

ENBRIDGE GAS INC.

**GENERAL TERMS AND CONDITIONS**

APPLICABLE TO  
DISTRIBUTION AND DIRECT PURCHASE SERVICES

## GENERAL TERMS AND CONDITIONS

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## **A. GENERAL TERMS**

### **1. Related Agreements / Documents**

#### 1.1. Incorporation by Reference

The terms and conditions contained in the following documents are incorporated into and form part of the Contract, in each case as such documents may be amended from time to time:

- (a) these General Terms and Conditions;
- (b) the Schedule(s);
- (c) the Rate Order; and
- (d) the Transaction Rules.

These General Terms and Conditions and the Transaction Rules are posted on the Company's website and may be amended from time to time in accordance with Section 20.3 of these General Terms and Conditions.

The Customer acknowledges and agrees that it shall at all times conduct its business relations with the Company in strict compliance with the terms and conditions of the foregoing documents, in each case as amended from time to time, and that all such terms and conditions shall be applicable to and binding upon the Customer. For certainty, for purposes of the Contract, the term "Applicant" as referenced in the Rate Order shall mean "Customer".

#### 1.2. Applicable Rates

Subject to the other terms and conditions of the Contract, the rates and charges for the Service(s) provided by the Company to the Customer under the Contract shall be as set out in, or otherwise determined in accordance with, the Rate Order.

#### 1.3. Order of Precedence

In the event and to the extent of an inconsistency or conflict between any of the terms of the Contract, including all documents incorporated herein by reference, the conflict or inconsistency shall be resolved by giving those provisions and documents the following order of descending precedence:

- (a) the Rate Order;
- (b) the Schedule(s);
- (c) these General Terms and Conditions; and
- (d) the Transaction Rules, as applicable.

## 2. Term

### 2.1. Initial Term

Subject to the other terms and conditions of the Contract, the term of each Service under the Contract shall commence on the Service Start Date specified in the applicable Schedule and shall continue until the expiry date specified in such Schedule, unless or until terminated sooner in accordance with the provisions of the Contract (the “**Initial Term**”).

### 2.2. Renewal

Upon the expiration of the Initial Term or unless sooner terminated in accordance with the provisions of the Contract, the Service(s) shall automatically renew for successive additional terms of twelve (12) months (together with the Initial Term, each individually, a “**Contract Term**”; and the Initial Term and all Contract Terms, collectively, the “**Term**”) and, subject to Section 2.3, the Contract Parameters as of the expiration of a Contract Term shall continue to apply for the next following Contract Term.

### 2.3. Modified Renewal Terms

At least fifty (50) days prior to the expiration of a Contract Term, the Customer and the Company may agree on and execute a revised Schedule for the next following Contract Term.

### 2.4. Termination without Cause

If permitted by and subject to the terms of the applicable Schedule, either Party may terminate any Service, which termination will be effective upon the expiration of the then current Contract Term for such Service, by providing prior written notice to the other Party delivered not less than sixty (60) days prior to the expiration of the then current Contract Term for such Service.

### 2.5. Termination Resulting from Regulatory Change

The Company shall have the right to terminate any Service at any time upon the issuance of an order or occurrence of a regulatory change established by a Governmental Authority, which causes, results in or requires such termination and, in such event, the Company shall provide the Customer with reasonable notice of such regulatory change and resulting termination.

## 3. Quality of Gas

### 3.1. Gas Quality

The Customer acknowledges and agrees that the quality, pressure and temperature of the Gas delivered by the Customer under the Contract shall conform to the minimum standards of the Company and the relevant Gas Transporter.

### 3.2. Freedom from Objectionable Matter

The Gas received by the Company and delivered to Customer hereunder shall not contain any contaminants, particles, or other impurities at a concentration that is known as a threat to the integrity of the system. The Gas shall be commercially free from bacteria, sand, dust, gums, crude oils, lubricating oils, liquids, chemicals, or compounds used in the production, treatment, compression, or dehydration of the

Gas or any other objectionable substance in sufficient quantity that renders the Gas unmerchantable or causes damage to or interference with the proper operation of the lines, regulators, meters, or other appliances through which the Gas flows.

### 3.3. Quality Non-Conformance

If the Gas received by the Company from the Customer or delivered by the Company to or on behalf of the Customer fails at any time to conform with any of the minimum standards set forth in this Section 3, the Party receiving such Gas shall notify the delivering Party of such deficiency and may, at its option, refuse to accept receipt of such Gas unless and until the Party delivering the Gas corrects such deficiency. Neither Party is responsible for any loss, damage or injury resulting from a Party's delivery of Gas that does not conform with any of the minimum standards set forth in this Section 3, except to the extent that any such loss, damage or injury arises as a result of such Party's gross negligence or wilful misconduct.

## 4. Billing and Payment

### 4.1. Payment by Customer

The Company shall render an invoice to the Customer following the end of each Billing Period setting out amounts payable in respect of the applicable Services. The Customer agrees to pay all such the amounts on or before the date(s) specified in the applicable invoice.

### 4.2. Applicable Taxes

- (a) Amounts payable under this Contract are exclusive of taxes, and the Customer is responsible for any taxes and applicable charges currently or subsequently required by a Governmental Authority, including harmonized sales tax, goods and services tax, royalties, duties, levies, cap and trade charges, carbon taxes or any other such charges.
- (b) In the event that any amount becomes payable as a result of a breach, modification or termination of this Contract, and if section 182 of the *Excise Tax Act* (Canada) applies to that amount, then the amount payable shall be increased by an amount equal to the goods and services tax percentage rate multiplied by the amount payable and the payor shall pay the increased amount.

### 4.3. Payment Terms and Late Payment Charges

The terms applicable to the issuing of invoices and the payment thereof, including any late payment charges, are as set out in the Rate Order. In the event the Rate Order does not set out applicable late payment charges, a late payment charge equal to 1.5% per month (for a nominal rate of 18% per annum compounded monthly) shall be applied on any unpaid balance owing, including previous arrears.

### 4.4. Estimated Billing

Charges payable by the Customer that are specified in invoices rendered by the Company may be calculated by the Company using estimated quantities of Gas consumed by the Customer. In such case, the Company shall adjust the amounts payable in a subsequent Billing Period so as to reflect the difference between the actual and estimated quantities of Gas consumed by the Customer during the relevant Billing Period.

#### 4.5. Payments by Company

If any payment is required to be made by the Company to the Customer pursuant to the terms of the Contract, then such payment shall be processed by the Company and remitted to the Customer, as applicable, in accordance with the Company's normal practice.

#### 4.6. Invoice Disputes

##### (a) Procedure

If the Customer disputes any invoice, the Customer shall, notwithstanding such dispute, pay to the Company the entire amount set out in the invoice or such other amount as determined by the Company, acting reasonably, and shall deliver to the Company a written notice specifying the disputed amount(s), a reasonably detailed description of the dispute, and the amount(s) that the Customer proposes to be the actual amount(s) to be paid pursuant to the invoice. Notwithstanding anything to the contrary, each Party shall continue performing its obligations under the Contract during any such dispute, including payment by the Customer.

##### (b) Adjustments

If it is determined by the Company that:

- (i) the Customer has paid an amount greater than the true and correct amount payable by the Customer, the Company shall credit to the Customer the difference between such amounts; or
- (ii) the Customer has paid an amount less than the true and correct amount payable by the Customer (whether or not the disputed invoice sets out an amount less than such true and correct amount), the Customer shall pay the balance of the amount owing plus applicable late payment charges in accordance with the Rate Order.

#### 4.7. Financial Assurances

##### (a) Requirement

Without limiting the rights of the Company to obtain financial assurances from the Customer under any other agreement, if at any time during the Term, the Company has reasonable grounds to believe that the Customer's creditworthiness has, or is reasonably likely to, become unsatisfactory, then the Company may, by written notice, require financial assurances or additional or increased financial assurances (in any such case, "**Financial Assurances**") to be provided by the Customer in accordance with this Section 4.7 as a condition of the Company's delivery of the Services hereunder. Upon receipt of such written notice, Customer shall have fourteen (14) days to provide the Financial Assurances as specified in such notice or by such other date as the Company and the Customer may agree in writing. For certainty, the Company may require or update Financial Assurances requirements at any time.

