

ENBRIDGE GAS INC.

- and -

[\*]

**GAS DELIVERY AGREEMENT**

**[Rate 125 - Unbundled Firm Service]**

**GAS DELIVERY AGREEMENT  
(Rate 125 - Unbundled Firm Service)**

**DATE OF AGREEMENT:**       [\*]

**PARTIES TO AGREEMENT:**       **ENBRIDGE GAS INC.**, an Ontario corporation, hereinafter called the “**Company**”, and  
[\*], hereinafter called the “**Customer**”.

**BACKGROUND**

- A.           The Customer requires the delivery of gas to the Terminal Location.
- B.           This Agreement provides for the delivery of gas by the Company to the Terminal Location and, where applicable, for the limited balancing of the Customer’s gas supply and demand, in accordance with the terms and conditions hereof.

**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 I - 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 Appendices hereto), capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**”, and similar expressions refer to this Gas Delivery Agreement, together with all Appendices and other attachments hereto, as the same may be amended or updated from time to time.

“**Anniversary Date**” means (A) where this Agreement has been executed on or as of the 1<sup>st</sup> Day of any calendar month, that Day and month, and (B) where this Agreement has been executed on or as of any other Day in any calendar month, the 1<sup>st</sup> Day of the month immediately following the month in which this Agreement has been executed.

“**Applicable Laws**” means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of any of the Parties, from time to time.

“**Authorization Notice**” means the written approval provided by the Company, in its sole discretion, in response to the Customer’s request for a short-term amendment to certain parameters of this Agreement. Such Authorization Notice shall specify the approved amended parameters and the term for the amendment.

“**Authorized Demand Overrun Gas**” has the meaning ascribed thereto in Section 3.4.2.

“**Bill**” has the meaning ascribed thereto in Section 5.1.

“**Billing Period**” means the period of days in respect of which the Company will regularly render a bill to the Customer as set out in Part 4 of Appendix “A”.

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

“**Change of Control**” has the meaning ascribed thereto in Section 19.6.

“**Companion Storage Contract**” means a gas storage service agreement between the Company and the Customer relating to service under a rate of the Company which Rate 125 specifies may be used in conjunction with Load Balancing.

“**Contract Demand**” means the volume of gas (expressed in m<sup>3</sup>) shown in item 2 of the Chart set out in Part 1 of Appendix “A”.

“**Contract Year**” means the twelve-month period:

- (a) commencing on the Date of First Deliveries; or
- (b) commencing at the beginning of the first Day immediately following the last day in a Contract Year.

“**cubic metre**” or “**m<sup>3</sup>**” means that volume of gas which at a temperature of 15 degrees Celsius and at an absolute pressure of 101.325 kilopascals (“**kPa**”) occupies one cubic metre; “**10<sup>3</sup>m<sup>3</sup>**” means one thousand cubic metres.

“**Cumulative Imbalance Account**” means the record maintained by the Company on behalf of the Customer to account for cumulative Daily Imbalances for each Day up to the aggregate Maximum Contractual Imbalance in accordance with Load Balancing.

“**Customer Affiliate**” means any Person that would be considered to be “affiliated” with the Customer pursuant to the *Business Corporations Act* (Ontario).

“**Daily Imbalance**” has the meaning ascribed thereto in Rate 125.

“**Date of First Deliveries**” means July 1, 2008.

“**Day**” means a period of 24 consecutive hours, beginning and ending at 1000 hours EST and a Day that is specified by a date shall be the Day which begins at 1000 hours EST on the specified date.

“**Demand Overrun Gas**” means any volume of gas taken by the Customer at the Terminal Location: (a) on a Day which exceeds the Contract Demand, or (b) in an hour which exceeds the Hourly Demand.

“**Dispute**” has the meaning ascribed thereto in Section 18.1.

“**Dispute Notice**” has the meaning ascribed thereto in Section 18.2.

“**Early Termination Date**” has the meaning ascribed thereto in Section 16.3 and Section 16.4.

“**EST**” means Eastern Standard Time at Toronto, Ontario; and which, for certainty, includes any adjustment for Daylight Savings Time.

“**Force Majeure**” and “**Event of Force Majeure**” have the meaning ascribed thereto in Section 13.3.

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

“**Gas Transporter/s**” means an entity engaged in the transportation of natural gas in inter-provincial or intra-provincial commerce and “**Gas Transporter/s Facilities**” means the actual facility used by the Gas Transporter/s.

“**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, whether over the Parties, their facilities, any gas supply, the sale, purchase or transportation of gas, or this Agreement or any part hereof.

“**Hourly Demand**” means, the volume of gas (expressed in m<sup>3</sup>) which is one twenty-fourth (1/24<sup>th</sup>) of the Contract Demand.

“**Load Balancing**” means the limited load balancing mechanism set forth in Rate 125 designed to reduce imbalances between anticipated and actual deliveries of gas to, and consumption of gas by, the Customer under this Agreement.

“**Maximum Contractual Imbalance**” has the meaning ascribed thereto in Rate 125.

“**month**” means a period beginning at 1000 hours EST on the first Day of a calendar month and ending 1000 hours EST, on the first Day of the next succeeding calendar month.

“**NAESB**” means the North American Energy Standards Board or any successor thereto.

“**Nomination**” means a written request from the Customer regarding a volume of gas that the Customer intends to deliver to the Company pursuant to this Agreement, or otherwise transfer or assign in a manner contemplated in this Agreement.

“**Nomination Times**” has the meaning ascribed thereto in Section 6.1.

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

“**OEB Act**” means the Ontario Energy Board Act, 1998, and all rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards promulgated thereunder from time to time.

“**Operating Characteristics**” has the meaning ascribed thereto in Part 5 of Appendix “A”.

“**Party**” means any one of the Company or the Customer, and “**Parties**” means more than one, or all of them, as the context requires.

“**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 Acceptance**” means the point of interconnection with the Company’s facilities as specified in Part 2 of Appendix “A”, or such other location(s) as the Customer and the Company may mutually agree upon in writing.

“**Point of Delivery**” has the meaning ascribed thereto in Section 2.5.

“**Point of Delivery Pressure**” means the pressure (expressed in kPa) shown in item 5 of the Chart in Part 1 of Appendix “A”.

“**Rate 125**” means the Company’s rate number 125 and associated riders, charges, terms and conditions established by the Company from time to time as approved by the OEB and in effect at the relevant time and all of which are set out in the Rate Handbook.

“**Rate Handbook**” means the Company’s ‘Handbook of Rates and Distribution Services’, as amended or replaced from time to time with the approval of the OEB.

“**Required Permit**” means any license, authorization, permit, regulatory consent, credential or similar qualification required by the OEB or under any Applicable Laws.

“**Supply Imbalance**” means an imbalance resulting from the existence of any Supply Overrun Gas or Supply Underrun Gas.

“**Supply Overrun Gas**” means the amount of gas taken by the Customer on a Day in excess of the amount of gas delivered by the Customer on such Day.

“**Supply Underrun Gas**” means the amount of gas delivered by the Customer on a Day in excess of the amount of gas taken by the Customer on such Day.

“**Term**” means the period from and including the date hereof to the earliest of:

- (a) 1000 hours EST on the next day following the Termination Date,

- (b) any Early Termination Date, and
- (c) the date fixed by, or determined from, any Order of the OEB as the date for the termination or expiration of this Agreement.

“**Termination Charge**” has the meaning ascribed thereto in Section 16.5.1.

“**Termination Date**” means the date specified in Part 7 of Appendix “A”.

“**Terminal Location**” means the plant or facility of the Customer, the location of which is specified in the Table in Part 1 of Appendix “A”, which is to receive gas pursuant to this Agreement.

“**UFG**” has the meaning ascribed thereto in Section 3.3.

“**Unauthorized Demand Overrun Gas**” has the meaning ascribed thereto in Part 3 of Appendix “A”.

“**Unauthorized Supply Overrun Gas**” means any volume of gas taken by the Customer at the Point of Delivery on any Day in excess of the sum of: (a) the volume of gas delivered by the Customer on that Day, plus (b) the volume of gas available to the Customer under any applicable Load Balancing or any Companion Storage Contract, or both.

“**Unauthorized Supply Underrun Gas**” means any volume of gas delivered by the Customer on any Day pursuant to this Agreement in excess of the sum of: (a) the volume of gas taken by the Customer at the Point of Delivery on that Day, plus (b) the volume of gas available to the Customer under any applicable Load Balancing or any Companion Storage Contract, or both.

1.2 Appendices - The following Appendix/ices are required to complete this Agreement and are incorporated herein by reference and are deemed to be a part hereof and are to be read in conjunction with and subject to this Agreement:

Appendix “A” - Customer Information

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

1.4 Rules of Interpretation - In this Agreement the following rules shall apply to the interpretation hereof:

- (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 number of days or other period within which or following which any act is to be done or step taken, the day which is the reference day in calculating such period shall not be counted in such number of days or other period;
- (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 Appendices and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (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 consistent with good utility practice; and
- (h) if there is any conflict between the provisions of the body of this Agreement and the provisions of any of the Appendices to this Agreement, then the provisions of the relevant Appendix shall prevail.

1.5 Entire Agreement - This Agreement and all Appendices and attachments 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. No additions, deletions or modifications of this Agreement shall be binding on any Party unless made in writing and signed by or on behalf of such Party. For certainty, no oral representations of the Company shall amend or modify this Agreement unless committed to writing and included herein by reference. To the extent that the Company permits the Customer, at the sole discretion and convenience of the Company, to use or employ any practice or procedure that is not specifically contemplated herein, the Customer may not rely on such practice or procedure where the same is not consistent with the terms of this Agreement.

1.6 Severability - This Agreement is a general form, intended for use by the Parties in their ongoing relations in Ontario. 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.

