

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

ENGIE Gas & LNG LLC	Date: July 19, 2017 Transaction Confirmation: NSB041-15
This Transaction Confirmation is subject to the Base Contract, as amended, between ENGIE Gas & LNG LLC, formerly known as GDF SUEZ Gas NA LLC, and Liberty Utilities (EnergyNorth Natural Gas) Corp., successor to EnergyNorth Natural Gas, Inc., effective as of December 19, 2011. The terms of this Transaction Confirmation are binding unless disputed in writing within two (2) Business Days of receipt unless otherwise specified in the Base Contract.	
<b>Party A or Seller:</b> ENGIE Gas & LNG LLC 1990 Post Oak Blvd, Suite 1900 Houston, TX 77027 Attn: Contract Administration Telephone: (713) 636-1742 Email: <a href="mailto:jason.austin@na.engie.com">jason.austin@na.engie.com</a> Base Contract No.: NSB041	<b>Party B or Buyer:</b> Liberty Utilities (EnergyNorth Natural Gas) Corp. 15 Buttrick Road Londonderry, NH 03053 Attn: Paul Maffa Telephone: (603) 216-3629 email: <a href="mailto:paul.maffa@libertyutilities.com">paul.maffa@libertyutilities.com</a>
<b>Contract Price:</b> Buyer shall pay to Seller a Contract Price per MMBtu equal to the following two components:  I. <u>Commodity Rate</u> : For each MMBtu of Gas or LNG delivered to Buyer during a Delivery Period, Buyer will pay to Seller a rate per MMBtu equal to [REDACTED] ("Commodity Rate").  II. <u>Call Payment for Contract Years 1, 3 and 4</u> : Buyer shall make a [REDACTED] call payment to Seller in the amount of [REDACTED] for Firm delivery as set forth herein (the "Call Payment") for Contract Years 1, 3 and 4. The Call Payment due and payable hereunder shall be paid to Seller [REDACTED] each, commencing in November of one calendar year and continuing through and including March of the following calendar year.  III. <u>Call Payment in Contract Year 2</u> : Buyer shall make a [REDACTED] call payment to Seller in the amount of [REDACTED] for Firm delivery as set forth herein (the "Call Payment") for Contract Year 2, which is a Leap Year. The Call Payment due and payable hereunder shall be paid to Seller [REDACTED] each, commencing in November 2019 and continuing through and including March 2020.  IV. If Seller is unable [REDACTED] to deliver on any Day the total quantity of Gas and/or LNG so nominated by Buyer, [REDACTED] associated with such undelivered quantity, which shall be determined [REDACTED] but not delivered on such Day, by an amount equal to [REDACTED] per MMBtu.  V. The Commodity Rate and the Call Payment components, each as stated on a per MMBtu basis, are hereinafter collectively referred to as the "Contract Price" per MMBtu and shall be billed to Buyer in accordance with Section 7 of the Base Contract.	
<b>Term:</b> The term of this Transaction Confirmation shall be from November 1, 2018 through and including March 31, 2022 and shall include four (4) distinct Contract Years:  <u>Contract Year 1</u> : November 2018 - March 2019 <u>Contract Year 2</u> : November 2019 - March 2020 <u>Contract Year 3</u> : November 2020 - March 2021 <u>Contract Year 4</u> : November 2021 - March 2022	
<b>Delivery Period:</b> The Delivery Period available for deliveries of LNG and/or Gas during each Contract Year period shall depend on the product, as set forth below:  <u>LNG</u> : November 1 at 10:00 a.m. Eastern Time (ET) through and including April 1 at 9:59 a.m. ET.  <u>Gas</u> : December 1 at 10:00 a.m. Eastern Time (ET) through and including March 1 at 9:59 a.m. ET.	



**Performance Obligation and Contract Quantity: Firm Combination Service**

**Firm (Variable) Quantity:**

During each Contract Year period of the Term, Seller agrees to sell and deliver to Buyer at the applicable Point(s) of Delivery and Buyer agrees to purchase and receive, subject to the terms and conditions set forth herein and in the Base Contract, as amended, a quantity of Gas and/or LNG equal to a Maximum Daily Quantity or "MDQ" not to exceed 7,000 MMBtu per Day with a total Contract Quantity of Gas and/or LNG during each such Contract Year period of the Term not to exceed 630,000 MMBtu (provided, however, that in Contract Year 2, a leap year, the not to exceed volume shall be 637,000 MMBtu), subject to the following:

- I. The MDQ stated herein is in the aggregate. On any Day during each Delivery Period (i) deliveries of only Gas to Buyer shall not exceed an MDQ of 7,000 MMBtu, and (ii) deliveries of only LNG to Buyer shall not exceed an MDQ of 7,000 MMBtu, based on one (1) LNG Truck equaling approximately 1,000 MMBtu, plus any additional quantities required to fill such LNG Truck to capacity; and
- II. On any day when both LNG and Gas are being delivered, the combined daily quantities shall be recognized such that this Firm Combination Service shall remain within the MDQ stated herein.

**Delivery Point(s):**

LNG: For Firm delivery service of LNG, at the truck loading flange of the Distrigas of Massachusetts LLC marine LNG terminal located in Everett, Massachusetts ("Facility"), for redelivery by Buyer to its facilities located in Concord, Manchester and Tilton, New Hampshire.

Gas: For Firm delivery of Gas, Buyer may nominate delivery at its citygate meters in Zone 6 of the Tennessee Gas Pipeline system in the following quantities:

2,000 MMBtu/Day at Laconia – Meter #420426

1,000 MMBtu/Day at Manchester – Meter #420133

2,000 MMBtu/Day at Nashua – Meter #420132

1,000 MMBtu/Day at Suncook – Meter #420451

\*an additional 1,000 MMBtu/Day at Laconia may be available through March 31, 2019; upon execution of this Transaction Confirmation, Seller shall seek to secure that additional firm capacity for Contract Year 1.

**Special Conditions:**

1. Scheduling: All Notices and communications given in connection with Nominations pursuant to Section 4 of the Base Contract may be provided by telephone or instant messaging. Buyer shall make all Nominations for deliveries of Gas occurring on any weekday, weekend day (i.e., Saturday, Sunday, Monday) and any Holiday, prior to [REDACTED] Eastern Standard Time (EST) on the Business Day prior to the Day of Gas flow. Nominations are not required to be ratable. Notwithstanding anything contained in the LNG Annex to the contrary, upon Seller's confirmation of Buyer's request for LNG, a nomination for such LNG shall have occurred and such nomination shall thereafter constitute a Firm obligation to each Party under this Transaction Confirmation.
2. Transportation of LNG: Transport from the Distrigas of Massachusetts LLC marine LNG terminal in Everett, MA, shall be scheduled solely by Buyer. All costs associated with such transportation, including any surcharges, shall be the responsibility of Buyer.
3. Dodd-Frank Compliance: The parties agree that for purposes of this Transaction Confirmation and as of the Trade Date each party is a producer, processor, commercial user of, or a merchant handling the commodity that is the subject of the Transaction Confirmation and is entering into this Transaction Confirmation solely for purposes related to its business as such. The parties confirm their intention that if any such commodity option transaction be physically settled, such that if exercised, it results in the sale of a commodity for either immediate or deferred delivery.
4. Regulatory Approval: Service under this Transaction Confirmation is contingent upon receipt by Buyer of regulatory approval of service hereunder by the New Hampshire Public Utility Commission ("PUC"). Notwithstanding, Buyer shall use due diligence to obtain approval for this Transaction Confirmation and provide satisfactorily evidence of such PUC approval to Seller within forty-eight (48) hours of receipt and not later than [REDACTED]. In the event the PUC rejects Buyer's request and does not grant regulatory approval for service under this Transaction Confirmation (and evidence of such rejection is provided to Seller within thirty (30) days of receipt and in any event no later than [REDACTED]) this Transaction Confirmation shall be immediately cancelled and rendered null and void. Each party shall be released and discharged from any further rights, liabilities and obligations to the other with respect to this Transaction Confirmation as of such date of cancellation; provided, however, that if such cancellation, release and discharge shall not affect any rights, liabilities and obligations of the either Party, including any credit support or other obligation due to be performed on or prior to the cancellation date of this Transaction Confirmation. In the event this Transaction Confirmation is cancelled and rendered null and void as a result of a rejection by the PUC, the Parties agree to use good faith efforts to timely negotiate a replacement transaction(s) for LNG combination services.

5. Joint Execution:

[REDACTED] Each Party shall be immediately released and discharged from any further rights, liabilities and obligations to each other with respect to this Transaction Confirmation as of such date of cancellation.

6. Document Conflict: For all sales of Gas, in the event of a conflict between the terms and conditions of the (i) Transaction Confirmation, (ii) Special Provisions, and (iii) Base Contract, the terms and conditions of the documents shall govern in the priority listed in this proviso.

7. Document Conflict: For all sales of LNG, in the event of a conflict between the (i) Transaction Confirmation, (ii) LNG Annex, (iii) Special Provisions, and (iv) Base Contract, the terms and conditions of the documents shall govern in the priority listed in this proviso.

8. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Base Contract, as amended by any Special Provisions and the LNG Annex.

Part A as Seller:  
ENGIE GAS & LNG LLC

By: \_\_\_\_\_

Name: Robert A. Wilson

Title: President & CEO

Date: July 19, 2017

Part B as Buyer:  
Liberty Utilities (Energy North Natural Gas) Corp.

By: \_\_\_\_\_

Name: PASIEKA

Title: President

Date: Aug 3 / 17

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## PORTLAND XPRESS PROJECT PRECEDENT AGREEMENT

This PRECEDENT AGREEMENT ("Precedent Agreement") is entered into and made effective this <sup>4<sup>th</sup></sup> day of <sup>October</sup> ~~September~~, 2017, by and between Portland Natural Gas Transmission System ("PNGTS" or "Transporter") and Liberty Utilities (EnergyNorth Natural Gas) Corp. ("Shipper"). PNGTS and Shipper may be referred to individually as a "Party" and collectively as the "Parties."

