



RETAILER DISTRIBUTION SERVICE RULES

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- Table of Contents -

ARTICLE 1 – Context..... 4

 1.1. Application 4

 1.2. Relationships 4

 1.3. Customers and Agents 4

ARTICLE 2 – Definitions 4

 2.1. Definitions 4

 2.2. Conflict..... 9

 2.3. Interpretation 9

ARTICLE 3 – General Provisions 10

 3.1. AUC Approval..... 10

 3.2. Gas Distribution Tariff..... 10

 3.3. Effective Date 10

 3.4. Waiver or Alteration 10

 3.5. Retailer Handbook..... 10

 3.6. Ownership of the Gas Distribution System 10

 3.7. New Gas Distribution System Segments, Specific Facilities and Service Additions 10

 3.8. Title or Interest in the Gas 11

 3.9. Gas Under AUI Control 11

 3.10. AUI Determines Routing..... 11

 3.11. Commingling or Exchange 11

 3.12. Right to Transport..... 11

ARTICLE 4 – General Obligations of the Retailers..... 11

 4.1. Timeliness and Due Diligence 11

 4.2. Arrangements with the Customer 12

 4.3. Responsibility for Gas Services..... 12

 4.4. Customer Authorization 12

 4.5. Retailer ID..... 12

 4.6. Single Retailer for Customers 12

 4.7. Fees and Other Charges..... 12

ARTICLE 5 – Customer Inquiries and Customer Information 13

 5.1. Customer Inquiries 13

 5.2. Customer Inquiries Related to Emergency, Outage, Safety and Environmental Situations . 13

 5.3. Standard Requests for Customer Usage Information Pursuant to Rule 010 13

 5.4. Non-Standard Requests for Customer Usage Information 13

 5.5. Providing Customer Information to AUI..... 13

ARTICLE 6 – Provision of Service 14

 6.1. Request for Service 14

 6.2. Qualification for Service 14

 6.3. Provision of Gas Distribution Service 15

 6.4. Application for Enrolment 15

ARTICLE 7 – Financial Matters 16

 7.1. Retailer Pays Tariffs 16

 7.2. Billing 16

 7.3. Payment 16

 7.4. Unpaid Bills..... 17

 7.5. Unauthorized Use..... 17

 7.6. Disputes..... 18

 7.7. Failure to Pay 18

ARTICLE 8 – Gas Distribution Service Interruption 18

 8.1. Continuous Supply 18

 8.2. Interruption 18

 8.3. Reasonable Efforts 18

Apex Utilities Inc.
Retailer Distribution Service Rules

ARTICLE 9 – Discontinuance of Gas Distribution Service	19
9.1. Discontinuance by the Retailer.....	19
9.2. Discontinuance by Apex Utilities Inc.	19
ARTICLE 10 – Service Disconnects and Reconnect	20
10.1. Disconnection of Service	20
10.2. Reconnect Service	21
ARTICLE 11 – Prudential Requirements	21
11.1. Setting of Prudential Requirements.....	21
11.2. Maintaining Prudential Requirements	22
11.3. Confidentiality	23
11.4. Costs	24
11.5. Interest on Security Deposits	24
ARTICLE 12 – Measurement	24
12.1. Provision and Ownership	24
12.2. Meter Reading	24
12.3. Changes to Metering Equipment.....	24
12.4. Statutory Standards Apply.....	24
12.5. Measuring Equipment	25
12.6. Testing Measuring Equipment.....	25
12.7. Facilities Interference	25
12.8. Use of TCPL Measurements	25
12.9. Forecast Quantities	25
ARTICLE 13 – Account Balancing	25
13.1. Retailer’s Account	25
13.2. Exchange of Gas	26
13.3. Daily Retailer’s Account Imbalance.....	26
13.4. Retailer’s Account Monitoring Rules	26
13.5. Termination of Retailer Service	28
13.6. Request for Additional Information	28
13.7. Liability.....	28
ARTICLE 14 – Termination on Default	29
14.1. Events of Default	29
14.2. Rights Upon Default	29
14.3. Recourse to Security Upon the Retailer Default	29
14.4. Termination on Default	29
ARTICLE 15 – Impaired Deliveries	30
15.1. Impaired Deliveries.....	30
ARTICLE 16 – Liability and Indemnity	30
16.1. Indemnity	30
16.2. Consequential Loss	32
ARTICLE 17 – Force Majeure.....	32
17.1. Effect of Force Majeure on Breach.....	32
17.2. Meaning of Force Majeure	32
17.3. Exceptions to Force Majeure.....	33
17.4. Notice of remedy	33
17.5. Obligation to Remedy	33
17.6. Labour Disputes	33
ARTICLE 18 – Dispute Resolution.....	34
18.1. Resolution by AUI and the Retailer	34
18.2. Resolution by Arbitration	34
18.3. Arbitrators	34
18.4. Failure to Concur	34
18.5. Refusal to Appoint an Arbitrator	34
18.6. Failure to Appoint a Third Arbitrator	34

Apex Utilities Inc.
Retailer Distribution Service Rules

18.7.	Technical Competence.....	34
18.8.	Compensation of Arbitrators.....	35
18.9.	Application of the Arbitration Act (Alberta)	35
18.10.	Decisions Binding.....	35
18.11.	Continuity of Service	35
ARTICLE 19 –	Miscellaneous Matters	35
19.1.	Retailer Distribution Service Rules Prevail.....	35
19.2.	General Laws Apply	35
19.3.	No Waiver	35
19.4.	No Assignment	36
19.5.	Applicable Laws.....	36
ARTICLE 20 –	Notice	36
20.1.	Notice in Writing	36
20.2.	Delivery of Notice	36
20.3.	Disruption of Mail.....	37
Schedule A –	Imbalance Purchases/Sales Charges	38
1.0	Imbalance Window Percentage.....	38
2.0	Imbalance Windows	38
3.0	Imbalance Purchase/Sale Price	38
4.0	Change to Imbalance Window Percentage and Minimum Energy Imbalance Window	39

ARTICLE 1 – Context

1.1. Application

These *Retailer Distribution Service Rules* are part of every *Retailer Distribution Service Contract* of *Apex Utilities Inc. (AUI)*.

1.2. Relationships

These *Retailer Distribution Service Rules* govern the relationship between *AUI* and the *Retailer* or any *Agent* acting on behalf of the *Retailer*, and between *AUI* and the *Customer*. These *Retailer Distribution Service Rules* complement *AUI's Commission-approved Natural Gas Utility Service Rules*, are part of *AUI's Gas Distribution Tariff* and apply to every *Retailer* unless varied by an Order of, or agreement approved by, the *Commission*.

1.3. Customers and Agents

Where the *Customer* has appointed the *Retailer* to act on the *Customer's* behalf, the *Retailer* will act in place of the *Customer*. Notwithstanding the foregoing, where the *Retailer* requires *AUI* to bill for *Gas Distribution Service* separately, *AUI* reserves the right to bill the *Customer* directly and receive payments for *Gas Distribution Service* directly from the *Customer*. Under this arrangement, *AUI's Natural Gas Utility Service Rules* apply with respect to payment terms for the *Customer*.

ARTICLE 2 – Definitions

2.1. Definitions

The following words or terms, when used in these *Retailer Distribution Service Rules*, the *Rate Schedule* or in a *Retailer Distribution Service Contract* will, unless the context otherwise requires, have the following meanings:

“Account” means a record maintained by *AUI* containing receipts, deliveries, *Unaccounted-For Gas*, *Imbalance Purchases*, *Imbalance Sales* and adjustments applicable to each *Retailer* providing *Gas Services* to *Customers* served by the *Gas Distribution System*;

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

“Account on the Transmission System” means the account held by *AUI* on *TCPL*;

“Act” means the *Gas Utilities Act – R.S.A. 2000 c.G-5*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Agency Agreement” means an agreement between a *Retailer* and another party wherein the other party is appointed as *Agent* for that *Retailer*;

“Agent” means a person who, on behalf of a *Retailer* under an *Agency Agreement*, performs functions, including, but not limited to, *Retailer* transactions with *AUI*;

“Alberta Utilities Commission”, “AUC” or “Commission” means the *Alberta Utilities Commission* or its successor;

“Apex Utilities Inc.” or “AUI” means *Apex Utilities Inc.* or its successor;

“AUI Emergency Phone Number” means *Apex Utilities Inc.*’s Emergency Phone Number as provided on *AUI*’s website at www.apexutilities.ca.

“AUI General Inquiry Phone Number” means *Apex Utilities Inc.*’s General Inquiry Phone Number as provided on *AUI*’s website at www.apexutilities.ca.

“Backcast” means an estimate of *Customer Load* prepared for the current *Gas Day* (B1) as described in the *Retailer Handbook*;

“Business Day” is any day other than Saturday, Sunday, or a holiday as defined in the *Interpretation Act, R.S.A. 2000, c 1-8*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Code of Conduct Regulation” means the *Code of Conduct Regulation, A.R. 183/2003*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Consent for Release of Customer Information” means the form used to obtain historical usage information outside of *Rule 010*:

“Consumer” means a person who enters into a marketing contract to purchase less than 2,500 gigajoules of gas per year as defined in the *Energy Marketing and Residential Heat Sub-Metering Regulation, A.R. 246/2005*, as amended from time to time, and any legislative enactment in substitution or replacement thereof;

“Consumer Protection Act” means the *Consumer Protection Act, RSA 2000, C-26.3*, as amended from time to time;

“Customer” means a person, firm, partnership, corporation or organization, served under Rates 11, 12, 13, or 14 pursuant to the *Rate Schedule*, consuming *Gas* in end-use at its location and is connected to the *Gas Distribution System*;

“Customer Billing Information” means the information required to be included in the *Customer*’s bill issued by the *Retailer* as required by the *Natural Gas Billing Regulation, A.R. 185/2003* and provided by *AUI*;

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

“Customer Usage Information” means historical *Gas* consumption information as specified in *AUC Rule 010*;

“Day” means a period of twenty-four (24) consecutive hours;

“Defaulting Party” will have the meaning set out in Article 14;

“Final Settlement” means the final calculation of settlement (S3) performed for the settlement *Month*, as described in the *Natural Gas Settlement System Code*;

“Forecast” means an estimate of *Customer Load* prepared for a *Gas Day* and includes forecasts F1, F2 and F3 as described in the *Retailer Handbook*;

