

# **Customer Use Agreement**

**Between**

**TransCanada PipeLines Limited**

**and**

THIS AGREEMENT made as of the            day of            .  
BETWEEN:

**TransCanada PipeLines Limited** (hereinafter called “TransCanada”)

AND:

(hereinafter called “Customer”)

WHEREAS TransCanada or its subsidiaries or Affiliates owns and operates an information service based on the use of an electronic information system as hereinafter described for use by the customers in the North American energy industry;

AND WHEREAS the Services, as further described below, allow customers to transmit data and information and to enter into certain transactions as described below;

AND WHEREAS TransCanada is prepared to provide the Customer (or its Affiliates) with the Services on terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration paid by the parties hereto, each to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

## **ARTICLE I.     Interpretation**

Definitions for this Agreement are found in Appendix “A”. All references in this Agreement to the singular shall include the plural, and all references to a particular gender shall include all genders. The provision of headings and tables of contents in this Agreement is for convenience of reference only, and such shall not have any interpretive value. For the purposes of this Agreement, the requirement of “writing” shall be satisfied if it meets the requirements of the *Electronic Transactions Act* (Alberta). For the purposes of this Agreement, Customer shall include Customer’s Affiliates to the extent that any transaction is undertaken for or on behalf of such Affiliate, and such Affiliate shall be bound by the provisions hereof.

## **ARTICLE II.    Services**

**Section 2.01 Services.** TransCanada agrees to provide Services to the Customer, as more particularly described on the Site (as may be amended from time to time). The Customer shall be responsible and liable for all telecommunications costs used to access the Site or the Services. The Customer shall conform to the System Specifications and Technical Requirements that are set forth on the Site (as may be amended by TransCanada from time to time). TransCanada may change the contents of the Site at any time without prior written notice to the Customer. However, in the event that it does so, it shall place prominently on the Site a notice to that effect. For the sake of this paragraph, changing content includes but is not limited to altering, replacing, eliminating, or adding new Services, changing System Specifications, Technical Requirements and so forth. In the event that the Site or Services are unavailable, then TransCanada may designate such other reasonable means of communication and/or transacting as it may deem appropriate, and to the extent that the Customer undertakes transactions using such alternative means of communication, the Customer agrees to be bound thereby. In the event that transcription of information is required by Customer, TransCanada shall not be responsible for the accuracy or completeness of such transcription. TransCanada does not warrant the completeness or accuracy of information found on the Site, transmitted via the Site, nor the availability of the Site.

**Section 2.02 Agency.** To the extent that the Customer appoints an agent, or is appointed an agent by a third party with respect to the subject matter hereof, the provisions of Appendix “B” shall apply in addition to the terms of the main body of this Agreement.

**Section 2.03 Technical Support.** TransCanada may provide technical support for the Site and Services on the terms and conditions and at the prices (if any) set forth on the Site, all as may be amended from time to time.

### **ARTICLE III. Intellectual Property**

**Section 3.01 Transaction Data.** Customer hereby grants to TransCanada a perpetual, royalty-free, non-exclusive, non-transferable (except to an Affiliate of TransCanada), irrevocable license to transmit and distribute the Transaction Data only in connection with, and to the extent required to provide, the Services and to aggregate, compile and analyze Customer's Transaction Data alone or in combination with the data of other customers. TransCanada shall not sell, license or provide Customer's Transaction Data to any person other than the Customer without the written direction or approval of the Customer, or except as required by law. TransCanada shall use commercially reasonable efforts to protect the confidentiality, security and access to the Transaction Data and other Confidential Information of the Customer.

**Section 3.02 TransCanada's Intellectual Property.** Other than as described in this Article III, TransCanada shall obtain no rights to the Transaction Data. The Site, and all intellectual property rights appertaining thereto are the property of TransCanada, its suppliers or licensors. All aggregated Transaction Data is the exclusive property of TransCanada, and TransCanada shall have no obligation to provide such aggregated Transaction Data to Customer. The Customer shall not reproduce any part of the Site or Services, or alter, decompile or reverse engineer all or any component thereof.

**Section 3.03 TransCanada's Warranties.** TransCanada represents and warrants that it has all legal rights necessary to provide the Services to the Customer; and to the best of its knowledge, neither the Services nor the Site infringe, violate or misappropriate the intellectual property rights of any third party.

### **ARTICLE IV. Security**

**Section 4.01 Contact Information.** TransCanada may request and Customer shall designate an individual as the Primary Contact and shall be responsible to ensure that information relating thereto is current. TransCanada may collect certain personal information noted below from Customer contacts. Such personal information may include the individual's name, company name, company address, individual business telephone, individual e-mail address, and a key word ("Contact Information"). Contact Information shall be used solely for verification purposes and to send additional information regarding the Services (or any changes thereto) to the Customer. By providing personal information hereunder, Customer warrants that it has the permission of the person to whom it relates to provide such information. The Customer agrees that TransCanada shall be entitled to rely conclusively on the accuracy of information provided by the Customer regarding the Primary Contact, and that such information shall bind the Customer, both until TransCanada receives notice to the contrary from the Customer.

