

## GENERAL TERMS AND CONDITIONS

### RATE 16 CUSTOMERS

#### 1. Definitions

In these Terms and Conditions and in the Schedules hereto, unless the context otherwise requires, each of the following words, phrases and expressions shall have the meaning set forth after it:

- a) “**10<sup>3</sup>m<sup>3</sup>**” means 1,000 cubic metres.
- b) “**Authorized Overrun**” has the meaning set out in Section 11.
- c) “**Authorized Overrun Charge**” means the rate set out in the applicable Industrial Rate Schedule in effect at the time.
- d) “**Billing Month**” means a period of approximately 30 days following which EPCOR renders a bill to the Customer. The billing month is determined by EPCOR's monthly billing schedule.
- e) “**Business Day(s)**” means any day other than a Saturday, Sunday or a statutory holiday in the Province of Ontario.
- f) “**Contract**” shall mean the contract for distribution service between EPCOR and Customer.
- g) “**Contract Demand**” or “**CD**” means the maximum volume of Gas that EPCOR is obligated to deliver to the Customer on a daily basis as set out in Schedule A to the Contract.
- h) “**Cubic Metre**” or “**m<sup>3</sup>**” means that volume of Gas which at a temperature of 15 degrees Celsius and at an absolute pressure of 101.325 kilopascals (kPa) occupies one cubic metre.
- i) “**Customer Delivery Point**” has the meaning given to it in Schedule A of the Specific Contract.
- j) “**Customer Location**” means the service location of any customer.

- k) “**Delivery Charge**” means the rate set out in the applicable Industrial Rate Schedule in effect at the time
  
- l) “**Direct Purchase**” means a Gas supply arrangement whereby a Customer contracts directly for its supply requirements with third parties and delivers the supply to EPCOR at the Customer Delivery Point for ultimate redelivery to the Customer at the Customer Location pursuant to the terms hereof.
  
- m) “**Firm**” means transportation or distribution service not subject to curtailment or interruption except under section 2 and 17 of these Terms and Conditions.
  
- n) “**First Day of Delivery**” means the first day that EPCOR makes service fully available to Customer under the Contract.
  
- o) “**Force Majeure**” shall mean acts of God, strikes, lockouts or any other industrial disturbance, acts of the public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, inability to obtain materials, supplies, permits or labour, any laws, orders, rules, regulations, acts or restraints of any governmental body or authority (civil or military), interruption and/or curtailment of any Firm Upstream Transportation Service, storage, load balancing or Gas supply arrangements by an upstream provider to EPCOR, any act or omission that is excused by any event or occurrence of the character herein defined as constituting force majeure, any act or omission by parties not controlled by the Party having the difficulty and any other similar cases not within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome.
  
- p) “**Gas**” means ‘gas’ as defined in the *Ontario Energy Board Act, 1998*, as amended from time to time.
  
- q) “**Gas Services**” means the services provided by EPCOR to the Customer under the applicable Rate 16 contract between EPCOR and the Customer and subject to these Terms and Conditions.
  
- r) “**Industrial Rate Schedule**” means the applicable Rate 16 Schedule as may be approved by the Board from time to time.

- s) “**Interest**” means a rate per annum equal to the minimum commercial lending rate of EPCOR’s principal banker in effect from time to time from the due date until the date of payment.
- t) “**OEB**” means the Ontario Energy Board.
- u) “**Peak Hour**” means the Customer’s maximum volumetric entitlement to receive Gas under the Contract in any hour as specified in Schedule A to the Contract.
- v) “**Point of Consumption**” means the location between the connecting flanges at the EPCOR meter station and the Customer’s pipe at the Customer Location where Gas is being delivered to Customer by EPCOR.
- w) “**Unaccounted for Gas**” or “**UAF**” means the difference between the aggregate volume of receipts of Gas into EPCOR’s distribution system and the aggregate volume of Gas metered by EPCOR at all of its Customer Locations, expressed as a percentage of the receipts into the system.
- x) “**Unauthorized Overrun**” has the meaning set out in Section 12.
- y) “**Unauthorized Overrun Charge**” means the rate set out in the applicable Industrial Rate Schedule in effect at the time.
- z) “**Upstream Charge**” means the rate set out in the applicable Industrial Rate Schedule in effect at the time.
- aa) “**Upstream Transportation Service**” means the transportation or storage arrangements entered into by EPCOR and any Upstream Service Provider to facilitate delivery and balancing of Gas supplies to the EPCOR distribution system.
- bb) “**Upstream Service Provider**” means any person who delivers Gas to EPCOR’s distribution system.