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

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

“Gas Distribution Service” means the service required to deliver *Gas* to a *Customer* by means of the *Gas Distribution System* and includes any services *AUI* is required to provide by the *Commission* or under the *Act* or regulations made thereunder;

“Gas Distribution System” means all facilities owned or used by *AUI* to deliver *Gas* to a *Customer* through a system of pipelines, works, plant and equipment that is primarily a low pressure system, including, without limitation, valves, meters, regulators and machinery;

“Gas Distribution Tariff” means *AUI*'s distribution tariff, including its rates, tolls, charges and terms and conditions of service fixed by the *Commission*, as defined in the *Act*, and amended from time to time;

“Gas Services” as defined in the *Act* means:

- i. The *Gas* provided and delivered, and
- ii. The services associated with the provision and delivery of the *Gas*, including
 - a) Arranging for the exchange or purchase of the *Gas*;
 - b) Making financial arrangements to manage the financial risk associated with the price of gas;
 - c) Arranging for *Gas Distribution Service*;
 - d) Arranging for delivery of *Gas* to specified Point(s) of Receipt on the *Gas Distribution System*;
 - e) Storage;
 - f) Billing, collection and responding to customer billing inquiries;
 - g) Maintaining information systems; and
 - h) Any other services specified by the Minister by Order as *Gas Services*;

“Gas Settlement” means *Initial Monthly Settlement*, *Interim Settlement* and/or *Final Settlement* as defined in the *Natural Gas Settlement System Code*;

“GJ” means gigajoules or one billion (1,000,000,000) joules;

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

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

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

“Imbalance Purchase” means the removal of an energy quantity outside the positive *Imbalance Window* from the *Account Imbalance* and financial settlement of that quantity;

“Imbalance Sale” means the removal of an energy quantity outside the negative *Imbalance Window* from the Account *Imbalance* and financial settlement of that quantity;

“Initial Monthly Settlement” means the first calculation of settlement (S1) performed for the settlement *Month*, as described in the *Natural Gas Settlement System Code*;

“Intercontinental Exchange” means *Intercontinental Exchange, Inc.*, an electronic trading platform market participants may use for transactions related to, amongst others, Gas purchase or sale;

“Interim Settlement” means the second calculation of settlement (S2) performed for the settlement *Month*, as described in the *Natural Gas Settlement System Code*;

“International System of Units” means a system of units based on the metric system and developed and refined by international convention especially for scientific work;

“J” or “joule” means the amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;

“kPa” means kilopascals of pressure gauge unless otherwise specified;

“Load” means the amount of Gas delivered or required to be delivered at any specific point or points on the *Gas Distribution System*;

“LBDA” means *AUI's* Load Balancing Deferral Account used to record certain revenues and expenses associated with load balancing the *Gas Distribution System*, including without limitation load balancing purchase/sales and *Imbalance Purchase/Sales*;

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

“Natural Gas Settlement System Code” or “NGSSC” means the AUC’s rules governing the standards for determining and communicating retail Gas consumption for the purpose of load settlement;

“Natural Gas Utility Service Rules” means the *AUI Natural Gas Utility Service Rules*, as amended by *AUI* and approved by the *Commission*, from time to time;

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

“Nomination” means a written or electronic request for Gas to flow at a *Point of Receipt* or a *Point of Delivery* at a specified rate of flow, commencing at a specified time; or, a specified quantity on a specified date(s);

“Non-Defaulting Party” has the meaning set out in Article 14;

“Notice of Non-Renewal” has the meaning set out in Article 11.2;

“Point of Delivery” for service by *AUI* to the *Customer*, means, unless otherwise specified in a *Retailer Distribution Service Contract* or other service agreement, the outlet side of a meter;

“Point of Receipt” means the point where the *Retailer* delivers *Gas* to the *Gas Distribution System* under the *Retailer Distribution Service Contract*. This is usually indicated by *AUI*'s acceptance of a receipt *Nomination* into the *Retailer's Account*;

“R3 Regulation” means the *Roles, Relationships and Responsibilities Regulation, A.R. 186/2003*, as amended from time to time and any legislative enactment in substitution or replacement thereof;

“Rate Schedule” means the *Gas Distribution Tariff* rate schedule, including the general conditions of service, any applicable gas distribution service rates and any applicable rate riders and/or such other rate schedule(s) as may be approved for *AUI* by the *Commission*, from time to time;

“Retailer” means a person or company other than *AUI* selling *Gas* and *Gas Services* directly to *Customers*, entitled to enrol *Customers* for that purpose within *AUI*'s service area and having completed a credit application as set out in the *Retailer Handbook* and meeting any prudential requirements set forth in these *Retailer Distribution Service Rules*. The term “Retailer” includes *Self-Retailers* and *Agents*;

“Retailer Distribution Service Contract” means the *Retailer Distribution Service Contract* between *AUI* and the *Retailer*, including all attached *Rate Schedules* and these *Retailer Distribution Service Rules*;

“Retailer Distribution Service Rules” means the *AUI Retailer Distribution Service Rules*, as amended by *AUI* and approved by the *Commission*, from time to time;

“Retailer Handbook” means the guide prepared by *AUI* describing the business processes between *AUI* and the *Retailer* in relation to the provision of service under these *Retailer Distribution Service Rules* and the *NGSSC*;

“Retailer Identification” means the 9-digit number uniquely representing each *Retailer* operating within Alberta;

“Retailer of Record” means the *Retailer* who is listed in *AUI*'s records through the procedures outlined in these *Retailer Distribution Service Rules*, the *Natural Gas Settlement System Code* and *Retailer Handbook* and thereby recognized by *AUI* as a particular *Customer's Retailer* for a *Point of Delivery* at a particular time;

“Rider H” means a rate rider, expressed as a percentage, approved by the *AUC* applicable to *Retailer's Account* for the recovery in-kind of *Unaccounted-For Gas*;

“Rule 004” means *AUC Rule 004 - Alberta Tariff Billing Code Rules*, as set by the *Commission* and amended from time to time;

“Rule 010” means *AUC Rule 010 - Rules on Standards for Requesting and Exchanging Site-Specific Historic Usage Information for Retail Electricity and Natural Gas Markets*, as set by the *Commission* and amended from time to time;

“Rule 028” means *AUC Rule 028 – Natural Gas Settlement System Code* rules, as set by the *Commission* and amended from time to time;

“Same Day Market” means the intra-Alberta *Gas* market generally available during trading hours on a calendar *Day* for transactions applicable to the *Gas Day* commencing on the same calendar *Day*;

“Self-Retailer” means a *Customer* carrying out *Retailer* functions to obtain *Gas* solely for its own use;

“Site” means a unique end-use *Point of Delivery*, being the finest level where settlement recognizes *Retailer* assignments and receives consumption data;

“Site ID” means a unique identification number assigned by *AUI* for each unique end-use *Point of Delivery*;

“Special Charges Schedule” means the *AUI Special Charges Schedule*, as amended by *AUI* and approved by the *Commission*, from time to time;

“Specific Facilities” means those facilities installed by *AUI* for the benefit of the *Customer* and required to deliver *Gas*;

“TCPL” means TransCanada Pipeline Ltd., including NOVA Gas Transmission Ltd. and their successor(s), a *Gas* transmission system;

“Unaccounted-For Gas” means a *Retailer’s* share of *AUI’s* line loss, *unaccounted-for gas* and compressor fuel at the rate specified in *Rider H* of the *Rate Schedule*;

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

2.2. Conflict

- (1) If there is any conflict between a provision expressly set out in an Order of the *AUC* and these *Retailer Distribution Service Rules*, the Order of the *AUC* will govern.
- (2) If there is any conflict between a provision expressly set out in these *Retailer Distribution Service Rules*, as may be amended from time to time, and a *Retailer Distribution Service Contract*, the express provision of these *Retailer Distribution Service Rules*, will govern, as of their effective date.

2.3. Interpretation

- (1) In the interpretation of the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules*, words in the singular will be read and construed in the plural or words in the plural will be read and construed in the singular where the context so requires.
- (2) The headings used throughout the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules* are inserted for reference only and are not to be considered or taken into account in construing the terms or provisions of any article, clause or schedule nor are they to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- (3) The definitions of all units of measurement and their prefixes used throughout the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules* will be in accordance with the *International System of Units*.

ARTICLE 3 – General Provisions

3.1. AUC Approval

These *Retailer Distribution Service Rules* have been approved by the AUC. The Company may amend these *Retailer Distribution Service Rules* by filing a notice of amendment with the AUC. Included in the notice to the AUC will be identification of the *Retailers* affected by the amendment and an explanation of how the affected *Retailers* will be notified of the amendments. Any amendment to the *Retailer Distribution Service Rules* will take effect 60 days after such notice is filed, unless the AUC otherwise directs.

3.2. Gas Distribution Tariff

The *AUI Gas Distribution Tariff* is available to the public during normal business hours at *AUI's* head office and at the offices of the AUC, and can also be accessed at *Apex Utilities Inc.'s* website at www.apexutilities.ca.

3.3. Effective Date

These *Retailer Distribution Service Rules* come into force as per the effective date shown on the cover page. Whenever *AUI* files notice of an amendment to these *Retailer Distribution Service Rules*, or when the AUC approves an amendment to these *Retailer Distribution Service Rules*, revisions will be issued, with the effective date of the amendments indicated thereon.

3.4. Waiver or Alteration

No agreement can provide for the waiver or alteration of any part of these *Retailer Distribution Service Rules* unless such agreement is first filed with, and approved by, the AUC.

3.5. Retailer Handbook

AUI has developed the *Retailer Handbook* to help *Retailers* and *Customers* understand the normal practices of *AUI*. The *Retailer Handbook* is available on *AUI's* website at www.apexutilities.ca. The *Retailer Handbook* will be updated, from time to time, to reflect industry changes, or the changing needs of *Retailers* and/or *Customers*. *AUI* is committed to follow practices in the *Retailer Handbook*. However, as these practices cannot cover every situation that may arise, it may be necessary to deviate from the *Retailer Handbook* in certain circumstances.

3.6. Ownership of the Gas Distribution System

- (1) *AUI* remains the owner of all segments of the *Gas Distribution System*, unless an agreement between *AUI* and the *Retailer* or *Customer* specifically provides otherwise.
- (2) Payment made by *Retailers* or *Customers* for costs incurred by *AUI* in installing any segment of the *Gas Distribution System* does not entitle *Retailers* or *Customers* to ownership of any such segment, unless an agreement between *AUI* and the *Retailer* or *Customer* specifically provides otherwise.

