

**Union In-Franchise Contracted Services**

**GENERAL TERMS AND CONDITIONS**

<b>1</b>	<b>NOMINATION REQUIREMENTS FOR IN-FRANCHISE CONTRACTED SERVICES .....</b>	<b>3</b>
<b>1.01</b>	<b>NOMINATION DEADLINE FOR SERVICES REQUIRING UNION TO NOMINATE ON OTHER PIPELINES .....</b>	<b>3</b>
<b>1.02</b>	<b>NOMINATION QUANTITIES (UNITS) .....</b>	<b>3</b>
<b>1.03</b>	<b>COMPRESSOR FUEL .....</b>	<b>3</b>
<b>1.04</b>	<b>UNION’S ACCEPTANCE OF NOMINATIONS .....</b>	<b>3</b>
<b>1.05</b>	<b>CONFIRMATION PROCESS .....</b>	<b>3</b>
<b>1.06</b>	<b>SCHEDULING PROCESS .....</b>	<b>4</b>
<b>1.07</b>	<b>SUBSEQUENT NOMINATIONS .....</b>	<b>4</b>
<b>1.08</b>	<b>PARKWAY CALL .....</b>	<b>4</b>
<b>2</b>	<b>FORCE MAJEURE.....</b>	<b>5</b>
<b>2.01</b>	<b>FORCE MAJEURE NOT AVAILABLE.....</b>	<b>5</b>
<b>2.02</b>	<b>FORCE MAJEURE DECLARED BY UNION .....</b>	<b>6</b>
<b>2.03</b>	<b>FORCE MAJEURE DECLARED BY CUSTOMER .....</b>	<b>6</b>
<b>2.04</b>	<b>APPLICABILITY TO CONTRACTUAL ANNUAL QUANTITY REQUIREMENTS.....</b>	<b>6</b>
<b>3</b>	<b>SUSPENSION AND TERMINATION .....</b>	<b>6</b>
<b>3.01</b>	<b>SUSPENSION OF SERVICE AND TERMINATION OF CONTRACT .....</b>	<b>6</b>
<b>3.02</b>	<b>EFFECT OF TERMINATION.....</b>	<b>7</b>
<b>4</b>	<b>NOTICE .....</b>	<b>7</b>
<b>5</b>	<b>BILLING .....</b>	<b>8</b>
<b>5.01</b>	<b>MONTHLY BILLING .....</b>	<b>8</b>
<b>5.02</b>	<b>RIGHT OF EXAMINATION .....</b>	<b>8</b>
<b>5.03</b>	<b>PAYMENTS.....</b>	<b>8</b>
<i>5.03-1</i>	<i>Payment Date .....</i>	<i>8</i>
<i>5.03-2</i>	<i>Remedies For Non-Payment.....</i>	<i>8</i>
<i>5.03-3</i>	<i>Adjustment for Underpayment or Overpayment.....</i>	<i>8</i>
<b>5.04</b>	<b>FINANCIAL ASSURANCE .....</b>	<b>9</b>
<b>5.05</b>	<b>NON-PAYMENT REMEDY .....</b>	<b>9</b>
<b>6</b>	<b>QUALITY .....</b>	<b>10</b>
<b>6.01</b>	<b>NATURAL GAS QUALITY .....</b>	<b>10</b>
<b>6.02</b>	<b>FREEDOM FROM OBJECTIONABLE MATTER .....</b>	<b>10</b>
<b>6.03</b>	<b>PARTIES’ RESPONSIBILITIES.....</b>	<b>10</b>
<b>7</b>	<b>MEASUREMENT .....</b>	<b>10</b>
<b>7.01</b>	<b>DETERMINATION OF VOLUME AND ENERGY .....</b>	<b>10</b>
<b>7.02</b>	<b>METERING BY UNION, CHECK MEASURING EQUIPMENT.....</b>	<b>10</b>
<b>7.03</b>	<b>OBSERVATION OF MEASUREMENT WORK .....</b>	<b>11</b>
<b>7.04</b>	<b>CALIBRATION AND TEST OF METERS .....</b>	<b>11</b>
<b>7.05</b>	<b>CORRECTION OF METERING ERRORS - FAILURE OF METERS.....</b>	<b>11</b>

<b>8</b>	<b>POSSESSION OF, AND RESPONSIBILITY FOR, GAS</b>	<b>12</b>
8.01	POINT OF RECEIPT AND POINT OF CONSUMPTION CONTROLS	12
8.02	TITLE TO THE GAS	12
8.03	COMMON CARRIER AND INSURANCE	12
8.04	RIGHT TO COMMINGLE THE GAS	12
<b>9</b>	<b>FACILITIES AT CONSUMPTION POINT</b>	<b>12</b>
9.01	CONSTRUCTION, MAINTENANCE AND ENTRY	12
9.02	PROPERTY, EASEMENTS, UTILITIES	12
<b>10</b>	<b>INDEMNITY</b>	<b>13</b>
<b>11</b>	<b>REPRESENTATIONS AND WARRANTIES BY AGENT</b>	<b>13</b>
<b>12</b>	<b>MISCELLANEOUS PROVISIONS</b>	<b>14</b>
12.01	INTERPRETATION	14
12.01-1	Definitions and Industry Usage	14
12.01-2	Expanded Meaning	14
12.01-3	Inconsistency	14
12.01-4	Currency	15
12.01-5	Time	15
12.02	ASSIGNABILITY	15
12.03	PROPER LAW OF CONTRACT	15
12.04	SUCCESSORS AND ASSIGNS	15
12.05	ENTIRE CONTRACT	15
12.06	CONFIDENTIALITY	15
12.07	PRIORITY OF SERVICE	15
12.08	WAIVER AND FUTURE DEFAULT	16
12.09	LAWS, REGULATIONS AND ORDERS	16
12.10	RIGHT TO CONTRACT	16
12.11	SURVIVING OBLIGATIONS	16
12.12	JOINT AND SEVERAL LIABILITY	16
12.13	INVALIDITY OF PROVISIONS	16
12.14	SERVICE CURTAILMENT	17
12.15	UNAUTHORIZED USE OF SERVICES	17
12.16	CONSEQUENTIAL CLAIMS OR DAMAGES	18
12.17	FURTHER ASSURANCES	18
12.18	AMENDMENT	18
12.19	COUNTERPARTS	18
12.20	CHANGES TO SERVICES	18
12.21	OVERRUN IN UNION'S NORTHERN <del>AND EASTERN</del> OPERATIONS AREAS	19
12.21-1	Distribution Overrun	19
12.21-2	Gas Supply Overrun	19
12.22	OVERRUN IN UNION'S SOUTHERN OPERATIONS AREA	20
12.22-1	Distribution Overrun	20
12.22-2	Gas Supply Overrun	21
<b>13</b>	<b>DEFINITIONS</b>	<b>21</b>

