

GISB Has, Gas EDI does not:

## **SECTION 1. PURPOSE AND PROCEDURES**

1.1. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas.

## **SECTION 2 DEFINITIONS**

2.13. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.

## **SECTION 7. BILLING, PAYMENT AND AUDIT**

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7. shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

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## **SECTION 2- DEFINITIONS**

2.1 The following terms, when used herein, shall have the following meanings:

"103m3 shall mean the quantity of Gas occupying a volume of 1000 cubic meters at a temperature of 15 degrees Celsius and at a pressure of 101.325 kilopascals absolute.

"Accelerated Payment Invoice" shall have the meaning set forth in Section 7.7.

"Business Day" is being sent and by whom the notice or payment or delivery is to be received.

"Claims" shall have the meaning set forth in Section 8.3.

"Contract Value" of a Transaction is the net present value (applying the Present Value Discount Rate) of the product of (1) the quantity of Gas remaining under a Transaction which the parties are obligated to transact multiplied by (2) the Contract Price.

"Costs" shall mean all reasonable costs, legal fees and expenses incurred by the Non-Defaulting Party to replace a Transaction or in connection with termination of a Transaction pursuant to Section 10.

"Defaulting Party" shall have the meaning set forth in Section 10.2.

“Dekatherm” shall mean one million British Thermal Units.

“Early Termination Date” shall have the meaning set forth in Section 10.3.

“GJ” shall mean 1 gigajoule; 1 gigajoule=1,000,000,000 Joules. The standard conversion factor between Dekatherms and GJ's is 1.055057 per Dekatherm.

“GST” shall have the meaning set forth in Section 6.2.

“Joule” shall mean the joule specified in the SI system of units.

“Liquidation Amount” shall have the meaning set forth in Section 10.4.

“Market Value” of a Transaction is the net present value (applying the Present Value Discount Rate) of the product of (1) the quantity of gas remaining under a Transaction which the parties are obligated to transact, multiplied by (2) a market price for a similar transaction considering the remaining Delivery Period, Contract Quantity and Delivery Point; with such market price to be established by either (i) a bona fide offer accepted by the Non-Defaulting Party, in good faith, from five Reference Market Makers, where the highest and lowest of such quotations shall be disregarded, and the arithmetic average of the three remaining quotations shall be the market price.

“Non-Defaulting Party” shall have the meaning set forth in Section 10.2.

“Non-Performance” shall mean the failure by a party to purchase and receive, or sell and deliver, Gas required by any Transaction hereunder which has not excused because of the non-performance (non-delivery or non-receipt, as applicable of the other party, or by Force Majeure).

“Non-Performing Party” shall mean a party in relation to which a Non-Performance has occurred.

“Notice” shall have the meaning set forth in Section 9.1.

“Performance Assurance” shall mean security in the form, amount and term reasonably specified by the party demanding the Performance Assurance, including, but not limited to, a standby irrevocable letter of credit, a pre-payment, a security interest in an asset acceptable to the demanding party or performance bond or guarantee by an entity acceptable to the party demanding the Performance Assurance.

“Performing Party” shall mean, if a Non-Performance has occurred, the party which is not the Non-Performing Party.

“Potential Event of Default” shall mean any event or circumstance which would, with Notice the

passage of time, or both constitute an Event of Default.

“Present Value Discount Rate” shall mean with respect to any Transaction, (i) if the amount payable is in Canadian currency, the yield of Canadian Government Treasury bills with a term closest to the time remaining in the Delivery Period, plus 100 basic points; or (ii) if the amount payable is in United States currency, the “Ask Yield” interest rate for United States Government Treasury notes as quoted in the Treasury Bonds, Notes, and bills section of the Wall Street Journal most recently published with a term closest to the time remaining in the Delivery Period, plus 100 basis points.

“Receiving Transporter” shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, Transporter delivering Gas at a Delivery Point.

