



**TERMS AND CONDITIONS  
FOR  
DISTRIBUTION ACCESS SERVICE**

**AUC Decision 2011-171 & 2011-317  
Effective October 1, 2011**

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**TABLE OF CONTENTS**

**ARTICLE 1 – PREAMBLE..... 7**

**ARTICLE 2 – DEFINITIONS AND INTERPRETATION ..... 8**

2.1 Definitions ..... 8

2.2 Conflicts ..... 16

2.3 Headings ..... 16

2.4 Schedules and Appendices..... 16

**ARTICLE 3 – GENERAL PROVISIONS ..... 16**

3.1 AUC Approval ..... 16

3.2 Gas Distribution Tariff ..... 17

3.3 Effective Date ..... 17

3.4 Application of Terms and Conditions ..... 17

3.5 Retailer Guide ..... 17

3.6 Ownership of Gas Pipeline System..... 18

3.7 New Gas Pipeline System, Specific Facilities and Service Additions ..... 18

3.8 Title or Interest in Gas ..... 18

3.9 Exclusive Control of Gas ..... 19

3.10 Routing and Facilities..... 19

3.11 Commingling or Exchange ..... 19

3.12 Right to Transport ..... 20

**ARTICLE 4 – GENERAL OBLIGATIONS OF RETAILERS, DEFAULT SUPPLY PROVIDER..... 20**

4.1 Timeliness, Due Diligence and Security Requirements ..... 20

4.2 Arrangements with Customers ..... 20

4.3 Responsibility for Gas Purchases ..... 20

4.4 Retailer Authorization ..... 21

4.5 Retailer and DSP Identification ..... 21

---

4.6	Single Retailer/DSP for Customer .....	21
4.7	Fees and Other Charges.....	21
<b>ARTICLE 5 – CUSTOMER INQUIRIES AND CUSTOMER INFORMATION.....</b>		<b>21</b>
5.1	Customer Inquiries .....	21
5.2	Customer Inquiries Related to Emergency Situations and Outages .....	22
5.3	Customer Information.....	22
5.3.1	Provision of Customer Usage Information to a Retailer/DSP .....	22
5.3.2	Provision of Customer Information to the Company .....	22
<b>ARTICLE 6 – PROVISION OF SERVICE .....</b>		<b>23</b>
6.1	Qualification for Service .....	23
6.1.1	Qualification for Service .....	23
6.1.2	Provision of Distribution Access Service .....	24
6.2	Application for Site Enrollment .....	24
<b>ARTICLE 7 – BILLING &amp; PAYMENT .....</b>		<b>26</b>
7.1	Retail/DSP Billing .....	26
7.2	Payment and Collection Terms .....	27
7.3	Late or Unpaid Bills .....	28
7.4	Adjustment of Bills.....	29
7.4.1	Billing Error .....	29
7.4.2	Unauthorized Use .....	29
<b>ARTICLE 8 – DISTRIBUTION ACCESS SERVICE INTERRUPTION .....</b>		<b>30</b>
8.1	Continuous Supply .....	30
8.2	Interruption .....	30
8.3	Reasonable Efforts.....	30
<b>ARTICLE 9 – DISCONTINUANCE OF DISTRIBUTION ACCESS SERVICE .....</b>		<b>31</b>
9.1	Discontinuance by the Retailer .....	31
9.2	Discontinuance by the Company .....	32



---

9.2.1	Discontinuance of DSP .....	32
9.2.2	Discontinuance of Retailer .....	32
9.2.3	Notice of Discontinuance .....	33
<b>ARTICLE 10 – SERVICE DISCONNECTS AND REINSTATEMENT .....</b>		<b>33</b>
10.1	Disconnection of Service.....	33
10.1.1	Disconnection by the Company .....	33
10.1.2	Disconnection at Request of Retailer/DSP .....	34
10.2	Reinstate Service .....	34
<b>ARTICLE 11 – PRUDENTIAL REQUIREMENTS .....</b>		<b>35</b>
11.1	Setting of Prudential Requirements .....	35
11.2	Maintaining Prudential Requirements .....	37
11.3	Confidentiality.....	38
11.4	Costs .....	39
11.5	Interest on Security Deposits .....	39
<b>ARTICLE 12 – METERING .....</b>		<b>39</b>
12.1	Provision and Ownership .....	39
12.2	Meter Reading.....	39
12.3	Changes to Metering Equipment.....	39
12.4	Meter Test and Adjustments .....	40
<b>ARTICLE 13 – ACCOUNT BALANCING .....</b>		<b>41</b>
13.1	Retailer/DSP Account .....	41
13.2	Exchange of Gas.....	42
13.3	Daily Retailer/DSP Account Balance .....	42
13.4	Retailer/DSP Account Monitoring Rules .....	43
13.5	Termination of Retailer Service .....	46
13.6	Request for Additional Information .....	47
13.7	Liability .....	47

---

<b>ARTICLE 14 – DEFAULT .....</b>	<b>48</b>
14.1 Events of Default.....	48
14.2 Rights Upon Default .....	48
14.3 Recourse to Security Upon Retailer Default.....	49
14.4 Termination on Default.....	50
<b>ARTICLE 15 – IMPAIRED DELIVERIES .....</b>	<b>50</b>
15.1 Impaired Deliveries .....	50
<b>ARTICLE 16 – LIABILITY AND INDEMNITY .....</b>	<b>50</b>
16.1 Indemnity.....	50
16.2 Consequential Loss.....	53
<b>ARTICLE 17 – FORCE MAJEURE.....</b>	<b>53</b>
17.1 Force Majeure Relief.....	53
17.2 Exclusions .....	54
17.3 Notice .....	54
17.4 Obligation to Remedy.....	54
17.5 Strikes and Lockouts.....	54
<b>ARTICLE 18 – DISPUTE RESOLUTION.....</b>	<b>55</b>
18.1 Resolution by Company and Retailer/DSP .....	55
18.2 Resolution by Arbitration .....	55
18.3 Arbitrators.....	55
18.4 Failure to Concur.....	55
18.5 Refusal to Appoint an Arbitrator .....	56
18.6 Failure to Appoint a Third Arbitrator .....	56
18.7 Technical Competence .....	56
18.8 Compensation of Arbitrators .....	56
18.9 Application of the Arbitration Act (Alberta) .....	56
18.10 Decisions Binding.....	57
18.11 Continuity of Service .....	57



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<b>ARTICLE 19 – MISCELLANEOUS.....</b>	<b>57</b>
19.1 Compliance with Applicable Legal Authorities .....	57
19.2 No Assignment.....	58
19.3 No Waiver .....	58
19.4 Law.....	58
<b>ARTICLE 20 – NOTICE .....</b>	<b>59</b>
<b>SCHEDULE A – DISTRIBUTION ACCESS SERVICE AGREEMENT.....</b>	<b>60</b>
<b>SCHEDULE B – DISCONNECT CUSTOMER SITE.....</b>	<b>65</b>
<b>SCHEDULE C – NON-DISCRETIONARY CHARGES .....</b>	<b>67</b>
<b>SCHEDULE D – IMBALANCE PURCHASE/SALE CHARGES.....</b>	<b>70</b>

## **ARTICLE 1 – PREAMBLE**

In accordance with the provisions of the Gas Utilities Act ("GUA") and the Regulations made thereunder ("Regulations"), ATCO Gas an operating division of ATCO Gas and Pipelines Ltd. ("ATCO Gas") will, for certain Customers, act solely as a Gas Distribution Service provider and will not be responsible for providing Gas directly to Customers or for billing delivery charges to Customers. In its role as a Gas Distribution Service provider, ATCO Gas will enable Retailers and the Default Supply Provider ("DSP") to acquire access to its Gas Pipeline System for the purposes of allowing them to sell Gas directly to Customers. A Customer may also act as a Self-Retailer by carrying out retailer functions to obtain Gas Services solely for its own use.

These Terms and Conditions are intended to apply to the relationship between ATCO Gas, as a Gas Distribution Service provider and all Retailers, the DSP, or any party who will be acting as an Agent on behalf of the Retailer/DSP for transactions governed by these Terms and Conditions. These Terms and Conditions will also govern the relationship between ATCO Gas and Customer(s) for whom the Retailer/DSP or any other party is acting as an Agent in its dealings with ATCO Gas. These Terms and Conditions serve as a companion to the Terms and Conditions for Distribution Service Connections which are intended to govern the relationship between ATCO Gas and Customer(s), or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Gas, regarding the provision of Gas Distribution Service on its Gas Pipeline System.

These Terms and Conditions outline the rules that Retailers, the DSP, and Agents must follow to engage in Retailer transactions with the Company.

The service provided by ATCO Gas hereunder is regulated by the Alberta Utilities Commission ("AUC"), and parties having any inquiries or complaints regarding these Terms and Conditions may direct such inquiries or complaints directly to ATCO Gas or to the AUC. These Terms and Conditions have been approved by the AUC.

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## ARTICLE 2 – DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

The following words and phrases, whenever used in these Terms and Conditions, the Company's Natural Gas Rate Schedules, Company's Retailer Guide or a Distribution Access Service Agreement, shall have the meanings set forth below:

"Account" means a record maintained by ATCO Gas which contains receipts, deliveries, Rider D, Imbalance Purchase and Imbalance Sale, and adjustments applicable to each Retailer/DSP providing Gas Services to Customers on the Gas Pipeline System;

"Account Balancing" means the process of managing Gas receipts and/or deliveries in an Account in order to keep the difference, net of adjustments, within the tolerance specified by the Imbalance Window;

"Account on the Transmission System" means the account held by the Company on NOVA Gas Transmission Ltd.

"Act" means the *Gas Utilities Act, R.S.A. 2000, c.G-5*, as amended from time to time;

"Agency Appointment Agreement" means an agreement between a Retailer/Self-Retailer or DSP and another party wherein the other party is appointed as Agent for that Retailer/Self-Retailer, or DSP;

"Agent" means a person who performs functions on behalf of a Self-Retailer, Retailer, or DSP including, but not limited to, retailer transactions with the Company;

"AUC" means the Alberta Utilities Commission established under the *Alberta Utilities Commission Act, S.A. 2007, c.A-37.2*, as amended from time to time;

"Backcast" means an estimate of Customer Load prepared for the current Gas Day as described in the Retailer Guide;

"Business Day" is any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act, R.S.A. 2000, c.1-8*, as amended from time to time;

*"Company"* means ATCO Gas, an operating division of ATCO Gas and Pipelines Ltd. or its successor;

*"Customer"* means a person, firm, partnership, corporation, organization or association (including without limitation, individual members of any unincorporated entity) who consumes Gas in end-use at its location and is connected to the Company Gas Pipeline System;

*"Customer Billing Information"* means the information required to be included on the Customer's bill issued by the Retailer/DSP as required by the Natural Gas Billing Regulation, A.R. 185/2003, or Default Gas Supply Regulation, A.R. 184/2003 respectively, as amended from time to time, and provided by the Company;

*"Customer Information"* means the data specified in the Natural Gas Settlement System Code and includes without limitation Site Customer name, Site Customer telephone number, Site Customer mailing address, Site Contact name, Site Contact phone number and other safety related information required to provide safe Gas Distribution Service to Customers;

*"Customer Usage Information"* means information regarding the historical Gas consumption as specified in AUC Rule 10.

