



**Diane Roy**  
Vice President, Regulatory Affairs

**Gas Regulatory Affairs Correspondence**  
Email: [gas.regulatory.affairs@fortisbc.com](mailto:gas.regulatory.affairs@fortisbc.com)

**Electric Regulatory Affairs Correspondence**  
Email: [electricity.regulatory.affairs@fortisbc.com](mailto:electricity.regulatory.affairs@fortisbc.com)

**FortisBC**  
16705 Fraser Highway  
Surrey, B.C. V4N 0E8  
Tel: (604) 576-7349  
Cell: (604) 908-2790  
Fax: (604) 576-7074  
[www.fortisbc.com](http://www.fortisbc.com)

**CONFIDENTIAL**

November 25, 2022

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC  
V6Z 2N3

Attention: Ms. Sara Hardgrave, Acting Commission Secretary

Dear Ms. Hardgrave:

**Re: FortisBC Energy Inc. (FEI)**

***Utilities Commission Act (UCA) – Section 71 Filing of Amending Agreement No. 1 to the Biomethane Purchase Agreement (BPA) with Walker RNG Inc. (Walker)***  
**– CONFIDENTIAL**

In accordance with Section 71 of the UCA and Sections 2.0 and 6.0 of the British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts, FEI hereby files for BCUC acceptance of an Amending Agreement dated November 18, 2022 (Amending Agreement No. 1) to the Original BPA between FEI and Walker dated July 20, 2020<sup>1</sup> for the supply of biomethane (Renewable Natural Gas or RNG).<sup>2</sup> Attached in Appendix A is a copy of Amending Agreement No. 1 which amends the original BPA Delivery Point from [REDACTED]

The Original BPA between FEI and Walker (included in Appendix B) was accepted by the BCUC in Order E-28-20. Amending Agreement No. 1 makes two amendments to the Original BPA. One is to supply RNG at [REDACTED] per GJ [REDACTED] per GJ from the current Price), and the other is to change the Delivery Point [REDACTED]

<sup>1</sup> The BPA between FEI and Walker was approved by way of BCUC Order E-28-20.

<sup>2</sup> RNG or Renewable Natural Gas is interchangeable with the term "biomethane" for this Application. In previous regulatory decisions, FEI and the BCUC have used biomethane and RNG, while the GRR uses the term renewable natural gas.

The Original BPA as amended by Amending Agreement No. 1 (Amended Walker BPA) is a prescribed undertaking under the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR).

A draft form of order sought is attached in Appendix C.

### **Request for Confidentiality**

FEI is requesting that this information be filed on a confidential basis pursuant to Section 19 of the BCUC's Rules of Practice and Procedure regarding confidential documents as set out in Order G-178-22, and section 71(5) of the *Utilities Commission Act*. FEI requests that the BCUC exercise its discretion under Section 6.0 of the Rules for Natural Gas Energy Supply Contracts and allow these documents to remain confidential. FEI believes this will ensure that market sensitive information is protected, and FEI's ability to obtain favourable commercial terms for future natural gas contracting strategies is not impaired. FEI operates within a competitive environment when securing commodity to serve customers. If FEI's supply purchasing strategies are released to the public, this could prejudice or influence the negotiations of contracts between FEI and suppliers or counterparties, which could result in higher commodity costs for customers.

## **1. LEGISLATIVE AND REGULATORY FRAMEWORK**

On April 18, 2010, the Province of BC enacted the CEA. The CEA established a number of energy objectives and provided that the Lieutenant Governor in Council (LGIC) can prescribe undertakings to encourage public utilities to pursue certain GHG reducing initiatives. Section 18 of the CEA states:

18 (1) In this section, "prescribed undertaking" means a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia.

(2) In setting rates under the Utilities Commission Act for a public utility carrying out a prescribed undertaking, the commission must set rates that allow the public utility to collect sufficient revenue in each fiscal year to enable it to recover its costs incurred with respect to the prescribed undertaking.

(3) The commission must not exercise a power under the Utilities Commission Act in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.

(4) A public utility referred to in subsection (2) must submit to the minister, on the minister's request, a report respecting the prescribed undertaking.

(5) A report to be submitted under subsection (4) must include the information the minister specifies and be submitted in the form and by the time the minister specifies.

On May 14, 2012, the LGIC issued Order in Council (OIC) 295/2012 approving the GGRR, which described classes of prescribed undertakings pursuant to section 18 of the CEA.

On March 21, 2017, the LGIC issued OIC 161/2017 approving an amendment to the GGRR related to RNG as follows:

(3.7) A public utility's undertaking that is in the class defined in subsection (3.8) is a prescribed undertaking for the purposes of section 18 of the Act.

(3.8) The public utility acquires renewable natural gas

(a) for which the public utility pays no more than \$30 per GJ [gigajoule], and

(b) that, subject to subsection (3.9), in a calendar year, does not exceed 5% of the total volume of natural gas provided by the public utility to its non-bypass customers in 2015.

(3.9) The volume referred to in subsection (3.8) (b) does not include renewable natural gas acquired by the public utility that the public utility provides to a customer in accordance with a rate under which the full cost of the following is recovered from the customer:

(a) the acquisition of the renewable natural gas;

(b) the service related to the provision of the renewable natural gas.

The Ministry has stated that the “amendments were made to the Greenhouse Gas Reduction (Clean Energy) Regulation in the spring of 2017 to increase incentives for using renewable natural gas in transportation and to establish measures to increase the supply of RNG.”<sup>3</sup>

The BCUC in its Decision and Order G-122-19<sup>4</sup> determined that for a project to qualify as a prescribed undertaking under section 2(3.8) of the GGRR as written at that time, it must satisfy the following three-part test:

---

<sup>3</sup> In the Matter of FEI's Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver, Exhibit C1-2.

<sup>4</sup> In the Matter of FEI's Application for Acceptance of the Biogas Purchase Agreement between FEI and the City of Vancouver.

1. The public utility must be acquiring renewable natural gas (as opposed to some other form of commodity);
2. The utility must pay no more than \$30 per GJ for that renewable natural gas; and
3. Subject to certain exceptions, the annual volume of renewable natural gas acquired must not exceed 5% of the total volume of natural gas the utility provided to its non-bypass customers in 2015.<sup>5</sup>

On May 25, 2021 the LGIC issued OIC 306/2021 which further amended section 2 to the GGRR related to RNG, including as follows:

*(a) by adding the following subsection:*

(3.71) For the purposes of subsection (3.8), “acquires renewable natural gas” includes producing renewable natural gas by producing or purchasing biogas and upgrading it to renewable natural gas, and

*(b) by repealing subsection (3.8) and substituting the following:*

(3.8) The public utility acquires renewable natural gas

(a) at costs that meet the following criteria, as applicable:

(i) if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

(ii) if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and

(b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10.

---

<sup>5</sup> Decision and Order G-122-19, page 8.

OIC 306/2021 also added section 9 of the GGRR, which sets a maximum price of \$31 dollars for fiscal year 2021/22.<sup>6</sup> The maximum price increases each fiscal year.

OIC 306/2021 also added section 10 of the GGRR, which indicates that acquisitions of hydrogen, synthesis gas, and lignin under sections 6, 7 and 8 of the GGRR also count towards the maximum volume.

The maximum volume of 15 percent in the GGRR is the implementation of the Province's CleanBC plan. The CleanBC plan states that it will put in place a minimum requirement for 15 per cent renewable content in natural gas by 2030, stating:<sup>7</sup>

As part of CleanBC, we will work with natural gas providers to put in place a minimum requirement for 15 per cent renewable content in natural gas by 2030. That means the gas we use in our furnaces, water heaters, dryers, stoves and other gas appliances will have less impact on the environment, and the methane that is wasted from agriculture, sewage and landfills will be significantly reduced. Waste hydrogen can also be mixed with the natural gas we use in our homes and will provide additional renewable natural gas for our needs.

The purpose of this class of prescribed undertaking is to facilitate FEI acquiring RNG, or other renewable gases, up to the maximum amount so that the Province can realize its greenhouse gas reduction goals in the CleanBC plan.

The BCUC initiated an Inquiry into the Acquisition of Renewable Natural Gas by Public Utilities in British Columbia (Inquiry) in response to a recommendation made by the BCUC in Order E-14-21 and accompanying Reasons for Decision with respect to FEI. On July 28, 2022, the BCUC issued the Phase 1 Report for the Inquiry (Phase 1 Report). The Phase 1 Report found, among other things, that:<sup>8</sup>

In order to distinguish different sources of Natural Gas, for the purpose of this report the Panel therefore will use the term Conventional Natural Gas for that Natural Gas which is formed from fossils and extracted from and below rocks within the earth's surface.

....

Therefore, the Panel determines that biomethane is pipeline quality gas derived from upgrading and processing biogas or biomass. Biomethane is indistinguishable from Conventional Natural Gas and can be injected into a gas pipeline system.

...

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<sup>6</sup> Beginning April 1, 2021 and ending March 31, 2022.

<sup>7</sup> CleanBC plan, at page 36. Online: [CleanBC: our nature. our power. our future. \(gov.bc.ca\)](https://www.gov.bc.ca/cleanbc/).

<sup>8</sup> Inquiry into the Acquisition of Renewable Natural Gas by Public Utilities in British Columbia – Phase 1 Report, Section 8, Summary of Findings and Recommendations.

Notwithstanding, we find that the creation of biomethane gives rise to specific Environmental Attributes and that these attributes may be contractually transferred between parties.

...

Therefore, the Panel determines that a unit of Natural Gas plus the Environmental Attributes associated with the production of an equivalent unit of biomethane is an example of Renewable Natural Gas.

...