3.7. New Gas Distribution System Segments, Specific Facilities and Service Additions

AUI reserves the right to communicate directly with the *Customer* in respect of any requests made by the *Customer*, or a party acting on its behalf, for the construction of new *Gas Distribution System* segments, *Specific Facilities* or additional services as provided for in the *Natural Gas Billing Regulation, A.R. 185/2003*, and amended from time to time. *AUI* reserves the right to charge the

Customer directly for any amounts required to be provided by the *Customer* under *AUI's Gas Distribution Tariff*.

The *Retailer* may be required to pay a contribution towards *AUI's* cost of installing any *Specific Facilities* required to provide *Gas Distribution Service*.

3.8. Title or Interest in the Gas

AUI will not acquire any title or interest in the *Gas* being transported under the *Retailer Distribution Service Contract*.

3.9. Gas Under AUI Control

Gas delivered to *AUI* by the *Retailer* for *Gas Distribution Service* will be under the exclusive control of *AUI* from the time such *Gas* is accepted at the *Point of Receipt* until delivered to the *Point of Delivery*.

3.10. AUI Determines Routing

AUI does not dedicate the *Gas Distribution System* or any segment of the *Gas Distribution System* for *Gas Distribution Service* for the *Retailer* or the *Customer* and, accordingly, the routing and facilities used for *Gas Distribution Service* for the *Retailer* will be at *AUI's* discretion and may change from time to time.

3.11. Commingling or Exchange

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

3.12. Right to Transport

The *Retailer* covenants with *AUI* the *Retailer* has the right to transport all *Gas* delivered under the *Retailer Distribution Service Contract* to *AUI* at the *Point of Receipt*.

ARTICLE 4 – General Obligations of the Retailers

4.1. Timeliness and Due Diligence

- (1) The *Retailer* is required to exercise due diligence and use reasonable efforts in meeting its obligations under these *Retailer Distribution Service Rules* and perform its obligations in a timely manner.

- (2) The *Retailer* must adhere to all credit, deposit and security requirements specified in these *Retailer Distribution Service Rules*.
- (3) The *Retailer* is required to make every reasonable effort to ensure the *Customer* is aware of the provisions of these *Retailer Distribution Service Rules*.

4.2. Arrangements with the Customer

Unless otherwise stated in these *Retailer Distribution Service Rules*, the *Retailer* will be solely responsible for having appropriate contractual or other arrangements with the *Customer* necessary to provide service to the *Customer*. *AUI* is not responsible for monitoring, reviewing or enforcing such contracts or arrangements and is not liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the *Retailer's* failure to perform obligations to the *Customer*.

4.3. Responsibility for Gas Services

The *Retailer* will be solely responsible for the provision of *Gas Services*, including, without limitation, the purchase of *Gas* supply, delivery of such *Gas* to the *Point of Receipt* and arranging for *Gas Distribution Service* of such *Gas* to the *Point of Delivery* for the *Customer*, subject to these *Retailer Distribution Service Rules*.

4.4. Customer Authorization

The *Retailer* is responsible for obtaining the *Customer's* authorization to enrol the *Customer* for receipt of *Gas Distribution Service*. For the purpose of *Gas Services*, the *Retailer* is responsible for obtaining any consent required under the *Code of Conduct Regulation* and the *Personal Information Protection Act SA 2003 c. P-6.5*, as amended, or any similar or replacement legislation.

4.5. Retailer ID

Any information exchange or communications between the *Retailer* and *AUI* under these *Retailer Distribution Service Rules* must include the *Retailer ID*.

4.6. Single Retailer for Customers

AUI is not required to recognize and deal with more than one *Retailer* per *Customer* in respect of a *Point of Delivery* at any given time. Nothing in these *Retailer Distribution Service Rules* prohibits a *Customer* from entering into arrangements with multiple *Retailers* for a *Point of Delivery* provided a single *Retailer* is designated to be the *Customer's Retailer* for purposes of these *Retailer Distribution Service Rules*.

4.7. Fees and Other Charges

AUI will provide all standard services hereunder pursuant to *AUI's Gas Distribution Tariff*. All additional, supplementary or extra non-discretionary services provided by *AUI* to a *Retailer* or *Customer*, where applicable, will be charged a separate rate or fee, such as those included, without limitation, in *AUI's Special Charges Schedule*. Payment for these services will be in accordance with the provisions of these *Retailer Distribution Service Rules*.

ARTICLE 5 – Customer Inquiries and Customer Information

5.1. Customer Inquiries

For *Customers* requesting information about retailer choice, *AUI* will:

- (1) make available notification and informational materials to *Customers* about competition and consumer choices;
- (2) direct *Customers* to an external source where they may obtain information about consumer choice. *AUI* is under no obligation to ensure the accuracy of the information provided by the external source.

5.2. Customer Inquiries Related to Emergency, Outage, Safety and Environmental Situations

The *Retailer* must ensure *Customers* contacting the *Retailer* regarding distribution emergency conditions, outages, safety or environmental situations related to the *Gas Distribution System* are immediately transferred to *AUI* using the *AUI Emergency Phone Number*. If the *Retailer* is unable to transfer a call to *AUI*, the *Retailer* will provide the *AUI Emergency Phone Number* to the *Customer*.

For continued quality customer care and for safety purposes, *AUI* may test or audit the time required by the *Retailer* to respond to such situations and communicate to the *Retailer* results considered by *AUI* to require corrective action by the *Retailer*.

5.3. Standard Requests for Customer Usage Information Pursuant to Rule 010

Requests for *Customer Usage Information* pursuant to *Rule 010* will be processed accordingly, provided *AUI* has received a Retailer Representation and Warranty Agreement signed by the *Retailer* in a form acceptable to *AUI*.

5.4. Non-Standard Requests for Customer Usage Information

- (1) Requests for *Customer Usage Information* not intended to conform to *Rule 010* are considered non-standard.
- (2) Before *AUI* will process a non-standard *Customer Usage Information* request, *AUI* must receive a properly completed *Consent for Release of Customer Information* signed by the *Customer*. Thereafter, *AUI* will process the request in accordance with the *Code of Conduct Regulation*.
- (3) The *Customer Usage Information* referenced in Article 5 will be provided by *AUI* once per year, per *Site*, at no cost. *AUI* reserves the right to assess a charge at actual cost for requests for *Customer Usage Information* beyond the requirements of the *Code of Conduct Regulation* or additional requests within one year for the same *Customer* at the same *Site*.

5.5. Providing Customer Information to AUI

The *Retailer* must notify *AUI* as promptly as reasonably practical of any changes to *Customer Information*, as *AUI* relies on this information to reasonably perform its *Gas Distribution Service* obligations to *Customers*. Such information will be provided in a form compliant with the *NGSSC* and *AUI's Retailer Handbook*. *AUI* will not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the *Retailer's* failure to provide up-to-date and accurate *Customer Information* to *AUI*. *AUI*

reserves the right to assess a charge at actual cost for additional processing work undertaken by *AUI* as a result of inaccurate *Customer Information* provided by the *Retailer*.

ARTICLE 6 – Provision of Service

6.1. Request for Service

When the *Retailer* requests *Gas Distribution Service* from *AUI*, *AUI* must inform the *Retailer* of the conditions to be satisfied before a *Retailer Distribution Service Contract* can be accepted and service commenced. The *Retailer* must provide any information *AUI* reasonably requires to assess the request. *AUI* may reject the request if the *Retailer* wants non-standard conditions or if facilities are not available to provide safe and reliable service.

6.2. Qualification for Service

The *Retailer* must fulfill the following requirements to the satisfaction of *AUI* before *AUI* will provide *Gas Distribution Service* to the *Retailer*:

- (1) To initiate the provision of *Gas Distribution Service*, the *Retailer* must complete and provide a *Retailer Distribution Service Contract* to *AUI*. Where practicable, a single *Retailer Distribution Service Contract* between *AUI* and the *Retailer* will be used to serve all *Customers* under Rates 11, 12 and 14;
- (2) Satisfy the credit requirements of *AUI* as set forth in these *Retailer Distribution Service Rules* and the *Natural Gas Billing Regulation, A.R. 185/2003*, as amended from time to time;
- (3) For the *Retailers* providing *Gas Services* to *Consumers*, as defined in the *Energy Marketing Regulation, A.R. 246/2005*, furnish a certified copy of the license issued to it;
- (4) For all the *Retailers* providing *Gas Services* to *Customers* using 2,500 GJ or more of gas per year, warrant in writing to *AUI* it will comply with the provisions of the *Consumer Protection Act*, and any regulations or policies made thereunder;
- (5) Warrant in writing to *AUI*, the *Retailer* will comply with the guidelines established in the *Retailer Handbook*;
- (6) Meet the compliance testing protocol of *AUI* in respect of information exchange, as set forth in the *Retailer Handbook*;
- (7) Meet any other requirements *AUI*, acting reasonably, may impose to provide *Gas Distribution Service* hereunder. If *AUI* determines additional requirements must be satisfied to qualify for *Gas Distribution Service*, the following process will apply:
 - a) Where *AUI* is confronted with a situation it, in its sole discretion, considers would materially alter the risk to *AUI*, or where *AUI* must impose additional requirements to comply with applicable legislation, *AUI* may implement the additional requirement and then apply to the *Commission* for approval of same; or,
 - b) Where *AUI* is not confronted with the circumstances outlined in (a) above, *AUI* will apply to the *Commission* for approval of the proposed additional requirement prior to implementing same.

6.3. Provision of Gas Distribution Service

Upon satisfaction of the requirements in Article 6.2, *AUI* will provide *Gas Distribution Service* to the *Retailer*, on behalf of the *Customer*, subject to these *Retailer Distribution Service Rules* and the *Natural Gas Utility Service Rules*. Subject to complying with all applicable laws, and the directions or requirements of any of those mentioned above, *AUI* reserves the right, upon giving the *Retailer* three (3) *Business Days*' notice, acting reasonably, to discontinue *Gas Distribution Service* to the *Retailer*, if at any time the *Retailer* no longer fulfills the above requirements.