*"Day"* means a period of twenty-four (24) consecutive hours;

*"Default Supply Provider"* or "DSP" means a Gas Distributor or a person authorized by a Gas Distributor, who provides Gas Services to Customers under rates, tolls or charges fixed by the AUC and terms or conditions fixed by the AUC;

*"Distribution Access Service"* means the service required to transport Gas to Customer(s) by means of a Gas distribution system. This service enables a Customer to obtain Gas supply service through Self-Retailing, from a Retailer or the DSP and is governed by these Terms and Conditions;

*"Distribution Access Service Agreement"* means an agreement for the provision of Distribution Access Service pursuant to these Terms and Conditions between the Company and a Retailer/DSP, in the form attached as Schedule A hereto;

*"Fair Trading Act"* means the *Fair Trading Act, R.S.A. 2000, c.F-2*, as amended from time to time;

*"Final Monthly Settlement"* means the last Gas Settlement performed for a Retailer/DSP's Sites(s) for a Month, as described in the Natural Gas Settlement System Code;

*"Forecast"* means an estimate of Customer Load prepared for the current or next Gas Day and includes forecast F1, F2, and F3 as described in the Retailer Guide;

*"Force Majeure"* means circumstances not reasonably within the control of the Company, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, temporary failures of gas supply, the intervention of federal, provincial, state or local government or from any of their agencies or boards excluding decisions and/or orders made by the AUC in the normal course of it exercising its authority to establish the revenue requirement of the parties to this agreement, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise;

*"Gas"* means all natural gas both before and after it has been subjected to any treatment or process by absorption, purification, scrubbing or otherwise, and includes all fluid hydrocarbons;

*"Gas Day"* means a Day beginning at eight hours (08:00), Mountain Standard Time;

"*Gas Distribution Service*" means the service required to transport Gas to Customers by means of a Gas Pipeline System, and includes any services the Gas Distributor is required to provide by the AUC or is required to provide under the *Act* or Regulations made thereunder;

"*Gas Distributor*" means the owner, operator, manager or lessee of a gas distribution system as defined in the *Act*;

"*Gas Distribution Tariff*" means the rates, tolls or charges fixed by the AUC and the terms and conditions fixed by the AUC, for Gas Distribution Service;

"*Gas Pipeline System*" means all those facilities owned or used by the Company in the receipt, delivery, transportation, measurement and testing of Gas, (including, without limitation, transmission and distribution lines, regulators, meters, equipment and machinery);

"*Gas Services*" as defined in the *Act* means:

- (i) the Gas that is provided and delivered, and
- (ii) the services associated with the provision and delivery of the Gas, including:
  - (A) arranging for the exchange or purchase of the Gas,
  - (B) making financial arrangements to manage the financial risk associated with the price of Gas,
  - (C) arranging for Gas Distribution Service,
  - (D) arranging for delivery of Gas to the gas distributor's specified Point(s) of Receipt,
  - (E) storage,
  - (F) billing, collection and responding to customer billing inquiries,
  - (G) maintaining information systems, and
  - (H) any other services specified by the Minister by order as Gas Services;

"*Gas Settlement*" means any or all of Initial Monthly Settlement, Interim Monthly Settlement and/or Final Monthly Settlement as defined in the Natural Gas Settlement System Code;

"*GJ*" means gigajoules or one billion (1 000 000 000) joules;

"*Gross Heating Value*" means the number of megajoules obtained from the combustion of a cubic metre of gas at a temperature of fifteen degrees Celsius (15°C), with the gas free of water vapor, and at a pressure of 101.325 kPa absolute and with the products of combustion cooled to the initial temperature of the gas and the water formed by the combustion condensed to the liquid state;

"*Imbalance*" means the difference between energy quantities of Gas received and Gas delivered, net of adjustments, in an Account each Gas Day;

"*Imbalance Window*" means a range of Imbalances within which an Account is considered to be in balance without action being taken to adjust receipts into or deliveries from that Account;

"*Imbalance Purchase/Sale*" means the removal from, by Imbalance Purchase, or addition to, by Imbalance Sale the daily Account Imbalance energy quantity outside the nearest Account daily Imbalance Window boundary, as the case may be, in a Retailer/DSP Account by ATCO Gas which will be settled financially;

"*Intercontinental Exchange*" means Intercontinental Exchange, Inc., an electronic trading platform that may be used by market participants for transactions related to, among others, natural gas energy purchase or sale;

"*J*" or "*joule*" means the amount of 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;

"*kPa*" means kilopascals of pressure gauge unless otherwise specified;

"*Load*" means the amount of natural Gas delivered or required to be delivered at any specific point or points in the Gas Pipeline System;

"LBDA" means the Company's load balancing deferral account that is used to record certain revenues and expenses associated with load balancing the Gas Pipeline System, including without limitation balancing purchase/sales and Imbalance Purchase/Sales;

"Month" means a period beginning at eight hours (08:00), Mountain Standard Time, on the first day of a calendar month and ending at eight hours (08:00), Mountain Standard Time, on the first day of the next succeeding calendar month;

"NGX" means Natural Gas Exchange Inc., an exchange for the trading and clearing of natural gas and electricity contracts that operates in a North American Technology and Physical Clearing Alliance with Intercontinental Exchange, Inc.;

"Natural Gas Service Agreement" means an agreement for the provision of a Service Connection pursuant to the Terms and Conditions for Distribution Service Connection, between the Company and a Customer;

"NGSSC" means the Natural Gas Settlement System Code that governs the standards for determining and communicating retail natural gas consumption for the purpose of load settlement;

"Nomination" means a request in electronic or other written or verbal form for Gas to flow at a Point of Receipt, a Point of Delivery or for receipt into or delivery out of an Account at a specified quantity on a specified date(s);

"Point of Delivery" for service by the Company to the Customer, means, unless otherwise specified in a Natural Gas Service Agreement, the outlet side of a meter;

"Point of Receipt" means the point on Company's system at which Retailer/DSP delivers Gas to the Gas Pipeline System under the Distribution Access Service Agreement. For clarity, this is usually indicated by Company's acceptance of a receipt Nomination into the Retailer/DSP's Account;

"R3 Regulation" means the *Roles, Relationships and Responsibilities Regulation, A.R. 186/2003*, as amended from time to time;

*"Rate Schedule"* means the natural gas rate schedule prepared by the Company and approved by the AUC, as amended from time to time;

*"Retailer"* means a person who sells or provides retail Gas Services directly to Customers and who is entitled to enroll Customers for Distribution Access Service under these Terms and Conditions and includes Self-Retailers;

*"Retailer Business Function Identification"* means the 2 character identification that describes the Retailer's/DSP's business function as a Retailer or a DSP as is specified in the Company's Retailer Guide.

*"Retailer/DSP Account"* means an Account held by a Retailer or the DSP;

*"Retailer Guide"* means the guide prepared by the Company which describes the business processes between the Company and the Retailer/DSP in relation to the provision of service under these Terms and Conditions and the NGSSC;

*"Retailer Identification"* means the 9 digit number that uniquely represents each Retailer/DSP operating within Alberta;

*"Retailer of Record"* means the Retailer or DSP who is listed in the Company's records through the procedures outlined in these Terms and Conditions, Gas Settlement System Code and Retailer Guide and thereby recognized by the Company, as a particular Customer's Retailer or DSP for a Point of Delivery at a particular time;

*"Rider D"* means a rate rider, expressed as a percentage, approved by the AUC applicable to Retailer/DSP Accounts for the recovery in kind of Unaccounted For Gas;

*"Same Day Market"* means the intra-Alberta natural gas market that is generally available during trading hours on a calendar Day for transactions applicable to the Gas Day commencing on the same calendar Day;

*"Self-Retailer"* means a person carrying out Retailer functions to obtain Gas solely for its own use;

"*Service Connection*" shall have the meaning ascribed thereto in Company's Terms and Conditions for Distribution Service Connections;

"*Single Family Dwelling*" means a private residence provided with sleeping and cooking facilities intended for domestic use and in which the occupants live as a single housekeeping unit that is not part of a multiple dwelling;

"*Site*" means a unique end-use Point of Delivery, being the finest level at which settlement recognizes Retailer and DSP assignments, and receives consumption data;

"*Site ID*" means a unique identification number assigned by the Company for each unique end-use Point of Delivery;

"*Specific Facilities*" means those facilities installed by the Company for the benefit of a particular Customer/Retailer/DSP which are connected to the Gas Pipeline System and are required to transport Gas;

"*Tariff Bill File*" means a physical electronic file containing site-specific tariff charges, usage and demand information for given tariff bill periods; it may also contain applicable site-specific one time charges. The Tariff Billing Code Rules are contained in AUC Rule 004;

"*Transmission System*" means all those facilities owned or operated by ATCO Pipelines and NOVA Gas Transmission Ltd. in the receipt, delivery, transportation, measurement and testing of Gas (including, without limitation, transmission lines, regulators, meters, equipment and machinery);

"*Unaccounted For Gas*" means Retailer's and DSP's share of Company's unaccounted for Gas, as specified in rate Rider D of the Company's Rate Schedule;

"*Yesterday Market*" means the intra-Alberta natural gas market that is generally available during trading hours on a calendar Day for transactions applicable to the Gas Day commencing on the previous calendar Day;

## **2.2 Conflicts**

- (a) If there is any conflict between a provision expressly set out in an Order of the AUC and these Terms and Conditions, the Order of the AUC shall govern.
- (b) If there is any conflict between a provision expressly set out in these Terms and Conditions, as may be amended from time to time, and a Distribution Access Service Agreement, the express provision of these Terms and Conditions shall govern, as of their effective date.

## **2.3 Headings**

The division of these Terms and Conditions into Articles, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

## **2.4 Schedules and Appendices**

The following schedules and appendices are attached to and form part of these Terms and Conditions:

- Schedule A - Distribution Access Service Agreement
- Schedule B - Disconnect Customer Site
- Schedule C - Non-Discretionary Charges
- Schedule D - Imbalance Purchase/Sales Charges

## **ARTICLE 3 – GENERAL PROVISIONS**

### **3.1 AUC Approval**

These Terms and Conditions have been approved by the AUC. The Company may amend these Terms and Conditions by filing a notice of amendment with the AUC. Included in the notice to the AUC shall be notification of which Retailers/DSP are affected by the amendment and an explanation of how affected Retailers/DSP will be

notified of the amendments. Any amendment to the Terms and Conditions will take effect 60 days after such notice is filed, unless the AUC otherwise directs.

### **3.2 Gas Distribution Tariff**

The Gas Distribution Tariff is available for public inspection during normal business hours at the business offices of the Company and at the offices of the AUC and can be accessed at ATCO Gas's website at: **www.atcogas.com**. These Terms and Conditions form part of the Gas Distribution Tariff.

### **3.3 Effective Date**

These Terms and Conditions come into force as per the Effective Date shown on the cover page. Whenever the Company files notice of an amendment to these Terms and Conditions, or when the AUC approves an amendment to these Terms and Conditions, revisions will be issued, with the effective date of the amendments indicated thereon.

### **3.4 Application of Terms and Conditions**

- (a) These Terms and Conditions, as amended from time to time, apply to the Company, to each Retailer and DSP. These Terms and Conditions also govern the relationship between the Company and Customer(s) for whom the Retailer/DSP is acting as an Agent in its dealings with the Company.
- (b) These Terms and Conditions also apply to any party appointed as Agent for a Retailer pursuant to an executed Agency Appointment Agreement, as set out in the Retailer Guide.
- (c) No agreement can provide for the waiver or alteration of any part of these Terms and Conditions unless such agreement is first filed with and approved by the AUC.

### **3.5 Retailer Guide**

The Company has developed the Retailer Guide to help Retailers/DSP and Customers understand the normal practices of the Company. The Retailer Guide is available on the

Company website at [www.atcogas.com](http://www.atcogas.com). The Retailer Guide will be updated, from time to time, to reflect changes to the Gas utility industry, or the changing needs of the Retailers, DSP or Customers. The Company is committed to follow practices in the Retailer Guide. However, as these practices cannot cover every situation that arises, it may be necessary to deviate from the Retailer Guide in certain circumstances.

### **3.6 Ownership of Gas Pipeline System**

- (a) The Company remains the owner of all segments of the Gas Pipeline System, unless an agreement between the Company and the Retailer, DSP, or Customer specifically provides otherwise.
- (b) Payment made by Retailers/DSP or Customers for costs incurred by the Company in installing any segment of the Gas Pipeline System does not entitle Retailers/DSP or Customers to ownership of any such segment, unless an agreement between the Company and the Retailer, DSP or Customer specifically provides otherwise.

### **3.7 New Gas Pipeline System Segments, Specific Facilities and Service Additions**

The Company reserves the right to communicate directly with the Customer in respect of any requests made by the Customer, or a party acting on its behalf, for the construction of new Gas Pipeline System segments, Specific Facilities or additional services as provided for in the *Natural Gas Billing Regulation, A.R. 185/2003*, as may be amended from time to time. The Company reserves the right to charge the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections.

### **3.8 Title or Interest in Gas**

The Company shall not acquire any title or interest in the Gas being transported under the Distribution Access Service Agreement.

