company Acquired Permits”** has the meaning ascribed thereto in Section 5.06(b)(ii);

- (j) **“Company Event of Default”** has the meaning ascribed thereto in Section 16.02;
- (k) **“Company Intellectual Property”** means all of the Intellectual Property for the provision of the Services by Company to Customer;
- (l) **“Company With Cause Termination Notice”** has the meaning ascribed thereto in Section 16.02;
- (m) **“Commissioning Date”** means the date when the Equipment at a Site is deemed to have been commissioned into service as determined by Company in its sole discretion and communicated in writing to Customer;
- (n) **“Confidential Information”** means the confidential, secret or proprietary information of a Party, its Affiliates or licensors (the **“Disclosing Party”**), including technical, financial and business information of the Disclosing Party which has been or may hereafter be disclosed, directly or indirectly, to the other Party (the **“Recipient”**), either orally, in writing or in any other material form, or delivered to the Recipient, as well as the terms of this Agreement;
- (o) **“Customer”** has the meaning ascribed thereto in the recitals;
- (p) **“Customer Account”** means the Company customer account established for Customer;
- (q) **“Customer Acquired Permits”** has the meaning ascribed thereto in Section 5.06(b)(i);
- (r) **“Customer Agreements”** means such other agreements for goods and services that are outside the scope of this Agreement, including (i) agreements for the establishment of a Customer Account, (ii) the transportation and delivery of the Renewable Gas and natural gas within Company’s distribution system, (iii) Facilitating Agreements, and (iv) payment of a contribution in aid of construction and/or the provision of financial security, if required, for Company to complete the installation and commissioning of one or more distribution line(s), service line(s), gas meter(s) and/or other upgrades to Company’s gas distribution system and related infrastructure;
- (s) **“Customer Event of Default”** has the meaning ascribed thereto in Section 16.02;
- (t) **“Decommissioning”** means the work and steps associated with decommissioning the Equipment identified on the relevant Appendix;
- (u) **“Designated Areas”** means the portions of the Site that are jointly selected by the Parties as the area(s) within which the Equipment will be located, as identified in the Injection Services Appendix;
- (v) **“Disclosing Party”** means the Party disclosing Confidential Information;
- (w) **“Distributor”** has the meaning ascribed thereto in Section 5.04;

- (x) **“Effective Date”** has the meaning ascribed thereto in the recitals;
- (y) **“Endorsement”**, **“Endorsed”** and similar expressions means approval in accordance with the procedures set out in Section 1.04 unless otherwise provided herein;
- (z) **“Environmental Attributes”** has the meaning ascribed thereto in Section 2.05;
- (aa) **“Equipment”** means the equipment installed by Company at a Site to provide the Services, including the facilities, equipment and related infrastructure as further described in the relevant Appendix;
- (bb) **“Facilitating Agreements”** means the agreements listed in Exhibit C7, Section C7.1;
- (cc) **“Facility”** has the meaning ascribed thereto in the recitals;
- (dd) **“Financial Assurances”** has the meaning ascribed thereto in Section 13.01;
- (ee) **“Force Majeure”** or **“Event of Force Majeure”** means any cause (i) not reasonably within the control of the Party claiming force majeure, and (ii) which by exercise of due diligence such Party is unable to prevent or overcome, and includes the following:
 - (i) physical events such as an act of God, landslide, earthquake, storm or storm warning such as a hurricane which results in evacuation of an affected area, flood, washout, explosion, breakage or accident to machinery or equipment or lines of pipe used to transport Gas, the necessity of repairs to or alterations of such machinery or equipment or lines of pipe, or inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party’s obligations under this Agreement;
 - (ii) interruption and/or curtailment of firm transportation by a Gas Transporter;
 - (iii) acts of others such as strike, lockout or other industrial disturbance, civil disturbance, blockade, act of a public enemy, terrorism, riot, sabotage, insurrections or war, as well as physical damage resulting from the negligence of others; and
 - (iv) governmental actions, such as necessity for compliance with any Applicable Law.
- (ff) **“Governmental Authority”** means any national, provincial, state, county, municipal, quasi-governmental or self-regulatory department, authority, organization, agency, commission, board, tribunal, dispute settlement panel or body, bureau, official, minister, Crown corporation, or court or other law, rule or regulation-making entity having or purporting to have jurisdiction over Company, Customer, or any Person, property, transaction, activity, event or other matter related to this Agreement;

- (gg) “**Improvements**” has the meaning ascribed thereto in Section 3.02;
- (hh) “**Initial Term**” has the meaning ascribed thereto in Section 16.01;
- (ii) “**Injection Services**” has the meaning ascribed thereto in Section 2.01(a);
- (jj) “**Intellectual Property Rights**”, “**Intellectual Property**” means intellectual property of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, software, industrial designs and copyrights;
- (kk) “**Latent Site Defects**” include any conditions or circumstances that were not revealed to or ascertained by Company during the due diligence that occurred at the Site. Latent Site Defects include but are not limited to the presence of legally significant cultural resources, endangered species, dangerous site conditions, earthquake fault lines, or air, soil or water contamination;
- (ll) “**OEB**” means the Ontario Energy Board, or any successor regulatory entity;
- (mm) “**OEB Act**” has the meaning ascribed thereto in Section 5.01;
- (nn) “**Party**” means Company or Customer, as applicable;
- (oo) “**Parties**” means both Company and Customer;
- (pp) “**Person**” means any natural person, sole proprietorship, corporation, partnership (general or limited, including master limited), limited liability company, trust, joint venture, joint stock company, unincorporated association, unincorporated syndicate, unincorporated organization, or other entity or association, and, where the context requires, any of the foregoing in its capacity as trustee, executor, administrator or other legal representative;
- (qq) “**Rate Handbook**” means Company’s (operating as Enbridge Gas Distribution) ‘Handbook of Rates and Distribution Services’ as amended, updated or replaced by Company from time to time with approval from the OEB;
- (rr) “**Rate Number**” means a numbered rate established by the Company from time to time for one or more category of service as approved by the OEB and in effect at the relevant time;
- (ss) “**Rate Schedule**” means the schedule of rates, charges, terms and conditions associated with each Rate Number established by the Company from time to time as approved by the OEB and in effect at the relevant time.
- (tt) “**Recipient**” means the Party receiving Confidential Information;
- (uu) “**Regulatory Proceeding**” has the meaning ascribed thereto in Section 9.02;
- (vv) “**Relationship Manager**” has the meaning ascribed thereto in Section 8.02;

