

GasEDI BASE CONTRACT FOR ~~SHORT-TERM~~ SALE AND PURCHASE OF NATURAL GAS

GENERAL TERMS AND CONDITIONS

Changes vs October 19, 2004, Draft:

- Section 1.2.d: minor modifications to conform to definitions of Base Contract and Contract.
- "Base Contract" definition revised.
- "Business Day" definition revised: changed "relevant" to "receiving" in 2 places; deleted concept that a Business Day opens at 8:00 a.m.; deleted final sentence.
- "Confirm Deadline" definition revised: changed "time stamped" to "received".
- "Cover Standard" definition revised: deleted "as referred to in Sectin 3.2" and deleted "if applicable" in first line.
- "Credit Event Default" definition deleted.
- "Credit Annex" definition revised.
- "Delivery Period" definition: deleted duplicate "as".
- "Event of Deafult" definition: revised (v).
- "Special Provisions" definition added.
- "Spot Price" definition revised: deleted "as referred to in Sectin 3.2" and deleted "if applicable" in first line.
- "Transaction Confirmation" definition: deleted "for a particular Delivery Period" at the end.
- Section 7.2.a: revised language regarding when payment is due.
- Section 10.2.a and Section 10.2.b: added language re duration of suspension rights.
- Section 11.1 replaced completely.
- Section 11.3: changed "Force Majeure" to "Section 11.1" in the first line and changed "provided" to "caused by an event described" in both (iv) and (v).
- Section 11.4: removed [] around commercially in first line, and revised language for (v).

Changes vs October 12, 2004, Draft:

- "Base Contract" definition modified.
- "Event of Default" (iii) definition - deleted " in accordance with Section 10.1".
- "Firm" definition modified.
- "Force Majeure" definition added.
- "NIT" definition added.
- "NOVA" definition added.
- "Transporter(s)" definition modified - deleted "immediately" in 2 places.
- Section 7.2.b - added "by the Payment Date, " in the second line.
- Section 10.1 - changed the deadline for providing Performance Assurance.
- Section 10.2.b relabelled as Section 10.2.c.
- Section 10.2.a reworded and broken up into Section 10.2.a and Section 10.2.b.
- Section 11.1 language modified.
- Section 11.2.A language modified.
- Section 11.2.B replaced completely.
- Section 11.2.B.a replaced completely.
- Section 11.2.B.b - now starts with "If the Delivery Point is a".
- Section 11.2.B.c - now starts with "If the Delivery Point is a".
- Section 14.11 - reversed sequence of sentences.

Change(s) vs September 21, 2004, Draft:

- Changed "Credit Support Annex" to "Credit Annex" in several places.
- Revised "Credit Annex" definition.
- Modified "Base Contract" defnintion.
- Modified "Contract" definition.
- Added ", if applicable" to Event of Default (v).
- Added place-holder for "Special Provisions" definition.
- Deleted "Customs and" from Section 6.3.a.
- Revised "Closest Business Day" portion of Section 7.2.a.
- Changed "shall be given" to "is effective" in Section 9.3.

- Deleted "Potential Event of Default" definition and deleted same from Sections 10.1 and 10.2.
- Renumbered Section 10.2 as Section 10.2.b, and therein changed "upon 1 Business Day's Notice" to "immediately upon giving Notice".
- Inserted new Section 10.2.a.
- Several revisions to Section 14.10.
- Minor punctuation changes to Section 14.11.

Change(s) vs September 13, 2004, Draft:

- Added Credit Support Annex, etc, to Section 1.2.d.
- Added Credit Support Annex and Special Provisions documents to Contract definition.
- Added definitions for "Credit Event Default" and "Credit Support Annex".
- Added Credit Event Default to Event of Default definition.

Change(s) vs August 30, 2004, Draft:

- Modified Payment Date definition.
- Modified Section 6.3.b.
- New proposal for Section 11.
- Section 14.1 - shortened the first sentence.
- Replaced Section 14.5.
- Renumbered Section 14.10 to 14.11 and modified this Section.
- Renumbered Section 14.11 to Section 14.12.
- Deleted what was Section 14.12 (Arbitration).
- Inserted new Section 14.10 - copied Section 14.10 from NAESB 2002.

Change(s) vs August 23, 2004, Draft:

- Added Section 11, Options 2 and 3.
- Moved Section 11.6 from Option 4 to Sub-Option 3.2.