### WITNESSETH:

**WHEREAS**, PNGTS is a provider of natural gas transportation services subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"); and

**WHEREAS**, Shipper desires to subscribe for firm natural gas transportation service from PNGTS and PNGTS desires to provide to Shipper firm natural gas transportation service pursuant to the terms of this Precedent Agreement, related agreement(s) for firm transportation service on PNGTS for Phase I, Phase II, and Phase III as each such phase is defined herein (each individually a "Service Agreement" and collectively "Service Agreements"), PNGTS' FERC approved Rate Schedule FT and the PNGTS FERC Gas Tariff ("Tariff"), as each may be amended from time to time; and

**WHEREAS**, Shipper has requested 5,000 Dth per day of firm transportation service from Union Dawn, Ontario ("Dawn"), an existing receipt point on the Dawn-Parkway System ("Union") owned by Union Gas Limited, to Dracut, Massachusetts ("Dracut"), an existing delivery point on PNGTS' interstate pipeline system; and

**WHEREAS**, to provide Shipper's 5,000 Dth per day of firm transportation service from Dawn to Dracut, PNGTS has determined that initially it will need to enter one or more contract(s) with TCPL for new firm transportation service on TransCanada PipeLines Limited's ("TCPL") system and Union's system addressing each of Phase I, Phase II, and Phase III, as each such phase is defined herein, encompassing the contemplated amount of capacity along the segment from Dawn to East Hereford, Quebec, where TCPL has an existing interconnect with PNGTS (aka Pittsburg, New Hampshire on the U.S. side) (the "TBO(s)"). Additionally, PNGTS anticipates that it will need to construct incremental horsepower and station modifications [REDACTED] as it determines to be necessary, as well as any other related and appurtenant facilities (the "PNGTS Construction") (collectively, all TBOs and service on PNGTS associated with capacity anticipated to be provided to any shipper in Phase I, Phase II, and/or Phase III, and the PNGTS Construction, are "the Project"); and

**WHEREAS**, if requested by Shipper, PNGTS anticipates assigning the TBOs to Shipper by path as follows: Dawn to Parkway, and Parkway to East Hereford. The result of these assignments, if requested, is that the Shipper will ultimately contract directly with Union Gas Limited for the Dawn to Parkway TBO, and with TransCanada for the Parkway to East Hereford TBO; and



**WHEREAS**, this Precedent Agreement is executed as evidence of Shipper's binding request for firm transportation service; PNGTS' willingness to provide services for the transportation of natural gas for Shipper per its requirements and effectuate the Project; and the Parties' intent to enter into the Service Agreements related to the Project, subject to the terms and conditions described in this Precedent Agreement; and

**WHEREAS**, Shipper acknowledges that PNGTS is relying on Shipper's commitments and obligations set forth in this Precedent Agreement to own, build and operate (all as applicable) the Project and PNGTS acknowledges that Shipper is relying on PNGTS' commitments and obligations set forth in this Precedent Agreement to obtain transportation service that will result from the Project; and

**WHEREAS**, in order to meet the requested phased in-service dates for the facilities and to meet other commercial objectives, PNGTS must be able to secure timely authorizations to construct the Project as necessary, including authorizations under the regulations of the Federal Energy Regulatory Commission ("FERC").

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

**1. Project Open Season and Project Construction.**

(a) **Open Season.** PNGTS held a binding open season for capacity on the Project from August 30, 2017 to September 6, 2017.

(b) **Project Construction.** Subject to the terms and conditions of this Precedent Agreement, PNGTS will acquire, design, construct, install, and obtain all necessary materials, permits and land rights for the PNGTS Construction, as determined by PNGTS in its sole discretion, and as may be required by law. PNGTS may, but is not obligated to: (i) make contractual arrangements to order or acquire equipment, materials and properties, (ii) design, construct, and/or lease facilities, and/or (iii) incur other costs in connection with the Project, without waiving any of the conditions precedent in Section 3.

**2. Levels, Term and Rates for Service from the Project.**

(a) **Capacity Entitlement.** Shipper shall execute a separate Service Agreement for each of Phase I, Phase II, and Phase III, a pro forma of which is provided as Attachment A, each within fifteen (15) days of tender by PNGTS. Each Service Agreement shall include the volumes, receipt and delivery points, term, rates, and other variables specific to such phase, as set forth in Attachment B, and shall be consistent in all material respects with the terms of this Precedent Agreement. No deviations or modifications by Shipper of the service agreement reflected in Attachment A will be accepted by PNGTS unless such changes are mutually agreed upon prior to the date the service agreement is tendered by PNGTS to Shipper.

(b) **Effective Date and Term.** PNGTS anticipates that the Project and Project facilities will be placed into service on a phased basis over a three-year period as follows: on or about November 1, 2018 ("Phase I"), on or about November 1, 2019 ("Phase II"), and on or about November 1, 2020 ("Phase III"), each date individually hereinafter referred to as the "Estimated In-Service Date" for the corresponding phase. PNGTS will utilize, in its sole discretion, what it believes to be the most efficient FERC permitting process with the intent to achieve the Estimated In-Service Date for each phase as timely as possible. Notwithstanding anything herein to the contrary, PNGTS' non-receipt of any regulatory approval(s), permit(s), order(s), or authorization(s) with respect to any particular phase of the Project shall have no effect on the Parties' rights and obligations with respect to any other phase of the Project contemplated herein. Unless otherwise agreed to by the Parties, service under the applicable Service Agreement, and payment of the applicable rates and surcharges set forth herein, shall commence for Phases I and III on the date when (i) the applicable phase is deemed by PNGTS to be ready for service, and (ii) FERC has been notified that such phase is complete and is ready to be placed into service, and (iii) the TBO corresponding to such phase has been placed into service, and for Phase II on the later of: (i) the TBO corresponding to such phase has been placed into service and (ii) November 1, 2019 (for each phase, its "Actual In-Service Date"), and each phase shall remain in effect for a period of twenty (20) years from the later of: (i) the Actual In-Service Date of the last phase of the Project for which all of PNGTS' conditions precedent set forth in Section 3(a) of this Precedent Agreement have been satisfied or waived and (ii) November 1, 2020 (for each phase, its "Initial Term").

(c) **Shipper's Rates and Other Applicable Charges for Service.** Shipper, aware of the availability of a maximum applicable recourse rate for transportation service on PNGTS for Phase III, elects to pay the fixed negotiated reservation rate and other applicable rates and charges set forth in Attachment B.

(d)

[REDACTED]

Applicable upon assignment of TBO to Shipper pursuant to Section 5(c): Shipper will be subject to the applicable Renewal Provisions referred to under section 8 of the FT Toll Schedule which forms part of TCPL's Tariff with the National Energy Board (Canada) ("TCPL NEB Tariff"). Under these provisions, Shipper may extend the Initial Term for a minimum of one (1) year, exercisable no later than twenty-four (24) months' with prior written notice to the expiration of the Initial Term. Any extended term will be priced at the applicable toll and surcharges for service pursuant to the TCPL NEB Tariff. To the extent applicable, Shipper shall also be subject to the provisions of Union's Tariff with the Ontario Energy Board ("Union Tariff").



(e) **Compliance with Tariff.** PNGTS shall provide service in accordance with the Tariff, and the TCPL NEB Tariff as applicable. Shipper must comply with all applicable terms and conditions of the Tariff and the TCPL NEB Tariff, as applicable, as such may change from time to time.

**3. PNGTS Conditions Precedent.**

(a) **Conditions Precedent to PNGTS' Obligations.** PNGTS' duties and obligations under this Precedent Agreement and the Service Agreement applicable to each phase are expressly subject to the following conditions precedent:

(i) Corporate Authorizations. PNGTS obtaining, by [REDACTED], the necessary management, corporate and/or board approvals to proceed with and construct the Project and to provide the service contemplated herein.

[REDACTED]

(iii) Economic Viability. At all times through its acceptance, in PNGTS' sole discretion, of the FERC Certificate of Public Convenience and Necessity authorizing PNGTS to provide the service associated with such phase, as applicable, the Project continuing to be commercially viable as determined by PNGTS in its sole discretion.

(iv) Required Approvals. For Phase I only, PNGTS receiving as applicable, by [REDACTED], and for Phase III only, PNGTS receiving as applicable, by [REDACTED], all federal, state and local governmental and regulatory approvals, permits, certificates, notices, orders and authorizations of whatever kind or nature necessary to construct and operate the respective phase of the Project, and to provide the service associated therewith, and to comply with the obligations set forth in this Precedent Agreement, in a form and substance acceptable to PNGTS in its sole discretion.

(v) Property Rights. For Phase III only, PNGTS, by [REDACTED], completing acquisition of all property rights, including but not limited to permanent and temporary rights of way, rights of ingress and egress, and easements, necessary to survey, construct and maintain a right-of-way corridor and other property necessary to construct the Project and to comply with the obligations set forth in this Precedent Agreement, all in a form and substance acceptable to PNGTS in its sole discretion.

(vi) Project Materials. For Phase III only, PNGTS acquiring, by [REDACTED], all materials necessary to construct the Project under terms acceptable to PNGTS in its

sole discretion.

(vii) Sufficient Commitments. For each phase, at all times prior to and including the Actual In-Service Date of such phase, the aggregate amount of capacity under binding contractual commitments by all Project shippers equal to or greater than the following amounts:

Phase I: [REDACTED] Dth/d

Phase II: [REDACTED] Dth/d

Phase III: [REDACTED] Dth/d

(viii) TCPL Capacity. PNGTS and TCPL having fully executed, by a date sufficient for implementation of such phase as contemplated herein, the TBO(s), in a form and substance acceptable to PNGTS in its sole discretion, that will provide the capacity on TCPL's system in the amount specified for such phase on Attachment B.