[T]he Panel finds that when Environmental Attributes associated with the production of biomethane are acquired by a BC public utility and then combined with an equivalent amount of Natural Gas acquired separately, this results in Renewable Natural Gas for the purpose of the GGRR.

...

Therefore, given the nature of the delivery of RNG, for the purposes of interpreting the GGRR the Panel finds that Renewable Natural Gas is acquired in each of these scenarios:

- (a) biomethane is acquired with its associated Environmental Attributes – as, for example, in the case of FEI's biomethane purchase agreements; and
- (b) Conventional Natural Gas is acquired and an appropriate quantum of Environmental Attributes that are associated with the production of biomethane are acquired separately.

In either case, the acquired product is Renewable Natural Gas for the purpose of the GGRR.

The BCUC also concluded (at page 28) the following regarding the annual volume test in the GGRR:

The Panel is persuaded that the actual delivered volume of RNG in a calendar year is the appropriate quantity on which to base the calculation for the annual volume test as set out in section 2(3.8)(b) of the GGRR.

The above findings from the Phase 1 Report are consistent with FEI's filings of BPAs as prescribed undertakings under the GGRR.

## **2. THE BPA AS AMENDED CONTINUES TO BE A PRESCRIBED UNDERTAKING**

As noted above, the Original BPA between FEI and Walker (included in Appendix B) was accepted by the BCUC in Order E-28-20.

Amending Agreement No. 1 makes two amendments to the Original BPA. One is to supply RNG at the [REDACTED] per GJ [REDACTED] per GJ from the current Price), and the other is to change the Delivery Point [REDACTED]. The change in delivery point reduces the risk for the supplier of differences in price between the [REDACTED]

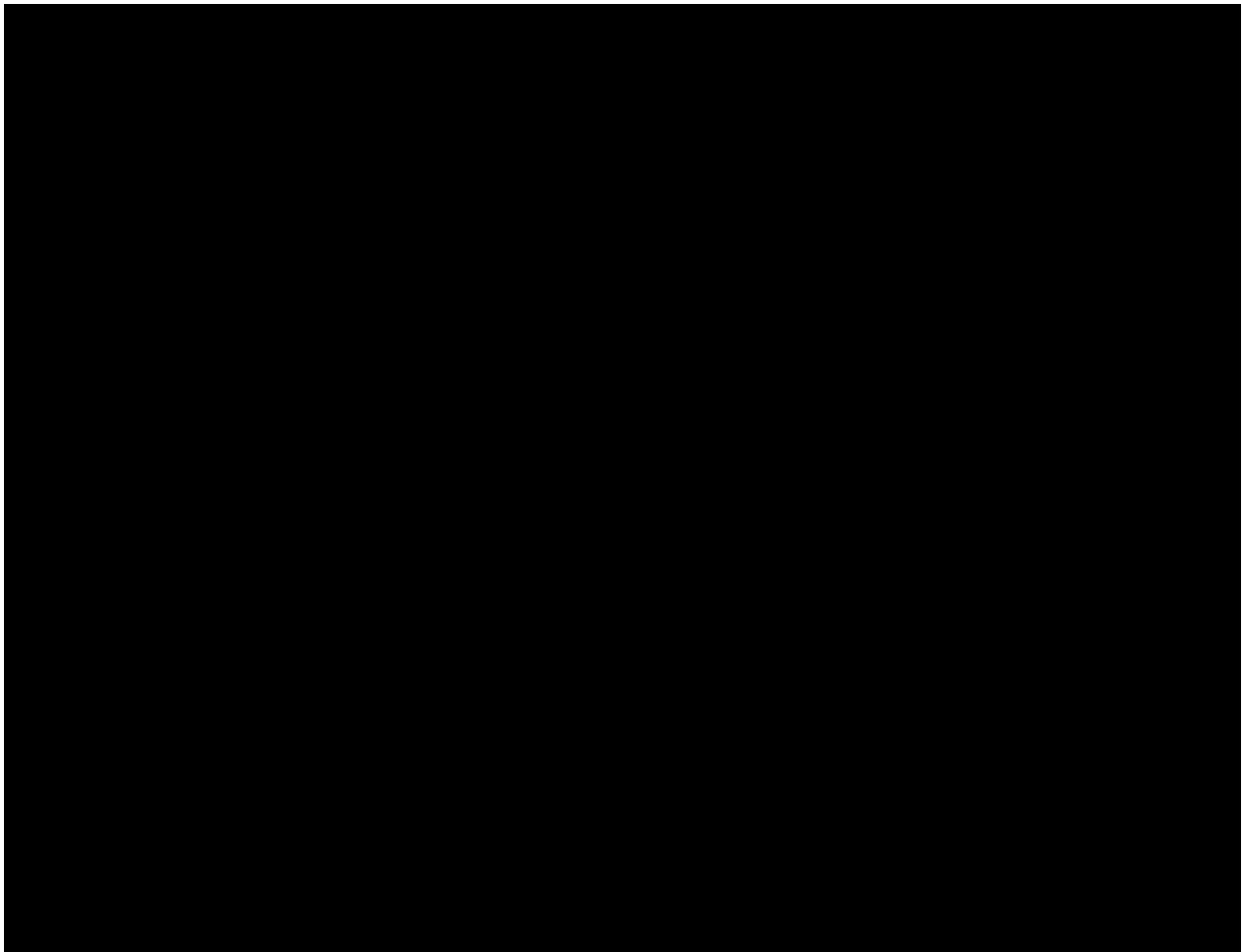
in Ontario and the price to deliver RNG at [REDACTED] The relative price difference between [REDACTED]  
[REDACTED]  
[REDACTED]

Under the amended GGRR, the three part-test for a BPA or project to qualify as a prescribed undertaking can be restated as follows:

1. The public utility must be acquiring RNG (as opposed to some other form of commodity);
2. The public utility must pay no more than the applicable maximum price for that RNG; and
3. The volume of RNG, hydrogen, synthesis gas, and lignin that the public utility acquires in a calendar year must not exceed 15 percent of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10 of the GGRR.

The Amended Walker BPA continues to satisfy the three-part test and qualifies as a prescribed undertaking:

1. FEI continues to acquire RNG from Walker. Amending Agreement No. 1 makes no changes to the RNG that FEI will be acquiring from Walker.
2. Amending Agreement No.1 decreases the price at which FEI is acquiring RNG from Walker so the price remains below the \$30 per GJ maximum acquisition price as was in place when the Original BPA was approved. As under the Original BPA, under the amended Walker BPA, the acquisition price of RNG cannot exceed the GGRR maximum price.
3. Amending Agreement No. 1 does not amend the volume of RNG that FEI will purchase from Walker under the Original BPA. The annual delivered volume of RNG that FEI expects to acquire each year is still below the calculated maximum of 15 percent of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, which is approximately 30 PJ. FEI has not yet acquired any hydrogen, lignin or synthesis gas. A summary of FEI's accepted BPAs and contracted volumes is included in Table 1 below. As shown in the table, both FEI's contractual maximum supply and expected annual supply is below the 30 PJ (or 30,000 TJ) maximum in the GGRR. In the future, if FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin approaches the maximum volume in the GGRR, FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year.



### **3. CONCLUSION**

The Walker BPA as amended by Amending Agreement No.1 continues to satisfy the three-part test to be a prescribed undertaking under section 2(3.8) of the GGRR. The amended Walker BPA is for the acquisition of RNG at an acquisition price that cannot exceed the GGRR maximum price. While FEI's current capacity to acquire RNG, hydrogen, synthesis gas, and lignin does not approach the maximum volume in the GGRR at this time, in the future FEI will manage its volumes of RNG supply to be within the maximum volume allowed by the GGRR each calendar year.

FEI has filed a copy of the Amending Agreement No.1 with the BCUC pursuant to FEI's obligation under section 71 of the UCA to file energy supply contracts. As the acquisition of RNG under the Amended Walker BPA is a prescribed undertaking, the BCUC must accept the BPA under section 71 of the UCA due to section 18 of the CEA, which prohibits the BCUC from exercising its powers in any way that would directly or indirectly prevent FEI from carrying out a prescribed undertaking. Therefore, FEI respectfully requests that the BCUC accept Amending Agreement No.1 under section 71 of the UCA without regulatory process.



If further information is required, please contact Scott Gramm, Senior Manager, Renewable & Low Carbon Fuel Development, at (604) 576-7242.

Sincerely,

**FORTISBC ENERGY INC.**

***Original signed:***

Diane Roy

Attachments

Appendix A

---

WALKER AMENDING AGREEMENT NO. 1

~~FILED CONFIDENTIALLY~~

THIS AMENDING AGREEMENT dated as of the 18 day of November, 2022.

AMONG:

**Walker RNG Inc.**, 6403 Egremont Drive, Komoka, Ontario, N0L 1R0

("Walker")

OF THE FIRST PART

AND:

**FortisBC Energy Inc.**, 16705 Fraser Highway, Surrey, British Columbia,  
V4N 0E8

("FortisBC")

OF THE SECOND PART

WHEREAS:

- A. Walker and FortisBC are parties to a GasEDI Base Contract for Short-Term Sale and Purchase of Natural Gas, including the Special Provisions attached thereto, with effect as of July 20, 2020 (the "**GasEDI**"); and
- B. In connection with and pursuant to the terms of the GasEDI, Walker and FortisBC entered into a Transaction Confirmation dated July 20, 2020 (the "**Confirmation**" and together with the GasEDI, the "**Agreement**"), for the purchase, sale, delivery and receipt of Biomethane.
- D. The parties are now desirous of amending the Agreement on the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereby covenant and agree as follows:

- 1. In this Amending Agreement, capitalized words and expressions used shall have the same meanings as are respectively assigned to them in the Agreement.
- 2. Section 4 of the Confirmation shall be deleted in its entirety and shall be replaced with the following:  
  
"**Delivery Point.** [REDACTED]"
- 3. Section 9(a) of the Confirmation shall be deleted in its entirety and replaced with the following:

*"Subject to subsection (b) below, the Contract Price payable for the Contract Quantity is [REDACTED] (the "Base Rate")."*

4. This Amending Agreement shall be read together with the Agreement.
5. This Amending Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the parties agree to attorn to the jurisdiction of the courts of British Columbia.
6. Words importing the singular include the plural and vice versa; words importing the masculine gender include the feminine and neuter genders; and words importing persons include individuals, sole proprietors, corporations, partnerships and unincorporated associations.
7. This Amending Agreement may be executed electronically in counterparts with the same effect as if all parties had signed the same document. All counterparts will be construed together and will constitute one original agreement.
8. All unamended terms and conditions shall remain in full force and effect.
9. This Amending Agreement shall have effect as of November 30, 2022.