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**SECTION 1 - PURPOSE AND PROCEDURES**

1.1 These General Terms and Conditions are intended to facilitate Transactions on a Firm or Interruptible basis.

1.2.a Any Transaction may be effected orally or electronically with the offer and acceptance constituting the valid, binding and enforceable agreement of the parties. The parties are legally bound from the time they agree to Transaction terms. Any such Transaction is considered a "writing" and to have been "signed". Notwithstanding the previous sentence, the parties agree that Confirming Party shall confirm [parties to select either (i) or (ii) in the Base Contract]: (i) all Transactions or (ii) all Transactions having a Delivery Period equal to or greater than the number of Days specified in the Base Contract by sending the other party a Transaction Confirmation by facsimile or mutually agreeable electronic means

by the close of the ~~next~~third Business Day following the Day on which the Transaction is effected. Confirming Party adopts its confirming letterhead or the like as its signature on any Transaction Confirmation and as the identification and authentication of Confirming Party.

1.2.b If a Transaction Confirmation sent by Confirming Party is materially different from the other party's understanding of the agreement referred to in Section 1.2.a, that party shall give Confirming Party Notice clearly identifying such difference on Confirming Party's Transaction Confirmation and return the annotated Transaction Confirmation to the Confirming Party by the Confirm Deadline. The failure of the other party to so notify Confirming Party by the Confirm Deadline is further evidence of the agreement between the parties and constitutes the other party's acknowledgement that the terms of the Transaction described in Confirming Party's Transaction Confirmation are accurate. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the Transaction (i.e. price, quantity, performance obligation, Delivery Point, Delivery Period, and/or transportation conditions), which modify or supplement the Base Contract, such provisions shall not be deemed to be accepted pursuant to this Section 1.2.b but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any Transaction agreed to by the parties.

1.2.c If a Transaction Confirmation is required pursuant to Section 1.2.a and the other party does not receive a Transaction Confirmation from Confirming Party by the deadline set out in Section 1.2.a, then the other party ~~shall~~may notify Confirming Party by sending its own Transaction Confirmation by the close of the Business Day following the deadline set out in Section 1.2.a. If a Transaction Confirmation sent by the other party is materially different from Confirming Party's understanding of the agreement referred to in Section 1.2.a, Confirming Party shall give the other party Notice clearly identifying such difference on the other party's Transaction Confirmation and return the annotated Transaction Confirmation to the other party by the Confirm Deadline. The failure of Confirming Party to so notify the other party by the Confirm Deadline is further evidence of the agreement between the parties and constitutes the Confirming Party's acknowledgement that the terms of the Transaction described in the other party's Transaction Confirmation are accurate. For greater certainty, if the other party does not receive a Transaction Confirmation from Confirming Party by the deadline set out in Section 1.2.a and the other party does not send its own Transaction Confirmation as provided for in this Section 1.2.c, the absence of a Transaction Confirmation in respect of a particular Transaction does not negate the existence of such Transaction between the parties.

1.2.d The entire agreement between the parties shall be those provisions contained in (i) an effective Transaction Confirmation, (ii) the oral or electronic agreement of the parties, ~~(iii) the Credit Annex, if applicable, and (iiiiv)~~ and (iii) the Base Contract, and (iv) these General Terms and Conditions (collectively, the "Contract"). In the event of a conflict among the foregoing, the terms shall govern in the priority listed in the previous sentence. The parties agree that all Transactions are entered into in reliance on the fact that the Base Contract, each Transaction Confirmation hereunder and each Transaction hereunder shall form constitute a single integrated agreement between the parties and each Transaction shall be merged into the Contract the parties agree that they would not otherwise have entered into this Base Contract or any Transaction.

1.3 Communications occurring via a telephone conversation may be recorded by either party and each party consents to same without further notice to, or consent from, the other party. Each party shall, to the extent required by applicable law, give notice to, and obtain consent from, each of its employees, contractors and other representatives who may have their communications recorded hereunder. Any recordings of communications relevant to a Transaction may be used as evidence in any legal, arbitration or other dispute resolution procedure, and the parties hereby expressly waive all rights to, and expressly agree not to, contest or otherwise argue against such use of any recordings relevant to the disputed Transaction.

1.4 Each party shall be entitled, upon reasonable request, to access the other party's recording(s), if any, associated with a disputed Transaction.

1.5 The parties hereby expressly waive all rights to, and expressly agree not to, contest any Transaction, or assert or otherwise raise any defences or arguments related to any Transaction to the effect that such is not binding, valid or enforceable in accordance with its terms because either the employee(s) or representative(s) who entered into the Transaction on behalf of a party, and who appeared to have the requisite authority to do so, did not, in fact, have such

authority or because the provisions of certain applicable laws require the Transaction to be in writing and/or executed by one or both parties.

## SECTION 2 - DEFINITIONS

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

"10<sup>3</sup>m<sup>3</sup>" ~~shall mean~~s the quantity of Gas occupying a volume of 1000 cubic metres at a temperature of 15 degrees Celsius and at a pressure of 101.325 kilopascals absolute.

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

"Affiliate" to be determined once we have seen all provisions in which it will be used; exclude Regulated Affiliate.