(b) **Notices of Satisfaction**. PNGTS shall provide Shipper with written notice no later than ten (10) days after each date set forth in Section 3(a), notifying Shipper that either: (1) the applicable condition precedent has been waived or satisfied; (2) PNGTS will execute its right to terminate this Precedent Agreement in accordance with Section 8; or (3) upon mutual written agreement of the Parties, the date by which the condition precedent must be satisfied is extended by a reasonable amount of time actually needed to satisfy the subject condition precedent. Failure to provide the required notice within such ten (10) day period shall be deemed a waiver of the applicable condition precedent.

#### **4. Shipper's Conditions Precedent.**

(a) **Conditions Precedent to Shipper's Obligations**. Shipper's duties and obligations under this Precedent Agreement and the Service Agreement applicable to each phase are expressly subject to the following condition precedent:

(i) Corporate Authorizations. Shipper obtaining [REDACTED] the necessary corporate authorizations to authorize the transaction under, and execute the Service Agreements contemplated in, this Precedent Agreement.

(ii) Required Approvals. Shipper receiving, [REDACTED] all applicable regulatory approvals and authorizations necessary to move forward with each phase of the Project, [REDACTED] to comply with the obligations set forth in this Precedent Agreement, in a form and substance acceptable to Shipper in its sole discretion.

(iii) Actual In-Service Date for Phase III. [REDACTED]  
[REDACTED]



[REDACTED]

(b) **Notices of Satisfaction.** Shipper shall provide PNGTS with written notice no later than ten (10) days after each date set forth in Section 4(a), notifying PNGTS that either: (1) the applicable condition precedent has been waived or satisfied; (2) Shipper will execute its right to terminate this Precedent Agreement in accordance with Section 8; or (3) upon mutual written agreement of the Parties, the date by which the condition precedent must be satisfied is extended by a reasonable amount of time actually needed to satisfy the subject condition precedent. Failure to provide the required notice within such ten (10) day period shall be deemed a waiver of the applicable condition precedent.

**5. PNGTS' Further Obligations.**

(a) **Required Approvals.** PNGTS shall use all commercially reasonable efforts to seek and obtain all approvals necessary for the acquisition, financing, leasing, construction, and operation of the Project, excluding any approvals to be obtained by TCPL, and including but not limited to seeking any necessary approvals and waivers or exemptions from the FERC or other government agencies, required for the construction and operation of the Project.

(b) **Construction of Project.** Subject to the conditions precedent set forth in Section 3, PNGTS shall use all commercially reasonable efforts to construct the PNGTS Construction and place the Project into service by the applicable Estimated In-Service Date for each phase, unless otherwise mutually agreed to by the Parties in writing.

(c) **Execution and Assignment of TBO.** PNGTS shall use all commercially reasonable efforts to execute TBO(s) encompassing capacity in each of Phase I, Phase II, and Phase III on TCPL's system as contemplated herein under terms consistent with this Precedent Agreement and subject to the TCPL NEB Tariff, at a time mutually agreeable to PNGTS and TCPL. Regardless of the actual in-service date of the TBO(s), no TBO(s) shall be assigned to Shipper and Shipper shall not be responsible under any particular TBO until the Actual In-Service Date of the phase of the Project to which it corresponds, unless agreed to in writing by Shipper. Upon the Actual In-Service Date of such phase of the Project and the TBO, PNGTS shall provide Shipper with notice that PNGTS is assigning to Shipper all of its rights, obligations, and interests in the TBO specific to such phase to Shipper. A pro forma draft of such TBO is attached hereto as Attachment D.

**6. Shipper's Further Obligations.**

(a) **Creditworthiness.** Shipper shall establish and maintain creditworthiness consistent with, and shall comply with, the creditworthiness terms and conditions, as each is applicable, set forth on Attachment C attached hereto and PNGTS' Tariff, as such may change



from time to time, throughout the term of this Precedent Agreement and each Service Agreement executed in connection with the Project. Such terms and conditions shall be included in the Service Agreement for each of Phase I, Phase II, and Phase III, as applicable.

(b) **Support.** Shipper shall reasonably cooperate with and provide to PNGTS, as requested and on a timely basis, such support, information and data requested by PNGTS that PNGTS reasonably deems necessary to obtain approvals to construct and operate the Project and/or to gain regulatory acceptance of the service contemplated hereunder.

(c) **Acceptance of Assignment of TBO.** Within ten (10) days after PNGTS provides Shipper with notice of assignment of a TBO, as contemplated in Section 5(c) herein, Shipper shall execute all documents and take all actions necessary to effectuate such assignment in accordance with the terms and procedures set forth herein, including but not limited to executing all documents and taking all actions necessary to ensure Shipper's compliance with TCPL's creditworthiness requirements and execute and comply with a financial assurances agreement ("FAA", a pro forma of which is attached hereto as Attachment E) if requested by TCPL, and Shipper shall become assignee of such TBO, and assume all of PNGTS' rights and obligations thereunder, with such assignment effective as soon as practicable. Shipper acknowledges and agrees that upon assignment of a TBO, it will be subject to the TCPL NEB Tariff in connection therewith. In no event shall the assignment of any TBO go into effect before the Actual In-Service Date of the corresponding phase on PNGTS. For each such TBO, Shipper shall be responsible for reimbursing PNGTS for all TBO charges paid by PNGTS from (i) the later of the Actual In-Service Date of the corresponding phase on PNGTS and the actual in-service date of such TBO to (ii) the effective assignment date of such TBO from PNGTS to Shipper.

(d) **Subsequent Additional Open Season.** In the event PNGTS determines, in its sole discretion, that the amount of capacity available for Phase II is dependent in any respect upon the results of a subsequent open season of any nature, Shipper agrees, after having received written notice from PNGTS stating as such, to place a bid in such subsequent open season, in accordance with the terms thereof and PNGTS' Tariff, reflecting the exact terms set forth in Attachment B, including those concerning rate, volume, and term, except that Shipper may subtract from the term the year associated with Phase I. In the event Shipper is allocated capacity at the conclusion of such subsequent open season, Shipper shall execute a firm transportation service agreement for such capacity prior to commencement of service thereunder, in accordance with PNGTS' Tariff. In such event, such allocation shall be credited toward Shipper's allocated capacity for Phase II, as applicable, such that Shipper shall not be bound to accept an amount of capacity in any phase in excess of the amount originally allocated to Shipper as contemplated in Attachment B hereto. In the event the results of such subsequent open season decrease the amount of capacity available for Phase II, the amount of capacity originally allocated to each Project shipper for such Phase II and/or Phase III, at PNGTS' sole discretion, may be decreased proportionately on a pro-rata basis using the same methodology by which capacity was originally allocated.

## **7. Effect of Assignment of TBO**



PNGTS' assignment to Shipper of any right(s) and/or obligation(s) under any TBO shall not affect either Party's rights and/or obligations under this Precedent Agreement except where explicitly stated otherwise.

**8. Term and Termination.**

(a) **Term.** This Precedent Agreement and any amendments thereto shall become effective upon execution and delivery by the Parties and shall continue in effect until either (1) the Actual In-Service Date of Phase III or (2) terminated by a Party in accordance with this Section 8.

(b) **PNGTS' Termination Rights.** In addition to any other remedies available to PNGTS at law or in equity, PNGTS may terminate the applicable phase of this Precedent Agreement, and amendments thereto, as applicable, effective upon ten (10) days' prior written notice to Shipper, if:

(i) the condition(s) precedent applicable to such phase set forth in Section 3 are not satisfied by the date set forth therein, if applicable and if such date has not been extended pursuant to the terms of Section 3; or

(ii) if Shipper fails to comply with any of its material obligations under this Precedent Agreement (provided, however, Shipper shall have ten (10) days to remedy such failure following written notice of such from PNGTS); or

(iii) a petition is filed, by or against Shipper or any Guarantor (as defined in Attachment C) of Shipper's obligations hereunder under any chapter of the United States Bankruptcy Code or similar laws and regulations in any other legal jurisdiction, if applicable.

(c) **Shipper's Termination Rights.** In addition to any other remedies available to Shipper at law or in equity, Shipper may terminate the applicable phase of this Precedent Agreement, and amendments thereto, as applicable, effective upon ten (10) days' prior written notice to PNGTS, if:

(i) the condition(s) precedent applicable to such phase set forth in Section 4 are not satisfied, waived, or deemed to be waived by the date set forth therein, if applicable and if such date has not been extended pursuant to the terms of Section 4; or

(ii) if PNGTS fails to comply with any of its material obligations under this Precedent Agreement (provided, however, PNGTS shall have ten (10) days to remedy such failure following written notice of such from Shipper).

(d) **Liability Upon Termination.**

(i) If PNGTS terminates any phase of this Precedent Agreement pursuant to Section 8(b)(i), or Shipper terminates any phase of this Precedent Agreement pursuant to

Section 8(c)(i) or Section 8(c)(ii), such termination shall be without liability, damages, costs or expenses to either Party, or to any of their shareholders, directors, officers, employees, agents, consultants or representatives and neither Party shall have any further rights or obligations whatsoever with respect to such phase pursuant to this Precedent Agreement or any Service Agreement associated with such phase except as expressly provided herein including but not limited to as provided in Section 8(e).

(ii) In addition to any other remedies available to PNGTS at law or in equity, if, after the satisfaction or waiver of the conditions set forth in Sections 4(a)(i) and 4(a)(ii), PNGTS terminates a phase of this Precedent Agreement other than Phase II pursuant to Section 8(b)(ii) and/or Section 8(b)(iii), Shipper shall pay PNGTS: (1) Shipper's Pro-Rata Share (as defined below) of the total estimated and actual Project costs committed and spent as determined at the time of termination, including any administrative and general costs allocated to the Project; and (2) any additional costs incurred by PNGTS to modify the Project scope that directly result from such termination. "Shipper's Pro-Rata Share" shall be defined as the ratio of Shipper's total aggregate contemplated Project volume for Phases I and III set forth on Attachment B to the total aggregate Project volumes requested by all shippers with a firm transportation precedent agreement or service agreement then in effect for service on in Phases I and III of the Project. Notwithstanding the foregoing damages calculations, nothing in this Section 8(d)(ii) shall limit or be construed to limit PNGTS' obligation to mitigate under applicable law any and all amounts due under this Section 8(d)(ii).