### **3.9 Exclusive Control of Gas**

Gas delivered to the Company by Retailer or DSP for transportation shall be under the exclusive control of the Company from the time such Gas is accepted for transportation at the Point of Receipt until delivered at the Point of Delivery.

### **3.10 Routing and Facilities**

The Company does not dedicate the Gas Pipeline System or Specific Facilities to transport Gas for Retailers or DSP, and accordingly the routing and facilities used in the transportation of Gas through the Gas Pipeline System for Retailers and DSP shall be at the Company's sole discretion and may change from time to time.

### **3.11 Commingling or Exchange**

The Company may in the course of transporting Gas through the Gas Pipeline System commingle with or exchange Gas owned by or transported for others, or remove certain hydrocarbon components present in the Gas. As commingling, exchanging, or the removal of certain hydrocarbon components may alter the Gross Heating Value or constituent parts of the Gas between the Point of Receipt and the Point of Delivery, the Company shall not be required to deliver at the Point of Delivery Gas with the same Gross Heating Value or containing the same constituent parts as Gas delivered at the Point of Receipt and the Company shall make whatever compensating adjustments to volume and Gross Heating Value as may be warranted. In the event, and to the extent, that any hydrocarbon components in the Gas delivered at the Point of Receipt are absent from the Gas delivered at the Point of Delivery as the result of commingling, exchanging or removal of such hydrocarbon components in the course of transporting the Gas, title to such hydrocarbon components shall, notwithstanding anything to the contrary otherwise contained in the Distribution Access Service Agreement, be deemed conclusively to have passed to the Company.

### **3.12 Right to Transport**

Retailer/DSP covenants with the Company that Retailer/DSP shall have the right to transport all Gas delivered under the Distribution Access Service Agreement to Company at the Point of Receipt.

## **ARTICLE 4 – GENERAL OBLIGATIONS OF RETAILERS, DEFAULT SUPPLY PROVIDER**

### **4.1 Timeliness, Due Diligence and Security Requirements**

- (a) The Retailer/DSP shall exercise due diligence and use reasonable efforts in meeting its obligations hereunder, and perform same in a timely manner.
- (b) The Retailer shall adhere to all credit, deposit and security requirements specified in these Terms and Conditions.
- (c) The Retailer/DSP shall make every effort to ensure that its Customers are aware of the provisions of these Terms and Conditions that may affect the Customer(s).

### **4.2 Arrangements with Customers**

Unless otherwise stated herein, the Retailer shall be solely responsible for having appropriate contractual or other arrangements with Customer(s) necessary to provide service to Customers. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements and shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's failure to perform its obligations to its Customer(s).

### **4.3 Responsibility for Gas Purchases**

The Retailer/DSP will be solely responsible for the purchase of Gas supply for the Customer(s) it provides Gas Services to and for arranging the delivery of such Gas to the Point of Delivery for the Customer(s), subject to these Terms and Conditions.

#### **4.4 Retailer Authorization**

The Retailer shall be responsible for obtaining authorization from each Customer authorizing the enrollment of the Customer for receipt of Distribution Access Service by such Retailer.

#### **4.5 Retailer and DSP Identification**

Any information exchange or communications between the Retailer or DSP and the Company under these Terms and Conditions shall employ Retailer Identification.

#### **4.6 Single Retailer/DSP for Customer**

The Company shall not be required to recognize and deal with more than one Retailer and/or DSP in respect of a Point of Delivery at any given time. Nothing in these Terms and Conditions shall prohibit a Customer from entering into arrangements with multiple Retailers and/or DSP for a Point of Delivery, provided that a single Retailer/DSP is designated to be the Customer's Retailer/DSP for the purposes of these Terms and Conditions.

#### **4.7 Fees and Other Charges**

The Company will provide all standard services hereunder pursuant to the Gas Distribution Tariff. All additional, supplementary or extra non-discretionary services provided by the Company to a Retailer/DSP will be charged a separate rate or fee, such as those included, without limitation, in Schedule C. Payment for these services shall be in accordance with the provisions of these Terms and Conditions.

### **ARTICLE 5 – CUSTOMER INQUIRIES AND CUSTOMER INFORMATION**

#### **5.1 Customer Inquiries**

For Customers requesting information on Distribution Access Service, the Company shall:

- (a) make available notification and informational materials to consumers about competition and consumer choices;
- (b) direct Customers to an external source where they may obtain information about consumer choice. The Company is under no obligation to assure the accuracy of this information.

## **5.2 Customer Inquiries Related to Emergency Situations and Outages**

Retailers/DSP shall make every effort to ensure Customers contacting the Retailer/DSP regarding distribution emergency conditions, outages, safety or environment situations related to the Company's distribution system are referred directly to the Company immediately. The Company reserves the right, without providing notice to the Retailer/DSP, to test or audit the response time of the Retailer/DSP. The Company will communicate any unacceptable patterns to the Retailer/DSP to be corrected.

## **5.3 Customer Information**

### *5.3.1 Provision of Customer Usage Information to a Retailer/DSP*

The provision of Customer Usage Information to a Retailer/DSP will be as specified in AUC Rule 10.

### *5.3.2 Provision of Customer Information to the Company*

The Retailer/DSP must notify the Company as promptly as reasonably practical of any changes to Customer Information, as the Company relies on this information to reasonably perform its Gas Distribution Service obligations to Customers. Such information shall be provided in a form that is compliant with the NGSSC and the Retailer Guide.. The Company shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's/DSP's failure to provide up-to-date and accurate Customer Information to the Company. The Company reserves the right to assess a charge for additional processing work undertaken by the Company as a result of inaccurate Customer Information provided by the Retailer/DSP, as set forth in Schedule C hereof.

## ARTICLE 6 – PROVISION OF SERVICE

### 6.1 Qualification for Service

#### 6.1.1 *Qualification for Service*

The Retailer/DSP must fulfill the following requirements to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer/DSP:

- (a) submit to the Company a fully completed, executed Distribution Access Service Agreement (Schedule A) and a Retailer of Record and Credit Application Form as set out in the Retailer Guide;
- (b)
  - (1) for Retailers, providing Gas Services to Customers whose annual consumption is less than or equal to 2500 GJ of gas per year, furnish a certified copy of the license issued to it and warrant in writing to the Company that it is licensed pursuant to and will comply with the provisions of the Fair Trading Act, and any regulations or policies made thereunder;
  - (2) for Retailers providing Gas Service to Customers whose annual consumption greater than 2500 GJ of gas per year, warrant in writing to the Company that it will comply with the provisions of the Fair Trading Act, and any regulations or policies made thereunder.
- (c) the Retailer (excluding the DSP) must satisfy the credit requirements of the Company as set forth in Article 11 hereof;
- (d) warrant in writing to the Company that it will comply with the guidelines established in the Retailer Guide;
- (e) meet the compliance testing protocol of the Company in respect of information exchange, which protocol is set forth in the Retailer Guide;

- (f) meet any other requirements that the Company, acting reasonably, may impose in order to provide Distribution Access Service hereunder. If the Company determines that additional requirements must be satisfied in order to qualify for Distribution Access Service, the following process will apply:
- (1) where the Company is confronted with a situation which the Company, in its sole discretion, considers would materially alter the risk to the Company, or where the Company must impose additional requirements in order to comply with applicable legislation, the Company may implement the additional requirement and then apply to the AUC for approval of same; or,
  - (2) where the Company is not confronted with the circumstances outlined in (1), above, the Company shall apply to the AUC for approval of the proposed additional requirement prior to implementing same.

#### *6.1.2 Provision of Distribution Access Service*

Upon satisfaction of the above requirements, the Company will provide Distribution Access Service to the Retailer/DSP, subject to these Terms and Conditions. Subject to complying with all applicable laws, and the directions or requirements of any of those mentioned above, the Company reserves the right upon giving the Retailer/DSP ten (10) Business Days notice, acting reasonably, to discontinue Distribution Access Service to the Retailer/DSP if at any time the Retailer/DSP no longer fulfills the above requirements, subject to the provisions of Article 7.3, Article 11.2(d), Article 13 and Article 14.1(d) herein.

## **6.2 Application for Site Enrollment**

- (a) In order to initiate the provision of Distribution Access Service by the Company, the Retailer/DSP shall complete and provide to the Company an enrollment for Distribution Access Service in the form and manner set out in the NGSSC. The Retailer/DSP shall provide updated Customer Information with each application for Site enrollment.

- (b) The Company will, subject to the Retailer/DSP meeting the provisions of these Terms and Conditions and in compliance with the NGSSC, accept an enrollment by a Retailer/DSP for provision of Distribution Access Service hereunder. The Company reserves the right to verify the identity of the Customer and the accuracy of the Customer Information.
- (c) Upon receipt of a valid enrollment from a Retailer/DSP in the form and manner set out in the NGSSC, the Company will recognize the Retailer/DSP as the Retailer of Record for that particular Site.
- (d) Enrollments will be processed by the Company on a first-come, first-served basis as per the NGSSC. Each enrollment will be time and date-stamped when received by the Company.
- (e) Enrollments will be accepted by Company from a Retailer/DSP on a daily basis. Once the enrollment is submitted, the Company will exercise reasonable efforts to provide the Retailer/DSP, in electronic form, within (2) Business Days, a status notification informing the Retailer/DSP whether the enrollment has been accepted or rejected. If an enrollment is accepted, the effective date of the acceptance and the commencement of Distribution Access Service will be in accordance with the NGSSC and will be confirmed in the response to the Retailer/DSP. If an enrollment is rejected, the Company will provide reasons for the rejection.
- (f) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not obtain an actual read at the time of the enrollment, the Company will estimate a meter read. At the request of the Retailer/DSP, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer/DSP as set forth in Schedule C hereof.
- (g) If more than one enrollment is received for a Site while an earlier enrollment is pending, only the first valid enrollment received by the Company shall be processed in that period as specified in the NGSSC.

- (h) If a Retailer finds that it has enrolled an incorrect Site (Customer), that Retailer shall notify the Company as soon as reasonably possible. Upon receiving notice from the Retailer, the Company will notify the previous Retailer to enroll the Site.
- (i) If the Company determines that the Site (Customer) who has been enrolled with the Retailer/DSP is indebted to the Company, the Company reserves the right to disconnect Gas Distribution Service to that Customer as set forth in Article 10 hereof.
- (j) The Retailer/DSP will not be liable to the Company for any outstanding indebtedness of the Customer to the Company, which accrued prior to the receipt by the Retailer/DSP of Distribution Access Service hereunder.

## **ARTICLE 7 – BILLING & PAYMENT**

### **7.1 Retailer/DSP Billing**

The Company will bill the Retailer/DSP for Distribution Access Services provided to the Retailer/DSP in accordance with the Tariff Billing Code (Rule 4) billing procedures set out as follows:

- (a) For the purpose of determining the amount to be billed by the Company and paid by the Retailer/DSP for the transportation of Gas under the Distribution Access Service Agreement, the unit to be used shall be one (1) GJ.
- (b) The Company will invoice the Retailer/DSP each billing cycle for Distribution Access Service provided by the Company for the period prior to the billing cycle; including the Imbalance Purchase/Sale amount, if any, as stipulated in Article 7.2(b) and Article 13.3 herein. The Company also reserves the right to perform off-cycle billings.
- (c) The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer/DSP. The Retailer/DSP shall process Customer payments and handle collection responsibilities.

- (d) The Company reserves the right to bill the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections. The Retailer/DSP shall refer to Schedule C – with respect to these services.
- (e) Retailers, DSP, or any party acting as an Agent on behalf of Retailers/DSP are required to provide Customers with notification of a Company distribution rate change in the billing envelope or through the electronic billing and payment process that accompanies the first charge to the Customer at the new rate.