"Base Contract" ~~shall mean~~s a contract executed by the parties: (i) that incorporates by reference these General Terms and Conditions, as may be amended from time to time by any Special Provisions, and any Credit Annex by reference; (ii) that specifies the agreed selections of provisions contained herein; (iii) and that sets forth other required information required herein; and (iv) a Credit Annex, if any.

"British Thermal Unit" or "Btu" ~~shall mean~~s the International Btu, which is also called the Btu(IT).

"Business Day" ~~shall mean~~s any day except Saturday, Sunday, or a statutory or banking holiday observed in the jurisdiction specified pursuant to Section 13.5 of the relevant receiving party's address for Notices as provided pursuant to Section 9.1. A Business Day ~~shall open~~ at 8:00 a.m. and ~~closes~~ at 5:00 p.m. local time for the relevant receiving party's principal place of business address for Notices as provided pursuant to Section 9.1. The relevant party, in each instance unless otherwise specified, shall be the party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"Buyer" refers to the party receiving Gas hereunder.

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

"Confirm Deadline" ~~shall mean~~s 5:00 p.m. in the receiving party's time zone on the second Business Day following the Business Day a Transaction Confirmation is received, or if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is ~~time stamped~~ received after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

"Confirming Party" ~~shall mean~~s the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

"Contract" ~~shall have the meaning set forth in Section 1.2.d~~ means the legally-binding relationship established by (i) the Base Contract, including a Credit Annex and all Special Provisions documents identified on the Base Contract, (ii) any and all effective Transaction Confirmations, and (iii) any and all Transactions entered into by the parties orally or electronically.

"Contract Price" ~~shall mean~~s, if the Delivery Point is in the United States, the amount expressed in U.S. Dollars per MMBtu or U.S. Dollars per Dekatherm or, if the Delivery Point is in Canada, the amount expressed in Canadian Dollars per GJ, unless specified otherwise in a Transaction.

"Contract Quantity" ~~shall mean~~s the quantity of Gas to be delivered and received pursuant to a Transaction.

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

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

"Cover Standard" ~~as referred to in Section 3.2~~ ~~shall~~ means, if applicable, if there is an unexcused failure to take or deliver any quantity of Gas pursuant to the Contract, then the Performing Party shall use commercially reasonable efforts to obtain Gas ~~or alternate fuels~~, or sell Gas, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the Non-Performing Party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the Non-Performing Party.

"Credit Event Default" means an event of default specified as a Credit Event Default under the Credit Annex.

"Credit Annex" means any Credit Annex as may be attached hereto as Exhibit B written agreement and/or amendment to these General Terms and Conditions, which is in addition to any Special Provisions, and which pertains to financial responsibility, defaults, remedies and/or Performance Assurance between the parties.

"Day" ~~shall~~ means 9:00 a.m. to 9:00 a.m. central clock time.

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

"Dekatherm" ~~shall~~ means one million British Thermal Units.

"Delivery Period" ~~shall be~~ means the period during which deliveries are to be made as ~~set forth in the~~ as agreed to by the parties in a Transaction ~~Confirmation~~.

"Delivery Point(s)" ~~shall~~ means such point(s) as are ~~mutually agreed upon between Seller and Buyer as set forth in the~~ to by the parties in a Transaction ~~Confirmation~~.

"Early Termination Date" ~~shall have~~ has the meaning set forth in Section 10.3.

"EFP" ~~shall~~ means the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm".

"ETA" ~~shall~~ means the Excise Tax Act (Canada).

"Event of Default" ~~shall~~ means (i) the failure to make payment when due under the Contract, which is not remedied within 2 Business Days after receiving Notice thereof (except for a failure to pay an Accelerated Payment invoice which shall immediately constitute an Event of Default); (ii) in respect of a party or its guarantor, the making of an assignment or any general arrangement for the benefit of creditors, the filing of a petition or otherwise commencing, authorizing, or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or having such petition filed or proceeding commenced against it, any bankruptcy or insolvency (however evidenced) or the inability to pay debts as they fall due; (iii) the failure to provide Performance Assurance ~~in accordance with Section 10.1;~~ (iv) a party's failure to deliver or receive Gas on a Firm basis, unless excused by the other party's Non-Performance or prevented by Force Majeure, for the greater of 4 cumulative Days or 5% of the number of Days in a Delivery Period, rounded up to a full Day, in any one Transaction; (v) a Credit Event Default, if applicable any default under any Credit Annex or (vi) the failure to perform any ~~other~~ material obligation under the Contract; (other than a failure to deliver or accept delivery of Gas which remedy is as set forth in Section 7.7 (except as provided in part (iv) of this definition an obligation which is specifically covered in this definition as a separate Event of Default or is covered under Section 3.2), if not remedied within 5 Business Days after receiving Notice thereof.