##### (b) Amount of Financial Assurances

The amount of Financial Assurances shall be determined based on all services provided by the Company to the Customer, including any such services provided by the Company pursuant to any other Enbridge

Agreement and not limited to the Services provided hereunder. The Financial Assurances in respect of the Services under this Contract specifically, shall not exceed the total of:

- (i) an amount equal to sixty (60) days of charges for all services provided by the Company to the Customer;
- (ii) the amounts, if any, invested by the Company in the Company's infrastructure required to provide services to the Customer and the Company's expected returns thereon;
- (iii) if the Customer holds a temporary capacity assignment from the Company of a third party asset (for example, upstream pipeline capacity), an amount equal to the higher of (A) sixty (60) days of all charges for the third party asset, and (B) assurances equivalent to that which may be required by the third party asset provider as if Customer held the asset directly; and
- (iv) if the Customer supplies their own Gas, an amount equal to the value, as determined by the Company, of any current or projected Deficiency.

(c) Form of Financial Assurances

Any Financial Assurances shall be provided by the Customer in the form of an irrevocable standby letter of credit or such other form as reasonably requested by the Company, in each case, in form and substance and from an issuer acceptable to the Company.

(d) Return

Where Customer has provided Financial Assurances to the Company, the Customer may request the return of such Financial Assurances from the Company by written notice. Upon receipt of such written notice, the Company shall respond within fourteen (14) days to the Customer's request and may, in its sole discretion, (A) require that the full amount of the Customer's Financial Assurances be maintained, or (B) release the Customer from or return, as the case may be, all or any portion of the Customer's Financial Assurances.

#### 4.8. Withholding

Notwithstanding anything in the Contract to the contrary, the Company shall have the right to withhold (either by withholding payment or by withholding a credit to which the Customer might otherwise be entitled) an amount owing to the Customer by the Company equal to the amount of money then due, owing and unpaid by the Customer to the Company under the Contract or any other Enbridge Agreement entered into between the Company and the Customer (the "**Withheld Amount**"). Upon the Company ceasing to be entitled to hold any particular portion of a Withheld Amount the Company shall promptly pay to the Customer an amount equal to such portion of the Withheld Amount.

#### 4.9. Company's Set-Off Rights

If the Customer is indebted (whether past, present, or future, liquidated, or unliquidated) to the Company, under the Contract or any other agreement, including one with a third party asset provider the Company has the right to reduce any amount payable by the Company to the Customer under the Contract by an amount equal to the amount of such indebtedness to the Company. As part of this set-off remedy, the Company may, without demand for payment, and without any other formality, all of which are hereby

waived, (a) take title to any or all of the Customer's Gas in the Company's possession, which Gas shall be valued at the Gas Day price for Gas at the natural gas trading hub at Dawn as listed in ICE NGX (or equivalent) for the day of set off, and (b) and set off, appropriate and apply any and all deposits or security, including any cash or other amounts at any time held by the Company, and any and all amounts to be remitted by the Company to the Customer, together with any other obligations at any time owing by the Company to or for the credit or the account of the Customer. The rights of the Company under this Section 4.9 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and liens) that the Company may have. The Company agrees to promptly notify the Customer at the time of or promptly following any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application.

## **5. Appointment of Agent**

### **5.1. Application**

The provisions of this Section 5 shall apply where an Agent has been appointed to act for or on behalf of one or more Customer(s) in respect of the rights and obligations of such Customer(s) under the Contract.

### **5.2. Effect of Appointment of Agent**

For all purposes of the Contract, where an Agent has been appointed to act for or on behalf of one or more End Use Customer(s), all references to "the Customer" in the Contract (which, for certainty, includes the Transaction Rules) shall mean the End Use Customer(s) and the Agent, jointly and severally; and without limiting the foregoing, the Agent shall be jointly and severally liable with each End Use Customer for all of the obligations of the Customer under the Contract.

### **5.3. Representations and Warranties of Agent**

The Agent represents and warrants to the Company as follows and confirms that the Company is relying upon the accuracy of each such representation and warranty in connection with the execution of the Contract by the Company and the acceptance of its rights and obligations hereunder:

- (a) the Agent is the duly appointed agent of the Customer(s) as identified to the Company from time to time and, in such capacity, is entitled to enter into the Contract on behalf of each such Customer and to act on their behalf;
- (b) the Company is entitled to rely on any act or omission of, or any document signed or approved by, the Agent on behalf of any Customer in respect of the Contract as if such act or omission had been made, or such document had been signed or approved, by such Customer;
- (c) payments made by a Customer to the Company pursuant to the Contract shall be made without any right of deduction or set-off regardless of any rights that such Customer may have against the Agent or any rights that the Agent may have against such Customer;
- (d) the Agent is authorized to receive and deliver, on behalf of each Customer, any notice, invoice, payment or other communication that is required or permitted to be received or delivered by such Customer pursuant to the Contract, and any such notice, invoice, payment or other communication so delivered or received by the Agent shall be deemed to be delivered or received by such Customer; and

- (e) the Company shall have no obligation to communicate to any Customer any notice, invoice, payment or other communication delivered from or to the Agent appointed or deemed to be appointed by such Customer.

#### 5.4. Company Entitled to Deal Exclusively with Agent

Notwithstanding any other term of the Contract, the Company shall be entitled, in its sole discretion and without any notice to any other Person, to deal exclusively with the Agent in respect of the rights and obligations of the Customer under the Contract.

#### 5.5. Proof of Agent's Authority to Act

The Company shall have the right, at any time and from time to time, to require the Agent to provide the Company proof, which must be satisfactory to the Company in its sole discretion, acting reasonably, that the Agent has been appointed by, and is authorized to act on behalf of, any or all of the Customers, and has the agency authority contemplated in Section 5.3; provided that the Company shall have no obligation to require or obtain such proof, and its failure to do so shall in no way limit the Company's rights or the Customers obligations under the Contract.

### **B. DIRECT PURCHASE**

The provisions of this Part B are applicable to a Customer that contracts for Service(s) where the Customer has chosen to deliver its own Gas requirements to the Company ("**Direct Purchase Services**").

## **6. Quantities**

### 6.1. Daily Deliveries by Customer

- (a) Obligated DCQ

Where Customer has contracted for Direct Purchase Services with an Obligated DCQ, the Customer shall deliver the DCQ on each Gas Day of the term of the relevant Pool, as applicable, in accordance with the Contract and the Transaction Rules. The DCQ shall be initially set and automatically updated in the manner and to the extent set out in the Transaction Rules. Such updated DCQ shall be deemed to be the DCQ in respect of the Customer, for all purposes under the Contract, as of the effective date of such update or as of such other date as permitted or required under the Contract and the Transaction Rules.

- (b) Other

For any other contracted Direct Purchase Services, the Customer shall deliver Gas each day in accordance with the Contract and the Transaction Rules.

### 6.2. No Obligation for Company to Accept Excess Quantities

The Company is not obligated to accept quantities of Gas that:

- (a) exceed, or would result in the Customer exceeding, the contracted quantities; or
- (b) have not been properly nominated by the Customer; or

- (c) where applicable, exceed the sum of receipts as confirmed by the Company with upstream Gas Transporters.

### 6.3. Fuel Gas

For Services requiring the Customer to provide Fuel Gas in kind, the Customer shall, on each Gas Day of the Term, deliver the necessary Fuel Gas based on the relevant published monthly Fuel Gas ratio for the corresponding Service. The nominated Fuel Gas requirements shall be calculated by rounding to the nearest whole gigajoule.

## 7. Nominations

### 7.1. Nomination by Customer

Customers with contracted Services requiring Nominations to the Company must submit Nominations to the Company. Nominations shall conform to NAESB standards as amended from time to time, applicable interconnecting Gas Transporters' nomination cycles, and the requirements of the contracted Services.

### 7.2. Acceptance of Nominations

Subject to the terms of the Contract, the Company shall accept Nominations for Services on each of the Nomination cycles. The Company shall have the right to reject any Nomination that specifies an activity that does not properly balance in accordance with the Contract or if the quantities nominated therein do not conform to the Contract Parameters.

### 7.3. Nomination Quantities

All Services are required to be nominated in whole gigajoules.

### 7.4. Confirmation Process

The confirmation process validates nominated quantities to flow between interconnecting pipelines to ensure Customers have nominated identical quantities to both pipeline operators. In the case where there is a discrepancy between the nominated quantities and the discrepancy cannot be resolved with Customer, then the lower quantity will be the confirmed scheduled quantity.

### 7.5. Effective Time of Nomination

Each Nomination shall be effective only from and after the time and date established by the Nomination request.

### 7.6. Subsequent Nominations

All scheduled Nominations for Services will remain in effect until a new Nomination is provided by Customer.

### 7.7. Interruptible Service Scheduling

- (a) During the scheduling process, the Company compares all Nominations to the physical capacity available for the Gas Day. If there is insufficient capacity available to meet all nominated quantities, the Company will complete scheduling reductions of nominated

Interruptible Services per the Priority of Service Guidelines described in Section 7.8. The Customer shall be notified by the Company of such reductions no later than the close of the scheduling deadline for the applicable Nomination cycle.