- (ww) **“Renewable Gas”** means Biogas that has been conditioned or upgraded to a quality meeting the Renewable Gas Specification;
- (xx) **“Renewable Gas Specification”** means the renewable gas standards or requirements established by Company, as updated periodically;
- (yy) **“Representatives”** means a Party’s employees, contractors, consultants and other agents;
- (zz) **“Required Orders”** means such grants, permits, licenses, registrations, approvals, consents, waivers, variances, exemptions, filings, authorizations, regulatory consent, credential or similar qualification, orders and decisions or requirements of or by any Governmental Authority having jurisdiction or control over any of the Parties, the Sites or any provision hereof, as are from time to time necessary in order that this Agreement and the performance thereof by the Parties be in compliance with all Applicable Laws;
- (aaa) **“Retained Confidential Information”** has the meaning ascribed thereto in Section 9.02;
- (bbb) **“Service Fees”** means all fees payable to Company by Customer pursuant to this Agreement, including the Appendices;
- (ccc) **“Services”** has the meaning ascribed thereto in Section 2.01;
- (ddd) **“Site”** has the meaning ascribed thereto in the recitals;
- (eee) **“Site Plan”** means the Site Plan attached at Appendix D;
- (fff) **“Site Manager”** has the meaning ascribed thereto in Section 8.03;
- (ggg) **“Term”** has the meaning ascribed thereto in Section 16.01;
- (hhh) **“Termination Charge”** means the termination charge, if any, specified in an Appendix to this Agreement;
- (iii) **“Untreated Biogas”** has the meaning ascribed thereto in the recitals; and
- (jjj) **“Without Cause Termination Notice”** has the meaning ascribed thereto in Section 16.02.



APPENDIX B
to the Biogas Services Agreement between
ENBRIDGE GAS INC. and
[INSTRUCTIONS: insert legal name of Customer]

dated ●

DESIGNATED AREAS

Save as specifically provided for in an Appendix to this Agreement, the following provisions pertain to rights to be provided by Customer to Company pursuant to this Agreement in respect of the Company's obligations to construct, install, operate and maintain the Equipment on the Site and to provide the Services:

1 DESIGNATED AREAS

- 1.1 The Designated Areas indicated on the Site Plan shall be fenced **[by the Company]** and Company shall be entitled to install permanent concrete barriers within the Designated Areas. Customer and its Representatives will only access the Designated Areas **[to perform activities required by Company pursuant to this Appendix (e.g. snow removal)]** if they are accompanied by Company or its Representatives, or in the event of an emergency and the Company Site Manager is not responsive. Notwithstanding anything in this Agreement to the contrary, Customer's right to enter the Designated Areas shall be subject to any Applicable Laws and to any policies and procedures of Company relating to environmental and health and safety matters ("**EHS Policies**").
- 1.2 Company shall provide a safety education plan and emergency response plan for the Equipment and the Designated Areas to Customer.
- 1.3 Company will have access to and entry upon the Site as required:
 - (i) at any time for the purposes of transporting components of the Equipment to and from the Designated Areas; installing, commissioning, inspecting, maintaining and repairing the Equipment in accordance with the provisions of this Agreement; and Decommissioning and removing the Equipment upon termination of this Agreement; and
 - (ii) at any time, without notice, for the purposes of responding to any emergency involving or otherwise affecting the Equipment, the performance of the Services or the supply of gas to the Equipment; making emergency inspections or repairs to the Equipment; and removing any article or remedying any condition which, in the opinion of Company, presents or creates a hazard to the safe operation of the Equipment or the safe performance of the Services.
- 1.4 Customer shall provide rights-of-way and/or easements as required by Company for Company and its Representatives to construct, install, operate and maintain the Equipment on the Site to serve Customer. In particular, (i) Company and its Representatives shall have a non-exclusive right-of-way along and upon the roads and paved areas of each Site for the purposes of pedestrian and vehicular passage to and

from the Designated Areas; and (ii) Customer will grant Company an easement in Company standard form with respect to Company Equipment (including the underground Equipment).

- 1.5 At all times and as necessary for Company to perform the Services, Customer shall provide Company with access to the Site, the Designated Areas and the Equipment, including unobstructed ready ingress and egress for all personnel, equipment and materials, and vehicles. Customer shall provide an appropriate location at the Site for the delivery of equipment, layout and storage of equipment and materials, ingress and egress and parking of construction related vehicles and the installation, construction, operation and maintenance of the Equipment.
- 1.6 During the installation of the Equipment and throughout the Term, Customer shall cooperate with Company and its subcontractors to ensure that the Designated Areas and the immediately surrounding area are kept free and clear of all debris and any other obstructing objects. Customer shall, at its sole cost and expense, remove any such debris and obstructing objects as requested by Company or its subcontractors.
- 1.7 Customer shall provide ongoing safeguards at the Site for the protection of the Equipment and the provision of the Services, and all Persons and other property related thereto, including lights and barriers, guard service, controlled access, and other measures developed pursuant to a continuous safety and security assurance program acceptable to Company, or otherwise reasonably required to prevent vandalism, theft, and danger to the Equipment. Customer shall provide a notice to Company describing Customer's safety and security assurance program no less than thirty (30) days prior to Company commencing construction on a Site.
- 1.8 Customer shall ensure that each Site, including, but not limited to any access roads, is kept clear of ice and snow during the winter months, slippery surfaces or of any other unsafe condition including but limited to ensuring that approaches to the Designated Areas are cleared of snow and salted throughout the Term.
- 1.9 Company will obtain the prior approval of Customer before erecting or installing any permanent signage or display materials on the Site, but Customer shall not withhold such approval unreasonably. Notwithstanding the foregoing, nothing in this Agreement shall restrict or prohibit Company from installing all emergency or safety-related signage and communications on or about the Equipment and the Site, as required by Applicable Laws or Company policy, all of which may be installed by Company without Customer's prior approval. At a minimum, Company shall erect or install permanent signage on or near the Equipment pertaining to the avoidance of smoking about or near the Equipment, restricting use and access to the Equipment by authorized and appropriately trained personnel and the display of an emergency telephone number to call in the event of a gas leak or other emergency.
- 1.10 Following the Commissioning Date of the Equipment and from time to time thereafter, in the event of an emergency or bona fide perceived emergency, Company shall be permitted to make any and all alterations or additions it deems necessary to the Designated Areas or the facilities located thereon, from time to time, without the prior written approval of Customer. At all other times, no alterations will be made except with