"Firm" ~~shall~~ means that either party may interrupt its performance without liability only to the extent that such performance is excused by the other party's Non-Performance, or by the exercise by a party of its suspension rights under Section 10, or is prevented by Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

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"Force Majeure" has the meaning set forth in Section 11.2.

"Gas" ~~shall means~~ any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.

"GJ" ~~shall means~~ 1 gigajoule; 1 gigajoule = 1,000,000,000 Joules. The standard conversion factor between Dekatherms and GJ's is 1.055056 GJ's per Dekatherm.

"GST" ~~shall have has~~ the meaning set forth in Section 6.2.

"Imbalance Charges" ~~shall means~~ any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

"Interruptible" ~~shall means~~ that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

"Joule" ~~shall means~~ the joule specified in the SI system of units.

"Liquidation Amount" ~~shall have has~~ the meaning set forth in Section 10.4.

"Market Value" of a Transaction ~~is means~~ the net present value (applying the Present Value Discount Rate) of the product of (1) the quantity of ~~g~~Gas remaining under a Transaction which the parties are obligated to transact, multiplied by (2) a market price for a similar transaction considering the remaining Delivery Period, Contract Quantity and Delivery Point; with such market price to be established by either (i) a bona fide offer accepted by the Non-Defaulting Party from a third party in an arms-length negotiation for a replacement transaction or (ii) quotations obtained by the Non-Defaulting Party, in good faith, from ~~five~~three Reference Market Makers, where the ~~highest and lowest of such quotations shall be disregarded, and the~~ arithmetic average of the three ~~remaining~~ quotations shall be the market price; provided however, that if such quotations are not readily available, or the quotations will not reflect comprehensive treatment of the pricing structure for Transactions terminated pursuant to Section 10.3(ii), as determined in the reasonable discretion of the Non-Defaulting Party, the Non-Defaulting Party shall determine the market price by considering any or all of the following: the settlement prices of NYMEX Gas futures contracts, similar sales or purchases of Gas, or information available to it internally, including, without limitation, information on relevant rates, prices, yields, yield curves, volatilities, spreads and other relevant market data in the relevant market, all adjusted to consider the remaining Delivery Period, Contract Quantity, Delivery Point and differences in transportation costs. A party shall not be required to enter into a replacement transaction in order to determine the market price. Any extension(s) of the Delivery Period of a Transaction to which the parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining market price. For the avoidance of doubt, any option pursuant to which one party has the right to extend the Delivery Period of a Transaction shall be considered in determining market price.

"MMBtu" ~~shall means~~ one million British Thermal Units which is equivalent to one Dekatherm.

"Month" ~~shall means~~ the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

"NIT" means NOVA Inventory Transfer.

"Non-Defaulting Party" ~~shall have has~~ the meaning set forth in Section 10.2.

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

"Non-Performing Party" ~~shall means~~ a party in relation to which a Non-Performance has occurred.

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"Notice" ~~shall have~~ has the meaning set forth in Section 9.1.

"NOVA" means NOVA Gas Transmission Ltd., or any successor company.

"Payment Date" ~~shall mean~~ the 25<sup>th</sup> day of the Month following the Month of delivery ~~a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.~~

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

"Performing Party" ~~shall mean~~ s, if a Non-Performance has occurred, the party which is not the Non-Performing Party.

"Person" definition may be required depending on definition of Affiliate.

~~"Potential Event of Default" shall mean any event or circumstance which would, with Notice, the passage of time, or both, constitute an Event of Default.~~

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

"Receiving Transporter" ~~shall mean~~ s the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

"Reference Market Makers" ~~shall mean~~ s leading dealers in the physical gas trading market or the energy swap market, which are not Affiliates of either party, selected by the Non-Defaulting Party from among dealers of the highest credit standing, which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Regulated Affiliate" to be determined once we have seen all provisions in which it will be used.

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

"Seller" refers to the party delivering Gas hereunder.

"Special Provisions" means any written amendment to these General Terms and Conditions agreed to by the parties.

"Spot Price" ~~as referred to in Section 3.2 shall mean~~ s, if applicable, the price listed in the publication specified by the parties in the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

"Taxes" ~~shall have~~ has the meaning set forth in Section 6.1.

"Termination Payment" for a Transaction ~~is~~ means the difference between the Market Value and the Contract Value, adjusted for Costs, as of the Early Termination Date. If the Non-Defaulting Party is Seller and Market Value minus Costs

is greater than the Contract Value, the Termination Payment will be positive (gain) and if the Market Value minus Costs is less than the Contract Value, the Termination Payment will be negative (loss). If the Non-Defaulting Party is the Buyer and the Contract Value minus Costs is greater than the Market Value, the Termination Payment will be positive (gain) and if the Contract Value minus Costs is less than the Market Value, the Termination Payment will be negative (loss).

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

“Transaction” ~~shall means~~ any ~~g~~Gas sale, purchase or exchange agreement effected pursuant to the Base Contract.