- (b) Once notified, the Customer shall be required to submit a revised Nomination no later than the close of the next scheduling Nomination cycle to meet the scheduled quantity for the Interruptible Service. To be accepted, this Nomination must be properly balanced, and the nominated quantities must not violate Customer's contractual entitlements. If a revised Nomination is not submitted in accordance with this Section 7.7(b), the Company will, using the contracted Services Customer has available, re-balance the Nomination to match the scheduled quantities.
- (c) Scheduling of Firm Services must be nominated on the NAESB 'Timely Nomination Cycle'. Nominations for increasing quantities for Firm Services after the Timely Nomination Cycle will be treated as Interruptible Services and will only be scheduled if there is sufficient capacity available.

#### 7.8. Priority of Service Guidelines

The Company has a priority of service listing posted on the Company's website to determine the order of scheduling reductions. It is applied at each NAESB Nomination cycle to prioritize scheduling reductions and service restrictions for the Company's services during periods when the Company's ability to flow interruptible gas quantities is less than the requested/forecasted quantities.

### **8. Receipt and Delivery**

#### 8.1. Receipt of Gas from Customer

On and subject to the terms of the Contract, during the Term the Company shall receive Gas from the Customer and the Customer shall deliver Gas to the Company.

#### 8.2. Point of Receipt

All Gas delivered to the Company by the Customer pursuant to the Contract shall be delivered at one or more Point(s) of Receipt, in accordance with the Contract and the Transaction Rules.

#### 8.3. Point of Consumption

All Gas delivered to or on behalf of the Customer by the Company pursuant to the Contract shall be delivered at the outlet of the Company's Metering Equipment at each Point of Consumption, in accordance with the Contract and the Transaction Rules.

#### 8.4. Transportation Costs

Where applicable, the Customer shall bear the full cost and expense of all of the Company's direct and indirect upstream transportation of Gas to the Point(s) of Receipt, including any cost and expense of Fuel Gas, from the Point(s) of Receipt to the Company's delivery area, and whether or not Gas is actually received by the Company (including where Gas is not received as a result of a Force Majeure).

## 8.5. Customer's Failure to Deliver Gas

### (a) Meaning and Effects of a Failure to Deliver

To the extent that the Customer is required to deliver a scheduled DCQ pursuant to the terms of the Contract, if:

- (i) the Customer fails to deliver the scheduled DCQ on any Gas Day of the Term for any reason, including as a result of a Force Majeure, and notwithstanding whether the DCQ was amended or otherwise modified for such Gas Day; and
- (ii) following the sending by the Company to the Customer of a notice of the failure (which notice, for the purpose of this Section (ii), may be given by telephone or by any one of the methods of delivery specified in Section 19.1), such failure is not remedied before the end of the relevant Gas Day (a "**Failure to Deliver**");

then, in addition to any other rights and remedies available to the Company hereunder:

- (iii) the Customer shall be liable to the Company for all direct and indirect costs arising out of or relating to a Failure to Deliver from the Point of Receipt to the Company's delivery area;
- (iv) the Company may make reasonable attempts, but is not obligated, to acquire an alternate supply of Gas and the Customer shall indemnify and hold the Company harmless with respect to the costs and expenses associated with acquiring the said alternate supply of Gas; and
- (v) the Company may immediately suspend distribution of Gas to the Point(s) of Consumption or direct the Customer to immediately curtail or cease consumption of Gas at the Point(s) of Consumption (for certainty, without limitation to any rights of Interruption that the Company may have under the Contract), which suspension or curtailment shall not constitute an Interruption under the Contract, and the Company shall not be liable for any damages, losses, costs or expenses incurred by Customer as a consequence of the Company exercising its rights under this Section.

For certainty, a Failure to Deliver will occur irrespective of any delivery by the Customer of quantities in excess of the DCQ for any subsequent Gas Day of the Term.

## 8.6. Applicable Rate

The rate applicable to a Failure to Deliver in the Rate Order, if applicable, shall apply to the quantity of Gas that the Customer fails to deliver and such rate shall be independent of and shall not in any way influence the calculation of the Company's costs and expenses associated with acquiring any alternate supply of Gas for the purposes of Section 8.5(a)(iv).

## 9. Possession and Title to Gas

### 9.1. Point of Receipt and Point of Consumption

As between the Company and the Customer, control, responsibility, and possession of all Gas received and/or delivered and transported hereunder shall pass from the delivering party to the receiving party at the relevant Points of Receipt and the Points of Consumption, as applicable.

### 9.2. Title to Gas

Each Party represents and warrants that it owns or controls, or has the right to deliver or have delivered to the other Party, Gas that is free and clear of any lien, mortgage, security interest or other encumbrance whatsoever. The delivering Party shall indemnify and hold harmless the receiving Party from all claims, actions, or damages arising from any adverse claims by third parties claiming an ownership or any other interest in such Gas.

### 9.3. Right to Commingle Gas

The Company shall have the right to commingle and use the Gas received from or on behalf of the Customer with Gas owned by the Company or any other Person or Persons. The Company shall have the right and full and absolute authority to deal in any manner with all Gas delivered to it, subject to the Contract.

## 10. Gas Balancing

### 10.1. Gas Balancing

Differences between Gas delivered by the Customer to the Company at each Point of Receipt and consumed by the Customer at each Point of Consumption are tracked by the Company in one or more Gas Accounts in accordance with the Service(s) contracted. The Customer shall plan and operate in such manner, and each of the Company and the Customer may take such actions as are required under the Contract, to cause Gas delivered by the Customer to balance to Gas consumed by the Customer in the relevant period and in respect of each Gas Account.

### 10.2. Energy Conversion

The measurement of Gas in volume may be converted to energy, and *vice versa*, in accordance with the Company's standard practices at the relevant time.

### 10.3. Deficiency of Gas

#### (a) Determination of Deficiency

For the purposes of the Contract and in respect of each Gas Account for the Service(s) contracted, the amount, if any, by which cumulative amount of Gas delivered by the Company to each applicable Point of Consumption exceeds the cumulative amount of Gas delivered by Customer to the Company is referred to as a "**Deficiency**".

#### (b) Effect of Deficiency

Any Deficiency shall be held, settled or otherwise dealt with by the Parties in accordance with the Rate Order and the Transaction Rules.

(c) Crystallization of Deficiency

The Company may, from time to time: (i) determine the liquidated sum owing by the Customer in respect of a Deficiency at a particular point in time, and (ii) notify the Customer of such sum. The calculation of such sum at the relevant time and the manner of such notification shall be in accordance with the Rate Order or Transaction Rules, as applicable.

10.4. Surplus of Gas

(a) Determination of Surplus

For the purposes of the Contract and in respect of each Gas Account for the Service(s) contracted, the amount, if any, by which the cumulative amount of Gas delivered by the Customer to the Company exceeds the cumulative amount of Gas delivered by the Company to each applicable Point of Consumption is referred to as a “**Surplus**”.

(b) Effect of Surplus

Any Surplus shall be held, settled or otherwise dealt with by the Parties in accordance with the Rate Order and Transaction Rules.

(c) Crystallization of Surplus

The Company may, from time to time: (i) determine the liquidated value of a Surplus at a particular point in time, and (ii) notify the Customer of such value. The calculation of such value at the relevant time and the manner of such notification shall be in accordance with the Rate Order or Transaction Rules.

**C. DISTRIBUTION**

The provisions of this Part C are applicable to a Customer that has contracted for Service(s) for the Company to deliver gas to their Point(s) of Consumption under a contract rate.

**11. Distribution Parameters**

11.1. Estimated Annual Volume

The Customer shall provide to the Company, from time to time as required by the Transaction Rules, estimates of the Gas requirements for each Point of Consumption, which shall be the Estimated Annual Volume for such Point of Consumption.

11.2. Maximum Daily Volume

The maximum volume of Gas that the Company is required to deliver to the Customer in any Gas Day of the Term shall not exceed the aggregate Contract Demand of each Point of Consumption identified and set out in the Contract, and in any hour shall not exceed the aggregate Hourly Demand of each Point of Consumption identified and set out in the Contract.

11.3. Minimum Annual Volume

The Minimum Annual Volume of Gas applicable to a Point of Consumption shall be the relevant Minimum Annual Volume set out in the Contract Parameters, subject to the terms of the Transaction Rules.