## 2. Force Majeure

In the event that either EPCOR or the Customer is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of the Contract or these Terms and Conditions, such Party shall give notice and full particulars of such Force Majeure in writing delivered by hand, fax or other direct written electronic means to the

other Party as soon as possible after the occurrence of the cause relied on and subject to the provision of this Section.

The Party claiming suspension shall likewise give notice as soon as possible after the Force Majeure condition is remedied, to the extent that the same has been remedied, and that such Party has resumed or is then in a position to resume the performance of the obligations and conditions of the Contract and these Terms and Conditions.

Neither Party shall 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 suspension 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; or
- d) the Party claiming suspension did not give notice to the other Party as soon as reasonably possible after the Force Majeure occurred.

An event of Force Majeure on EPCOR's system will excuse the failure to deliver Gas by EPCOR or the failure to accept Gas by EPCOR hereunder, and both Parties shall be excused from performance of their obligations hereunder, except for payment obligations, to the extent of and for the duration of the Force Majeure.

If EPCOR is prevented, by reason of an event of Force Majeure on EPCOR's system from delivering Gas on the day or days upon which EPCOR has accepted Gas from Customer, EPCOR shall thereafter make all reasonable efforts to deliver such quantities as soon as practicable and on such day or days as are agreed to by Customer and EPCOR. If EPCOR delivers such Gas on this basis, Customer shall not receive any demand charge relief as contemplated herein.

If on any day EPCOR fails to accept Gas from Customer by reason of an event of Force Majeure on EPCOR's system and fails to deliver the quantity of Gas nominated hereunder by Customer up to the Contract Demand for that Contract, then for that day the Delivery Charge shall be reduced by an amount equal to the applicable Daily Demand Rate, as defined in this paragraph, multiplied by the difference between the quantity of Gas actually delivered

by EPCOR during such day and the quantity of Gas which Customer in good faith nominated on such day. The term “**Daily Demand Rate**” shall mean the Delivery Charge or equivalent pursuant to the Industrial Rate Schedule divided by the number of days in the month for which such rate is being calculated.

An event of force majeure upstream or downstream of EPCOR’s system shall not relieve Customer of any payment obligations.

### **3. Nomination and Balancing Procedures**

If at any time EPCOR, or EPCOR’s Upstream Service Provider requires nominations for transportation of Gas volumes for ultimate delivery to the Customer, the Customer agrees to nominate its daily Gas volumetric requirement to EPCOR, or its designated agent, consistent with the industry nomination standards.

To the extent that EPCOR’s Upstream Transportation Service includes any seasonal or day-to-day balancing rights for EPCOR, the Customer shall be entitled to a reasonable proportion of such balancing rights, as determined by EPCOR from time to time.

Nominated services must be nominated on the NAESB Timely Nomination Cycle otherwise they are considered to be late nomination and are therefore interruptible.

If the Customer utilizes any of EPCOR’s seasonal or day-to-day balancing services or any other services available from the Upstream Service Provider, the Customer agrees to comply with all balancing requirements imposed by the Upstream Service Provider. Customer also agrees to be liable for its share of any such usage limitations or restrictions, fees, costs or penalties associated with the usage of such services, as set out in the Upstream Service Provider’s applicable rate schedule, including but not limited to any associated storage fees, daily or cumulative balancing fees or penalties, and Gas commodity costs. Any such amounts shall be billed monthly.

EPCOR agrees to keep Customer informed of all requirements of the Upstream Services Provider, and agrees to provide such contract to Customer.

