

## COLLECTION SERVICE AGREEMENT SCHEDULE

### BACKGROUND

- A. The Company and the Customer are parties to a Gas Delivery Agreement (the “**Gas Delivery Agreement**”) which provides for the receipt of Gas from the Customer and delivery of Gas to a number of Terminal Locations owned, or controlled, by the Customer.
- B. The Customer desires to engage the Company for the purpose of collecting amounts payable in respect of volumes of Gas delivered to such Terminal Locations.
- C. The Parties confirm that in addition to entering into this Agreement they have entered into one or more of the Enbridge Agreements.

**THEREFORE IN CONSIDERATION** of the foregoing premises and the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### **1.1** Definitions

In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement (including the Schedules hereto) capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“**Agreement**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this Collection Service Agreement, together with all attachments hereto, as the same may be amended or updated from time to time.

“**Billing Period**” in respect of the Customer means each consecutive period of approximately one month established by the Company for the Customer in accordance with the Company’s customary billing procedures.

“**Claim**” means any claim, demand, liability, damage, loss, suit, dispute, civil or criminal litigation, action or cause of action, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review and all costs and expenses relating thereto.

“**Customer Manager**” means the individual who is an employee or other authorized representative of the Customer and who has been appointed, from time to time, to act for and on behalf of the Customer in respect of the rights and obligations of the Customer under this Agreement.

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

“**Collection Fee**” has the meaning given to such term in Section 3.5.

**“Delivered Volume”** means the volume of Gas (less any Fuel Gas) delivered during a calendar month to the Company pursuant to the Gas Delivery Agreement.

**“Enbridge Agreements”** means the Company’s EnTRAC user agreement, gas delivery agreement (both customer and agent form), large volume distribution contract and GDAR services agreement, in each case as may be entered into between the Parties (as applicable) and any other agreement entered into between the Parties in connection with the foregoing agreements or this Agreement, in each case, as amended, restated, supplemented, revised or otherwise modified from time to time.

**“EnTRAC System”** means the self-service automated processing system established by the Company for use by its customers, among others, to permit them to conduct business with the Company on a more efficient basis.

**“Fuel Gas”** means in respect of any Gas to be delivered by a Customer to the Company, the fuel ratio (expressed as a percentage of the volume of such gas) in effect from time to time for Gas transportation service, as established by the relevant Gas Transporter.

**“Gas”** means natural and/or residue gas comprised primarily of methane.

**“Gas Transporter”** means a Person, other than the Company, with which the Company or the Customer has contracted to transport Gas from or to any Point of Acceptance.

**“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 Canada or any provincial, regional or local governmental, or other subdivision thereof.

**“Invoice”** has the meaning given to such term in [Section 3.1](#).

**“Invoice Amount”** has the meaning given to such term in [Section 3.1](#).

**“MDV”** means mean daily volume, as a reference to a volume of Gas, determined in accordance with the *Transaction Rules*.

**“Monthly Volume”** in respect of the Customer for a Billing Period means the volume of Gas (expressed in cubic metres) delivered by the Company to the Customer under the Gas Delivery Agreement during such Billing Period.

**“OEB”** means the Ontario Energy Board, or any successor regulatory entity.

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

**“Point of Acceptance”** means a point at which the Company accepts delivery of a supply of Gas from, or in respect of, a Customer pursuant to a Gas Delivery Agreement; and for certainty, shall be such location or locations as are established as valid points of receipt of Gas by the relevant Gas Transporter(s), and in each case as selected and identified in a Transaction Request during the submission of a nomination for the relevant Pool.

“**Pool**” means a pool which has been established by the Customer for the purpose of the delivery of Gas by the Customer to the Company and the redelivery of that Gas by the Company to the Customer for a period of time, and has attached to it an identifier, start and end dates, a Point of Acceptance, one or more Terminal Location and an aggregate MDV.