## **7.2 Payment and Collection Terms**

- (a) The Retailer/DSP shall pay to the Company, on or before the 11th Business Day following the Business Day on which the Retailer/DSP was invoiced, the amount invoiced by the Company for the preceding period.
- (b) Company shall invoice, and Retailer/DSP shall pay, the monthly net Imbalance Purchase/Sale amount, if any, on the next available billing cycle following the date on which the Imbalance Purchase/Sale amount was authorized by the Company;
- (c) The Company will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding, the Company will accept payment by cash or certified cheque if agreed to by the Company.
- (d) The Company has established two electronic billing options for Retailers/DSP electing to send and receive payments electronically. The Preauthorized Payment Agreement ("Authorization") and the Electronic Payment Transfer Agreement, as set out in the Retailer Guide, set forth the terms and conditions for making payments and providing remittance information electronically.
- (e) The Retailer/DSP shall pay all amounts owed to the Company for any of the Distribution Access Services (which includes Imbalance Purchase/Sale) provided by the Company whether or not the Customer has paid the Retailer/DSP.

- (f) Failure to receive a bill does not release a Retailer/DSP from the obligation to pay the amount owing for any of the Distribution Access Services provided by the Company.
- (g) The Company shall charge interest on the late payment as set forth in the Company's Rate Schedule.

### **7.3 Late or Unpaid Bills**

- (a) If a Retailer defaults or is late in paying charges, subject to (b)(4) below, the Company will provide the Retailer notice as required below in (b)(1), and will be entitled to draw on the security of the Retailer if the Retailer's arrears are not paid within (3) three Business Days after the date of the notice. The Retailer must provide an additional deposit to replace the funds drawn down because of the default or late payment as stipulated in Article 11.2 herein.
- (b)
  - (1) If a Retailer defaults in its payments the Company must provide the Retailer with a notice in writing stating that the Retailer is in default in its payments to the Company under the Company's Rate Schedule and these Terms and Conditions, and advising that the Company may make a claim against the Retailer's security if the arrears are not paid within (3) three Business Days after the date of the notice.
  - (2) If after the expiry of the period set out in (b)(1) the Retailer's arrears remain unpaid, the Company may make a claim against the Retailer's security to cover the arrears. The Company may also discontinue or restrict Distribution Access Service to the Retailer with three (3) Business Day's notice if in its opinion not doing so could impair its ability to use the Retailer's security for continuing arrears or amounts that have not been billed but are owed to ATCO Gas.
  - (3) If the Retailer has provided security in the form of a financial deposit, the Company may deduct from that deposit the amount of the unpaid arrears.

- (4) If in the opinion of the Company the giving of notice in accordance with (b)(1) would impair the Company's ability to make a claim against a Retailer's security or to deduct the unpaid arrears from a Retailer's financial deposit, the Company may make the claim or deduct the unpaid arrears without notice.
- (c) The Company may, at its sole discretion and in addition to any other remedies available to it, restrict enrollment or terminate Distribution Access Service to the Retailer/DSP, if such Retailer/DSP does not pay all outstanding bills in accordance with these Terms and Conditions.

## **7.4 Adjustment of Bills**

### *7.4.1 Billing Error*

Should the Retailer/DSP dispute any amount owing, the Retailer/DSP shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, the Company will return any amount found owing to the Retailer/DSP forthwith. The right or ability of either party to dispute a bill for service provided hereunder shall only apply to requests in writing and are limited to a period where electronic cancel and recharge may occur. The Company may assess a charge to the Retailer/DSP for reviewing billing disputes, in circumstances where the Company has not been responsible for any billing error.

### *7.4.2 Unauthorized Use*

Where the Company determines that there has been unauthorized use of Gas Services including, but not limited to, meter or equipment tampering, unauthorized connection or reinstatement, theft or fraud whereby the Company is denied full compensation for Distribution Access Services provided, the Company will bill the Retailer/DSP for the Company's estimated delivery charges of such unauthorized use. Nothing in this Article shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

## **ARTICLE 8 – DISTRIBUTION ACCESS SERVICE INTERRUPTION**

### **8.1 Continuous Supply**

The Company shall make all reasonable efforts to maintain a continuous Gas supply to the Retailer's/DSP's Customers, but the Company cannot guarantee an uninterrupted Gas supply.

### **8.2 Interruption**

Without liability of any kind to the Company, the Company shall have the right to disconnect or otherwise curtail, interrupt or reduce service to the Retailer/DSP (and the Retailer's/DSP's Customers):

- (a) whenever the Company reasonably determines that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any segment of the Gas Pipeline System;
- (b) to maintain the safety and reliability of the Gas Pipeline System; or,
- (c) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of the Gas Pipeline System or Force Majeure.

### **8.3 Reasonable Efforts**

The Company shall use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the Customer with prior notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume Distribution Access Service as promptly as reasonably practicable.

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## **ARTICLE 9 – DISCONTINUANCE OF DISTRIBUTION ACCESS SERVICE**

This Article, as amended from time to time, describes the relationship between the Company and the Retailer/DSP in relation to de-enrollment of a Site, which includes, without limitation, the circumstances when a Retailer chooses not to arrange for Distribution Access Service to the Customer as set forth in Article 9.1, or when the Company discontinues Distribution Access Service to the Retailer/DSP as set forth in Article 9.2 herein, or when Retailer/DSP fails to provide supply or balance its Account as set forth in Article 13 herein. This Article does not cover the provisions under which a Customer requests its meter be removed or service line to be disconnected.

### **9.1 Discontinuance by the Retailer**

- (a) To discontinue Distribution Access Service, a Retailer shall complete and provide to the Company a notice of de-enrollment of service in the form and manner set out in the NGSSC. Such notice shall clearly specify the Retailer's reason(s) for seeking to de-enroll the Site.
- (b) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not obtain an actual read at the time of the de-enrollment, the Company will estimate a meter read. At the request of the Retailer, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer as set forth in Schedule C hereof.
- (c) The Company will accept or reject the notice from the Retailer of de-enrollment in accordance with the NGSSC.
- (d) The Retailer is responsible to ensure that its Customers are provided notice of the de-enrollment, and the consequences thereof, and that the Company will not be held liable for any Customer disputes with the Retailer.
- (e) Upon receipt of a valid notice of de-enrollment of Distribution Access Service from a Retailer in the form and manner set out in the NGSSC, the Company will accept the de-enrollment request of the Retailer and will notify the Default Supply Provider of the pending transaction. If the site is not enrolled by a replacement Retailer

within the period set out in the Retailer Guide, the Company will notify the DSP to enroll the site.

- (f) The Retailer shall remain responsible for Gas Services to the Site until the de-enrollment effective date, a replacement Retailer/DSP is enrolled for the Site or the site is salvaged.
- (g) The Retailer may revoke a notification to de-enroll a Site as set out in the NGSSC.

## **9.2 Discontinuance by the Company**

### *9.2.1 Discontinuance of DSP*

The Company may discontinue or restrict Distribution Access Service to the DSP if any of the following occur:

- (a) the DSP has failed to meet its obligations under these Terms and Conditions or the Distribution Access Service Agreement with the Company.

### *9.2.2 Discontinuance of Retailer*

The Company may discontinue or restrict Distribution Access Service to the Retailer if any of the following occur:

- (a) the Retailer has failed to meet its obligations under these Terms and Conditions or the Distribution Access Service Agreement with the Company,  
or
- (b) the Retailer has failed to meet its credit requirements pursuant to Article 11,  
or
- (c) the Retailer has failed to meet its obligations pursuant to Article 13,  
or
- (d) the Retailer's license has been revoked by Service Alberta .

### 9.2.3 *Notice of Discontinuance*

Notification of discontinuance will be made electronically to the Retailer/DSP. The Company will provide the Retailer/DSP notice before the Company discontinues Distribution Access Service to the Retailer/DSP, subject to the provisions of these Terms and Conditions. Upon discontinuance of Distribution Access Service to a Retailer pursuant to this Article, the provision of the affected service(s) will be assumed by the DSP.

## **ARTICLE 10 – SERVICE DISCONNECTS AND REINSTATEMENT**

This Article, as amended from time to time, describes the relationship between the Company and the Retailer/DSP in relation to the physical disconnect of a Point of Delivery.

### **10.1 Disconnection of Service**

#### *10.1.1 Disconnection by the Company*

- (a) The Company reserves the right to disconnect Gas Distribution Service to the Customer in a number of circumstances, including but not limited to non-payment of the Company bills or any past due charges by the Customer; evidence of safety violations or fraud by the Customer; threats or harassment of employees or agents of the Company, failure to provide access for meter readings, or the Customer failing to meet its obligations under the Terms and Conditions for Distribution Service Connections.
  
- (b) If the disconnect is a result of a safety violation, the Company will reinstate the service when the safety problem is resolved and when the Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance. The Company may assess a reinstatement charge to the Retailer/DSP as set forth in Schedule C hereof.

### *10.1.2 Disconnection at Request of Retailer/DSP*

- (a) In accordance with subsection 5(1) of the R3 Regulation, the Retailer/DSP shall have the right to request that the Company disconnect service to a particular Customer or Site as per the NGSSC.
- (b) The Retailer/DSP shall remain responsible for all Gas Services to the Customer until the Company has completed the disconnection.
- (c) The Company will notify the Retailer/DSP if a disconnect request was not successfully completed and include the reason why it was not successfully completed. If the Retailer/DSP still requires a disconnect, the Retailer/DSP must re-issue a disconnect request.
- (d) The Company shall not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article.

### **10.2 Reinstatement Service**

Before reinstating or restoring service to a particular Site:

- (a) the Retailer/DSP must provide the Company with authorization to reinstate service;
- (b) if the reason for the reinstatement request is to resume access service after a Site was Cut Off for Non-Payment ("CONP") to the Customer's Retailer/DSP, and the Customer Information on the reinstatement request matches the Customer Information on the original CONP disconnect request, then the Company will not reinstate until such time as a disconnect release is received by the Company from the Retailer/DSP that issued the disconnect request. Such release shall be sent to the Company within 24 hours of the Retailer/DSP receiving payment.
- (c) the Retailer/DSP or Customer must provide proof of compliance with Article 12 of the Terms and Conditions for Distribution Service Connections.

- (d) the Company reserves the right to assess a reinstatement charge as set forth in Schedule C hereof, pursuant to this Article.

## **ARTICLE 11 – PRUDENTIAL REQUIREMENTS**

In circumstances where the Retailer has multiple Retailer Identification numbers, the review, setting and maintaining of prudential requirements shall be based on the Retailer Business Function Identification level.

### **11.1 Setting of Prudential Requirements**

- (a) The Retailer must fulfill the requirements as set forth in this Article to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer.
- (b) Subject to review and reassessment of the Prudential Requirements of a Retailer by the Company from time to time, a Retailer shall meet and maintain such financial and other Prudential Requirements as set out in the Natural Gas Billing Regulation, A.R. 185/2003, as amended from time to time, to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations.
- (c) The Company will confirm the credit rating of the Retailer, affiliate or person which guarantees the financial obligation of the Retailer. The credit rating will mean the bond rating according to Standard and Poor's Bond Rating Service or an equivalent bond rating from Dominion Bond Rating Service or Moody's Investors Service.

The minimum credit rating that will qualify a Retailer for a reduction in security or allowing a person to provide an irrevocable guarantee of the Retailer's financial obligation is BBB-, as set out in Section 6(3) of the Natural Gas Billing Regulation A.R 185/2003 as amended from time to time.

If a Retailer has obtained more than one credit rating, the lowest credit rating will be used in the assessment.

- (d) Subject to review and reassessment, the Company shall determine the amount of the security reduction available for each Retailer, and the maximum amount of any guarantee required from the person guaranteeing the financial obligations of the Retailer, subject to sections 5, 6 and 7 of the Natural Gas Billing Regulation, A.R. 185/2003, as amended from time to time. The Company shall notify the Retailer of its security requirement within 20 (twenty) Business Days from the receipt of the Retailer's complete application for service.
- (e) For the purposes of calculating the amount of the Retailer's security deposit pursuant to section 5(2) of the Natural Gas Billing Regulation, A.R. 185/2003, as amended from time to time, the Retailer must project its payments under the Company's Rate Schedule over a period equal to the lesser of (A) 75 days, or (B) the total of (i) 20 days, plus (ii) the number of days between consecutive bills issued by the Company to the Retailer, plus (iii) the number of days from the issuance of a bill by the Company until payment is due from the Retailer.
- (f) For the purposes of calculating the amount of the Retailer's security deposit required, the Retailer will add an additional 20 days of projected payments (the Load Balancing Security) under the Company's Rate Schedule to the amount of security deposit required under the Natural Gas Billing Regulation A.R. 185/2003, as amended from time to time as identified in part (e) above which shall serve as separate security in respect of any Imbalance Sales that ATCO Gas may be required to charge the Retailer in order to balance their accounts.
- (g) Subject to section 6 of the Natural Gas Billing Regulation, A.R., 185/2003, as amended from time to time, the Retailer shall provide security in the manner set out in the Retailer Guide, in the form of a financial deposit, a bond, an irrevocable letter of credit or an irrevocable guarantee. An irrevocable guarantee may only be provided from a person, other than the Retailer, with a qualifying credit rating.