11.4. Allocation of Gas Consumption

On any Gas Day of the Term, any Gas used by the Customer at a Point of Consumption shall be deemed used in accordance with the order set out below:

First Gas used	Firm Gas up to the Firm Contract Demand then in effect and, if applicable, prorated between contracted Firm Service(s) based on Daily Contract Demand
Next Gas Used	Seasonal Gas up to the Seasonal Contract Demand then in effect (if applicable)
Next Gas Used	Interruptible Gas up to the Interruptible Contract Demand then in effect and allocated between Interruptible Services (if applicable and available)
Next Gas Used	Authorized Overrun (if applicable)
Next Gas Used	Unauthorized Overrun

11.5. Exceeding Contract Demand

If the Customer exceeds the Contract Demand, the applicable provisions of the Rate Order and the Transaction Rules will apply, and which, for certainty, may result in an automatic increase of the Contract Demand.

11.6. Unauthorized Overrun

The Customer acknowledges and agrees that:

- (a) the use of, or deemed taking of, a volume of Gas which is Unauthorized Overrun will result in the Customer paying a price for such volume of Gas which is likely to be significantly greater than the price payable under the Contract for Gas which is not Unauthorized Overrun;
- (b) if the Contract provides for Interruptible Service, then the use of Gas which is Unauthorized Overrun may in some circumstances result in the Customer forfeiting its right to be provided with Interruptible Service; and
- (c) the payment for Gas which is Unauthorized Overrun shall not relieve the Customer from any other remedy available to the Company against such Customer for a default under the Contract.

**12. Measurement & Metering**

12.1. Measurement of Volume and Energy

All volume and energy amounts of, and the standard of measurement and tests for, Gas delivered under the Contract shall be determined in accordance with the Electricity and Gas Act.

12.2. Metering Equipment

- (a) The Company shall have the right, in its sole discretion, to install Equipment, including service pipes, meters, regulators, attachments and other related equipment (collectively, "**Metering Equipment**"), of suitable capacity and design required to measure the quantity of Gas delivered by the Company under the Contract in respect of a Point of Consumption in accordance with the Electricity and Gas Act at such location as the Company may determine.
- (b) If the Company determines that such Metering Equipment should be installed on the Customer's premises (whether owned by the Customer or any other Person), the site shall be as agreed between the Customer and the Company. All installations of the Metering Equipment shall be made in accordance with all Applicable Laws.
- (c) The Company shall operate and maintain any Metering Equipment installed by the Company.

12.3. Determination of Volume and Energy

- (a) If the Company has installed Metering Equipment at or near a Point of Consumption, the heating value measured at such Point of Consumption shall be used, in respect of certain Services as specified in the Rate Order, to convert volume to energy for Gas delivered by the Company to the Customer at such Point of Consumption.
- (b) If there is no site-specific energy measurement available at or near a Point of Consumption, the Company's Average Heating Value will be used to convert volumes to energy for Gas delivered by the Company to the Customer at such Point of Consumption. The supercompressibility factor shall be determined, at the Company's discretion, in accordance with the then most current edition of either the "Manual for Determination of Supercompressibility Factors for Natural Gas" (PAR Project NX-19) published in 1962 or with the American Gas Association's "Transmission Measurement Committee Report No. 8".

12.4. Access to Metering Equipment and Observation of Measurement Work

The Company and the Customer shall each have:

- (a) access to and the right to enter the location at which the Metering Equipment is installed at any reasonable time on prior notice to the other Party; provided that, in cases of emergency, as determined by the Company acting reasonably, the Company shall have access to and the right to enter the measurement/regulating location at any time without prior notice to the Customer; and
- (b) the right to be present at the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of the Metering Equipment.

Each Party accessing the Metering Equipment location shall comply with any specific policies or procedures in respect of such location (including any facility's security, health and/or safety policies and procedures); provided that such policies or procedures are reasonable and provided in advance of access to the relevant premises.

12.5. Customer's Provision of Premises and Utilities

The Customer agrees to provide, at its own expense, (a) any and all housing reasonably required by the Company at the Customer's premises for the protection of the Metering Equipment, and (b) if required for the Metering Equipment, any electrical power supply, telecommunications network connection and other utility supply apparatus as specified by the Company from time to time.

12.6. Title to Equipment

The title to all Equipment placed on or otherwise installed at the Customer's premises (whether such premises are owned by the Customer or any other Person) shall remain with the Company, with right of removal, and no charge shall be made by the Customer for use of premises occupied thereby.

12.7. Easements and Agreements

The Customer grants to the Company, on such non-financial commercial terms and conditions as may be agreed upon by the Parties, any required easements or agreements and undertakes to obtain or execute and deliver to the Company such required easements or agreements, to allow the Company to have the related use of the Customer's premises (whether such premises are owned by the Customer or any other Person), which may be reasonably required by the Company to facilitate the construction, installation, operation, use, inspection, removal, renewal, replacement, alteration, reconstruction, repair, expansion or maintenance of the Equipment.

12.8. Verification and Test of Meters

If requested by the Customer, the Metering Equipment shall be examined by the Company in the presence of a representative of the Customer, but the Company shall not be required as a matter of routine to examine the Metering Equipment more frequently than as may be required by Applicable Laws. If the Customer disputes the accuracy of the Metering Equipment, the Customer may request an inspection of the Metering Equipment.

12.9. Determination of Metering Error

If any Metering Equipment is determined to be measuring the volume of Gas inaccurately or is otherwise found to be in error, the Customer's Gas consumption shall be estimated by the Company and such estimated amount shall be deemed to be Gas so consumed for all purposes of the Contract, including determining supply and delivery charges payable by the Customer in respect of such quantity of Gas.

12.10. Correction of Metering Error

If any Metering Equipment is determined to be measuring the volume of Gas inaccurately or is otherwise found to be in error by the Company, the Company shall take such actions as may be required under Applicable Laws, which may include adjustments to or replacement of the Metering Equipment or a correction in billing in accordance with Section 4.

## 13. Curtailment

### 13.1. Contingency Curtailment

- (a) In the event of actual or threatened inability to deliver the quantity of Gas contracted for under the Contract to a Point of Consumption due to a Force Majeure affecting the Company or the limitation or suspension of supply ordered by an authorized Governmental Authority, the Customer shall, at the direction of the Company and upon receipt by the Customer of a notice from the Company, curtail or suspend use of Gas or any specified Service during the period specified by the Company. Any such curtailment or suspension may be directed by the Company in its sole discretion and the Company shall use its reasonable efforts to notify the Customer of any such curtailment or suspension as soon as commercially reasonable.
- (b) If the Company intends to require the Customer to curtail or suspend use of Gas pursuant to Section 13.1(a) as a result of a threatened inability to deliver due to a Force Majeure affecting the Company, then as soon as the Company makes the determination that there is a threatened inability to deliver (which determination shall be made in the Company's sole discretion acting reasonably), the Company shall notify the Customer of such determination and the reasons therefor.
- (c) If the curtailment or suspension of supply is ordered by an authorized Governmental Authority, then the Company shall ensure that the notice to the Customer to curtail or suspend use is consistent with such order, and that the duration of such curtailment or suspension is not longer than that duration required by such order.
- (d) Any curtailment or suspension pursuant to this Section 13.1 shall be effected by the Company in a manner determined by the Company in its sole discretion. The Company shall not be liable for any loss of production or for any damages arising out of or relating to any curtailment or suspension pursuant to this Section 13.1 or the length of advance notice to the Customer thereof.

### 13.2. Maintenance Curtailment

- (a) The Company may be required from time to time to perform construction and maintenance activities to its facilities, which may impact the Company's ability to meet the Customer's requirements or the Company's obligations under the Contract. In such event, the Company shall have the right to curtail or suspend any Service in whole or in part and shall endeavour to provide to the Customer with at least fifteen (15) days' prior notice of such curtailment or suspension (except in cases of emergency, as determined by the Company acting reasonably, in which event a curtailment or suspension may commence immediately with notice provided by the Company as soon as reasonably practicable thereafter).
- (b) In the event of a curtailment or suspension pursuant to this Section 13.2, the Company shall use reasonable efforts to determine a period that is satisfactory to the Customer during which such construction and maintenance activities will occur and to reasonably limit the extent and duration of any curtailment or suspension under this Section 13.2. If the Parties cannot agree to a mutually acceptable period, the Company shall have the right to determine such period in its sole discretion.

- (c) The Customer shall curtail or suspend its use of Gas delivered by the Company in accordance with the directions of the Company and for such duration as determined in accordance with this Section 13.2. During any such curtailment or suspension, the Customer shall be relieved of the proportionate demand charges for Services directly related to such curtailment or suspension but, for certainty, shall not be relieved of commodity and proportionate demand charges for such Services used by Customer despite the curtailment or suspension.

## 14. Interruptible Service

### 14.1. Application

The provisions of this Section 14 shall apply where the Customer contracts for any Interruptible Service for the delivery of Gas to a Point of Consumption, including in combination with Firm Service in respect of the same Point of Consumption.