6.4. Application for Enrolment

- (1) To initiate the provision of *Gas Distribution Service* by *AUI*, the *Retailer* will complete and provide to *AUI* an enrolment for *Gas Distribution Service* in the form and manner set out in the *NGSSC*. The *Retailer* will provide updated *Customer Information* with each enrolment.
- (2) Subject to the *Retailer* meeting the provisions of these *Retailer Distribution Service Rules*, *AUI* will accept an enrolment by the *Retailer* for provision of *Gas Distribution Service*. *AUI* reserves the right to verify the identity of the *Customer* and the accuracy of the *Customer Information*.
- (3) Upon receipt of a valid enrolment from the *Retailer* in the form and manner set out in the *NGSSC*, *AUI* will recognize the *Retailer* as the *Retailer of Record* for that particular *Site*.
- (4) Enrolments will be processed for *Retailers* by *AUI* on a first-come, first-served basis. Each enrolment will be time and date-stamped when received by *AUI*.
- (5) Enrolments will be processed by *AUI* in accordance with *Rule 028*.
- (6) *AUI* will normally estimate the meter reading for each *Customer* enrolled. If the *Retailer* requests a special off-cycle meter reading, *AUI* will make one attempt to read the meter and will assess a Special Meter Reading charge to the *Retailer*, as set forth in the *Special Charges Schedule*. If *AUI* cannot access the meter for a reading, *AUI* will estimate the meter reading and the *Customer* will be charged a *No Access Fee*.
- (7) If more than one *Retailer* enrolment is received for a *Site* while an earlier *Retailer* enrolment is pending, only the first valid *Retailer* enrolment received by *AUI* will be processed in that period.
- (8) If a *Retailer* finds it has enrolled a *Site* in error, the *Retailer* must notify *AUI* as soon as reasonably possible of the error in the manner indicated in *Rule 028*.
- (9) If *AUI* determines the *Customer* who is enrolled with the *Retailer* is indebted to *AUI*, *AUI* reserves the right to disconnect *Gas Distribution Service* to the *Customer*, as set forth in Article 10 of these *Retailer Distribution Service Rules*.
- (10) The *Retailer* will not be liable to *AUI* for any outstanding indebtedness of the *Customer* to *AUI* accruing prior to the *Retailer* receiving *Gas Distribution Service*.

ARTICLE 7 – Financial Matters

7.1. Retailer Pays Tariffs

- (1) The *Retailer* will pay *AUI* for those tariffs and charges set forth in the *Retailer Distribution Service Contract* as payable by the *Retailer*.
- (2) The *Retailer* will not be relieved by Force Majeure from the obligation to pay the charges set forth pursuant to this Article unless Force Majeure has been invoked by *AUI*.

7.2. Billing

AUI will bill the *Retailer* for *Gas Distribution Service* provided in accordance with the *AUC Rule 004* billing procedures set out as follows:

- (1) For the purpose of determining the variable amount to be billed by *AUI* and paid by the *Retailer* for the transportation of *Gas* under the *Retailer Distribution Service Contract*, the unit to be used will be gigajoules.
- (2) *AUI* will invoice the *Retailer* each billing cycle for *Gas Distribution Service* provided by *AUI* for the period prior to the billing cycle. *AUI* reserves the right to perform off-cycle billings.
- (3) *AUI* may include, in any statement, any adjustments to billings for prior Months. Neither *AUI*, nor the *Customer*, nor the *Retailer* will be entitled to interest on any adjustment.
- (4) *AUI* reserves the right to bill the *Customer* directly for any amounts required to be provided by the *Customer* for *Specific Facilities*.
- (5) The *Retailer* is required to provide the *Customer* with notification of an *AUI Gas Distribution Tariff* rate change in the billing envelope or through electronic billing at the time of the first charge to the *Customer* at the new rate. Notwithstanding the foregoing, *AUI* reserves the right to directly provide the *Customer* with information about its *Gas Distribution Tariff*. *AUI* also reserves the right to contact the *Customer* directly for comments and receive feedback about *AUI's Gas Distribution Service* and *Gas Distribution Tariff*.
- (6) *AUI* reserves the right to correct for errors in a previous statement.
- (7) The *Retailer* will process the *Customer* payments and handle collection responsibilities. *AUI* will not assume any billing or collection obligations or responsibilities for, or on behalf of, the *Retailer*, unless agreed to by written contract between *AUI* and the *Retailer*. *AUI* may, at its sole discretion and in addition to any other remedies available to it, restrict enrolment or terminate *Gas Distribution Service* provided to the *Retailer* if the *Retailer* does not pay all outstanding amounts owed to *AUI*.

7.3. Payment

- (1) The *Retailer* will pay to *AUI*, on or before the 21st *Calendar Day* following the *date* on which the *Retailer* was invoiced.
- (2) *AUI* will invoice, and the *Retailer* will pay, the monthly net *Imbalance Sale* amount, if any, on or before the due date as shown on the invoice.

- (3) *AUI* will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding, *AUI* will accept payment by cash, cheque or electronic funds transfer drawn in *AUI*'s favour if agreed to by *AUI*.
- (4) An Electronic Payment Transfer Agreement, is included in the *Retailer Handbook*, and sets forth the terms and conditions for making payments and providing remittance information electronically.
- (5) The *Retailer* will pay all amounts owed to *AUI* for any of the *Gas Distribution Services* provided by *AUI* regardless of whether the *Customer* has paid the *Retailer*.
- (6) Failure to receive a bill does not release the *Retailer* from the obligation to pay the amount owing for any of the *Gas Distribution Services* provided by *AUI*.

7.4. Unpaid Bills

- (1) If the *Retailer* defaults or is late in paying charges, subject to 7.4.3(d) below, *AUI* will provide the *Retailer* notice as required in 7.4.3(a) below. *AUI* will be entitled to draw on the credit facility of the *Retailer* if the *Retailer*'s arrears are not paid within three (3) *Business Days* after the date of the notice. The *Retailer* must provide an additional deposit to replace the funds drawn down because of the default or late payment.
- (2) *AUI* will assess the *Retailer* a late payment charge for any overdue amount, including previous late payment charges. The late payment percentage is set out in the *Special Charges Schedule*. Any payments will first be applied to unpaid balances.
- (3) If the *Retailer* defaults in its payments:
 - a) *AUI* must provide the *Retailer* with a notice in writing stating the *Retailer* is in default in its payments to *AUI* under these *Retailer Distribution Service Rules* and advising the *Retailer* *AUI* may make a claim against the *Retailer*'s security if the arrears are not paid within three (3) *Business Days* after the date of the notice;
 - b) If, after the expiry of the period set out in (3)(a) above, the *Retailer*'s arrears remain unpaid, *AUI* may make a claim against the *Retailer*'s security to cover the arrears;
 - c) If the *Retailer* has provided security in the form of a financial deposit, *AUI* may deduct from that deposit the amount of the unpaid arrears; and
 - d) If, in the opinion of *AUI*, the giving of notice in accordance with (3)(a) above would impair *AUI*'s ability to make a claim against the *Retailer*'s security or to deduct the unpaid arrears from the *Retailer*'s financial deposit, *AUI* may make the claim or deduct the unpaid arrears without notice.
- (4) *AUI* may, at its sole discretion and in addition to any other remedies available to it, restrict enrolment or terminate *Gas Distribution Service* to the *Retailer*, if such *Retailer* does not pay all outstanding bills in accordance with these *Retailer Distribution Service Rules*.

7.5. Unauthorized Use

Where *AUI* determines there has been unauthorized use of *Gas Distribution Service* or the *Gas Distribution System*, including, but not limited to, meter or equipment tampering, unauthorized connection or reconnection, theft or fraud, whereby *AUI* is denied full compensation for *Gas Distribution Services* provided, *AUI* will bill the *Retailer* for *AUI*'s estimated *Gas Distribution Service*

charges for such unauthorized use. *AUI* reserves the right to bill the *Retailer* for repairs of damage or reconstruction of *AUI's Gas Distribution System*. Nothing in this Article will limit any other rights or remedies *AUI* may have in connection with such unauthorized use.

7.6. Disputes

- (1) In the event the *Retailer* disputes any amount owing, the *Retailer* will nevertheless pay to *AUI* the full disputed amount when payment is due and subject the dispute for resolution in accordance with these *Retailer Distribution Service Rules*. Following resolution of any such dispute pursuant to Article 18 – Dispute Resolution, *AUI* will return any amount found owing to the *Retailer*.
- (2) The right or ability of the *Retailer* to dispute a charge for service provided under the *Retailer Distribution Service Contract* or these *Retailer Distribution Service Rules* will only apply to requests in writing and are limited to charges rendered up to two (2) years prior to the date of written notice of the dispute. *AUI* reserves the right to assess a charge to the *Retailer* for administration of a billing dispute raised by the *Retailer* in circumstances where *AUI* is not responsible for any error.

7.7. Failure to Pay

In the event the *Retailer* fails to pay the full amount of any statement within sixty (60) *Days* after payment is due, *AUI*, in addition to any other remedy it may have, may suspend *Gas Distribution Service* provided to the *Retailer* (upon 48 hours written notice) until full payment is made and such suspension will not terminate or otherwise affect the *Retailer's* obligations to *AUI*.

ARTICLE 8 – Gas Distribution Service Interruption

8.1. Continuous Supply

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

8.2. Interruption

Without liability of any kind to *AUI*, *AUI* will have the right to disconnect or otherwise curtail, interrupt or reduce service to the *Retailer* (and the *Retailer's Customers*):

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

8.3. Reasonable Efforts

AUI will use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the *Customer* with prior

notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume *Gas Distribution Service* as promptly as reasonably practicable.

ARTICLE 9 – Discontinuance of Gas Distribution Service

This Article, as amended from time to time, specifies the processes for the transactions between *AUI* and the *Retailer* in relation to de-enrolment of a *Site*, including, without limitation, the circumstances when the *Retailer* chooses to discontinue *Gas Distribution Service* for the *Customer*, as set forth in Article 9.1 of these *Retailer Distribution Service Rules* or when *AUI* discontinues *Gas Distribution Service* to the *Retailer*, as set forth in Article 9.2.