“**Pool Parameters**” means the parameters associated with a particular Pool as established by the Customer, including the term of the Pool, the volumes of Gas and the Price for each Terminal Location.

“**Price**” means the amount (expressed in cents per cubic metre) specified by the Customer in a Transaction Request in respect of, and applicable to, the relevant Terminal Location.

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

“**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.

“**System Gas**” means commodity supply Gas provided by the Company on terms approved by the OEB.

“**Terminal Location**” means the building or other facility of the Customer at or in which Gas to be delivered pursuant to the Gas Delivery Agreement will be used by the Customer.

“**Transaction Request**” means a request from the Customer, and approved or accepted by the Company, for the provision of services offered by the Company and made by the Customer to the Company by any means, including electronic instructions, which request shall be in the form and shall include such information as may be required by the Company pursuant to the *Transaction Rules*.

“**Transaction Rules**” means the rules, regulations, policies and procedures established by the Company, and amended or updated by the Company from time to time, in respect of the services provided pursuant to this Agreement, among others.

## **1.2 Industry Usage**

Terms and expressions which are not defined herein and which have an accepted meaning in the custom and usage of the business of exploration, production, transportation, distribution or sale of Gas in Canada shall have that meaning when used in this Agreement.

## **1.3 Rules of Interpretation**

In this Agreement the following rules shall apply to the interpretation thereof:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”;

- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded;
- (e) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency;
- (f) the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (g) 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.

#### **1.4 Entire Agreement**

This Agreement and all 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.

#### **1.5 Severability**

This Agreement is a general form, intended for use by the Parties in their ongoing relations in Canada. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any applicable laws, then (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Party or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **1.6 Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated as an Ontario contract. For the purpose of any legal actions or proceedings brought by any Party in respect of this Agreement, each Party irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### **1.7 Confidentiality**

Except to the extent necessary to perform its obligations hereunder or to comply with any applicable law, regulation or rule, no party hereto shall, without the prior written consent of the other parties, disclose to any third party the terms and conditions of this Agreement.

**1.8            Substitution of Agreement**

If, and to the extent that, the Company and the Customer have prior to the date hereof entered into a collection service agreement similar to this Agreement (the “**Prior Agreement**”) for or in respect of the provision of certain collection services by the Company, the Prior Agreement is hereby amended and restated effective as of the coming into force of this Agreement, and thereafter replaced by this Agreement. For certainty, the execution and delivery of this Agreement shall not affect any action taken or payments made under or pursuant to, or in reliance on the Prior Agreement.

**ARTICLE 2**  
**BASIC AGREEMENT**

**2.1            Assignment of Collection Rights**

On the terms and subject to the conditions contained herein, the Customer hereby assigns to the Company in respect of each Terminal Location all rights of the Customer to render accounts to, and collect payment of the Price as applicable to the volume of Gas delivered to each Terminal Location, and the Company hereby accepts such assignment and, in the manner provided for herein, agrees to remit to the Customer the Price payable in respect of each Terminal Location for such Gas.

**2.2            Representations and Warranties of the Customer**

In addition to any other representations and warranties given to the Company under this Agreement, the Customer represents and warrants to the Company, and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in entering into this Agreement, that at the date hereof and at all times during the Term:

- (a) each of the Terminal Locations which is or becomes the subject of this Agreement is owned by, or under the control of, the Customer and the Customer is entitled to act for and on behalf of each such Terminal Location as provided for under this Agreement;
- (b) the Customer has associated, or will associate, a Price with each Terminal Location in accordance with the *Transaction Rules*;
- (c) the Customer Manager is solely responsible to provide the Company all the necessary and correct information required by the Company to fulfill the Company’s obligations under this Agreement; and
- (d) the Company is entitled to rely solely on the information provided by the Customer Manager in that regard; and for these purposes, without limitation, where the Customer utilizes the EnTRAC System, the Company may rely on all actions taken, and information set out, by any Person on behalf of the Customer in the EnTRAC System.

