

PRECEDENT AGREEMENT

THIS PRECEDENT AGREEMENT (“**Precedent Agreement**”) dated this [_] day of [Month], [Year] by and between **Union Gas Limited**, an Ontario corporation (“**Union**”), and [name of shipper], a(n) [jurisdiction] [type of entity] (“**Shipper**”) (Union and Shipper may sometimes be referred to separately as “**Party**” or jointly as “**Parties**” in this Precedent Agreement) witness that:

WHEREAS, Union owns and operates a natural gas transmission system in south-western Ontario, through which Union offers firm transportation services;

WHEREAS, Union intends, subject to Shipper’s execution of this Precedent Agreement, Shipper’s execution of the Transportation Agreement defined below, and Union’s determination of capacity requirements, to own, build and operate any facilities necessary to provide the Transportation Services, proposed to be in service by November 1, 2021 and herein known as the “**Expansion Facilities**”;

WHEREAS, this Precedent Agreement is executed as evidence of Shipper’s binding request for firm transportation service as well as Shipper’s acknowledgement that Union requires the benefit of certain construction and regulatory conditions precedent not contained in the tariff applicable to the Transportation Agreement;

WHEREAS, Shipper acknowledges that Union is relying on Shipper’s commitments and obligations set forth in this Precedent Agreement in order to own, build and operate the Expansion Facilities;

WHEREAS, the design of the Expansion Facilities may change based on the final capacity requirements or project design as determined by Union in Union’s sole discretion, which may result in a reduction in scope or elimination of the requirement for Expansion Facilities;

WHEREAS, Shipper agrees to enter into a transportation agreement whereby Union will provide service and Shipper will receive service in Ontario in accordance with and in the form included in Union’s M12 Rate Schedule (such transportation agreement shall be referred to herein as the “**Transportation Agreement**”); and

WHEREAS, Shipper agrees to enter into a financial backstopping agreement (the “**Financial Backstopping Agreement**”) whereby Shipper agrees to financially indemnify Union for the costs associated with developing and constructing the Expansion Facilities on the terms and conditions contained therein,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Union and Shipper agree as follows:

1.0 Effective Date and Term

This Precedent Agreement shall become effective as of the date first stated above and shall remain in effect until the earlier of: (a) all of the conditions precedent in Section 3.0 have been satisfied or waived by the Party claiming the benefit thereof, or (b) either Union or Shipper exercises their respective termination rights pursuant to this Precedent Agreement.

2.0 Firm Transportation Services

Shipper agrees that it will execute the firm Transportation Agreement necessary to satisfy Shipper's firm transportation requirements under the terms set forth below and in the form attached as Schedule 1[insert contract number]. The Transportation Agreement shall provide firm transportation services including, without limitation, the following terms as described in [insert contract number].

- (a) Contract Demand
- (b) Start and End Dates
- (c) Receipt Point(s)
- (d) Delivery Point(s)
- (e) Demand Charge
- (f) Renewal Rights

Shipper shall be responsible for all charges, pursuant to Union's M12 Rate Schedule, as applicable.

3.0 Conditions Precedent

3.1 The obligations of Union to provide the Transportation Services in the Transportation Agreement are subject to the conditions precedent for Union's benefit in the Transportation Agreement and to the following conditions precedent, which are for the sole benefit of Union and which may be waived or extended in whole or in part in the manner provided for in this Precedent Agreement:

- (a) Union shall have obtained, in form and substance satisfactory to Union, and all conditions shall have been satisfied under, all governmental, regulatory and other third party approvals, consents, orders, and authorizations that are required to:
 - i. construct and operate the Expansion Facilities; and
 - ii. provide the Transportation Services,under a regulatory framework satisfactory to Union, in its sole discretion;
- (b) Union shall have obtained all internal approvals that are necessary or appropriate to construct and operate the Expansion Facilities and provide the Transportation Services, by [insert date]);
- (c) Union shall have completed and placed into service the Expansion Facilities;
- (d) Shipper shall have executed the Transportation Agreement and provided Union with a copy thereof along with notification of the satisfaction or waiver of the conditions precedent for the benefit of Shipper outlined in Article XXI, Section 2 of Schedule "A2010" of the Transportation Agreement by [insert date]; and,
- (e) Union, where applicable, shall have received from Shipper an executed Financial Backstopping Agreement, in form and substance reasonably acceptable to the Parties by [insert date].