9.1. Discontinuance by the Retailer

- (1) To discontinue *Gas Distribution Service*, the *Retailer* must provide to *AUI* an electronic notice of de-enrolment in accordance with *Rule 028*. Upon receipt of a valid notice of de-enrolment, *AUI* will process the de-enrolment pursuant to *Rule 028*.
- (2) In accordance with Article 12 of these *Retailer Distribution Service Rules*, *AUI* will obtain meter reads on a monthly basis. If *AUI* does not obtain an actual read at the time of the de-enrolment, *AUI* will estimate a meter read. At the request of the *Retailer*, *AUI* will obtain an actual off-cycle meter read and assess a charge to the *Retailer* as set forth in the *Special Charges Schedule*.
- (3) *AUI* will accept or reject the *Retailer's* de-enrolment in accordance with *Rule 028*.
- (4) Notwithstanding the *Retailer's* responsibilities to provide updated *Customer Information* pursuant to Article 5 – *Customer Inquiries* and *Customer Information*, **the Retailer must update Customer Information upon notice of de-enrolment** as per AUC Rule 028.
- (5) The *Retailer* will provide *AUI* with updated *Customer Information* pursuant to Article 5.
- (6) The *Retailer* is responsible to ensure the *Customer* is provided notice of the de-enrolment and the consequences of such de-enrolment, including the fact *AUI* will not be held liable for any disputes as between the *Customer* and the *Retailer*.
- (7) Upon receipt of a successful de-enrolment from a *Retailer* in the form and manner set out in the *NGSSC*, and if the *Site* is not subsequently enrolled by a replacement *Retailer* within the period set out in the *NGSSC*, the *Site* will be enrolled for default supply *Gas Service*.
- (8) The *Retailer* will remain responsible for *Gas Services* to the *Site* until a replacement *Retailer* is enrolled for the *Site*, a de-enrolment from the current *Retailer* processed, default supply *Gas Service* is in place for the *Site*, or the *Site* is permanently disconnected, whichever is earlier.
- (9) The *Retailer* may revoke a notification to de-enrol a *Site* as set out in the *NGSSC*.

9.2. Discontinuance by Apex Utilities Inc.

- (1) *AUI* may discontinue or restrict *Gas Distribution Service* to the *Retailer* if any of the following occur:
 - a) The *Retailer* fails to meet its obligations under these *Retailer Distribution Service Rules* or the *Retailer Distribution Service Contract* with *AUI*;

- b) The *Retailer* fails to meet its prudential requirements pursuant to Article 11; or
 - c) The *Retailer's* license is revoked by Alberta Government Services or another responsible authority.
- (2) Notification of discontinuance will be made electronically to the *Retailer*. *AUI* will provide the *Retailer* three (3) *Business Days'* notice before *AUI* discontinues *Gas Distribution Service* to the *Retailer*. Upon discontinuance of *Gas Distribution Service* to the *Retailer* pursuant to this Article, *AUI* will assume provision of the affected service it is reasonably capable of providing.

ARTICLE 10 – Service Disconnects and Reconnect

This Article, as amended from time to time, specifies the processes for the transactions between *AUI* and the *Retailer* in relation to the physical disconnect of a *Site*.

10.1. Disconnection of Service

- (1) Disconnection by *AUI*
- a) *AUI* reserves the right to temporarily or permanently disconnect the *Customer* from the *Gas Distribution System* in a number of circumstances, including, but not limited to, non-payment of *AUI* bills or any past due charges, evidence of safety violations, energy theft or fraud by the *Customer*, threats or harassment made against employees or agents of *AUI*, failure to provide access to the service *Site* for meter readings or other necessary work or any other failure by the *Customer* to meet its obligations under the *Natural Gas Utility Service Rules* or *Retailer Distribution Service Rules*.
 - b) If the disconnect is a result of a safety violation, *AUI* will reconnect the service only after the safety problem is resolved and the *Customer* has provided or paid *AUI's* costs of providing such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance. *AUI* may assess a Reconnection Fee as set forth in the *Special Charges Schedule*.
- (2) Disconnection at Request of the *Retailer*
- a) In accordance with the *R3 Regulation*, the *Retailer* will have the right to request *AUI* disconnect *Gas Distribution Service* to a *Site* where the *Retailer* is the *Retailer of Record*. *AUI* will process such requests in accordance with *Rule 028*.
 - b) The *Retailer* will remain responsible for all *Gas Services* to the *Site* until *AUI* has completed the disconnection.
 - c) *AUI* reserves the right to assess charges to the *Retailer* to disconnect *Gas Distribution Service* or attempt to disconnect service to the *Customer* at actual cost, including, but not limited to, direct labour, materials, services and equipment, plus applicable overheads.
 - d) *AUI* will notify the *Retailer* if a disconnect request was not successfully completed and include the reason why it was not successfully completed. If the *Retailer* still requires the *Customer* to be disconnected, the *Retailer* must re-issue a disconnect request.

- e) *AUI* will not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind, whatsoever or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article.
- (3) Disconnects Affecting Lines and Equipment
- a) If the purpose of a disconnection can be reasonably expected to affect the *Gas Distribution System*, the *Customer* is expected to notify *AUI* of the *Customer's* plans prior to the disconnection. The *Retailer* will provide the *Customer* with the *AUI General Inquiry Phone Number*. Such purposes include, but are not limited to, relocation of *lines and equipment*, *service site* renovations, *service site* demolition and permanent stoppage in the use of *Gas*.

10.2. Reconnect Service

Before reconnecting or restoring service to a *Site*:

- a) For a disconnection initiated by a *Retailer*, the *Retailer* must provide *AUI* with written authorization to reconnect a service.
- b) The *Retailer* or *Customer* must comply with *AUI's Natural Gas Utility Service Rules* and these *Retailer Distribution Service Rules*.
- c) *AUI* reserves the right to assess, in accordance with these *Retailer Distribution Service Rules* and the *Natural Gas Utility Service Rules*, a Reconnection Fee and any other applicable charges set forth in the *Special Charges Schedule*.

ARTICLE 11 – Prudential Requirements

In circumstances where the *Retailer* has multiple *Retailer Identification* numbers, the review, setting and maintaining of prudential requirements will be based on the *Retailer* Business Function Identification code as defined in AUC Rule 028.

11.1. Setting of Prudential Requirements

The *Retailer* must fulfill the requirements set forth in this Article to the satisfaction of *AUI* before *AUI* will provide *Gas Distribution Service* to the *Retailer*.

- (1) Subject to review and reassessment of the prudential requirements of the *Retailer* by *AUI*, from time to time, the *Retailer* is required to meet and maintain such financial and other prudential requirements as set out in the *Natural Gas Billing Regulation, A.R. 185/2003*, to ensure the *Retailer* is, and remains, of sufficient financial standing to meet its ongoing financial obligations.
- (2) *AUI* will confirm the credit rating of the *Retailer*, affiliate or person guaranteeing the financial obligation of the *Retailer*. The credit rating will mean the bond rating according to Standard and Poor's Bond Rating Service or an equivalent bond rating from Dominion Bond Rating Service or Moody's Investors Service.

The minimum credit rating qualifying a *Retailer* for a reduction in security or allowing a person to provide an irrevocable guarantee of the *Retailer's* financial obligation is BBB-, as

set out in section 6(3) of the *Natural Gas Billing Regulation A.R. 185/2003*, as amended from time to time.

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

- (3) Subject to review and reassessment, *AUI* will determine the amount of the security reduction available for each *Retailer*, and the maximum amount of any guarantee required from the person guaranteeing the financial obligations of the *Retailer*, subject to sections 5, 6 and 7 of the *Natural Gas Billing Regulation, A.R. 185/2003*, as amended from time to time. *AUI* will notify the *Retailer* of its security requirement within 20 (twenty) *Business Days* from the receipt of the *Retailer's* complete application for service.
- (4) For purposes of calculating the amount of the *Retailer's* security deposit pursuant to section 5(2) of the *Natural Gas Billing Regulation, A.R. 185/2003*, the *Retailer* must project its payments under *AUI's Rate Schedule* over a period equal to the lesser of (A) 75 days, or (B) the total of (i) 20 days, plus (ii) the number of days between consecutive bills issued by *AUI* to the *Retailer*, plus (iii) the number of days from the issuance of a bill by *AUI* until payment is due from the *Retailer*.
- (5) For the purposes of calculating the amount of the *Retailer's* security deposit required, the *Retailer* will add an additional 20 days of projected payments (the *Load Balancing Security*) under *AUI's Rate Schedule* to the amount of security deposit required under the *Natural Gas Billing Regulation A.R. 185/2003*, as amended from time to time as identified in part (4) above, which will serve as separate security in respect of any *Imbalance Sales* *AUI* may be required to charge the *Retailer* in order to balance *Retailer's Account*.
- (6) Subject to section 6 of the *Natural Gas Billing Regulation, A.R., 185/2003*, as amended from time to time, the *Retailer* will provide security in the manner set out in the *Retailer Handbook*, in the form of a financial deposit, a bond, an irrevocable letter of credit from a financial institution acceptable to *AUI*, or an irrevocable guarantee. An irrevocable guarantee may only be provided from a person(s) acceptable to *AUI*, other than the *Retailer*, with a qualifying credit rating.

11.2. Maintaining Prudential Requirements

- (1) If the *Retailer's* actual outstanding charges under *AUI's Rate Schedule* are materially greater than the value projected by the *Retailer* under Article 11.1 of these *Retailer Distribution Service Rules*, *AUI* will update the projection and, if additional security is required based on the updated projection, require the *Retailer* to provide additional security within five (5) *Business Days* of *AUI's* request.
- (2) *AUI* requires *Retailers* to report any downgrading of their corporate bond rating to *AUI* within two (2) *Business Days* of said rating revisions, and must provide any additional security required as a result of the downgrading within five (5) *Business Days* of the downgrading.
- (3) A *Retailer* may also advise *AUI* of any upgrading of its credit rating. If the amount of security required from the *Retailer* is reduced as a result of the upgraded credit rating, *AUI* will return any financial deposit no longer required within 20 business days of being advised by the *Retailer* of the upgraded credit rating.
- (4) Subject to Article 7 of these *Retailer Distribution Service Rules*, if the *Retailer* fails to pay any amount billed *AUI* will apply all or any portion of the *Retailer's* security deposit to the

unpaid amount. The *Retailer* will then be required to replenish the security deposit within five (5) *Business Days*.

- (5) Subject to Articles 7 and 11 of these *Retailer Distribution Service Rules*, if the *Retailer* fails to pay any amount billed or fails to present additional security as outlined herein, *AUI* reserves the right to suspend the provision of additional *Gas Distribution Service* to the *Retailer* or discontinue *Gas Distribution Service* entirely to the *Retailer*. *AUI* will provide the *Retailer* notice of discontinuance three (3) *Business Days* before *AUI* discontinues *Gas Distribution Service* to the *Retailer*.

Upon discontinuance of *Gas Distribution Service* to the *Retailer* pursuant to this Article, *AUI* will assume the provision of the affected service *AUI* is reasonably capable of providing.