1.7 Governing 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 hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## **ARTICLE II - BASIC AGREEMENTS**

2.1 Delivery of Gas - On and subject to Rate 125 and the other terms and conditions of this Agreement, during the Term the Customer shall deliver gas to the Company and the Company shall deliver gas to the Customer.

2.2 Condition to Obligations - Notwithstanding the execution of this Agreement by the Parties and any term or provision herein to the contrary, including Section 2.1, it shall be a condition precedent to the respective obligations of the Parties under this Agreement (other than the obligation of the Parties set out in Section 19.2, which obligation shall be binding upon execution of this Agreement) that each of the Parties shall have received all approvals and consents required for the construction and operation of the Terminal Location, if applicable, and any gas line required to deliver gas to the Terminal Location.

2.3 Applicable Rates – Rate 125 is incorporated into this Agreement and forms part of this Agreement. Each of the Parties shall have the rights and obligations which such Party is contemplated to have in the provisions of Rate 125 and Rate 125 shall be construed as though (i) a reference therein to “Applicant” is a reference to the Customer, (ii) a reference to “Service Contract” is a reference to this Agreement and (iii) words defined herein have the same meaning when used in Rate 125.

2.4 Point of Acceptance - All gas delivered to the Company by the Customer pursuant to this Agreement shall be delivered at the Point of Acceptance.

2.5 Delivery at Terminal Location - All gas delivered to the Customer by the Company pursuant to this Agreement shall be delivered at the outlet of the Company’s metering equipment at or prior to the Terminal Location (the “**Point of Delivery**”). For these purposes, if the Customer has a dedicated service, the Company may in its discretion deem the interconnection point between the dedicated distribution line and the Terminal Location to be the Point of Delivery. The Company agrees to deliver gas to the Point of Delivery at not less than the Point of Delivery Pressure.

## **ARTICLE III- CONTRACT VOLUMES, DEMAND OVERRUN GAS**

3.1 Maximum Daily Receipt - The maximum volume of gas the Company is required to receive from the Customer in any Day is the Contract Demand and in any hour is the Hourly



Demand; provided that the Company, in its sole discretion, may agree to receive a volume of gas which is in excess of the foregoing maximum amounts.

3.2 Maximum Daily Delivery - The maximum volume of gas the Company is required to deliver to the Customer in any Day is the Contract Demand, and in any hour is the Hourly Demand.

3.3 Unaccounted for Gas - In addition to any other gas delivery requirement of the Customer in this Agreement, in respect of unaccounted for gas (“UFG”), the Customer must deliver to the Company an amount of gas, if any, as contemplated in the Rate Handbook and communicated by the Company to the Customer from time to time. For certainty, wherever in this Agreement there is a reference to a volume of gas in respect of an obligation of the Customer (other than in relation to a dedicated service), whether to be delivered by the Customer or otherwise, the volume of gas shall be automatically adjusted, upwards or downwards as the case may be, to account for the Customer’s obligation hereunder in respect of UFG.

3.4 Demand Overrun Gas

3.4.1 Maximum Nominations - The Customer shall not, at any time, submit a Nomination which is for an amount of gas in excess of the Contract Demand without first having obtained the prior written authorization of the Company to do so. This limitation on the Customer shall apply notwithstanding that the Company may accept such a Nomination without having first given such written authorization. Authorizations shall be granted in the sole discretion of the Company.

3.4.2 Authorized Demand Overrun Gas - Unless otherwise set out in Rate 125 or *Appendix “A”*, the Company may, in its sole discretion, authorize the Customer to use Demand Overrun Gas by providing the Customer with an Authorization Notice, in which case the gas shall be deemed to be “**Authorized Demand Overrun Gas**” for the purposes of Rate 125 and the terms and conditions hereof.

3.4.3 Unauthorized Demand Overrun Gas - Contract Demand Alteration - The terms and conditions set out in *Appendix “A”* and Rate 125 shall apply in the event the Customer consumes Unauthorized Demand Overrun Gas in excess of the Contract Demand or Hourly Demand, plus, if applicable, any Authorized Demand Overrun Gas.

3.5 Gas Transporter Variances - Notwithstanding any provision of this Agreement to the contrary:

- (a) the volume of gas which the Customer shall deliver to the Company hereunder shall equal the volume of gas confirmed to the Company by the relevant Gas Transporter/s delivering the Customer’s gas to the Company;
- (b) other than in the case of dedicated service, the volume of gas which the Company shall deliver to the Customer hereunder shall be adjusted for the volume of UFG as determined by the Company from time to time in accordance with its standard practice consistently applied; and

- (c) subject to Load Balancing and the terms and conditions of any Companion Storage Contract between the Parties (in either case, as applicable), the Company shall have no obligation at any time to deliver to the Customer a volume of gas which is greater than the volume of gas confirmed for delivery to the Customer by the relevant Gas Transporter/s.

3.6 Annual Consumption Forecast - The Customer shall provide to the Company not less than sixty (60) days prior to the commencement of each Contract Year an annual forecast of daily gas consumption expressed in cubic metres identifying expected daily flows, expected down times and anticipated peak consumption periods. For certainty, the Company shall have no obligation to deliver gas to the Customer in accordance with any such annual forecast.

#### **ARTICLE IV - RATES FOR GAS DELIVERY SERVICES**

4.1 Rate 125 - Subject to the other terms and conditions of this Agreement, the rates and charges for delivery services contracted for by or provided to the Customer hereunder from time to time shall be determined in accordance with the version of Rate 125 as applicable at the time the relevant service is rendered. The rates and charges shall be applicable, and the Customer shall be responsible therefor, from and after the Date of First Deliveries.

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

4.3 OEB Directed Changes - In the event the terms and conditions of this Agreement are changed by order of the OEB, including retroactive changes, such changed terms and conditions shall be deemed to be in effect between the Company and the Customer in accordance with the terms of such order.

4.4 Independence of Rates - Except as specifically set forth in this Agreement, the charges applicable to gas delivered to the Customer hereunder shall be determined and computed in accordance with Rate 125 without regard to any volume of gas contracted to be delivered or delivered under any other numbered rate of the Company or pursuant to any other agreement to which the Company and the Customer are parties.

#### **ARTICLE V - BILLING AND PAYMENT**

5.1 Billing - Bills are issued at the end of each Billing Period in respect of services provided by the Company under this Agreement during the Billing Period (each, a “**Bill**”) and are due when rendered. In addition, the Company will issue bills in respect of other services, costs and charges as set out in Part 4 of Appendix “A”.

5.2 Payment - Payment terms are as set out in the Rate Handbook or as otherwise agreed by the Parties and set out in Part 4 of Appendix "A".

5.3 Bills - Bills delivered by the Company to the Customer hereunder shall include, in respect of the Billing Period to which the Bill relates:

- (a) the volume of gas delivered by the Customer to the Company hereunder during such Billing Period;
- (b) the volume of gas delivered by the Company to the Customer hereunder during such Billing Period; and
- (c) the amount payable by the Customer during such Billing Period,

as determined by the Company in accordance with this Agreement and Rate 125.

5.4 Co-operation - The Customer acknowledges that, as a shipper on Gas Transporter/s facilities, the Customer may be in possession of information with respect to volumes of gas delivered to the Company hereunder which may be required by the Company in the preparation of a Bill. The Customer agrees to co-operate with the Company to the extent necessary for the Company to obtain any information not in its possession and required for the preparation of such Bill.

5.5 Errors - If an error is discovered by the Company or the Customer in a Bill, an adjustment to correct the same shall be made in a subsequent Bill. The Customer must notify the Company of any error in a Bill within three (3) years from the date of the relevant Bill, failing which the Customer shall be precluded from making a claim regarding the error.

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

5.7 Withholding - Notwithstanding anything in this Agreement 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 (the "**Withheld Amount**"). Upon the Company ceasing to be entitled to hold any particular portion of a Withheld Amount, the Company shall forthwith pay to the Customer an amount equal to such portion of the Withheld Amount. In addition, at any time the Company shall have the right to set-off an amount due, owing and unpaid by the Customer to the Company against any amount owing to the Customer by the Company, upon delivering a notice to the Customer to that effect.

5.8 Taxes Applicable - Rates and charges do not include any goods and services taxes or any other taxes (whether existing as of the date of this Agreement or imposed after the date of this Agreement) which may be payable by the Customer, and such taxes remain the responsibility of the Customer.

## **ARTICLE VI - NOMINATIONS**

6.1 Nominations - The Customer shall submit to the Company Nominations in accordance with Rate 125 and NAESB standards and at the nomination times (the “**Nomination Times**”) set out therein. At a minimum, Nominations must be made once per Day.

6.2 Changes to Nomination Volume - The Customer shall have the opportunity, subject to acceptance by the Company, to revise a Nomination by further notice or notices given to the Company, provided that (i) such notice or notices must be given in accordance with the applicable Nomination Times and (ii) the Customer must comply with the other terms and conditions of this Article VI regarding revisions to the Nomination.

6.3 Acceptance - Acceptance by the Company of any Nomination from the Customer shall be subject to the other terms and provisions of this Agreement, and is contingent upon the confirmation and actual delivery of the gas from the relevant Gas Transporter/s.

6.4 No Transfer of Volumes - Subject to the terms of Article VII, the accounting between the Customer and the Company will be on a daily basis and settled in each Billing Period and neither the Company nor the Customer will have the right to transfer any volumes of gas from one Day to the next Day.

6.5 Nomination Requirements - To qualify for firm contractual entitlements a Nomination must be submitted at the then current Nomination Times. Valid Nominations must be submitted regularly, failing which the last regular Nomination accepted by the Company shall be considered as a standing Nomination applicable to each subsequent Day until varied by the Customer.

## **ARTICLE VII – LOAD BALANCING, UNAUTHORIZED SUPPLY GAS**

### 7.1 Load Balancing

7.1.1 Availability - The Company shall provide Load Balancing to the Customer provided the Customer is deemed eligible for such service in accordance with Rate 125. Notwithstanding the foregoing, if the Point of Acceptance is outside the TCPL Enbridge CDA, the Company will not provide Load Balancing to the Customer.