In addition to nominating for daily volumes for redelivery by EPCOR to Customer, Customer shall also nominate for additional volumes for the necessary compressor or other fuel requirements of the Upstream Transportation Provider as well as any UAF requirements of EPCOR as set out in the Industrial Rate Schedule from time to time.

### **4. Measurement**

EPCOR will install, operate and maintain at a Customer Location such measurement and regulating equipment of suitable capacity and design as is required to measure the volume of Gas delivered. Customer authorizes EPCOR to construct, operate and maintain the required underground Gas service and above ground metering and regulating facilities at the Point of Consumption. Data derived from such measurement and regulating equipment shall be made available to Customer electronically on a timely basis.

If a Customer meter is out of service or is registering inaccurately, the volume of quantity of Gas used by the Customer shall be determined as follows:

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

## **5. Customer Facilities**

It is the Customer's responsibility to provide and maintain all pipes, fittings, valves and other equipment to take the Gas from the outlet of the EPCOR meter station. Customer agrees, if requested by EPCOR, to provide a 120-volt/15 amp dedicated electrical circuit, and a telecommunications line to allow for electronic communication with EPCOR's meter station, at the Customer's expense.

## **6. Access to EPCOR Equipment**

Except in the event of an emergency, EPCOR and/or its authorized agent shall at all reasonable business hours, have access to the premises for the purposes of reading the Customer's meter; examining, maintaining or repairing any Gas equipment installed by EPCOR; or removing the meter or other equipment. In the case of an emergency, EPCOR and/or its authorized agents shall have access to the premises at any hour.

## **7. Financial Assurances**

If determined by EPCOR, in its sole discretion, Customer shall provide financial assurances necessary to ensure Customer's ability to honour the provisions of the Contract. Should EPCOR determine that financial assurance is required, Customer shall provide and maintain financial assurance acceptable to EPCOR. If at any time during the term of the Contract,

EPCOR has reasonable grounds to believe that Customer's creditworthiness is or could become unsatisfactory, then EPCOR may, by written notice to Customer, request financial assurances from Customer in an amount determined by EPCOR. Upon receipt of such written notice, Customer shall have fourteen (14) calendar days to provide such financial assurances.

Customer may provide EPCOR such financial assurances in the form of cash, letters of credit, corporate guarantees acceptable to EPCOR or such other form as may be agreed upon between Customer and EPCOR. If Customer fails to provide financial assurances as set out above, the termination and suspension provisions of these Terms and Conditions shall apply.

Where Customer has provided financial assurance to EPCOR, and the Customer believes that the grounds for requesting such financial assurances no longer exist, the Customer may request the return of such financial assurances from EPCOR by written notice. Upon receipt of such written notice, EPCOR shall have fourteen (14) calendar days to return such financial assurance to Customer or provide reasons for failure to return such financial assurance. The Customer may only make such request once per calendar year.

## **8. EPCOR Liability**

EPCOR shall not be liable for any loss, injury, damage, expense, charge, cost or liability of any kind, whether direct, indirect, special or consequential in nature, (excepting only direct physical loss, injury or damage to a customer or a customer's property, resulting from the negligence or wilful misconduct of EPCOR, its employees or agents) arising from or connected with any failure, defect, fluctuation or interruption in the provision of Gas service by EPCOR to its customers.

## **9. Billing and Payment**

- a) **Bills:** Each month during the term of the Contract, EPCOR will deliver to the Customer a monthly bill setting out the Gas deliveries for such month and all charges payable, plus all applicable taxes, pass-through charges, administrative charges, duties, or levies payable by Customer in connection with the services provided under this Contract.
- b) **Payment:** Payment is due within twenty (20) days from receipt of the monthly bill. If Customer fails to pay the amount when due, late payment charges will apply. In addition, the suspension and termination provisions as provided for herein will also apply.