3.2 The obligations of Shipper under the Transportation Agreement are subject to the conditions precedent for the benefit of Shipper in the Transportation Agreement and to the following conditions precedent, which are for the sole benefit of Shipper, and which may be waived or extended in whole or in part in the manner provided for in this Precedent Agreement:

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3.3 Union and Shipper shall each use due diligence and reasonable efforts to satisfy and fulfill the conditions precedent, if applicable, specified in Sections 3.1 (a), (c), (d) and (e), and the conditions precedent specified in Section 3.2 (if any). Each Party shall notify the other forthwith in writing of the satisfaction or waiver of each condition precedent for such Party's benefit. Subject to Section 3.5 herein, if a Party concludes that it will not be able to satisfy a condition precedent that is for its benefit, that Party may, upon written notice to the other Party, terminate this Precedent Agreement and the Transportation Agreement and upon the giving of such notice, this Precedent Agreement and the Transportation Agreement shall be of no further force and effect and each of the Parties shall be released from all further obligations hereunder.

3.4 Subject to Section 3.5 herein, if any of the conditions precedent in Section 3.1 (b), (d) or (e) are not satisfied or waived by the Party entitled to the benefit of such condition, by the date provided therein, (or if any of the conditions precedent in Section 3.2 are not satisfied or waived by the Party entitled to the benefit of such condition, by [insert date]), then either Party may, upon written notice to the other Party, terminate this Precedent Agreement and the Transportation Agreement and upon the giving of such notice, this Precedent Agreement and the Transportation Agreement shall be of no further force or effect and each of the Parties shall be released from all further obligations hereunder.

3.5 In the event of termination of the Precedent Agreement and Transportation Agreement pursuant to Sections 3.3 and 3.4 herein, then such termination shall be without prejudice to any rights or remedies that a Party may have for breaches of this Precedent Agreement and the Transportation Agreement prior to such termination and any liability a Party may have incurred before such termination shall not thereby be released; and (ii) any obligations and any liabilities that the Shipper may have incurred or be liable for pursuant to the Financial Backstopping Agreement shall not thereby be released, affected or diminished.

4.0 Union's Authorizations and Approvals

During the term of this Precedent Agreement, Shipper agrees to support and cooperate with, and to not oppose, obstruct or otherwise interfere with in any manner, the efforts of Union to obtain all authorizations and/or exemptions and supplements and amendments thereto necessary for Union to construct, own, operate, and maintain, under Union's proposed regulatory framework, the Expansion Facilities and to provide the firm transportation service contemplated in this Precedent Agreement and to perform its obligations as contemplated by this Precedent Agreement. In addition, Shipper agrees to support and cooperate with, and to not oppose, obstruct or otherwise interfere with in any manner, the efforts of another party to obtain all authorizations and/or exemptions and supplements and amendments thereto necessary for that party to construct, own, operate, and maintain, under that party's proposed regulatory framework, facilities which are required in conjunction with the Expansion Facilities.

5.0 Allocation of Capacity in the event of partial completion of Expansion Facilities

If Expansion Facilities are required to satisfy any Transportation Service,

- (a) then to the extent that such Expansion Facilities are only partially completed and placed in service by the Commencement Date or at any time thereafter, then any firm capacity available on such partially completed Expansion Facilities (the “**Partial Expansion Capacity**”) will be allocated in accordance with this Section 5.0 to all Transportation Agreements: (a) which require the same Expansion Facilities for the Contract Demand; and (b) under which all conditions precedent have been satisfied or waived except for such conditions precedent that relate to the completion and placing in-service of the Expansion Facilities.
- (b) Such allocation shall be made in priority of the NPV as such term is defined in Article XVI of Schedule “A2010” of the M12 Rate Schedule and allocated in accordance with said Article.
- (c) If, pursuant to this Section, a Transportation Agreement is allocated any portion of Partial Expansion Capacity, then the conditions precedent that relate to the completion and placing in-service of the Expansion Facilities shall be deemed to have been waived such that the Initial Term under the Transportation Agreement will commence. If a Transportation Agreement is not allocated the entirety of the Contract Demand under such Transportation Agreement, then such Contract Demand shall be deemed to be such lower allocated amount (and for greater certainty, the Initial Term shall nevertheless be deemed to have commenced) until such time as the Transportation Agreement is allocated additional Partial Expansion Capacity pursuant to this Section or until the entirety of the Expansion Facilities are completed and placed in-service.
- (d) The procedure contemplated by this Section will be applicable from time to time on each occasion that the Expansion Facilities are incrementally completed and placed in service.

