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**GENERAL TERMS AND CONDITIONS  
FOR TRANSPORTATION**

**ARTICLE 1**  
**DEFINITIONS**

- 1.1 "Affiliate" shall mean any person, entity, or business section, or division that directly or through one or more intermediaries' controls, is controlled by, or is under common control with the entity in question.
- 1.2 "Agreement" shall mean the agreement to which the General Terms and Conditions for Transportation apply.
- 1.3 "Btu" shall mean British thermal unit(s) and shall be computed on a temperature base of sixty degrees (60°) Fahrenheit and a pressure base of fourteen and sixty-five hundredths (14.65) psia and on a gross-real-dry basis and shall not be corrected for real water vapor as obtained by means commonly acceptable to the industry, and "MMBtu" shall mean one million (1,000,000) Btu.
- 1.4 "Commission" shall mean the Railroad Commission of Texas.
- 1.5 "Company" shall mean Texas Gas Service, a division of ONEOK, Inc., when it is acting as Company on the Pipeline System.
- 1.6 "Cumulative Tolerance Limit" shall mean five percent (5%) of aggregate historical annual deliveries of a Qualified Supplier's pool of customers for the most recent year ended on June 30. The Company, at its sole discretion, may make adjustments to the Cumulative Tolerance Limit to reflect changes to the pool of customers and other known changes to anticipated deliveries that the Company determines to be reasonably reliable and accurate.
- 1.7 "Customer" shall mean a consumer which subscribes to natural gas services provided by Texas Gas Service.
- 1.8 "Dekatherm" (Dth) shall mean 1,000,000 Btu's (1 MMBtu). This unit will be on a dry basis.
- 1.9 "Day" shall mean the 24-hour period commencing at 9:00 a.m. (central clock time) on one calendar day and ending at 9:00 a.m. (central clock time) the following calendar day.
- 1.10 "Dry" shall mean the heating value calculation being determined with no water vapor present.
- 1.11 "Effective Date" shall mean the date specified in the Agreement.

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- 1.12 "Gas" or "natural gas" shall mean the effluent vapor stream in its natural, gaseous state, including gas-well gas, casing head gas, residue gas resulting from processing both casing head gas and gas-well gas, and all other hydrocarbon and non-hydrocarbon components thereof.
- 1.13 "Gas Transportation Order" shall mean a completed Exhibit A relating to the applicable gas transportation service Agreement.
- 1.14 "Gross Heating Value" or "Gross" shall mean the amount of energy transferred as heat per mass or mole from the complete combustion of the gas with oxygen (from air), at a base temperature in which all water formed by the reaction condenses to liquid.
- 1.15 "Mcf" shall mean one thousand (1,000) cubic feet of Gas.
- 1.16 "Month" shall mean the period beginning at 9:00 a.m. central clock time on the first Day of each calendar month and ending at 9:00 a.m. Central clock time on the first Day of the next succeeding calendar month, except where references not involving Gas measurement volumes are involved, in which case the calendar month shall be deemed to be referred to.
- 1.17 "Monthly Tolerance Limit" shall mean ten percent (10%) of the aggregate deliveries for a Qualified Suppliers pool of customers for such month.
- 1.18 "PDA" shall mean a predetermined allocation method.
- 1.19 "Pipeline System" shall mean the current existing utility distribution facilities of Company located in the State of Texas.
- 1.20 "Point of Delivery" shall mean the point or points where Gas is delivered from the Pipeline System to or for the account of Customer and are shown on the applicable Gas Transportation Order.
- 1.21 "Point Operator" shall mean the person or entity that controls the Point of Receipt or Point of Delivery.
- 1.22 "Point of Receipt" shall mean the point or points where Company shall receive Gas into the Pipeline System from Customer, as described on the applicable Gas Transportation Order.
- 1.23 "Psia" shall mean pounds per square inch, absolute.
- 1.24 "Psig" shall mean pounds per square inch, gauge.
- 1.25 "Qualified Supplier" shall mean a supplier of natural gas for transportation to customers through the Company's pipeline system that meets the requirements of and has executed a Supplier Service Agreement.

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- 1.26 “Real” shall mean the division of the ideal heating value by the compressibility of the gas. This creates an ideal Gross Heating Value per Real cubic foot.
- 1.27 “Supplier Service Agreement” shall mean a contract setting forth the requirements and terms upon which a supplier of natural gas may make deliveries of customer owned gas into the Company’s pipeline system for delivery to one or more of the Company’s customers receiving service under this tariff.
- 1.28 “Tariff” shall mean every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing gas service filed with the regulatory authorities or agencies having jurisdiction over Company or the services provided hereunder.
- 1.29 “Week” shall mean a period of seven (7) consecutive Days beginning at 9:00 a.m. central clock time on each Monday and ending at the same time on the next succeeding Monday.
- 1.30 “Year” shall mean a period of three hundred sixty-five (365) consecutive Days, or three hundred sixty-six (366) consecutive Days when such period includes a February 29.