## **GENERAL TERMS AND CONDITIONS**

### **1 NOMINATION REQUIREMENTS FOR IN-FRANCHISE CONTRACTED SERVICES**

Customers with contracted Services requiring Nominations to Union must submit Nominations to Union in accordance with Union's nomination provisions. All Nominations shall be submitted by electronic means via Unionline. Union, in its sole discretion, may amend or modify the nominating procedures or Unionline at any time.

Nominations shall be submitted so as to be received by Union in accordance with timelines established by Union, which reflect the North American Energy Standards Board (NAESB) standard nomination cycles, applicable interconnecting transporters' nomination cycles, and Services approved by the Ontario Energy Board. Union will accept Nominations, subject to Section 1.04. Nominations made after the applicable deadline shall not be accepted except at the sole discretion of Union. The nomination cycle timelines are posted on Union's website and the nomination deadlines are provided in Unionline.

#### **1.01 Nomination Deadline for Services requiring Union to Nominate on Other Pipelines**

The Nomination deadline for any contracted services (e.g. exchanges) requiring Union to nominate on upstream pipelines is two (2) hours prior to the close of the nomination window for the Timely Nomination Cycle. These services are only offered on the Timely Nomination Cycle. If nominated after this deadline but before the close of the Timely Nomination Cycle deadline Union will attempt to accommodate on a reasonable efforts basis. Union does not accept changes to the nominated quantities for these services after the close of the Timely Nomination Cycle deadline.

#### **1.02 Nomination Quantities (Units)**

All Services are required to be nominated in whole Gigajoules (GJ's)

#### **1.03 Compressor Fuel**

For Services requiring Customer to provide Compressor Fuel in kind, the nominated fuel requirements will be calculated by rounding to the nearest whole GJ.

#### **1.04 Union's Acceptance of Nominations**

Union will accept Nominations for contracted Services on each of the nomination cycles. The Nomination will be rejected if the activity on the Nomination does not properly balance or if the nominated quantities violate Customer's contractual entitlements.

#### **1.05 Confirmation Process**

The confirmation process validates nominated quantities to flow between interconnecting pipelines to ensure Customers have nominated identical quantities to both pipeline operators. In the case where there is a discrepancy between the nominated quantities and the discrepancy

cannot be resolved with Customer, then the lower quantity will be the confirmed scheduled quantity.

#### **1.06 Scheduling Process**

During the scheduling process, Union compares all of the Nominations to the physical capacity available for the Gas Day in question.

If there is insufficient capacity available to meet all of the nominated quantities, Union will complete scheduling reductions of nominated Interruptible Services.

If Union is unable to completely schedule an Interruptible Service, Customer will be advised of its scheduled quantities no later than the close of the scheduling deadline for the applicable Nomination cycle. Once notified, Customer is, within 30 minutes, required to submit a revised Nomination to meet the scheduled quantity for the Interruptible Service. In order to be accepted, this Nomination must be properly balanced and the nominated quantities must not violate Customer's contractual entitlements. If a revised Nomination is not submitted, Union will, using the contracted Services Customer has available, re-balance the Nomination to match the scheduled quantities.

Scheduling of Firm Services must be nominated on the Timely Nomination Cycle. Nominations for increasing quantities for Firm Services after the Timely Nomination Cycle will be treated as Interruptible Services and will only be scheduled if there is sufficient capacity available.

#### **1.07 Subsequent Nominations**

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

The Unbundled Service requires a valid daily Nomination.

#### **1.08 Parkway Call**

This Section 1.08 is only applicable to Services taken under Rate U2. Union shall advise Customer of the Parkway Call requirement on or before the scheduling deadline for the Timely Nomination Cycle on the Day immediately preceding the Gas Day for which the Parkway Call is required.

After being notified by Union, but no later than the next Unionline deadline for the Gas Day for which the Parkway Call is required, Customer shall provide a revised Nomination to Union, which shall include the entire Parkway Call. If a revised Nomination acceptable to Union is not provided by that deadline or does not include the entire Parkway Call, a Failure to Deliver will be deemed to have occurred, and the Failure to Deliver section in Schedule 2 of this Contract shall apply.

## **2 FORCE MAJEURE**

In the event that either Customer or Union is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Contract then, subject to the provision of this Section 2, the obligations (other than the obligations to make payment of money then due) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.

The party claiming Force Majeure shall give Notice, with full particulars of such Force Majeure, to the other party as soon as possible after the occurrence of Force Majeure.

The party claiming Force Majeure shall also give Notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.

Force Majeure means:

- a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
- b) freezing or failure of wells or lines of pipe; curtailment of firm transportation and/or firm storage by Transporters;
- c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;
- d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
- e) any act or omission by parties not controlled by the party claiming Force Majeure; and
- f) any other similar causes not within the control of the party claiming Force Majeure.

The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

### **2.01 Force Majeure Not Available**

A party claiming Force Majeure shall not be entitled to the benefit of the provisions of Force Majeure if any one or more of the following circumstances prevail:

- a) the Force Majeure was caused by the negligence of the party claiming Force Majeure;
- b) the party claiming Force Majeure failed to make all reasonable efforts (not including litigation, if such remedy would require litigation) to remedy the Force Majeure;
- c) the Force Majeure was caused by lack of funds;

- d) the party claiming Force Majeure did not give Notice required, as soon as reasonably possible after the Force Majeure occurred.

#### **2.02 Force Majeure Declared by Union**

During a Force Majeure declared by Union, Customer will be responsible for commodity charges and will only be relieved of the demand charges applicable to that part of the Services not available to Customer as a result of the Force Majeure. Union will not be responsible for any Transporter charges.