### 14.2. Interruption

- (a) During periods of peak demand or for any other causes which necessitate reducing the load on any Gas transmission or distribution pipeline, as determined by the Company in its sole discretion, the Company may, in its sole discretion, acting reasonably, direct the Customer to curtail or suspend its use of an Interruptible Service by providing notice to the Customer by any one or more of telephone, e-mail, SMS messaging or any other means of communication in accordance with the Transaction Rules.
- (b) For purposes of the Contract, each such curtailment or suspension of Gas may be referred to as an “**Interruption**”, the period during which an Interruption is in effect may be referred to as the “**Interruption Period**” and any Service that is subject to or is otherwise suspended as a result of an Interruption pursuant to this Section 14 may be referred to as an “**Interrupted Service**”.

### 14.3. Meaning of Failure to Comply

For the purposes of Sections 14 and 15.2(b), the Customer shall be deemed to have failed to comply with a direction given by the Company pursuant to this Section 14 if, during the Interruption Period:

- (a) where the Customer is receiving only Interruptible Service to the relevant Point of Consumption, the Customer takes any Gas at the Point of Consumption; or
- (b) where the Customer is receiving a combination of Interruptible Service and Firm Service to the relevant Point of Consumption, the Customer takes any Gas in excess of the contracted hourly or daily quantity of Firm Gas at the Point of Consumption.

### 14.4. Effect of Failure to Comply

If the Customer has not complied with the directions contained in any notice delivered pursuant to this Section 14, then, in addition to any right or remedy available to the Company pursuant to Section 15.3, the Company shall be entitled to immediately and without further notice to Customer suspend delivery of Gas to the Point(s) of Consumption during the course of the Interruption Period, even where the Customer is also receiving Service that is not Interruptible, when the Company, acting reasonably, has determined there is a risk to the integrity of its distribution system. Customer shall also pay all applicable charges and

reimburse the Company for all of the Company's direct and indirect costs and expenses arising out of or relating to the Interruption and resumption of the Interrupted Service.

14.5. Resumption of Service

The Company shall resume the Interrupted Service(s) as soon as practicable after the Company determines, in its sole discretion, that the conditions requiring the Interruption cease to exist and following the receipt of notice by the Customer from the Company of such resumption.

14.6. Appropriateness of Curtailment

- (a) The Customer acknowledges and agrees that it can accommodate any total or partial Interruption by the Company as contemplated in this Section 14 and that the Company shall not be liable for any damages, losses, costs or expenses arising out of or relating to any Interruption; provided that the Company has acted in material compliance with the terms of this Section 14.
- (b) If Interruptible Service to the Customer is terminated for any reason, the Customer acknowledges and agrees that the Company may not have adequate capacity to provide the Customer with Firm Service in place of such Interruptible Service and that the Company shall have no obligation to provide Firm Service in place of such Interruptible Service to the Customer.

**D. OTHER TERMS**

**15. Default**

15.1. Events of Default

In addition to any other events specified as such in the Contract, the occurrence of any one or more of the following events shall constitute an **"Event of Default"** by a Party (in each case, the **"Defaulting Party"**):

- (a) the Defaulting Party fails to perform or observe any of its obligations under the Contract (other than as specifically provided in Section 15.2) on its part to be observed and performed; provided however, that if such failure is curable, as determined by the non-Defaulting Party at the time of such failure, such failure shall only become an Event of Default if it remains uncured for a period of five (5) days following notice thereof (containing particulars of the failure in reasonable detail) given by the non-Defaulting Party to the Defaulting Party; and
- (b) the occurrence of any Act of Bankruptcy.

15.2. Additional Customer Events of Default

In addition to any other events set out in the Contract, the occurrence of any one or more of the following events shall constitute an Event of Default by the Customer (in such event, also the **"Defaulting Party"**) under the Contract immediately and without notice:

- (a) a Failure to Deliver (as described in Section 8.5);

- (b) if the Customer fails to comply with any direction or notice given by the Company to curtail or suspend its use of Gas as provided in any of Sections 13.1, 13.2 or 14.2;
- (c) if the Customer uses Gas in excess of the Contract Demand or Hourly Demand;
- (d) if the Customer fails to pay the Company any sum when due in accordance with Section 4.1;
- (e) if the Customer fails to provide Financial Assurances in accordance with Section 4.7; and
- (f) if there occurs an event of default of the Customer or an equivalent or substantially similar event in respect of the Customer under any other Enbridge Agreement, subject to any cure provisions in such Enbridge Agreement.

### 15.3. Rights and Remedies

Without limiting any other rights of a Party under the Contract, upon the occurrence of an Event of Default by the Defaulting Party, the non-Defaulting Party may do any one or more of the following, immediately and without further notice, as the non-Defaulting Party in its sole and absolute discretion may determine:

- (a) where the Customer is the Defaulting Party, the Company may:
  - (i) require the Customer to pay to the Company, and in such event the Customer shall be liable for and shall so pay to the Company, any and all applicable compliance, late payment and/or other charges as prescribed in the relevant Rate Order and/or Transaction Rules; and
  - (ii) suspend any one or more of its obligations under the Contract, including, if applicable, the delivery of Gas to any one or more Point(s) of Consumption;
- (b) exercise any of its other rights and remedies provided for in the Contract or which are otherwise available to it at law or in equity, including those rights and remedies set out in Section 17 and, where the Customer is the Defaulting Party, Sections 4.9, 10.3, 10.4 and 14.4; and
- (c) terminate the Contract or any or all Services under the Contract, which termination may, be either immediately or at a future date, pending negotiation by the Parties of a new Contract for Services which Customer qualifies for.

The Customer hereby expressly and irrevocably consents to the Company and its representatives entering onto the Customer's premises at any time and without notice or any requirement for any further consent, following the occurrence of an Event of Default by the Customer, for the purpose of enforcing any of the Company's rights under the Contract, including accessing the Metering Equipment to physically suspend the delivery of Gas to a Point of Consumption.

### 15.4. Effects of Termination

Upon the termination of a Service under the Contract, whether at the expiry of the Term or for any reason prior thereto, each of the following will occur in respect of such Service, to the extent applicable:

- (a) the Customer shall revert to:

- (i) System Gas if the Customer had contracted a Direct Purchase Service with the Company, provided that sufficient capacity for the Company to provide System Gas to the delivery area is available; and
  - (ii) an applicable non-contract general service rate if the Customer had contracted with the Company for a contract rate for distribution Service to the Point of Consumption, provided that sufficient capacity to provide Firm Service to the Point of Consumption is available;
- (b) the Company shall prepare and forward to the Customer a statement setting out the status and amount of any Deficiency or Surplus in respect of each Gas Account and, promptly following receipt of such statement, the Customer shall settle such obligations pursuant to Section 4; provided that, and notwithstanding any provision in the Rate Order to the contrary, if the Contract is terminated as a result of an Event of Default by the Customer, then settlement of such obligations shall be effected by payment made by the Customer immediately following delivery of such statement; and
- (c) provided that the Company has acted in accordance with the material terms of the Contract, the Company shall have no liability to the Customer or to any Person with whom, or for whom, the Customer has any contractual or other obligations as a result of the termination of the Contract or of any Pool.

## **16. Survival**

The following provisions, in addition to any other provisions referred to therein, shall survive the termination of the Contract and continue in full force and effect to such extent as to properly give effect to such surviving provisions:

- (a) Section 1 – Related Documents;
- (b) Section 4 – Billing and Payment;
- (c) Section 10 – Gas Balancing;
- (d) Sections 15.3 – Rights and Remedies;
- (e) Section 15.4 – Effects of Termination;
- (f) Section 16 – Survival;
- (g) Section 17 – Indemnification;
- (h) Section 20.1 – Retention of Records;
- (i) Section 20.3 – Confidentiality;
- (j) Section 20.11 – Joint and Several Liability; and
- (k) any and all other provisions of the Contract, which by their terms are required to survive as contemplated therein.

## 17. Indemnification

### 17.1. Indemnification

Subject to any limitations specifically set out in the Contract, each Party (the “**Indemnifying Party**”), shall save harmless and indemnify the other Party, its affiliates and their respective directors, officers, employees, agents, successors and permitted assigns (collectively, the “**Indemnified Party**”) from and against any and all liability (including cost, expense, injury, loss, damage, legal fees) incurred or sustained by the Indemnified Party, howsoever caused, resulting from, arising out of or relating to:

- (a) any breach or non-fulfilment of any covenant or agreement to be performed by the Indemnifying Party pursuant to the Contract;
- (b) any inaccuracy or misrepresentation in any of the representations or warranties of the Indemnifying Party in the Contract or any agreement, instrument or other document made or given pursuant to the Contract;
- (c) the negligence or wilful misconduct of the Indemnifying Party or any of its employees or agents or any Person acting under the authority of or with the permission of such Indemnifying Party;
- (d) any failure by the Indemnifying Party or any of its employees or agents or any Person acting under the authority of or with the permission of such Indemnifying Party to comply with any Applicable Laws in the performance of its obligations under the Contract;
- (e) any Canadian federal or provincial income taxes resulting from any payment made under this Section 17.1; or
- (f) where the Indemnifying Party is the Customer and the Customer is a gas distributor, any termination of a Service, including any obligation that the Company might have assumed or be required to assume to provide any services to the Customer’s customers.