- (6) A *Retailer* required to provide security in accordance with the *Natural Gas Billing Regulation, A.R. 185/2003* and these *Retailer Distribution Service Rules* must maintain that amount of security until all obligations of the *Retailer* under *AUI's Gas Distribution Tariff* are satisfied. A *Retailer* providing security, other than by means of a financial deposit held by *AUI*, must either ensure its security has no expiry date and cannot be terminated or must, at all times, ensure its security is automatically extended from year to year for successive periods of a minimum of one year from any expiration date thereof, unless *AUI* is notified in writing by prepaid registered mail not less than thirty (30) *Days* prior to any expiration date, the security will not be renewed for any such additional period (*Notice of Non-Renewal*).
- (7) Upon receipt of a *Notice of Non-Renewal*, *AUI* will provide notice of same in writing to the *Retailer* advising the *Retailer's* failure to provide *AUI* with alternate security meeting the requirements set out in the *Natural Gas Billing Regulation, A.R. 185/2003* within three (3) *Business Days* after the date of the notice will constitute a breach of the *Retailer's* obligation to maintain its security in accordance with section 8 of the *Natural Gas Billing Regulation, A.R. 185/2003* and an event of default under Article 14 of these *Retailer Distribution Service Rules*. If, after three (3) *Business Days*, *AUI* is not in receipt of such alternate security, the full amount of the *Retailer's* security determined in accordance with Article 11 of these *Retailer Distribution Service Rules* will become due and payable to *AUI* and *AUI* will be entitled to make demand or claim against the *Retailer's* security in accordance with Article 14.3.
- (8) In the event of a default by the *Retailer*, *AUI* is entitled to recover, as part of the *Gas Distribution Tariff*, any costs not covered by a claim against the *Retailer's* security under section 9 of the *Natural Gas Billing Regulation A.R. 185/2003*, as amended from time to time.

11.3. Confidentiality

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

Notwithstanding the preceding paragraph, pursuant to section 10(3) of the *Code of Conduct Regulation*, a receiving party may disclose confidential information to any governmental, judicial or regulatory authority requiring such confidential information in the reasonable exercise of its duties.

11.4. Costs

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

11.5. Interest on Security Deposits

Interest on each *Retailer's* cash security deposit held by *AUI* will be calculated at the rate specified, from time to time, in the *Residential Tenancies Act, S.A. 2004, c.R-17.1*. Interest will be credited to the *Retailer* annually.

ARTICLE 12 – Measurement

12.1. Provision and Ownership

The meters used by *AUI* to assess the level of *Gas Distribution Service* charges to the *Retailer* will be the same meters used to provide the *Customer Billing Information* to the *Retailer*. *AUI* will provide and install all meters for each *Point of Delivery* and each meter will remain the property of *AUI*.

12.2. Meter Reading

- (1) Billing will be based on actual or estimated usage. *AUI* reserves the right to assess a Special Meter Reading charge for non-routine reads, as set out in the *Special Charges Schedule*.
- (2) *AUI* will read the meter monthly or as often as reasonable necessary.
- (3) *AUI* will keep an accurate record of all meter readings for the purpose of billing the *Gas Distribution Services* provided.
- (4) *AUI* may elect to change the meter reading schedule for a site, providing advance notice to the *Retailer* as defined by *Rule 004*.
- (5) *AUI* is not required to accept *Customer* meter readings. Where *Customer* meter readings are provided, *AUI* reserves the right to decline the use of the *Customer* meter reading based on specific criteria.

12.3. Changes to Metering Equipment

Notwithstanding Article 3.7, should a *Retailer* request, or consent to, a *Customer* request for new metering equipment beyond the basic service, *AUI* will provide, install, test and maintain the required metering equipment. The metering equipment must be requested or consented to in writing by the *Customer* and meet *AUI's* requirements. The *Customer* will bear the cost of providing and installing the metering equipment and ongoing operating costs as set forth in the *Special Charges Schedule*.

12.4. Statutory Standards Apply

All measurements, calculations and procedures used in determining the quantities of *Gas* delivered at the *Point of Receipt* or at the *Point of Delivery* must be in accordance with the *Electricity and Gas Inspection Act R.S. 1985 c.E-4*, as amended, and all applicable regulations issued pursuant thereto.

12.5. Measuring Equipment

All measuring equipment, devices and materials required to measure the *Gas* at the *Point of Receipt* or at the *Point of Delivery* must be installed, maintained and operated by *AUI*, its agents or third parties acceptable to *AUI* and must be of standard manufacture and type approved by Industry Canada. The *Customer* may install and operate check measuring equipment provided it does not interfere with the operation of *AUI*'s equipment or system.

12.6. Testing Measuring Equipment

The accuracy of the measuring equipment must be verified by standard tests and methods acceptable to *AUI* or upon the reasonable request of the *Retailer* or the *Customer*. Tests of such measuring equipment will be made at *AUI*'s expense, however the *Retailer* or the *Customer* will bear the expense of tests made at their request if the inaccuracy is found to be within the limits of error allowed in the *Electricity and Gas Inspection Act, R.S.C., 1985, c.E-4*.

12.7. Facilities Interference

In the event the *Customer*'s or the *Retailer*'s facilities interfere with *AUI*'s ability to provide accurate measurement at the *Point of Receipt* or the *Point of Delivery*, *AUI* may, immediately and without prior notice, cease to receive further deliveries of *Gas* at the *Point of Receipt* pending the remedying by the *Customer* or the *Retailer* of the cause of such interference to the satisfaction of *AUI*.

12.8. Use of TCPL Measurements

Notwithstanding anything contained elsewhere in the *Retailer Distribution Service Contract*, *AUI* and the *Retailer* agree, at a *Point of Delivery* or at a *Point of Receipt*, being a *TCPL/AUI* system interconnection, where *TCPL*'s measuring equipment (rather than *AUI* measuring equipment) is used or relied upon by *AUI* for measuring *Gas* delivered under the *Retailer Distribution Service Contract*, *TCPL*'s measurement and testing of *Gas* procedures will apply.

12.9. Forecast Quantities

The *Retailer* agrees to provide to *AUI*, for planning purposes, such forecasts of future quantities to be delivered under the *Retailer Distribution Service Contract* or the *Demand General Service Contract*, as *AUI* may request from time to time.

ARTICLE 13 – Account Balancing

13.1. Retailer's Account

- (1) The *Retailer's Account* will be accumulated and recorded by *AUI* each *Day* and, without limitation, will include such items as *Gas* supply *Nominations*, *Retailer Load*, *Imbalance* quantity, opening *Imbalance* quantity, in-kind settlement quantity, *Retailer's* share of *Unaccounted-For Gas* and/or other adjustment quantities deemed appropriate as determined by *AUI* from time to time.
- (2) Each *Day* *AUI* will *Forecast* and *Backcast Retailer's Load* according to the practices specified in Rule 028 and *AUI's Retailer Handbook*.
- (3) The *Retailer* will provide in kind, *Unaccounted-For Gas* each *Day* at the rate specified in *Rider H*.

- (4) *AUI* will make the *Account* available to the *Retailer* in the manner described in *AUI's Retailer Handbook*.

13.2. Exchange of Gas

The *Retailer* warrants it will make its *Gas* supply available in an account on *TCPL* and *AUI* will make *Gas* available in the *Retailer's Account* by means of an exchange with said account on *TCPL* and *AUI's Account on the Transmission System*, subject to the procedures described in the *Retailer Handbook*.

13.3. Daily Retailer's Account Imbalance

- (1) For each *Gas Day*, the *Imbalance Window* applicable to each *Retailer's Account Imbalance* will be determined as specified on Schedule A.
- (2) The *Retailer* will, at all times, endeavor to maintain its daily *Account Imbalance* energy within the daily *Imbalance Window*.
- (3) For each *Gas Day*, in the event the value of the *Retailer's Account* daily *Imbalance* energy is greater than/less than the value of the quantity specified by the positive/negative *Imbalance Window*, the difference will be settled by *Imbalance Purchase/Sale* at the price specified on Schedule A.
- (4) The net quantity and dollars resulting from the *Imbalance Purchase* and *Imbalance Sales* transactions in Article 13.3(3), if any, will be invoiced to *Retailer* once per *Month*.

13.4. Retailer's Account Monitoring Rules

AUI will perform monitoring of the *Retailer's Account* according to the following:

- (1) Step 1
- a) If there is no evidence of a *Nomination* in the *Retailer's Account* by 8:00 a.m. MST of the closing *Gas Day* (*Gas Day 1*), which has not been pre-authorized by *AUI*, *AUI* will attempt to contact the *Retailer* for an explanation. If the *Retailer* indicates in writing (by e-mail) it intends to balance the *Account* within the *Account Balancing* timeline specified in the *Retailer Handbook*, then *AUI* will take no further action at Step 1. For this purpose, "balance the *Account*" means the *Retailer* provided sufficient *Gas* supply for *Gas Day 1*, whereby the resulting *Account Imbalance* on *Gas Day 1* was within the *Imbalance Window* and no *Imbalance Purchase/Sale* was triggered.
- b) If at (1)(a) above:
- i) *AUI*, with reasonable effort by telephone and e-mail, is unable to contact the *Retailer* by 10:00AM MST; or
- ii) the *Retailer* has indicated an inability to make *Nominations* to its *Account* for *Gas Day 1*;

then the *Retailer's Account* will be closed for the remainder of *Gas Day 1* and the rules related to *Imbalance Purchases/Sales* as stipulated in the *Retailer Distribution Service Rules* will be in effect for the *Retailer's Account* on *Gas Day 1*.

(2) Step 2

- a) If there is no evidence of a *Nomination* in the *Account* by 8:00 a.m. MST of the *Gas Day* following *Gas Day 1* (*Gas Day 2*), not pre-authorized by *AUI*, *AUI* will attempt to contact the *Retailer* for an explanation. This rule will also apply to those *Retailers* who made a commitment to balance their *Account* in Step 1, but did not fulfill that commitment, even if a nomination was made for *Gas Day 1*.
- b) If at (2)(a) above
 - i) *AUI*, with reasonable effort by telephone and e-mail, is unable to contact the *Retailer* by 10:00AM ; or
 - ii) the *Retailer* has indicated an inability to make the *Nominations* to its *Account* for *Gas Day 2*;

then the *Retailer's Account* will be closed for the remainder of *Gas Day 2* and the rules related to *Imbalance Purchases/Sales* as stipulated in these *Retailer Distribution Service Rules* will be in effect for the *Retailer's Account* on *Gas Day 2*.