## 11.2 Maintaining Prudential Requirements

- (a) If a Retailer's actual outstanding charges under the Company's Rate Schedule and these Terms and Conditions are materially greater than the value projected by the Retailer under Article 11.1 of these Terms and Conditions, the Company will update the projection and, if additional security is required based on the updated projection, require the Retailer to provide additional security within five (5) Business Days of the Company's request.
- (b) The Company requires Retailers to report any downgrading of their corporate bond rating to the Company within two (2) Business Days of said rating revisions, and must provide any additional security required as a result of the downgrading within five (5) Business Days of the downgrading.
- (c) If a Retailer fails to pay any amount billed, subject to Article 7.3 of these Terms and Conditions, the Company will apply all or any portion of that Retailer's security deposit to the unpaid amount. The Retailer will then be required to replenish the security deposit within five (5) Business Days.
- (d) If the Retailer fails to maintain its prudential requirements in accordance with Article 11 the Company reserves the right to suspend the provision of additional Distribution Access Service to the Retailer, or discontinue Distribution Access Service to the Retailer. The Company will provide the Retailer notice of discontinuance three (3) Business Day before the Company discontinues Distribution Access Service to the Retailer. Upon discontinuance of Distribution Access Service to a Retailer pursuant to this Article, provision of the affected service(s) will be assumed by the DSP.
- (e) A Retailer that is required to provide security in accordance with the *Natural Gas Billing Regulation*, AR 185/2003, as amended from time to time, and these Terms and Conditions must maintain that amount of security until all obligations of the Retailer under the Company's Distribution Tariff are satisfied. A Retailer who provides security other than by means of a financial deposit held by the Company, must either ensure that its security has no expiry date and cannot be terminated, or

must at all times ensure that its security is automatically extended from year to year, for successive periods of a minimum of one year from any expiration date thereof, unless the Company is notified in writing by prepaid registered mail not less than 30 days prior to any expiration date that the security will not be renewed for any such additional period ("Notice of Non-Renewal").

- (f) Upon receipt of a Notice of Non-Renewal, the Company shall provide notice of same in writing to the Retailer advising that the Retailer's failure to provide the Company with alternate security meeting the requirements set out in the *Natural Gas Billing Regulation*, AR 185/2003, within 3 business days after the date of the notice shall be in breach of the Retailer's obligation to maintain its security in accordance with s.8 of the *Natural Gas Billing Regulation*, AR 185/2003, and an event of default under Article 14.1(d) of these Terms and Conditions. If after 3 business days the Company is not in receipt of such alternate security, the full amount of the Retailer's security determined in accordance with Article 11.1 of these Terms and Conditions shall become due and payable to the Company and the Company shall be entitled to make demand or claim against the Retailer's security in accordance with Article 14.3.
  
- (g) In the event of a default by a Retailer, the Company is entitled to recover as part of the Gas Distribution Tariff any costs not covered by a claim against the Retailer's security under section 9 of the Natural Gas billing Regulation AR 185/2003 as amended from time to time.

### **11.3 Confidentiality**

All information provided by the Retailer in relation to its financial standing and designated by the Retailer as confidential will be treated as such under the Confidentiality Agreement between the Retailer and the Company. The terms and conditions of the Confidentiality Agreement are set out in the Retailer Guide.

#### **11.4 Costs**

All costs associated with obtaining financial security and meeting prudential requirements under this Article are the responsibility of the Retailer.

#### **11.5 Interest on Security Deposits**

Interest on each Retailer's cash security deposit held by the Company will be calculated at the rate specified from time to time in the *Residential Tenancies Act, R.S.A. 2000, c.R-17*, but not less than 2.5% per annum. Interest will be paid to the Retailer annually.

### **ARTICLE 12 – METERING**

#### **12.1 Provision and Ownership**

The meters used by the Company to assess the level of Distribution Access Service charges to the Retailer/DSP will be the same meters used to provide Customer Billing Information to the Retailer/DSP. The Company will provide and install all meters for each Point of Delivery of a Customer of the Retailer/DSP in accordance with the Company's Terms and Conditions for Distribution Service Connections. Each meter shall remain the property of the Company.

#### **12.2 Meter Reading**

Billing will be based on meter readings made by the Company from time to time or on estimates for those billing periods when the meter is not read. The Company reserves the right to assess a charge to the Retailer/DSP for additional reads above the Company's standard practices as set forth in Schedule C hereof.

#### **12.3 Changes to Metering Equipment**

(a) Notwithstanding Article 3.7, should a Retailer/DSP request or consent to a Customer request for new metering equipment beyond the basic service, the Company shall provide, install, test and maintain the required metering equipment. The metering equipment must be requested or consented to in writing by the Retailer/DSP and meet the Company's requirements. The Retailer/DSP shall bear

the cost of providing and installing the metering equipment, and ongoing operating costs as set forth in Schedule C hereof.

The metering equipment will remain the property of the Company and will be maintained by the Company. The Company shall complete installation of the metering equipment within thirty (30) days of delivery from the supplier. The Company shall bill the Retailer/DSP upon installation, and the Retailer/DSP shall pay the Company in full as per the terms stated on the invoice. If payment is not received as per the terms stated on the invoice, the Company shall charge interest on the late payment as per the terms stated on the invoice. Article 7.3 herein will also apply in the event of late or unpaid bills.

- (b) Notwithstanding Article 3.7, should a Retailer/DSP request or consent to a Customer request to return the metering equipment to its previous basic form, the Retailer/DSP shall bear the cost of removal and installation of the metering equipment.
- (c) At the request of a Retailer/DSP, or with the Retailer's/DSP's consent, the Company may provide other metering services, above standard metering service, in its discretion, acting reasonably, and may charge separate fees for such services.

#### **12.4 Meter Test and Adjustments**

- (a) The Company may inspect and test a meter at any reasonable time.
- (b) The Company shall arrange for a meter to be removed and tested by an official designated for that purpose by Measurement Canada or an accredited agency as may, from time to time, be designated for this purpose in the event of a Customer initiated meter test..
- (c) If a test determines that the meter is not accurate within the limits set by government standards, the Retailer's/DSP's bill will be adjusted accordingly. Where it is impossible to determine when the error commenced, it shall be deemed

to have commenced three (3) months before the test or the date of the meter installation, whichever occurred later. The Company shall not be liable to the Retailer/DSP for any additional costs that are associated with such metering or meter reading errors.

- (d) The Company reserves the right to assess a charge to the Customer or Customer's Retailer/DSP for a meter test, in circumstances where the Company has not been responsible for any metering error, as set forth in Schedule C hereof. This charge does not apply to circumstances when the meter tested is found to be faulty.
- (e) If any appliance of a Customer connected to the Gas Pipeline System prevents or impedes the meter from accurately recording the total amount of energy supplied, the Company may forthwith disconnect the Customer, or disconnect such appliance from the Gas Pipeline System and shall, in either case, estimate the amount of energy consumed and not registered, as accurately as it is able to do so and charge the Retailer/DSP.

## **ARTICLE 13 – ACCOUNT BALANCING**

### **13.1 Retailer/DSP Account**

- (a) The Retailer/DSP Account shall be accumulated and recorded by Company each Day and, without limitation, shall include such items as Gas supply Nominations, Retailer Load, Imbalance quantity, opening Imbalance quantity, previous Month(s) true-up quantity(ies), Retailer/DSP's share of Company's Unaccounted For Gas and/or other adjustment quantity(ies) deemed appropriate as determined by the Company from time to time.
- (b) Each Day the Company shall Forecast and Backcast Retailer's Load according to the practices specified in the Company's Retailer Guide.
- (c) The Retailer/DSP shall provide in kind Unaccounted For Gas each Day at the rate specified in Rider D.

- (d) The Company shall make the Account available to the Retailer/DSP in the manner described in the Retailer Guide.
- (e) The Retailer/DSP shall be required to hold one Account for each of the north zone and south zone corresponding to Retailer/DSP's aggregate north zone and aggregate south zone Customers, as applicable.

### **13.2 Exchange of Gas**

- (a) The Retailer/DSP warrants that it will make its Gas supply available in an Account on the Transmission System and that the Company will make that Gas available in the Retailer/DSP's Account by means of an exchange with that Account on the Transmission System and the Company's Account on the Transmission System, subject to the procedures described in the Retailer Guide.

### **13.3 Daily Retailer/DSP Account Balance**

- (a) For each Gas Day, the energy quantity of the Retailer/DSP Account Imbalance Window shall be calculated by multiplying the daily Backcast by the  $\pm$ Imbalance Window percentage specified on Schedule D and rounded to the nearest GJ, provided that the resultant is not less than the minimum energy Imbalance Window specified on Schedule D.
- (b) The Retailer/DSP shall at all times endeavor to maintain its daily Account Imbalance energy within the quantity specified by the daily Imbalance Window.
- (c) For each Gas Day, in the event the absolute value of the Retailer/DSP Account daily Imbalance energy is greater than the absolute value of the quantity specified by the daily Imbalance Window, the difference quantity shall be settled by Imbalance Purchase/Sale at the price specified on Schedule D.
- (d) The net quantity and dollars resulting from the Imbalance Purchase and Imbalance Sales transactions in (c), if any, will be invoiced to Retailer/DSP once per Month as specified in Article 7.

### 13.4 Retailer/DSP Account Monitoring Rules

The Company shall perform monitoring of the Retailer/DSP's Account according to the following:

(a) Step 1

- i. If there is no evidence of a Nomination in the Retailer's Account by 10:00 a.m. local time of the current Gas Day (Gas Day 1), which has not been pre-authorized by the Company, the Company will attempt to contact the Retailer for an explanation. If the Retailer indicates in writing (by email or FAX) that it intends to balance the Account within the Account Balancing timeline specified in the Retailer Guide, then the Company will take no further action at Step 1. For the purposes of this clause, "balance the Account" means the Retailer provided sufficient gas supply for Gas Day 1 such that the resulting Account Imbalance on Gas Day 1 was within the Imbalance Window and no Imbalance Purchase/Sale was triggered.

ii. If at (a)(i) above:

1. the Company, with reasonable effort by telephone and email, is unable to contact the Retailer by the time of the release of the F3 Forecast for Gas Day 1, or
2. the Retailer has indicated an inability to make Nominations to its Account for Gas Day 1, or
3. there continues to be no evidence of a Nomination in the Retailer's Account by the time of the release of the F3 Forecast for Gas Day 1,

then the Company will transact on the Same Day Market based on the F3 Forecast for Gas Day 1. The transaction(s) will be recorded in the Company's Account on the Transmission System, not the Retailer's Account, and charged to the LBDA. The Retailer's Account will be closed for the remainder of Gas

Day 1 and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect for the Retailer's Account on Gas Day 1.

(b) Step 2

- i. If there is no evidence of a Nomination in the Account by 10:00 a.m. local time of the Gas Day following Gas Day 1 (i.e. Gas Day 2), which has not been pre-authorized by the Company, the Company will attempt to contact the Retailer for an explanation. This rule will also apply to those Retailers who made a commitment to balance their Account in Step 1, but did not fulfill that commitment, even if a nomination was made for Gas Day 1. The Retailer will be required to nominate gas supply equal to the F3 Forecast for Gas Day 2 no later than one half ( $\frac{1}{2}$ ) hour after the F3 Forecast has been issued.
- ii. If at (b)(i) above
  1. the Company, with reasonable effort by telephone and email, is unable to contact the Retailer by the time of one half ( $\frac{1}{2}$ ) hour after the release of the F3 Forecast for Gas Day 2, or
  2. the Retailer has indicated an inability to make the Nominations to its Account for Gas Day 2, or
  3. the gas supply in the Retailer's Account does not equal the F3 Forecast energy by the time of one half ( $\frac{1}{2}$ ) hour after the release of the F3 Forecast for Gas Day 2,

then the Company will transact on the Same Day Market based on the F3 Forecast for Gas Day 2. The transaction(s) will be recorded in Company's Account on the Transmission System, not the Retailer's Account, and charged to the LBDA. The Retailer's Account will be closed for the remainder of Gas Day 2 and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect for the Retailer's Account on Gas Day 2.