### 17.2. Limitations

The liability of each Party, and its affiliates and their respective directors, officers, employees, agents, successors or permitted assigns, to another Party, whether arising out of breach of contract, tort, any other theory of liability or otherwise, shall be limited to the loss sustained by such other Party as a result of direct physical damage sustained by such other Party, including reasonable costs of repair or replacement. In no event shall either Party or any of its affiliates or their respective directors, officers, employees, agents, successors or permitted assigns be liable for any loss of profits, loss of earnings, business interruption losses, cost of capital or loss of business opportunities (in all cases whether direct, indirect or consequential) or any consequential, incidental, special, indirect, aggravated or non-compensatory damages, punitive damages or exemplary damages howsoever caused, whether arising out of breach of contract, tort, any other theory of liability or otherwise, regardless of whether such damages were foreseeable and whether or not the breaching Party was advised of the possibility of such damages. The limitation of liability set forth in this Section 17.2 shall not apply to Customer’s payment obligations under the Contract.

## 18. Force Majeure

### 18.1. Definition

For the purpose of the Contract, “**Force Majeure**” means any circumstance whatsoever not within the reasonable control of the Party claiming force majeure, but only if and to the extent that: (a) such circumstance cannot be prevented, avoided, remedied, or removed despite the exercise of good faith and reasonable diligence by such Party; and (b) such circumstance materially and adversely affects the ability of the Party to perform its obligations under the Contract, and such Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the effect of such circumstance on the Party’s ability to perform its obligations under the Contract and to mitigate the consequences thereof. Subject to the preceding sentence, Force Majeure shall include the following:

- (a) fire, earthquakes, floods or such other extreme weather, environmental or geological conditions; epidemic or pandemic; public health emergency; acts of war (whether declared or undeclared), acts of terrorists, embargo or civil disorder; or any Law caused by any of the foregoing;
- (b) strike, lockout, work stoppage, labour dispute, or such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated;
- (c) explosion; accident; structural collapse; breakage of machinery, equipment or lines of pipe used to deliver 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 the Contract;
- (d) curtailment of Firm Gas transportation by a Gas Transporter; or
- (e) any legal prohibition on a Party’s ability to conduct the Party’s business (other than as provided in Section 2.5), including the passing of any Law prohibiting the Party from conducting the Party’s business, other than as a result of the Party’s failure to comply with any Law.

### 18.2. Notice and Other Requirements

- (a) Promptly following a Party becoming aware of a Force Majeure which may impact on any of such Party’s obligations, such Party shall notify the other Party of the event, the manner in which such Party’s obligations hereunder will or may be affected and the Point(s) of Consumption that will or may be affected, and such Force Majeure shall be deemed to have commenced when the relevant circumstance occurred provided notice is given promptly.
- (b) The Party claiming Force Majeure shall use reasonable efforts (not including litigation, if such efforts would require litigation) to eliminate such Force Majeure. Without in any way limiting any of the foregoing, the settlement of strikes or lockouts shall be entirely within the discretion of the Party affected.
- (c) The Party claiming Force Majeure shall promptly give notice to the other Party when such Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling its obligation(s) herein. The Party claiming Force Majeure shall proceed

to fulfill its obligations which are impacted by the Force Majeure as soon as reasonably possible after such Force Majeure has been eliminated or has ceased to prevent such Party from fulfilling such obligations.

### 18.3. Effects of Force Majeure

Subject to Sections 8.5 and 13.1, in respect of which a Force Majeure does not relieve the Customer of its obligations, and subject to the other provisions of this Section 18:

- (a) a Party shall not be liable to the other Party, in respect of such first mentioned Party's obligations under the Contract, as a result of a Force Majeure and such other Party shall have no claim for damages or specific performance or other right of action against the first mentioned Party as a result of a Force Majeure; and
- (b) if the performance of a Party's obligations hereunder is delayed, impaired or prevented as a result of a Force Majeure, such obligations shall be suspended during the continuance of such Force Majeure.

### 18.4. Force Majeure Declared by Company

In the event a Force Majeure is declared by the Company, the Customer will continue to be obligated for all applicable charges relevant to contracted Services which continue to be available notwithstanding the Force Majeure, including any commodity charges, and may only be relieved of Minimum Annual Volume and demand charges as set out in this Section 18.4 for any Service not available to the Customer as a direct result of the Force Majeure. The Customer shall remain responsible for any related upstream transportation charges. If any curtailment or suspension of service resulting from a Force Majeure continues for any period in excess of twenty-four (24) hours, then the minimum bill charge payable by the Customer shall be reduced on a pro rata basis based on the number of days during which a Party's obligation to deliver or receive Gas in respect of such Point of Consumption is suspended pursuant to Section 18.3(b). Gas consumed during a period of Force Majeure pursuant to any Service will be deemed not to have been consumed for purposes of determining the Customer's compliance with the applicable Minimum Annual Volume adjusted in accordance with the foregoing.

### 18.5. Force Majeure Declared by Customer

In the event a Force Majeure is declared by the Customer, all demand, commodity and service rates and charges or financial obligations otherwise payable under the Contract will remain payable to the Company. As between the Customer and the Company, the Customer shall be solely responsible for any related upstream transportation charges. If any Force Majeure occurs at the Customer's facilities downstream of the Company's Metering Equipment at the relevant Point of Consumption, the Customer shall remain obligated to, if applicable, deliver gas at the Point of Receipt as set out in the then current Contract Parameters.

### 18.6. Limitations

Notwithstanding any other term of this Section 18, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances:

- (a) such Party's inability to perform the obligation was caused by its lack of finances;

- (b) such Party's inability to perform the obligation was caused by its deliberate act or inaction, negligence or wilful misconduct;
- (c) such Party failed to comply with Section 18.2 in respect of the Force Majeure;
- (d) the curtailment of Gas by the Company in accordance with the Customer's Interruptible Service(s), if any; or
- (e) such Party's economic hardship, including the Customer's ability to sell Gas at a higher or more advantageous price or to buy Gas at a lower or more advantageous price.

#### 18.7. Financial Obligations

Notwithstanding any other term of this Section 18, in no event shall any Party be excused from any of its financial responsibilities or obligations under the Contract as a result of a Force Majeure, including any obligations to make payment of money then due pursuant to any other provision of the Contract.

### 19. Notice

#### 19.1. Method of Delivery

Subject to Section 19.3 and except as otherwise provided in the Contract, all notices, directions or documents of any nature required or permitted to be given by one Party to the other pursuant to the Contract (in each case, a "**Notice**") shall be in writing and shall be delivered personally or by courier, mail (except in the event of any threatened, or during any actual, postal strike or other disruption of postal service) or email as follows:

- (a) if to the Company, at
  - Enbridge Gas Inc.
  - 500 Consumers Road
  - North York ON M2J 1P8
  - Email: Rob.DiMaria@enbridge.com
  - Attention: Manager, Contracting & Compliance
- (b) if to the Customer, to the most current address provided by the Customer in a Company Platform or in a Schedule, provided that in the event of any inconsistency between the Customer's address in a Company Platform and Schedule, the address provided in a Company Platform shall take precedence.

#### 19.2. Deemed Delivery

Except as otherwise provided in the Contract, a Notice given in accordance with Section 19.1 is deemed to have been received (a) if delivered personally or by courier, on the date of actual receipt by the receiving party; (b) if by mail, on the third (3<sup>rd</sup>) Business Day following the day on which it is postmarked; and (c) if by email, then on the date of transmission if transmitted on a Business Day prior to 5:00pm or else on the next following Business Day (except for any Notice with respect to a Force Majeure pursuant to Section 18.2, which shall be deemed to have been received on the date of transmission irrespective of whether or not such day is a Business Day).

19.3. Notice via Company Platforms

All Nominations shall be made using a Company Platform, as well as any other Notice expressly required or permitted to be so given. Each Nomination and each Notice required or permitted to be given using a Company Platform is deemed to have been received on the date and at the time that such Notice was sent.