**ARTICLE 2**  
**RESTRICTIONS AND RESERVATIONS**

- 2.1 It is understood and agreed that Customer has only the right to transportation service in the Pipeline System and all equipment, including (but not in any way limited thereto) all pipe, valves, fittings, and meters comprising the Pipeline System and all other property and capacity rights and interests, shall at all times during the term of the Agreement remain the property of Company. Customer agrees not to cause or permit any liens or encumbrances to be filed with respect to the Pipeline System by reason of Customer's actions. Customer's Gas shall at all times remain the property of Customer, and Company shall have no right or property interest therein.
- 2.2 Company reserves the right in its sole discretion to remove, relocate, expand, or rebuild, without approval of Customer, any portion of the Pipeline System. Customer shall make no alterations, additions, or repairs to or on the Pipeline System, nor shall Customer bear any cost of any alterations, additions, repairs, maintenance or replacements made to or on said Pipeline System.
- 2.3 Customer agrees not to connect or cause the connection of any third party to the Pipeline System for any purpose without the express written approval and consent of Company to be granted in Company's sole discretion. Customer further agrees not to transport or cause to be transported any Gas for any third party. If either of these conditions is breached by Customer, Company shall have the right and option, notwithstanding any other provision of the Agreement or the General Terms and Conditions for Transportation, to terminate the Agreement including the Exhibits thereto immediately and without further obligation to Customer.

- 2.4 Company presently is transporting Gas to third parties on the Pipeline System and shall have the right in the future to transport additional Gas for such purposes and to transport Gas to additional third parties as it may desire, and Company shall have the right to make additional connections to the Pipeline System as may be required to serve presently existing and new customers, all of which is subject to the provisions of the Agreement. Company's transportation of Gas hereunder shall not obligate Company in any manner beyond the terms of the Agreement and the Exhibits attached thereto.
- 2.5 Company shall own any and all liquids which are recovered from the Pipeline System and may use, sell or transfer all liquids without having to account in any manner, or pay any monies or other consideration to Customer.
- 2.6 The Company reserves the unilateral right from time to time to seek regulatory approval to make any changes to, or to supersede, the rates, charges and any terms stated in the tariffs, rate schedules, the agreements, and the General Terms and Conditions.

**ARTICLE 3**  
**OPERATIONS**

- 3.1 Customer shall deliver its Gas into the Pipeline System at the Points of Receipt described on the applicable Gas Transportation Order, as it now exists and as it may be amended. Customer shall have no right to require Gas to be received at any particular Point of Receipt and Company may delete such points or modify the capacity thereof from time to time and at any time in its sole discretion with no further obligation to Customer with respect to such Point of Receipt. All supplies of Gas delivered to the Pipeline System must comply with the terms and conditions of the Agreement and the exhibits attached thereto. In no event shall Company be required to expand, modify, construct, rearrange, or change the operations of the Pipeline System in order to receive Gas from or on behalf of Customer or in order to deliver Gas to Customer at any existing Points of Delivery.
- 3.2 Customer shall advise (in a method and format approved by Company in its sole discretion) Company with respect to each Day, Week and Month the name of each supplier with whom it has a contract (and the name of the individual with such supplier responsible for Customer's account), which source of supply is delivering to Company, how much Gas is nominated to be delivered to Company from each source of supply (i.e., each well, plant, or other desired Point of Receipt) and the anticipated deliveries at each Point of Delivery. Customer's nomination shall be in good faith, in balance between Points of Receipt and Points of Delivery, and shall be based on Customer's commercially reasonable best efforts to estimate usage for Hour, Day, Week, and Month. Customer will cause their Qualified Supplier to act as their agent in the nomination process. Qualified Supplier shall not intentionally nominate more or less Gas than is anticipated for consumption by Customer(s), except as may be needed for balancing purposes to the extent Company accepts such nomination. Qualified Supplier shall submit nominations to

the Company's gas scheduling department in accordance with their currently effective nomination process which can be provided to the parties upon request. Customer and Qualified Supplier shall exercise commercially reasonable best efforts to deliver to the Pipeline System Dths of Gas that Company is to deliver from the Pipeline System to Customer during any particular Hour, Day, Week and Month, including but not limited to volumes needed for peak Day usage for Customer's facilities.