The Company will also provide electronic notice to the Retailer indicating that unless the Retailer takes action to provide gas supply to its Account sufficient

to alleviate Company's concerns by 10:00 a.m. local time of the next Gas Day (i.e. Gas Day 3), the Company intends to permanently close the Retailer's Account during Gas Day 3.

(c) Step 3

If there is no evidence of a Nomination in the Retailer's Account by 10:00 a.m. local time of the current Gas Day (Gas Day 3), which has not been pre-authorized by the Company, the Company will provide electronic notice to the Retailer that its Account is permanently closed. The Company will commence de-enrollment of Sites associated with the Retailer's Account during Gas Day 3 to first take effect on Gas Day 4.

The Company will transact on the Same Day Market based on the F3 Forecast for Gas Day 3. The transaction(s) will be recorded in the Company's Account on the Transmission System, not the Retailer's Account, and charged to the LBDA. The rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect for the Retailer's Account.

(d) Step 4

The Company will continue to transact in the Same Day Market based on the F3 Forecast for the Retailer who has defaulted until all the Retailer's Sites have been de-enrolled and successfully re-enrolled with the DSP. The transaction(s) will be recorded in the Company's Account on the Transmission System, not the Retailer's Account and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect. When all of the defaulting Retailer's Sites have been successfully enrolled with the DSP, the termination of Distribution Access Service will be complete and Company will not undertake any further transactions on behalf of the defaulting Retailer. The Company will continue to apply the rules related to Imbalance Purchase/Sale to the Retailer's Account as a result of adjustments related to settlement or other matters which occur after the Retailer's Account has been permanently closed.

(e) Step 5

In the event of non-payment on the part of the Retailer, and without limiting the Company's rights or remedies at law or in equity, the Company shall have the right to recover any charges to a Retailer by claiming against the Retailer's or Agent's performance bond (as stipulated in Article 11 of these Terms and Conditions) which exists to secure due performance by the Retailer or Agent of its obligation under the Distribution Access Service Agreement.

(f) The Account monitoring rules described above will also be used to monitor the DSP Account to provide early detection of issues that may result in obligations under the terms specified in the commercial arrangements between the Company and the DSP.

(g) In the event that the Company is notified by the Retailer in writing (by email or FAX) or in the event that the Company becomes aware that the Retailer has declared itself or has been declared to be insolvent prior to the full three days of Account monitoring described in this section, the Company shall have the right to discontinue Distribution Access Service with one (1) Business Day's notice.

### **13.5 Termination of Retailer Service**

(a) These Terms and Conditions shall continue in force until all the Retailer's Sites have been de-enrolled and Final Monthly Settlement for the Retailer's Account has been completed, whereupon Company shall terminate the Retailer's Account. The Company will continue to transact in the Same Day Market based on the F3 Forecast for the Retailer who has defaulted until all the Retailer's Sites have been de-enrolled and successfully re-enrolled with the DSP. The transaction(s) will be recorded in the Company's Account on the Transmission System, not the Retailer's Account and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect.

(b) Notwithstanding the provisions of (a), upon mutual agreement, the Retailer and the Company may enter into an arrangement to settle the outstanding energy amounts

in the Retailer's terminating Account, including without limitation, the Account closing Imbalance and adjustments to the Account from Gas Settlement, in a manner that is different than is normally required under the provisions of these Terms and Conditions and/or the Retailer Guide.

### **13.6 Request for Additional Information**

A Retailer may request additional settlement information above the basic service provisions specified in the Retailer Guide or information previously provided by the Company if:

- (a) the Retailer provides a written request to the Company outlining the purpose for the additional settlement information; and
- (b) the additional settlement information applies only to the Customers of the Retailer.

Upon satisfaction of the above requirements, the Company will advise the Retailer in a written proposal of the type of work, time of delivery and charges necessary to provide the additional settlement information to the Retailer.

### **13.7 Liability**

The Company shall not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article. No express or implied warranties of any kind shall apply to information or services provided by the Company to any person as part of such good faith performance, including without limitation implied warranties of fitness for a particular purpose.

## ARTICLE 14 – DEFAULT

### 14.1 Events of Default

An event of default under these Terms and Conditions and the Distribution Access Service Agreement will occur if either the Company, the DSP or the Retailer (“Defaulting Party”):

- (a) is the subject of a bankruptcy, insolvency or similar proceeding;
- (b) makes an assignment for the benefit of its creditors;
- (c) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (d) fails to pay the other party (“Non-Defaulting Party”) when payment is due, or to satisfy any other material obligation under these Terms and Conditions or the Distribution Access Service Agreement including, without limiting the generality of the foregoing, fulfilling the prudential requirements as set forth in Article 11, in accordance with these Terms and Conditions, and fails to remedy the failure or satisfy the obligation, as the case may be, within three (3) Business Days after receipt of written notice thereof from the Non-Defaulting Party;
- (e) fails to balance its Account in accordance with Article 13.

### 14.2 Rights Upon Default

In an event of default, the Non-Defaulting Party shall, subject to these Terms and Conditions and any applicable regulatory requirements, be entitled to pursue any and all available legal and equitable remedies and terminate the Distribution Access Service Agreement. Where the Defaulting Party is the Company or the Retailer and the Non-Defaulting Party elects to terminate, the Distribution Access Service Agreement is terminated without any liability or responsibility whatsoever, except for obligations arising

prior to the date of termination. The Non-Defaulting Party shall provide written notice to the Defaulting Party of its intention to terminate Distribution Access Service hereunder.

### **14.3 Recourse to Security Upon Retailer Default**

In addition to any other rights and remedies set out herein, in an event of default by the Retailer, other than a default in payment addressed under section 9 of *Natural Gas Billing Regulation*, AR 185/2003, the full amount of the Retailer's security determined in accordance with article 11.1 of these terms and conditions shall become due and payable to the Company and the Company shall be entitled to make demand or claim against the Retailer's security for the full amount secured thereunder. All funds received by the Company in respect of such claim shall be retained by the Company and applied against the Retailer's obligations hereunder until such time as all of the Retailer's obligations have been determined and satisfied. Any balance remaining after satisfaction of the Retailer's obligations shall be returned to the issuing party of the security for the benefit of the Retailer.

### **14.4 Termination on Default**

If any one or more of the parties to the Distribution Access Service Agreement fails to perform any of the covenants or obligations imposed upon it under and by virtue of the Distribution Access Service Agreement (the "Defaulting Party"), then in any such event, the other party or parties to the Distribution Access Service Agreement (the "Non-Defaulting Party") may at its option terminate the Distribution Access Service Agreement insofar and only insofar as the Distribution Access Service Agreement pertains to the Defaulting Party by proceeding as follows:

- (a) The Non-Defaulting Party shall cause a notice in writing or fax to be given to the Defaulting Party advising as to the nature of any default and declaring it to be the intention of the Non-Defaulting Party to terminate the Distribution Access Service Agreement.

## **ARTICLE 15 – IMPAIRED DELIVERIES**

### **15.1 Impaired Deliveries**

If by reason of the causes set forth in this Article, the Company is unable, in whole or in part, to deliver the quantities of Gas provided for in the Distribution Access Service Agreement, then the Company shall be relieved of liability for not delivering such quantities, and the Company may curtail or discontinue deliveries of Gas under the Distribution Access Service Agreement during the continuance and to the extent of the inability; provided however that the Company shall endeavor to give reasonable notice of any curtailment or discontinuance of deliveries arising by virtue of such causes and shall promptly endeavor to remedy the cause of any curtailment or discontinuance of deliveries as soon as reasonably possible. Such notice shall specify the Company's estimate of the duration of any such curtailment or discontinuance of deliveries under the Distribution Access Service Agreement. The causes above referred to shall be:

- (a) the necessity, in the Company's sole opinion, of making modifications or improvements to the Gas Pipeline System; provided however that the Company shall, when practicable, endeavor to effect such modifications or improvements, which are not emergency in nature, at a time and in a manner which shall not unduly interfere with or interrupt deliveries of Gas; or
- (b) the necessity of making repairs to the Gas Pipeline System.

## **ARTICLE 16 – LIABILITY AND INDEMNITY**

### **16.1 Indemnity**

- (a) Each party (as applicable, the "Indemnitor") will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives ("Indemnitee(s)") from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claim, cause of action, action, suit or proceeding by a third party ("Claim") which arises from damage to property or injury to or death of persons

resulting from the Indemnitor's failure to perform its obligations under these Terms and Conditions which failure is caused by the negligence or willful act of the Indemnitor or any of its directors, officers, employees, agents or representatives acting within the scope of their authority or employment. The indemnity under this Article will be limited to an amount in proportion to the degree to which the Indemnitor or its directors, officers, employees, agents or representatives acting within the scope of their authority or employment are at fault. For the purpose of this Article "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under these Terms and Conditions.

- (b) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Article 16.1 such Indemnitee will give the Indemnitor prompt notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
  
- (c) Subject to Article 16.1(d) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Article 16.1(a) in respect of:
  - (1) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third party claimant (and, if applicable, to the court or other tribunal determining the Claim), the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and

the Indemnitor shall be entitled, at its option, to take carriage of the defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee shall cooperate with the Indemnitor to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or

- (2) some, but less than all, of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the Indemnitee is of the opinion that the Indemnitor's interests are not in conflict with its own, the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to that portion of the Claim in respect of which the Indemnitor has an obligation to indemnify the Indemnitee and consult with the Indemnitor in respect thereof.

The Indemnitee shall not make any admission of the liability regarding, or settle or compromise, that portion of the Claim in respect of which the Indemnitor has acknowledged its obligation to indemnify the Indemnitee without the written consent of the Indemnitor, which consent shall not be unreasonably withheld.

- (d) The provisions of Article 16.1(a) hereof shall not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.
- (e) Except to the extent to which either party is required to indemnify the other party (and those other persons specified in this Article 16) by the express terms of Article 16, neither party, nor its directors, officers, agents, employees, and representatives, will be liable to the other party for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the other party, its directors,

officers, employees, agents and representatives howsoever and whenever caused, and each party, for itself and as agent for its directors, officers, agents, employees and representatives hereby forever releases the other party, its directors, officers, agents, employees and representatives from any liability or obligation in respect thereof. For greater certainty, neither party shall be limited in a claim against the other for specific performance or other equitable relief in relation thereto, or direct damages only and related costs and expenses (including reasonable legal fees), arising from a breach of these Terms and Conditions.

## **16.2 Consequential Loss**

Notwithstanding anything to the contrary contained in these Terms and Conditions, neither party will be liable to the other party, and the Company shall not be liable to the Customer with respect to matters for which the party is acting as agent for the Customer, for any damage, cost, expense, injury, loss or other liability of an indirect, special or consequential nature suffered by the other party or claimed by any third party against the other party which arises due to such party's failure to perform its obligations under these Terms and Conditions or for any other reason (including negligence on its part or on the part of any person for whose acts it is responsible), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits, loss of production, loss of earnings, loss of contract, cost of purchased or replacement capacity and energy, cost of capital and loss of the use of any segment of the Gas Pipeline System or property owned, operated, leased or used by the other party.

## **ARTICLE 17 – FORCE MAJEURE**

### **17.1 Force Majeure Relief**

The Company or Retailer/DSP, as the case may be, is relieved of its obligations hereunder, and shall not be liable for any failure to perform any term of these Terms and

Conditions to the extent that and when such failure is due to, or is a consequence of, any event of Force Majeure.

Retailer/DSP shall not be relieved by Force Majeure as described in this Article 17 from the obligation to pay the charges set forth pursuant to this Article unless Force Majeure has been invoked by the Company.

### **17.2 Exclusions**

Notwithstanding the definition of Force Majeure, lack of funds shall not be an event of Force Majeure.