IN WITNESS of this Amending Agreement, the parties have entered into this Amending Agreement on the date and year first written above.

**Walker RNG Inc.**

Per:   
\_\_\_\_\_  
Authorized Signatory

**FortisBC Energy Inc.**

  
Per: \_\_\_\_\_  
Authorized Signatory

Appendix B

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WALKER ORIGINAL BPA, DATED JULY 20, 2020

~~FILED CONFIDENTIALLY~~

## GasEDI BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS COVER SHEET

Page 1 of 3

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October 26, 2000

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

## COVER SHEET

This Base Contract is entered into as of the following date:

The parties to this Base Contract are the following:

|  |                     |  |
|--|---------------------|--|
|  |                     | PARTY B  |
|  | Party               | FortisBC Energy Inc.   |
|  | Address 1           | 16705 Fraser Highway   |
|  | Address 2           |  |
|  | City                | Surrey   |
|  | State / Province    | British Columbia   |
|  | Zip / Postal Code   | V4N 0E8  |
|  | Base Contract #     |  |
|  | Duns #              | 249953860  |
|  | US Federal Tax ID # |  |
|  | Canadian GST #      | R100431592   |
|  | Bank                | See Banking Information Addendum on<br>Page 3 of this Cover Sheet          |
|  | NOTICES             |  |
|  | Contact             | VP, Market Development and External<br>Relations                           |
|  | Phone               | (604) 592-7837   |
|  | Fax                 | (604) 592-7895   |
|  | Email               |  |
|  | 24 HOUR OPERATIONS  |  |
|  | Contact             | Operations – Scheduling / Nominations                                      |
|  | Phone               | (604) 592-7799   |
|  | Fax                 | (604) 592-7895   |
|  | Email               | <a href="mailto:tradelog@fortisbc.com">tradelog@fortisbc.com</a>           |
|  | INVOICES & PAYMENTS |  |
|  | Contact             | Gas Supply Accounting  |
|  | Phone               | 604-592-7869 / 604-592-7861  |
|  | Fax                 | (604) 592-7420   |
|  | Email               | <a href="mailto:gasaccounting@fortisbc.com">gasaccounting@fortisbc.com</a> |
|  | CONFIRMATIONS       |  |
|  | Phone               |  |
|  | Fax                 |  |

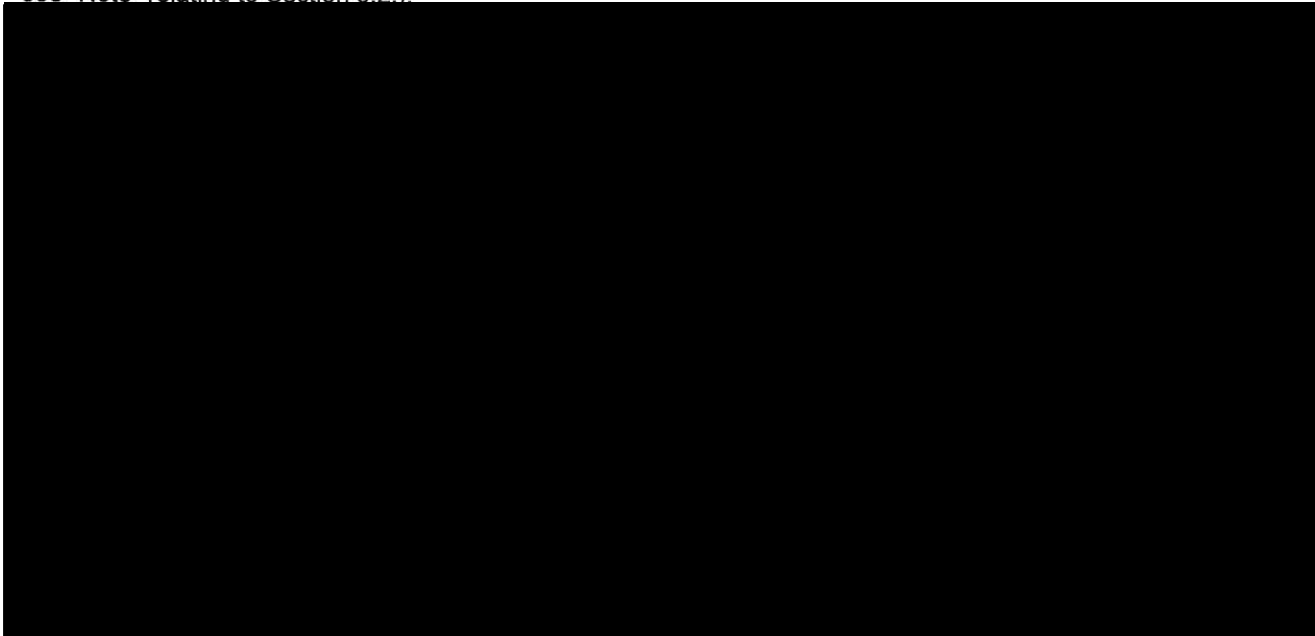
## GasEDI BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS COVER SHEET

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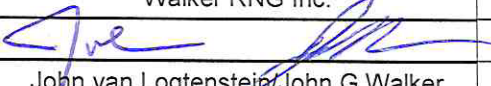

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October 26, 2000

This Base Contract incorporates by reference for all purposes the General Terms and Conditions of the GasEDI Base Contract for Short-Term Sale and Purchase of Natural Gas as published by GasEDI. The parties hereby agree to the following provisions offered in said General Terms and Conditions (select only one from each box, but see "Note" relating to Section 3.2.):



IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

| PARTY A   |           | PARTY B   |
|---|-----------|---|
| Walker RNG Inc.   | Party     | FortisBC Energy Inc.  |
|  | Signature |  |
| John van Logtenstein/John G Walker  | Name      | Roger Dall'Antonia  |
| Secretary-Treasurer / President   | Title     | President & CEO   |
| 20 July 2020  | Date      | 15 July 2020  |

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of sale, purchase or exchange of natural gas. This Contract is intended for interruptible transactions or firm transactions of one year or less and may not be suitable for transactions of longer than one year. Further, GasEDI does not mandate the use of this Contract by any party. GasEDI DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO GasEDI's DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT GasEDI KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL GasEDI BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.

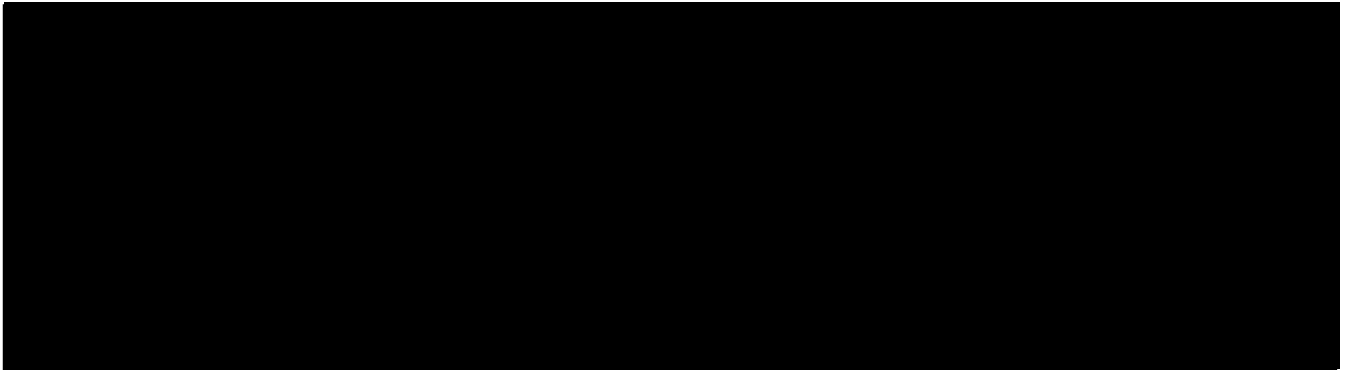
GasEDI BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS COVER SHEET