AUI will also provide electronic notice to the *Retailer* indicating the *Retailer* must take action to provide gas supply to its *Account* sufficient to alleviate *AUI's* concerns by 10:00 a.m. MST of the next *Gas Day* (*Gas Day 3*), and *AUI* intends to permanently close the *Retailer's Account* during *Gas Day 3*.

(3) Step 3

If there is no evidence of a *Nomination* in the *Retailer's Account* by 8:00 a.m. MST of the current *Gas Day* (*Gas Day 3*), not pre-authorized by *AUI*, *AUI* will attempt to contact the *Retailer* for an explanation. This rule will also apply to those *Retailers* who made a commitment to balance their *Account* in Step 1, but did not fulfill that commitment, even if a nomination was made for *Gas Day 1*. If there is no evidence of a *Nomination* in the *Retailer's Account* by 10:00 a.m. MST, *AUI* will provide electronic notice to the *Retailer* indicating the *Retailer's Account* is permanently closed. *AUI* will commence de-enrolment of *Sites* associated with the *Retailer's Account* during *Gas Day 3* to first take effect on *Gas Day 4*.

The rules related to *Imbalance Purchases/Sales* as stipulated in these *Retailer Distribution Service Rules* will be in effect for the *Retailer's Account*.

(4) Step 4

AUI will continue to assess *Imbalance Purchases/Sales* for the *Retailer* who has defaulted until all the *Retailer's Sites* have been de-enrolled and successfully re-enrolled with the default supply provider. When all of the defaulting *Retailer's Sites* have been successfully enrolled with the default supply provider, the termination of *Gas Distribution Service* will be complete. *AUI* will continue to apply the rules related to *Imbalance Purchases/Sales* to the *Retailer's Account* as a result of adjustments related to settlement or other matters which occur after the *Retailer's Account* has been permanently closed.

(5) Step 5

In the event of non-payment on the part of the *Retailer*, and without limiting *AUI*'s rights or remedies at law or in equity, *AUI* will have the right to recover any charges to a *Retailer* by claiming against the *Retailer*'s or *Agent*'s performance bond (as stipulated in Article 11) and existing to secure due performance by the *Retailer* or *Agent* of its obligation under the *Retailer Distribution Service Contract*.

- (6) In the event *AUI* is notified by the *Retailer* in writing or by e-mail, or in the event *AUI* becomes aware the *Retailer* has declared itself or has been declared to be insolvent prior to the full three (3) days of *Account* monitoring described in this Article, *AUI* will have the right to discontinue *Gas Distribution Service* with one (1) *Business Days*' notice.

13.5. Termination of Retailer Service

- (1) These *Retailer Distribution Service Rules* will continue in force until all the *Retailer*'s *Sites* have been de-enrolled and *Final Settlement* for the *Retailer*'s *Account* has been completed, whereupon *AUI* will terminate the *Retailer*'s *Account*. *AUI* will continue to transact in the *Same Day Market* based on the *F3 Forecast* for the *Retailer* who has defaulted until all the *Retailer*'s *Sites* have been de-enrolled and successfully re-enrolled with the default supply provider. The transaction will be recorded in *AUI*'s *Account on the Transmission System*, not the *Retailer*'s *Account* and the rules related to *Imbalance Purchase/Sale* as stipulated in these *Retailer Distribution Service Rules* will be in effect.
- (2) Notwithstanding the provisions of Article 13.5(1) above, upon mutual agreement, the *Retailer* and *AUI* may enter into an arrangement to settle the outstanding energy amounts in the *Retailer*'s terminating *Account*, including without limitation, the closing *Account Imbalance* and adjustments to the *Account* from *Gas Settlement*, in a manner different than is normally required under the provisions of these *Retailer Distribution Service Rules* and/or the *Retailer Handbook*.

13.6. Request for Additional Information

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

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

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

13.7. Liability

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

ARTICLE 14 – Termination on Default

14.1. Events of Default

An event of default under these *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* will occur if either *AUI* or the *Retailer* (for purposes of this provision, the *Defaulting Party*):

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

14.2. Rights Upon Default

In an event of default, the *Non-Defaulting Party* will, subject to these *Retailer Distribution Service Rules* and any applicable regulatory requirements, be entitled to pursue any and all available legal and equitable remedies and terminate the *Retailer Distribution Service Contract*. Where the *Defaulting Party* is *AUI* or the *Retailer* and the *Non-Defaulting Party* elects to terminate, the *Retailer Distribution Service Contract* is terminated without any liability or responsibility whatsoever, except for obligations arising prior to the date of termination. The *Non-Defaulting Party* will provide written notice to the *Defaulting Party* advising as to the nature of any default and of its intention to terminate service under the *Retailer Distribution Service Contract* and these *Retailer Distribution Service Rules*.

14.3. Recourse to Security Upon the Retailer Default

In addition to any other rights and remedies set out in these *Retailer Distribution Service Rules*, in an event of default by the *Retailer*, other than a default in payment addressed under section 9 of *Natural Gas Billing Regulation, A.R. 185/2003*, the full amount of the *Retailer's* security determined in accordance with Article 11 of these *Retailer Distribution Service Rules* will become due and payable to *AUI* and *AUI* will be entitled to make demand or claim against the *Retailer's* security for the full amount secured. All funds received by *AUI* in respect of such claim will be retained by *AUI* and applied against the *Retailer's* obligations until such time as all of the *Retailer's* obligations have been determined and satisfied. Any balance remaining after satisfaction of the *Retailer's* obligations will be returned to the issuing party of the security for the benefit of the *Retailer*.

14.4. Termination on Default

If any one or more of the parties to the *Retailer Distribution Service Contract* fails to perform any of the covenants or obligations imposed upon it under and by virtue of the *Retailer Distribution Service Contract* (the *Defaulting Party*), then in any such event, the other party to the *Retailer Distribution*

Service Contract (the Non-Defaulting Party) may, at its option, terminate the Retailer Distribution Service Contract insofar, and only insofar, as the Retailer Distribution Service Contract pertains to the Defaulting Party. To terminate the Retailer Distribution Service Contract pursuant to this provision, the Non-Defaulting Party will cause a notice in writing or e-mail to be given to the Defaulting Party advising as to the nature of any default and declaring it to be the intention of the Non-Defaulting Party to terminate the Retailer Distribution Service Contract.

ARTICLE 15 – Impaired Deliveries

15.1. Impaired Deliveries

- (1) If, by reason of the causes set out in this Article, *AUI* is unable, in whole or in part, to deliver the *Gas* provided for in the *Retailer Distribution Service Contract*, then *AUI* will be relieved of liability for not delivering such quantities and *AUI* may curtail or discontinue deliveries of *Gas* under the *Retailer Distribution Service Contract* during the discontinuance and to the extent of the inability. However, *AUI* will endeavour to give reasonable notice of any curtailment or discontinuance of deliveries arising by virtue of such causes and will promptly endeavour to remedy the cause of any curtailment or discontinuance of deliveries as soon as reasonably possible.
- (2) Such notice will specify *AUI's* estimate of the duration of any such curtailment or discontinuance of deliveries under the *Retailer Distribution Service Contract*.
- (3) The causes referred to above are the necessity, in *AUI's* sole opinion, of making repairs, modifications or improvements to the *Gas Distribution System*. However, *AUI* will, when practicable, endeavour to effect such modifications or improvements, not emergency in nature, at a time and in a manner that does not unduly interfere with or interrupt deliveries of *Gas*.

ARTICLE 16 – Liability and Indemnity

16.1. Indemnity

- (1) Each party (as applicable, the Indemnitor) will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives (Indemnitee(s)) from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claim, cause of action, action, suit or proceeding by a third party (Claim) which arises from damage to property or injury to or death of persons resulting from the Indemnitor's failure to perform its obligations under these *Retailer Distribution Service Rules* which failure is caused by the negligence or willful act of the Indemnitor or any of its directors, officers, employees, agents or representatives acting within the scope of their authority or employment. The indemnity under this Article will be limited to an amount in proportion to the degree to which the Indemnitor or its directors, officers, employees, agents or representatives acting within the scope of their authority or employment are at fault. For the purpose of this Article "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under these *Retailer Distribution Service Rules*.
- (2) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Article such Indemnitee will give the Indemnitor prompt notice of the Claim, which will describe the Claim in reasonable detail and will indicate the

estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder will not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

- (3) Subject to Article 16.1(4) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Article 16.1(1) in respect of:
- (a) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third party claimant (and, if applicable, to the court or other tribunal determining the Claim), the Indemnitee will make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and the Indemnitor will be entitled, at its option, to take carriage of the defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee will cooperate with the Indemnitor to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or
 - (b) some, but less than all, of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the Indemnitee is of the opinion that the Indemnitor's interests are not in conflict with its own, the Indemnitee will make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to that portion of the Claim in respect of which the Indemnitor has an obligation to indemnify the Indemnitee and consult with the Indemnitor in respect thereof.

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

- (4) The provisions of Article 16.1(1) hereof will not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.
- (5) Except to the extent to which either party is required to indemnify the other party (and those other persons specified in this Article 16 by the express terms of Article 16, neither party, nor its directors, officers, agents, employees, and representatives, will be liable to the other party for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the other party, its directors, officers, employees, agents and representatives howsoever and whenever caused, and each party, for itself and as agent for its directors, officers, agents, employees and representatives hereby forever releases the other party, its directors, officers, agents, employees and representatives from any liability or obligation in respect thereof. For greater certainty, neither party will be limited in a claim against the other for specific performance or other equitable relief in relation thereto, or direct damages

only and related costs and expenses (including reasonable legal fees), arising from a breach of these Terms and Conditions.

16.2. Consequential Loss

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

ARTICLE 17 – Force Majeure

17.1. Effect of Force Majeure on Breach

Subject to the other provisions of this Article, if either party to the *Retailer Distribution Service Contract* fails to observe or perform any of the covenants or obligations herein imposed upon it and such failure is occasioned by, or in connection with, or in consequence of Force Majeure, as hereinafter defined, such failure will be deemed not to be in a breach of such covenants or obligations.

Retailer will not be relieved by Force Majeure as described in this Article 17 from the obligation to pay the charges set forth pursuant to this Article unless Force Majeure has been invoked by *AUI*.