(e) **Effect of Termination.** Termination of any phase of this Precedent Agreement pursuant to the provisions of this Section 8 by either Party shall have no effect on either Party's rights and/or obligations arising from or related to (i) any Service Agreement applicable to any of Phase I, Phase II, or Phase III if such phase is in service at the time of such termination; or any TBO applicable to any of Phase I, Phase II, or Phase III if such phase is in service at the time of such termination and such TBO has been assigned to Shipper pursuant to Section 6(c) hereof. Any such Service Agreement, and any such TBO, shall remain in full force and effect. In the event either Party terminates this Precedent Agreement pursuant to the provisions of this Section 8, any executed Service Agreement corresponding to the terminated phase shall automatically terminate.

9. **Reserved.**

10. **Force Majeure.**

(a) **Definition.** "Force Majeure" means any event beyond the affected Party's reasonable control and that is not due to the affected Party's negligence or non-compliance with applicable law. An event of Force Majeure may include, but is not limited to flood, drought, earthquake, unusually severe weather, fire, lightning, tornadoes, washouts, or other Acts of God; epidemic; war, riot, civil disturbance or disobedience, terrorist acts; sabotage; blockades, arrests, strikes, lockouts or other labor disputes; restraint by a governmental authority; expropriation; failure or breakdown in machinery or facilities; or a Force Majeure event affecting a materials supplier, vendor, material man, or contractor engaged in the Project. Notwithstanding the



foregoing, the term Force Majeure does not include (i) acts or omissions of any third party, including any materials supplier, vendor, material man, or contractor, unless such acts or omissions are themselves the result of Force Majeure; and (ii) changes in market conditions. The failure to prevent or settle any strike(s), lockout(s) or other labor dispute(s) shall not be considered to be a matter within the reasonable control of the affected Party.

(b) **Excuse from Performance.** Neither Party shall be responsible or liable for any delay or failure in its performance under this Precedent Agreement, and no delay, failure, or other occurrence or event shall be deemed a breach of this Precedent Agreement, to the extent such delay, failure, occurrence or event is caused by Force Majeure, provided that:

(i) the affected Party gives the other Party prompt written notice (in accordance with the provisions of Section 17 hereafter) describing the particulars of the occurrence of the Force Majeure; except that, if the nature of the event of Force Majeure is such that written notice cannot be immediately given, then the affected Party shall provide verbal notice, the effectiveness of which shall be subject to the other Party confirming receipt thereof as soon as practicable;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the affected Party proceeds with reasonable diligence to remedy its inability to perform; and

(iv) when the affected Party is able to resume performance of its obligations under this Precedent Agreement, that Party shall give the other Party notice to that effect; except that if the nature of the event of Force Majeure is such that written notice cannot be immediately given, then the affected Party shall provide verbal notice, the effectiveness of which shall be subject to the other Party confirming receipt thereof as soon as practicable.

(c) **Certain Exceptions.** Except as otherwise expressly provided for in this Precedent Agreement, the existence of a condition or event of Force Majeure shall not relieve Shipper of its obligation to meet PNGTS' creditworthiness requirements or to make payments hereunder.

**11. Representations and Warranties.** Each Party represents and warrants to the other Party that, as of the execution of this Precedent Agreement:

(a) Such Party is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is in good standing in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of such Party;

(b) The execution, delivery and performance of this Precedent Agreement by such Party has been duly authorized by all necessary action on the part of such Party in accordance



with such Party's charter documents;

(c) This Precedent Agreement constitutes the legal, valid, binding and enforceable obligation of such Party, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting creditor's rights generally and by general equitable principles;

(d) No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any governmental authority is required on the part of such Party in connection with the execution and delivery of this Precedent Agreement; and

(e) There is no pending or, to the best of such Party's knowledge, threatened suit, claim, action, litigation or proceeding affecting such Party before any court, government authority or arbitrator that could reasonably be expected to materially and adversely affect the financial condition or operations of such Party or the ability of such Party to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Precedent Agreement.

**12. Parties in Interest.** Nothing in this Precedent Agreement, whether express or implied, is intended to confer any rights or remedies to third parties, and no provision in this Precedent Agreement or any Service Agreement shall be construed as creating any obligations for the benefit of, or rights in favor of any person or entity other than PNGTS or Shipper.

**13. Effect of Agreement and Amendment.** This Precedent Agreement shall inure to the benefit of and be binding upon each of the Parties and their permitted successors and assigns. This Precedent Agreement and any Service Agreement when executed constitute the entire agreement and understanding between the Parties hereto with respect to the subject matter herein and therein, and supersede all prior agreements and understandings, whether oral or written, with respect to development of the Project. This Precedent Agreement does not supersede, and is without prejudice to any rights or obligations the Parties have to each other pursuant to, any other non-Project related agreement(s) between PNGTS and Shipper still in effect as of the date of execution of this Precedent Agreement or executed subsequently. This Precedent Agreement can only be amended, modified, or supplemented by the written agreement of PNGTS and Shipper, executed and delivered by duly authorized representatives of the Parties.

**14. Waivers and Enforcement.** Except as expressly set forth herein, the failure of either Party to give notice of default or breach of any provision of this Precedent Agreement, or to enforce any terms or conditions of this Precedent Agreement, shall not operate as or be construed as a permanent waiver of any of the terms, conditions, rights or remedies contained in this Precedent Agreement or any Service Agreement.

**15. Governing Law and Venue.** This Precedent Agreement will be governed by and construed in accordance with the federal laws of the United States and the laws of the State of Maine, without reference to conflicts of law provisions that would direct the application of the laws of another jurisdiction. EACH OF THE PARTIES HERETO HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER



SOUNDING IN CONTRACT, TORT OR OTHERWISE AMONG ANY OF THEM ARISING OUT OF, CONNECTED WITH, RELATING TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM IN CONNECTION WITH THIS PRECEDENT AGREEMENT.

**16. Counterparts.** This Precedent Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. A signature delivered by facsimile or other electronic means shall be deemed to be an original signature for purposes of this Precedent Agreement.

**17. Notices.** Notices under this Precedent Agreement shall be in writing and shall be addressed as follows:

Liberty Utilities (EnergyNorth Natural Gas)  
Corp.  
354 Davis Road  
Oakville, ON L6J 2X1 Canada

Attention: William R. (Bill) Killeen  
Phone: 905-465-6125  
Fax:  
Email: bill.killeen@libertyutilities.com

Portland Natural Gas Pipeline System  
700 Louisiana Street

Houston, TX 77002-2700  
Attention: Vice President  
Business Development  
Phone: 832-320-5862  
Fax: 832-320-5555  
Email:  
russell\_mahan@transcanada.com

Unless otherwise required by the terms of this Precedent Agreement, notices must be in writing and may be given by facsimile transmission, overnight courier service, personal delivery, mail or electronic mail ("e-mail"). Notices shall be deemed given: (i) when sent by facsimile transmission, provided that the sender has received electronic or voice confirmation of the recipient's receipt of such transmission; (ii) if sent by overnight or international courier service, when receipt by the recipient is confirmed by such service; (iii) if mailed or delivered by personal delivery, when received by the recipient; or (iv) when sent by e-mail, provided that the sender has received electronic or voice confirmation that the recipient has read such transmission (e.g., a "read receipt" or a reply). Either Party may change its contact information for notices hereunder by providing written notice of that change to the other Party.

**18. Assignment.** Except as hereinafter provided in this Section 18 and/or Attachment C, Shipper may not assign or transfer in any manner, in whole or in part, any rights or obligations hereunder, without first obtaining the prior written consent of Transporter, which consent shall not be unreasonably withheld or delayed, and any attempted assignment or transfer without such consent need not be recognized or accepted by Transporter. Consent shall not be deemed to be unreasonably withheld if Transporter has a reasonable basis to conclude that it will not be financially indifferent to the assignment. Further, any such assignee shall agree in writing to be bound by the terms and conditions set forth in this Precedent Agreement. No assignment or transfer shall be effective as to the other Party unless and until (i) the aforementioned consent is granted, (ii) the assigning Party and the assignee notify the other Party of such assignment and (iii) the assignee acknowledges in writing for the benefit of the other Party that such assignee has



assumed the obligations of the assigning Party under this Precedent Agreement and is bound by the terms and conditions hereof. Transporter may assign this Precedent Agreement to an entity proposing to provide the transportation services described herein in a manner substantially consistent with the terms and conditions contained in this Precedent Agreement. Subject to the foregoing, this Precedent Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

19. **No Drafting Presumption.** Each Party participated in the drafting of this Precedent Agreement. For the purposes of contractual interpretation, no terms or conditions of this Precedent Agreement shall be construed against any Party as a result of the preparation or drafting thereof.

20. **Interpretation.** The headings contained in this Precedent Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Precedent Agreement. The recitals appearing first above are hereby incorporated in and made part of this Precedent Agreement. The singular form of any noun shall be deemed to include the plural, and the plural form of any noun shall be deemed to include the singular.

21. **Definitions.** All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Tariff.

22. **Applicable Laws.** This Precedent Agreement and the performance hereof are subject to all present and future applicable laws, orders, decisions, rules and regulations of duly constituted governmental authorities having jurisdiction over the Parties.