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October 26, 2000

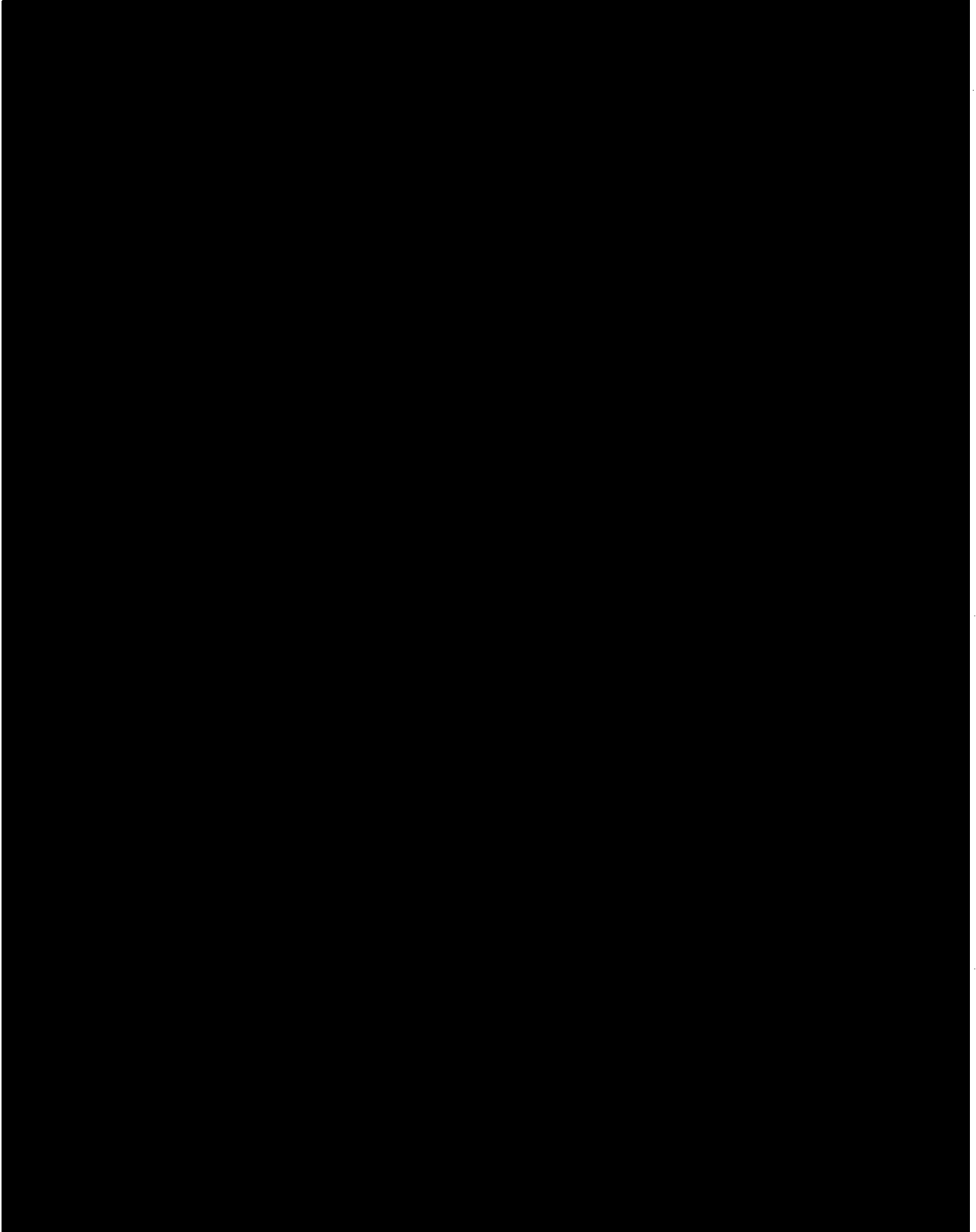
BANKING INFORMATION ADDENDUM

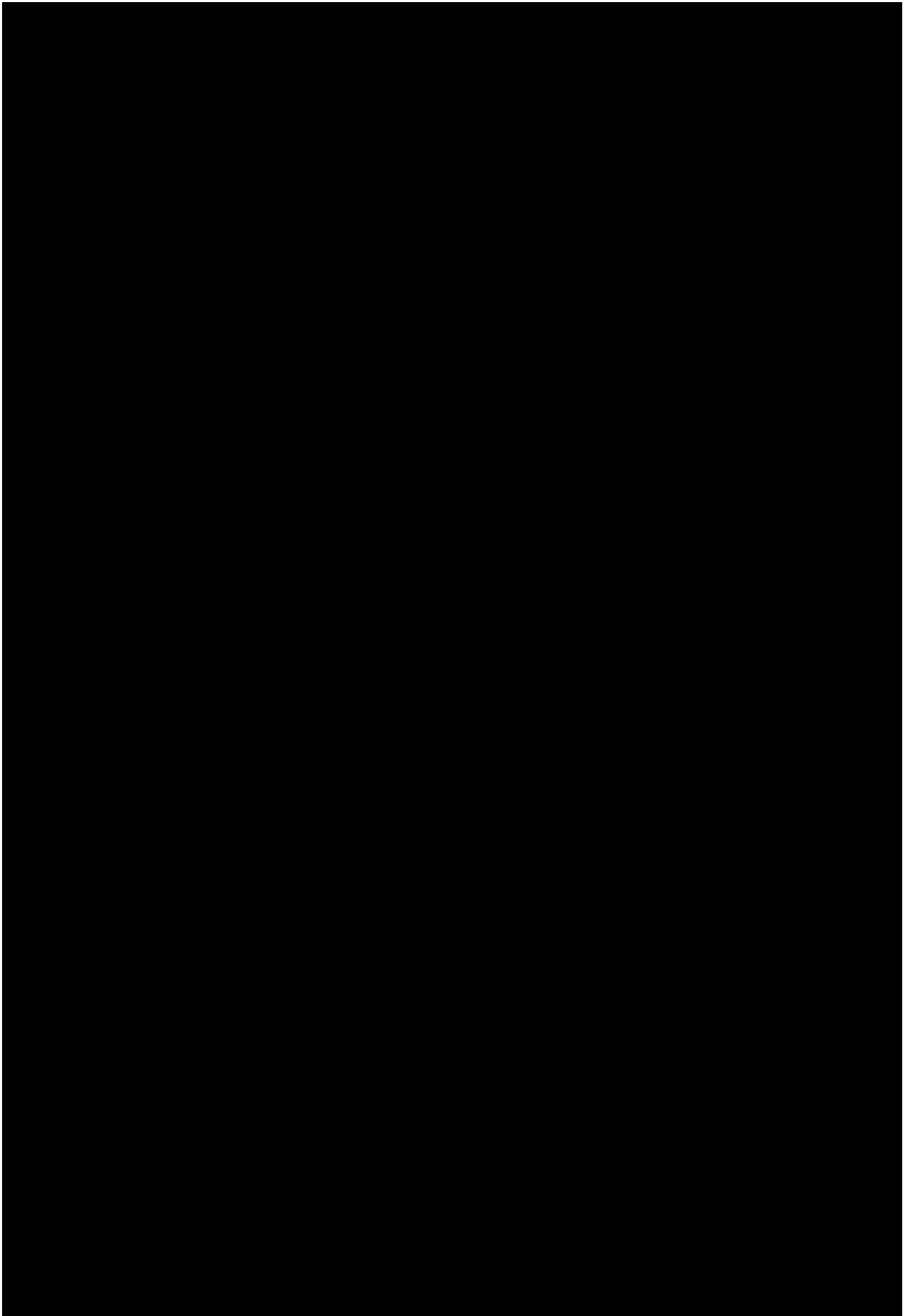


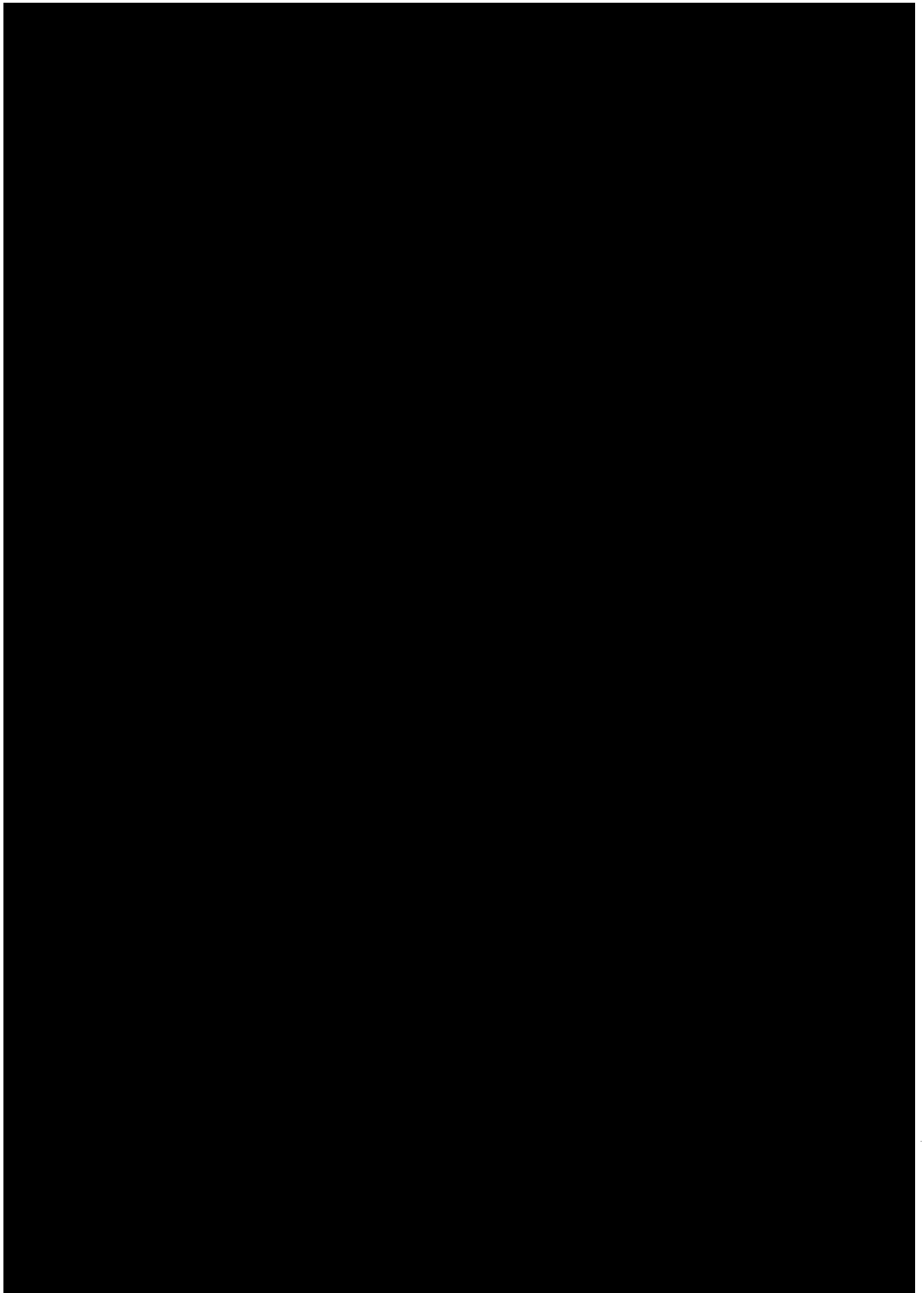


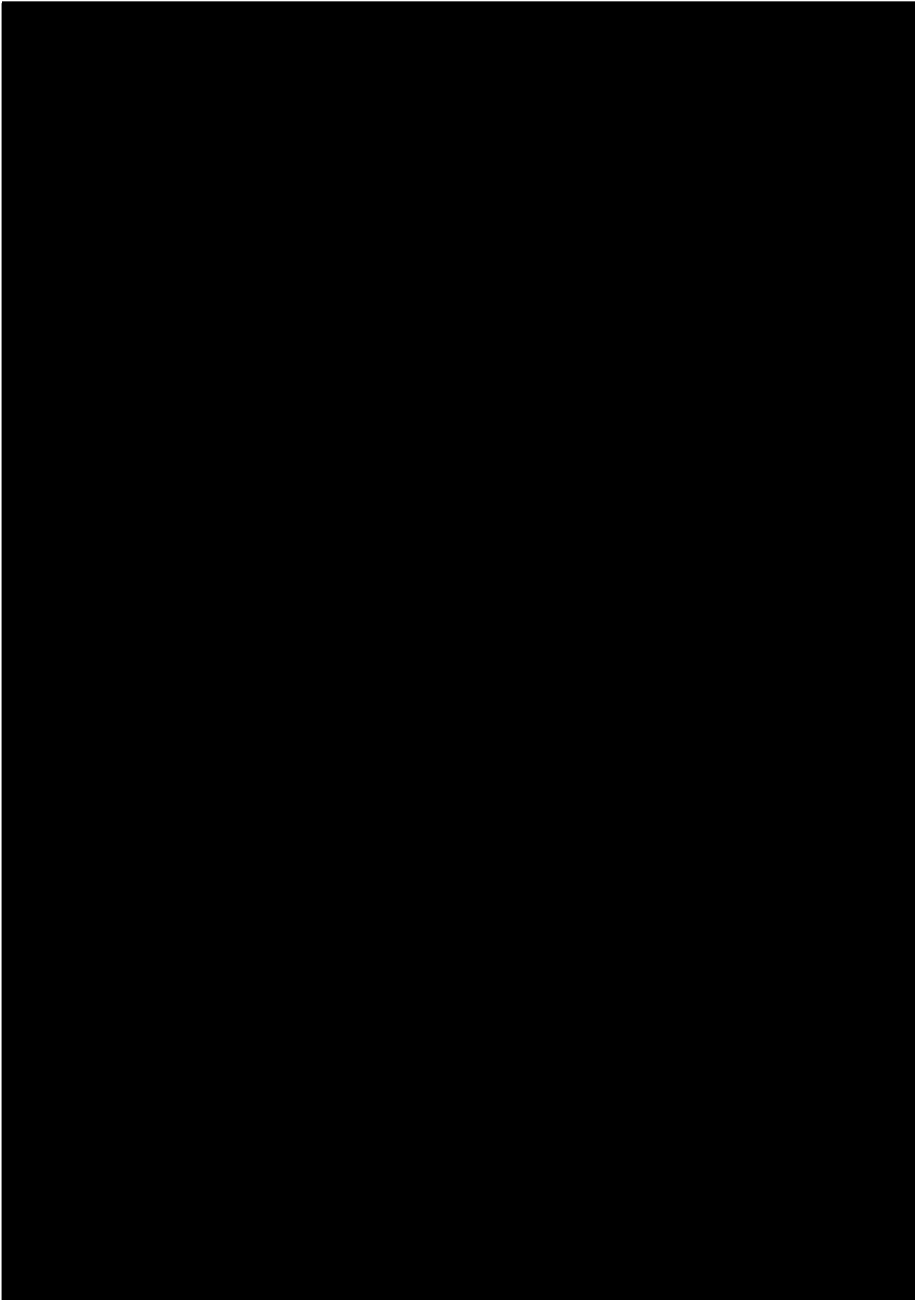
**Standard Provisions to  
The GasEDI Contract for Short-Term Sale and Purchase of Natural Gas**

The General Terms and Conditions to the GasEDI Base Contract for Short-Term Sale and Purchase of Natural Gas dated October 26, 2000 are hereby [REDACTED]









**GasEDI BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS****GENERAL TERMS AND CONDITIONS**

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October 26, 2000

**GasEDI BASE CONTRACT FOR  
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**SECTION 1 - PURPOSE AND PROCEDURES**

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

1.2.a Any Transaction may be effected orally or electronically with the offer and acceptance constituting the valid, binding and enforceable agreement of the parties. The parties are legally bound from the time they agree to Transaction terms. Any such Transaction is considered a "writing" and to have been "signed". Notwithstanding the previous sentence, the parties agree that Confirming Party shall confirm a Transaction by sending the other party a Transaction Confirmation by facsimile or mutually agreeable electronic means by the close of the next Business Day. Confirming Party adopts its confirming letterhead or the like as its signature on any Transaction Confirmation and as the identification and authentication of Confirming Party.

1.2.b If a Transaction Confirmation sent by Confirming Party is materially different from the other party's understanding of the agreement referred to in Section 1.2.a, that party shall give Confirming Party Notice clearly identifying such difference on Confirming Party's Transaction Confirmation and return the annotated Transaction Confirmation to the Confirming Party by the Confirm Deadline. The failure of the other party to so notify Confirming Party by the Confirm Deadline is further evidence of the agreement between the parties and constitutes the other party's acknowledgement that the terms of the Transaction described in Confirming Party's Transaction Confirmation are accurate.

1.2.c If the other party does not receive a Transaction Confirmation from Confirming Party by the deadline set out in Section 1.2.a, then the other party shall notify Confirming Party by sending its own Transaction Confirmation by the close of the Business Day following the deadline set out in Section 1.2.a. If a Transaction Confirmation sent by the other party is materially different from Confirming Party's understanding of the agreement referred to in Section 1.2.a, Confirming Party shall give the other party Notice clearly identifying such difference on the other party's Transaction Confirmation and return the annotated Transaction Confirmation to the other party by the Confirm Deadline. The failure of Confirming Party to so notify the other party by the Confirm Deadline is further evidence of the agreement between the parties and constitutes the Confirming Party's acknowledgement that the terms of the Transaction described in the other party's Transaction Confirmation are accurate.

1.2.d The entire agreement between the parties shall be those provisions contained in (i) an effective Transaction Confirmation, (ii) the oral or electronic agreement of the parties, (iii) the Base Contract, and (iv) these General Terms and

**GasEDI BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS****GENERAL TERMS AND CONDITIONS**

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Conditions (collectively, the "Contract"). In the event of a conflict among the foregoing, the terms shall govern in the priority listed in the previous sentence. The parties agree that all Transactions entered into shall form a single integrated agreement between the parties and each Transaction shall be merged into the Contract.

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

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

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

**SECTION 2 - DEFINITIONS**

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

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

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

"Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein.

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