6.0 Limitation of Damages

THE PARTIES HERETO AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR BUSINESS INTERRUPTIONS) ARISING OUT OF OR IN ANY MANNER RELATED TO THIS PRECEDENT AGREEMENT, AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE SOLE, CONCURRENT OR CONTRIBUTORY NEGLIGENCE (WHETHER ACTIVE OR PASSIVE), STRICT LIABILITY (INCLUDING, WITHOUT LIMITATION, STRICT STATUTORY LIABILITY AND STRICT LIABILITY IN TORT) OR OTHER FAULT OF EITHER PARTY. THE IMMEDIATELY PRECEDING SENTENCE SPECIFICALLY PROTECTS EACH PARTY AGAINST SUCH PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF WITH RESPECT TO THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY OF SUCH PARTY, AND ALL RIGHTS TO RECOVER SUCH DAMAGES OR PROFITS ARE HEREBY WAIVED AND RELEASED.

7.0 Modification or Waiver

No modification or waiver of the terms and provisions of this Precedent Agreement may be made except by the execution of a written amendment to this Precedent Agreement. The waiver by any Party of a breach or violation of any provision of this Precedent Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation thereof.

8.0 Supersedes Other Agreements

This Precedent Agreement, the Transportation Agreement, and the Financial Backstopping Agreement 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.

9.0 Notices

Notices under this Precedent Agreement must be sent,

If to Union:

Union Gas Limited
Attention: [contact name or contact office]
Facsimile: (NNN) NNN-NNNN

If to Shipper:

[name and address of Shipper]
Attention: [contact name or contact office]
Facsimile: (NNN) NNN-NNNN

Any Party may change its address by written notice to that effect to the other Party. Notices given under this Section are deemed to have been effectively given upon receipt, if mailed via prepaid overnight mail by a reputable carrier or if delivered by courier. Notices sent by mail will be deemed effectively given on the third (3rd) business day following the day when the notice properly addressed and postpaid is placed in the Canadian mail. It is expressly understood and agreed, however, that any notices must first be delivered by facsimile or other similar means, and if mailed or sent by courier, must be mailed or sent by courier as soon as practicable thereafter.

10.0 Governing Law

This Precedent Agreement shall be interpreted, performed, and enforced 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.

11.0 No Third Party Beneficiaries

This Precedent Agreement shall not create any rights in third parties, and no provision of this Precedent Agreement shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the Parties.

12.0 No Drafting Presumption

No presumption shall operate in favor of or against any Party as a result of any responsibility that any Party may have had for drafting this Precedent Agreement.

13.0 Recitals

The recitals and representations appearing first above are hereby incorporated in and made a part of this Precedent Agreement.

14.0 Counterparts

This Precedent Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

15.0 In Service Timing

Notwithstanding anything in this Precedent Agreement or the Transportation Agreement, Shipper agrees that it shall have no cause of action or claims against Union if the in-service date for the Expansion Facilities is later than the date stated in the Recitals. This Section 15.0 is intended to survive the termination of this Precedent Agreement.

16.0 Definitions

Capitalized terms used in this Precedent Agreement shall have the meaning given those terms in the Transportation Agreement, unless defined herein.

17.0 Assignment

The Parties hereto shall not assign this Precedent Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. This Precedent 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 Precedent Agreement be permitted unless the Transportation Agreement and the Financial Backstopping Agreement are also assigned to the same permitted assignee.

18.0 Conflict

For the period that this Precedent Agreement is in effect, in the event of any conflict between the provisions of the main body of this Precedent Agreement and the Transportation Agreement included as Schedule 1 herein, the provisions of the main body of this Precedent Agreement shall prevail over the Transportation Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Precedent Agreement to be duly executed by their duly authorized officers as of the date first written above.

Union Gas Limited

By: _____
Authorized Signatory

[Name of Shipper]

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Schedule 1 to the Precedent Agreement
Transportation Agreement