- 3.3 Before the start of the Gas Day, the Point Operator and Company shall establish a predetermined allocation (PDA) method to specify how Gas received or delivered by Company shall be allocated in accordance with confirmed nominations at such point. Only one PDA methodology shall be applied per allocation period.
- 3.4 Customer's Gas shall be delivered to Customer from the Pipeline System at the Points of Delivery. To the extent that Customer's acts or omissions cause Company to incur, directly or indirectly, fees, charges, expenses, or penalties from a supplier or transporter for failure to satisfy such supplier's or transporter's balancing or nomination requirements, then Customer agrees to reimburse Company for such fees, charges, expenses, or penalties, and defend, indemnify, and hold Company harmless with respect thereto. Any fees, charges, expenses or penalties which were determined to be in error will be credited back to the Customer.
- 3.5 The Point of Receipt and Point of Delivery may be, or may later become points through which other quantities of Gas are being measured; therefore, the measurement of Gas under the Agreement may involve the allocation of Gas deliveries. In such event, each party hereto will furnish, or cause to be furnished, to the other all data required to accurately account for all Gas.
- 3.6 Except as may be set forth on a Gas Transportation Order, Company shall receive and deliver Gas hereunder as nearly as practicable at uniform hourly and daily rates of flow. It is recognized that it may be physically impracticable, because of measurement, Gas control limitations and other operating conditions, to stay in zero (0) imbalance each hour and each Day; therefore, the daily and hourly quantities received may, due to the aforementioned reasons, vary above or below the daily and hourly quantities delivered. If the quantities received and the quantities delivered hereunder should create an imbalance at the end of any hour, Day, Week, or Month, then Company and Customer shall adjust receipts and/or deliveries at any time to the end that the quantities received and delivered shall be kept as near to zero (0) imbalance as practicable.

3.7 Imbalances

Customer must designate no more than one Qualified Supplier. The Qualified Supplier shall act on behalf of the Customer to procure gas supplies, deliver gas supplies to points of receipt designated in the Gas Transportation Order, and shall act as the Customer's agent with respect to nominations, operational notices required under the Gas Transportation Agreement or applicable tariffs and with respect to resolution of imbalances under this Rate Schedule.

(A) The following cash out provisions shall be applied to the Qualified Supplier for its aggregate pool of Customers that are being provided service pursuant to a Rate Schedule or some other form of transportation service:

- 1) Qualified Supplier shall not deliver into the Pipeline System more Dths of Gas than Company delivers to the aggregate pool of Customers at the Points of Delivery during a Month. At the end of the Month in which an over-delivery occurred and exceeded the Monthly Tolerance Limit or the Cumulative Tolerance Limit, Qualified Supplier shall sell such excess Gas to Company at 95% of Inside FERC's FOM Houston Ship Channel index price.
- 2) If Company receives less Dths of Gas than are delivered to the aggregate pool of Customers at the Points of Delivery in excess of the Monthly Tolerance Limit or Cumulative Tolerance Limit in any particular Month, then Qualified Supplier shall purchase such under-delivered volumes at 105% of Inside FERC's FOM Houston Ship Channel index price.

The Company will provide monthly imbalance statements along with calculations of the cash out charges in accordance with the aforementioned cash out provisions to the Qualified Supplier each month. Payments for cash out charges will be due each month within 15 business days of the imbalance statement date. The Company may elect at its sole discretion to accrue the monthly cash out provisions each month and only require periodic settlement rather than monthly payments.

The monthly transport payments shall not be abated with respect to a Month in which under-deliveries occurred except as provided in Article 9 and Article 10 hereof.

- 3.8 Customer and Company shall exercise their commercially reasonable best efforts to comply with all of the standards established by the North American Energy Standards Board, Inc. ("NAESB"), but in no event shall either party be required to comply with the NAESB standards if such compliance has a material adverse affect upon such party.
- 3.9 In the event Customer's source of gas supply is terminated by Customer's supplier due to non-payment or other reasons, or if customer is otherwise unable to continue as a transportation customer, Customer may, upon the giving of five (5) business days advance notice to Company, obtain service from Company under the general sales tariff applicable to Customer. Prior to commencing such service, Company may, in its sole discretion, require Customer to post a deposit or bond in accordance with the provisions of Article 5 hereof.

**ARTICLE 4**  
**PRESSURE AND QUALITY OF GAS**

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- 4.1 Customer shall deliver (or cause to be delivered) the Gas to the Pipeline System at the Point of Receipt at a pressure sufficient to effect delivery into the Pipeline System at that point. If necessary, Customer shall provide additional compression to make such deliveries hereunder, and Company shall not have any cost or responsibility in that regard.
- 4.2 Subject to the provisions of Section 4.1 above, the Gas shall be delivered to Customer from the Pipeline System at the Points of Delivery at pressures sufficient to effect deliveries to Customer's facilities, but not to exceed the maximum pressure that has existed for each Point of Delivery.
- 4.3 Gas delivered by and to Customer shall be commercially free of dust, gums, gum-forming constituents, gasoline, water, and any other substance that may become separated from the Gas during the handling hereof. All Gas received shall conform to the following additional specifications:
- (A) Contain not more than one-quarter (1/4) grain of hydrogen sulfide per 100 cubic feet, as determined by a method generally acceptable for use in the gas industry;
  - (B) Contain not more than five (5) grains of total sulfur per 100 cubic feet;
  - (C) Contain not more than two percent (2%) by volume of carbon dioxide;
  - (D) Contain not more than four percent (4%) by volume of total inerts, including carbon dioxide and nitrogen;
  - (E) Contain not more than two-tenths of one percent (.2%) by volume of oxygen;
  - (F) Contain a gross heating value equivalent to at least 980 British Thermal Units per cubic foot and not to exceed 1080 British Thermal Units per cubic foot;
  - (G) Have a temperature of not more than one hundred twenty degrees (120°) Fahrenheit and not less than forty degrees (40 °) Fahrenheit;
  - (H) Contain no water or hydrocarbons in liquid form;
  - (I) Contain not more than 7 pounds of water in vapor stage per 1,000 Mcf of gas; and
  - (J) Be interchangeable with the Company's system Gas at the Point of Receipt or delivered to the nearest customer, city border station, or other pipeline interconnected with such receiving facility or downstream of the Point of Receipt.
- 4.4 The Company, at its option, may refuse to accept delivery of any gas not meeting the quality specifications set out above. Thereafter, Customer or Qualified Supplier shall have the right to conform or cause the gas to be conformed to the above specifications. If the Customer or