“Transaction Confirmation” ~~shall means~~ the document, substantially in the form of Exhibit A, setting forth the terms of a Transaction formed pursuant to Section 1 ~~for a particular Delivery Period~~.

“Transporter(s)” ~~shall means~~ all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer ~~immediately~~ upstream or ~~immediately~~ downstream, respectively, of the Delivery Point pursuant to a particular Transaction.

### SECTION 3 - PERFORMANCE OBLIGATION

3.1 Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular Transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed in a Transaction.

The parties have selected either the “Cover Standard” version or the “Spot Price Standard” version as indicated on the Base Contract.
Cover Standard:
3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, subject to Section 10.5, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard for replacement Gas <del>or alternative fuels</del> and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the exclusive and sole remedy of the non-breaching party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s).
Spot Price Standard:

3.2 In addition to any liability for Imbalance Charges, which shall not be recovered twice by the following remedy, subject to Section 10.5, the exclusive and sole remedy of the parties in the event of a breach of a Firm obligation shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price.

#### SECTION 4 - TRANSPORTATION, NOMINATIONS AND IMBALANCES

4.1 Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2 The parties shall coordinate their Gas nomination and scheduling activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior operational notice, sufficient to meet the requirements of all Transporter(s) involved in the Transaction, of the quantities of Gas to be delivered and purchased each Day. Such operational notice may be made by any mutually agreeable means, including phone, fax and email. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3 The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

#### SECTION 5 - QUALITY AND MEASUREMENT

5.1 All Gas delivered by Seller shall meet the quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of the Contract shall be specified as one MMBtu dry, one Dekatherm dry, one GJ or one 10<sup>3</sup>m<sup>3</sup>. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

#### SECTION 6 - TAXES

The parties have selected either the "Buyer Pays At and After Delivery Point" version or the "Seller Pays Before and At Delivery Point" version as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

6.1 Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses, interest or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

6.1 Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses, interest or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes which are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

6.2 The Contract Price does not include any amounts payable by Buyer for the goods and services tax ("GST") imposed pursuant to the ETA or any similar or replacement value added or sales or use tax enacted under successor legislation. Notwithstanding the selection made pursuant to Section 6.1, Buyer ~~will~~shall pay to Seller the amount of GST payable for the purchase of Gas in addition to all other amounts payable under the Contract. Seller ~~will~~shall hold the GST paid by Buyer and ~~will~~shall remit such GST as required by law. Buyer and Seller ~~will~~shall provide each other with the information required to make such GST remittance or claim any corresponding input tax credits, including GST registration numbers.

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

6.3.b Where Buyer is registered for GST under the ETA and Buyer indicates to Seller that Gas will be exported from Canada, Buyer may request Seller treat such Gas as "zero-rated" Gas for export within the meaning of the ETA for billing purposes ~~and. If Seller, in its sole discretion, agrees to so treat such Gas, then~~ Buyer hereby declares, represents and warrants to Seller that Buyer ~~intends to~~shall export such Gas by means of pipeline or other conduit in circumstances described in Section 6.3.a (i) to (iii).

6.3.c Without limiting the generality of Section 8.3, Buyer indemnifies Seller for any GST, penalties and interest and all other damages and costs of any nature arising from breach of the declarations, ~~covenants~~, representations and warranties contained in Section ~~6.2 or~~ 6.3.a or 6.3.b, or otherwise from application of GST to Gas declared, represented and warranted by Buyer to be acquired for export from Canada.

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

## SECTION 7 - BILLING, PAYMENT AND AUDIT

7.1 ~~On or before the 15<sup>th</sup> Day of each Month,~~ Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

The parties have selected either the "Closest Business Day to Payment Date" version or the "Next Business Day following Payment Date" version as indicated on the Base Contract.

Closest Business Day to Payment Date

7.2.a Buyer shall remit the amount due in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer; provided that: if the Payment Date falls on a Sunday, or a Monday which is not a Business Day, payment is due on the next following Business Day; and if the Payment Date falls on a Saturday, or a weekday, other than a Monday, which is not a Business Day, payment is due on the immediately preceding Business Day.

Next Business Day following Payment Date

7.2.a Buyer shall remit the amount due in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer; provided that: if the Payment Date is not a Business Day, payment is due on the next following Business Day.

7.2.b If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide, by the Payment Date, supporting documentation acceptable in industry practice to support the amount paid or disputed. Within 3 Business Days following resolution of the billing dispute, any underpayments or overpayments shall be paid or refunded with accrued interest at the rate specified in Section 7.4 for the period from the date of underpayment or overpayment until paid.

7.3 In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2 above.

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

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

7.6 The parties shall net all same currency amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any credit support document or agreement shall be subject to netting under this or any other provision of the Contract. In the event that the parties have executed a separate netting agreement, the terms and conditions therein shall prevail.