**20. Miscellaneous**

20.1. Retention of Records

The Company shall retain its books, records and other documents relating to measurements and the settlement of accounts hereunder for a reasonable period of time, as determined by the Company, and otherwise in accordance with any period or periods prescribed by Applicable Laws.

20.2. Changes to Services

The acceptance and implementation of any change to a Service requested by a Customer shall be subject to the Company having the appropriate facilities and, where applicable, appropriate capacity or services contracted with third parties, in each case as determined by the Company.

20.3. Entire Agreement

The Contract, including each Service Schedule, constitutes the entire agreement between the Parties with respect to the subject matter set out herein and replaces any prior understandings or agreements, whether written or oral, regarding such subject matter. No change or modification of the Contract is valid unless it is in writing and signed by both Parties. No disclaimers, purchase order documents, invoices or other documents of the Customer shall be binding upon the Company.

20.4. Amendment

- (a) The Company may, at any time and from time to time, in its sole discretion, acting reasonably, amend these General Terms and Conditions or the Transaction Rules. The Company will notify the Customer not less than sixty (60) days prior to the effective date of any such amendment by posting a copy of such amendment on the Company's website. Except as set out in Section 20.4(b), such amendment shall become effective, and shall apply and be binding on the Customer, on such date specified by the Company in the notice to Customers of such amendment.
- (b) In the case of amendment to these General Terms and Conditions, the Customer may, within thirty (30) days after receipt of a notice of such amendment, provide notice to the Company objecting to such amendment. If no such objection notice is provided to the Company, the Customer will be deemed to have accepted such amendment, which shall, as of the effective date of such amendment, apply to and be binding on the Customer. If the Customer has provided a notice to the Company objecting to such amendment, the Company and the Customer shall discuss in good faith whether any accommodation to such amendment is appropriate.
- (c) In the event that any amendment to these General Terms and Conditions or the Transaction Rules is directed, requested or required by any Governmental Authority or pursuant to any Applicable Law, the Company shall post a copy of such amendment on the Company's

website as soon as reasonably practicable. Such amendment shall become effective and shall apply and be binding on the Customer, on the date established by or in accordance with such Governmental Authority or Applicable Law, notwithstanding any notice and objection periods prescribed by Section 20.4(a) and (b).

- (d) Except as provided in Sections 20.4(a) or 20.4(c), no amendment of the Contract is effective unless it is in writing and signed by each Party.

#### 20.5. Confidentiality

- (a) As a result of the business relations between the Parties pursuant to the Contract, a Party (the “**Receiving Party**”) may acquire confidential information regarding the business and affairs of another Party (the “**Disclosing Party**”, and such confidential information, “**Confidential Information**”). Confidential Information shall be marked in writing as ‘confidential’ and, if disclosed verbally, shall be confirmed in writing as confidential promptly following disclosure. The disclosure of Confidential Information to competitors of the Disclosing Party or to the general public could be detrimental to the interests of the Disclosing Party. Any Confidential Information of a Disclosing Party acquired or obtained by the Receiving Party shall not be used by the Receiving Party, or disclosed to others (other than directors, officers, employees, representatives and agents of the Receiving Party who require same with respect to the fulfillment of such Party’s obligations under the Contract), either directly or indirectly, unless the Disclosing Party provides its prior written consent, except for and solely to the extent that any Confidential Information becomes public through no fault or act of the Receiving Party. For certainty, the contents of the Contract are deemed to be Confidential Information.
- (b) In the event that the Receiving Party is compelled or required to disclose any Confidential Information by Law or pursuant to any other requirement of any Governmental Authority, to the extent permitted by such Law or other requirement and all other Applicable Laws, the Receiving Party shall (i) give the Disclosing Party prompt prior written notice of such Law or other requirement so that the Disclosing Party may seek an appropriate protective order or other remedy; (ii) if such protective order or other remedy is not obtained, furnish only that portion of Confidential Information which is so required to be disclosed and otherwise preserve the confidentiality of the Confidential Information.

#### 20.6. Waiver

Except as otherwise expressly set out in the Contract, no waiver of any provision of the Contract shall be binding unless it is in writing and signed by the Party so waiving. No indulgence or forbearance by either Party shall constitute a waiver of such Party’s right to insist on performance in full and in a timely manner of all covenants in the Contract. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of the Contract at any time.

#### 20.7. Relationship of the Parties

Nothing herein shall be construed to create a joint venture or partnership between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party. As between the Parties, the Company is not a common carrier nor an insurer of the Customer’s Gas.

20.8. Assignment and Enurement

The Customer may not sell, assign or transfer any of its interest in or rights or obligations under the Contract, in whole or in part, without the prior written approval of the Company, which approval will not be unreasonably withheld or delayed. The Contract shall enure to the benefit of and be binding upon the Parties and their respective permitted successors and permitted assigns.

20.9. Governing Law

All matters arising out of or relating to the Contract are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction). For the purpose of any legal actions or proceedings brought by any Party in respect of the Contract, each Party irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

20.10. Severability

If any term or provision of the Contract or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any Applicable Laws, then (a) such invalidity, unenforceability or contravention will not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction, and (b) the Parties will negotiate in good faith to amend the Contract to implement the intentions set forth therein.

20.11. Joint and Several Liability

In the event that a Customer is more than one Person, the obligations of all of such Persons shall be joint and several and the Company shall not be required to exhaust its rights and remedies against any one Person prior to exercising its rights and remedies in respect of any other Person.

20.12. Further Acts

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to the Contract and the transactions contemplated thereby.

20.13. Time is of Essence

Time is of the essence in the Contract. Extension, waiver or variation of any provision of the Contract shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

20.14. Interpretation

For the purposes of the Contract, (a) the headings in these General Terms and Conditions are inserted for convenience or reference only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of these General Terms and Conditions; (b) the words "include", "includes" and "including" are deemed to be followed by the words "without limitation"; (c) whenever the singular is used herein, the same includes the plural, and whenever the plural is used herein, the same includes the singular, where appropriate; (d) references to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; (e) reference to a statute means such statute as updated, amended or

replaced from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Contract shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

20.15. Execution

Each Service Schedule and any other document that forms part of the Contract that requires, by its terms, the signatures of more than one Party may be executed in counterparts and all such counterparts together shall constitute one and the same instrument and notwithstanding the date that each such counterpart is signed shall be deemed to be made and dated as of the applicable date specified in such Service Schedule or other document. For the purposes of the Contract, delivery of a signature by electronic transmission or using electronic signatures shall have the same force and effect as a manual signature and constitutes a valid and effective delivery.

**E. DEFINITIONS**

Unless the context otherwise specifies or requires, for the purposes of the Contract, capitalized terms used in these General Terms and Conditions shall have the respective meanings attributed to them as follows:

**“Act of Bankruptcy”** means any one or more of the following in respect of a Party:

- (a) the commencement by the Party of any application, proceeding or other action under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) or any other statute, rule or regulation relating to bankruptcy, insolvency, winding-up, reorganization, administration, plans of arrangement, relief or protection of debtors seeking (i) to adjudicate it as bankrupt or insolvent; (ii) a reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, compromise, stay of proceedings of creditors generally or other relief, with respect to it or its debts; or (iii) an appointment of a receiver, interim receiver, receiver and manager, trustee, custodian, conservator or other similar official for it or for all or any part of its assets;
- (b) there is commenced against the Party any application, proceeding or other action of a nature referred to in subclause (a) above that is not stayed, dismissed or discharged within fifteen (15) Business Days;
- (c) a general assignment by the Party for the benefit of creditors;
- (d) a declaration by the Party of a general moratorium on payment of its indebtedness or interest thereon, or proposes a compromise or arrangement between it and any of its creditors;
- (e) any execution, distress or other enforcement process, whether by court order or otherwise, which would have a material adverse effect on the financial viability of the Party becomes enforceable against any property of the Party; and
- (f) the Party ceases carrying on business in the ordinary course, is dissolved, is wound up or is unable to, or admits in writing its inability to, pay its debts as they become due.

**“Agent”** means a Person appointed as an agent to act for or on behalf of an End Use Customer in respect of the rights and obligations of such End Use Customer under a Contract, as contemplated in Section 5, and includes a ‘gas vendor’ as defined in the OEB’s Gas Distribution Access Rule.

**“Applicable Laws”** means, with respect to any Person, property, transaction, event or other matter, any Law binding on or applicable to that Person, property, transaction, event or other matter.

**“Authorized Overrun”** means a quantity of Gas in excess of Contract Parameters for which the Customer received authorization from the Company in advance.

**“Average Heating Value”** means the average forecasted heating value of all Gas to be received by the Company for the applicable delivery area for the applicable period.

**“Banked Gas Account”** means an account used to track differences between the gas delivered by a direct purchase Customer and the measured consumption at the associated Point(s) of Consumption.