the written consent of Customer, such consent not to be unreasonably withheld, delayed or conditioned.

- 1.11 Customer shall provide Company with access rights required by Company to effect the removal of any and all of the Equipment or any other of Company's assets installed on or below the Site after the expiration or earlier termination the Agreement.

2 LIENS BY COMPANY

- 2.1 Company shall comply with all the provisions of the *Construction Act* (Ontario) and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks). If and when any builder's or other lien for work, labour, services or materials supplied to or for Company or for the cost of which Company may be in any way liable or claims therefor shall arise or be filed, Company shall within twenty (20) days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which Customer may make any payments into court (but not in any event to the lien claimant) required to procure the discharge of any such liens, shall be entitled to be reimbursed by Company within fourteen (14) calendar days, and its right to reimbursement shall not be affected or impaired if Company shall then or subsequently establish or claim that any lien so discharged was without merit or excessive or subject to any abatement, setoff or defence.

3 OWNERSHIP OF EQUIPMENT

- 3.1 Company shall retain sole and exclusive title in and to the Equipment at all times while the relevant Appendix remains in effect, notwithstanding that they may be annexed or affixed to the premises. The Equipment may be removable in whole or in part by Company without the consent of Customer.
- 3.2 Customer shall not, under any circumstances, permit any third party to attach or perfect any lien, security interest, mortgage, charge or other encumbrance (each, an "**Encumbrance**") over the Equipment. Customer shall promptly notify Company upon receipt of any notice from a third party that alleges, asserts or claims to hold, an Encumbrance over the Equipment.
- 3.3 Company shall be entitled to label the Equipment to designate that the Equipment is owned by Company and Customer shall not remove or tamper in any way with such labelling.
- 3.4 Only personnel duly authorized by Company are allowed to connect or disconnect the Equipment, remove the Equipment or perform any work upon Company-owned facilities, including the Equipment.
- 3.5 Customer shall not frustrate or otherwise restrict Company's efforts to protect or otherwise assert its proprietary rights in and to the Equipment. Without limiting the generality of the foregoing, Customer hereby consents to the registration by Company of a notice of its interest in the Equipment pursuant to the *Personal Property Security Act* (Ontario), and

filing in the public records, including real estate records, such instruments as Company may consider to be appropriate.

4 ENVIRONMENTAL

4.1 **[INSTRUCTION: may be revised to reflect Site conditions]** Customer represents and warrants that the Site has not been used of the storage of and does not contain any toxic, hazardous, dangerous, noxious or waste substances or contaminants (collectively the “**Hazardous Substances**”). If Company encounters Hazardous Substances in undertaking any work it shall give notice to Customer. At the expense of Customer, Company shall effect the removal of such Hazardous Substances in accordance with Applicable Laws.

DRAFT

APPENDIX C
to the Biogas Services Agreement between
ENBRIDGE GAS INC. and
[INSTRUCTION: insert legal name of Customer]

dated ●

INJECTION SERVICES

1 INTERPRETATION

1.1 Definitions. All capitalized terms used in this Appendix and not otherwise defined will have the meaning given to them in the Agreement. In this Appendix:

- (a) **“Contract Year”** means a twelve (12) month period beginning on the Commissioning Date during the first Contract Year and on the anniversary date of the Commissioning Date for all subsequent Contract Years;
- (b) **“Customer’s Facility”** means the biogas upgrading and conditioning Facility operated by Customer;
- (c) **“Day”** shall mean a period of twenty-four (24) consecutive hours beginning at 10:00 a.m. Eastern Standard Time. The reference date for any Day shall be the calendar date upon which the twenty-four (24) hour period shall commence;
- (d) **“Delivery Point”** means Company’s Eastern Delivery Area (“**EDA**”), or Company’s Central Delivery Area (“**CDA**”) as defined in TransCanada Pipeline Limited’s tariff as approved by the National Energy Board;
- (e) **“Eastern Standard Time”** means Eastern Standard Time at Toronto, Ontario; and which, for certainty, includes any adjustment for Daylight Savings Time;
- (f) **“Injection Receipt Point”** means the physical point of delivery downstream of Customer’s Facility to the Equipment; each Injection Receipt Point shall be clearly marked or tagged physically;
- (g) **“Market Quantity”** shall mean the daily quantity of Renewable Gas in GJ nominated on that Day by Customer;
- (h) **“Maximum Produced Volume per Day”** has the meaning ascribed to it in Section 4.1;
- (i) **“Nomination”** means a written or electronic request from Customer regarding a quantity of Renewable Gas that Customer intends to deliver to Company pursuant to this Agreement, or otherwise transfer or assign in a manner contemplated in this Agreement;
- (j) **“Produced Quantity”** or **“PQ”** is measured in GJ and is the product of:

Produced Volume (10^3m^3) x Producer Heat Value ($\text{GJ}/10^3\text{m}^3$);

- (k) **“Produced Volume”** means the aggregate of all actual volumes of Renewable Gas in 10³m³, delivered by Customer to Company at the Injection Receipt Point on any Day;
- (l) **“Producer Balancing Account”** managed through the Enhanced Balancing Service Agreement, shall mean the gas balance held by Company for Customer, or owed by Customer to Company, at the Delivery Point. Where the Producer Balancing Account is zero or a positive number, the account is in a credit position, and where the Producer Balancing Account is less than zero, the account is in a debit position;
- (m) **“Producer Heat Value”** means the heat content as set by Company, and shall be determined in accordance with Company’s policies and procedures; and
- (n) **“System Capacity”** shall mean the volumetric capacity that exists from time to time within Company's pipeline and distribution system, as determined by Company in its sole discretion.