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

"Buyer" refers to the party receiving Gas hereunder.

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

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

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

"Contract" shall have the meaning set forth in Section 1.2.d.

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

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

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

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

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

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

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

"Dekatherm" shall mean one million British Thermal Units.

"Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.

"Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.

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

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

"ETA" shall mean the Excise Tax Act (Canada).

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

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Gas which remedy is as set forth in Section 7.7 (except as provided in part (iv) of this definition), if not remedied within 5 Business Days after receiving Notice thereof.

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

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

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

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

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

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

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

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

"Market Value" of a Transaction is the net present value (applying the Present Value Discount Rate) of the product of (1) the quantity of gas remaining under a Transaction which the parties are obligated to transact, multiplied by (2) a market price for a similar transaction considering the remaining Delivery Period, Contract Quantity and Delivery Point; with such market price to be established by either (i) a bona fide offer accepted by the Non-Defaulting Party from a third party in an arms-length negotiation for a replacement transaction or (ii) quotations obtained by the Non-Defaulting Party, in good faith, from five Reference Market Makers, where the highest and lowest of such quotations shall be disregarded, and the arithmetic average of the three remaining quotations shall be the market price.

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

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

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

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

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

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



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"Payment Date" shall mean a date, selected by the parties in the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

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

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

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

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

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

"Reference Market Makers" shall mean leading dealers in the physical gas trading market or the energy swap market, selected by the Non-Defaulting Party from among dealers of the highest credit standing, which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit.

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

"Seller" refers to the party delivering Gas hereunder.

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

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

"Termination Payment" for a Transaction is the difference between the Market Value and the Contract Value, adjusted for Costs, as of the Early Termination Date. If the Non-Defaulting Party is Seller and Market Value minus Costs is greater than the Contract Value, the Termination Payment will be positive (gain) and if the Market Value minus Costs is less than the Contract Value, the Termination Payment will be negative (loss). If the Non-Defaulting Party is the Buyer and the Contract Value minus Costs is greater than the Market Value, the Termination Payment will be positive (gain) and if the Contract Value minus Costs is less than the Market Value, the Termination Payment will be negative (loss).