**2.3 No Liabilities**

The Customer hereby acknowledges and agrees that in accepting the assignment of rights pursuant to Section 2.1, the Company does not and will not assume any liabilities or other obligations of the Customer or of any other Person to the Customer.

**2.4 Company's Expenses**

The Company shall bear and pay all expenses incurred by it in the exercise of the rights acquired pursuant to Section 2.1.

**ARTICLE 3**  
**COLLECTION AND REMITTANCE**

**3.1 Collection of Invoice Amount**

In respect of Gas delivered by the Company to a Terminal Location pursuant to the Gas Delivery Agreement in a Billing Period, the Company will issue a statement of account (an "Invoice") to the Customer in the next following Billing Period and have it delivered to the Terminal Location. The Invoice will show, as the amount payable (the "Invoice Amount") by the Customer in respect of the relevant Terminal Location for the purchase of Gas during the Billing Period, an amount equal to either,

- (a) the product of the Customer's Monthly Volume for such Terminal Location for the Billing Period and the Price applicable to such Customer, or
- (b) if an equal billing arrangement has been established between the Customer and the Company, the equal billing amount so established.

The Invoice shall be prepared, delivered and payable in accordance with the Company's customary billing procedures. The Customer acknowledges that the Invoice will normally be a part of the Company's regular monthly bill to the Customer, and that such Invoice may include other amounts payable by the Customer to the Company or by the Customer to other Persons at arm's length to the Company.

**3.2 Payment by Customer for Terminal Locations**

The Customer shall pay to the Company the aggregate amount shown as payable (inclusive of the Invoice Amount and all taxes) in each Invoice received by the Customer, in accordance with the payment terms set out therein. If the Customer is subject to equal billing arrangements, price adjustments shall be made in accordance with such arrangements.

**3.3 Aggregate Remittance to Customer**

In respect of the Delivered Volume, the Company shall remit to the Customer an amount equal to the product of such volume of Gas (expressed in cubic metres) times the applicable Price. For purposes of calculating the amount to be remitted to the Customer hereunder, the Parties acknowledge that: (A) the Customer may establish one or more Pools in the EnTRAC System; (B) each Terminal Location in a Pool shall have associated with it by the Customer a Price; and (C) the amount to be remitted to the Customer hereunder is based on the weighted average Price for the Terminal

Locations in the relevant Pool as provided for in the *Transaction Rules*. Remittance shall be made by the Company to the Customer for a calendar month on or before the 22nd day of the month following such calendar month. If such day is not a Business Day, such amount shall be due and payable on the first Business Day next preceding such day.

### **3.4**            **Statements to Customer**

Coincident with each remittance made under Section 3.3, the Company shall post on the EnTRAC System and make available for review by the Customer a statement setting out for the relevant calendar month,

- (a)     the amount of the remittance in respect of each Pool established by the Customer;
- (b)     the Delivered Volume for the relevant calendar month for each Pool established by the Customer; and
- (c)     such other information as the Company may from time to time determine.

### **3.5**            **Collection Fee**

For the services rendered by the Company to the Customer hereunder in a Billing Period, the Customer shall pay to the Company an amount (the “**Collection Fee**”) equal to the product of: (A) the relevant service charge identified and set out in Schedule “A” - Collection Service Charges, from time to time; and (B) the number of Invoices issued, or deemed to be issued, by the Company in respect of the Customer during the relevant Billing Period. Schedule “A” may be amended from time to time by the Company, in its sole discretion, on not less than sixty (60) days prior written notice to the Customer. The amount so calculated, together with all taxes payable by the Customer thereon, shall be paid by set-off against the amount remitted by the Company to the Customer pursuant to Section 3.3.