7.7 A Performing Party may accelerate the payment owed by the Non-Performing Party related to a Non-Performance by sending to the Non-Performing Party an invoice (an "Accelerated Payment Invoice") for the amounts due it under Section 3.2, setting forth the calculation thereof and a statement that pursuant to this Section 7.7 such amount is due in 3 Business Days. If the Performing Party does not deliver an Accelerated Payment Invoice, amounts payable pursuant to Section 3.2 shall be invoiced and payable in accordance with Sections 7.1 and 7.2. The Non-Performing Party must pay the Accelerated Payment Invoice when due and the Non-Performing Party: (i) shall not be entitled to net amounts owed to it hereunder by the Performing Party against its obligation to make payment on an Accelerated Payment Invoice; and (ii) shall, notwithstanding Section 7.2, pay the full amount of the Accelerated Payment Invoice despite any dispute it may have as to the amount owing thereunder.

7.8 A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement,

charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to Transactions. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

## SECTION 8 - TITLE, WARRANTY AND INDEMNITY

8.1 Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2 Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

8.3 Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable legal fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4 Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5, or Seller's warranty obligations pursuant to Section 8.2.

## SECTION 9 - NOTICES

9.1 All Transaction Confirmations, invoices, payments and other communications made pursuant to the Contract ("Notices") shall be in writing and made to the addresses for Notices specified by each respective party from time to time.

9.2 All Notices required hereunder may be sent by facsimile or mutually agreeable electronic means, a nationally recognized overnight courier service or hand delivered.

9.3 Notice ~~shall be given~~ is effective when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent electronically or by facsimile shall be deemed to have been received upon the sending party's receipt of confirmation of a successful transmission; if the day on which such electronic or facsimile Notice is received is not a Business Day or is after ~~five~~ 5 p.m. on a Business Day, then such Notice shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party.

## SECTION 10 - FINANCIAL RESPONSIBILITY, DEFAULTS AND REMEDIES

10.1 If a party has reasonable grounds for insecurity regarding the payment, performance or enforceability of any obligation under the Contract, such party may demand Performance Assurance, whether or not an Event of Default ~~or Non-Performance or Potential Event of Default~~ has occurred, which Performance Assurance shall be provided by the other party by the end of the ~~5<sup>th</sup> Business Day after the demand is received~~ next Business Day after the demand is received if the demand is received by 12:00 noon, or by the end of the 2<sup>nd</sup> Business Day after the demand is received if the demand is received after 12:00 noon. The Performance Assurance shall not exceed the amount calculated in accordance with the procedure for determining the Total Termination Payment, as of the date of the demand, as if all Transactions had been terminated plus all other outstanding amounts owed or accrued under the Contract.

[DRAFTING NOTES:

Immediately vs promptly?

Liquidated damages for benefit of suspending party? Section 3.2?

Provided no Event of Default is declared in 10.2 ...

Where should crossed out sentence of Section 10.2.b be placed?]

10.2.a If Buyer does not pay Seller any amount owed to Seller in accordance with Section 7, then Seller, in addition to any other remedies available hereunder, at law or equity, may, immediately upon giving Notice and for so long as such amount remains unpaid, suspend its performance under any or all Transactions under the Contract and/or withhold any amounts owed to Buyer under the Contract, any Transaction or any other agreement between the parties (whether or not yet due) and set off against such withheld amounts any amounts owed to Seller hereunder (whether or not yet due).

~~10.2.b In addition, Upon demanding Performance Assurance, pursuant to Section 10.1 a party may, in addition to any other remedies available hereunder, at law or equity, until such Performance Assurance is provided, upon 1 Business Day's Notice, suspend its performance under any or all Transactions under the Contract and/or withhold any amounts owed to the other party under the Contract, any Transaction or any other agreement between the parties (whether or not yet due) and set off against such withheld amounts any amounts owed to it hereunder (whether or not yet due). A party exercising its right to suspend its performance pursuant to this section will have no liability to the other party hereunder, at law or equity notwithstanding that the other party remedies its performance failure or completes performance hereunder and there is no Event of Default.~~

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

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

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

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

a waiver of the Non-Performance, the requirement for payment as contemplated by Section 3.2 or any of the other rights or remedies of the Performing Party in connection therewith.

10.6 Each party reserves to itself all rights, set-offs, counterclaims, and other defences which it is or may be entitled to arising from the Contract.

## SECTION 11 - FORCE MAJEURE

Options are being considered, with no decision at this point. For the sake of convenience, two versions are presented:

1. GasEDI 2000 Base Contract version, without change (it is expected this version will NOT appear in the New GasEDI Base Contract).
2. New version, which includes 2 versions of possible Section 11.2 language.