- c) **Remedies for Non-Payment:** Should Customer fail to pay all of the amount of any bill as herein provided when such amount is due,
- i. Customer shall pay to EPCOR, Interest on the unpaid portion of the bill from the due date until the date of payment; and,
  - ii. if such failure to pay continues for thirty (30) days after payment is due, EPCOR, in addition to any other remedy it may have under the Contract and these Terms and Conditions, may suspend Gas Services until such amount is paid. Notwithstanding such suspension, all demand charges shall continue to accrue hereunder as if such suspension were not in place.
- d) **Bill Dispute:** If Customer in good faith disputes the amount of any such bill or part thereof Customer shall pay to EPCOR such amounts as it concedes to be correct and provide a notice to EPCOR outlining the amounts in dispute and the rationale for such dispute. If EPCOR determines that the bill amount disputed by Customer is correct, EPCOR shall provide Customer with a notice outlining the rationale for such determination. Should Customer still dispute the bill, a final determination shall be reached between the Parties. At any time thereafter, within twenty (20) days of a demand made by EPCOR, Customer shall furnish financial assurances satisfactory to EPCOR, guaranteeing payment to EPCOR of the amount ultimately found due upon such bill after a final determination. Such a final determination may be reached either by agreement, arbitration decision or judgement of the courts, as may be the case. Notwithstanding sections 9(a) and (b) above, EPCOR shall not be entitled to suspend Gas Services because of such non-payment in a good faith dispute by Customer unless and until default occurs in the conditions of such financial assurances or default occurs in payment of any other amount due to EPCOR hereunder.
- e) **Adjustment for Overpayment or Underpayment:** If it shall be found that at any time or times Customer has been overcharged or undercharged in any form whatsoever under the provisions of the Contract and Customer shall have actually paid the bills containing such overcharge or undercharge, EPCOR shall refund the amount of any such overcharge and Interest shall accrue from and including the first day of such overcharge as paid to the date of refund and shall be calculated but not compounded at a rate per annum determined each day during the calculation period, and the Customer shall pay the amount of any such undercharge, but without Interest.



In the event an error is discovered in the amount billed in any statement rendered by EPCOR, such error shall be adjusted by EPCOR. Such overcharge, undercharge or error shall be adjusted by EPCOR on the bill next following its determination (where the term "**bill next following**" shall mean a bill rendered at least fourteen (14) days after the day of its determination), provided that claim therefore shall have been made within three (3) years from the date of the incorrect billing. In the event any refund is issued with Customer's bill, the aforesaid date of refund shall be deemed to be the date of the issue of bill.

- f) **Taxes:** In addition to the charges and rates as per the applicable rate schedules and price schedules, Customer shall pay all taxes which are imposed currently or subsequent to the execution of the Contract by any legal authority having jurisdiction and any amount in lieu of such taxes paid or payable by EPCOR.

#### **10. Resale Prohibition**

Gas taken at a Customer Location shall not be resold other than in accordance with all applicable laws and regulations and orders of any governmental authority or OEB having jurisdiction.

#### **11. Authorized Overrun**

If on any day Customer requests permission from EPCOR to exceed the Peak Hour or CD set out in Schedule A to the Contract, and EPCOR authorizes such exceedance in writing, such exceedance volumes shall constitute an Authorized Overrun. Any Authorized Overrun volumes shall attract additional charges as set out in the applicable Industrial Rate Schedule in effect at the time of such exceedance.

#### **12. Unauthorized Overrun**

If at any time a Customer exceeds the Peak Hour or CD set out in Schedule A to the Contract, and such exceedance has not been authorized by EPCOR in advance, then such amounts shall be deemed an Unauthorized Overrun. Any Unauthorized Overrun volumes shall attract additional charges as set out in the Industrial Rate Schedule in effect at the time of such exceedance.

#### **13. Arbitration**

If and when any dispute, difference or question shall arise between the Parties touching the Contract or anything herein contained, or the construction hereof, or the rights, duties or liabilities of the Parties in relation to any matter hereunder, the matter in dispute shall be

submitted and referred to arbitration within ten (10) days after written request of either Party. Upon such request each Party shall appoint an arbitrator, and the two so appointed shall appoint a third. A majority decision of the arbitrators shall be final and binding upon both Parties. In all other respects the provisions of the Arbitration Act, 1991, or any act passed in amendment thereof or substitution therefore, shall apply to each such submission. Operations under the Contract shall continue, without prejudice, during any such arbitration and the costs attributable to such arbitration shall be shared equally by the Parties hereto.