### **3.6**            **Balance Adjustments**

3.6.1           Adjustment Statement - On or before ninety (90) days following the expiry of the term of a Pool, or, where the term of a Pool is two (2) years or more, following each anniversary date of such Pool, in respect of each Pool established by the Customer, the Company shall provide the Customer with a statement containing the following information:

- (a)     the aggregate amount billed to each Terminal Location in the Pool in respect of each month of the term of the Pool;
- (b)     the aggregate amount paid to the Customer in respect of each month of the term of the Pool; and
- (c)     any carrying cost differential during each such month.

For purposes of this Agreement, the ‘carrying cost differential’ means the difference between the Company’s inventory carrying cost and the inventory carrying cost of the Gas subject to this Agreement, and such carrying cost differential shall be calculated in accordance with the *Transaction Rules*.

3.6.2 Reconciliation - The statement described in Section 3.6.1 shall also include a calculation of the difference at the end of the term of the Pool between the payments made to the Customer pursuant to Section 3.3 (the “**Aggregate Payment Amount**”) and the amounts billed by the Company to the Terminal Locations pursuant to Section 3.1 (the “**Aggregate Billed Amount**”).

3.6.3 Payment - If the Aggregate Payment Amount exceeds the Aggregate Billed Amount, then the Customer shall remit to the Company such difference, net of any carrying cost differential. If the Aggregate Billed Amount exceeds the Aggregate Payment Amount, then the Company shall remit to the Customer such difference, net of any carrying cost differential. All remittances to be made hereunder shall be made contemporaneously with the remittances to the Customer pursuant to Section 3.3.

### **3.7 Payment Mechanism and Set-Off**

3.7.1 Net Remittances - All remittances between the Company and the Customer shall be netted against each other on a monthly basis, in accordance with the *Transaction Rules*. Except as otherwise provided herein, net remittances to be made by the Company to the Customer or by the Customer to the Company shall be made by cheque or by bank transfer (by electronic or other means) to an account designated from time to time by the Customer to the Company or the Company to the Customer, as applicable, in accordance with the *Transaction Rules*. Remittances to be made by the Customer to the Company shall be paid, to the maximum extent possible, by set-off against any amounts to be remitted by the Company to the Customer, including pursuant to Section 3.3. For certainty, and without limiting the foregoing, the Company shall be entitled to set-off against any amounts to be remitted by the Company to the Customer any or all amounts owing by the Customer to the Company, whether under this Agreement, any Gas Delivery Agreement, or any other agreement or arrangement between them.

3.7.2 Company’s Set-Off Rights – The Company is hereby authorized by the 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) and 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 (in whatever currency) at any time owing by the Company to or for the credit or the account of the Customer now or hereafter existing under this Agreement or any Enbridge Agreement, against any and all of the obligations of the Customer to the Company now or hereafter existing under this Agreement or any Enbridge Agreement, irrespective of whether or not the Company has made any demand under this Agreement or any Enbridge Agreement and although such obligations of the Customer may be contingent or unmatured. 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 the Company under this Section 3.7.2 are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and liens) that the Company may have. The Company agrees to promptly notify the 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.

Further, and notwithstanding any other provision of this Agreement, the Customer is hereby afforded a corresponding right to set off, appropriate and apply, as that provided to the Company above, mutatis mutandis.

### 3.8 Transaction Rules

3.8.1 Compliance - The Customer acknowledges and agrees: (A) that it shall at all times conduct its business relations with the Company in strict compliance with the terms and conditions of this Agreement, including the *Transaction Rules*, as amended from time to time; and (B) that all of such terms and conditions, as amended from time to time, shall be applicable to and binding upon the Customer. The Company acknowledges and agrees that it shall at all times conduct its business relations with the Customer in strict compliance with the terms and conditions of this Agreement, including the *Transaction Rules*, as amended from time to time. If there is any conflict between the provisions of this Agreement and the provisions of the *Transaction Rules*, the provisions of this Agreement shall prevail.