#### **2.03 Force Majeure Declared by Customer**

During a Force Majeure declared by Customer, all demand charges and all commodity charges otherwise payable under this Contract will continue to be payable. Where this Contract includes an Obligation to Deliver Gas, such Obligation to Deliver Gas shall not be relieved under Force Majeure. Union will not be responsible for any Transporter charges.

#### **2.04 Applicability to Contractual Annual Quantity Requirements**

a) The number of Days of Force Majeure will proportionately reduce any minimum annual quantity upon which any minimum bills are determined, subject to the following:

- If the Force Majeure was declared by Union, such reduced minimum annual quantity will not be limited to the minimum quantity required to qualify for the applicable Rate Schedule.
- If the Force Majeure was declared by Customer, such reduced minimum annual quantity will be limited to the minimum quantity required to qualify for the applicable Rate Schedule.

b) Services taken during the period of Force Majeure will be deemed not to have been taken for purposes of determining the applicable minimum annual quantity.

### **3 SUSPENSION and TERMINATION**

#### **3.01 Suspension of Service and Termination of Contract**

In the event of a breach, misrepresentation, non-observance or non-performance by any party to this Contract of any covenant, provision, representation, condition, continuing condition, restriction or stipulation contained in this Contract (including, without limiting the generality of the foregoing, any failure to pay, or any failure to provide financial assurances when required pursuant to the terms of this Contract, or any Failure to Deliver), the party not in default may give written Notice to the defaulting party requiring it to remedy such default.

If the defaulting party fails to fully remedy the default within a period of ten (10) Business Days from receipt of such Notice, (or, in the event of a Failure to Deliver, if the defaulting party has failed to immediately remedy the Failure to Deliver) then, if the Customer is the defaulting party, Union may suspend Services under this Contract. Such suspension shall not relieve Customer from paying any charges payable under this Contract.

If the defaulting party fails to fully remedy such default within a period of ten (10) Business Days from receipt of such Notice, then this Contract may be terminated by Notice from the party not in default.

If either party makes an assignment in bankruptcy, is a party against whom a receiving order is made, or for whom a receiver or monitor has been appointed under a security agreement or by a court or any similar action under any law, the other party may terminate this Contract immediately, except where not permitted by such law.

The rights set forth in this Section 3.01 shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

### **3.02 Effect of Termination**

Notwithstanding the termination of this Contract, each party shall continue to be liable to pay on the terms herein specified any amount accrued and payable up to the time of termination. Termination will be without waiver of any other remedy to which the party not in default may be entitled including breaches of contract, for past and future damages, and losses.

## **4 NOTICE**

All Notices provided for or permitted hereunder (each, a "Notice") shall be in writing and shall be sufficiently given and received if personally delivered or sent by registered mail, charges prepaid, or by Unionline, email, fax or other means of recorded electronic communication to the applicable address, provided that no Notice shall be sent by mail pending any threatened, or during any actual, postal strike or other disruption of postal service.

Customer contact information, as provided to Union, shall be found on the secured portion of Union's website (the secured portion of Union's website is known as Unionline). Union's contact information shall be displayed on the unsecured portion of Union's website.

Any Notice personally delivered shall be deemed to have been received on the date of such delivery. Any communication sent by Unionline, email, fax or other means of electronic communication shall be deemed to have been received on the Business Day on which it is sent. Any communication sent by mail shall be deemed to have been validly and effectively received on the third Business Day following the day on which it is postmarked.

Notwithstanding the above, with the exception of Notice of Interruption, Force Majeure, or Service Curtailment as per Section 12.14 hereof, any Notice received after 5:00 p.m. or on a weekend or a statutory holiday is deemed to be received on the next Business Day.

Notwithstanding the above, nominations shall be made via Unionline, subject to execution of an agreement for use of Unionline and will be deemed to be received on the same Day and same time as sent.

## **5 BILLING**

### **5.01 Monthly Billing**

Each Month, Union shall render a bill for Services and any other charges for the preceding Month. Charges may be based on estimated quantities. If based on an estimate, Union shall provide, in a future Month's billing, an adjustment based on any difference between actual quantities and estimated quantities. In addition to the charges and rates as per the applicable rate schedule, Customer is responsible for any applicable Goods and Services Tax, Harmonized Sales Tax, or other taxes, royalties, charges, duties or levies, (including but not limited to charges under any form of cap and trade, carbon tax, or similar system) imposed currently or subsequent to the execution of this Contract by any legal authority having jurisdiction.

### **5.02 Right of Examination**

Both Union and Customer shall have the right to examine, at any reasonable time, copies of the books, records and charts of the other to the extent necessary to verify the accuracy of any statement, chart or computation made under or pursuant to the provisions of this Contract.

### **5.03 Payments**

#### **5.03-1 Payment Date**

Payment date is identified in the applicable Rate Schedule. If payment date is not identified in a Rate Schedule, it will be as identified on the invoice.

#### **5.03-2 Remedies For Non-Payment**

In the event that Customer fails to pay Union when payment is due, late payment charges as identified in the applicable Rate Schedule and the suspension and termination provisions in Section 3 will apply.

#### **5.03-3 Adjustment for Underpayment or Overpayment**

If a Customer in good faith disputes a bill or any portion thereof, notwithstanding such dispute, Customer shall pay to Union the entire amount set forth in the bill, or such amount as determined by Union, acting reasonably. Together with such payment, Customer shall provide written Notice to Union setting out the portions of the bill that are in dispute, an explanation of the dispute and the amount that Customer believes is the correct amount.

If it is subsequently determined that Customer has been overcharged and Customer has actually paid the bill(s) containing the overcharge then, within thirty (30) calendar days after the final determination, Union shall refund the amount of any such overcharge with Interest.

If it is subsequently determined that Customer has paid less than the full amount of an invoice which has been shown to be correct, Customer shall pay the amount owing, with Interest.



Customer and Union each expressly disclaims and waives any claim or dispute (including those related to amounts charged for Services or quantities of Gas distributed, stored, or transported) that relate to a period that is earlier than 12 Months prior to the date written Notice to the other party of such claim or dispute is asserted. This applies to the extent allowed under law regardless of and whether such claim or dispute is related to a billing error or measurement error or any other error or circumstance whatsoever.