23. **Confidentiality.** This Precedent Agreement and the terms set forth herein are confidential and the Parties agree not to disclose such terms other than as otherwise set forth in this Precedent Agreement and as required by applicable laws, regulations or any securities exchange. In this connection, the Parties acknowledge that (i) Transporter may file information with FERC in a public manner disclosing the content of this Precedent Agreement as necessary or desirable to support its FERC certificate application, and (ii) Shipper may disclose the terms of this Agreement in any application for required regulatory approvals as set forth in Section 4(a)(ii) hereof, provided, however, that in making such application, Shipper shall use all reasonable efforts to protect the commercial terms of this Precedent Agreement from public disclosure. In addition, the Parties acknowledge that, unless otherwise restricted by applicable law or regulations, each Party may disclose the terms hereof to its affiliates, its partners, members or shareholders, and its and their respective directors, officers, employees, agents, consultants and advisors (including, without limitation, financial advisors, lenders, attorneys and accountants) that have a *bona fide* need to know such information and to potential assignees of their interests under this Precedent Agreement that have agreed to use this information only for the purposes intended herein and who agree to keep such information confidential, provided further, that the disclosing party shall be responsible for any such breach of these confidentiality provisions by the parties to which it disclosed such information. To the extent which any content of this Precedent Agreement shall be disclosed to FERC in a public manner in connection with Transporter's FERC certificate application, such disclosure shall constitute a permanent waiver by the Parties to claims of confidentiality under this Section 23 with respect to the content so disclosed. Notwithstanding the foregoing, PNGTS may freely, without limitation, issue press



releases, communicate with the media, coordinate with governmental officials, or otherwise discuss the Project without Shipper's prior written consent; provided (i) such communications do not disclose the specific commercial terms contained in this Agreement; (ii) PNGTS does not disclose the specific identity of Shipper; and (iii) PNGTS provides Shipper with advance notice prior to making the first of such communications (such notice shall not be required for further such communications by PNGTS).

The provisions of this Section 23 shall survive termination of this Precedent Agreement until the date that is one (1) calendar year after such termination.

**24. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THIS PRECEDENT AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR CHARACTER RESULTING FROM OR ARISING OUT OF THE ACTIONS TAKEN BY OR THE OMISSIONS OF SUCH PARTY UNDER THIS PRECEDENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES RELATED TO LOSS OF USE, INCREASED COST OF OPERATIONS, LOSS OF PROFIT OR REVENUE, LOSS OF PRODUCT OR PRODUCTION, OR BUSINESS INTERRUPTIONS, AND EACH PARTY RELEASES THE OTHER PARTY AND WAIVES ANY RIGHT OF RECOVERY FOR SUCH DAMAGES REGARDLESS OF WHETHER ANY SUCH DAMAGES ARE CAUSED BY THE OTHER PARTY'S SOLE, JOINT, CONCURRENT, ACTIVE, PASSIVE, OR GROSS NEGLIGENCE, FAULT, BREACH OF WARRANTY, BREACH OF AGREEMENT, STATUTE, STRICT LIABILITY, OR OTHERWISE; PROVIDED THAT WHENEVER A REMEDY IS SPECIFIED IN THIS PRECEDENT AGREEMENT, THE SPECIFIED REMEDY SHALL NOT BE CONSTRUED TO BE PRECLUDED UNDER THIS SECTION 24 AND SUCH REMEDY SHALL BE THE SOLE REMEDY AVAILABLE TO THE PARTIES TO THE EXCLUSION OF ANY OTHER RIGHTS, POWERS, PRIVILEGES OR REMEDIES PROVIDED BY LAW, UNLESS IT IS SPECIFICALLY STATED HEREIN THAT SUCH REMEDY IS NON-EXCLUSIVE.

**25. Non-Exclusive Service.** Transporter is an open-access interstate natural gas pipeline company, and is required to offer available capacity on a not unduly discriminatory basis on the Project to other potential customers.

**26. Reserved.**

**IN WITNESS WHEREOF,** the duly authorized representatives of the Parties have executed this Precedent Agreement.

**PORTLAND NATURAL GAS TRANSMISSION  
SYSTEM By its Operator, PNGTS Operating Co., LLC**

By: \_\_\_\_\_  
Name: Jon A. Dobson  
Corporate Secretary  
Its: \_\_\_\_\_


PORTLAND NATURAL GAS TRANSMISSION  
SYSTEM By its Operator, PNGTS Operating Co., LLC

By:  PB

Name: Nathaniel A. Browne

Its: Chief Financial Officer

LIBERTY UTILITIES (ENERGYNORTH NATURAL  
GAS) CORP.

By: 

Name: SUSAN LYNN FLECK

Its: PRESIDENT NEW HAMPSHIRE  
LIBERTY UTILITIES.



## ATTACHMENT A

### PRO FORMA SERVICE AGREEMENT FOR SERVICE ON PNGTS

#### GAS TRANSPORTATION CONTRACT FOR FIRM TRANSPORTATION SERVICE

This Gas Transportation Contract ("Contract") is made as of the \_\_\_\_ Day of \_\_\_\_\_ by and between the Portland Natural Gas Transmission System, a Maine general partnership, herein "Transporter" and [name of Shipper] a [state] [entity], herein "Shipper," pursuant to the following recitals and representations:

WHEREAS, Shipper intends to enter into natural gas supply arrangements, including transportation upstream of Transporter's System, and to make arrangements for the delivery of such gas supply for the account of Shipper to the receipt point(s), and to make arrangements for the receipt and transportation of such gas downstream of the delivery point(s) on Transporter's System;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein assumed, Transporter and Shipper agree as follows:

1. Shipper shall apply for or cause to be applied for and use reasonable best efforts to obtain all of the agreements and governmental authorizations or exemptions necessary to enable Shipper to deliver to and receive from Transporter the transportation quantities specified below.

2. Subject to the condition herein, Transporter hereby agrees to provide to Shipper, and Shipper hereby agrees to accept, firm natural gas transportation service on Transporter's System under Transporter's Rate Schedule FT, providing for firm transportation from the receipt point(s) of the quantities of natural gas specified below. Such firm transportation service shall be provided for the term specified in Schedule 1. The transportation service, unless otherwise agreed upon, will be provided at the maximum applicable rate as approved by the FERC in the Tariff, as the Tariff may be changed from time to time, subject to the rate discount provisions set forth below.

#### ARTICLE I - SCOPE OF CONTRACT

1. On the Commencement Date and each Day thereafter on which Shipper and Transporter schedule Gas for transportation hereunder, Shipper shall cause the Scheduled Quantity, up to the Maximum Daily Quantity (MDQ), to be delivered to Transporter at the Receipt Point(s).

2. On the Commencement Date and each Day thereafter, Transporter shall make the Scheduled Quantity available to or on behalf of Shipper at the Delivery Point(s) on a firm basis.

3. Shipper shall be solely responsible for securing faithful performance by gas supplier(s) and/or any applicable upstream or downstream shippers and transporters in all matters which may affect Transporter's performance hereunder, and Transporter shall not be liable hereunder to Shipper as a result of the failure of gas supplier(s) and/or any applicable upstream or downstream shippers and transporters to so perform.

## ARTICLE II - RESERVATION OF FIRM TRANSPORTATION CAPACITY

1. Shipper hereby reserves the right to cause Transporter to receive from or for the account of Shipper at each Receipt Point on any Day such quantities of Gas up to the MDQ for such Receipt Point as set forth on the currently effective Schedule 1 appended hereto and Transporter shall make available to or on behalf of Shipper at each Delivery Point on any Day such quantities of Gas up to the MDQ for such Delivery Point as set forth on the currently effective Schedule 1 appended hereto. Schedule 1 is hereby incorporated as part of this Contract.

2. Transporter shall make available to Shipper the service reserved under this Article II on the Days and for the quantities of Gas for which such service has been reserved, subject to Shipper's compliance with the terms and conditions of this Contract.

## ARTICLE III - ALLOCATION OF OFF-PEAK CAPACITY

On any Day during the period from April 1 through October 31 that System Capacity is not otherwise scheduled under any Rate Schedule, such capacity will be allocated pro rata to Rate Schedule FT Shippers whose Gas Transportation Contracts have initial terms of twenty (20) Years or longer, and were in existence prior to June 1, 2013, based on these Shippers' annual reservation charges under Rate Schedules FT.

## ARTICLE IV - RATE

1. For each Month, Shipper agrees to pay the Recourse Usage Rate, or a usage rate mutually agreed to in writing by Shipper and Transporter as set forth on the currently effective Schedule 1 attached hereto, multiplied by the sum of the Delivery Point Scheduled Quantity or Quantities during such Month; provided, however, that in the event that Transporter determines, in its sole discretion on a basis that is not unduly discriminatory, or otherwise pursuant to this Contract, to render service on behalf of Shipper for a discounted usage rate, Transporter shall notify Shipper in writing of the amount of such discounted usage rate, the Day(s) on which such rate shall be in effect and the quantities to which such rate applies. For each DTH of Scheduled Quantity to which a discounted usage rate applies, as set forth in Transporter's notice, Shipper agrees to pay and shall pay the applicable discounted usage rate in lieu of the maximum usage rate.

2. For each Month, Shipper agrees to pay the Recourse Reservation Rate, or the Seasonal Recourse Reservation Rate if applicable, or a rate mutually agreed to in writing by Shipper and Transporter as set forth on the currently effective Schedule 1 attached hereto, multiplied by the Shipper's Maximum Contract Demand as specified in this Contract; provided however, that in the event that Transporter determines, in its sole discretion or otherwise



pursuant to this Contract, to render service on behalf of Shipper for a discounted reservation rate, Transporter shall notify Shipper in writing of the amount of such discounted reservation rate, the Day(s) on which such rate shall be in effect and the quantities of which such rate applies. For each DTH of the Maximum Contract Demand to which a discounted reservation rate applies, as set forth in Transporter's notice, Shipper agrees to pay and shall pay the applicable discounted reservation rate in lieu of the maximum reservation rate.

3. Shipper agrees to pay and shall pay all applicable charges specified in Rate Schedule FT.

4. For all capacity allocated to Shipper under Article III herein, Shipper shall not pay reservation charges but Shipper shall pay transportation usage charges, surcharges, fees, and other charges allocated to such capacity or the quantities transported.

#### ARTICLE V - RESERVED FOR FUTURE USE

[Phase I and Phase III – Credit Provisions from Precedent Agreement to be incorporated into Article V]

#### ARTICLE VI - RATE SCHEDULES AND GENERAL TERMS AND CONDITIONS

This Contract and all provisions contained or incorporated herein are subject to the provisions of Rate Schedule FT and of the General Terms and Conditions of Transporter's Tariff, as such may be revised or superseded from time to time, all of which by this reference are made a part hereof. The General Terms and Conditions and Rate Schedule FT shall control in the event of a conflict between the General Terms and Conditions or Rate Schedule FT and this Contract. All of the terms defined in Transporter's Tariff shall have the same meaning wherever used in this Contract.