7.1.2 Maintenance of Cumulative Imbalance Account - The Company shall establish and maintain on behalf of the Customer the Cumulative Imbalance Account. Any volumes of gas delivered or taken by the Customer constituting a Daily Imbalance, up to the Maximum Contractual Imbalance, shall be debited or credited to the Cumulative Imbalance Account.

7.1.3 Balancing by the Company - Any Supply Imbalance shall be addressed by the Company as follows, and in the following order:

- (a) where the Customer has entered into a Companion Storage Contract which has ‘no-notice storage service’:
  - (i) the Company shall first utilize any Withdrawal Capacity or Injection Capacity (as such terms are defined in the Companion Storage Contract), as applicable, available to the Customer under such Companion Storage Contract in order to reduce such imbalance; and
  - (ii) the Company shall apply Load Balancing to any Excess Storage Withdrawal Gas or Excess Storage Injection Gas (as such terms are defined in the Companion Storage Contract), as applicable; and
- (b) where the Customer has not entered into a Companion Storage Contract or where the Customer has entered into a Companion Storage Contract which does not have ‘no notice storage service’, the Company shall apply Load Balancing to any Supply Imbalance.

Any Daily Imbalance which on any Day exceeds the Maximum Contractual Imbalance after the above steps have been followed shall be deemed to be either Unauthorized Supply Overrun Gas or Unauthorized Supply Underrun Gas for the purposes hereof.

7.1.4 Balancing by the Customer - In the event the Customer has, or is deemed to have, either a debit or credit in its Cumulative Imbalance Account, the Customer may seek to balance its Cumulative Imbalance Account by such means, and subject to such terms and conditions, as are set out in Rate 125, any Companion Storage Contract, and any rules of the Company applicable to Customer’s Supply Imbalance.

7.1.5 Pooling and Pro-Rating - In the event that one or more Rate 125 Gas Delivery Agreements (in addition to this Agreement) has been executed between the Company and

- (a) the Customer; or
- (b) a Customer Affiliate,

then the Customer may make pooled Nominations for some or all of the terminal locations specified in such agreements (the “**Pooled Locations**”) that share the same Point of Acceptance as the Terminal Location, such that, in the event of any net Daily Imbalance (based on the aggregated Daily Imbalance of all such Pooled Locations), the Company shall apply Load Balancing after pro-rating such net Daily Imbalance amongst all Pooled Locations based on the relative contract demand applicable to each of the Pooled Locations.

7.1.6 Disposition of Gas Upon Termination or Expiry - If this Agreement terminates or expires then, except as authorized by the Company, the Cumulative Imbalance Account shall not be in a credit or debit balance situation, and:

- (a) any debit balance in the Cumulative Imbalance Account that remains as of such date of termination or expiry shall be deemed to be Unauthorized

Supply Overrun Gas and the Customer shall be subject to the provisions of Section 7.2.1 in respect thereof;

- (b) any credit balance in the Cumulative Imbalance Account that remains as of such date of termination or expiry shall be deemed to be Unauthorized Supply Underrun Gas and the Customer shall be subject to the provisions of Section 7.2.2 in respect thereof.

## 7.2 Unauthorized Supply Gas

7.2.1 Unauthorized Supply Overrun Gas - In any instance of the occurrence, use of, or deemed taking of, a volume of Unauthorized Supply Overrun Gas, the Customer shall pay the rates and charges for such gas as set out in Rate 125 and Appendix "A". The Customer further agrees that it has no right to take Unauthorized Supply Overrun Gas and that payment therefor shall not relieve it from any other remedy available to the Company against the Customer for breach of any other provision of this Agreement.

7.2.2 Unauthorized Supply Underrun Gas - In any instance of the occurrence, use of, or deemed delivery of, a volume of Unauthorized Supply Underrun Gas, the Company shall pay the rates and charges for such gas as set out in Rate 125 and Appendix "A". The Customer further agrees that it has no right to deliver Unauthorized Supply Underrun Gas and that payment therefor by the Company shall not relieve the Customer from any other remedy available to the Company against the Customer for breach of any other provision of this Agreement.

## **ARTICLE VIII - DELIVERY, POSSESSION, TITLE AND COMMINGLING**

8.1 Possession - The Customer shall be deemed to be in control and possession of gas that is the subject matter of this Agreement (other than gas purchased from the Company) until it shall have been delivered to or for the account of the Company at the Point of Acceptance, after which the Company shall be deemed to be in control and possession of such gas until it is delivered to the Point of Delivery, after which the Customer shall be deemed to be in control and possession of such gas. The Customer shall bear the full cost and expense for transporting and delivering, as well as the full and complete liability and responsibility for, such gas to the Point of Acceptance and shall bear full and complete liability and responsibility for gas that is delivered to the Point of Delivery. Upon accepting custody of the gas at the Point of Acceptance, the Company shall bear full and complete liability and responsibility for gas until it is delivered to the Point of Delivery.

## 8.2 Delivery and Title

8.2.1 Under Consumption - The volume of gas delivered by the Customer to the Point of Acceptance on a Day (the "**Gas Delivered for the Day**") shall be deemed to have been redelivered to the Terminal Location to the extent of the lesser of: (A) the Gas Delivered for the Day; and (B) the volume of gas delivered by the Company to the Point of Delivery on such Day (the "**Gas Taken for the Day**"), and title to that lesser amount of gas shall at all times remain in the Customer.

8.2.2 Over Consumption - With respect to Gas Taken for a Day which is in excess of the Gas Delivered for the Day, title to such excess Gas Taken for the Day shall pass from the Company to the Customer at the Point of Delivery.

8.2.3 Title of Customer - Except as aforesaid, at any particular time the Customer shall have title to, and only to, gas delivered by or for the Customer to the Point of Acceptance and not delivered to the Point of Delivery to the extent of the credit balance, if any, at such time in the Cumulative Imbalance Account.

8.3 Right to Commingle - The Company and the Customer recognize that the gas delivered hereunder will be from a commingled stream of gas and will be carried to the Point of Acceptance through the facilities of one or more Gas Transporter/s. The Company shall have the right to commingle gas delivered to the Company by or for the Customer at the Point of Acceptance with gas owned by the Company or any other Person or Persons, and the Company shall have the right and full and absolute authority to deal in any manner with all gas delivered to it.

8.4 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 that at the date hereof and at all times during the Term:

- (a) the Customer shall have good and marketable title in and to the gas to be delivered to the Company and shall be entitled to deliver and, where applicable, sell such gas to the Company in accordance with the terms of this Agreement, free and clear of any adverse claim of any nature or kind whatsoever; and
- (b) gas delivered to the Company by or for the Customer will not be subject to any royalties, taxes (federal and/or provincial) or other charges payable by, or that may become a liability of, the Company and the purchases by the Company from the Customer contemplated hereunder will not result in any liability to the Company for royalties, taxes (federal and/or provincial but not income taxes) or like charges which are applicable before possession of and title to such gas passes to the Company,

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

8.5 Indemnity by Customer - The Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all suits, claims, liens and encumbrances of whatsoever nature relating to the title to gas delivered by the Customer to the Company. If at any time an adverse claim of any nature is asserted against the title to any of such gas, the Company may withhold, in an interest bearing escrow account at a Schedule I Bank in Canada, during the period of such claim or until the title is freed from such claim any amounts payable by the Company to the Customer not exceeding in the aggregate the amount of such claim or until the Customer furnishes a bond, in form and amount and with

sureties acceptable to the Company, conditioned to save the Company harmless, as provided for in this Section 8.5.

## **ARTICLE IX - POINT OF ACCEPTANCE - QUALITY AND MEASUREMENTS**

9.1 Quality - The quality, pressure and temperature of the gas delivered by the Customer hereunder shall conform to the minimum standards of the Gas Transporter/s and such gas shall otherwise be marketable gas.

9.2 Measurement - For the purpose of determining the volume of gas delivered to the Company by the Customer, the Parties agree to accept the measurement of the relevant Gas Transporter/s, or as the Gas Transporter/s and the Company may otherwise agree, and the volume of gas so determined for a particular Day shall be deemed to be the volume of gas delivered by the Customer to the Company on such Day. The standard of measurement and tests for the gas delivered hereunder shall be in accordance with the contractual arrangements made by the Company with the relevant Gas Transporter/s, or as the Gas Transporter/s and the Company may otherwise agree, in effect from time to time.

9.3 Testing - The Company agrees, in its arrangements with Gas Transporter/s, to obtain measuring and/or testing in a manner and at an interval which is in compliance with the practice of Gas Transporter/s. In the event that either Party should request measuring or testing at any time, the other Party will cooperate fully to obtain such measurement and testing from Gas Transporter/s, provided that the Party seeking the test shall bear the cost thereof if the contractual arrangements with Gas Transporter/s require payment of the cost. For certainty, a Party may not unreasonably withhold or delay giving its consent or providing any access necessary to complete such measuring or testing.

## **ARTICLE X - POINT OF DELIVERY - METERING AND EQUIPMENT**

### 10.1 Metering at Point of Delivery

10.1.1 Installation - Subject to Section 10.4, the Company agrees to install, operate and maintain measurement equipment of suitable capacity and design as is required to measure the volume of gas to be delivered by the Company under this Agreement. The Customer agrees to provide, at its own expense, (i) any and all housing reasonably required by the Company for the protection of measurement equipment and regulating equipment at the Customer's premises used in connection with the delivery of any such gas, and (ii) any electrical or other connections reasonably required for the Company's measurement equipment, including a continuous supply of electrical power at 110 volts; a dedicated, single, voice grade, analog outside telephone line for local and WATTS (800 service) calls; and such other connections as the Company may require from time to time. The measurement and regulating equipment shall be installed at the Customer's premises and the site shall be as agreed between the Customer and the Company. All such installations of equipment shall be made in accordance with all applicable safety regulations.