Version 1: OLD VERSION - quoted from the GasEDI 2000 Base Contract, without change, for convenient comparison to the proposed NEW VERSION (below). It is expected this version will NOT appear in the New GasEDI Base Contract.

11.1 Except with regard to a party's obligation to make payment due under the Contract, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure.

11.2 Force Majeure shall include but not be limited to the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption of firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3 Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) the party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4 Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbance.

11.5 The party whose performance is prevented by Force Majeure must provide notification to the other party. Initial notification may be given orally; however, Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas as applicable to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

Version 2: NEW VERSION, which includes 2 versions of possible Section 11.2 language.

11.1 Subject to the provisions of this Section 11, neither party shall be liable to the other for failure to perform an Firm obligation, other than Imbalance Charges incurred and any obligation to make payments then due or becoming due under the Base Contract, to the extent that its performance was is prevented by Force Majeure.

11.1 Except with regard to a party's obligation to make payment due under the Contract, neither party shall be liable to the other for failure to perform a Firm obligation to the extent such performance is prevented by Force Majeure.

[Need to add a selection box on the Cover Sheet and/or the Transaction Confirmation - choose between Traditional Option or Delivery Point Specific Option. Which Option will be the default?]

**11.2.A Option A - Traditional Option:**

11.2.A The term "Force Majeure", as used in these General Terms and Conditions, means any event not reasonably within the control of the party claiming a suspension of its obligations where such event directly prevents or restricts delivery by Seller or receipt by Buyer, as applicable, of Gas at a Delivery Point, and more specifically such term shall include but not be limited to the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, that result in evacuation of the affected area, floods, washouts, explosions, breakage of or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption or curtailment of firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorist acts, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction.

**11.2.B Option B - Delivery Point Specific Option:**

11.2.B The parties intend that the term "Force Majeure" shall be restricted to mean an event or circumstance which directly prevents or restricts one party from performing its obligations at a Delivery Point specified under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of the party providing notification of the Force Majeure to the other party, and which, by the exercise of due diligence, the party providing notification of the Force Majeure to the other party is unable to overcome or avoid or cause to be avoided. For greater certainty, if the Delivery Point is:

11.2.B "Force Majeure" means only an event or circumstance as defined in (a), (b), or (c) below, as applicable, not reasonably within the control of the party claiming a suspension of its obligations, where such event prevents or restricts delivery by Seller or receipt by Buyer, as applicable, of Gas at a Delivery Point.

11.2.B.a NIT, or other similar inventory transfer account, "Force Majeure" is restricted to mean an interruption, curtailment or pro-rationing by a Transporter of firm inventory transfer service, which affects all shippers who had nominated for firm deliveries or firm receipts to take place by inventory transfer on that Day. On any Day or any portion of a Day that there is a Force Majeure, Seller shall deliver to Buyer, and Buyer shall receive from Seller, that percentage of the Contract Quantity which is equal to the percentage amount of Gas which according to the Transporter, had been nominated by all inventory transfer shippers and which the Transporter is not interrupting, curtailing or pro-rationing on the Day or that portion of a Day without regard to price.

11.2.B.a If the Delivery Point is NIT, "Force Majeure" means only an interruption, curtailment or pro-rationing by NOVA of firm NIT service, which affects all NOVA shippers who had nominated for firm deliveries or firm receipts to take place by NIT on that Day. On any Day or any portion of a Day that there is a Force Majeure and either party provides Notice of the Force Majeure to the other, Seller shall deliver to Buyer, and Buyer shall receive from Seller, that percentage of the Contract Quantity which is equal to the percentage amount of Gas which according to NOVA had been nominated by all NOVA shippers for NIT and which NOVA is not interrupting, curtailing or pro-rationing on the Day or that portion of a Day without regard to price.

11.2.B.b If the Delivery Point is a ~~A~~ Non-Liquid Delivery Point, which means a delivery point located at a producer's, processor's, distributor's or consumer's plant gate or a specified location on the gathering system for production from the wells in a particular geographic area, "Force Majeure" means any event beyond the reasonable control of the party providing notification of the Force Majeure to the other party, including, without limitation, the events set out in section 11.2.A.

11.2.B.c If the Delivery Point is a ~~A~~ Delivery Point other than NIT or a Non-Liquid Delivery Point, "Force Majeure" is restricted to mean (i) a curtailment or interruption by a Transporter of firm service at the Delivery Point, regardless of

the reasons therefore, or (ii) any governmental actions such as the requirement to comply with any court order or any law, statute, regulation or authorization of a governmental authority having jurisdiction.

11.3 Neither party shall be entitled to the benefit of the provisions of Force Majeure Section 11.1 to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) subject to the provisions of Section 11.4, the party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; (iii) economic hardship which shall include but not be limited to, lack of finances, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass-through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided caused by an event described in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves[, except, in either case, as provided caused by an event described in Section 11.2, as applicable {OR Section 11.2A, as applicable} NTD: discuss whether (v) applies to Option 11.2.B.b Non-Liquid Delivery Point].