#### **5.04 Financial Assurance**

If at any time during the term of this Contract, Union has reasonable grounds to believe that Customer's creditworthiness under this Contract has become unsatisfactory, then Union may, by written Notice, request financial assurances from Customer in an amount determined by Union in a commercially reasonable manner. Upon receipt of such written Notice, Customer shall have fourteen (14) calendar days to provide such financial assurances.

The financial assurances requested by Union will not exceed the sum of the following:

- a) an amount equal to sixty (60) calendar days of all Services; and,
- b) if Customer holds a temporary capacity assignment from Union of a third party asset (for example, upstream pipeline capacity), an amount equal to the higher of sixty (60) calendar days of all charges for the third party asset, or security equivalent to that which may be required by the third party asset provider as if Customer held the asset directly; and,
- c) if Customer supplies their own Gas, an amount equivalent to the value, as determined by Union, of any current or projected negative Banked Gas Account balance.

Customer may provide Union such financial assurances in the form of cash, letters of credit, guarantees or such other form as may be agreed upon between Customer and Union.

In the event that Customer fails to provide financial assurances as set out above, the termination and suspension provisions in Section 3 shall apply.

Where Customer has provided financial assurances to Union, and the grounds for requesting such financial assurances have been removed so that Customer's creditworthiness under this Contract has become satisfactory, then Customer may request the return of such financial assurances from Union by written Notice. Upon receipt of such written Notice, Union shall have fourteen (14) calendar days to return such financial assurances to Customer.

#### **5.05 Non-Payment Remedy**

If Customer shall be indebted (whether past, present, or future, liquidated, or unliquidated) to Union, under this Contract or any other agreement including one with a third party asset provider, Union has the right to reduce any amount payable by Union to Customer under this Contract by an amount equal to the amount of such indebtedness to Union. As part of this set-off remedy, Union may take title to any or all of Customer's Gas in Union's possession. Such Gas shall be valued at the Day price for Gas at Dawn as listed in Canadian Gas Price Reporter (or equivalent) for the Day of set off.

## **6 QUALITY**

### **6.01 Natural Gas Quality**

In any Month, the minimum average gross heating value of the Gas received by Union from Customer, and delivered to Customer by Union, shall be thirty-six (36) Megajoules per Cubic Metre. Gas shall not contain more than seven (7) milligrams of hydrogen sulphide per Cubic Metre nor four hundred and sixty (460) milligrams of total sulphur per Cubic Metre of Gas, as determined by standard methods of testing.

### **6.02 Freedom from Objectionable Matter**

The Gas received by Union and delivered to Customer hereunder shall be commercially free (at prevailing pressure and temperature in Union's pipeline at the Point of Receipt or Point of Consumption, as the case may be) from bacteria, dust, or other solids or liquids which cause injury to, or interfere with proper operation of the lines, regulators, or meters through which it flows.

### **6.03 Parties' Responsibilities**

If the Gas being received by Union from Customer or delivered by Union to Customer fails at any time to conform to any of the specifications set forth in this Section 6, the party receiving such Gas shall notify the delivering party of such deficiency. The party receiving the Gas may, at its option, refuse to accept receipt of Gas pending correction by the party delivering the Gas. Neither party is responsible for any loss, damage, nor injury resulting from such party's delivery of Gas that does not conform to any specifications set forth in Section 6 except to the extent any such loss, damage or injury arises as a result of such party's gross negligence or wilful misconduct.

## **7 MEASUREMENT**

### **7.01 Determination of Volume and Energy**

- a) The volume and energy amounts shall be determined in accordance with the Electricity and Gas Inspection Act, R.S.C. 1985 c. E-4 (the "Act") and the Electricity and Gas Inspection Regulations, S.O.R 86/131 (the "Regulations"), and any documents issued under the authority of the Act and Regulations and any amendments thereto. Where there is no site specific energy measurement, Union's Average Heat Value will be used to convert volumes to energy.
- b) The supercompressibility factor shall be determined, at Union's discretion, in accordance with either the "Manual for Determination of Supercompressibility Factors for Natural Gas" (PAR Project NX-19) published in 1962 or with American Gas Association's "Transmission Measurement Committee Report No. 8, Nov. 1992".

### **7.02 Metering by Union, Check Measuring Equipment**

Union will install and operate meters and related equipment in accordance with the Act and the Regulations referenced in these General Terms and Conditions.

Customer may install, maintain, and operate, such check measuring equipment as desired, and shall be so installed as not to interfere with the operation of Union's measuring equipment at or near the Consumption Point. This check measuring equipment will be downstream of the Consumption Point and at Customer's own expense.

Where Union has installed heat value measuring equipment at Customer's end use location, the heating value properly measured at this site will be used to convert volume to energy for Gas delivered by Union to Customer.

### **7.03 Observation of Measurement Work**

Union and Customer shall have the option to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment. Each party shall provide reasonable notification to the other party in connection with testing, calibrating or adjusting measuring equipment, to enable the other party to be present if desired.

### **7.04 Calibration and Test of Meters**

The accuracy of Union's measuring equipment shall be verified by Union at reasonable intervals.

If Customer notifies Union that it desires a special test, the expense of any such test shall be borne by Customer if the measuring equipment tested is found to be in error by two per cent (2%) or less. In this event, previous recordings shall be considered accurate, but such equipment shall be adjusted to record as near to absolute accuracy as possible. If the special test shows a percentage of inaccuracy greater than two percent (2%), the expense of the test will be borne by Union and the financial adjustment shall be calculated in accordance with the Act and Regulations thereunder, and any successor statutes and regulations. Union shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) calendar day period.

### **7.05 Correction of Metering Errors - Failure Of Meters**

In the event a meter is out of service, or registered inaccurately, the volume or quantity of Gas shall be determined by Union 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.

## **8 POSSESSION OF, AND RESPONSIBILITY FOR, GAS**

### **8.01 Point of Receipt and Point of Consumption Controls**

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

### **8.02 Title to the Gas**

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

### **8.03 Common Carrier and Insurance**

To further clarify the relationship between Union and Customer, Union is not a common carrier and Union is not an insurer of Customer's Gas.

### **8.04 Right to Commingle the Gas**

Union shall have the right to commingle and use the Gas received under this Contract with Gas owned by Union or others and deliver such commingled Gas to Customers.