**Section 4.02 Malicious Code.** Customer shall be responsible to ensure that it is protected from malicious code, and that any hardware and/or software used to access the Site is checked by and subject to a current anti-virus software package. TransCanada represents and warrants that it will not intentionally introduce any malicious code, virus, or other damaging software into the Site, and that it will use reasonable efforts to avoid such introduction.

**Section 4.03 UserIDs and Passwords.** TransCanada shall provide distinct UserIDs and initial passwords to Customer in accordance with TransCanada's then-current policy. Any person gaining access to the Site or Services utilizing a UserID assigned to Customer shall be deemed to have been given authority to do so by the Customer (regardless of whether such authority has actually been given) and the Customer shall be responsible and liable for all actions originating or caused by that UserID. If the Customer suspects that the security of a UserID or password has been compromised, it shall so inform TransCanada immediately. Upon receipt of such notice, TransCanada shall promptly terminate the relevant UserID and shall, if requested by the Customer, issue a new UserID to Customer. Provided that TransCanada acts in a reasonably timely manner, the Customer shall remain liable for transactions entered into using such UserID until such UserID is terminated. The Customer shall not be liable to TransCanada for any UserID and/or password if TransCanada has given notice in writing to the Customer that such UserID and/or password has been terminated or disabled.

**Section 4.04 Binding Effect.** Unless explicitly noted on the Site to the contrary (i) all transactions entered into by the Customer through the Site shall be binding upon the Customer, or Customer's principal, as the case may be; (ii) all transactions entered into by TransCanada on its own behalf through the Site shall be binding upon TransCanada; (iii) both parties agree that electronic transactions shall have binding legal effect on both parties; and (iv) to the extent that TransCanada designates alternative means of communications or transactions pursuant to Section 2.01, all such

communications or transactions shall also be governed by this Agreement. TransCanada may, at its sole discretion but only upon request of the Customer, permit transactions entered into through the Site to be cancelled, rescinded, or terminated.

#### **ARTICLE V. Term of Agreement**

This Agreement may be terminated pursuant to the conditions outlined in this Article. In the event that TransCanada wishes to revise the terms and conditions hereof, it shall so notify Customer at least thirty (30) days in advance of the effective date of such revised terms and conditions. Customer agrees that its continued access to the Site or use of the Services after such notice will constitute agreement with the amended terms, as communicated to Customer by TransCanada. This Agreement may be terminated at any time by either party for convenience upon thirty (30) days written notice. This Agreement may be terminated by either Party immediately upon any bankruptcy or insolvency proceedings involving the other Party, or upon breach of failure by the other Party to comply with any term or condition of this Agreement. In the event of termination hereof for any reason, Customer shall cease all use of or access to the Site and Services.

#### **ARTICLE VI. Confidentiality**

Each Party agrees to use Confidential Information of the other Party only to the extent required or permitted under this Agreement, or as required by law or regulatory authority of competent jurisdiction. Nothing herein shall be construed to restrict either Party (or any of its employees or agents) from using any knowledge, know-how, expertise or experience that is retained solely in the memory of its employees or agents and that is of a general, non-specific nature. Nothing in this Agreement shall be construed as granting a license by either Party for the use of all or any portion of the other Party's Confidential Information, except as provided for herein. The Parties agree that all writings or embodiments (regardless of media) relating to the Confidential Information of the disclosing Party that have been received by it shall remain the property of the disclosing Party and recipient shall immediately upon request by the other return or destroy all such writings and embodiments and all copies thereof (regardless of media). Notwithstanding the foregoing, a receiving Party may retain such copies as are required to be kept by law.

#### **ARTICLE VII. Liability**

**Section 7.01 Liability.** Subject to the terms and conditions of this Agreement, each Party shall be liable for, and shall indemnify the other Party from and against, any and all losses, costs (including legal costs), damages and expenses whatsoever arising from its breach of this agreement, where such breach results from or is reasonably attributable to the negligence, gross negligence or willful misconduct of such indemnifying party, its employees, agents or contractors.

**Section 7.02 Other Damages.** No Party shall be liable to any other Party for indirect, incidental, consequential, exemplary, punitive or special damages arising out of or otherwise connected with this Agreement.

**Section 7.03 Limitation of Liability.** Notwithstanding the provisions of Section 7.01, TransCanada's entire liability under this Agreement shall be limited to the amount paid by the Customer to TransCanada in the most recent calendar year pursuant to this Agreement; provided, however, that such limit shall not apply in the event of TransCanada's gross negligence or willful misconduct.

#### **ARTICLE VIII. General**

**Section 8.01 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supercedes and replaces all previous agreements and understandings, whether written, oral or electronic with respect to the subject matter hereof.

**Section 8.02 Amendments.** No amendment to this Agreement shall be valid unless executed in writing by both Parties.

**Section 8.03 Waiver.** No waiver or other failure by either Party to enforce any right hereunder shall be valid unless in writing and acknowledged by both Parties, nor shall such waiver or failure to enforce be construed to be an ongoing waiver unless so expressly stated.