1.2 Exhibits. The following are the Exhibits to this Appendix as of the Effective Date:

Exhibit C1	–	Contract Parameters
Exhibit C2	–	Conditions Precedent
Exhibit C3	–	Required Orders
Exhibit C4	–	Construction Phase: Company and Customer Work
Exhibit C5	–	Service Fees
Exhibit C6	–	Termination Charge
Exhibit C7	–	Facilitating Agreements
Exhibit C8	–	Gas Quality

2 TERMINATION CHARGE

2.1 The Termination Charge payable pursuant to this Appendix is specified in Exhibit C6.

3 CONDITIONS PRECEDENT

3.1 The conditions precedent applicable to this Appendix are set out in Exhibit C2.

4 DESCRIPTION OF INJECTION SERVICES

4.1 Provision of Injection Services. Company will provide the Injection Services on the following basis, consistent with the specifications for the Injection Services at the Site:

- (a) Company shall be responsible for planning, designing, procuring, installing, constructing, engineering, commissioning, operating and maintaining Equipment of suitable capacity and design as is required for Company to provide the Injection Services in accordance with this Appendix and the Agreement;
- (b) Customer shall own, operate and maintain any and all equipment and facilities upstream of the Injection Receipt Point;

- (c) the Equipment shall be owned by Company and operated and maintained by Company and/or its contractors or agents;
- (d) throughout the Term, Customer shall provide Renewable Gas to Company at the Injection Receipt Point;
- (e) if Biogas provided by Customer fails to conform to the Renewable Gas Specification, Company, in addition to its other remedies, may refuse to accept delivery of the Biogas until such deficiency has been remedied by Customer;
- (f) each Party agrees to forthwith notify the other verbally, followed by written notification, if the Biogas provided by Customer at the Injection Receipt Point does not meet the Renewable Gas Specification;
- (g) Customer shall deliver, or cause to be delivered, the Produced Volume, up to the Maximum Produced Volume per Day (10^3m^3) during the Term at the Injection Receipt Point;
- (h) in the event Customer is not delivering to Company Renewable Natural Gas, no remedy will be available to Customer;
- (i) Company agrees to accept delivery of the Produced Volume, on a reasonable efforts basis, at the Injection Receipt Point provided that:
 - (i) Company has sufficient System Capacity to receive the gas offered for delivery by Customer; and
 - (ii) such gas meets the Renewable Gas Specification;
- (j) Company shall deliver at the Delivery Point a Market Quantity provided Customer has tendered its daily quantity Nomination in accordance with Section 5 of this Appendix; and
- (k) in the event that there is insufficient System Capacity, Company will not be able to accept the Produced Volume pursuant to this Appendix, and no remedy will be available.

5 NOMINATIONS

- (a) Processes. Customer shall use the processes and mechanisms designated from time to time by Company to submit its Nominations for Market Quantity. Customer may provide notice of Nominations as indicated in Exhibit C1. Customer acknowledges that a further corresponding nomination may be required pursuant to any relevant Customer Agreements with Company.
- (b) Submittal. Customer shall submit to Company Nominations in accordance with the North American Energy Standards Board (“NAESB”) standards and at the nomination times (the “**Nomination Times**”) set out therein. Valid Nominations must be submitted regularly, failing which the last regular Nomination accepted by

Company shall be considered as a standing Nomination applicable to each subsequent Day until varied by Customer.

- (c) Acceptance. Acceptance by Company of any Nomination from Customer shall be subject to the other terms and provisions of this Agreement, and is contingent upon the confirmation and actual delivery of the Produced Volume. A Nomination shall only be deemed to be accepted by Company upon issuance of an electronic communication to Customer providing notice of such acceptance.
- (d) Revision. Customer shall have the opportunity, subject to acceptance by Company, to revise a Nomination by further notice or notices given to Company, provided that (i) such notice or notices must be given in accordance with the applicable Nomination Times; and (ii) Customer must comply with the other terms and conditions of this Section 5 regarding revisions to the Nomination.
- (e) Company Remedies. If Customer does not nominate in accordance with this Section 5, Company may, in addition to its other rights and remedies available under the Agreement or at law, suspend further performance of the Injection Services under this Appendix.

6 PRODUCER BALANCING ACCOUNT

- 6.1 Producer Balancing Account. Customer and Company acknowledge that the Producer Heat Value may be greater or less than the energy value associated with Company system gas, and that adjustments will be required to reflect any difference between the Produced Quantity and the Market Quantity. In addition, there may also be differences between the Nominations and the amount produced. To facilitate such adjustments, Company shall establish and maintain on behalf of Customer a Producer Balancing Account.
- 6.2 Producer Balancing Account. Producer Balancing Account services will provided in accordance with Exhibit C7. Exhibit C7 may be amended by Company from time to time upon ninety (90) days' notice to Customer.
- 6.3 Commingling. Company shall have the right to commingle the quantity of Renewable Gas referenced herein with gas owned by Company or gas being stored and/or transported by Company for third parties.