### **17.3 Notice**

The party claiming relief from liability under the provisions of this Article 17 shall promptly give the other party notice of the Force Majeure including full particulars thereof and shall promptly give the other party notice when the Force Majeure event ceases to prevent performance pursuant to these Terms and Conditions.

### **17.4 Obligation to Remedy**

The party claiming relief from liability under the provisions of this Article 17 shall promptly remedy the cause and effect of the Force Majeure insofar as it is reasonably able to do so.

### **17.5 Strikes and Lockouts**

Notwithstanding any other provision of these Terms and Conditions the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming relief from liability and such party may settle such strike, lockout or industrial disturbance at such time and on such terms and conditions as it may deem appropriate and no failure or delay in settling such strike, lockout or industrial disturbance shall constitute a cause or event within the control of such party or deprive such party of the benefits of this Article 17.

## **ARTICLE 18 – DISPUTE RESOLUTION**

### **18.1 Resolution by Company and Retailer/DSP**

If any dispute between the Company and a Retailer/DSP arises at any time in connection with these Terms and Conditions, the Company and the Retailer/DSP acting reasonably and in good faith, shall use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner.

### **18.2 Resolution by Arbitration**

If any dispute has not been resolved pursuant to Article 18.1 hereof within 30 days after notice from the Company or the Retailer/DSP to the other of its desire to have the dispute resolved, then the dispute shall be resolved pursuant to Articles 18.3 to 18.11 hereof. The Company and the Retailer/DSP shall abide by the terms of any award rendered by the arbitrator(s) appointed hereunder without delay.

### **18.3 Arbitrators**

All disputes or differences between the Company and a Retailer/DSP in connection with these Terms and Conditions shall be referred (unless the Company and the Retailer/DSP concur in the appointment of a single arbitrator) to a board of arbitrators consisting of one (1) arbitrator to be appointed by each of the Company and the Retailer/DSP who shall, by instrument in writing, appoint a third arbitrator immediately after they are themselves appointed. Notwithstanding the foregoing, any disputed matters between the Company and a Retailer/DSP relating to an order or direction made or approved by the AUC or falling within the exclusive jurisdiction of the AUC, shall be referred to the AUC for resolution.

### **18.4 Failure to Concur**

The Company and a Retailer/DSP shall be deemed to have failed to concur in the appointment of a single arbitrator if such an arbitrator shall not have been appointed within fifteen (15) days after the serving by either the Company or the Retailer/DSP on the other of notice requesting it to concur in the appointment of such an arbitrator.

### **18.5 Refusal to Appoint an Arbitrator**

If either the Company or the Retailer/DSP shall neglect or refuse to appoint an arbitrator within fifteen (15) days after the other party (provided such other party has appointed its arbitrator) has served the Company or the Retailer/DSP, as the case may be, with notice to make the appointment, the party who has appointed its arbitrator shall be entitled to apply, upon notice to the other party, to a Justice of the Court of Queen's Bench of Alberta to appoint an arbitrator for the party in default.

### **18.6 Failure to Appoint a Third Arbitrator**

If the arbitrators appointed by the Company and the Retailer/DSP have not, within fifteen (15) days after their appointment or the appointment of the arbitrator last appointed, as the case may be, appointed a third arbitrator, either the Company or the Retailer/DSP shall be entitled to apply upon notice to the other party to a Justice of the Court of Queen's Bench of Alberta to appoint such an arbitrator.

### **18.7 Technical Competence**

Any arbitrator appointed under the provisions of this Article whether by concurrence of the Company and the Retailer/DSP, by either party, by the arbitrators, or by a Justice of the Court of Queen's Bench of Alberta shall, in the opinion of the persons making such appointment, be possessed of such technical or other qualifications as may be reasonably necessary to enable him to properly adjudicate upon the dispute or difference.

### **18.8 Compensation of Arbitrators**

Each party shall be responsible for the costs of the arbitrator appointed by it hereunder. The costs of the third arbitrator shall be divided evenly between the parties.

### **18.9 Application of the Arbitration Act (Alberta)**

Except as herein modified, the provisions of the *Arbitration Act, R.S.A., 2000, c. A-43*, as amended from time to time, shall apply to any arbitration proceeding.

### **18.10 Decisions Binding**

A decision of the single arbitrator or the majority of the three arbitrators named or appointed shall be final and binding upon each of the parties to the dispute or difference.

### **18.11 Continuity of Service**

All performance required under these Terms and Conditions by the Company and the Retailer/DSP and payment therefore shall continue during the dispute resolution proceedings contemplated by this Article 18, provided that in the case of any such proceedings pertaining to amounts payable under these Terms and Conditions, any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings and interest shall be paid thereon by the party required to make the payment or reimbursement on the amount thereof at the rate specified from time to time in, the Residential Tenancies Act, R.S.A. 2000, c.R.-17, but not less than 2.5% from the date so determined until paid.

## **ARTICLE 19 – MISCELLANEOUS**

### **19.1 Compliance with Applicable Legal Authorities**

The Company, DSP and the Retailer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other actions of governmental authorities having applicable jurisdiction. The Company will not violate, directly or indirectly, or become a party to a violation of any requirement of any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Distribution Access Service to the Retailer/DSP (or a Customer of the Retailer/DSP). The Company's obligation to provide Distribution Access Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of such Distribution Access Service will have been obtained and will be maintained in force during such period of Distribution Access Service.

### **19.2 No Assignment**

Neither the Company nor the Retailer/DSP shall assign any of its rights or obligations under these Terms and Conditions or the Distribution Access Service Agreement without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. No assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or the Distribution Access Service Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Article shall be void. However, the Company may assign any or all of its rights and obligations under these Terms and Conditions and the Distribution Access Service Agreement, without the Retailer's/DSP's consent, to any entity succeeding to all or substantially all of the assets of the Company, if the assignee agrees, in writing, to be bound by all of the Terms and Conditions hereof and if any necessary regulatory approvals are obtained.

### **19.3 No Waiver**

The failure of either party to insist on strict performance of any provisions of these Terms and Conditions or a Distribution Access Service Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of these Terms and Conditions or a Distribution Access Service Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.

### **19.4 Law**

These Terms and Conditions and the Distribution Access Service Agreement between the Company and the Retailer/DSP shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these Terms and Conditions and the Distribution Access Service Agreement shall be brought in the courts of the Province of Alberta.

## ARTICLE 20 – NOTICE

Unless otherwise stated herein, all notices, demands or requests required or permitted under these Terms and Conditions or a Distribution Access Service Agreement shall be in writing and shall be personally delivered or sent by courier-service or electronic transmission addressed as follows:

(a) If to the Retailer/DSP, to the address and the addressee set out in the Distribution Access Service Agreement between the Retailer/DSP and the Company.

(b) If to the Company to: ATCO Gas  
10035 - 105 Street, Edmonton, Alberta, T5J 2V6  
**Attention:** Manager, Pricing  
**Fax:** (780) 420-5098

Notice received after the close of the Business Day shall be deemed received on the next Business Day.

**SCHEDULE A – DISTRIBUTION ACCESS SERVICE AGREEMENT**

MEMORANDUM OF AGREEMENT made the (day) of (month), (year)

BETWEEN: **(RETAILER/DSP NAME)**

(address)

(hereinafter called the "Retailer"/"DSP")

- and -

**ATCO Gas and Pipelines LTD.**, a body corporate with its Head Office in the City of Edmonton in the Province of Alberta ("ATCO Gas" or "Company")

WHEREAS the Retailer/DSP has requested the Company to provide the Retailer/DSP with Distribution Access Service for the purpose of serving its Gas customer(s) ("the Customer"):

The Retailer/DSP and the Company agree as follows:

1. The Retailer/DSP is solely responsible for the provision of accurate and timely Customer Information to the Company. The Retailer/DSP agrees to provide the following information by electronic form to the Company, and represents and warrants that such information is true and accurate:

(a) Retailer Identification No(s): \_\_\_\_\_.

(b) Customer Information, in a form acceptable to the Company, for each Customer of the Retailer/DSP.

Should any of the Customer Information change during the term of this Distribution Access Service Agreement, the Retailer/DSP shall advise the Company of the change, by electronic means, in accordance with the NGSSC. The company reserves the right to request the Retailer/DSP provide Customer Information update.

2. This Distribution Access Service Agreement is subject to the Company's Terms and Conditions for Distribution Access Service ("Terms and Conditions"), as amended from time to time, which are approved by the Alberta Utilities Commission ("AUC").
3. The Retailer/DSP acknowledges that it has been offered a copy of the Company's Terms and Conditions, has reviewed and understands these Terms and Conditions and agrees to be bound by them, and any amendments thereto, in all transactions with the Company or its Customers.
4. No person, whether an employee or agent of the Company or otherwise, can agree to change, alter, vary or waive any provision of the Terms and Conditions without the express approval of the AUC.
5. The Retailer/DSP acknowledges that it has been offered a copy of the Company's Retailer Guide and is aware of the policies and business practices of the Company detailed therein.
6. This Distribution Access Service Agreement shall be effective on the date first noted herein, and thereafter shall remain in effect until terminated by either party in accordance with Article 9 or Article 11, as applicable, of the Terms and Conditions; or for the reasons set out in Article 14 of the Terms and Conditions.
7. The Retailer/DSP understands and agrees that the Distribution Access Service provided hereunder is provided solely for the Retailer's/DSP's use at the locations and for the Customers identified to the Company in accordance with paragraph 1 hereof. The Retailer/DSP shall not use the Distribution Access Service provided by the Company for any other purpose.
8. If the Retailer/DSP, at any time, becomes aware that any Customer is using the service(s) provided by the Retailer/DSP or the Company in a manner which is inconsistent with the Terms and Conditions, which could potentially create safety, health or environment concerns or damage the Company's Distribution System or Gas Pipeline System, the Retailer/DSP shall immediately notify Company of such circumstances.

9. In providing service to its Customer, the Retailer/DSP shall not, in any way, damage or interfere with or otherwise disturb, alter or tamper with the Gas Pipeline System of the Company. The Retailer/DSP shall notify the Company immediately of any problem or defect relating to Company's Gas Pipeline System, which is discovered by or brought to the attention of the Retailer/DSP.
10. The Retailer/DSP agrees to pay all rates, charges, invoices or fees levied or billed to it by the Company in accordance with Article 7 of the Terms and Conditions.
11. The Retailer/DSP acknowledges, understands and agrees that the Company will not perform any billing or collection activities on its behalf. The Retailer/DSP agrees to pay all amounts due and owing to the Company in accordance with Article 7 of the Terms and Conditions, regardless of any billing or collection disputes the Retailer/DSP may have with its Customer(s).
12.
  - (a) The Retailer agrees to comply with the Company's Prudential Requirements established pursuant to Article 11 of the Terms and Conditions for purposes of enabling the Company to assess the Retailer's credit risk and required security.
  - (b) The Company shall be entitled to access the financial security provided by the Retailer/DSP in any event of default including late payment or default on any invoices or bills of the Company, in accordance with Articles 7, 11 and 14 of the Terms and Conditions.
13. This Distribution Access Service Agreement is subject to all applicable legislation, including the *Gas Utilities Act, R.S.A. 2000, c.G-5*, as amended from time to time, and the Regulations made thereunder, and all applicable orders, rulings, regulations and decisions of the AUC or any other regulatory authority having jurisdiction over the Company or the matters addressed herein.
14. This Distribution Access Service Agreement shall enure to the benefit of and be binding and enforceable by the parties hereto and their respective executors, administrators, successors and, where permitted, assigns.

15. If any provision of this Distribution Access Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Distribution Access Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.
16. Neither Party may disclose any Confidential Information obtained pursuant to this Distribution Access Service Agreement to any third Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include all business, financial, and commercial information pertaining to the Parties, Customers of either Party, suppliers for either Party, personnel of either Party, any trade secrets and other information of a similar nature, whether written or otherwise that is marked "proprietary" or "confidential" with the appropriate owner's name.

Notwithstanding the preceding, a receiving Party may disclose Confidential Information to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling or order, providing that:

- (a) such Confidential Information is submitted under the applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and
  - (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.
17. All notices required hereunder shall be in writing and may be given personally, by facsimile or prepaid registered mail addressed to the party for which the notice is intended to its address designated hereunder or to such other address as may be substituted therefore from time to time.