#### **14. Gas Quality**

The quality of Gas delivered by the Customer to the Customer Delivery Point shall conform to the quality specifications of the Upstream Service Provider as set out in the general terms and conditions of the Upstream Service Provider (as amended from time to time).

#### **15. Possession and Title**

- a) **Possession:** The responsibility for, and possession of all Gas received and/or delivered and transported hereunder, shall pass from the delivering Party to the receiving Party at the Customer Delivery Point and the Point of Consumption, as applicable.
- b) **Title:** 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.

#### **16. Event of Default and Termination of Contract**

In the event of a material breach or non-performance on the part of either Party (the “**Defaulting Party**”) of any provision of the Contract or these General Terms and Conditions (but not events under Force Majeure and not including any failure to take or make delivery in whole or in part of the Gas delivered to/by EPCOR by any of the reasons provided for in these Terms and Conditions) which has not been waived by the non-Defaulting Party (an “**Event of Default**”), then the non-Defaulting Party may give written notice to the Defaulting Party requiring it to remedy such default (if capable of being remedied). If the Defaulting Party fails to fully remedy the Event of Default within a period of ten (10) Business Days from receipt of such notice, then the non-Defaulting Party may, at its sole option, declare by notice to the Defaulting Party the Contract to be terminated for all purposes other than and except as to any

liability of the Defaulting Party under this Contract that was incurred before and subsisting at the day when the Contract is declared terminated by the non-Defaulting Party.

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 the Contract immediately, except where not permitted by law.

The rights set forth in this clause 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.

Subject to any OEB ruling that states otherwise, other than any liability incurred before and subsisting at the day the Contract is terminated, no termination payment or any other payment set out in the Contract or its schedules shall be owed by Customer in the event that EPCOR is the Defaulting Party.

#### **17. Service Suspension, Curtailment and Maintenance**

EPCOR shall have the right to curtail or not to schedule part or all of the Gas Services, in whole or in part, (a “**Curtailment**”) on all or a portion of its pipeline system at any time for reasons of Force Majeure or when, in EPCOR’s sole discretion, acting reasonably, capacity, safety or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its pipeline system. EPCOR shall provide Customer such notice of such Curtailment as is reasonable under the circumstances. If due to any cause whatsoever EPCOR is unable to receive or deliver the quantities of Gas which Customer has requested, then EPCOR shall order Curtailment by all Shippers affected and to the extent necessary to remove the effect of the disability.

EPCOR’s facilities from time to time may require maintenance or construction. If such maintenance or construction is required, and in EPCOR's sole opinion, acting reasonably, such maintenance or construction may impact EPCOR’s ability to meet Customer's requirements, EPCOR shall provide at least fifteen (15) days’ notice to Customer, except in the case of an emergency. To the extent that EPCOR's ability to accept and/or deliver Customer's Gas is impaired, the Monthly Fixed Charge shall be reduced in accordance with Section 2 of these Terms and Conditions.

EPCOR shall use reasonable efforts to determine a mutually acceptable period during which such maintenance or construction will occur and also to limit the extent and duration of any

impairments.

In the event maintenance, suspension or other Curtailment impacts EPCOR's ability to meet Customer's requirements or the delivery of Gas hereunder, EPCOR shall not be liable for any damages arising from the Curtailment, maintenance or service suspension and shall not be deemed in breach of the Contract or these Terms and Conditions.

Customer shall comply with any reasonable directions provided by EPCOR to Customer, in connection with a Curtailment. If the Customer fails to comply with EPCOR's direction, then: (a) EPCOR shall have the right to immediately and without further notice to the Customer, suspend the delivery of Gas to the Point of Consumption; and (b) Customer will reimburse EPCOR for EPCOR's reasonable, documented costs associated with such non-compliance, including but not limited to any charges identified in the Industrial Rate Schedule.

Customer hereby expressly and irrevocably consents to EPCOR's and its representatives entering onto the property of the Customer, for the purpose of enforcing EPCOR's rights under the Contract and these Terms and Conditions, including accessing EPCOR's equipment to physically suspend the delivery of Gas to the Point of Consumption.