7 OBLIGATIONS OF CUSTOMER

- 7.1 Renewable Gas Specification. Throughout the Term, Customer shall provide Biogas meeting the Renewable Gas Specification to Company at the Injection Receipt Point.
- 7.2 Cooperation. Customer shall cooperate with Company to facilitate the provision of the Services including the installation, construction, commissioning, operations and maintenance of the Equipment.
- 7.3 Customer Acquired Permits and Work. Customer shall obtain Customer Acquired Permits set out in Exhibit C3, and perform the Customer work identified in Exhibit C4, at Customer's own cost and expense.

- 7.4 Customer Operating Obligations. Customer shall be responsible for the following operating obligations, at its own cost and expense:
- (a) a means to deal with gas that does not meet the Renewable Gas requirements (“**Off-spec Gas**”) such that the Off-spec Gas is not delivered to the Injection Receipt Point;
 - (b) flare or alternative gas disposal equipment located at the Customer’s Facility upstream of the Equipment that receives and disposes gas from the Equipment, and access to such equipment, and Customer will ensure the flare or alternative gas disposal equipment is in good working order and of sufficient capacity to meet the requirements communicated by Company; and
 - (c) any electrical or other connections reasonably required for the Equipment, including a continuous supply of electrical power at 110 volts, maximum 100 amps.
- 7.5 Customer’s Facility. Customer shall commission and operate the Customer’s Facility.
- 7.6 Maintenance or Shut-Down by Customer. Customer will provide Company with:
- (a) an annual schedule of planned preventative maintenance and shutdown activities for the Customer’s Facility by January 31 of each calendar year (and, if the Commissioning Date occurs other than on January 1 of a calendar year, within thirty (30) days of the Commissioning Date);
 - (b) with respect to any changes to the annual schedule, at least three (3) months’ notice of such changes; and
 - (c) immediately provide notice in the case of an unscheduled shut-down by Customer of the Customer’s Facility.
- 7.7 Annual Forecast. Customer shall provide to Company not less than sixty (60) days prior to the commencement of each Contract Year an annual forecast of the Produced Volume in cubic meters identifying expected daily flows, expected down times and anticipated peak production periods. For certainty, Company shall have no obligation to accept gas from Customer in accordance with any such annual forecast.
- 7.8 Declaration. Upon request by Company, Customer shall provide to Company a declaration (in a form acceptable to Company) that the Biogas provided at the Injection Receipt Point is derived from biomass for the purposes of any Company reporting requirements.

8 ADDITIONAL OBLIGATIONS OF COMPANY

- 8.1 Company Acquired Permits and Work. Company shall be responsible for obtaining the Company Acquired Permits set out in Exhibit C3, and performing the Company work identified in Exhibit C4.
- 8.2 Decommissioning Process. Upon the expiration or termination of this Agreement, Company shall be responsible for safely Decommissioning and removing the Equipment and all of the Improvements made pursuant to this Agreement by Company; provided that

(i) Company shall have no obligation to remove the permanent civil structures (e.g. the concrete pad) upon which the Equipment is installed, nor to undertake any remedial work **[INSTRUCTION: if the site has unique Decommissioning obligations, please add a “Decommissioning Obligations” Exhibit by including the following language, adding an Exhibit at the end of this document and amending the list of Exhibits in Section 1.2 to include the Decommissioning Obligations Exhibit: (other than the Decommissioning Obligations Itemized in Exhibit •)]** to return the Site to its original condition prior to the installation of the Equipment; (ii) gas lines at the Site (including underground gas lines) will be disconnected (in the case of underground gas lines, cut at grade level) and abandoned in place but purged and capped; and (iii) metal structures (such as water pipes and electrical services) will not be removed by Company. All costs associated with Decommissioning will be charged to Customer. Customer shall allow Company a sufficient amount of time to complete the removal of the Equipment and related facilities.

9 CONTROL AND POSSESSION OF BIOGAS

9.1 The Parties agree that:

- (a) Customer shall be deemed to be in control and possession of, and responsible for, the Biogas until it shall have been delivered to Company at the Injection Receipt Point and shall bear the full cost and expense for delivering the Biogas to the Injection Receipt Point; and
- (b) upon delivery at the Injection Receipt Point and until delivery to the Delivery Point **[or to the return piping transfer point (in the case of return to Customer if the Biogas does not meet the Renewable Gas Specification)]**, Company shall be deemed to be in control and possession of, and responsible for, such Biogas.

For certainty, upon delivery to the Delivery Point, Company will be deemed to be in control and possession of, and responsible for, such gas in accordance with the provisions of the relevant Customer Agreements.

10 CURTAILMENT AND SUSPENSION

10.1 In the event of actual or threatened inability to provide the Injection Services under this Appendix by Company due to a Force Majeure Event affecting Company or when curtailment or discontinuance of gas supply is ordered by a Governmental Authority, Customer shall, at the direction of Company, make arrangements to cease deliveries of Renewable Gas as needed during the period specified by Company (by notice to Customer in accordance with the other terms of this Agreement). Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by Customer by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

10.2 Company may be required from time to time to perform maintenance or construction to its facilities (including the Equipment and Company’s gas distribution facilities) which may impact Company’s ability to meet Customer’s requirements, or Company’s obligations, set out in this Appendix. In such event, except in cases of emergency, Company shall have the right to suspend service under this Agreement in whole or in part; provided that

Company and Customer, each acting reasonably, determine a mutually acceptable period during which such maintenance or construction will occur. For certainty, in cases of emergency no prior notice or consultation by Company shall be required to perform any required maintenance or construction, provided Company shall use reasonable efforts to inform Customer of the nature, extent and timing of such emergency. In all cases, Company shall use reasonable efforts to limit the extent and duration of any service interruption hereunder. During any such service interruption, (i) make arrangements to cease deliveries of Renewable Gas as needed during the period specified by Company; and (ii) in cases of emergency, Customer will be required to pay only prorated Service Fees, as determined by Company in its sole discretion, but such prorating shall not affect any other contracts or agreement for services between Company and Customer.