## **9 FACILITIES AT CONSUMPTION POINT**

### **9.01 Construction, Maintenance and Entry**

Union may construct on Customer's property (whether owned by Customer or any other party), at each Point of Consumption, the metering stations and facilities required by Union. With notification to Customer (except in cases of emergency where no notification is required), Union employees or agents may, at any reasonable time, enter Customer's property, provided that in all cases, Union's employees or agents agree to abide by Customer's facility security policies and procedures and health and safety policies (provided that they are reasonable and provided by Customer to Union's employees or agent prior to entry to the property).

### **9.02 Property, Easements, Utilities**

Customer agrees that all stations and facilities installed by Union, including the meter station, are the property of Union whether the facilities are on property belonging to Customer or some other party.

Customer grants to Union, on such non-financial commercial terms and conditions as may be agreed upon, any required easements or agreements and undertakes to obtain or execute and deliver to Union such required easements or agreements, to allow Union to have the related use of Customer's land interests which may be reasonably required by Union to facilitate Construction.

In the event that the station at the Point of Consumption requires electrical power circuitry, exclusive telecommunications and/or telecommunications lines, or other utility supply apparatus (“Equipment”), at each or any meter in the station, for telemetry; in addition to telemetry; or for purposes unrelated to telemetry, Customer agrees to provide and pay for all such Equipment and all utilities required (including power and telephone service as specified by Union) for the purpose of serving the Equipment. The exclusive telephone line for each meter must not employ a manual switchboard.

## **10 INDEMNITY**

Each party (the “Indemnifying Party”) hereby agrees to indemnify and save the other party (the “Indemnified Party”) harmless from and against all claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be brought against the Indemnified Party or which Indemnified Party may suffer or incur as a result of, in respect of, or arising out of any of the following:

- a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Indemnifying Party contained in this Contract;
- b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Indemnifying Party contained in this Contract or contained in any document given pursuant to this Contract;
- c) *(Subsection 10(c) is only applicable to Agent or Customer as the Indemnifying Party)* the failure of the Indemnifying Party to satisfy its obligations to end use locations listed in Schedule 3 (where a Schedule 3 is included in this Contract);
- d) *(Subsection 10(d) is only applicable to Agent as the Indemnifying Party)* any dispute arising out of any aspect of the relationship between the Agent and Customer;
- e) any negligence or wilful misconduct of the Indemnifying Party;
- f) all costs and expenses including, without limitation, legal fees, incidental to or in respect of the foregoing.

This indemnity shall survive the termination or expiration of this Contract.

## **11 REPRESENTATIONS AND WARRANTIES BY AGENT**

Agent hereby represents and warrants to Union as follows and confirms that Union is relying upon the accuracy of each of such representations and warranties in connection with the execution of this Contract by Union and the acceptance of its rights and obligations hereunder:

- a) Agent is the duly appointed agent of Customer and, in such capacity, is entitled to enter into this Contract on behalf of Customer and to act on its behalf hereunder;

- b) Union is entitled to rely on anything done or any document signed by Agent on behalf of Customer, in respect of this Contract as if the action had been taken or the document had been signed by Customer; and
- c) payments made by Customer to Union pursuant to invoices shall be made without any right of deduction or set-off regardless of any rights Customer may have against Agent or any rights Agent may have against Customer.
- d) Agent shall be the only person to deliver or receive all Notices, invoices, and payments. Any Notice, invoice, or payment made to Union by Agent will be deemed to be received from Customer. Any Notice, invoice, or payment made by Union to Agent will be deemed to be received by Customer. Union shall not be responsible to communicate to End Users any such Notice, invoice, or payment from or to Agent.

## **12 MISCELLANEOUS PROVISIONS**

### **12.01 Interpretation**

#### **12.01-1 Definitions and Industry Usage**

Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in these General Terms and Conditions, Schedules and/or Rate Schedule. Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the exploration, production, transmission, storage, and distribution or sale of natural gas in Canada have an accepted meaning shall have that meaning.

#### **12.01-2 Expanded Meaning**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- a) words importing the singular shall include the plural and vice versa;
- b) words importing the gender shall include the masculine, feminine and neuter genders; and
- c) references to any statute shall extend to any orders in-council or regulations passed under and pursuant thereto, of any amendment or re-enactment or such statute, orders-in-council or regulations, or any statute, orders-in-council or regulations substantially in replacement thereof.

#### **12.01-3 Inconsistency**

In the event of a conflict among the terms of the (i) Rate Schedules; (ii) the body of the Contract; (iii) Schedules to the Contract; and, (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority as listed.

#### **12.01-4 Currency**

Unless otherwise indicated, all reference to dollars in this Contract shall mean Canadian dollars.

#### **12.01-5 Time**

All references to time in this Contract shall be stated in Eastern Clock Time.

#### **12.02 Assignability**

Neither the rights nor the obligations of Customer under this Contract shall be assignable without the prior written consent of Union. Union's consent may not be unreasonably withheld or delayed.

#### **12.03 Proper Law of Contract**

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario, and the parties to this Contract exclusively attorn to the jurisdiction of the Courts of Ontario.

#### **12.04 Successors and Assigns**

The Contract shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted and lawful assigns.

#### **12.05 Entire Contract**

This Contract constitutes the entire agreement between the parties pertaining to the subject matter hereof. This Contract supersedes any prior agreements, understandings, negotiations or discussions, whether oral or written, between the Parties in respect of the subject matter hereof.

#### **12.06 Confidentiality**

Except for credit purposes, unless the Parties to this Contract otherwise expressly agree in writing, the terms of this Contract will remain strictly confidential except as otherwise required by applicable law or by any competent regulatory body or court of competent jurisdiction.

#### **12.07 Priority of Service**

Despite any other provision of this Contract, when the use of Gas or Service is curtailed or restricted, by order of any authorized government agency, or by Force Majeure, Customer shall, in accordance with the direction of Union, curtail or discontinue use of Gas or Service during the period in which such Gas or Service is so jeopardized. Union shall not be liable for any loss of production or for any damages whatsoever by reason of such curtailment or discontinuance or because of the length of advance Notice given directing such curtailment or discontinuance. However, Union shall use its reasonable efforts to provide Notice as soon as possible to Customer, of such curtailment or discontinuance of Gas or Service as aforesaid.

