

THIS FINANCIAL BACKSTOPPING AGREEMENT made as of the XX day of _____, 2XXX

BETWEEN:

UNION GAS LIMITED, a company existing under the laws of the Province of Ontario,
(hereinafter referred to as “**Union**”)

- and -

[insert name of shipper], a company existing under the laws of _____,
(hereinafter referred to as “**Shipper**”)

WHEREAS Shipper has participated in an Open Season held by Union and is one of a group of shippers that have requested and entered into agreements with Union for the provision by Union of transportation services requiring all or a portion of the Expansion Facilities (collectively, the “**Open Season Shippers**”);

AND WHEREAS Union and Shipper have entered into a Precedent Agreement dated [Month Day, Year] (the “**Precedent Agreement**”) and an associated firm transportation contract M12/C1XXX, dated [Month Day, Year] (the “**Contract**”), for transportation service on Union’s pipeline system;

AND WHEREAS pursuant to the Precedent Agreement, Expansion Facilities, as defined therein, must be constructed in order to enable Union to provide the required transportation service for Shipper and potentially other Open Season Shippers by the Commencement Date, as set out in the Contract;

AND WHEREAS the conditions precedent for the benefit of Shipper outlined in Article XXI, Section 2 of Schedule “A2010” of the Contract and Section 3.2 of the Precedent Agreement (if any) (the “**Shipper Conditions**”) must be satisfied or waived by Shipper prior to the applicable date(s) provided in the Contract and the Precedent Agreement, as applicable, (each date a “**Shipper Conditions Precedent Date**”);

AND WHEREAS the Contract and Precedent Agreement provide for certain conditions precedent for the benefit of Union;

AND WHEREAS Union is currently engaging in development and construction activities related to the Expansion Facilities and Shipper has agreed to financially indemnify Union, subject to certain limitations as provided herein, for Shipper’s share of Pre-Service Costs, as defined hereinafter;

THIS CONTRACT WITNESSETH that in consideration of the foregoing and mutual covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS

“**Cancelled Facilities**” means that portion of the Expansion Facilities not built as a result of Union’s decision pursuant to the provisions of Subsection 3.a. herein.

“**Indemnity Date**” means [Month Day, Year].

“**Pre-Service Costs**” shall mean Union’s reasonable costs consistent with good engineering and operating practices generally accepted in the industry, incurred by Union, or which have accrued to or will accrue to Union, or which have been allocated to or which will be allocated to Union, or for which Union is contractually obligated to pay, which are incurred on or after the Indemnity Date, in conjunction with its efforts to develop and construct the Expansion Facilities. Pre-Service Costs shall include, but shall not be limited to, those expenditures and/or costs (including cancellation costs, carrying costs, costs to mitigate, third party claims and litigation costs), incurred by Union, or which have accrued to or will accrue to Union, or which have been allocated to or which will be allocated to Union, or for which Union is contractually obligated to pay associated with engineering, construction, materials and equipment, environmental, the obtaining of land rights, regulatory, and/or legal activities, interest during construction, internal overhead and administration (including amounts paid to affiliates for services rendered in accordance with the Affiliate Relationships Code as established by the Ontario Energy Board) and any other costs, expenses, losses, demands, damages and obligations incurred in furtherance of Union’s efforts to develop and construct the Expansion Facilities. All amounts specified in this Financial Backstopping Agreement are in Canadian Dollars.

2. CONSTRUCTION

Unless the context requires otherwise: (a) any capitalized term used herein not specifically defined shall have the definition given to it in the Precedent Agreement or the Contract; (b) the gender (or lack of gender) of all words used in this Financial Backstopping Agreement includes the masculine and feminine; (c) the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (d) “shall” and “will” have equal force and effect; (e) the words “include,” “including,” or “includes” shall be read to be followed by the words “without limitation” or words having similar import; and (f) the word “or” will have the inclusive meaning represented by the phrase “and/or”.

3. TERMS

- a. **Cancelled Facilities, with Precedent Agreement Terminated:** If Shipper fails to satisfy or waive any Shipper Conditions by the associated Shipper Conditions Precedent Date and the Precedent Agreement is terminated in accordance with the terms thereof, and Union, based on such Shipper’s failure, has decided to:
 - i. cancel the development and construction of all of the Expansion Facilities, or
 - ii. cancel the development and construction of a portion of the Expansion Facilities,then such Shipper shall reimburse Union for the Pre-Service Costs pertaining to the Cancelled Facilities.

In addition, in the event that Union has decided to:

- i. cancel the development and construction of all of the Expansion Facilities; or
- ii. cancel the development and construction of a portion of the Expansion Facilities,

based on Shipper's failure to satisfy or waive any Shipper Conditions by the associated Shipper Conditions Precedent Date and the Precedent Agreement is terminated in accordance with the terms thereof AND the similar failure of any other Open Season Shippers to satisfy or waive their shipper conditions by the associated shipper conditions precedent date; then Shipper shall reimburse Union for Shipper's proportionate share (as prorated based on initial contract demand (GJ/d) among the other Open Season Shippers who failed to satisfy or waive their shipper conditions by the associated shipper conditions precedent date and whose transportation services would have required the development and construction of the Cancelled Facilities) of Pre-Service Costs pertaining to the Cancelled Facilities.

b. Union Unable to Meet or Waive Conditions Precedent, with Precedent Agreement Terminated: If Union:

- i. fails to satisfy or waive any of the conditions precedent for its benefit in Article XXI, Section 1 of Schedule "A2010" of the Contract and the Precedent Agreement is terminated in accordance with the terms thereof; or
- ii. fails to satisfy or waive any of the conditions precedent for its benefit set out in Subsection 3.1 in the Precedent Agreement, and the Precedent Agreement is terminated in accordance with the terms thereof,

then Shipper shall reimburse Union for Shipper's proportionate share (as prorated based on initial contract demand (GJ/d) among all Open Season Shippers whose transportation services would have required the development and construction of the Expansion Facilities) of Pre-Service Costs.

c. Union Obligation to Minimize Pre-Service Costs: Union shall use commercially reasonable efforts to minimize all Pre-Service Costs payable by Shipper to Union, including without limitation, mitigating costs by soliciting one or more replacement customers for excess transportation services, if applicable.

d. Shipper's Pre-Service Costs Not to Exceed: Notwithstanding any other provisions in this Financial Backstopping Agreement, Shipper's share of Pre-Service Costs shall not exceed _____ dollars (\$XXXXXX.00).