Qualified Supplier does not elect to conform the gas to said specifications, then the Company at its sole option may accept or reject any such gas.

- 4.5 Notwithstanding anything to the contrary contained herein, the gas which the Company transports and delivers to the Customer shall be odorized by the Company. In the event Customer desires to remove the odorant, such removal shall be solely at Customer's risk and expense.

**ARTICLE 5**  
**PAYMENT**

- 5.1 Should Customer fail to pay or deliver any or all of the amount of the transportation payment and/or other fees due under any exhibit when such amount is due (which in no event shall be later than the last Day of the applicable Month), interest on the unpaid portion shall accrue at a rate (which in no event shall be higher than the maximum rate permitted by applicable law) equal to one and one-half percent (1 ½%) per month from the due date until the date of payment. If such failure to pay continues for fifteen (15) Days after payment is due, Company, in addition to any other remedy it may have, may suspend further receipts and deliveries of Gas until such amount is paid; provided, however, that if Customer in good faith shall dispute in writing the amount of any such bill or part thereof and shall pay to Company such amounts as it concedes to be correct and, at any time thereafter within thirty (30) Days of the due date of such payment, shall furnish a good and sufficient surety bond in an amount and with surety satisfactory to Company, guaranteeing payment to Company of the amount ultimately found due upon such bills, including interest thereon, after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Company shall not be entitled to suspend further receipts and withdrawals of Gas unless and until default be made in the conditions of such bond. As an alternative to posting a bond, Customer may pay the portion of any amount in dispute without waiving its rights to recoup any monies improperly billed.

If the portion of any amount in dispute is ultimately determined to be incorrect, such amount shall be refunded by Company to Customer together with interest thereon at a rate (which in no event shall be higher than the maximum allowed by law) equal to one and one-half percent (1½%) per Month for the period from the date of payment to Company to the date of refund by Company.

- 5.2 Customer agrees to pay any amounts due pursuant to the Agreement and the General Terms and Conditions for Transportation to Company within fifteen (15) Business Days after receipt of an invoice from Company.
- 5.3 Company reserves the right, prior to initiation of service, to require a cash deposit or bond in favor of Texas Gas Service in order to assure payment of amounts that may become due pursuant to the Agreement and the exhibits attached thereto. In the event Customer's financial condition



materially weakens or Customer fails to make timely payment in accordance with Article 5 after the execution of the Agreement, then upon written request from Company, Customer agrees to deposit cash with Texas Gas Service or secure a bond in favor of Texas Gas Service in order to assure the payment of amounts that may become due pursuant to the Agreement and the exhibits attached thereto. Such deposit or bond shall be furnished to Texas Gas Service within fifteen (15) days after a request by Texas Gas Service is made for such deposit or bond and shall be made in a form and amount satisfactory to Texas Gas Service. If such deposit or bond is not furnished in a timely manner, or if a bond expires or is canceled prior to the end of the period specified below, or if the cash deposit or bond is not increased as specified below, then leasing of capacity and the rendering of all other services may be suspended by Texas Gas Service in its sole discretion until such deposit or bond is furnished, renewed or increased, as applicable.

- 5.4 Nothing in this Article 5 shall be deemed to supersede the respective rights and obligations of Company and Customer as provided by Texas statutes, rules, and/or regulation, as such statutes, rules, or regulations may be amended from time to time, with respect to adjustments to the amounts owed by Customer as a result of errors in Customer's meter or errors in reading Customer's meter. Customer shall be responsible for payment of the amounts owed Company for transportation service and gas supply provided to Customer during the applicable period for which it has been determined that Customer's meter was in error to the favor of Customer.