10.1.2 Access - Each Party shall have access to and the right to enter the measurement/regulating location at any reasonable time and shall have the right to be present at



the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of measurement equipment.

## 10.2 Examination

10.2.1 Equipment Failure - If the measurement equipment is found to be out of service, or measuring inaccurately, the volume of gas shall be determined by the Company as follows:

- (a) by using the registration of any check meter or meter, if installed and accurately registering; or, in the absence of (a), then;
- (b) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or, in the absence of both (a) and (b), then;
- (c) by estimating the quantity of gas delivered during periods under similar conditions when the meter was registering accurately.

10.2.2 Examination - If requested by the Customer, the Company's measurement 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 such equipment more frequently than once in any nine (9) month period or such other period of time as may be required by Applicable Laws.

10.2.3 Error and Correction - If the measurement equipment is found to be in error by not more than three per cent (3%), the previous recording shall be considered correct but proper adjustments to the meter will be made immediately. However, if the error is greater than three per cent (3%), a correction in billing shall be made in accordance with the *Electricity and Gas Inspection Act*, R.S. 1986, c. E-4 and its regulations as amended from time to time or any other legislation which may succeed the said Act.

## 10.3 Measurement Criteria

10.3.1 All gas delivered shall be measured utilizing equipment which conforms to the regulations prescribed in the "Electricity and Gas Inspection Procedures" dated July, 1998 issued by Measurement Canada, Government of Canada, as amended from time to time.

10.3.2 The measurement unit shall be one cubic metre of gas at a pressure of 101.325 kPa absolute and at a temperature of fifteen (15) degrees Celsius measured or calculated in accordance with the *Electricity and Gas Inspection Act* and its regulations as amended from time to time or any other legislation which may succeed the said Act.

10.3.3 Subject to Applicable Laws, supercompressibility factors shall be applied to gas volume calculations in accordance with A.G.A. Gas Measurement Report No. 3, 1969 edition, and Manual for the Determination of Supercompressibility Factors for Natural Gas, PAR Research Project NX-19, as amended from time to time.

10.4 Gas Transporter Metering - Notwithstanding the foregoing provisions of this Article X, in the case of a dedicated distribution line, the Company may, in its sole discretion, determine to rely solely on the measurement equipment of the Gas Transporter at the Point of Acceptance to measure the volume of gas to be delivered by the Company under this Agreement, and in such event the Parties agree to accept the measurements of such Gas Transporter and the volume of gas so determined for a particular Day shall be deemed to be the volume of gas delivered by the Company to the Customer at the Point of Delivery on such Day.

10.5 Equipment - The title to all service pipes, meters, regulators, attachments and equipment placed on the Customer's premises and not sold to the Customer shall remain with the Company, with right of removal, and no charge shall be made by the Customer for use of premises occupied thereby. The Customer agrees to be responsible for any loss or damage thereto resulting from wilful or negligent acts of the Customer or the Customer's agents or employees or any Person acting under the authority of or with the permission of the Customer.

#### **ARTICLE XI - CURTAILMENT AND SUSPENSION**

11.1 Contingency Curtailment - In the event of actual or threatened inability to deliver the volume(s) of gas contracted for under this Agreement to the Terminal Location due to an Event of Force Majeure affecting the Company, or when curtailment or discontinuance of supply is ordered by a Governmental Authority, the Customer shall, at the direction of the Company, curtail or discontinue use of gas during the period specified by the Company upon notice to the Customer in accordance with the other terms of this Agreement and any applicable terms set forth in Rate 125. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

11.2 Maintenance Curtailment - The Company may be required from time to time to perform maintenance or construction to its facilities which may impact the Company's ability to meet the Customer's requirements, or the Company's obligations, set out in this Agreement. In such event, except in cases of emergency, the Company shall provide the Customer with reasonable notice of the suspension of service (in light of the circumstances relating to the suspension) in accordance with the other terms of this Agreement and any applicable terms set forth in Rate 125. For certainty, unless otherwise set out in Rate 125, in cases of emergency no prior notice or consultation by the Company shall be required to perform any required maintenance or construction, provided the Company shall use reasonable efforts to inform the Customer of the nature, extent and timing of such emergency. In all cases, the Company shall use reasonable efforts to limit the extent and duration of any service interruption hereunder. During any such service interruption, the Customer will be required to pay prorated Demand Charges but such prorating shall not affect any other contracts or agreement for services between the Company and the Customer.

11.3 Physical Suspension of Service - If

- (a) the Customer:
- (i) takes gas at the Point of Delivery in excess of the (A) Hourly Demand, plus, (B) the amount of any Authorized Demand Oerrun Gas, or
  - (ii) fails to deliver gas to the Point of Acceptance for which a Nomination has been provided to the Company,

in either case, to the extent that such excess taking or failure to deliver results in, or is determined by the Company, in its sole discretion acting reasonably, to likely result in, an interruption or interference with the Company's ability to provide services to any other customer of the Company; or

- (b) the Company, in its sole discretion acting reasonably, determines that it is necessary to reduce the load on any gas transmission or distribution pipeline to protect the safety or security of any of its other customers or the integrity of all or any part of the Company's gas distribution system; or
- (c) there occurs an Event of Default or as otherwise contemplated in Article XV,

then the Company shall have the right to curtail, or completely suspend, service under this Agreement in whole or in part for such period of time as is necessary to address such interruption, interference or other necessity, in the sole discretion of the Company acting reasonably. If such a determination is made by the Company, then the Company shall notify the Customer forthwith of the extent and timing of the service curtailment or suspension and the Customer shall comply with such curtailment or suspension requirement. If the Customer fails to comply with the terms of the curtailment or suspension notice, then the Company shall have the right, without any further notification to the Customer, to implement the shut-down protocol referred to in Section 12.3 (or, failing the inclusion of such protocol, the Company's then standard shut-down protocol) and to effect a complete shut-down of the delivery of gas to the Terminal Location. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer as a consequence of the exercise of any of such rights by the Company.

**ARTICLE XII - REPRESENTATIONS, WARRANTIES AND OTHER OBLIGATIONS**

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

- (a) all necessary action has been taken by the Customer to authorize the execution, delivery and performance by the Customer of this Agreement

and this Agreement constitutes a legal, valid and binding obligation enforceable against the Customer in accordance with its terms;

- (b) the Customer will establish and maintain all appropriate operating controls and arrangements such as will allow the Customer to operate the Terminal Location within the parameters established by and set out in this Agreement;
- (c) the Customer will not, at any time, intentionally employ or otherwise use the rates and charges for Unauthorized Supply Overrun Gas or Unauthorized Supply Underrun Gas for the purpose of obtaining gas supply to the Terminal Location;
- (d) the Customer has not, and will not during the Term, make any direct connection to any Gas Transporter or other transmitter or distributor of gas for the delivery or sale, or possible delivery or sale, of gas to or in respect of the Terminal Location;
- (e) the Customer will not construct any gas line to or in respect of the Terminal Location;
- (f) the Customer is not a transmitter or distributor of gas (as contemplated in the OEB Act) and has no application before the OEB to become a transmitter or distributor of gas or for the construction of a gas line to or in respect of the Terminal Location, whether pursuant to Part VI of the OEB Act or otherwise; and
- (g) such other representations, warranties and covenants as are set out in Appendix "A", if any.

12.2 Operation of Facility - The Customer covenants and agrees that throughout the Term it will operate its business in the ordinary course of the type of business operating a similar facility of the size and nature set out in, and substantially in accordance with, the '**Operating Characteristics**' for the Terminal Location as set out in Part 5 of Appendix "A".

12.3 Start-Up/Shut-Down - In any circumstance where the Terminal Location is required, for any reason and at any time during the Term, to commence or cease operation, the Customer and the Company shall comply with the start-up and shut-down protocols as set out in Part 6 of Appendix "A", as the same may be amended from time to time by agreement of the Customer and the Company.

#### 12.4 Adoption of NAESB Standards

12.4.1 Acknowledgement of Standards - Each of the Parties acknowledges and agrees that the NAESB develops and promotes standards for business practices and electronic communication of gas transactions, with a view to simplifying the management of gas across the entire North American pipeline grid.

12.4.2 Amendment to Conform with Standards - The Customer hereby acknowledges that the NAESB may, from time to time, revise or implement standards that conflict with or supplement the provisions of this Agreement. If it becomes necessary for the Company to adopt a recommended standard that conflicts with or supplements the provisions of this Agreement, it shall deliver a notice to the Customer which specifies such standard and sets out the revisions to this Agreement that are necessary to accommodate such standard. The Parties agree that on the thirtieth (30th) day following the delivery of such notice, this Agreement shall be deemed to be amended by the incorporation of the revisions set out in such notice.

12.5 Energy Conversion - Gas delivered to the Customer hereunder shall be converted from energy to volume at the rate published in the Rate Handbook.

12.6 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 or of the Company to any third parties, howsoever caused, resulting from, arising out of or relating to a breach of this Agreement arising out of:

- (a) the Customer taking gas at the Point of Delivery in excess of (i) the Hourly Demand, plus, (ii) the amount of any Authorized Demand Overtake Gas; in each case, to the extent that such excess taking results in an interruption or interference with the Company's ability to provide services to any other customer of the Company; or
- (b) the Customer failing to deliver gas to the Point of Acceptance for which a Nomination has been provided to the Company, to the extent that such failure to deliver results in an interruption or interference with the Company's ability to provide services to any other customer of the Company.

12.7 Commissioning Period – Intentionally Deleted.

### **ARTICLE XIII - FORCE MAJEURE**

13.1 Effect of Force Majeure - Subject to the other provisions of this Article XIII, a Party shall not be liable to the other Party, in respect of such first mentioned Party's obligations under this Agreement (other than the obligations to make payment of money then due) as a result of the inability of the first mentioned Party to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. A delay or interruption in the performance by a Party of any of such obligations due to Force Majeure shall suspend the period of performance of such obligation during the continuance of such Force Majeure.