“Reference Market Makers” shall mean leading dealers in the physical gas trading market or the energy swap market, selected by the Non-Defaulting Party from among dealers of the highest credit standing, which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit.

“Scheduled Gas” shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

“Seller” refers to the party delivering Gas hereunder.

“Taxes” shall have the meaning set forth in Section 6.1.

“Termination Payment for a Transaction” is the difference between the Market Value and the Contract Value, adjusted for Costs, as of the Early Termination Date. If the Non-Defaulting Party is Seller and Market Value minus Costs is greater than the Contract Value, the Termination Payment will be positive (gain) and if the Market Value minus Costs is less than the Contract Value, the Termination Payment will be negative (loss). If the Non-Defaulting Party is the Buyer and the Contract Value minus costs is greater than the Market Value, the Termination Payment will be positive (gain) and if the Contract Value minus Costs is less than the Market Value, the Termination Payment will be negative (loss).

“Total Termination Payment” will be the sum of the Termination Payments for all Transactions terminated pursuant to Section 10. The Total Termination Payment is a reasonable pre-estimate of the loss suffered, and is not intended as a penalty.

“Transaction” shall mean any gas sale, purchase or exchange agreement effected pursuant to the Base Contract.

## **SECTION 5- QUALITY AND MEASUREMENT**

5.1 All Gas delivered by Seller shall meet the quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of the Contract shall be specified as one

MMBtu dry, one Dekatherm dry, one GJ or on 103m3. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## **SECTION 6- TAXES**

6.2 The Contract Price does not include any amounts payable by Buyer for the goods and services tax imposed pursuant to the Excise Tax Act (Canada) or any similar or replacement sales or use tax enacted under successor legislation ("GST"). Notwithstanding the selection made pursuant to this Section 6, Buyer will pay to Seller the amount of GST payable for the purchase of Gas in addition to all other amounts payable under the Contract. Seller will hold the GST paid by Buyer and will remit such GST as required by law. Buyer and Seller will provide each other with the information required to make such GST remittance, including GST registration numbers.

6.3.a Where Buyer indicates to Seller that Gas will be exported from Canada, Buyer may request Seller treat such Gas as "zero-rated" Gas for export within the meaning of the Excise Tax Act for billing purposes: If Seller in its sole discretion, agrees to so treat such Gas, then Buyer represents and warrants to Seller that Buyer will: (i) export such Gas as soon as is reasonably possible after Seller delivers such Gas to Buyer (or after such Gas is delivered to Buyer after a storage service described by the applicable provisions of the Excise Tax Act) having regard to the circumstances surrounding the export and, where applicable, normal business practice; (ii) not acquire such Gas for consumption or use in Canada (other than as fuel or compressor gas to transport such Gas by pipeline) or for supply in Canada (other than to supply natural gas liquids or ethane as described in the applicable provisions of the Excise Tax Act) before export of such Gas; (iii) ensure that, after such Gas is delivered and before export, such Gas is not further processed, transformed or altered in Canada (except to the extent reasonably necessary or incidental to its transportation and other than to recover natural gas liquids or ethane from such Gas at a straddle plant); (iv) maintain on file and provide to Seller if required, or to the Canada Customs and Revenue Agency, evidence satisfactory to the Minister of National Revenue of the export of such Gas by Buyer; and/or (v) comply with all other requirements prescribed by the Excise Tax Act for a zero-rated export of such Gas.

6.3.b Where Gas is acquired for export from Canada Buyer shall provide Seller with a declaration in writing that Buyer intends to export such Gas in circumstances described by the applicable provisions of the Excise Tax Act.

6.3.c Without limiting the generality of Section 8.3, buyer indemnifies Seller for any GST, penalties and interest and all other damages and costs of any nature arising from breach of the representations and warranties contained in Section 6.3.a or from application of GST to Gas represented and warranted by Buyer to be acquired for export from Canada.