The Retailer's address for notice is:

**Retailer Name**  
Retailer Address

The Corporation's address for notice is:

**ATCO Gas and Pipelines Ltd**  
10035 – 105 Street



P.O. Box 2426  
Edmonton, Alberta, T5J 2V6

Attention:  
Facsimile:

Attention: Customer Care Services  
Facsimile: (780) 420-1058

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day first above mentioned.

**[RETAILER/DSP NAME]**

**ATCO Gas and Pipelines LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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## **SCHEDULE B – DISCONNECT CUSTOMER SITE**

The Company's policy (as approved in these Terms and Conditions) with respect to disconnecting Customers is set out below. The same policies shall apply to all Retailers/DSP.

1. Where a Retailer/DSP requests the Company to disconnect a Customer for non-payment, the Retailer/DSP shall provide to the Company updated Customer Information, the proof of payment amount the Retailer/DSP will accept in the event the Customer provides ability of payment, the date the Customer was provided 10 days written notice and a direct phone number to the Retailer's/DSP's collection department for circumstances when the Customer is required to contact the Retailer/DSP immediately to resolve payment issues. The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer/DSP.
2. A Retailer/DSP that submits a disconnect for non-payment, must submit a disconnect release to the Company within 24 hours of receiving the Customer payment.
3. Disconnection by Company or at request of Retailer/DSP (including Cut Off For Non-Payment "CONP" activity) will commence for residential and commercial residential property sites on April 15<sup>th</sup> of each year. Between April 15<sup>th</sup> and October 31<sup>st</sup> when the overnight temperature is forecast to drop below zero (0) degrees Celsius in the 24 hour period immediately following the proposed disconnect within the Company service area the Company will not disconnect a residential or commercial residential property. Residential and commercial residential, including multi-family, property sites will not be disconnected during the winter season defined as November 1<sup>st</sup> to April 14<sup>th</sup>, unless there is written notification to the Retailer/DSP from the property owner requesting the disconnection. The Retailer/DSP will forward a copy of the property owner's written request to the Company before the Company will schedule field work.

4. CONP activity will be scheduled during regular business hours on weekdays of Monday, Tuesday, Wednesday and Thursday. No CONP activity will be scheduled on Friday, Saturday and Sunday or any statutory holiday or any day prior to a statutory holiday observed in the service area.
5. The Company will not disconnect a Customer if the Retailer/DSP has not provided the Customer with a written notice at least 10 Business Days in advance of the proposed disconnect. The Company must be provided with a copy of such notice upon request.
6. The Company will not disconnect if the Customer produces a receipt showing it has paid the most current bill or the amount specified in part 1 of this Schedule B.
7. The Company will provide to a previous Retailer of Record at the Site the right to request a disconnect for a period of 8 months since that Retailer/DSP last provided Distribution Access Service at the Site. When this occurs, the Company will comply with a request to energize from the current or new Retailer only after the Retailer requesting the CONP has issued a release. See Terms and Conditions for Distribution Access Service Article 10.2(b).
8. The Company may, upon visiting the Site, delay the disconnection until the Company is satisfied that all conditions for disconnection are met. Reasons for delay include, but are not limited to:
  - (a) Customer Information does not match Customer Information provided by the Retailer/DSP
  - (b) Customer has proof of payment in hand at the Site and is prepared to meet payment conditions set by the Retailer/DSP
  - (c) Immediate danger may exist to the occupants or the companies' representatives.
  - (d) Disconnecting the service will adversely affect other Customers who are not to have their service disconnected.
  - (e) Where meters are located inside or on another Customer's property and access to the meter cannot be obtained. These situations will require additional distribution requirements including construction arrangements to disconnect elsewhere on the service line.

## **SCHEDULE C – NON-DISCRETIONARY CHARGES**

### **1.0 APPLICABILITY**

Applicable to every Retailer/DSP participating in Distribution Access Service within the Company's service area.

The service charges outlined herein are also outlined in the Company's Terms and Conditions for Distribution Service Connections. This is done to ensure the Customer (or Retailer/DSP) is aware of the charges that may apply whether they are reviewing this set of Terms and Conditions or the other. For greater clarity, the listing of these charges in both sets of T & C's does not entitle the Company to recover charges under both sets of T & C's.

### **2.0 SCHEDULE OF CHARGES**

All charges and provisions of the Customer's applicable price schedule shall apply in addition to the following charges for the service being provided.

**SCHEDULE C  
NON DISCRETIONARY CHARGES  
Effective January 1, 2011**

**1. SERVICE LINES:** Applicable to all services except those eligible for grants under the Rural Gas Act.

**1.1 Pipe Installation:**

<b>ATCO Gas (North)</b>		
<b>Service Line Diameter</b>	<b>Summer</b>	<b>Winter</b>
15.9 mm or 26 mm (up to and including 15 metres)	\$720*	\$970*
Linear charge for length over 15 metres	\$47/metre	\$64/metre
42.2 mm or 60.3 mm (up to 15 metres)	\$960*	\$1,310*
Linear charge for length over 15 metres	\$66/metre	\$89/metre
Greater than 60 mm	Contract Price	Contract Price
Credit for provision of service line trench in 4-party installation	\$40	\$200

<b>ATCO Gas (South)</b>		
<b>Service Line Diameter</b>	<b>Summer</b>	<b>Winter</b>
15.9 mm or 26 mm (up to and including 15 metres)	\$520*	\$710*
Linear charge for length over 15 metres	\$31/metre	\$44/metre
42.2 mm or 60.3 mm (up to 15 metres)	\$960*	\$1,310*
Linear charge for length over 15 metres	\$66/metre	\$89/metre
Greater than 60 mm	Contract Price	Contract Price
Credit for provision of service line trench in 4-party installation	\$40	\$200

Notes:

1. Winter and Summer conditions are determined by the ATCO Gas representative on site. Typically winter conditions are 150mm or more of frozen ground conditions and / or 300mm or more of snow cover. If construction occurs within the winter construction season as determined by ATCO Gas, winter construction rates will apply.
2. The customer will be charged for the Primary Service line from the property line to the Gas Meter location when the main is located outside the customer's property.
3. The customer will be charged for the Primary Service line from the edge of easement to the Gas Meter location when the main is located in an easement within the customer's property.

\*The fixed charge will be phased in over three years as per the following table:

	Service Size	Summer			Winter		
		2010	2011	2012	2010	2011	2012
South	15mm or 26mm	\$430	\$520	\$620	\$620	\$710	\$810
	42mm or 60mm	\$780	\$960	\$1140	\$1130	\$1310	\$1490
North	15mm or 26mm	\$580	\$720	\$860	\$830	\$970	\$1110
	42mm or 60mm	\$780	\$960	\$1140	\$1130	\$1310	\$1490

**1.2 Mobilization Charge:** A mobilization charge of \$150.00 will be levied for each additional site visit required when a site with an inspector confirmed site ready date does not meet ATCO Gas requirements for service line installations upon arrival of the service installation crew.

**1.3 Pavement and Concrete Breaks:** Contract Price. Applicant responsible for settlement and permanent repair.

**1.4 Crossings:** Including highway, railroad, road, pipeline, canal - Contract Price

**1.5 Compaction:** Contract Price

**1.6 Shallow Utility Crossings:** Contract Price

**1.7 Waste Removal:** Contract Price

**2. COMPANY RURAL INVESTMENT:** "three times net revenue"

**3. REINSTATEMENT CHARGE:**

a. Residential (not before 8am of the next business day) - \$90.00

b. Residential (before 8am of the next business day) - \$205.00

c. Non-Residential (not before 8am of the next business day) - Contract Price (minimum \$90.00)

d. Non-Residential- (before 8am of the next business day) - Contract Price (minimum \$205.00)

**4. METER RELOCATIONS**

**3.1 Single Family Dwelling:** Inside to outside – No direct ATCO Gas charges if viewed as required by ATCO Gas. Customer may be responsible for permitting fees and site clean up. All other moves at Contract Price.

**3.2 Other:** Contract Price

**5. INSTALLATION OF AUTOMATIC METER READING OR REMOTE METER READING DEVICE - \$170.00**

**6. ALTERATIONS, RELOCATIONS AND REPLACEMENT - Contract Price**

**7. SERVICE CALL FOR PROBLEMS CAUSED BY CUSTOMERS - Contract Price** including estimated cost of lost gas.

**8. TEMPORARY SERVICE – Contract Price**

**9. SPECIAL METER READ FEE: \$50.00**

**10. METER HANDLING FEE:**

a. Residential - \$110.00

b. Non-Residential - Contract Price (minimum \$110.00)

c. Customer Usage Information Fee will apply as required.

**11. DISHONoured CHEQUES: \$30.00**

**12. CUSTOMER USAGE INFORMATION: Contract Price**

**13. PROVISION OF CUSTOMER INFORMATION TO THE COMPANY: Contract Price**

**14. BILLING ERROR: Contract Price**

NOTE: All charges in Schedule C are subject to GST except the "Dishonored Cheque" charge.

## **SCHEDULE D – IMBALANCE PURCHASE/SALE CHARGES**

### **1.0 Imbalance Window Percentage**

The daily Imbalance Window percentage applicable to each Retailer/DSP Account is  $\pm 5\%$ .

### **2.0 Minimum Energy Imbalance Window**

The daily minimum energy Imbalance Window applicable to each Retailer/DSP Account for each Day is:

- (a) When the daily Backcast is less than or equal to 5,000 GJ the minimum energy Daily Imbalance Window quantity shall be  $\pm 500$  GJ;
- (b) When the daily Backcast is greater than 5,000 GJ the minimum energy Daily Imbalance Window quantity shall be  $\pm 1,000$  GJ.

### **3.0 Imbalance Purchase/Sale Price**

The Imbalance Purchase/Sale price applicable to each Retailer/DSP Account is:

- (a) For Imbalance Purchase, the price used by the Company will be the lowest Same Day Market or Yesterday Market trade price that occurs on the NGX for the Gas Day as reported by the NGX as the “AECO “C” and N.I.T Same Day Price” and “NGX Alberta Yesterday Price” obtained from the “Historical NGX Indices” webpage <http://www.ngx.com/protectedmembers/indices.html>
- (b) For Imbalance Sale, the price used by the Company will be the highest Same Day Market or Yesterday Market trade price that occurs on the NGX for the Gas Day as reported by the NGX as the “AECO “C” and N.I.T Same Day Price” and “NGX Alberta Yesterday Price” obtained from the “Historical NGX Indices” webpage <http://www.ngx.com/protectedmembers/indices.html>

### **4.0 Change to Imbalance Window Percentage and Minimum Energy Imbalance Window**

In the event that the Transmission System determines the Pipeline Tolerance Level needs be increased or decreased and the Transmission Balance Zone is changed the Company

will change the Imbalance Window and the minimum energy balancing window for Retailer/DSP Accounts to the following:

<u>Transmission Balance Zone</u>		<u>AG Imbalance Window</u>			
<u>-%</u>	<u>+%</u>	<u>-%</u>	<u>+%</u>	<u>Less than 5000 GJ</u>	<u>5000 GJ and over</u>
-4%	+4%	-5%	+5%	-500 GJ to +500 GJ	-1000 GJ to +1000 GJ
-3%	+4%	-3%	+5%	-300 GJ to +500 GJ	-600 GJ to +1000 GJ
-2%	+4%	-2%	+5%	-200 GJ to +500 GJ	-400 GJ to +1000 GJ
-1%	+4%	-1%	+5%	-100 GJ to +500 GJ	-200 GJ to +1000 GJ
0%	+4%	0%	+5%	0 GJ to +500 GJ	0 GJ to +1000 GJ
-4%	+3%	-5%	+3%	-500 GJ to +300 GJ	-1000 GJ to +600 GJ
-4%	+2%	-5%	+2%	-500 GJ to +200 GJ	-1000 GJ to +400 GJ
-4%	+1%	-5%	+1%	-500 GJ to +100 GJ	-1000 GJ to +200 GJ
-4%	0%	-5%	0%	-500 GJ to 0 GJ	-1000 GJ to 0 GJ

The change to the imbalance Window Percentage and Minimum Energy Imbalance Window for Retailer/DSP Accounts will be in effect for the same gas days as the Transmission Balance Zone change.