13.2 Notice and Other Requirements

13.2.1 Initial Notice - Forthwith following a Party becoming or being made aware of an Event of Force Majeure which may impact on any of such Party's obligations, such Party shall notify the other Party of the event and of the manner in which such Party's obligations hereunder will or may be affected; and such Event of Force Majeure shall be deemed to have commenced

when it occurred provided notice is given within six (6) hours of the occurrence, and otherwise when such notice is given.

13.2.2 Efforts to Eliminate - The Party claiming Force Majeure shall, unless such Event of Force Majeure is a strike, lockout or other industrial disturbance, use its best efforts to eliminate such event of Force Majeure.

13.2.3 Subsequent Notice - The Party claiming Force Majeure shall forthwith give notice to the other Party when such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling its obligation to deliver or receive gas as contemplated herein.

13.2.4 Resumption of Obligations - The Party claiming Force Majeure shall proceed to fulfill such Party's obligations which are impacted by the Event of Force Majeure as soon as reasonably possible after such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling such obligations.

13.2.5 Oral Notice - Any notice under this Section 13.2 may be given orally; provided that such notice shall only be effective if it is confirmed the same day in writing by facsimile or as otherwise provided in Section 19.1.

13.3 Definition - In this Agreement, "**Force Majeure**" or "**Event of Force Majeure**" means any cause (A) not reasonably within the control of the Party claiming force majeure, and (B) which by exercise of due diligence such Party is unable to prevent or overcome, and includes the following:

- (a) physical events such as an act of God, landslide, earthquake, storm or storm warning such as a hurricane which results in evacuation of an affected area, flood, washout, explosion, breakage or accident to machinery or equipment or lines of pipe used to transport gas, the necessity for making repairs to or alterations of such machinery or equipment or lines of pipe or inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party's obligations under this Agreement;
- (b) interruption and/or curtailment of firm transportation by a Gas Transporter;
- (c) acts of others such as strike, lockout or other industrial disturbance, civil disturbance, blockade, act of a public enemy, terrorism, riot, sabotage, insurrections or war, as well as physical damage resulting from the negligence of others;
- (d) if the Company provides Load Balancing to the Customer, failure or malfunction of any storage equipment or facilities of the Company; and
- (e) governmental actions, such as necessity for compliance with any Applicable Laws.

13.4 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 Event of Force Majeure and may only be relieved of any applicable charges, if any, relevant to contracted services not available to the Customer as a direct result of the Force Majeure. Any related upstream transportation charges would be the Customer's sole responsibility.

13.5 Force Majeure Declared by Customer - In the event the Force Majeure is declared by the Customer, all demand, commodity and service rates and charges in respect of currently effective Nominations or financial obligations otherwise payable under this Agreement will remain payable to the Company. If any Force Majeure occurs at the Customer's facilities downstream of the Point of Delivery, the Customer will remain obligated to, if applicable, deliver gas at the Point of Acceptance in respect of the then currently effective Nominations.

13.6 Additional Effect of Force Majeure - Except as provided in Section 13.7, and subject to Section 13.8, a Party hereunder shall not be liable to the other Party hereunder for the first mentioned Party's inability to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. In the case of any such inability so caused, then the other Party shall have no claim for damages or specific performance or other right of action against the first mentioned Party.

13.7 Limitations - Notwithstanding any other term of this Article XIII, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure if:

- (a) such Party's inability to perform the obligation was caused by its lack of finances; or
- (b) such Party's inability to perform the obligation was caused by its deliberate act or inaction; or
- (c) such Party failed to comply with Section 13.2 in respect of the Event of Force Majeure.

13.8 Further Limitations - Notwithstanding any other term of this Article XIII, 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) the curtailment of interruptible gas supply; or
- (b) a Force Majeure claimed by a Gas Transporter responsible for the delivery to the Point of Acceptance of gas for which a Nomination has been accepted by the Company hereunder, if (i) another Gas Transporter is capable of delivering such gas to the Point of Acceptance (unless the Party has used its best efforts to contract with such other Gas Transporter and has been unable to do so); or (ii) gas is available in the secondary market from another supplier sufficient to meet the terms of the relevant Nomination; or

- (c) 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; or
- (d) the loss or failure of the Customer's gas supply or depletion of reserves, unless (i) the Force Majeure causing such loss or failure is a result of a natural disaster (such as landslide, earthquake or hurricane) or an act of others (such as terrorism, riot, sabotage, insurrection or war; but not a strike, lockout or other industrial disturbance); and (ii) gas is not available in the secondary market from another supplier sufficient to meet the terms of the Customer's then current obligations under this Agreement.

#### **ARTICLE XIV - FINANCIAL ASSURANCES AND INSURANCE**

14.1 Requirement for Financial Assurances - Contemporaneously with the execution of this Agreement and at any time during the Term, the Company may, upon notice to the Customer, require the Customer to provide the Company, and the Customer shall provide if the Company so requests, financial assurances in respect of the Customer's obligations hereunder in the amount and of the type required by the Company (the "**Financial Assurances**"), all in accordance with the terms set out in Appendix "A". Initially, the Financial Assurances required by the Company to be provided by the Customer shall be those set out in Appendix "A".

14.2 Nature of Financial Assurances - Any request for such Financial Assurances shall be based upon the creditworthiness of the Customer, and shall be consistent with the Company's then current policies relating to customer account security applicable to like customers. Such Financial Assurances may consist of an irrevocable letter of credit in a form and from an issuer acceptable to the Company and/or such other security as the Company may specify. Such Financial Assurances may relate to the Customer's pending or current distribution service with the Company and/or the Customer's requests of the Company for an extension of the Term or for additional payment or gas credit or terms.

14.3 Third Party Credit Review - Without in any way limiting the Company's rights under this Article XIV, the Company may from time to time contract with or use the services of a qualified, arm's length third party to assess, review and/or provide comment on the creditworthiness of the Customer. If such arm's length third party advises the Company that an adjustment to the Financial Assurances is recommended, the Company shall be entitled to rely on such recommendations and require the Customer to adjust its Financial Assurances accordingly pursuant to the foregoing terms of this Article XIV.

14.4 Realization of Financial Assurances - The Company shall be entitled to realize upon any Financial Assurances in the manner and to the extent provided for and set out in this Agreement, including Appendix "A", and such Financial Assurances.

14.5 Requirement for Insurance - Contemporaneously with the execution of this Agreement and from time to time during the Term, the Company may, upon notice to the Customer, require the Customer to provide the Company, and the Customer shall provide if the Company so requests, evidence of insurance carried by the Customer in the amount and of the



type required by the Company (the “**Customer’s Insurance**”), all in accordance with the terms set out in Part 10 of Appendix “A”. Initially, the Customer’s Insurance shall be as set out in Part 10 of Appendix “A”.

#### **ARTICLE XV- EVENTS OF DEFAULT AND REMEDIES**

15.1 Events of Default - In addition to any other events set out in this Agreement which are deemed to be an Event of Default, the occurrence of any one or more of the following events shall be considered an event of default (an “**Event of Default**”):

- (a) if the Customer fails to make any payment due hereunder (other than a payment due pursuant to Part 4(b)(ii) of Appendix “A”) within five (5) days of the due date thereof (whether due in the ordinary course or by acceleration or otherwise);
- (b) if the Customer fails to make a payment due pursuant to Part 4(b)(ii) of Appendix “A”:
  - (i) within five (5) days of the due date thereof (whether due in the ordinary course or by acceleration or otherwise); and
  - (ii) the Company has given a notice to the Customer specifying that (A) the due date for payment has passed and (B) forthwith following the expiry of the cure period referred to in (b)(i) above the Company will suspend any or all of its obligations under this Agreement, then
  - (iii) forthwith following the expiry of such cure period, the Company shall be entitled to suspend any or all of its obligations under this Agreement for a period of fourteen (14) days; and
  - (iv) the Customer fails to make the full amount of such payment within such fourteen (14) day period;
- (c) if the Customer:
  - (i) exceeds the Contract Demand, except as specifically contemplated and provided otherwise, if at all, in Appendix “A”;
  - (ii) fails to perform, observe or comply with any of its other covenants or obligations under this Agreement or any other agreement now or hereafter entered into with the Company, or if any representation or warranty made in this Agreement is or proves to be incorrect or misleading in any material respect at the time made or deemed to have been made (or repeated), and such failure or incorrectness is not remedied within thirty (30) days after written notice of such failure or incorrectness is given to the Customer; or

- (iii) fails to perform, observe or comply with any particular covenant or obligation under this Agreement, or if any representation or warranty made in this Agreement is or proves to be incorrect or misleading in any material respect at the time made or deemed to have been made (or repeated), on more than three (3) occasions in any twelve (12) consecutive calendar month period, notwithstanding that it remedies each such failure or incorrectness within the applicable cure period, if any, provided for; provided that the Company has given a notice of each such failure or incorrectness to the Customer;
- (d) if the Customer fails to provide, maintain, extend or increase any Financial Assurances in accordance with the terms of this Agreement;
- (e) if the Customer, or any of its directors, officers, employees, agents or other representatives, as applicable, fails to obtain or maintain any applicable Required Permit which affects, or which the Company determines acting reasonably may affect, the safety or security of any of the Company's other customers or the integrity of all or any part of the Company's gas distribution system and such Required Permit is not reinstated, obtained or otherwise brought into good standing within thirty (30) days of such failure, provided that during such period prior to the reinstatement, obtaining or otherwise bringing into good standing of such Required Permit, the Company shall be entitled to exercise its rights under Section 15.2(a); or if the Customer, or any of its directors, officers, employees, agents or other representatives, as applicable, fails to obtain or maintain any other applicable Required Permit and such Required Permit is not reinstated, obtained or otherwise brought into good standing within thirty (30) days after written notice of such failure is given to the Customer;
- (f) if the Customer (i) is dissolved; (ii) admits in writing that it is insolvent or its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes, or has instituted against it, any proceeding (whether by way of petition, assignment, notice of motion or otherwise) seeking a judgment of bankruptcy or any other relief under any bankruptcy, insolvency or reorganization or relief from creditors law whether the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) (as amended, supplemented or replaced from time to time), or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it and not consented to by it, such proceeding or petition is not dismissed, discharged or vacated in each case within thirty (30) days of the institution or presentation thereof against it; (v) has a resolution passed for its winding up, official management or liquidation; (vi) seeks or becomes subject to or

consents to the appointment of an administrator, provisional liquidator, conservator, receiver, receiver-manager, trustee, custodian or similar official for it or for all or substantially all its assets or the Terminal Location and, in the case of any such appointment not sought by it and not consented to by it, such appointment remains in effect for a period of thirty (30) days; (vii) has a secured party take possession of all or substantially all its assets or the Terminal Location and maintain such possession for a period of thirty (30) days; (viii) causes or is subject to any event with respect to it which, under applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive) and, in the case of any such event not caused by it and not consented to by it, such event continues for a period of thirty (30) days; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