11 REPRESENTATIONS AND WARRANTIES OF CUSTOMER

11.1 In addition to any other representations and warranties given to Company under this Agreement, Customer represents and warrants to Company that at the date hereof and at all times during the Term:

(a) there are no latent defects at the premises that will impede Company from obtaining the Company Acquired Permits,

(b) **[INSTRUCTIONS: insert any project-specific reps and warranties that are necessary]**

and acknowledges and agrees that Company is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement and the acceptance by Company of all Renewable Gas from Customer.

12 SERVICES FEES

12.1 Commencing as of the Commissioning Date and continuing throughout the Term, Customer shall pay Company the Service Fees set out in Exhibit C5.

12.2 The Service Fees for the first month immediately after the Commissioning Date may be invoiced on a pro-rata basis or deferred until a subsequent month or invoice for the purposes of aligning the Service Fees with the invoice period for the supply of natural gas pursuant to the Customer Account.

12.3 The Service Fees shall be payable in accordance with Section 4.02 of the Agreement.

12.4 If an invoice remains unpaid past the period established in Section 4.02 of the Agreement, Company may, in addition to its other rights and remedies available under the Agreement or at law, suspend further performance of the Injection Services under this Appendix until such invoice is paid or, in the alternative, terminate this Appendix.

[Remainder of page intentionally left blank.]

EXHIBIT C1 – CONTRACT PARAMETERS

The following table sets out the contract parameters and notice requirements for Nominations:

Contract Parameter	Details
Site	[municipal address]
Delivery Point	The gas production site measured by Company's meter located at [Lot __, Concession __, __ Township, __ County, Province of Ontario, Station # ____]
Producer Heat Value	The deemed Producer Heat Value as of the Commissioning Date is: [●]
Maximum Produced Volume per Day	[●] 10 ³ m ³
Allowable Operating Pressure	Minimum: [●] kPa Maximum: [●] kPa The pressure of the Renewable Natural Gas delivered by Customer to Company at the Injection Receipt Point shall be at least the minimum specified above but shall not exceed the maximum limit specified above. Company may change the minimum allowable operating pressure from time to time provided such pressure remains below the maximum allowable operation pressure and Company shall provide to Customer six (6) months' notice of such change. For greater clarity, the maximum pressure specified above shall not be changed for the Term of the Agreement.
Notice for Nominations	gascontrol@enbridge.com

EXHIBIT C2 – CONDITIONS PRECEDENT

C2.1 The obligations of Company to provide the Services pursuant to this Appendix are subject to the following conditions precedent which are for the sole benefit of Company and which may be waived in whole or in part by Company:

- (a) Company shall have obtained, in form and substance satisfactory to Company, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders, and authorizations that are required to:
 - (i) construct and operate the Equipment; and
 - (ii) provide the Services,
under a regulatory framework satisfactory to Company, in its sole discretion;
- (b) each of the Parties shall have received all Required Orders for the construction and operation of the Customer's Facility and the Equipment at the Site.
- (c) Customer and Company shall have entered into the necessary Customer Agreements, including the Facilitating Agreements,
- (d) Company shall have completed and placed into service the facilities and Equipment necessary to provide the Services hereunder;
- (e) Customer shall have provided Company with notice that Customer has: (i) obtained all Customer Acquired Permits pertaining to the Services, and (ii) the Customer's Facility and related infrastructure is commissioned.

EXHIBIT C3 – REQUIRED ORDERS

[INSTRUCTION: To be completed.]

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EXHIBIT C4 – CONSTRUCTION PHASE: COMPANY AND CUSTOMER WORK

[INSTRUCTION: To be completed.]

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EXHIBIT C5 – SERVICE FEES

Customer shall pay to Company the following Service Fees in respect of the Services provided by Company to Customer pursuant to this Appendix.

Customer will pay a Service Fee on a monthly basis (the “**Monthly Service Fee**”), determined in accordance with the following:

C5.1 INITIAL MONTHLY SERVICE FEE

The following fee (the “**Initial Monthly Service Fee**”) will be invoiced to Customer from and after the Commissioning Date. The Initial Monthly Service Fee is based on Company’s initial estimates of the capital, operating and financing cost requirements (and applicable taxes) of the Equipment:

Initial Monthly Service Fee: **[insert service fee]**, plus applicable taxes

C5.2 DETERMINATION OF MONTHLY SERVICE FEE AND TRUE-UP OF INITIAL MONTHLY SERVICE FEE

- (a) As of and from the Commissioning Date until the Monthly Service Fee is settled in accordance with this Section D5.2, Customer will pay the Initial Monthly Service Fee as set out above.
- (b) Within twenty (20) Business Days of the six (6) month anniversary of the Commissioning Date, Company will prepare and deliver to Customer a notice setting out the Monthly Service Fees, recalculated on the basis of the actual costs incurred by Company, and the Monthly Service Fee for the remainder of the Term will be invoiced in accordance with the Monthly Service Fee set out in the notice (subject to amendment in accordance with the Agreement and this Appendix).
- (c) If the Monthly Service Fee in the notice exceeds the Initial Monthly Service Fee, Company will, within two (2) billing cycles of such determination, debit the monthly invoice issued by Company to Customer for the Services for an amount equal to such difference multiplied by the number of billing cycles in respect of which Customer was charged the Initial Monthly Service Fee. If the Monthly Service Fee as so determined is less than the Initial Monthly Service Fee, Company will, within two (2) billing cycles of such determination, credit the monthly invoice issued by Company to Customer for the Services for an amount equal to such difference multiplied by the number of billing cycles in respect of which Customer was charged the Initial Monthly Service Fee.