**ARTICLE 6**  
**STATEMENTS AND RECORDS**

- 6.1 On or about fifteen (15) days after the Company receives necessary volumetric information from other parties for each calendar month after commencement of Gas receipts and deliveries hereunder, Company shall render to the Qualified Supplier a statement for the preceding Month showing the total Dths of Gas received and delivered and each Point of Receipt and Point of Delivery. If information necessary for statement purposes is in the possession of Customer, Customer shall furnish such information to Company on or before the sixth (6th) Day of the Month in which the statement requiring such data is to be rendered.
- 6.2 Both parties hereto shall have the right at any and all reasonable times within twenty four (24) months from the time period in question, to examine the books and records of the other to the extent necessary to verify the accuracy of any statement, computation, or demand made hereunder.
- 6.3 Customer agrees to supply to Company, at Company's request at any time and from time to time, a sample of the liquids removed from the gas stream of the facilities which deliver gas to Company which sample is to be taken from a point upstream from the Point of Receipt. Said sample shall not contain any toxic, hazardous, or deleterious materials or any materials which Company, in its sole discretion, deems in any way harmful to its facilities, personnel or the environment, including, but not limited to, polychlorinated byphenyls (PCBs), and substances or materials considered hazardous or other similar terms, or requiring investigation, remediation or

removal under any federal, state or local statute, regulation, rule or ordinance or any amendments thereof whether now in effect or as may be in effect in the future. If such samples contain any such materials or substances, Company shall have the right, in its sole discretion and in addition to other remedies available to it, to immediately cease receipt of Gas through the Point of Receipt until such time as all such materials or substances are eliminated from the Gas such that Company, in its sole discretion, elects to again receive such Gas through the Point of Receipt. Should Customer fail or refuse to eliminate all such materials or substances within a reasonable time, Company shall have the right, upon written notice, to terminate this Agreement. Customer hereby expressly agrees to indemnify and hold Company and Company's affiliates harmless from and against any and all liabilities, losses, claims, damages, actions, costs, fines, and expenses of whatever nature, including, but not limited to, court costs, and attorney's fees arising out of or in any manner relating to the presence of PCBs and/or any other toxic, hazardous, deleterious, harmful, or unsafe materials as described above in Gas delivered by or on behalf of Customer into Company's system.

**ARTICLE 7**  
**MEASUREMENT AND TESTS OF GAS AND EQUIPMENT**

The measurement and tests for quality of Gas delivered and delivered by Customer hereunder shall be governed as follows:

- 7.1 The quantities of Gas received and delivered shall be measured by means of meters of standard type which conform to the American Gas Association Measurement Committee Reports and other industry standards as to construction and installation.
- 7.2 The unit of volume for purposes of measurement shall be one (1) cubic foot of Gas at a temperature base of sixty degrees (60°) Fahrenheit and at a pressure base of fourteen and seventy-three hundredths (14.65) pounds per square inch absolute. Customer agrees that the Btu content per Mcf of the gas volumes delivered by the Company at the Point of Delivery shall be assumed to be equal to the Btu content per Mcf of the gas volumes delivered by Customer at the Point of Receipt, when corrected for differences in pressure base.
- 7.3 The temperature shall be adjusted to standard conditions by a compensation device included with the meter or such other method as the Company shall deem appropriate. Corrections shall be made in accordance with industry practice.
- 7.4 Specific gravity shall be determined with accuracy to the nearest one thousandth (.001) by use of an instrument that conforms to industry standards.
- 7.5 Whenever the conditions of pressure and temperature differ from the standards, conversion of the volumes from these conditions to the standard conditions shall be in accordance with the Ideal Gas Laws corrected for deviation from Boyle's Law, all to be in accordance with methods

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and tables set out in the American Gas Association Measurement Committee Reports, or by other accepted methods that may be used from time to time.

- 7.6 The gross heating value of the Gas shall be determined by means of a sampling method of general use in the Gas industry. The location of the sampling equipment shall be determined by Company in its sole discretion but shall be at a location where a representative sample of the Gas to which it applies may be taken.
- 7.7 Tests to determine total sulfur, hydrogen sulfide, oxygen, carbon dioxide, total inerts, and water vapor shall be made by approved standards methods in general use by the Gas industry. Such tests shall be made at the request of either party hereto. If a test is performed at Customer's request and shows that the quality specifications as set forth in Section 4.3 hereof have been satisfied, Customer shall pay all costs and expenses of Company related to such test.
- 7.8 Except as may be otherwise provided, all measuring and testing equipment, housing devices, and materials shall be standard manufacture and type and shall, with all related equipment, appliances, and buildings, be owned, installed, maintained and operated or caused to be installed, maintained and operated by Company at the Points of Receipt and Points of Delivery. Customer may install and operate check measuring and testing equipment, which equipment and the operation thereof shall not interfere with the operation of Company's equipment.
- 7.9 The accuracy of the measuring and testing equipment shall be verified according to Company's standard for the device being used and at other reasonable times upon request of Customer or Company. Gas quality tests may be made at times of equipment testing or at other reasonable times. Unless a test is requested by Customer, notice of the time and nature of each test shall not be given by Company. If a test is requested by a Customer, then Company shall give Customer notice sufficiently in advance to permit Customer to have a representative present. Representatives of both Customer and Company may be present to observe such tests. The results of any such tests shall be considered accurate until the next tests are made. All tests of measuring equipment shall be made at Company's expense, except that Customer shall bear the expense of tests made at its request if the inaccuracy found is two percent (2%) or less.
- 7.10 If, at any time, any of the measuring or testing equipment is found to be out of service, or registering inaccurately of any percentage, it shall be adjusted at once to read accurately within the limits prescribed by the manufacturer. If such equipment is out of service or inaccurate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, the previous reading of such equipment shall be disregarded for any period definitely known or agreed upon, or if not so known or agreed upon, for a period of time equal to one-half of the elapsed time since the last test. The volume of Gas delivered during such period shall be estimated (i) by using the data recorded by any check measuring equipment if installed and accurately registering, or if not installed or registering accurately, (ii) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation, or if neither such method is feasible, (iii) by estimating the quantity or quality delivered based upon deliveries under similar conditions during a period

when the equipment was registering accurately. No adjustment shall be made for recorded inaccuracies of two percent (2%) or less.