- (g) if any execution, distress, attachment, sequestration or other enforcement process or judgment or order, 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 including the Terminal Location; and, such execution, distress, attachment, sequestration or other enforcement process or judgment or order shall continue unsatisfied (or shall not have been vacated or discharged) for a period of fifteen (15) consecutive days; or
- (h) if the Customer ceases carrying on business in the ordinary course;

provided that each of the above-noted Events of Default has been inserted for the benefit of the Company and may be waived by the Company in its sole discretion in whole or in part at any time by notice to the Customer, and the Company may, in its sole discretion, extend the period for the cure 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 cure the Event of Default within a reasonable period of time.

15.2 Remedies Upon Event of Default - Upon the occurrence of an Event of Default, the Company may, at its sole option, do any one or more of the following:

- (a) suspend any or all of the services or obligations of the Company or rights of the Customer under this Agreement provided that such suspension shall not relieve the Customer of the obligation to pay all rates and charges under this Agreement during such suspension;
- (b) exercise any of the rights and remedies of a secured party under this Agreement and under any law then in effect;
- (c) exercise its rights of set-off against any and all property of the Customer in the possession of the Company or its agents;

- (d) liquidate or exercise all or any part of any Financial Assurances then held by or for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer;
- (e) establish an Early Termination Date in accordance with Section 16.3 and terminate this Agreement; and/or
- (f) exercise any other rights or remedies the Company has at law, including bringing an action at law as may be necessary or advisable in order to recover damages and costs.

15.3 Suspension of Company's Obligations - In addition to any other rights or remedies the Company may have under this Agreement or otherwise, the Company shall not be required to provide the services or perform its obligations hereunder, and shall be entitled to suspend such services and obligations, at any particular time, if performance thereof would be in contravention of any Applicable Laws. If the Company suspends its obligations pursuant to this Section 15.3 and such suspension continues for more than ninety (90) consecutive days, then the Parties shall meet to consider and to discuss in good faith and settle whether the Agreement should be terminated or whether the Company should further suspend its obligations, and the effect of same. For certainty, if the parties determine to terminate this Agreement, then the Parties shall in good faith determine what amount, if any, of the Termination Charge the Customer shall pay to the Company.

## **ARTICLE XVI - TERM AND TERMINATION**

16.1 Agreement Term - This Agreement shall be effective from the date hereof and shall continue for the Term.

16.2 Annual Renewal - Each year, on or prior to the Anniversary Date, the Customer and the Company shall agree on the terms and particulars of service for the Terminal Location set out in Appendix "A" for the next following year. If the Customer and the Company are unable to agree thereon prior to the Anniversary Date, then the then current Appendix "A" shall continue to apply pending agreement between the parties and the Termination Date set out in the then current Appendix "A" shall be deemed extended until such date as the parties execute an updated Appendix "A"; provided that the then current Appendix "A" may only be so extended for up to an additional six (6) month period, after which the Termination Date will not be further extended.

16.3 Termination by the Company - If an Event of Default occurs at any time during the Term, the Company may, in its discretion, establish a date, which date shall be not less than five (5) Business Days after delivery of notice to the Customer (an "**Early Termination Date**"), on which this Agreement shall terminate, provided that no such notice is required to terminate this Agreement in the event that the Customer defaults by reason of an Event of Default described in Subsections 15.1(f), (g) or (h).

16.4 Termination by Customer - Subject to the other provisions of this Article XVI, the Customer may terminate this Agreement at any time upon not less than six (6) months prior

notice to the Company (also, an “**Early Termination Date**”), which notice shall set out the Day upon which the termination shall be effective.

#### 16.5 Termination Charge

16.5.1 Amount of Termination Charge - If an Early Termination Date has been established, either by the Company pursuant to Section 16.3, or by the Customer pursuant to Section 16.4, the Customer shall pay to the Company, within ten (10) Business Days of receipt of an invoice from the Company therefor, an amount (the “**Termination Charge**”) calculated in accordance with Part 8 of Appendix “A”.

16.5.2 Use of Security - Upon the establishment of an Early Termination Date, if the Customer fails to pay the Termination Charge in full when required to do so pursuant to the terms of this Section 16.5, the Company may, at its sole option, liquidate or exercise all Financial Assurances then held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer.

16.6 Liquidated Damages - The Parties agree that the Termination Charge constitutes liquidated damages that are a reasonable estimate of the damages or loss to be suffered by the Company as a consequence of early termination and is not a penalty.

16.7 Effects of Termination - Upon the termination of this Agreement, whether at the expiry of the Term or for any reason prior thereto:

- (a) the Company may, in its sole discretion and without any notification to the Customer, implement the shut-down protocol referred to in Section 12.3 (or, failing the inclusion of such protocol, the Company’s then standard shut-down protocol) and effect a complete shut-down of the delivery of gas to the Terminal Location;
- (b) the Customer shall forthwith pay all amounts due and owing to the Company pursuant to the terms of this Agreement; and
- (c) all provisions of this Agreement relating to payments required hereunder shall continue after termination until all such payments have been fully satisfied.

### **ARTICLE XVII – GUARANTEE – Intentionally Deleted.**

### **ARTICLE XVIII- DISPUTE RESOLUTION**

18.1 Mechanism for Resolution of Disputes – All disputes, claims, questions or differences arising out of or in connection with this Agreement, or its performance, enforcement, breach, termination or validity, (each a “**Dispute**”) shall be resolved in the manner set out in this Article XVIII.

18.2 Notice of Dispute - A Party claiming that a Dispute has arisen must give written

notice (a “**Dispute Notice**”) to the other Party specifying the nature of the dispute, the relief sought and the basis for the relief sought.

18.3 Meeting between Parties – Forthwith following delivery of a Dispute Notice, the Parties must commence the process of attempting to resolve the Dispute by referring such Dispute to their respective representatives and shall cause their respective representatives to meet, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to both Parties .

18.4 Binding Arbitration - If the Dispute is not resolved to the satisfaction of the Parties with fifteen (15) Business Days after delivery of the Dispute Notice, then either Party may, upon notice by such Party to the other, at any time thereafter require the Dispute to be resolved by binding arbitration pursuant to this Section 18.4:

- (a) The Dispute shall be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) based upon the following provisions of this Section 18.4.
- (b) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties, or in the event of failure to agree within ten (10) Business Days following delivery of the written notice to arbitrate, each of the Parties shall designate an unaffiliated third person within a further ten (10) Business Days who together shall agree upon and appoint an arbitrator. In the event such unaffiliated third persons fail to appoint the arbitrator within such ten (10) Business Day period, any Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to rule upon the particular matter to be decided.
- (c) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within sixty (60) days of the submission of the Dispute to arbitration.
- (d) After written notice is given to refer any Dispute to arbitration, the Parties will meet within fifteen (15) Business Days of delivery of the notice and will negotiate in good faith any changes in these arbitration provisions or the rules of arbitration which are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the values at risk.
- (e) The arbitration shall take place in Toronto, Ontario, and the language of the arbitration shall be English.
- (f) The arbitration award shall be given in writing and shall be final and binding on the Parties , not subject to any appeal, and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrators’ fees and expenses, the provision of a

reporter and transcripts, reasonable legal fees and reasonable costs of preparation.

- (g) The Parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, the Parties, their counsel and any person necessary to the conduct of the proceeding, except as may lawfully be required in judicial proceedings relating to the arbitration or otherwise or as may be required by Applicable Laws.

## **ARTICLE XIX - GENERAL**

19.1 Notice or Communication - Except as otherwise expressly provided in this Agreement, all notices, directions, authorizations, and other communications of any nature required or permitted to be given hereunder by one Party to the other (in each case, a “**Notice**”) shall be in writing and shall be delivered personally to an officer or other responsible employee of the addressee or sent by courier, by facsimile or by electronic internet communication to the applicable addressee as follows:

- (a) in the case of the Company, to it at:

Courier Address:	Enbridge Gas Inc. 500 Consumers Road North York ON M2J 1P8
Nominations:	Gas Nominations Direct: (780) 420-8850 Fax Number: (780) 420-8533 Attention: Gas Nominations [email: sms@enbridge.com]
Billing and Payment:	Billing Direct: 1 (800) 565-3364 Fax Number: (905) 762-3633 Attention: Key Account Billing Rep
Emergency/Shut-Down:	Emergency Toll Free: 1 (866) 420-6630 Gas Control Direct: (780) 420-8853 Fax Number: (780) 420-8533 Attention: Gas Control [email: gasctrl@enbridge.com]
Legal and Other:	Legal Direct: (416) 495-5868 Fax Number: (416) 495-5994 Attention: Law Department

- (b) in the case of the Customer, to it at the address set out in Part 9 of Appendix “A”,

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 19.1. 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 electronic internet communication. If such day is not a Business Day or if the Notice is received after 1700 EST (at the time of place of receipt) on any Business Day, the Notice shall be deemed to have been sent and received on the immediately following Business Day. The Company shall not be required to accept any communication from a third party which is sent on the Customer's behalf unless the Customer has provided the Company in advance with an authorization in form acceptable to the Company authorizing such third party to act as agent for the Customer and to send communications hereunder on the Customer's behalf.