3.8.2 Changes - The Company may, at any time and from time to time, in its sole discretion acting reasonably, make changes to the Transaction Rules. All such changes shall become effective on the first day of the month which is not less than thirty-five (35) days following notification to the Customer of the relevant change (the “**Change Notice**”). The Change Notice shall include a brief description of the background to and rationale for each change. To the extent that the Company is able, in its sole discretion, to provide additional notice to the Customer of any proposed changes, in advance of the delivery of the Change Notice, the Company shall endeavour to do so.

3.8.3 Effect of Changes – On the effective date set out in the Change Notice, the change or changes set out therein shall be deemed to be, and shall be and become, a part of this Agreement. The Customer covenants and agrees to comply with such change or changes forthwith thereafter.

## ARTICLE 4 SECURITY ARRANGEMENTS

### 4.1 Determination of Security Requirement

The Company may, but is not obligated to, require security from the Customer. Should the Company determine that security is required, the amount of such security and the Customer’s obligations and the Company’s rights in respect of such security shall be governed by the Company’s then current Large Volume Distribution Customers Security Deposit Policy, or any successor or substitute policy of the Company, as the same may be amended from time to time, (the “**Security Policy**”).

### 4.2 Use of Security

Without in any way limiting the rights of the Company pursuant to the Security Policy, the Company has the right to use, set-off, appropriate, apply and realize any security, or any part of it, provided to the Company by the Customer upon there occurring an Event of Default of the Customer under this Agreement or under any Enbridge Agreement 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 the Customer. No right, power or remedy of the 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. The Customer shall remain liable for all obligations, indebtedness and liabilities owing by it or any of the Serviced Entities (as hereinafter defined) to the Company that are outstanding following realization of all or any part of any security provided to the Company hereunder.

## **ARTICLE 5**

### **TAXES AND INTEREST PAYABLE**

#### **5.1 Taxes and Other Charges**

Any taxes (other than the Company's income taxes) and other charges payable or owing to any Governmental Authority which may become payable on or in respect of the Collection Fee shall be borne and paid by the Customer. Goods and services tax exigible under the *Excise Tax Act* (Canada) shall be accounted for on the basis specified by Canada Customs and Revenue Agency.

#### **5.2 Interest on Overdue Amounts**

5.2.1 By Customers - Any amount owing pursuant to an Invoice by the Customer to the Company and not paid on or before the date on which it is due shall be subject to the Company standard late payment provisions as recited in the Invoice as approved by the OEB from time to time.

5.2.2 By Company - Any amount to be remitted by the Company to the Customer and not remitted on or before the date on which it is due shall thereafter bear interest at an annual rate equal to the prime rate of interest of the Toronto Dominion Bank (Toronto, Main Branch) on such due date plus 1%.

## **ARTICLE 6**

### **MODIFICATIONS**

#### **6.1 Price Revisions**

The Customer may increase or decrease the Price applicable to a Terminal Location in accordance with the *Transaction Rules*. Any such increase or decrease may be made only,

- (a) once a month; and
- (b) by the Customer notifying the Company of the particulars of such increase or decrease, including the Terminal Location to which the change applies and the new Price applicable; and for these purposes, the Customer shall be deemed to have notified the Company of such increase or decrease if the Customer amends the Price applicable to a Terminal Location in the EnTRAC System.

#### **6.2 Effective Date of Change**

Each increase or decrease effected pursuant to this Article shall become effective on the relevant date identified in the relevant Transaction Request. Upon the effective date so established, this

Agreement shall be deemed to be amended by the deletion of the Price theretofore in effect and by the substitution therefor of the revised Price.