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

"Transaction" shall mean any gas sale, purchase or exchange agreement effected pursuant to the Base Contract.

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

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

**SECTION 3 - PERFORMANCE OBLIGATION**

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

The parties have selected either the "Cover Standard" version or the "Spot Price Standard" version as indicated on the Base Contract.

**Cover Standard:**

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

**Spot Price Standard:**

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

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

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

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

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

**SECTION 5 - QUALITY AND MEASUREMENT**

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

**SECTION 6 - TAXES**

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

**Buyer Pays At and After Delivery Point:**

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

**Seller Pays Before and At Delivery Point:**

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

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

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

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

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

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

**SECTION 7 - BILLING, PAYMENT AND AUDIT**

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

7.2 Buyer shall remit the amount due in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

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

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

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

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

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

7.8 A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This examination right shall not be available with respect to proprietary information not directly relevant to Transactions. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

**SECTION 8 - TITLE, WARRANTY AND INDEMNITY**

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

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

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

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

**SECTION 9 - NOTICES**

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



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

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

**SECTION 10 - FINANCIAL RESPONSIBILITY, DEFAULTS AND REMEDIES**

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

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

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

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

10.5 In the event a party is a Non-Performing Party, the Performing Party shall have the right to, in addition to any other remedies available hereunder: (i) withhold any or all payments due the Non-Performing Party hereunder for the period of the applicable Non-Performance and net or set-off amounts due the Performing Party against such withheld amounts; (ii) during the period of the applicable Non-Performance, upon at least 1 Business Day's Notice, suspend its performance under any or all Transactions; and/or (iii) if the Non-Performing Party fails to pay any Accelerated Payment Invoice when due, the Performing Party may, without further Notice to the Non-Performing Party, declare an Early Termination Date with respect to the particular Transaction to which the Non-Performance relates in accordance with Section 10.3. The failure of the Performing Party to exercise any of the rights or remedies contained in this Section 10.5 shall not constitute a waiver of the Non-Performance, the requirement for payment as contemplated by Section 3.2 or any of the other rights or remedies of the Performing Party in connection therewith.

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

**GasEDI BASE CONTRACT FOR SHORT-TERM SALE AND PURCHASE OF NATURAL GAS**  
**GENERAL TERMS AND CONDITIONS**

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**SECTION 11 - FORCE MAJEURE**

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

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

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

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

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

**SECTION 12 - TERM**

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

**SECTION 13 - MISCELLANEOUS**

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

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

13.3 No waiver of any breach of the Contract shall be held to be a waiver of any other or subsequent breach.

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

**GENERAL TERMS AND CONDITIONS**

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

13.5 The interpretation and performance of the Contract shall be governed by the laws of the jurisdiction specified by the parties in the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

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

13.7 There is no third party beneficiary to the Contract.

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

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

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

**SECTION 14 - LIMITATIONS**

14.1 EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.



## TRANSACTION CONFIRMATION

Date: July 20 2020  
("Effective Date")

Transaction Confirmation #: \_\_\_\_\_

This is a Transaction under the GasEDI Base Contract for the Sale and Purchase of Biomethane dated July 20 2020 ("Base Contract") and the Special Provisions attached to the Base Contract made between the parties hereto and is made subject to the condition set forth in Section 16 of this Transaction Confirmation.

### IT IS AGREED:

#### 1. Definitions.

- (a) Capitalized terms used, but not defined in this Transaction Confirmation, have the meanings given to those terms in the General Terms and Conditions of the Base Contract and in addition:

"**Biogas**" means raw gas composed primarily of methane derived from the decomposition of organic matter.

"**Biogas Upgrader**" means those Facilities owned by the Seller located in Aylmer, Ontario.

"**Biomethane**" means pipeline quality Gas derived from the decomposition of organic matter. Pipeline quality means meeting the gas quality requirements of the receiving pipeline at the Delivery Point.

"**Carbon Offsets**" means, for the purposes of calculating Market Value, Offsets that are created from emissions reduction at a facility or project located in Canada and are verified using a standard that is at least equivalent to the protocols established under the British Columbia Greenhouse Gas Emission Control Regulation or a replacement standard which might include, but is not limited to, standards that are recognized by the International Carbon Reduction & Offset Alliance (ICROA) as compliant with the ICROA Code of Best Practice.

"**Commodity Cost Recovery Charge**" means the Buyer's cost to supply conventional Gas to its utility customers which shall be established by the Commodity Cost Recovery Charge set out in the Buyer's Table of Charges in Rate Schedule 1 for Residential Service as approved by the British Columbia Utilities Commission from time to time.

"**Condition**" means the condition set out in Section 16 of this Transaction Confirmation.

**“Condition Removal Date”** means the date set out for the removal of the condition in Section 16 of this Transaction Confirmation.

**“Contract Quantity”** shall mean the quantity of Biomethane to be delivered and received pursuant to this Transaction.

**“Contract Year”** means each twelve (12) consecutive month period starting on the Start Date.

**“Director”** means the British Columbia government employee designated as the director for the purposes of the RLCFRA.

**“Environmental Attribute”** means:

- (i) all attributes associated with, or that may be derived from the actual or assumed reduction, displacement or offset of emissions associated with the Biomethane sold pursuant to this Contract;
- (ii) the right to quantify and register the interests and rights associated with such attributes or characteristics with competent authorities;
- (iii) any existing or future instrument, including any Offset, environmental emission allowances and reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions associated with, or that may be derived from the actual or assumed reduction, displacement or offset of emissions associated with the Biomethane and related activities sold pursuant to this Contract.
- (iv) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing.

**“Facilities”** means the Biogas Upgrader and the anaerobic digestion facility owned by Walker RNG Inc. located in Aylmer, Ontario.

**“Green Premium”** means the difference between the Contract Price and the Commodity Cost Recovery Charge.

- (i) in the case of default by Seller, at the Buyer's option, either as
  - (a) a transaction consisting of Biomethane; or,
  - (b) a transaction consisting of conventional Gas plus Carbon Offsets equal to the greenhouse gas reduction that would have been achieved by the Biomethane supply for the remainder of the Transaction; the number of Carbon Offsets to be equivalent to the product of (1) the difference between 0.05 metric tonnes of CO<sub>2</sub>e/GJ (being the CO<sub>2</sub> equivalency of conventional Gas) and the carbon intensity of the Biomethane set out in Section 10 multiplied by (2) the Minimum Annual Quantity for each Contract Year (or part of a Contract Year prorated) remaining under the Transaction, provided such carbon Offsets with the required quality are readily available in the market, and
- (ii) in the case of default by Buyer, the higher of:
  - (a) a transaction consisting of Biomethane; or,
  - (b) a transaction consisting of conventional Gas plus Carbon Offsets equal to the greenhouse gas reduction that would have been achieved by the Biomethane supply for the remainder of the Transaction; the number of carbon Offsets to be equivalent to the product of (1) the difference between 0.05 metric tonnes of CO<sub>2</sub>e/GJ (being the CO<sub>2</sub> equivalency of conventional Gas) and the carbon intensity of the Biomethane set out in Section 10 multiplied by (2) the Minimum Annual Quantity for each Contract Year (or part of a Contract Year prorated) remaining under the Transaction, and

The Non-Defaulting Party shall determine the Market Value using good faith and in a commercially reasonable manner but is not required to actually enter into a transaction in order to determine the market price.

**"Offset"** means any credits, emission offsets or other tradable or recognized instruments issued or granted by a government or program authority or recognized under a regulation, in recognition of emission reductions or sequestration that may be applied to achieving compliance with any emissions related obligations or commitments whether voluntary or mandatory.

**"Production Audit"** means the records and physical audit described in Section 13 of this Transaction Confirmation.

**"Production Location"** means Aylmer, Ontario.

**"RLCFRA"** means the British Columbia Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act and its regulations and amendments thereto.

**"Start Date"** means the start date for the delivery of Biomethane to the Buyer set out in Section 3.

- (b) For the purposes of this Transaction Confirmation, the definition of Event of Default set out in the General Terms and Conditions of the Base Contract shall be replaced by the definition set out below:

**"Event of Default" shall mean**

- (i) the failure to make payment when due under the Contract, which is not remedied within two (2) Business Days after receiving Notice thereof (except for a failure to make an Accelerated Payment invoice which shall immediately constitute an Event of Default);
- (ii) the making of an assignment or any general arrangement for the benefit of creditors, the filing of a petition or otherwise commencing, authorizing, or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or having such petition filed or proceeding or cause under any bankruptcy or similar law for the protection of creditors commenced against it, any bankruptcy or insolvency (however evidenced) or the inability to pay debts as they fall due;
- (iii) the failure to provide Performance Assurance in accordance with Section 10.1 of the General Terms and Conditions;
- (iv) Seller's failure to deliver at least the Minimum Daily Quantity or the Minimum Annual Quantity unless:
  - (a) excused by supply interruption in accordance with Section 8 (Basis of Sale, Purchase) of this Transaction Confirmation,
  - (b) excused by Buyer's Non-Performance, or
  - (c) prevented by Force Majeure in accordance with Section 11 of the General Terms and Conditions as amended by the Special Provisions (Force Majeure);
- (v) Buyer's failure to receive up to the Maximum Daily Quantity or the Maximum Annual Quantity unless:
  - (a) excused by supply interruption in accordance with Section 8 (Basis of Sale, Purchase) of this Transaction Confirmation,
  - (b) excused by Seller's Non-Performance, or
  - (c) prevented by Force Majeure in accordance with Section 11 of the General Terms and Conditions as amended by the Special Provisions (Force Majeure);
- (vi) breach by Seller of any representation or warranty set forth in Section 10 (Environmental Attributes) of this Transaction Confirmation or its obligations under Section 14 (Part 3 Fuel under the RLCFA);
- (vii) a Buyer's finding or, in the case a dispute was arbitrated, an arbitrator's decision made pursuant to the Production Audit finds that the gas delivered hereunder does not meet the definition of Biomethane under Section 1 (Definitions);
- (viii) if Buyer is prevented from completing a Production Audit due to the actions or inaction of the Seller which is not remedied within ten (10) Business Days after receiving Notice thereof; or
- (ix) the failure to perform any other material obligation under the Contract, which is not remedied within ten (10) Business Days after receiving Notice thereof.