19.2 Confidentiality - "**Confidential Information**" means any information relating to the terms or performance of this Agreement disclosed by one Party (the "**Disclosing Party**") to the other (the "**Receiving Party**"), whether prior to or after the execution of this Agreement, relating to the business and operations of the Disclosing Party or any of its affiliates (as that term is defined in the *Business Corporations Act* (Ontario)) and the terms and conditions and performance of this Agreement. Neither Party shall disclose any Confidential Information to any other Person (other than such Party's officers, directors, consultants, employees, lenders, project partners, counsel, affiliates (as that term is defined in the *Business Corporations Act* (Ontario)) accountants and other professional advisors and prospective purchasers of any of the rights under this Agreement, or the Ontario Power Authority or any successor thereto, all on a need-to-know basis and all of whom have agreed, or by the nature of their retainer, engagement, employment or relationship to such Party, are required, to keep such information confidential on similar terms, and for whose breach such Party shall be liable to the other Party), except with the consent of the Disclosing Party or in order to comply with the provisions of any Applicable Laws. Further, the Receiving Party shall not use any Confidential Information except in the fulfillment of its rights and obligations under this Agreement. Each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation, provided that all monetary damages shall be limited to actual direct damages and a breach of this section, in and of itself, shall not give rise to a right to suspend performance under, or terminate this Agreement.

### 19.3 Limitation of Liability

19.3.1 Company's Liability - The liability of the Company, and its shareholders, directors, officers, employees and agents, whether founded in tort or breach of contract or otherwise, shall:

- (a) be limited to the loss sustained by the Customer as a result of direct physical damage sustained by the Customer, including reasonable costs of repair and replacement;
- (b) exclude any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties;



- (c) exclude any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract; and
- (d) be limited to the amount set out in Part 11 of Appendix "A", whether claimed individually or in the aggregate with other losses claimed by the Customer or any other customer or customers similarly situated.

19.3.2 Customer's Liability - Except in respect of the Customer's liability under Section 8.5 or Section 12.6 or in respect of any payment obligation of the Customer hereunder, the liability of the Customer, and its shareholders, directors, officers, employees and agents, whether founded in tort or breach of contract or otherwise, shall:

- (a) be limited to the loss sustained by the Company as a result of direct physical damage sustained by the Company, including reasonable costs of repair and replacement;
- (b) exclude any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties;
- (c) exclude any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract; and
- (d) be limited to the amount set out in Part 11 of Appendix "A", whether claimed individually or in the aggregate with other losses claimed by the Company or any other customer or customers similarly situated.

19.4 Survival - Notwithstanding the termination of this Agreement:

- (a) the provisions of Section 19.2 shall survive for ten (10) years;
- (b) the provisions of Section 19.3 shall survive indefinitely;
- (c) the Customer and the Company shall maintain records applicable to this Agreement for a period of six (6) years following termination;
- (d) the Customer shall fulfill all payment and other obligations hereunder, including in respect of the Customer's Cumulative Imbalance Account balance obligations as provided hereunder, and the Company shall have a continuing right to enforce against all Financial Assurances; and
- (e) the Company shall have the continuing right to the use of easements granted by the Customer in favour of the Company for access to the plant, facilities and/or equipment owned by the Company.

19.5 Assignment - This Agreement shall be binding upon the Parties and their respective successors and assigns. The Customer may not assign this Agreement or any of its rights or obligations hereunder in whole or in part without the prior written consent of the

Company, provided that such consent shall not be unreasonably withheld.

19.6 Change of Control – There shall be no Change of Control of the Customer without the prior written consent of the Company, provided that such consent shall not be unreasonably withheld where the Company is satisfied that neither the creditworthiness of the Customer or the Financial Assurances provided hereunder shall be adversely affected by the Change of Control. “**Change of Control**” means any sale, merger, reorganization or other transaction pursuant to which the shareholders or equity holders of the Customer immediately prior to completion of such transaction cease as a result of such transaction to hold at least 51% of the voting securities of the Customer.

19.7 Execution of Documents - This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original, and such counterparts together shall constitute but one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

**IN WITNESS WHEREOF** this Agreement has been executed by the Parties hereto, as of the day and year first above written.

**ENBRIDGE GAS INC.**

[\*]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX “A”**  
**(Non-Dedicated Service)**

**CUSTOMER INFORMATION**

**PART 1 - CONTRACT PARAMETERS**

Terminal Location	Applicable Rate  (item 1)	Contract Demand [m <sup>3</sup> ]  (item 2)	Hourly Demand [m <sup>3</sup> ]  (item 3)	Maximum Contractual Imbalance  (item 4)	Point of Delivery Pressure [kPa]  (item 5)

- (a) Delivery Pressure - In no event shall the Company be obligated to deliver gas pursuant to this Agreement at a pressure which exceeds any maximum allowable operating pressure prescribed or recommended by the Company or any Governmental Authority or under any agreement between the Company and any Gas Transporter(s).

**PART 2 - POINT OF ACCEPTANCE**

Location

- (a) The Parties may agree in writing to alternate Point(s) of Acceptance along the TransCanada Pipelines Ltd. Gas Transporter pipeline. The Company shall offer the Customer such Point(s) of Acceptance as are permitted by the then Rate 125, subject to any terms and conditions set out therein. If the Company agrees to offer an alternate Point of Acceptance to its customers who have contracted for upstream services that require such alternate Point of Acceptance, such alternate Point of Acceptance shall be made available to the Customer, subject to any applicable terms and conditions.
- (b) If TransCanada Pipelines Ltd. is authorized by regulatory order of the National Energy Board to determine that the Point of Acceptance is other than TCPL Enbridge CDA, then the Point of Acceptance shall be such other TCPL Point of Acceptance, unless otherwise agreed between the Parties.

**PART 3 - CONTRACT DEMAND ALTERATION**

- (a) With the Consent of the Company - The Customer may make a request for an increase to the Contract Demand, on either a permanent or temporary basis, in writing not less than six (6) months in advance of the Day on which the Customer wishes the increase to become effective. If the Company determines that: (i) the distribution line and related infrastructure which the Company has installed to service the Terminal Location can accommodate the requested additional Contract Demand, and (ii) that such increase will not detrimentally impact the Company's local distribution facilities or the distribution of gas to its other customers, the Company will consent to such increase, subject to any terms and conditions which the Company may reasonably require (including but not limited to a change to the Point of Delivery Pressure, if required).
- (b) Due to Unauthorized Demand Overrun Gas -
- (i) If the Customer's gas consumption exceeds:
- A. either:
- I. the Contract Demand on any Day, or
- II. the Hourly Demand in any hour of any Day,
- plus,
- B. the amount of any Authorized Demand Overrun Gas, such gas shall be deemed to be "**Unauthorized Demand Overrun Gas**".
- (ii) In any instance of the occurrence, or use of, or deemed taking of Unauthorized Demand Overrun Gas, the Contract Demand will be automatically adjusted upward to equal: the actual hourly peak gas consumption of the Customer on the Day in which the applicable Unauthorized Demand Overrun Gas was consumed, multiplied by 24 (the "**New Contract Demand**"). The establishment of a New Contract Demand shall establish a corresponding: (A) new Hourly Demand, and (B) new Maximum Contractual Imbalance.
- (iii) The charges applicable to the consumption of Unauthorized Demand Overrun Gas shall apply for a period (the "**Alteration Period**") equal to:
- A. the period commencing at 10:00:00 a.m. EST on the Anniversary Date of the Contract Year in which the applicable Unauthorized Demand Overrun Gas was consumed and continuing until 9:59:59 a.m. EST on the Day in which such Unauthorized Demand Overrun Gas was consumed (the "**Prior Alteration Period**"); and

- B. the period commencing at 10:00:00 a.m. EST on the Day after the Day in which the applicable Unauthorized Demand Overrun Gas was consumed and continuing until 9:59:59 a.m. EST on the next following Anniversary Date (the "**Future Alteration Period**").
- (iv) In the event the Customer consumes Unauthorized Demand Overrun Gas, the Customer shall pay to the Company charges equal to:
- A. in respect of the Prior Alteration Period, the New Contract Demand, multiplied by the monthly Demand Charge (as set out in Rate 125), and further multiplied by 120%; and
- B. in respect of the Future Alteration Period, the New Contract Demand, multiplied by the monthly Demand Charge (as set out in Rate 125), and further multiplied by 120%.
- In addition, the Customer must comply with such other provisions, if any, as are set out in Rate 125.
- (v) The New Contract Demand shall apply for the duration of the Future Alteration Period. Except as otherwise set out herein or in Rate 125, the New Contract Demand, and adjusted Hourly Demand and Maximum Contractual Imbalance, shall not apply to the Prior Alteration Period.
- (vi) Following receipt of an invoice therefor, the Customer shall pay to the Company all charges, as specified herein and in Rate 125, applicable to the consumption of Unauthorized Demand Overrun Gas.
- (c) Request in Excess of Authorized Demand Overrun Days Permitted in Rate 125 - In the event the Customer has made a request for Authorized Demand Overrun Gas on five (5) Days in any Contract Year (or such other number of days as set out in Rate 125), any further such request made during such Contract Year shall be treated as Unauthorized Demand Overrun Gas and the terms of Subsection (b) above shall apply to such Unauthorized Demand Overrun Gas and shall establish a 'New Contract Demand' for the Alteration Period set out in Subsection (b) above. For certainty, in such instance, all of the charges set out in Subsection (b) above during the Alteration Period shall be payable by the Customer to the Company.
- (d) Contract Demand Limit - Event of Default - Notwithstanding any other terms in this Agreement or in Rate 125, the Company shall not be obligated to deliver gas pursuant to this Agreement for any new Contract Demand or Hourly Demand (including a New Contract Demand and new Hourly Demand contemplated under this Agreement) which exceeds the Contract Demand or Hourly Demand set out in Part 1 of this Appendix "A" by more than 10%. If, at any time during the Term, the Customer exceeds the Contract Demand or Hourly Demand set out in Part 1 of this Appendix "A" by more than 10%, the Customer shall be deemed to be in material breach of this Agreement and such material breach shall constitute

an Event of Default for the purposes of Section 15.1(c)(i), without any opportunity to cure and the Company shall be entitled to exercise any of its remedies set out in Section 15.2. For greater certainty, if the Customer's gas consumption exceeds the Contract Demand or Hourly Demand set out in Part 1 of this Appendix "A" by less than 10% of the original Contract Demand or Hourly Demand, as the case may be, such excess taking shall not be deemed to be an Event of Default for the purposes of Section 15.1(c)(i).