- 7.11 The parties hereto shall have the right to inspect equipment installed or furnished by the other or third-party operators and the charts and other measurement or testing data of all such parties at all times during business hours; but the reading, calibration, and adjustment of such equipment and changing of charts shall be done only by the party installing and furnishing the same. The parties hereto shall preserve all original test data, charts, and other similar records in such party's possession for a period of at least twenty-four (24) months. Measurement data corrections should be processed within six (6) months of the production month with a three (3) month rebuttal period. This standard shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. Parties' other statutory or contractual rights shall not otherwise be diminished by this standard.
- 7.12 At every Point of Receipt and every Point of Delivery, the party having control over such facility shall allow the other party immediate access to the receipt and delivery information as it is generated by the party having such control. With respect to all Points of Receipt and Points of Delivery that have electronic flow measurement, both parties shall have remote telephone and electronic access to the receipt and delivery information generated at such Point of Receipt and Point of Delivery.

**ARTICLE 8**  
**TITLE TO AND RESPONSIBILITY FOR GAS**

- 8.1 Customer and Company, respectively, warrant title to all Gas delivered by it into or from the Pipeline System hereunder, and each of Customer and Company, respectively, warrant and represent each has the right to deliver the Gas hereunder, and that such Gas is free from liens and adverse claims of every kind. Customer agrees to indemnify and save Company harmless from and against all loss, damage, claims, and expense of every character with respect to Gas delivered by it on account of royalties, taxes, payments, liens, or other charges or claims arising (i) before or created upon delivery of said Gas into the Pipeline System, and (ii) upon and after delivery of said Gas from the Pipeline System to Customer.
- 8.2 Subject to compliance with the provisions of Section 8.1 above, Company warrants that title to all Gas delivered hereunder by Customer is free from liens and adverse claims of every kind. Company agrees to indemnify and save Customer harmless from and against all loss, damage, claims, and expense of every character with respect to Gas to be delivered at the Point of Delivery on account of royalties, taxes, payments, liens, or other charges or claims arising after delivery of Gas to and before withdrawal thereof from the Pipeline System by Customer.
- 8.3 As between the parties hereto, Customer or its supplier shall be deemed to be in the exclusive control and possession of the Gas until such Gas has been delivered to Company at the Point of Receipt, and after its withdrawal by Customer at the Point of Delivery. After Customer's or

Customer's suppliers' delivery of such Gas at the Point of Receipt, Company shall thereafter be deemed to be in the exclusive control and possession of such Gas until its withdrawal by Customer at the Point of Delivery. The party which shall be in the exclusive control and possession of such Gas shall be responsible for all injury or damage caused thereby and shall be responsible for any loss of Gas while in its possession, except with regard to injury, damage or loss caused by or arising out of the negligence of the nonpossessory party.

- 8.4 The Pipeline System shall at all times remain the property of Company, and Customer shall have no right or property interest therein but only the right for the transportation of Gas.

**ARTICLE 9**  
**FORCE MAJEURE AND CASUALTY**

- 9.1 If either Company or Customer is rendered unable, wholly or in part, by reason of force majeure or any other cause of any kind not reasonably within its control, other than financial, to perform or comply with their obligations hereunder, then such party's obligations or conditions shall be suspended during the continuance of such inability and such party shall be relieved of liability for failure to perform the same during such period; provided, however, obligations to make payments when due hereunder shall not be suspended. Any force majeure event (other than labor disputes, strikes, or lockouts) shall be remedied so far as possible with reasonable dispatch. Settlement of strikes, lockouts, and labor disputes shall be wholly within the discretion of the party having the difficulty. The term "force majeure" shall include, but is not limited to, the following: acts of God and the public enemy; the elements; fire, accidents, breakdowns, strikes; any industrial, civil, or public disturbance; inability to obtain or delay in obtaining rights-of-way, material, supplies, permits, or labor; any act or omission by parties not subject to control by the party hereunder having the difficulty; and any laws, orders, rules, regulations, acts or restraints of any governmental body or authority, civil or military. If pursuant to the foregoing Company curtails or temporarily discontinues the receipt or delivery of Gas hereunder, Customer agrees to hold Company harmless from any loss, claim, damage, or expense that Customer may incur by reason of such curtailment or discontinuance.
- 9.2 If a portion of the Pipeline System required to make the transportation service available is partially damaged by fire or other casualty, the damage may be repaired by Company, at its option and in its sole discretion, as speedily as practicable, due allowance being made for the time taken for the settlement of insurance claims. Until such repairs are made, the payments shall be apportioned in proportion to the portion of the capacity of the Pipeline System which is still available for the purposes hereof, such determination to be made in the sole discretion of Company. If the damage is so extensive as to render the Pipeline System wholly unusable, in Company's sole opinion, the payments, if any, shall cease until such time as the Pipeline System is again useable. In case the damage shall, in Company's sole opinion, amount substantially to a destruction of the portion of the Pipeline System available for the transportation of Gas and Company shall elect not to repair the damage, then the Agreement shall terminate at the time of such damage, and Company shall not be liable to Customer for any liability, damage, or claim which arises out of any failure to make repairs.