2. **Parties.**

**Seller:** Walker RNG Inc.  
**Buyer:** FortisBC Energy Inc.

3. **Delivery Period.**

**Start Date:**

- (i) Buyer acknowledges that Seller will source the entire quantity of Biomethane committed pursuant to this Transaction Confirmation from the Biogas Upgrader which is being designed and constructed with an anticipated operational date of [REDACTED]
- (ii) Seller shall provide Buyer with written Notice of the date (the "Start Date") on which the Biogas Upgrader is fully operational and the Seller will begin to deliver Biomethane to the Buyer; and
- (iii) If the Start Date is later [REDACTED] after the Conditions Removal Date, then Buyer may, at its sole and unfettered discretion, terminate this Transaction Confirmation by providing written Notice to Buyer without penalty or further liability.

**End Date:** [REDACTED] Contract Years from the Start Date.

4. **Delivery Point.** [REDACTED]

5. **Contract Quantity of Biomethane.** All Gas supplied by the Seller to the Buyer pursuant to this Transaction shall be exclusively Biomethane from the Facilities in the Contract Quantity below:

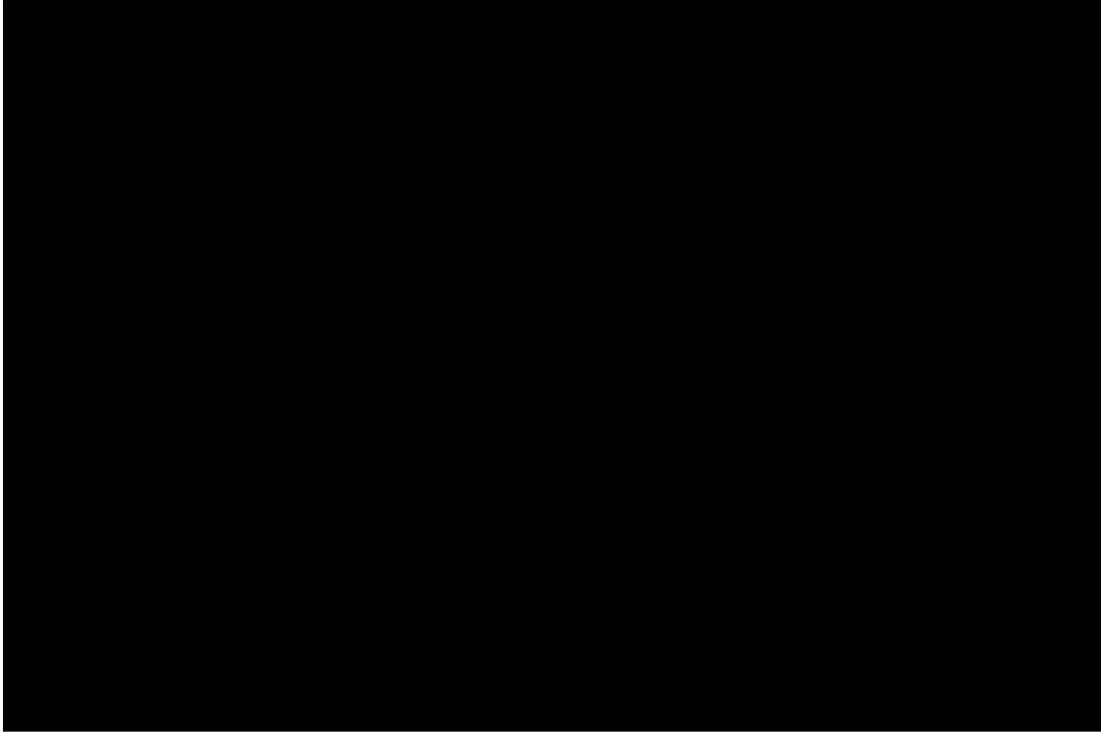
- (a) Minimum Daily Quantity: [REDACTED] per day.
- (b) Minimum Annual Quantity: [REDACTED] per Contract Year
- (c) Maximum Daily Quantity: [REDACTED] per day. Seller may exceed Maximum Daily Quantity on a case-by-case basis, at Buyer's discretion, in order to meet but not exceed Maximum Annual Quantity.
- (d) Maximum Annual Quantity: [REDACTED] per Contract Year. Buyer, may, at its discretion, accept more than the Maximum Annual Quantity.

6. **Exclusivity.** The Seller covenants to supply Buyer exclusively with all the Biomethane produced by the Seller at the Facilities and any expansions thereof, up to the Maximum Annual Quantity.

7. **Nominations.** At least two (2) Business Days prior to the start of each Month, Seller shall provide Buyer with the quantity of Biomethane that the Seller shall nominate for delivery at the Delivery Point on each Day for that Month. Without expanding or limiting the Seller's obligation to supply the Minimum Daily Quantity, the Seller may revise its daily nominations for that month in the event of unplanned maintenance of the Facilities, unexpected and materially detrimental changes to the microbiological conditions of the anaerobic digester

or for reasons of Force Majeure (as set out in the General Terms and Conditions and the Special Provisions). These obligations are in addition to those set out in Section 4.2 of the General Terms and Conditions.

8. **Basis of Sale, Purchase.** Firm, subject to the following: Seller shall not be considered to be in default of the Contract if its failure to supply the Minimum Daily Quantity is for the following reason:



9. **Contract Price.**

- (a) Subject to subsection (b) below, the Contract Price payable for the Contract Quantity is [REDACTED] per GJ (the "**Base Rate**").
- (b) Subject to subsection (c) below, commencing from the November 1<sup>st</sup> occurring after the first anniversary of the Start Date and on every November 1<sup>st</sup> thereafter, the Base Rate will be adjusted by [REDACTED] over the previous year.
- (c) No adjustment will be made which results in the applicable rate payable by the Buyer exceeding the applicable of:
  - (i) the then current maximum RNG supply purchase price approved by the British Columbia Utilities Commission; or
  - (ii) the maximum RNG supply purchase price established by the Province of British Columbia.

10. **Environmental Attributes and Representations.**

- (a) Seller represents and warrants that the Biomethane produced is generated through the anaerobic digestion of organic matter and is not supplemented, replaced in whole or in part with fuels purchased or extracted other than from the Production Location.

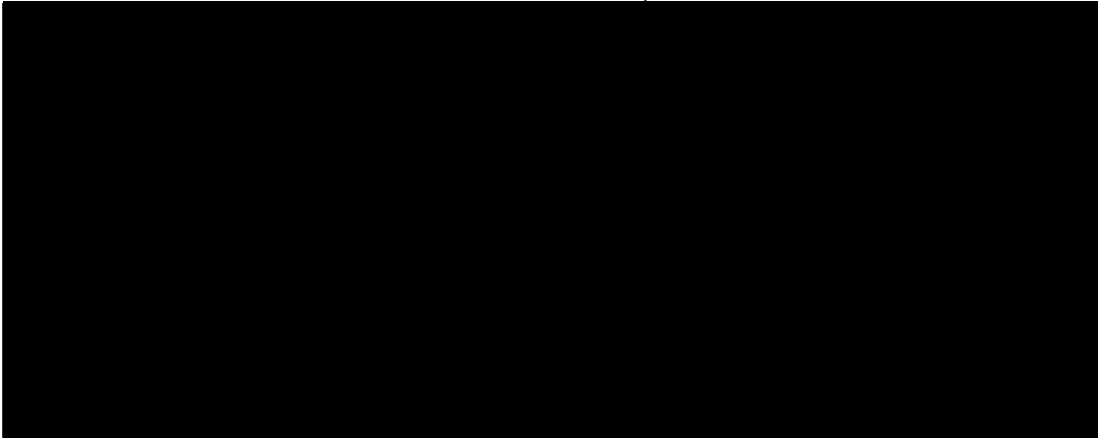
- (b) Seller represents that the calculated carbon intensity of the Biomethane shall be [REDACTED] grams of CO<sub>2</sub> equivalent or less per mega joule (gCO<sub>2</sub>e/MJ) and as soon as commercially reasonable after the Start Date, shall provide the Buyer with a report as described in Section 12 (*Carbon Intensity Report*) below calculating the carbon intensity and the calculated carbon intensity of the Biomethane shall not exceed [REDACTED] gCO<sub>2</sub>e/MJ during the Term of the Contract.
  - (c) Seller represents and warrants that, all Environmental Attributes that could be associated with the produced Biomethane at the time of delivery to Buyer are attached thereto and that neither the Biomethane nor the Environmental Attributes associated therewith have been sold more than once by the Seller at any point between production and sale to Buyer whether by sales into carbon markets or otherwise.
  - (d) Seller represents and warrants that Seller does not have and no third party has, any claim to the Environmental Attributes associated with the Biomethane purchased by Buyer under this Transaction Confirmation.
  - (e) Seller represents and warrants that, up to the point of delivery to Buyer, neither the Environment Attributes nor the Biomethane have been used by Seller to meet any federal, state, provincial or local renewable energy requirement, renewable energy procurement, renewable energy portfolio standard, or other renewable energy mandate.
  - (f) Seller shall transfer to Buyer at the Delivery Point all Environmental Attributes, whether current or future, known or unknown at the time of delivery, associated with the Biomethane purchased along with the transfer of title in the Biomethane purchased.
11. **Reports.** By the 15th of the month following the month of delivery the Seller shall provide the Buyer monthly reporting of the following information, in respect of the month of delivery, and supporting documentation acceptable to industry practice as follows: :
- (a) daily production volume of Biomethane produced at the Facilities;
  - (b) daily Gas nominations made by Seller in total on the Westcoast Energy Inc. pipeline system; and
  - (c) daily load balancing account activity.
12. **Carbon Intensity Report.** Seller shall provide Buyer with a report by [REDACTED] of each Contract Year, certifying the carbon intensity of the Biomethane produced at the Facilities and delivered to the Buyer during the previous calendar year. The carbon intensity shall be calculated in accordance with the requirements of the government of British Columbia as set out in section 6(6) of the RLCFRA and shall be certified by the Seller's chief operating officer.
13. **Production Audit.**
- (a) Seller shall, upon reasonable request by Buyer provide the following:
    - (i) no more than twice in any 12-month period, records and other documentation; and
    - (ii) no more than once in any 12-month period, to provide Buyer and Buyer's consultant with reasonable and physical access to the Facilities;