#### **PART 4 - BILLING AND PAYMENT**

(a) Billing Period

- (i) In respect of the billing for all services, costs and charges payable under this Agreement (including the Demand Charge, Direct Purchase Administration Charge and Authorized Demand Overrun Charges) other than charges for Unauthorized Supply Overrun Gas and Unauthorized Supply Underrun Gas and/or Unauthorized Demand Overrun Gas, the Billing Period shall be a period commencing on the first Day of each calendar month and ending on the first Day of the next following calendar month.
- (ii) In respect of the billing for Unauthorized Supply Overrun Gas and Unauthorized Supply Underrun Gas and/or Unauthorized Demand Overrun Gas, such bills may be rendered forthwith following the charges being incurred or will be included with the Customer's regular monthly bill.

(b) Payment Period

- (i) Payment in full of all bills rendered as contemplated in subparagraph (a)(i) of this Part 4 is due and shall be paid by Customer not more than **seventeen (17)** days following the date on which the relevant bill is rendered.
  - (ii) Payment in full of all bills rendered as contemplated in subparagraph (a)(ii) of this Part 4 is due and shall be paid by Customer not more than **five (5)** days following the date on which the relevant bill is rendered.
- (c) Interest - Any amount to be remitted by the Customer under this Agreement and which is not remitted on or before the relevant due date shall bear interest at the rate set out in the Rate Handbook (currently Part III, Section F), compounded monthly, until the amount, and all interest thereon, has been paid in full.

**PART 5 - CUSTOMER'S OPERATING CHARACTERISTICS**

Type of Facility:	
Operating Scenario:	
Minimum Time for Start-Up [hours]:	
Maximum Fuel Demand Ramping Rate [GJ/minute/minute]:	
Minimum Time for Shut-Down [hours]:	

**PART 6 - START-UP AND SHUT-DOWN PROTOCOLS**

Pursuant to Section 12.3 of the Agreement, the Customer and the Company shall comply with the start-up and shut-down protocols set out in Exhibit 1 attached hereto, as the same may be amended from time to time by prior written agreement of the Parties.

**PART 7 - TERMINATION DATE**

The Termination Date shall be [\*].

**PART 8 - TERMINATION CHARGE**

Not applicable.

**PART 9 - COMMUNICATIONS**

Communications to the Customer shall be directed as follows:

Courier Address:	
Nominations:	
Billing and Payment:	
Emergency/Shut-Down*:	
Legal and Other:	

\*Note: The Customer is required to, and covenants and agrees that it will, monitor the Emergency/Shut-Down contact twenty-four (24) hours per day seven (7) days a week during the Term.

**PART 10 - INSURANCE**

Pursuant to Section 14.5 of the Agreement, the Customer will be required to carry, at all times during the Term, the following insurance coverage:

- (a) The Customer shall, at its cost and expense, take out and maintain for the Term comprehensive commercial general liability insurance covering bodily injury and property damage, including blanket contractual coverage, with a minimum inclusive limit of not less than Ten Million Dollars (\$10,000,000) per occurrence (the "**Required Insurance**").
- (b) The Company shall be named as an additional named insured under the Required Insurance. All of the Required Insurance policies shall contain a provision that the coverage afforded thereunder shall not be modified or cancelled until at least thirty (30) days prior written notice has been given to the Company.
- (c) Upon request of the Company, the Customer shall provide the Company with a certificate of insurance from its insurer(s) or insurance broker evidencing that the Required Insurance is in effect.

The Company shall have the right to review the minimum amount of the Required Insurance from time to time. If the Company determines, acting in a commercially reasonable



manner, that it would be appropriate for the amount of the Required Insurance to be increased or decreased, it shall provide a notice to the Customer to that effect and setting out the revised minimum amount of the Required Insurance. The Customer shall increase or decrease the Required Insurance to the amount set out in such notice within sixty (60) days of receipt of such a notice, and shall provide to the Company the certificate referred to in paragraph (c) above to evidence such adjustment. The Company may require such an adjustment of the minimum insurance amount not more often than once every five (5) years.

**PART 12 - FINANCIAL ASSURANCES**

- (a) Requirement - As of the date of this Appendix "A", the Customer is not required to post Financial Assurances.
- (b) Realization on Financial Assurances - In addition to any other rights in respect thereof set out in the Agreement, the Company shall be able to liquidate or exercise all or any part of any Financial Assurances then held by or for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of the Customer:
  - (i) in respect of any claim for indemnity made by the Company pursuant to Section 8.5 or Section 12.6, and in respect of which the Customer does not dispute the claim or the claim is the subject of a final and binding arbitration decision made pursuant to Article 18; or
  - (ii) if any Financial Assurance then held by or for the benefit of the Company will terminate or expire or otherwise be of no further force or effect, or is to be increased in amount, after a specified date, and at least ten (10) days prior to such date such Financial Assurance is not renewed or extended and increased, if applicable.

- (c) Adjustment of Financial Assurances - The amount and type of the Financial Assurances may be adjusted from time to time in accordance with the provisions of Article XIV and this Appendix "A". Without in any way limiting the foregoing, if, at any time during the Term: (i) the Company has reasonable grounds to believe that the Customer's creditworthiness or performance under this Agreement has or may become unsatisfactory; (ii) there is a material adverse change in market conditions; (iii) there occurs a change in OEB policies or requirements; or (iv) for any other reason set out in this Appendix "A", the Company may provide the Customer with notice requiring the Customer to post additional or increased Financial Assurances in a form, amount and for a duration identified by the Company in a commercially reasonable manner and agreed upon with the Customer. Upon receipt of such notice, the Company and the Customer shall have the period of days specified in the notice to settle and agree upon the form, amount and duration of such additional or increased Financial Assurances. If the additional or increased Financial Assurances are not agreed upon or, if agreed upon, not provided to the Company within the specified period, the Customer shall thereupon be deemed to be in default under this Agreement and the Company shall, in addition to any of its other rights hereunder, thereafter have the option to terminate this Agreement in accordance with the terms hereof.

**PART 13 - ACKNOWLEDGEMENT**

The Customer and the Company acknowledge and agree that this Appendix "A" forms an integral part of, is required to complete, and is incorporated by reference into, the Rate 125 Gas Delivery Agreement entered into between them.

**ENBRIDGE GAS INC.**

[\*]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 1**  
**to Appendix "A"**  
**of the Gas Delivery Agreement – Rate 125**

**START-UP AND SHUT-DOWN PROTOCOLS**

**1. Regular Operational Start-up and Shut-down**

For regular operational start-ups and shut-downs of the Terminal Location, the Customer will:

- (a) follow regular Nomination procedures as required by and set out in the Agreement and Rate 125;
- (b) provide the Company with a day ahead hourly gas consumption forecast and use reasonable efforts to communicate to the Company changes from the original day ahead forecast; and
- (c) promptly notify the Company following receipt of a direction from the Independent Electricity System Operator or any successor thereto, to start-up or shut-down the Terminal Location.

**2. Emergency Shut-down / Suspension**

In the event that either the Company or the Customer requires an emergency shut-down of or suspension of service to the Terminal Location due to an Event of Force Majeure or other situation contemplated in the Agreement or Rate 125, the Party initiating the shut-down / suspension will use reasonable efforts to provide the Company or the Customer, as applicable, with as much notice of the required shut-down / suspension as is reasonably possible in the circumstances, and in any event with such notice, if any, as may be required by the Agreement and/or Rate 125.

**3. Event of Default Suspension**

In the event that the Company determines to suspend service to the Terminal Location pursuant to Article XV of the Agreement, the Company will:

- (a) provide the Customer with notice thereof in accordance with the terms of the Agreement; and
- (b) in addition to the foregoing, provide the Customer with a minimum of one hour prior notice in advance of the actual suspension of service to the Terminal Location.

#### 4. **Communications**

Each of the Company and the Customer shall keep the other Party apprised of the status of a start-up or shut-down of the Terminal Location and/or suspension of service to the Terminal Location in accordance with the Agreement and the terms set out herein. Communications between the Company and the Customer shall be directed:

- (a) in the case of regular operational start-up or shut-down,
  - (i) to the Company, at the contact information set out in Section 19.1 of the Agreement under the heading "Nominations"; and
  - (ii) to the Customer, at the contact information set out in Part 9 of Appendix "A" to the Agreement under the heading "Nominations"; and
- (b) in the case of emergency shut-down / suspension or event of default suspension,
  - (i) to the Company, at the contact information set out in Section 19.1 of the Agreement under the heading "Emergency/Shut-Down"; and
  - (ii) to the Customer, at the contact information set out in Part 9 of Appendix "A" to the Agreement under the heading "Emergency/Shut-Down".