(if applicable)

Shipper shall be entitled to the Right of First Refusal provided for in Section 6.13.3(b)(6), of the General Terms and Conditions of Transporter's Tariff, notwithstanding the fact that Shipper would otherwise be ineligible for this right under Section 6.13.3.

#### ARTICLE VII - TERM

1. This Contract shall be effective as of [INSERT DATE].

2. This Contract shall continue in force and effect until [expiration date], and [ ] thereafter unless terminated by either party upon at least [ ] prior written notice to the other; provided, however, that if the FERC authorizes Transporter to abandon service to Shipper on an earlier date, this Contract shall terminate as of such earlier date.

3. The termination of this Contract by expiration of fixed Contract term or by termination notice provided by Shipper triggers pregranted abandonment under Section 7 of the Natural Gas Act as of the effective date of the termination.

4. Any provision of this Contract necessary to correct imbalances or to make payment under this Contract as required by the Tariff will survive the other parts of this Contract until such time as such balancing or payment has been accomplished.

#### ARTICLE VIII - NOTICES

Notices to Transporter shall be addressed to:

Portland Natural Gas Transmission System  
One Harbour Place, Suite 375  
Portsmouth, New Hampshire 03801

Notices to Shipper hereunder shall be addressed to:

[Name of Shipper]  
[Address]

Either party may change its address under this Article by written notice to the other party.

#### ARTICLE IX - TRANSFER AND ASSIGNMENT OF CONTRACT

Any entity which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of either Transporter or Shipper, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Contract. Any party may, without relieving itself of its obligations under this Contract, assign any of its rights hereunder to an entity with which it is affiliated, but otherwise no assignment of this Contract or of any of the rights or obligations hereunder shall be made unless there first shall have been obtained the written consent thereto of Shipper in the event of an assignment by Transporter, or Transporter in the event of an assignment by Shipper, which consents shall not be unreasonably withheld. It is agreed, however, that the restrictions on assignment contained in this Article IX shall not in any way prevent either party to this Contract from pledging or mortgaging its rights hereunder as security for its indebtedness.

Shipper acknowledges that Transporter intends to make a collateral assignment of this Contract to financial institutions (collectively, the "Lenders") in connection with a Financing Agreement and agrees that if the Lenders succeed to the interest of Transporter by foreclosure or otherwise Shipper shall accord the Lenders the same rights as Transporter hereunder.

In order to facilitate obtaining financing or refinancing for the System, Shipper shall execute such consents, agreements or similar documents with respect to a collateral assignment hereof to the Lenders, and any credit support documents, and shall deliver an opinion of counsel



on behalf of Shipper and any provider of credit support, as Lenders may reasonably request in connection with the documentation of the financing or refinancing for the System, which consent and opinion shall, among other things warrant or opine the enforceability of this Contract and of any credit support documents under the applicable governing law(s) and the compliance thereof with all applicable law.

#### ARTICLE X - NONRECOURSE OBLIGATION OF PARTNERSHIP AND OPERATOR

Shipper acknowledges and agrees that: (a) Transporter is a Maine general partnership; (b) Shipper shall have no recourse against any partner in Transporter with respect to Transporter's obligations under this Contract and that its sole recourse shall be against the partnership assets, irrespective of any failure to comply with applicable law or any provision of this Contract; (c) no claim shall be made against any partner under or in connection with this Contract; (d) Shipper shall have no right of subrogation to any claim of Transporter for any capital contributions from any partner to Transporter; (e) no claims shall be made against the Operator, its officers, employees, and agents, under or in connection with this Contract and the performance of Operator's duties as Operator (provided that this shall not bar claims resulting from the gross negligence or willful misconduct of Operator, its officers, employees or agents) and Shipper shall provide Operator with a waiver of subrogation of Shipper's insurance company for all such claims; and (f) this representation is made expressly for the benefit of the partners in Transporter and Operator.

#### ARTICLE XI - LAW OF CONTRACT

Notwithstanding conflict-of-laws rules, the interpretation and performance of this Contract shall be in accordance with and controlled by the laws of the State of Maine.

#### ARTICLE XII - CHANGE IN TARIFF PROVISIONS

Shipper agrees that Transporter shall have the unilateral right to file with the Federal Energy Regulatory Commission or any successor regulatory authority any changes in any of the provisions of its Tariff, including of any of its Rate Schedules, or the General Terms and Conditions, as Transporter may deem necessary, and to make such changes effective at such times as Transporter desires and is possible under applicable law.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed in several counterparts by their proper officers thereunto duly authorized, as of the date first hereinabove written.

ATTEST:                      PORTLAND NATURAL GAS TRANSMISSION SYSTEM  
By Its Operator, PNGTS Operating Co. LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:                      LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)  
CORP.

By: \_\_\_\_\_

FB



## SCHEDULE 1

**Receipt Point(s):**

**Delivery Point(s):**

**Maximum Daily Quantity:**

**Maximum Contract Demand Quantity:**

**Effective Service Period:**

**Rate Provision(s) (check if applicable rate):**

\_\_\_\_\_ Discounted Rate

\_\_\_\_\_ Negotiated Rate

**Shipper's charges and fees shall be calculated as follows:**

EB

## ATTACHMENT B

Primary Receipt Point(s)	Primary Delivery Point(s)*	Transportation Demand**	Initial Term	Negotiated Daily Demand Rate***	Daily Commodity Rate***	Rate Schedule
Union Dawn, Ontario on Union, then Parkway on TCPL until the TBO is assigned to Shipper as contemplated herein, at which time the receipt point shall be on PNGTS, Pittsburg, New Hampshire.	Parkway on Union (into TCPL), then East Hereford (into PNGTS), then Dracut, Massachusetts (into Tennessee Gas Pipeline), until the TBO is assigned to Shipper as contemplated herein, at which time the delivery point shall be on PNGTS, Dracut, Massachusetts (into Tennessee Gas Pipeline)	An aggregate of 5,000 Dth/day to be allocated by PNGTS between Phase I, Phase II, and Phase III.	For each of Phase I, Phase II, and Phase III, in accordance with Section 2(b) of this Precedent Agreement	For each of Phase I, Phase II, and Phase III, [REDACTED]	Maximum applicable under PNGTS Rate Schedule FT	FT

\* Subject to the terms of PNGTS' Tariff and the policy and regulations of FERC, Shipper shall have the right to amend its primary delivery point for Phase III from Dracut, Massachusetts (into Tennessee Gas Pipeline) to a new point of delivery to be located upstream of Dracut on PNGTS' portion of the Joint Facilities. Shipper shall be responsible for all costs associated with any such new point of delivery.

\*\* The amount of capacity set forth for each phase may be adjusted by PNGTS as necessary in the event PNGTS does not obtain required capacity on TCPL's system by a date sufficient for implementation of each phase as contemplated. For each phase, actual volumes are subject to the results of the open season contemplated in Section 1(a) of this Precedent Agreement, as well as the potential subsequent additional open season contemplated in Section 6(d) of this Precedent Agreement, if applicable. After the conclusion of each such open season, PNGTS shall notify Shipper of the specific volume allocated to it for each of Phase I, Phase II, and Phase III.

\*\*\* Shipper shall pay all maximum applicable demand and commodity surcharges specified under PNGTS' Rate Schedule FT, in addition to any charges associated with mandated compliance with new or revised regulations or legislation (i.e. environmental, modernization and safety), and the abandonment surcharge, delivery pressure toll and the Union Dawn receipt surcharge if



applicable, pursuant to the TCPL NEB Tariff, all of which as may change from time to time. In addition, Shipper shall pay fuel in-kind in accordance with the TCPL NEB Tariff, PNGTS' FERC approved incremental fuel charge, as well as any measurement variance, if applicable, for the Portland XPress Project. The Parties agree and acknowledge that the natural gas transportation on TCPL contemplated herein is beyond FERC's jurisdiction, and (i) all amounts paid therefore shall be considered separate and apart from those paid for transportation services on PNGTS; and (ii) such services shall not be included in the calculation of PNGTS' billing determinants and/or cost of service in any proceeding before FERC.

**Secondary Receipt Points:**

Subject to the terms of this Precedent Agreement and any resulting Service Agreement, Shipper shall have secondary receipt point and alternate receipt point access, as applicable, on each of PNGTS' and TCPL's systems, pursuant to the terms and conditions of each PNGTS' Tariff and the TCPL NEB Tariff, [REDACTED] as applicable; provided, however, when the TBO is assigned to Shipper as contemplated herein, Shipper's secondary receipt point and alternate receipt point access right(s) on TCPL's system shall be as set forth therein.

**Secondary Delivery Points:**

Subject to the terms of this Precedent Agreement and any resulting Service Agreement, Shipper shall have secondary delivery point and diversion point access, as applicable, on each of PNGTS' and TCPL's systems, pursuant to the terms and conditions of each of PNGTS' Tariff and the TCPL NEB Tariff, [REDACTED] as applicable; provided, however, when the TBO is assigned to Shipper as contemplated herein, Shipper's secondary delivery point and diversion point access rights(s) on TCPL's system shall be as set forth therein.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## ATTACHMENT C

### CREDITWORTHINESS TERMS AND CONDITIONS REGARDING TRANSPORTATION ON PNGTS

1. During the term of this Precedent Agreement and the Initial Term of the Service Agreement(s) which may result from this Precedent Agreement, as such pertain to service provided by PNGTS (and not TCPL), Shipper understands and agrees that it will establish and maintain creditworthiness. The determination of creditworthiness shall be in accordance with Section 6.3.4.1 of PNGTS' Tariff. If Shipper is not deemed creditworthy pursuant to Section 6.3.4.1, Shipper shall provide and maintain Credit Support pursuant to Attachment C Section 2 below, except for Phase II, for which Shipper shall provide and maintain credit support pursuant to PNGTS' Tariff, and for which the provisions of Paragraphs 2 through 7 shall not apply.