11.4 The party claiming Force Majeure shall make commercially reasonable efforts to resolve the event once it has occurred in order to resume performance; provided, however, the parties agree that nothing contained in this Section 11 shall require: (i) the settlement of strikes, lockouts or other industrial disturbances except in the sole discretion of the party experiencing such disturbance; (ii) the extension of the term of any Transaction; (iii) the parties to make up any quantity of Gas they would otherwise have been obligated to sell and purchase during any period when Force Majeure was validly claimed; (iv) Seller to deliver, or Buyer to receive, the Gas at points other than the Delivery Point(s); for (v) a party to make more than commercially reasonable efforts to mitigate such event] or (v) a party to purchase replacement Gas at a price greater than the Contract Price.

11.5 The party whose performance is prevented by Force Majeure must provide notification to the other party. Initial notification may be given orally; however, Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas as applicable to the extent and for the duration of Force Majeure.

11.6 If an event of Force Majeure only partially affects a party's ability to perform its purchase or sale obligations at a Delivery Point on any Day, then Firm obligations under the Base Contract shall be given priority over such affected party's interruptible obligations at the Delivery Point and such interruptible obligations shall be curtailed to the extent required to give effect to the Firm obligations. If after completely curtailing all of its interruptible obligations, such party's ability to perform its Firm obligations under the Base Contract is still affected, then the Firm obligations shall, to the extent permitted by the applicable Transporter(s), be treated equally with such party's other firm obligations at the Delivery Point and the Firm obligations shall only be reduced by the same percentage that the other firm obligations are reduced.

## SECTION 12 - TERM

12.1 The Contract may be terminated on 30 days' Notice, but shall remain in effect until the expiration of the latest Delivery Period of ~~any~~all Transaction-Confirmation(s). The rights of either party pursuant to Section 7.8, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Contract.

## SECTION 14~~3~~ - LIMITATIONS

**14~~3~~.1 EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL**

DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### SECTION ~~13~~4 - MISCELLANEOUS

~~13.1 The Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of the Contract shall run for the full term of the Contract. No assignment of the Contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withheld or delayed; provided, either party may transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any transfer and assumption, the transferor shall not be relieved of nor discharged from any obligations hereunder.~~

~~14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may [(i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) ]transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.~~

~~134.2~~ If any provision in the Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of the Contract.

~~134.3~~ No waiver of any breach of the Contract shall be held to be a waiver of any other or subsequent breach, and any waiver of any breach of this Contract by a party shall not be effective unless it is in writing.

~~134.4~~ The Contract sets forth all understandings between the parties respecting each Transaction, and any prior contracts, understandings and representations, whether oral or written, relating to such Transactions are merged into and superseded by the Contract and any effective Transaction Confirmation(s). The Base Contract may be amended only by a writing executed by both parties.

~~134.5~~ The interpretation and performance of the Contract shall be governed by the laws of the jurisdiction specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. This Contract shall be governed by, construed and enforced in accordance with the applicable laws of the jurisdiction specified in the Base Contract, excluding however, any conflict of laws rule which would apply the law of another jurisdiction, and the parties agree to surrender and attorn to the exclusive jurisdiction of the courts of the jurisdiction specified in the Base Contract for the resolution of any disputes arising under or in connection with this Contract.

~~13~~4.6 The Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any Federal, State, Province, or local governmental authority having jurisdiction over the parties, their facilities, or Gas supply, or the Contract.

~~13~~4.7 There is no third party beneficiary to the Contract.

~~13~~4.8 Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes the Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

~~14~~.9 The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

~~14~~.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, Neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any Transaction to a third party (other than the Affiliates, employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule; (ii) to the extent necessary for the enforcement of this Contract; (iii) to the extent necessary to implement any Transaction; or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any Transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, The parties shall be entitled to all remedies available at law or in equity including, without limitation injunctive remedies, to enforce, or seek relief, in connection with this confidentiality obligation, except that any damages shall be limited to direct damages. The terms of any Transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the Transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

~~14~~.11 The parties also agree that this Contract, including all Transactions hereunder, constitutes an "eligible financial contract" within the meaning of the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding-Up and Restructuring Act (Canada), and other Canadian insolvency legislation. The parties agree that this Contract, including all Transactions hereunder, constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

~~13~~.~~9~~~~14~~.~~12~~ For currency conversions required under the Contract, to convert Canadian or United States currency to the other, the parties shall use the average of the Bank of Canada posted noon spot exchange rates as quoted for each Day during the Month during which Gas was, or was obligated to be, delivered and received.

~~13~~.10 Any controversy or claim arising out of or relating to the Contract shall be determined by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association.