for the purpose of confirming compliance with the obligations, representations and warranties regarding the Biomethane and the Environmental Attributes associated with the Biomethane.

- (b) No more than twice in any 12-month period, Buyer may request Seller to confirm in writing that the representations and warranties concerning the Biomethane and Environmental Attributes associated with the Biomethane, as made by Seller, under Section 10 (*Environmental Attributes*) remain valid.
- (c) Seller agrees to cooperate and provide all reasonable assistance to Buyer regarding any audit of the Facilities for the purpose of confirming compliance with the obligations, representations and warranties regarding the Biomethane and the Environmental Attributes associated with the Biomethane.
- (d) If Buyer, acting reasonably, finds that the obligations, representations or warranties regarding the Biomethane and the Environmental Attributes associated with the Biomethane are in non-compliance with this Transaction Confirmation, then Seller may, acting reasonably, dispute such finding. Each Party agrees to provide the other Party with its findings and supporting documentation and agrees to cooperate, in good faith, with each other to resolve the dispute.
- (e) Any dispute of the nature described in, and not resolved under, subsection (d) above shall be resolved in accordance with Section 13.10 of the Special Provisions to the GasEDI Base Contract.

**14. Part 3 Fuel under the RLCFRA.**

- (a) Seller acknowledges that Buyer may wish to resell Biomethane purchased under this agreement to its customers in British Columbia who may intend to use Biomethane as a transportation fuel and Buyer and its customers wish to report such use under Part 3 of the RLCFRA.
  - (b) Immediately following the Start Date, Seller shall apply under the RLCFRA for a determination by the Director of the carbon intensity of the Biomethane supplied to Buyer under this Agreement for the purposes of Part 3 of the RLCFRA and observe the requirements of the RLCFRA applicable to a producer of Part 3 fuel.
- 

**15. Remedies for Default.**

- (a) Section 3.2 of the GasEDI Base Contract shall not apply to this Transaction.



- (b) For the purposes of this Transaction, the definition of Market Value and Contract Value set out in Section 2.1 of the GasEDI Base Contract shall not apply to this Transaction and the definition of Market Value and Contract Value set out in Section 1 (*Definitions*) of this Transaction Confirmation shall apply.
- (c) For the purposes of Section 10.1, 10.3 and 10.4 of the GasEDI Base Contract, the Total Termination Payment of this Transaction shall not exceed [REDACTED]  
[REDACTED]  
[REDACTED].
- (d) If Buyer's determination or, in the case a dispute was arbitrated, an arbitrator's decision made pursuant to the Production Audit, finds that the Gas delivered under this Transaction failed to meet the definition of Biomethane under Section 1 (*Definitions*) or the Environmental Attributes delivered were not associated with the Biomethane as represented and warranted under Section 10 (*Environmental Attributes*) then, Seller shall either not charge or return the Green Premium paid by Buyer in respect of such Gas.

**16. Condition.**

- (a) This Transaction shall be of no force or effect unless the following conditions ("**Conditions**") are satisfied or waived by Buyer on or before [REDACTED] ("**Condition Removal Date**"):
  - (i) this Transaction has obtained the necessary regulatory approvals, if any, required to be obtained by Buyer to purchase energy, including but not limited to approval from the British Columbia Utilities Commission.
  - (ii) [REDACTED]
- (b) In the event the Buyer has submitted an application to the British Columbia Utilities Commission for the approval of this Transaction no less than three (3) months before the Condition Removal Date, and the British Columbia Utilities Commission has not made its decision by the Condition Removal Date, the Condition Removal Date shall be automatically extended for another three (3) months.
- (c) Buyer shall make reasonable good faith efforts to satisfy or, shall waive, the Condition by the then-current Condition Removal Date. Buyer shall provide written notice of the satisfaction or waiver of the Condition, if any, on or prior to the Condition Removal Date.

**17. Change of Law.** If on or after the date of this Agreement, there is any change to the methodologies prescribed by a governmental authority under applicable laws and regulations for calculating the carbon intensity of fuels (including, but not limited to, changes in quantification methods, emission factors, global warming potentials, and other input values) with which Buyer or Seller is required to comply and, as a result, a party is unable to comply with, or faces a materially negative impact from one or more provisions of this Agreement (a "Change"), then, at the written request of either party, the parties shall enter into good faith negotiations and may amend this Agreement to take account of the Change or, if agreed, take such other actions as commercially reasonable to take account of the Change, so that the

Transactions contemplated hereunder can be completed in keeping with the intentions of the parties at the time of entry into the Agreement.

18. In addition to the exclusions of confidentiality set out in Section 13.11 of the Special Provisions, the parties may disclose the terms of this Contract to the extent such information is delivered to a third party for the purpose of auditing or evaluating a party's performance under the Contract or to the extent such information is required to be disclosed for the purposes of quantifying and registering Environmental Attributes, including but not limited to complying with the requirements of the RLCFRA.

Executed by the Parties on the dates specified below.

WALKER RNG INC.

  
Signed

JOHN VAN LOFTENSTEIN  
Name

SECRETARY-TREASURER  
Title

July 20 2020  
Date


FORTISBC ENERGY INC.

  
Signed:

Roger Dall'Antonia  
Name

President and CEO  
Title

15 July 2020  
Date

  
Signed

John Walker  
Name

President  
Title

July 20-2020  
Date





**ORDER NUMBER**

E-xx-xx

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.  
Section 71 Filing of an Amending Agreement to the Biomethane Purchase Agreement between  
FortisBC Energy Inc. and Walker RNG Inc.

**BEFORE:**

[Panel Chair]  
Commissioner  
Commissioner

on Date

**ORDER**

**WHEREAS:**

- A. On November 25, 2022, pursuant to section 71 of the *Utilities Commission Act* (UCA) and British Columbia Utilities Commission (BCUC) Rules for Natural Gas Energy Supply Contracts (Rules), FortisBC Energy Inc. (FEI) filed with the BCUC seeking acceptance of an amending agreement to the existing Biomethane Purchase Agreement (BPA) between FEI and Walker RNG Inc (Walker) (Application);
- B. Section 18(1) of the Clean Energy Act (CEA) defines a prescribed undertaking as “...a project, program, contract or expenditure that is in a class of projects, programs, contracts or expenditures prescribed for the purpose of reducing greenhouse gas emissions in British Columbia”;
- C. Section 18(3) of the CEA states that “the commission must not exercise a power under the UCA in a way that would directly or indirectly prevent a public utility...from carrying out a prescribed undertaking”;
- D. On May 25, 2021, the LGIC, by Order in Council (OIC) 306/2021, approved an amendment to the Greenhouse Gas Reduction (Clean Energy) Regulation (GGRR), which among other things, repealed and replaced section 2 (3.8) to state:

(3.8) The public utility acquires renewable natural gas

a) at costs that meet the following criteria, as applicable:

- i. if the public utility acquires renewable natural gas by purchasing it, the price of the renewable natural gas does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the contract for purchase is signed;

- ii. if the public utility acquires renewable natural gas by producing it, the levelized cost of production reasonably expected by the public utility does not exceed the maximum amount, determined in accordance with section 9, in effect in the fiscal year in which the public utility decides to construct or purchase the production facility, and
  - b) that, in a calendar year, does not exceed 15% of the total amount, in GJ, of natural gas provided by the public utility to its non-bypass customers in 2019, subject to subsection (3.9) and section 10;
- E. On December 4, 2020, by Order E-28-20, the BCUC accepted the BPA between FEI and Walker, pursuant to section 71 of the UCA, the Rules, section 18 of the CEA and the GGRR;
- F. Amending Agreement No. 1 amends the delivery point and the price for which FEI will acquire the biomethane;
- G. The BCUC has not reviewed the Application from a public interest perspective as the Walker BPA, as amended, is a prescribed undertaking under section 18(1) of the CEA;
- H. FEI requests that the Application including Appendices be kept confidential due to their commercially sensitive nature; and
- I. The BCUC has reviewed the Application and considers the following determinations are warranted.

**NOW THEREFORE** pursuant to section 71 of the UCA, the Rules, section 18 of the CEA and the GGRR, the BCUC orders as follows:

1. The BCUC accepts for filing Amending Agreement No. 1 to the BPA between FEI and Walker.
2. The BCUC will keep the Application including Appendices confidential as requested by FEI as they contain commercially sensitive information.

**DATED** at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)  
Commissioner

Attachment (Yes? No?)