**ARTICLE 7**  
**REPRESENTATIONS AND INDEMNITY**

**7.1 Representations and Warranties of the Customer**

In addition to any other representations and warranties given to the Company under this Agreement, the Customer represents and warrants to the Company, and acknowledges and agrees that the Company is relying upon the accuracy of each of such representations and warranties in entering into this Agreement, that at the date hereof and at all times during the Term:

- (a) the Customer has all necessary right, power and authority to assign to the Company the right to render accounts and receive payment in accordance with the provisions of this Agreement;
- (b) the information contained in the Pool Parameters from time to time is and shall be at all times correct and complete in every material respect;
- (c) all information provided or made available to the Company by the Customer from time to time, whether pursuant to the EnTRAC System or otherwise, shall be correct and complete in every material respect; and
- (d) the Company is entitled to rely on anything done or any document signed by any Person on behalf of the Customer, including the Customer Manager, in respect of this Agreement as if the action had been taken or the document had been signed by the Customer.

**7.2 Authority of, and Dealings with, Customer**

7.2.1 Representations and Warranties - In addition to any other representations and warranties given to the Company under this Agreement, the Customer represents and warrants to the Company, and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in entering into this Agreement, that at the date hereof and at all times during the Term:

- (a) the Customer is and will be the duly appointed representative of the various the legal entities which own or operate the Terminal Locations serviced by this Agreement (the “**Serviced Entities**”) and, in such capacity, is entitled to enter into this Agreement on behalf of each of the Serviced Entities and to act on behalf of each of the Serviced Entities under this Agreement; and
- (b) the Company is entitled to rely on anything done or any document signed by the Customer in respect of this Agreement as if the action had been taken or the document had been signed by each of the Serviced Entities individually and/or collectively.

7.2.2 Dealings with Customer - The Company shall be entitled, in its sole discretion and without any notice to any Party, to deal exclusively with the Customer in respect of the rights and obligations of each of the Serviced Entities (individually and/or collectively) under this Agreement.

### **7.3 Guarantee by Customer**

7.3.1 Notwithstanding that the Company may from time to time interact directly with one or more of the Serviced Entities in performing the services hereunder, or that one or more of the Serviced Entities may from time to time be obligated to the Company as a result of services performed by the Company under this Agreement or another Enbridge Agreement or otherwise, the Company shall at all times be liable to the Company, and shall indemnify the Company, for the obligations of each of the Serviced Entities to the Company from time to time. The obligation of the Customer hereunder shall apply notwithstanding any termination or expiry of this Agreement, or the addition or deletion of any Terminal Location or the application of this Agreement thereto.

7.3.2 This indemnity is absolute and unconditional. The Customer's obligations under this Section will not be affected by any actions of any other party, including any of the Serviced Entities. The Company is not required to notify the Customer that any of the Serviced Entities has failed to perform any of its obligations under this Agreement in order to enforce the provision of this Section.

### **7.4 Indemnity**

7.4.1 Indemnification - The Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Company, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Customer or any of the Customer's employees or agents or any Person acting under the authority of or with the permission of the Customer. The Customer further agrees to indemnify and hold the 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 7.4.1.

7.4.2 Indemnification - The Company shall save harmless and indemnify the Customer, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Customer, howsoever caused, resulting from, arising out of or relating to the negligence or wilful misconduct of the Company or any of the Company's employees or agents or any Person acting under the authority of the Company. The Company further agrees to indemnify and hold the 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 7.4.2.

7.4.3 Limitation - Notwithstanding any other provision of this Agreement, the liability of each Party, and their respective shareholders, directors, officers, employees and agents, to another Party, whether founded in tort or breach of contract 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. Without limitation, a Party shall not be liable for any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties. In no event shall a Party be liable for any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

**7.5 Changes in Industry Standards**

The Company and the Customer acknowledge that amendments to natural gas industry standards (including changes in the measurement of energy units) may render the terms of this Agreement inoperable or unenforceable. In such an event, the Parties shall in good faith negotiate such amendments to this Agreement as are necessary in order for this Agreement to continue in force during the Term.