#### **12.08 Waiver and Future Default**

No waiver by either Union or Customer of any one or more defaults by the other in the performance of any provisions of this Contract, nor any waiver by either Union or Customer in the enforcement of any right under this Contract, shall operate or be construed as a waiver of any future default or defaults, or as a waiver of enforcement of any future rights, whether of a like or a different character.

#### **12.09 Laws, Regulations and Orders**

This Contract and the respective rights and obligations of the Parties hereto are subject to all present and future valid laws, statutes, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction. This Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency, which affects any of the provisions of this Contract.

#### **12.10 Right to Contract**

Customer hereby represents and warrants to Union that it or its Agent has the sole right to enter into this Contract for each of the Points of Consumption, for the term of this Contract.

#### **12.11 Surviving Obligations**

Despite the termination or expiry of this Contract, the following defined provisions shall remain in full force and effect in accordance with their terms and shall survive termination or expiry. The term of the survival shall be for the period referenced in this section.

- a) confidentiality as outlined in Section 12.06
- b) liability and Gas balancing obligations to the extent any liabilities and Gas balancing obligations have accrued prior to the date of termination or expiry of this Contract, and may continue as a result of an event occurring prior to the termination or expiry of this Contract (for the period until all liabilities and Gas balancing and reconciliations have been completed)
- c) settlement of accounts; rights to set off; calling any Letter of Credit; collecting on any security (for the period until all accounts have been settled).

#### **12.12 Joint and Several Liability**

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

#### **12.13 Invalidity of Provisions**

If any of the provisions of this Contract are invalid, illegal or unenforceable in any respect, the validity or legality of enforceability of the remaining provisions shall not in any way be affected.



#### **12.14 Service Curtailment**

Union may be required from time to time to perform Construction to its facilities, which may impact Union's ability to meet Customer's requirements. In such event, Union shall have the right to suspend any Service in whole or in part but will use reasonable efforts to determine a mutually acceptable period during which such Construction will occur and also to reasonably limit the extent and duration of any impairment. Union shall provide at least fifteen (15) calendar days Notice (except in cases of emergency, in which event it may be done immediately with Notice provided as soon as reasonably possible afterwards) to Customer of the extent that Union's ability to provide Service may be impaired. During any such curtailment, Customer will be relieved of the demand charges for Services directly related to the said curtailment, but commodity and proportionate demand charges for Services available to Customer will be payable.

#### **12.15 Unauthorized Use of Services**

Subject to Section 1.07, where Union is unable to completely or partially schedule Interruptible Service during periods of peak demand or for causes which require the reduction of load on any part of Union's Gas transmission or distribution system, such Service shall be subject to discontinuance of use by Union upon Notice, given in accordance with these General Terms and Conditions. Union shall have the sole right and discretion to give Notice to discontinue use. Each discontinuance of use shall be referred to as an "Interruption" and the applicable period referred to as the "Interruption Period".

Customer shall comply with any Notice of Interruption provided by Union to Customer and shall discontinue its use of Interruptible Gas supplied or transported by Union for the Interruption Period. If the Customer fails to comply with Union's Notice, then (a) such failure shall constitute an Event of Default; and (b) Union shall have the right to immediately and without further Notice to the Customer, suspend the delivery of Gas to the Consumption Point. Subject to Section 9 hereof, Customer hereby expressly and irrevocably consents to Union and its representatives entering onto the property of the Customer, for the purpose of enforcing Union's rights under this agreement, including accessing Union's equipment to physically suspend the delivery of Gas to the Consumption Point.

Customer shall be deemed to have failed to comply with Union's Notice in accordance with this section if, during the Interruption Period, any Gas is consumed in excess of Customer's Firm Service. In such circumstances, during the course of the Interruption Period, Union shall be entitled to suspend delivery of Gas to the Consumption Point under this section even where the Customer is also receiving Service which is not Interruptible.

For clarity, Union would only exercise its ability to suspend delivery of Gas to Customer during an Interruption Period when Union, acting reasonably, has determined there is a risk to system integrity.

If the Customer has not complied with a Notice from Union in respect of an Interruption, the Customer shall reimburse Union for all of Union's costs of suspending delivery of Gas to the Consumption Point including charges identified in the Rate Schedules as well as any direct

damages resulting from exceeding contract parameters and not complying fully with any Notice or direction.

If Customer failed to comply during an Interruption Period in breach of a Notice as contemplated herein, Union shall, notwithstanding any other term of this Contract, have the right to give Notice to suspend all Services to Customer, and terminate this Contract at a future date, pending the negotiation of a new Contract for Services which Customer qualifies for.

The Customer acknowledges and agrees that it can accommodate any total or partial Interruption of Gas by Union as contemplated in this section and that Union shall have no liability of any loss arising from any such Interruption of Service.

#### **12.16 Consequential Claims or Damages**

Neither party shall be responsible for any consequential, incidental, special nor indirect damages howsoever caused, including, without limitation, loss of profits, loss of earnings, business interruption losses, cost of capital or loss of business opportunities. This provision shall survive the termination or expiration of this Contract.

#### **12.17 Further Assurances**

Each party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents, and assurances as may reasonably be requested for the carrying out and performance of this Contract.

#### **12.18 Amendment**

Union may from time to time incorporate updates to Schedule 2 and/or these General Terms and Conditions which are intended to be applicable to all of Union's customers on non-discriminatory basis. Union will notify Customer no less than sixty (60) calendar days prior to the effective date of the update and post the update on Union's website. If, ten (10) Business Days prior to the effective date, Customer has not provided Notice to Union objecting to the updates, the Customer will be deemed to have accepted the revised Schedule 2 and/or these General Terms and Conditions, as the case may be, which shall, as of the effective date, apply to this Contract. If Customer has provided Notice objecting to such revision, Union and Customer shall use reasonable efforts to negotiate an accommodation, failing which the updates shall not apply to this Contract.

#### **12.19 Counterparts**

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

#### **12.20 Changes to Services**

Any changes to Services are subject to Union having the facilities on its system, and, where applicable, capacity or Services contracted with third parties.