4. FINANCIAL ASSURANCES

From time to time, Union may request, and Shipper shall provide to Union, the requisite financial assurances reasonably necessary to ensure Shipper's ability to honour the provisions of this Financial Backstopping Agreement in the form and amount reasonably required by Union (the "**FBA Financial Assurances**"). The FBA Financial Assurances, if required, will be as determined solely by Union.

5. INVOICING PROCESS

Upon final determination by Union of any amounts owing by Shipper under this Financial Backstopping Agreement, Union shall provide an invoice to Shipper, with sufficient supporting evidence, reasonably satisfactory to Shipper, justifying the invoiced amount in relation to the Cancelled Facilities, and Shipper shall pay such amounts within fifteen (15) days following Shipper's receipt of any invoices. Shipper acknowledges and understands that the final determination of any amounts owing by Shipper might not be capable of determination until such time as the Expansion Facilities are completed and placed into service. If Shipper fails to pay any invoice in full within the time herein required, interest on the unpaid portion shall accrue from the date such payment is first overdue until payment is made at a rate of interest equal to an effective monthly interest rate of 1.5%, compounded monthly, for an effective annual interest rate of 19.56%, and such interest shall be immediately due and payable.

6. TERMINATION OF AGREEMENT

This Financial Backstopping Agreement shall terminate on the date that the Expansion Facilities are placed into service or the date Shipper has paid all of its invoices (including all applicable interest thereon) pursuant to Section 5 herein, as applicable; provided however, that any rights or remedies that a party may have for breaches of this Financial Backstopping Agreement prior to such termination and any liability a party may have incurred pursuant to the Financial Backstopping Agreement before such termination shall not thereby be released.

7. ESTIMATE OF PRE-SERVICE COSTS

Shipper acknowledges that it has been provided an initial estimate for the Pre-Service Costs (the "**Estimated Pre-Service Costs**") and that the initial estimate is attached at Schedule 1. Union shall provide an update of the Estimated Pre-Service Costs and Shipper's proportionate share of the Estimated Pre-Service Costs within thirty (30) days of the end of each calendar quarter, beginning at the end of the first quarter of [2XXX] in a form similar to Schedule 1. Once Shipper's share of the Pre-Service Costs reach or exceed the amount provided in Subsection 3d. herein, Union is not obligated to send any quarterly updates to Shipper. Shipper and Union acknowledge and agree that the Estimated Pre-Service Costs are estimates provided for information purposes only and that to the extent Shipper's liability pursuant to this Financial Backstopping Agreement is greater than or less than any Estimated Pre-Service Costs (subject to Subsection 3d. herein), Shipper shall be obligated to pay its share of Pre-Service Costs as calculated pursuant to the provisions of this Financial Backstopping Agreement.

8. MISCELLANEOUS

- a. The parties hereto shall not assign this Financial Backstopping Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. This Financial Backstopping Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their permitted successors and assigns. In no event will the assignment of this Financial Backstopping Agreement be permitted unless the Precedent Agreement and Contract are also assigned to the same permitted assignee.

- b. This Financial Backstopping Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and each of the parties shall attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
- c. This Financial Backstopping Agreement was negotiated and prepared by both parties with the advice and participation of counsel. The parties have agreed to the wording of this Financial Backstopping Agreement and none of the provisions hereof shall be construed against one party on the ground that such party is the author of this Financial Backstopping Agreement or any part hereof.
- d. The recitals and representations appearing first above are hereby incorporated in and made a part of this Financial Backstopping Agreement.
- e. This Financial Backstopping Agreement may be executed in multiple counterparts (including by means of facsimile or electronic signature pages), each of which shall be deemed an original and all of which shall constitute one and the same instrument.
- f. A waiver of any default, breach of non-compliance under this Financial Backstopping Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach, non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Financial Backstopping Agreement shall not operate as a waiver of the party's rights under this Financial Backstopping Agreement in respect of any continuing or subsequent default, breach or non-compliance (whether of the same or any other nature).
- g. This Financial Backstopping Agreement, the Precedent Agreement and the Contract reflect the whole and entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the subject matter hereof.
- h. For the period this Financial Backstopping Agreement is in effect, in the event of any conflict between the provisions of this Financial Backstopping Agreement and the main body of the Precedent Agreement and/or the Contract, the provisions of this Financial Backstopping Agreement shall prevail over the main body of the Precedent Agreement and the Contract.

[signature page follows]

IN WITNESS WHEREOF this Financial Backstopping Agreement has been properly executed by the parties hereto by their duly authorized officers effective as of the date first above written.

[insert name of SHIPPER]

UNION GAS LIMITED

Name:

Title:

Name:

Title:

Name:

Title:

Schedule 1

Estimated Pre Service Costs

The following is an estimate provided for informational purposes only and without prejudice:

Customer Proportional Share (based on total allocated volumes)

[insert estimate here]