**ARTICLE 10**  
**GOVERNMENTAL RULES, REGULATIONS,**  
**AND AUTHORIZATIONS; INTERPRETATION OF AGREEMENT**

- 10.1 The Agreement is subject to all valid orders, laws, rules, and regulations of duly constituted municipal, State and Federal governmental authorities and agencies having jurisdiction or control over the parties, their facilities or Gas supplies, the Agreement, or any provision hereof. The Company reserves the right to seek modification or termination of any of the General Terms and Conditions, the Gas Transportation Agreement, and any of the tariffs to which it applies.
- 10.2 The Agreement shall be interpreted under the laws of the State of Texas, excluding any law thereof directing the application of the laws of another jurisdiction.

**ARTICLE 11**  
**MISCELLANEOUS**

- 11.1 Any modification of terms, or amendment of any provisions hereof, shall become effective only by supplemental written agreement between the parties.
- 11.2 (A) Any of the following events or conditions shall constitute a default of Customer under the Agreement:
- (1) Default in the delivery of any payment or any sums hereunder for a period of sixty (60) Days after the same becomes due;
  - (2) Any other breach of the material terms and conditions of the Agreement and the failure of Customer to cure such breach within thirty (30) Days after written demand by Company or such longer period of time after such notice as may be reasonably required to cure such breach if the breach is not reasonably curable within such thirty (30) Day period, provided that Customer shall have commenced such cure within such thirty (30) Day period and thereafter diligently continues its efforts to cure such breach until such breach shall have been fully cured;
  - (3) Customer shall (i) apply for or consent to the appointment of or taking of possession by a receiver or liquidator of itself or substantially all of its property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Federal Bankruptcy Code, or (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts of Customer;

- (4) A proceeding or case shall be commenced, without the application or consent of the affected party, in any court of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts of Customer (ii) the appointment of a trustee, receiver, liquidator or custodian of such party or of all or substantially all of its assets, or (iii) similar relief under any law relating to bankruptcy or insolvency, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed, for a period of ninety (90) Days; or
  - (5) If any certificate, statement, representation, or warranty furnished by Customer proves to be false or incomplete in any material respect.
- (B) Upon the happening of any event of default as set forth in subparagraph 11.2(A) above, Company shall have the right to do any one or more of the following without demand or notice of any kind:
  - (1) Declare due, sue for, and receive from Customer the sum of all transportation payments and all other amounts due and owing under the Agreement plus the sum of all transportation payments and other amounts to become payable during the balance of the term of the Agreement;
  - (2) Retake possession of the entire capacity of the Pipeline System without any court order or other process of law and without any rights of Company being thereupon terminated;
  - (3) Terminate the Agreement and the Exhibits;
  - (4) Pursue any other remedy at law or in equity.
- (C) Any of the following events or conditions shall constitute an Event of Default with respect to Company under the Agreement:
  - (1) Default in the crediting of any sums due to Customer or in the payment of any other sums due to Customer under the Agreement for a period of ninety (90) Days after the same is established by Company to have become due;
  - (2) Company's breach of any material term or condition of the Agreement and the failure of Company to cure such breach within thirty (30) Days after written demand by Customer or such longer period of time after such notice as may be reasonably required to cure such breach if the breach is not reasonably curable within such thirty (30) Day period, provided that Company shall have commenced such cure within such thirty (30) Day period and thereafter

diligently continues its efforts to cure such breach until such breach shall have been fully cured.

- (3) Company shall (i) apply for or consent to the appointment of or taking of possession by a receiver or liquidator of itself or substantially all of its property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Federal Bankruptcy Code, or (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts of Company;
  - (4) A proceeding or case shall be commenced, without the application or consent of the affected party, in any court of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts of Company, (ii) the appointment of a trustee, receiver, liquidator or custodian of such party or of all or substantially all of its assets, or (iii) similar relief under any law relating to bankruptcy or insolvency, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed, for a period of ninety (90) Days;
  - (D) Upon the happening of any event of default as set forth in subparagraph 11.2(C) above, Customer shall have the right to do any one or more of the following without demand or notice of any kind:
    - (1) Declare due, sue for, and receive from Company the sum of all outstanding credits and other amounts due and owing under the Agreement;
    - (2) Terminate the Agreement and the Exhibits;
    - (3) Pursue any other remedy at law or in equity.
  - (E) The rights granted to Company and Customer hereunder shall be cumulative as to each and action on one shall not be deemed to constitute an election or waiver of any other right to which Company or Customer may be entitled.
  - (F) Upon the termination of the Agreement, whether by lapse or time or otherwise, Customer will surrender any and all rights in the Pipeline System immediately.
- 11.3 Company shall not be liable for damages resulting from interruption of service, when such interruption is necessary to make repairs, changes, or adjustments in Company's equipment and facilities.
- 11.4 No waiver by Company or Customer of any default or the other under the Agreement shall operate as a waiver of any future default, whether of a like or different character.