EXHIBIT C6 - TERMINATION CHARGE

C6.1 TERMINATION CHARGE PRIOR TO COMMISSIONING DATE

For purposes of calculating the Termination Charge in the event of a termination prior to the Commissioning Date, the Termination Charge will be calculated by Company based upon the aggregate of all internal and external costs, expenses and overheads incurred by Company up to, and resulting from, the termination, including but not limited to those relating to: site and station design and studies, permitting fees, site preparation, construction, material, equipment, third party parts and components, maintenance, Decommissioning, site and station restoration and associated cancellation fees up to an amount that will not exceed the Termination Charge for Contract Year 1 as set out in the table below.

C6.2 TERMINATION CHARGE AS OF AND FROM THE COMMISSIONING DATE

Contract Year during which Termination Occurs*	Termination Charge
1	●
2	●
3	●
4	●
5	●
6	●
7	●
8	●
9	●
10	●

* For greater certainty, the Termination Charge will decrease each Contract Year following the first Contract Year as shown in the above table.

C6.3 DETERMINATION OF TERMINATION CHARGE

As of and from the Commissioning Date until the Monthly Service Fee is settled in accordance with Exhibit C5, the Termination Charge will be the Termination Charge set out in the table above. The notice provided to Section D5.2 of Exhibit C will set out, in addition to the requirements of Exhibit C5, a recalculation of the Termination Charge based on the actual costs associated with the Equipment.

EXHIBIT C7 –FACILITATING AGREEMENTS

C7.1 FACILITATING AGREEMENTS

Customer shall be required to have entered into the following agreements with Company, and such agreements to expire no earlier than the day the Injection Service Contract expires:

- (a) Interruptible Service Hub Contract contract between Customer and Company under which Company provides interruptible Hub service.
- (b) Enhanced Exchange Service Agreement: Company agrees, on any day, to receive on Customer's behalf at Dawn (Facilities), any quantity of gas which Customer nominates and which Company has authorized for exchange service.
- (c) Enhanced Balancing Service Agreement: Company either calculates a credit or debit to the Enhanced Balancing Account by subtracting the Market Quantity from the Dawn Quantity. Where such amount is greater than zero, Company will credit the Enhanced Balancing Account, or where such amount is less than zero, Company will debit the Enhanced Balancing Account. This Service shall be performed on a retroactive basis on the terms and conditions contained in the Enhanced Balancing Service Agreement, as may be revised from time to time by Company.

C7.2 DIFFERENCE BETWEEN PRODUCED QUANTITY AND MARKET QUANTITY

The parties shall deal with any gas imbalances pursuant to the applicable Facilitating Agreements between the parties.

EXHIBIT C8 – GAS QUALITY

C8.1 GAS QUALITY

This section covers the pipeline gas quality specifications for RNG injection into the gas distribution system.

C8.2 HEATING VALUE

The minimum gross heating value of the gas delivered to/by Company hereunder, shall be thirty-six (36) megajoules per cubic metre. The maximum gross heating value of the gas delivered to/by Company hereunder shall be forty-one point three (41.3) megajoules per cubic metre. The gas to be delivered hereunder to Company may be a commingled supply from Customer's gas sources of supply. The gas to be delivered by Company may be a commingled supply from Company'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 Customer. Further, Company may subject, or permit the subjection of, the gas to compression, dehydration, cooling, cleaning and other processes.

C8.3 FREEDOM FROM OBJECTIONABLE MATTER

The gas to be delivered to/by Company hereunder,

- (a) shall not contain any contaminants, particles, or other impurities at a concentration that is known as a threat to the integrity of the system, human health, or the environment.
- (b) shall be commercially free* from bacteria, siloxanes, ammonia, halocarbons, heavy metals, 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 that renders the gas toxic, unmerchantable, or causes damage to or interference with the proper operation of the lines, regulators, meters, or other appliances through which the gas flows.

* Limits to quantify commercially free amounts:

- 3 mg of ammonia per m³ of gas.
 - 1 mg of silicon per m³ of gas for siloxanes.
 - 10 mg of fluorine and 1 mg of chlorine per m³ gas for halocarbons.
 - 80 µg of mercury and 190 µg of arsenic per m³ gas for heavy metals.
 - 50,000,000 total bacteria, 1,000,000 live bacteria and 10,000 spores per 100 ft³ gas for bacteria.
- (c) shall not contain more than seven (7) milligrams of hydrogen sulphide per cubic metre of gas, nor more than one hundred (100) milligrams of total sulphur per cubic metre of gas,
 - (d) shall not contain more than six (6) milligrams of mercaptan sulphur per cubic metre of gas,

- (e) shall not contain more than two point zero (2.0) molar percent by volume of carbon dioxide in the gas,
- (f) shall not contain more than zero point four (0.4) molar percent by volume of oxygen in the gas,
- (g) shall not contain more than zero point five (0.5) molar percent by volume of carbon monoxide in the gas,
- (h) shall not contain more than two point zero (2.0) molar percent of hydrogen in the gas subject to an engineering assessment for each specific RNG project to identify impacted equipment sensitive to hydrogen, e.g. gas turbines, stationary reciprocating gas engines, steel tanks in CNG vehicles.
- (i) shall not contain more than sixty-five (65) milligrams of water vapour per cubic metre of gas,
- (j) shall not have a cricondenthem hydrocarbon dewpoint exceeding minus eight (-8) degrees Celsius,
- (k) shall have Wobbe Number from forty seven point two (47.2) megajoules per cubic metre of gas to fifty one point two (51.2) 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.
- (l) shall not exceed forty-three degrees Celsius (43°C), and,
- (m) shall not be odourized by Customer

C8.4 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 Exhibit C8.

- (a) In the event that the quality of the gas does not conform or if Company, acting reasonably, suspects the quality of the gas may not conform to the specifications herein, then Customer shall, if so directed by Company acting reasonably, forthwith carry out, at Customer'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 Company with a certified copy of such tests. If Customer does not carry out such tests forthwith, Company may conduct such test and Customer shall reimburse Company for all costs incurred by Company for such testing.
- (b) If Customer's gas fails at any time to conform to the requirements of this Exhibit C8, Company, 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

Customer. Each Party agrees to notify the other verbally, followed by written notification, of any such deficiency of quality.