2. As used herein, "**Credit Support**" means:

(A) A guaranty, in a form acceptable to PNGTS, in its sole discretion, of Shipper's payment obligations pursuant to this Precedent Agreement and each Service Agreement, from an entity deemed creditworthy by PNGTS in accordance with Section 1 above ("**Guarantor**"); or

(B) One of the following collateral options [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(i) an irrevocable standby letter of credit, in a form acceptable to PNGTS, and issued by a bank or financial institution deemed acceptable by PNGTS; or

(ii) a cash security deposit acceptable to PNGTS; or

(C) Any other financial assurance mutually agreed upon by PNGTS and Shipper.

If Credit Support is initially required to satisfy creditworthiness, such Credit Support shall be provided by Shipper upon execution of this Precedent Agreement by the Parties. In the event Shipper provides either one of the collateral Credit Support options described above in Section 2(B) of this Attachment C, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3. As a requirement of PNGTS' financing arrangement, Shipper and Shipper's Guarantor (if applicable) each agree to execute and deliver, upon execution and delivery of each Service

Agreement in accordance with the terms hereof, an acknowledgement and consent and third party opinion. Where Shipper has satisfied creditworthiness via a letter of credit, upon issuance of such letter of credit, Shipper agrees to have executed and delivered at the same time, by the financial institution or issuing bank, a letter of credit consent. Should Shipper and PNGTS mutually agree to another form of financial assurance, such assurance shall be subject to the compliance requirements of PNGTS' financing arrangements as applicable.

4. PNGTS shall have the right to review Shipper's (or its Guarantor's) creditworthiness, in accordance with this Attachment C, on an ongoing basis and Shipper shall provide, upon PNGTS' request, information in order for PNGTS to determine the continuing creditworthiness of Shipper (or its Guarantor). The Parties agree that Shipper's failure to maintain creditworthiness or supply or maintain Credit Support shall not (a) relieve Shipper of its other obligations under this Precedent Agreement or the resulting Service Agreement, or (b) prejudice PNGTS' right to seek damages or performance under this Precedent Agreement or any resulting Service Agreement.

5. Shipper acknowledges that this Precedent Agreement and each Service Agreement are contracts under which PNGTS will extend financial accommodations to Shipper, within the meaning of United States Bankruptcy Code Section 365(e)(2)(B). Shipper likewise acknowledges that in the event that a petition is filed, by or against Shipper or any Guarantor of Shipper's obligations hereunder pursuant to any chapter of the United States Bankruptcy Code, or any other legal jurisdiction, if applicable, and if PNGTS does not terminate this Precedent Agreement and/or each Service Agreement as a result of such filing, PNGTS may consider the bankruptcy filing in determining whether Shipper remains creditworthy, and in determining what, if any, financial assurances must be submitted by or for Shipper as a condition to Shipper's creditworthiness under this Precedent Agreement and the effective Service Agreement.

6. The creditworthiness requirements of this Attachment C shall apply to any assignee pursuant to an assignment (in whole or part) of this Precedent Agreement or the replacement shipper taking permanent release of capacity release provided pursuant to any Service Agreement, in whole or part, of capacity provided pursuant to such Service Agreement. PNGTS may refuse to allow Shipper to assign (in whole or part) any Service Agreement or permanently release capacity provided pursuant to any Service Agreement if PNGTS has a reasonable basis to conclude that it will not be financially indifferent to the assignment or release. If Shipper's request to permanently release capacity is denied by PNGTS, PNGTS shall notify Shipper of such denial and shall include in the notification the reasons for such denial.

7. The credit terms and conditions, subject to any required FERC approvals, will be incorporated into the Service Agreement.



**ATTACHMENT D**

**PRO FORMA TBO AGREEMENT  
(SERVICE AGREEMENT FOR FIRM TRANSPORTATION ON TCPL)**

**FIRM TRANSPORTATION SERVICE CONTRACT**

THIS FIRM TRANSPORTATION SERVICE CONTRACT, made as of the [•] day of [•].

BETWEEN: TRANSCANADA PIPELINES LIMITED  
a Canadian corporation  
("TransCanada")

OF THE FIRST PART  
AND:

[•]  
an Entity Formed under the laws of  
[•]  
("Shipper")  
OF THE SECOND PART

WITNESSES THAT:

WHEREAS TransCanada owns and operates a natural gas pipeline system extending from a point near the Alberta/Saskatchewan border where TransCanada's facilities interconnect with the facilities of NOVA Gas Transmission Ltd. easterly to the Province of Quebec with branch lines extending to various points on the Canada/United States of America International Border; and

WHEREAS Shipper has satisfied in full, or TransCanada has waived, each of the conditions precedent set out in Sections 1.1 (b) and (c) of TransCanada's Firm Transportation Service Toll Schedule referred to in Section 7.1 hereof (the "FT Toll Schedule"); and

WHEREAS Shipper has requested and TransCanada has agreed to transport quantities of gas, that are delivered by Shipper or Shipper's agent to TransCanada at the Receipt Point(s) referred to in Section 3.2 hereof (the "Receipt Point(s)"), to the Delivery Point(s) referred to in Section 3.1 hereof (the "Delivery Point(s)") pursuant to the terms and conditions of this Contract; and

WHEREAS the Parties hereto have heretofore entered into an agreement dated as of the [•] day of [•], 200[•], (the "Precedent Agreement") which bound them, subject to fulfillment or waiver of the conditions precedent therein set forth, to enter into a Contract substantially upon the terms and conditions hereinafter described; and

WHEREAS the conditions precedent of the Precedent Agreement have been satisfied or waived; and

EB

WHEREAS the quantities of gas delivered hereunder by Shipper or Shipper's agent to TransCanada are to be removed from the province of production of such gas by Shipper and/or Shipper's suppliers and/or its (their) designated agent(s) pursuant to valid and subsisting permits and/or such other authorizations in respect thereof.

NOW THEREFORE THIS CONTRACT WITNESSES THAT, in consideration of the covenants and agreement herein contained, the Parties hereto covenant and agree as follows:

#### ARTICLE I – COMMENCEMENT OF SERVICE

1.1 TransCanada shall use reasonable efforts to have the additional facilities (and/or obtain such transportation arrangements on other gas transmission systems) as may be required to effect the transportation of the gas hereunder (the "Necessary Capacity") in place by the [●] day of [●], 20[●], or as soon as possible thereafter. TransCanada's ability to provide service by the [●] day of [●], 20[●], will be subject to, inter alia:

- a) the timing of receipt by Shipper and TransCanada of the authorizations referred to in paragraphs 1 and 2 of the Precedent Agreement which are required prior to the commencement of construction of TransCanada's facilities and the timing of the commencement of the services required by TransCanada (if any) on Other Pipelines; and
- b) the lead time required for the acquisition, construction and installation of those facilities required by TransCanada.

TransCanada shall use reasonable efforts to provide Shipper with ten (10) days advance Notice of the anticipated availability of the Necessary Capacity (the "Advance Notice"). TransCanada shall give Shipper Notice of the actual date of availability of the Necessary Capacity ("TransCanada's Notice"), and service hereunder shall not commence prior to the actual date of availability of the Necessary Capacity.

1.2 The date of commencement of service hereunder (the "Date of Commencement") shall be the earlier of :

- a) the date for which Shipper first nominates and TransCanada authorizes service hereunder; or
- b) the tenth (10<sup>th</sup>) day following the day on which Shipper received TransCanada's Notice;

PROVIDED that Shipper shall not be obligated to a Date of Commencement which is earlier than the [●] day of [●], 20[●], unless mutually agreed upon by both Parties.

#### ARTICLE II – GAS TO BE TRANSPORTED

2.1 Subject to the provisions of this Contract, the FT Toll Schedule, the List of Tolls, and the General Terms and Conditions referred to in Section 7.1 hereof, TransCanada shall provide transportation service hereunder for Shipper in respect of a quantity of gas which, in any one day from the Date of Commencement until the [●] day of [●], 20[●], shall not exceed [●] GJ/d (the "Contract Demand").



**ARTICLE III – DELIVERY POINT(S) AND RECEIPT POINT(S)**

3.1 The Delivery Point(s) hereunder are those points specified as such in Exhibit "1" which is attached hereto and made a part hereof.

3.2 The Receipt Point(s) hereunder are those points specified as such in Exhibit "1" hereof.

**ARTICLE IV -TOLLS**

4.1 Shipper shall pay for all transportation service hereunder from the Date of Commencement in accordance with TransCanada's FT Toll Schedule, List of Tolls, and General Terms and Conditions set out in TransCanada's Transportation Tariff as the same may be amended or approved from time to time by the National Energy Board ("NEB").

**Article V – Term of Contract**

5.1 This Contract shall be effective from the date hereof and shall continue until the [•] day of [•], 20[•].

**ARTICLE VI – NOTICES**

6.1 Any notice, request, demand, statement or bill (for the purpose of this paragraph, collectively referred to as "Notice") to or upon the respective parties hereto shall be in writing and shall be directed as follows:

<b>IN THE CASE OF TRANSCANADA:</b>		<b>TRANSCANADA PIPELINES LIMITED</b>	
(i)	mailing address:	P.O. Box 1000 Station M Calgary, Alberta T2P 4K5	
(ii)	delivery address:	TransCanada Tower 450 - 1st Street S.W. Calgary, Alberta T2P 5H1	
		Attention:	Director, Customer Service
		Telecopy:	(403) 920 - 2446
(iii)	nominations:	Attention:	Manager, Nominations and Allocations
		Telecopy:	(403) 920 - 2446
(iv)	invoices:	Attention:	Manager, Contracts and Billing
		Telecopy:	(403) 920 - 2446
(v)	other matters:		
	Attention:		Director, Customer Service
		Telecopy:	(403) 920 – 2446

**IN THE CASE OF SHIPPER:**

- |       |                   |  |
|-------|-------------------|--|
| (i)   | mailing address:  | [•]  |
| (ii)  | delivery address: | same as above  |
| (iii) | nominations:      | Attention: [•]<br>Telecopy: [•]                        |
| (iv)  | invoices:         | Attention: [•]<br>Telecopy: [•]<br>E-mail address: [•] |
| (v)   | other matters:    | Attention: [•]<br>Telecopy: [•]                        |

Notice may be given by telecopier or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) days after mailing, Saturdays, Sundays and statutory holidays excepted. In the event regular mail service, courier service, telecopier or other telecommunication service shall be interrupted by a cause beyond the control of the Parties hereto, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, telecopier or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

(a) Article vii – Miscellaneous Provisions

7.1 The FT Toll Schedule, the List of Tolls, and the General Terms and Conditions set out in TransCanada's Transportation Tariff as amended or approved from time to time by the NEB are all by reference made a part of this Contract and operations hereunder shall, in addition to the terms and conditions of this Contract, be subject to the provisions thereof. TransCanada shall notify Shipper at any time that TransCanada files with the NEB revisions to the FT Toll Schedule, the List of Tolls, and/or the General Terms and Conditions (the "Revisions") and shall provide Shipper with a copy of the Revisions.