- 11.5 The Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. In the event Customer sells, leases or otherwise transfers its distribution system to a third party, whether voluntarily or involuntarily, then Customer agrees, as a part of such sale, lease or transfer, to assign to such third party and to require such third party to accept the assignment of the Agreement and the Exhibits included therein, subject to the provisions of the following sentence. Neither the Agreement nor the Exhibits attached thereto nor the rights and obligations of Customer hereunder may be assigned without the consent of Company, which consent shall not be unreasonably withheld.
- 11.6 Customer will not mortgage, create a security interest in, or encumber the Agreement, or sublet the rights granted hereby, or permit its use by others, or pledge, loan, sublet, create a security interest in, or in any other manner attempt to dispose of such rights, or permit its use by others, or suffer any liens or legal process to be incurred or levied thereon; provided, however, that Customer may grant a security interest or similar encumbrance in connection with any existing financing arrangement associated with Customer's facility.
- 11.7 Except as provided below, Customer shall pay all fees, taxes, charges, and assessments imposed by or on behalf of any governmental entity in connection with the Agreement or in connection with the purchase, transportation, and disposition of Gas by or on behalf of Customer pursuant to the Agreement including but not limited to municipal and/or supplemental fees, franchise fees and any supplements thereto and taxes; provided that Company shall pay all ad valorem taxes and assessments levied on the Pipeline System and all appurtenant facilities. Company shall file all returns required for the Pipeline System and all appurtenant facilities. Customer will furnish Company with any information available to Customer in connection with Company's obligations under this section.
- 11.8 Company and Customer agree to exercise and take reasonable steps necessary to safeguard and cause their officers, directors, employees, agents, advisers, and representatives to safeguard the confidentiality of the Agreement and the terms and conditions thereof (as contrasted with the existence and effectiveness of the Agreement which are not confidential) and not to disclose any part of it or any information derived there from or any negotiations relating thereto to any party or person except that limited number of people within Company's and Customer's organizations, and their advisers, lenders and potential investors, as may need to know the terms and conditions hereof in order to evaluate, understand, execute and perform the Agreement. Company and Customer agree not to copy or permit the copying of the Agreement, except as may be necessary for their operations. In the event Customer or Company or any of their officers, directors, employees, agents, or representatives, is requested or required (by oral or written question or request for information or documents in legal proceedings, interrogatories, subpoena, Civil Investigative Demand or similar process) to disclose any information concerning the Agreement or the terms and conditions thereof or any negotiations relating thereto, it is agreed that the party receiving such question or request will provide the other parties with prompt notice thereof so that such other parties may seek a protective order or other appropriate relief or a release from the other parties. It is further agreed that if, in the absence

of a protective order or receipt of a release, the other party is compelled to disclose such information or else stand liable for contempt or suffer other censure or penalty or adverse effect, then such party may disclose such information. The parties hereto are further authorized to make disclosure of the Agreement as may be required by Federal, state, or local regulation or agency or as may be required by auditors or accountants in connection with the preparation of financial statements or tax returns. Disclosure hereunder shall not constitute a basis for defense, termination, or modification of the Agreement.

**ARTICLE 12**  
**DISPUTE RESOLUTION**

- 12.1 Any dispute arising out of or relating to this Agreement for which a claim or demand is asserted that is equal to or exceeds a value of \$25,000 shall be resolved in accordance with the procedures specified in this Article 12, which shall be the sole and exclusive procedures for the resolution of any such disputes. The cost of conducting the dispute resolution process, including the fees and expenses of any arbitrators, shall be shared equally by the parties, and each party shall bear its own costs, including any attorneys' fees or other expenses incurred in the process. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.
- 12.2 Negotiation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between management level personnel who have authority to settle the controversy. Any person may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. Within thirty (30) days after delivery of the initial notice, the designated managing personnel of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 12.3 Arbitration. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by negotiation as provided above within sixty (60) days after initiation of negotiations shall be finally resolved by arbitration in accordance with the CPR Rules for Non-Administered Arbitration then currently in effect by (i) a sole arbitrator agreed upon by the parties if the dispute is between \$25,000 and \$250,000, or (ii) three independent and impartial arbitrators, of whom each party shall designate one, if the dispute is in excess of \$250,000. All arbitrators shall be knowledgeable in the natural gas industry. The arbitrator(s) shall have no authority to award consequential, punitive or exemplary damages. Provided, however, if one party fails to participate in the negotiation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§

1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. Unless otherwise agreed, the place of arbitration shall be Austin, Texas.