## 12.21 Overrun in Union's Northern ~~and Eastern~~ Operations Areas

### 12.21-1 Distribution Overrun

If, on any Day, Customer consumes Gas in excess of the sum of:

- a) Firm Transportation Service Contract Demand, if applicable; plus,
- b) Firm Sales Service Contract Demand, if applicable; plus,
- c) Firm Bundled Transportation Service Contract Demand, if applicable; plus,
- d) The uninterrupted contracted quantity of Rate 25 Large Volume Interruptible T-service, if applicable; plus,
- e) The uninterrupted contract quantity of Rate 25 Large Volume Interruptible Utility Sales Service if applicable,

then such excess shall be deemed Overrun and charged to Customer as either Authorized or Unauthorized Overrun.

#### Authorized Overrun

Overrun may be authorized if requested in writing by Customer and agreed to by Union in advance of the Day, subject to Union's sole discretion. If Union specifically provides prior written authorization to Customer to exceed the quantities identified in Schedule 1, such excess quantity shall be deemed Authorized Overrun. Customer shall be charged the delivery charge for Rate 25 Sales Service as defined in Schedule 1.

#### Unauthorized Overrun

Any Overrun quantity not authorized by Union shall be deemed Unauthorized Overrun. Customer shall be charged 150% of the maximum delivery charge identified in the Rate 25 Rate Schedule, in addition to any other remedies Union may pursue.

Any Overrun quantity when a Notice of Interruption is in effect (including any quantity which had been previously considered Authorized Overrun), shall be deemed Unauthorized Overrun. Customer shall be charged the Unauthorized Overrun Non-Compliance Rate as identified in the applicable Rate Schedule, in addition to any other remedies Union may pursue.

### 12.21-2 Gas Supply Overrun

If, on any Day, Customer consumes Gas in excess of the sum of:

- a) The quantity of Firm T-service delivered to Union, if applicable, plus
- b) The quantity of Rate 25 Large Volume Interruptible T-service delivered to Union, if applicable; plus,
- c) Firm Sales Service Contract Demand, if applicable; plus,
- d) Firm Bundled Transportation Service Contract Demand, if applicable; plus,

- e) The uninterrupted contract quantity of Rate 25 Large Volume Interruptible Utility Sales Service if applicable,

then such excess shall be deemed Overrun and purchased from Union by Customer as either Authorized Overrun or Unauthorized Overrun.

#### **Authorized Overrun**

Overrun may be authorized if requested in writing by Customer and agreed to by Union in advance of the Day, subject to Union's sole discretion. If Union specifically provides prior written authorization to Customer to exceed the quantities identified in Schedule 1, such excess quantity shall be deemed Authorized Overrun. Customer shall be charged the Gas Supply Charge for Rate 25 Utility Sales provided in Schedule "A" (Union North Gas Supply Charges) for the appropriate Delivery Area, if applicable.

#### **Unauthorized Overrun**

Any Overrun quantity not authorized by Union shall be deemed Unauthorized Overrun. In addition to any other remedies Union may pursue, Customer shall be charged the greatest of:

1. the highest daily cost of Gas at Dawn, Parkway, Niagara, Empress or Iroquois in the month the Overrun occurred or the month following, as published in the Canadian Gas Price Reporter ("CGPR") or equivalent as determined by Union plus all applicable costs associated with transporting such overrun to the applicable Delivery Area;

or,

2. Union's Dawn Reference Price as approved by the Ontario Energy Board for the Day the Overrun occurred plus all applicable costs associated with transporting such overrun to the applicable delivery area;

or,

3. the Gas Supply Charge for Rate 25 Utility Sales provided in Schedule "A" (Union North Gas Supply Charges) for the appropriate Delivery Area for the Day the Overrun occurred.

### **12.22 Overrun in Union's Southern Operations Area**

#### **12.22 -1 Distribution Overrun**

If on any Day, Customer consumes Gas in excess of the sum of:

- a) Firm Contract Demand, if applicable; plus
- b) Uninterrupted Interruptible Contract Demand, if applicable

then such excess shall be deemed Overrun and charged to Customer as either Authorized Overrun or Unauthorized Overrun.

### **Authorized Overrun**

Overrun may be authorized if requested in writing by Customer and agreed to by Union in advance of the Day, subject to Union's sole discretion. If Union specifically provides prior written authorization to Customer to exceed the quantities identified in Schedule 1, such excess quantity shall be deemed Authorized Overrun. Customer shall be charged the Authorized Overrun charge as per the applicable Rate Schedule.

### **Unauthorized Overrun**

Any Overrun quantity not authorized by Union shall be deemed Unauthorized Overrun. Customer shall be charged the Unauthorized Overrun charge as per the applicable Rate Schedule, in addition to any other remedies Union may pursue.

Any Overrun quantity when a Notice of Interruption is in effect (including any quantity which had been previously considered Authorized Overrun), shall be deemed Unauthorized Overrun. Customer shall be charged the Unauthorized Overrun Non-Compliance Rate as identified in the applicable Rate Schedule, in addition to any other remedies Union may pursue.

### **12.22-2 Gas Supply Overrun**

If a Utility Sales Customer incurs Distribution Service Overrun, regardless of whether it is Authorized Overrun or Unauthorized Overrun, Customer shall be charged the total Gas Supply Charge for Utility Sales provided in Schedule "A" (Gas Supply Charges) for all Gas Supply quantities deemed to be purchased.

## **13 DEFINITIONS**

Except where this Contract expressly states another meaning, the following definitions, when used in these General Terms and Conditions or in this Contract, shall have the following meanings:

**"Agent"** means such person as appointed by Customer as its agent to enter into the Contract on behalf of the Customer and to act on Customer's behalf hereunder.

**"Average Heat Value"** means the average forecasted heating value of all Gas to be received by Union for the applicable Delivery Area for the applicable period.

**"Authorization Notice"** means the written approval provided by Union in response to Customer's request for a short-term amendment to certain contract parameters or additional Services. Such Authorization Notice shall specify the approved amended parameters and the term for the amendment.

**"Business Day"** means any day upon which Union's head office in Chatham, Ontario, is normally open for business.

**"Bundled Service"** means a Service provided by Union under the Gas Distribution Contract and/or the Bundled T Gas Contract without daily Nominations at the

Consumption Point.

**“Bundled T”** means the Bundled T Gas Contract with Union under which Customer receives Receipt Services.

**“Compressor Fuel”** means an amount of Gas specified by Transporter to be supplied by a shipper as a fuel source for Transporter’s pipeline compressors.