- (c) With respect to Exhibit C8, C8.3 (i). herein, Company may accept the gas subject to Customer's obligations under the Dehydration Contract, if applicable.

C8.5 QUALITY OF GAS RECEIVED

The quality of the gas to be received by Company hereunder is to be of a merchantable quality and in accordance with the quality standards as set out by Company in this Exhibit C8, but, Company 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 this Exhibit C8.

C8.6 QUALITY OF GAS AT DAWN

The quality of the gas to be delivered to Company at Dawn (Facilities) or the gas to be delivered by Company to Customer at Dawn (Facilities) hereunder is to be of a merchantable quality and in accordance with the quality standards and measurement standards as set out by Company in this Exhibit C8, except that total sulphur limit shall be not more than one hundred (100) milligrams per cubic metre 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 this Exhibit C8.

APPENDIX D
to the Biogas Services Agreement between
ENBRIDGE GAS INC. and
[INSTRUCTION: insert legal name of Customer]

dated ●

SITE PLAN

[INSTRUCTION: To be completed.]

DRAFT

APPENDIX E
to the Biogas Services Agreement between
ENBRIDGE GAS INC. and
[INSTRUCTION: insert legal name of Customer]

dated ●

FINANCIAL ASSURANCES

1 FINANCIAL ASSURANCES

Pursuant to Section 13.01 of the Agreement, Customer will be required to post and maintain, at all times during the Term and for a period of six (6) months thereafter, an irrevocable standby letter of credit in the amount of **[INSTRUCTION: insert \$ amount of financial assurance required]**. Such letter of credit shall be in a form and from an issuer acceptable to Company. Customer shall provide Company with the Financial Assurances on or before **[INSTRUCTION: insert date required]** or such other date as the Parties may agree in writing.

2 ADJUSTMENT OF FINANCIAL ASSURANCES

At any time during the Term of this Agreement, Company may require Customer to provide Company additional or increased Financial Assurances in respect of Customer's obligations hereunder in the amount and of the type required by Company (the "**Additional Financial Assurances**", and for certainty, references to the Financial Assurances shall include any Additional Financial Assurances). A request for Additional Financial Assurances may be based upon: (i) an increased estimate from Company of the cost of completion of the Services; (ii) an increase in the actual costs of completion of the Services; (iii) Company's reasonable belief that the creditworthiness or the performance of Customer under this Agreement has or may become unsatisfactory; (iv) a change in Applicable Law, or OEB policies or requirements; (v) a change in Company's policies relating to financial assurances; or (vi) a change in market conditions. Such request shall be consistent with Company's then current policies relating to financial assurances. Such Additional Financial Assurances may consist of: (i) an irrevocable letter of credit in a form and from an issuer acceptable to Company, and/or (ii) such other security as Company may specify. Customer shall provide such Additional Financial Assurances to Company on or prior to the expiry of ten (10) days from the date of receipt of Company's notice, and Customer's failure to do so shall be a default hereunder entitling Company to terminate this Agreement immediately.

3 OTHER COMPANY AGREEMENTS

For certainty, Customer's obligations in respect of Financial Assurances under this Agreement are in addition to any other security required to be provided by Customer under any Customer Agreements. In that regard, additional or alternate financial assurances may be required to be provided by Customer to Company under the Customer Agreements from time to time.

4 REALIZATION ON FINANCIAL ASSURANCES

4.1 In addition to any other rights in respect thereof set out in the Agreement, Company shall be able to liquidate or exercise all or any part of any Financial Assurances then held by or

for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of Customer:

- (a) in respect of any obligation of Customer to pay any amount to the Company, and which obligation has become a Customer Event of Default under this Agreement or under any Customer Agreement;
- (a) in respect of any claim for indemnity made by the Company pursuant to this Agreement and in respect of which Customer does not dispute the claim or the claim is the subject of a final and binding decision by a court of competent jurisdiction; or
- (b) in respect of any cost or expense incurred by the Company as a result of Customer's failure to fulfill or comply with any of its obligations pursuant to this Agreement.

4.2 Company may realize the Financial Assurances, or any part thereof, by doing any one or more of the following: (i) taking possession of the security and any cash deposits by any method permitted by law; (ii) setting off or otherwise dealing with the security and any cash deposits; (iii) drawing on letters of credit; (iv) demanding payment on guarantees; (v) exercising any and all of the rights and remedies granted pursuant to the Personal Property Security Act (Ontario) and any other applicable legislation, or otherwise available at law or in equity; and (vi) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to Customer. No right, power or remedy of Company (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination. Customer shall remain liable for all obligations, indebtedness and liabilities owing by it to Company that are outstanding following realization of all or any part of the security.

4.3 Notwithstanding any other provision of this Agreement, Company is hereby authorized by Customer, without demand for payment, and without any other formality, all of which are hereby waived, at any time and from time to time, to set off, appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or security, including any cash or other amounts, at any time held by Company, and any and all amounts to be remitted by Company to Customer, together with any other obligations (in whatever currency) at any time owing by Company to or for the credit or the account of Customer now or hereafter existing under this Agreement or any of the Customer Agreements, against any and all of the obligations of Customer to Company now or hereafter existing under this Agreement or any of the Customer Agreements, irrespective of whether or not Company has made any demand under this Agreement or any of the Customer Agreements and although such obligations of Customer may be contingent or unmatured (and for purposes of this provision, "contingent or unmatured" obligations refers only to Customer's deficiency or surplus gas delivery obligation, if any, pursuant to any Customer Agreement, and the crystallization thereof as provided therein). Each of the Parties hereto hereby waives, to the extent lawful, any "reasonable period" which may be imposed by a court prior to the exercise of such set-off, appropriation and application. The rights of Company under this Section 4 are in addition to any other rights and remedies (including other rights of setoff, consolidation of accounts and liens) that

Company may have. Company agrees to promptly notify Customer at the time of or forthwith following any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application.

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