**ARTICLE 8  
TERM AND TERMINATION**

**8.1 Term of Agreement**

Subject to the other terms and conditions of this Agreement, the term of this Agreement (the “**Term**”) shall commence on the date first above written and shall continue until the expiry or termination of the last of the Pools established by the Customer in respect of which the Customer has subscribed for services under this Agreement, or until terminated in accordance with the terms of this Agreement.

**8.2 Company’s Rights of Termination**

Subject to the other provisions of this Article 8 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:

- (a) at any time upon not less than sixty (60) days prior written notice to the Customer; or
- (b) at any time upon the occurrence of an Event of Default; or
- (c) at any time, without notice, upon the occurrence of a regulatory change established by a Governmental Authority, which causes, results in, necessitates or requires such termination.

**8.3 Events 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 the Customer under this Agreement and shall be considered an event of default (an “**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:

- (a) if the Customer fails to perform or observe any of its obligations under this Agreement on its part to be observed and performed or is in breach of any of its representations or warranties made hereunder and such failure or breach shall continue unremedied following notice thereof (giving particulars of the failure or breach in reasonable detail) from the Company to the Customer, for a period of thirty (30) days; or

- (b) if the Customer files a petition in bankruptcy, makes application or files a petition seeking any re-organization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of the Customer or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the Customer and is not stayed, otherwise enjoined or discharged within fifteen (15) Business Days; or
- (c) if 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 Customer becomes enforceable against any property of the Customer; or
- (d) if the Customer ceases carrying on business in the ordinary course, commits any act of bankruptcy under *The Bankruptcy and Insolvency Act* or is wound up; or
- (e) if there occurs an 'Event of Default' of the Customer under any other Enbridge Agreement (as defined in the relevant Enbridge Agreement);

provided that each of the above-noted Events of Default have been inserted for the benefit of the Company and may be waived by the Company in whole or in part at any time by notice to the Customer, the Company may extend the period for the remediation of any such Event of Default (if any), provided that the Customer is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Company that the steps being taken by the Customer are likely to satisfy the Event of Default within a reasonable period of time.

#### **8.4 Effect of Termination**

Notwithstanding the termination of this Agreement, each Party shall continue to be liable to pay, on the terms herein specified, any amount accrued or accruing and payable by such Party to the other up to the time of termination.

### **ARTICLE 9 GENERAL**

#### **9.1 Notice**

All notices, directions, documents of any nature required or permitted to be given by one Party to the other pursuant to this Agreement (in each case, a "Notice") shall be in writing and shall be delivered personally or by courier or sent by facsimile as follows:

[Remainder of page intentionally left blank.]

- (a) in the case of the Company, to it at:  
Enbridge Gas Inc.  
500 Consumers Road  
North York ON M2J 1P8  
Fax Number: (416) 495-5657  
Manager, Key Accounts & Vendor Relationships
- (b) in the case of the Customer, to the Customer's legal contact at the address set out in the Master Services Agreement between the Company and the Customer,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 9.1. A Notice may be delivered by electronic internet communication provided the Parties have agreed in writing in advance to do so and have established in writing in advance their respective addresses for such communication. A Notice 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 is received after ordinary office hours (at the time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day.

## **9.2 Time of the Essence**

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

## **9.3 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 this Agreement. Without limiting the foregoing, each Party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

## **9.4 Amendment**

This Agreement may be amended only by written agreement of the Parties.

## **9.5 Waiver**

Except as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a 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 this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

**9.6            Assignment**

The Customer may not sell, assign or transfer any of its interest in or rights or obligations under this Agreement, in whole or in part without the prior written approval of the Company.

**9.7            Enurement and Binding Effect**

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns and be binding upon the parties hereto and their respective successors and permitted assigns.

Schedule "A"

**COLLECTION SERVICE CHARGES**

<b><u>Rate Schedule</u></b>	<b><u>Fee per Monthly Invoice</u></b>
Rate 1	\$1.05
Rates 6 & 9	\$2.00
Rates 100, 110, 115, 135, 145 & 170	\$5.00