7.2 The headings used throughout this Contract, the FT Toll Schedule, the List of Tolls, and the General Terms and Conditions are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions thereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

7.3 This Contract shall be construed and applied, and be subject to the laws of the Province of Alberta, and, when applicable, the laws of Canada, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction.



IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date first  
above written.

[•]

TRANSCANADA PIPELINES LIMITED

Per: _____	Per: _____
Name: _____	Name: _____
Title: _____	Title: _____
Per: _____	Per: _____
Name: _____	Name: _____
Title: _____	Title: _____

Contract Approval	
Customer Service Leader	
Customer Representative	
Legal Review	Proforma Approved

**EXHIBIT "1"**

This is EXHIBIT "1" to the FIRM TRANSPORTATION SERVICE CONTRACT made as of the [•] day of [•] between TRANSCANADA PIPELINES LIMITED ("TransCanada") and [•] ("Shipper").

The Delivery Point hereunder is the point of interconnection between the pipeline facilities of TransCanada and [•] which is located at:

[•]

The Receipt Point hereunder is the point of interconnection between the pipeline facilities of TransCanada and [•] which is located at:

[•]

TB



## ATTACHMENT E

### PRO FORMA FINANCIAL ASSURANCES AGREEMENT

#### FINANCIAL ASSURANCES AGREEMENT

This Financial Assurances Agreement made the Date<sup>th</sup> day of Month, 20YR.

BETWEEN:

**TRANSCANADA PIPELINES LIMITED**  
a Canadian corporation  
(hereinafter called "TransCanada")

AND:

**Shipper Legal Name**  
a corporation incorporated in  
the Province of Alberta  
(hereinafter called "Shipper")

WITNESSES THAT:

WHEREAS, upon Shipper and TransCanada executing this Financial Assurances Agreement (hereinafter called the "Financial Assurances Agreement"), Shipper and TransCanada shall enter into a Precedent Agreement (hereinafter called the "Precedent Agreement") wherein both parties shall agree, subject to satisfaction of the conditions contained in the Precedent Agreement, to enter into a Firm Transportation Service Contract substantially in the form attached as Exhibit "A" to the Precedent Agreement (hereinafter called the "Contract"); and

WHEREAS, the Contract, upon execution, will be for gas transportation and related services where TransCanada determined it must construct facilities in order to provide such service ("Expansion Capacity Service"); and

WHEREAS, the Contract, upon execution, would provide for TransCanada to transport for the account of Shipper up to Quantity GJ/d of natural gas from the Receipt Point to the Delivery Point commencing the 1<sup>st</sup> Day of Month, Year or as soon as possible thereafter; and

WHEREAS the General Terms and Conditions of TransCanada's Canadian Mainline Transportation Tariff that are applicable to the Contract, as such may be amended, replaced or varied from time to time (hereinafter called the "Tariff"), sets out that TransCanada may request and Shipper shall provide if TransCanada so requests, financial assurances for the payment of the charges to be paid by Shipper pursuant to the Contract; and

WHEREAS, the parties wish to enter into this Financial Assurances Agreement for the purpose of describing the manner in which such security is to be provided by Shipper.

NOW THEREFORE THIS FINANCIAL ASSURANCES AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements contained herein, Shipper and TransCanada agree as follows:

1. Prior to the execution of the Contract, TransCanada may request financial assurances from Shipper in form and substance acceptable to TransCanada and in an amount determined in accordance with the Tariff for Expansion Capacity Service. Shipper shall provide such financial assurances within four (4) Banking Days of TransCanada's request or such other time as may be set forth by TransCanada in the request. Upon receipt by TransCanada of the requested financial assurances, section 9(d) of the Precedent Agreement shall be satisfied, and until receipt by TransCanada of the requested financial assurances, section 9(d) of the Precedent Agreement shall not be satisfied.
2. TransCanada may request that Shipper at any time and from time to time prior to and during service, provide TransCanada with financial assurances acceptable to TransCanada, in form and substance satisfactory to TransCanada and in an amount determined in accordance with the Tariff for Expansion Capacity Service (the "Financial Assurances Request").
3. Shipper shall provide TransCanada with the financial assurances requested in the Financial Assurances Request within the time period set out in the Tariff.
4. If Shipper fails to provide TransCanada with the financial assurances requested, then TransCanada may, in addition to any other remedy available to it, exercise any remedies available to it in the Precedent Agreement, the Contract, or the Tariff.
5. This Financial Assurances Agreement shall become effective on the date of execution hereof and shall remain in effect until:
  - (a) the Precedent Agreement is terminated by either party in accordance with the terms thereof and all of the Shipper's obligations pursuant to the Precedent Agreement have been satisfied, and
  - (b) if the Contract is executed,
    - (i) the Contract is terminated by either party in accordance with the terms thereof and all of the Shipper's obligations pursuant to the Contract have been satisfied;or



- (ii) all of the Shipper's obligations pursuant to the Contract for the Existing Term have been satisfied.
6. For greater certainty, this Financial Assurances Agreement is deemed to be a financial assurances agreement under the Tariff.
7. This Financial Assurances Agreement and the rights and obligations of the parties hereunder shall be subject to all present and future laws, rules, regulations, decisions and orders of any legislative body or duly constituted authority now or hereafter having jurisdiction over any of the matters contained herein, including without limitation the General Terms and Conditions of the Tariff.
8. Any notice, request or demand (hereinafter called a "Notice") to or upon the respective parties hereto, shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally or by courier, first class mail, telecopier or email to the address hereinafter mentioned:

In the case of TransCanada: **TRANSCANADA PIPELINES LIMITED**

Delivery Address: TransCanada PipeLines Tower  
450 – 1<sup>st</sup> Street S.W.  
Calgary, Alberta  
T2P 5H1

Mailing Address: P.O. Box 1000, Station M  
Calgary, Alberta  
T2P 4K5

Attention: Director, Counterparty Risk  
Telecopier: (403) 920-2359

Email: counterparty\_risk@transcanada.com

In the case of Shipper: **Shipper Legal Name**

Delivery Address: Street Address S.W.  
City, Province  
Postal / Zip Code

Mailing Address: Same As Above

Attention: Contact Name  
Telecopier: 403-Fax Number

Email : xxx@shipper.com

Any Notice shall be sent in order to ensure prompt receipt by the other party. Such Notice sent as aforesaid shall be deemed to have been received by the party to whom it is sent: (a) at the time of its delivery if personally delivered or if sent by telecopier or email, or (b) on the business day following transmittal thereof if sent by courier, or (c) on the third (3<sup>rd</sup>) Banking Day following the transmittal thereof if sent by first class mail; provided, however, that in the event normal mail service, courier service, telecopier or email shall be interrupted by a cause beyond the control of the parties hereto, then the party sending the Notice shall utilize any of the said services which has not been so interrupted or shall personally deliver such Notice. Each party shall provide Notice to the other of any change of address for the purposes hereof.

9. Any company which shall succeed by purchase, merger or consolidation to the assets substantially or in entirety, of Shipper or TransCanada, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Financial Assurances Agreement. Either party may, without relieving itself of its obligations under this Financial Assurances Agreement, assign any of its rights and obligations hereunder to an affiliate (as such term is defined in the Canada Business Corporations Act) of such party without the consent of the other party hereto, but otherwise no assignment of this Financial Assurances Agreement or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the written consent thereto of the other party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Shipper may not assign its rights or obligations hereunder unless Shipper concurrently assigns its rights and/or obligations under the Precedent Agreement or the Contract to the same assignee. It is agreed, however, that the restrictions on assignment contained in this paragraph shall not in any way prevent either party to this Financial Assurances Agreement from pledging or mortgaging its rights hereunder as security for its indebtedness. This Financial Assurances Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.
10. This Financial Assurances Agreement shall be construed and applied in accordance with, and be subject to, the laws of the Province of Alberta, and, where applicable, the laws of Canada.
11. If any provision of this Financial Assurances Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or enforceability shall apply only to such provision and all other provisions hereof shall continue in full force and effect.
12. TransCanada and Shipper hereby stipulate and agree that this Financial Assurances Agreement is executed for the sole benefit of TransCanada and Shipper, including all successors and



assignees permitted under the terms of this Financial Assurances Agreement. TransCanada and Shipper expressly intend that no rights under this Financial Assurances Agreement inure to any other parties.

13. Shipper acknowledges and agrees that it has reviewed and is familiar with the terms, conditions and provisions of the Tariff.
14. TransCanada and Shipper agree that any upper case terms not defined herein shall have the meaning ascribed thereto in the Tariff.
15. This Financial Assurances Agreement may be so executed in counterpart and a complete set of counterpart pages shall be provided to each party.

IN WITNESS WHEREOF, the parties hereto have executed this Financial Assurances Agreement as of the date first above written.

**Shipper Legal Name**

**TRANSCANADA PIPELINES LIMITED**

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

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

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

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

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

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

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

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

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

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

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

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

Contract Approval	
Customer Service Leader	
Customer Representative	
Legal Review	Proforma