**“Billing Period”** means a period of one (1) month during the Term or such other duration as otherwise determined by the Company’s monthly reading and billing schedule.

**“Business Day”** means any day on which the Company’s offices in Ontario are open for business as usual.

**“Company”** means Enbridge Gas Inc.

**“Company Platform”** means the Company’s electronic web-based business application(s) used, or that may be used from time to time, to exchange information with the Customer.

**“Contract”** means the contract for Services entered into by the Customer and the Company, which includes these General Terms and Conditions and all documents incorporated by reference herein and therein.

**“Contract Demand”** means the maximum volume or quantity of Gas that the Company is obligated to deliver in any one Gas Day of the Term to a Customer at the Point of Consumption under all Services or, if the context so requires, under a particular Service.

**“Contract Effective Date”** means the date the Parties agree to be bound by the terms and conditions set out in a Schedule in respect of the Service(s) set out in such Schedule.

**“Contract Parameters”** means the variable terms applicable to a particular Service, including those terms set out in the applicable Schedule(s), Rate Order, Transaction Rules, Company Platform or as otherwise agreed to by the Parties.

**“Contract Term”** has the meaning given to such term in Section 2.2.

**“Contract Year”** means a period of twelve (12) consecutive months beginning on the Service Start Date and ending on the day prior to the anniversary thereof, and each succeeding twelve (12) consecutive months commencing on an anniversary of the Service Start Date, unless otherwise agreed.

**“Customer”** means, individually or collectively, any Person or Persons receiving one or more of the Services of the Company and which term includes the End Use Customer.

**“Dawn”** means the Gas trading and storage hub located in southwestern Ontario.

**“DCQ” or “Daily Contracted Quantity”** means the aggregated daily energy of contracted deliveries of Gas (excluding Fuel Gas) to be made by the Customer calculated in accordance with the Transaction Rules.

**“Defaulting Party”** has the meaning given to such term in Section 15.1.

**“Deficiency”** has the meaning given to such term in Section 10.3(a).

**“Delivery Pressure”** means the pressure at which the Gas is to be delivered to a Point of Consumption as set out in a Service Schedule.

**“Electricity and Gas Act”** means the *Electricity and Gas Inspection Act (Canada)*, including all regulations and documents issued thereunder, as may be updated, amended or replaced from time to time.

**“Enbridge Agreement”** means any agreement between the Company and the Customer, including for certainty, the Contract.

**“End Use Customer”** means a Person receiving one or more of the Services of the Company and excluding, for certainty, an Agent.

**“Equipment”** means the Company’s assets, facilities, pipelines, service pipes, meters, regulators, attachments, and other equipment, including, for certainty, Metering Equipment.

**“Estimated Annual Volume”** means the Customer’s estimated annual Gas requirement for each Rate Schedule applicable to each Point of Consumption for each year of the Contract Term.

**“Event of Default”** has the meaning given to such term in Section 15.1.

**“Failure to Deliver”** has the meaning given to such term in Section 8.5.

**“Financial Assurances”** has the meaning given to such term in Section 4.7.

**“Firm”** means any service not subject to Interruption or curtailment except under Force Majeure.

**“Force Majeure”** has the meaning given to such term in Section 18.1.

**“Fuel Gas”** means, in respect of any Gas to be delivered by a Customer to the Company, the additional proportion of such Gas in effect from time to time for Gas transportation and storage service(s), which additional proportion is established by the Company or the relevant Gas Transporter.

**“Gas”** has the meaning given to such term in the OEB Act.

**“Gas Account”** means a Banked Gas Account, storage account or balancing account.

**“Gas Day”** means a period beginning at 10:00 a.m. (Eastern Standard Time) on one calendar day and ending at the same hour on the next calendar day as defined by NAESB.

**“Gas Transporter(s)”** means a Person with which the Company or the Customer has contracted to transport Gas from or to any Point of Receipt.

**“General Terms and Conditions”**, **“hereto”**, **“herein”**, **“hereby”**, **“hereunder”**, and similar expressions refer to these General Terms and Conditions, together with all attachments hereto, as the same may be amended or updated from time to time.

**“Governmental Authority”** means any government, regulatory body or authority, agency, crown corporation, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of any national, state or provincial, regional or local governmental, or other subdivision thereof, whether over the Parties, their facilities, any Gas supply, the sale, purchase or transportation of Gas, or the Contract or any part hereof.

**“Hourly Demand”** means a contractually specified volume of gas applicable to a Service which is the maximum volume of gas the Company is required to deliver to the Customer on an hourly basis under the Contract.

**“Indemnified Party”** has the meaning given to such term in Section 17.1.

**“Indemnifying Party”** has the meaning given to such term in Section 17.1.

**“Interrupted Service”** has the meaning given to such term in Section 14.2.

**“Interruptible”** means any Service or Gas, as applicable, that may be subject to Interruption.

**“Interruption”** has the meaning given to such term in Section 14.2.

**“Interruption Period”** has the meaning given to such term in Section 14.2.

**“Law”** means any law (statutory, common or otherwise), rule, regulation, ordinance, order, injunction, judgment, award, decree, permit or determination of (or agreement with) a Governmental Authority.

**“Metering Equipment”** has the meaning given to such term in Section 12.2.

**“Minimum Annual Volume”** means the Customer’s annual minimum Gas requirement for each Service applicable at each Point of Consumption.

**“NAESB”** means the North American Energy Standards Board.

**“Nomination”** means a request to the Company, specifying, among other things, the details of Gas quantities and the relevant Point(s) of Receipt of the Gas.

**“Non-Obligated”** means any quantities of Gas that are not committed to be delivered by the Customer on a Firm basis, but which the Company will receive on a Firm basis when delivered by Customer.

**“Notice”** has the meaning given to such term in Section 19.

**“Obligated”** means the quantity of Gas which Customer is committed to deliver to the Company on a Firm basis at the Point(s) of Receipt.

**“OEB”** means the Ontario Energy Board.

“**OEB Act**” means the *Ontario Energy Board Act, 1998* (Ontario), as updated, amended or replaced from time to time.

“**Party**” means any one of the Company and the Customer(s), and “**Parties**” means both of them.

“**Person**” means an individual, corporation, partnership, firm, joint venture, syndicate, association, trust, trustee, government, governmental agency, board, tribunal, ministry, commission or department or other form of entity or organization and the heirs, beneficiaries, executors, legal representatives or administrators of an individual, and “**Persons**” has a similar meaning.

“**Point of Consumption**” means, unless otherwise specified in the Contract, the outlet side of the Metering Equipment located at Customer location(s).

“**Point of Receipt**” means the location(s) where the Company has agreed to receive delivery of Gas from or on behalf of a Customer.

“**Pool**” means a group of one or more Customers or Points of Consumption which have been associated by an Agent or Customer for the purpose of the delivery of Gas by the Customer(s) to the Company and the redelivery of that Gas by the Company to the Customer(s) for a period of time, and has attached to it an identifier, start and end dates, a Point of Receipt, one or more Point(s) of Consumption (generally corresponding to the various Customers in the Pool) and an aggregate DCQ.

“**Rate Number**” means a numbered rate in effect at the relevant time, established by the Company for one or more category of customer as approved by the OEB and set out in the Rate Order.

“**Rate Order**” means the rate order (including schedules attached thereto) approved by the OEB applicable to the Service(s) being provided, as updated, amended or replaced from time to time.

“**Rate Schedule**” means the rate schedule contained in the Rate Order setting out the schedule of rates, charges, terms and conditions associated with a Rate Number in effect at the relevant time.

“**Rate Zone**” means the Company’s rates and services areas as defined in applicable Rate Orders issued by the OEB.

“**Schedule**” means a Service schedule entered into by the Company and the Customer in the form prescribed by the Company.

“**Seasonal**” means any Service that is available during a specified period of the year.

“**Service**” means any direct purchase, receipt, distribution, storage or a related service provided by the Company, which is subject to these General Terms and Conditions.

“**Service Start Date**” means the date a Service commences as set out in the relevant Schedule.

“**Surplus**” has the meaning given to such term in Section 10.4(a).

“**System Gas**” means commodity supply Gas provided by the Company pursuant to a Rate Order approved by the OEB.

“**Term**” has the meaning given to such term in 2.2.

**“Transaction Rules”** means the rules, regulations, policies and procedures established by the Company for the transacting of gas supply and demand transactions, as amended or updated by the Company from time to time, in respect of certain Services.

**“Unauthorized Overrun”** means a quantity of Gas in excess of the Contract Parameters for which the Customer did not receive authorization from the Company in advance.

**“Withheld Amount”** has the meaning given to such term in Section 4.8.