17.2. Meaning of Force Majeure

For the purposes of the *Retailer Distribution Service Rules*, "Force Majeure" means any cause, other than financial, beyond the control of the party claiming suspension and the cause could not have been prevented or overcome by due diligence, including, but not limited to:

- a) acts of God, such as lightning, earthquakes, storms, floods, fires, landslides and washouts;
- b) strikes, lockouts or other industrial disturbances;
- c) acts of the Queen's enemy, sabotage, wars, blockades, insurrections, riots, epidemics, civil disturbances, arrests and restraints;
- d) explosions, breakages of or accidents to machinery or lines of pipe;
- e) hydrate obstructions of lines of pipe and equipment;
- f) temporary failures of Gas supply;
- g) freezing of wells or delivery facilities, well blowouts, and craterings; and

- h) the Orders of any court or governmental authority.

17.3. Exceptions to Force Majeure

- (1) Notwithstanding Article 17.2, a Decision, Direction, or Order made by the *Commission* in the normal course of it exercising its authority to establish the appropriate revenue requirement or rates of the parties to this agreement will not be considered an event of Force Majeure.
- (2) Neither party is entitled to the benefit of the provisions of Article 12.1 under any of the following circumstances:
- a) to the extent the failure was caused by the sole negligence of the party claiming suspension;
 - b) to the extent the failure was caused by the party claiming suspension having failed to remedy the condition where it is within that party's ability, alone, to do so and to resume the performance of such covenants or obligations with reasonable dispatch;
 - c) if the failure was caused by lack of funds or with respect to the payment of any amount or amounts then due under the *Retailer Distribution Service Contract*; or
 - d) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining the occurrence was in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under the *Retailer Distribution Service Contract*, the party claiming suspension necessarily gives to the other party notice, either in writing or by electronic mail, advising that such party is unable, by reason of Force Majeure (the nature of which to be specified in the notice, to perform the particular covenants or obligations.

17.4. Notice of remedy

The party claiming relief from liability under the provisions of this Article 17 will promptly give the other party notice of the Force Majeure including full particulars thereof and will promptly give the other party notice when the Force Majeure event ceases to prevent performance pursuant to these *Retailer Distribution Service Rules*.

17.5. Obligation to Remedy

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

17.6. Labour Disputes

Notwithstanding anything to the contrary in this Article, expressed or implied, the parties agree the settlement of strikes, lockouts and other industrial disturbances will be entirely within the discretion of the particular party involved in the labour dispute and such party may make settlement of the labour dispute at such time and on such terms and conditions as it may deem advisable. No delay in making such settlement will deprive such party of the benefit of this Article 17.

ARTICLE 18 – Dispute Resolution

18.1. Resolution by AUI and the Retailer

If any dispute between *AUI* and a *Retailer* arises at any time in connection with these *Retailer Distribution Service Rules*, *AUI* and the *Retailer*, acting reasonably and in good faith, will use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner.

18.2. Resolution by Arbitration

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

18.3. Arbitrators

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

18.4. Failure to Concur

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

18.5. Refusal to Appoint an Arbitrator

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

18.6. Failure to Appoint a Third Arbitrator

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

18.7. Technical Competence

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

18.8. Compensation of Arbitrators

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

18.9. Application of the Arbitration Act (Alberta)

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

18.10. Decisions Binding

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

18.11. Continuity of Service

All performance and payments requirements under these *Retailer Distribution Service Rules* by *AUI* and the *Retailer* will continue during the dispute resolution proceedings contemplated by this Article provided, in the case of any such proceedings pertaining to amounts payable under these *Retailer Distribution Service Rules*, any payments or reimbursements required as a result of the proceedings will be effective as of a date to be determined in such proceedings and interest will be paid on those amounts by the party required to make the payment or reimbursement on the amount at the rate specified from time to time in the *Residential Tenancies Act, R.S.A. 2000, c.R.-17*, but not less than 2.5% from the date so determined until paid.

ARTICLE 19 – Miscellaneous Matters

19.1. Retailer Distribution Service Rules Prevail

No representation or commitment inconsistent with these *Retailer Distribution Service Rules* has any effect unless approved by the *Commission*.

19.2. General Laws Apply

The *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* are subject to all applicable present and future laws, rules, regulations and orders of any legislative body or duly instituted authority now or hereafter having jurisdiction. *AUI* will not violate, directly or indirectly, or become a party to a violation of any requirement of any applicable federal, provincial or local statute, regulation, bylaw, rule or order to provide *Retailer Distribution Service* to the *Retailer* (or a *Customer* of the *Retailer*). *AUI's* obligation to provide *Retailer Distribution Service* is subject to the condition all requisite governmental and regulatory approvals for the provision of such *Retailer Distribution Service* will have been obtained and will be maintained in force during such period of *Retailer Distribution Service*.

19.3. No Waiver

The failure of either party to insist on strict performance of any provisions of these *Retailer Distribution Service Rules* or a *Retailer Distribution Service Contract*, or to take advantage of any of its rights hereunder, will not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which will remain in full force and effect. No term or condition of these *Retailer Distribution Service Rules* or a *Retailer Distribution Service Contract* will be deemed to have been waived and no breach excused unless such waiver

or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.

19.4. No Assignment

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

19.5. Applicable Laws

The *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* between *AUI* and the *Retailer* will be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these *Retailer Distribution Service Rules* and the *Retailer Distribution Service Contract* will be brought in the courts of the Province of Alberta.

ARTICLE 20 – Notice

20.1. Notice in Writing

Unless otherwise stated herein, all notices, demands or requests required or permitted under these *Retailer Distribution Service Rules* or a *Retailer Distribution Service Contract* will be in writing and will be personally delivered or sent by courier-service or electronic transmission addressed as follows:

- (a) If to the *Retailer*, to the address and the addressee set out in the *Retailer Distribution Service Contract* between the *Retailer* and *AUI*.
- (b) If to *AUI* to:
 - Apex Utilities Inc.
 - 5509-45 Street,
 - Leduc, AB T9E 6T6
 - Attention: Director, Regulatory
 - Fax: (780) 986-5220

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

20.2. Delivery of Notice

- (1) Any notice may be given by mailing the same, postage prepaid, in an envelope properly addressed to the person to whom the notice is given and will be deemed to be received four (4) *Business Days* after the mailing of the notice.

- (2) Any notice may also be given by prepaid facsimile or other means of electronic transmission addressed to the person to whom such notice is given, at such person's address for notice and any such notice so served will be deemed to have been given one (1) *Business Day* after transmission.
- (3) Any notice may also be delivered by hand to the person, or his representative, to whom such notice is given at such person's address for notice and such notice will be deemed to have been given when received by such person or his representative.
- (4) Any notice may also be given by telephone followed immediately by letter, facsimile or other means of electronic transmission. Any notice so given will be deemed to have been given of the date and time of the telephone notice.

20.3. Disruption of Mail

In the event of disruption of regular mail, every payment will be delivered and every notice, demand, statement or bill will be given by one of the alternative means set out in this Article.

Schedule A – Imbalance Purchases/Sales Charges

1.0 Imbalance Window Percentage

The percentage used to calculate each *Retailer's Account Imbalance Window* is $\pm 4\%$.

2.0 Imbalance Windows

The daily *Imbalance Window* for each *Gas Day*, applicable to each *Retailer's Account Imbalance*, is based on the result of multiplying the *Retailer's* daily *Backcast* by the absolute value of the *Imbalance Window* percentage (*Imbalance Window* determinant):

- a) If the result is 0 (zero), the daily *Imbalance Window* quantity will be 0 GJ;
- b) If the result is greater than 0, and less than or equal to 50, the daily *Imbalance Window* quantity will be ± 50 GJ;
- c) If the result is greater than 50, and less than or equal to 100, the daily *Imbalance Window* quantity will be ± 100 GJ;
- d) If the result is greater than 100, and less than or equal to 150, the daily *Imbalance Window* quantity will be ± 150 GJ;
- e) If the result is greater than 150, and less than or equal to 200, the daily *Imbalance Window* quantity will be ± 200 GJ;
- f) If the result is greater than 200, the daily *Imbalance Window* quantity will be ± 400 GJ.

3.0 Imbalance Purchase/Sale Price

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

- a) For an *Imbalance Purchase*, the price used by *AUI* will be the lowest *Same Day Market* or *Yesterday Market* trade price occurring on the *NGX* for the *Gas Day*, as reported by the *NGX* as the "AECO "C" and N.I.T Same Day Price" and "NGX Alberta Yesterday Price" obtained from the *NGX* "Trading Reports" website.
- b) For an *Imbalance Sale*, the price used by *AUI* will be the highest *Same Day Market* or *Yesterday Market* trade price occurring on the *NGX* for the *Gas Day*, as reported by the *NGX* as the "AECO "C" and N.I.T Same Day Price" and "NGX Alberta Yesterday Price" obtained from the *NGX* "Trading Reports" website.

4.0 Change to Imbalance Window Percentage and Minimum Energy Imbalance Window

In the event *TCPL* determines its pipeline tolerance level needs be increased or decreased and as a result, the *TCPL* transmission balance zone is changed, *AUI* will revise the daily *Imbalance Window* as follows:

TCPL Balance Zone	AUI Account Tolerance on TCPL		Imbalance Window Determinant > 0 and <= 50		Imbalance Window Determinant > 50 and <= 100		Imbalance Window Determinant > 100 and <= 150		Imbalance Window Determinant > 150 and <= 200		Imbalance Window Determinant > 200	
-4% +4%	-2,000	2,000	-50	50	-100	100	-150	150	-200	200	-400	400
-3% +4%	-1,500	2,000	-38	50	-75	100	-113	150	-150	200	-300	400
-2% +4%	-1,000	2,000	-25	50	-50	100	-75	150	-100	200	-200	400
-1% +4%	-500	2,000	-13	50	-25	100	-38	150	-50	200	-100	400
0% +4%	0	2,000	0	50	0	100	0	150	0	200	0	400
-4% +3%	-2,000	1,500	-50	38	-100	75	-150	113	-200	150	-400	300
-4% +2%	-2,000	1,000	-50	25	-100	50	-150	75	-200	100	-400	200
-4% +1%	-2,000	500	-50	13	-100	25	-150	38	-200	50	-400	100
-4% 0%	-2,000	0	-50	0	-100	0	-150	0	-200	0	-400	0

A change to the *Imbalance Window* as a result of a change in the *Imbalance Window* percentage and/or change in the *AUI* account tolerance on *TCPL* will be in effect for the same *Gas Days* as the corresponding *TCPL* Balance Zone change.