6.4 In the event that any amount becomes payable pursuant to the Contract as a result of a breach, modification or termination of the Contract, the amount payable shall be increased by any applicable Taxes or GST.

## **SECTION 7- BILING, PAYMENT AND AUDIT**

7.4 If a party fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of: (i) if the amount payable is in United States currency the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum, compounded monthly; or, if the amount payable is in Canadian currency, the per annum rate of interest identified from time to time as the prime lending rate charged to its most credit worthy customers for commercial loans by the Toronto Dominion Bank, Main Branch, Calgary, Alberta, Canada, plus two percent per annum, compounded monthly; or (ii) the maximum applicable lawful interest rate.

7.5 Payment shall be made in the currency of the Contract Price.

## **SECTION 10 – FINANCIAL RESPONSIBILITY, DEFAULTS AND REMEDIES**

10.2 If an Event of Default or potential Event of Default occurs with respect to a party (the "Defaulting Party"), then the other party (the "Non-Defaulting Party") shall have the right to, in addition to any other remedies available hereunder: (i) upon 1 Business Day's Notice, suspend its performance under any or all Transactions under the Contract; and/or (ii) withhold any amounts owned to the Defaulting Party under the contract, and Transaction or any other agreement between the parties (whether or not yet due ) and setoff against such withheld amounts any amount owed the Non-Defaulting Party hereunder (whether or not yet due).

10.3 In addition to the provisions of Section 10.2, upon the occurrence of an Event of Default, the Non-Defaulting Party may, for so long as the Event of Default is continuing terminate, accelerate and liquidate all Transactions then outstanding or not yet commenced in accordance with the provisions of this Section 10 by (i) providing Notice to the Defaulting Party, and (ii) establishing an early termination date, which date shall be between 1 and 20 Business Days following the Event of the Default, on which all such Transactions shall terminate ("Early Termination Date"). If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate the Total Termination payment and notify the Defaulting Party of such amount including detailed support for the Total Termination Payment calculation.

10.4 The Non-Defaulting Party may net the Total Termination Payment against all other amounts owing (whether or not yet due) between the parties under the Contract and any other agreements between the parties. This amount constitutes the "Liquidation Amount" payable by the Defaulting Party within 2 Business Days or payable by the Non-Defaulting Party on the 25<sup>th</sup> of the Month following the Early Termination Date, as applicable. A disputed amount hereunder shall be paid by the Defaulting Party, subject to refund.

10.5 In the event a party is a non-Performing Party, the Performing Party shall have the right to, in addition to any other remedies available hereunder (i) withhold any or all payments due the Non-Performing Party hereunder for the period of the applicable Non-Performance and net or set off amounts due the Performing Party against such withheld amounts; (ii) during the period of the applicable Non-Performance, upon at least 1 Business Day's Notice, suspend its performance under any or all Transactions, and/or (iii) if the Non-Performing Party fails to pay any Accelerated Payment Invoice when due, the Performing Party may without further Notice to the Non-performing Party, declare an Early Termination Date with respect to the particular Transaction to which the non-Performance relates in accordance with Section 10.3. The failure of the Performing Party to exercise any of the rights or remedies contained in this Section 10.5 shall not constitute a waive of the Non-performance the requirement for payment as contemplated by Section 3.2 or any of the other rights or remedies of the Performing Party in connection therewith.

## **SECTION 13 – MISCELLANEOUS**

- 13.9 For currency conversions required under the Contract to convert Canadian or United States currency to the other, the parties shall use the average of the Bank of Canada posted noon spot exchange rates as quoted for each Day during the Month during which Gas was, or was obligated to be delivered and received.
- 13.10 Any controversy or claim arising out of or relating to the Contract shall be determined by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association.

#### **SECTION 14 – LIMITATIONS**

- 14.1** EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES , LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE , JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE, TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED THE PARTIES ACKNOWLEDGE THAT THE DAMAGES AR DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.