**“Construction”** means constructing, maintaining, removing, operating and/or repairing Union’s facilities for the purpose of commencing, maintaining, or discontinuing deliveries of Gas to Customer.

**“Contract”** means the contract entered into between Union and Customer to which these General Terms and Conditions, Rate Schedules and Schedules apply, and into which they are incorporated by reference.

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

**“Contract Year”** means a period of twelve (12) consecutive Months beginning on the Day of First Delivery and each anniversary date thereafter unless mutually agreed otherwise.

**“Cubic Metre”** (“m<sup>3</sup>”) means the volume of Gas which occupies one cubic metre when such Gas is at a temperature of 15 degrees Celsius, and at an absolute pressure of 101.325 kilopascals.

**“Customer”** shall have the meaning as defined in this Contract.

**“Daily Contract Quantity”** (“DCQ”) means that portion of the daily parameters as set out in Schedule 1, being a quantity of Gas which Customer must deliver to Union on a Firm basis.

**“Daily Variance Account”** (“DVA”) means the account used to manage imbalances between nominated supply, nominated storage activity and consumption for customers with an Annual Firm Storage Space based on Contract Demand multiple of 10 .

**“Day”** means Gas Day.

**“Day of First Delivery”** means the date the Service, obligations, terms and conditions of the Gas Distribution Contract commence, as set out in its Schedule 1.

**“Day of First Receipt”** means the date the Service, obligations, terms and conditions of the Bundled T commence, as set out in its Schedule 1.

**“Delivery Area”** means the receipt zone(s) of Union (Manitoba, Western, Northern, Sault Ste. Marie, Central, North Central or Eastern Delivery Areas) which are defined as the

delivery zone(s) of TCPL for service under its applicable toll schedules.

**“Delivery Service”** means the transportation of Gas by Union to storage or the Consumption Points.

**“Distribution Service”** means any combination of Delivery Service and Storage Service.

**“End User”** means the ultimate user of the Gas in Union’s franchise area.

**“Equipment” is as defined in Section 9.02 of this General Terms and Conditions.**

**“Failure to Deliver”** means the circumstance where Customer is obligated to deliver a quantity of Gas to Union, and all or a portion of the said quantity is not received by Union at the Points of Receipt.

**“Firm”** means any Services not subject to interruption or curtailment except under sections titled Force Majeure; Service Curtailment; and Priority of Service of these General Terms and Conditions.

**“Firm Entitlements”** means the quantity of Gas as set out in Schedule 1 of the Unbundled Service contract which Customer will nominate and deliver to Union and Union shall receive at each contracted Receipt Point.

**“Firm Hourly Quantity”** means the maximum quantity of natural gas that may flow during any hourly period when a Notice of Interruption is in effect within a Day.

**“Force Majeure” is as defined in Section 2 of this General Terms and Conditions.**

**“Gas”** means Gas as defined in the Ontario Energy Board Act, 1998, as amended, supplemented or re-enacted from time to time, which may be commingled supplies.

**“Gas Day”** is as defined by the North American Energy Standards Board (“NAESB”).

**“Interruptible”** means any Services subject to interruption, after being notified by Union.

**“Interruption” is as defined in Section 12.15 of this General Terms and Conditions.**

**“Interruption Period” is as defined in Section 12.15 of this General Terms and Conditions.**

**“Interest”** means a rate equivalent to the prescribed interest rate for Ontario Energy Board approved deferral and variance accounts as posted on the Ontario Energy Board’s website.

**“Joule” (J)** means the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force. The term “Megajoule” (MJ) shall mean 1,000,000 Joules. The term “gigajoule” (GJ) shall mean 1,000,000,000 Joules.

“**Month**” means a period beginning at 10:00 a.m. (Eastern Clock Time) on the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

“**Nomination**” means a request to Union for a Service in accordance with Union’s nomination provisions.

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

“**Northeast Zone**” means Union’s NDA, NCDA and EDA on TCPL’s Canadian Mainline system.

“**Northwest Zone**” means Union’s WDA, SSMDA and MDA on TCPL’s Canadian Mainline system.

“**Notice**” is defined in Section 4 of this General Terms and Conditions.

“**Obligated**” means that quantity of Gas which Customer is committed to deliver to Union on a Firm basis at the Points of Receipt.

“**Parkway Call**” is defined in Section 1.08 of this General Terms and Conditions

“**Points of Consumption**” or “**Consumption Points**” means, unless otherwise specified in this Contract, the outlet side of the Union measuring equipment located at Customer’s or End User locations as specified in Schedule 1 or Schedule 3, as applicable.

“**Rate Schedule**” means the Ontario Energy Board approved rate schedule applicable to the Service being provided, (including schedules attached thereto), or such other replacement rate schedule as approved by the Ontario Energy Board from time to time.

“**Receipt Service**” means the approved receipt of Gas from Customer to Union at the Points of Receipt.

“**Receipt Point**” or “**Points of Receipt**” shall mean the points listed on Schedule 1 of this Contract where Union may receive Gas from Customer.

“**Schedules**” means the schedules attached to and forming part of this Contract.

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

“**Service(s)**” means Receipt, Delivery or Storage Service as defined herein.

“**Storage Service**” means the space and deliverability service for storage under either Bundled Service or Unbundled Service.

“**TCPL**” means TransCanada PipeLines Limited.



“**Timely Nomination Cycle**” means the first nomination cycle for Union’s Gas Day.

“**Transporter**” means the transmission company that transports the Gas to the Receipt Point.

“**Unbundled Service**” means a Service provided by Union under which Customer will nominate and balance daily for Receipt, Storage and Delivery Services.

**“Union” means Enbridge Gas Inc. operating as Union Gas.**

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“**Unionline**” means Union’s electronic web based system for Customer and Union to interact electronically, including but not limited to nominating and information exchange.

“**When Available**” means any interruptible Service that is available based on Union’s sole discretion after Firm and Interruptible Services have been exhausted and is priced at the interruptible rate in the applicable Rate Schedule.

“**Western**” means the points of receipt on the TCPL system where Union is able to receive Gas.

“**Year**” means a period of 365 days; provided, however, that any such Year, which contains a date of February 29, shall consist of 366 days.