**Section 8.04 Invalidity or Unenforceability.** In the event that any provision hereunder shall be or be deemed to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed omitted from this Agreement, and the remainder interpreted in a manner that, to the greatest extent permitted by law, gives effect to the intention of the invalid or unenforceable provision.

**Section 8.05 Enurement.** This Agreement shall enure to the benefit of and be binding upon TransCanada and Customer, and their respective successors and permitted assigns.

**Section 8.06 Governing Law and Attornment.** This Agreement shall be governed by and construed and interpreted in accordance with the laws in force in the Province of Alberta, Canada (excluding the conflicts of law provisions thereof). The Parties hereby attorn to the jurisdiction of the courts of the Province of Alberta and agree that any action brought in connection with this Agreement may only be commenced and prosecuted in the courts of such Province.

**Section 8.07 Notices and Contacts.** Any notice required to be given under this Agreement shall be in writing and may be given personally or sent by facsimile or other electronic transmission or prepaid registered letter addressed to the other Party at the addresses below, and if mailed, shall be deemed to be given seventy-two (72) hours after it is mailed and if given personally, upon delivery thereof and if given by facsimile or other electronic transmission, upon successful transmission thereof:

(a) TO:

Attention:

Telephone:

(b) TO: TransCanada PipeLines Limited

450 – 1st Street S.W.

Calgary, Alberta

T2P 4K6

Attention: Manager Contracts & Billing

Telephone: (403) 920-phone

Fax: (403) 920-fax

**Section 8.08 Assignment.** Neither the Customer nor TransCanada may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Either Party may assign this Agreement to any legal entity that succeeds to all or substantially all of its assets and assumes its obligations by contract or by operation of law.

**Section 8.09 Precedence.** In the event that a competent regulatory authority, court of competent jurisdiction or legislative body enacts or makes a binding decision that is in conflict with this Agreement, then such enactment or decision shall govern over the provisions of this Agreement related thereto. In the event of a conflict among the provisions of this Agreement and any Schedule or appendix hereto or any applicable tariff or regulatory instrument, then the following order of precedence shall apply, in descending order: the applicable tariff or regulatory instrument; the main body of this Agreement; then any Schedule or Appendix to this Agreement.

**Section 8.10 Force Majeure.** If and to the extent that either Party shall be prevented, delayed or restricted in the fulfillment of any obligation hereunder because of any cause beyond the control of the Party affected which prevents the performance by such Party of any obligation hereunder and not caused by its fault or default and not avoidable by the exercise of reasonable effort including, without limitation, strikes, labour disturbances, civil disturbance, acts, orders, legislation, regulations or directives of any government or public authority, including delay in or failure to issue building permits, acts of a public enemy, war, riot, act of terrorism, sabotage, earthquake, fire, storm, hurricane, flood, explosion, failure of electronic or telecommunications device or Act of God, it shall be deemed not to be a default in the performance of such obligation and any period for the performance of such obligation shall be extended accordingly.

**Section 8.11 Relationship of Parties.** Nothing in this Agreement shall cause or be construed to cause the Customer, nor its employees, agents or subcontractors to be employees, agents or subcontractors of TransCanada. The Customer shall not, without the prior written consent of TransCanada (which consent may be arbitrarily withheld), enter into any contractual obligation, agreement or commitment in the name or on behalf of TransCanada or bind TransCanada in any respect whatsoever.

**Section 8.12 Name.** Neither Party shall use the other's name or brand in advertising, promotional material or press releases without the prior written consent of the other.

**Section 8.13 Counterparts.** This Agreement may be executed in counterparts which when taken together shall be considered one and the same document, and the parties agree that facsimile or portable document format (PDF) transmissions shall have the same force and effect and evidentiary value as originally signed documents.

**Section 8.14 Time.** Time is of the essence of this Agreement.

**Section 8.15 Authority.** The persons signing or otherwise executing this Agreement represent and warrant that they have the full authority and capacity to enter into this Agreement and to bind the Party for which they act or purport to act. The Customer warrants that the Primary Contact has the authority to undertake further transactions pursuant to this Agreement.

IN WITNESS WHEREOF the parties hereto have caused their duly authorized representatives to execute this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_ .

**TransCanada PipeLines Limited**

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

Manager,  
**Commercial Services, Optimization and Design**

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

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

## **APPENDIX “A”: DEFINITIONS**

(a) “Affiliates” means, in relation to either Party, any other person or group of persons acting in concert (including joint ventures) directly or indirectly, that controls, is controlled by or under common control with the Party, and for the purposes of this definition and references in this Agreement to “Affiliate”, “control” means the possession, directly or indirectly, by such person or group of persons acting in concert of the power to direct or cause the direction of the management and policies of the first mentioned person, whether through the ownership of voting securities or otherwise.

(b) “Confidential Information” means:

(i) any technical, corporate, economic or marketing or other information, knowledge or data relating to a Party or any of its Affiliates or their respective employees or businesses, regardless of media; any information regarding customers, clients, trading partners or other business associates or arrangements, or identity of same, of a Party or any of its Affiliates; any information regarding a Party’s or any of its Affiliate’s respective business or affairs; Contact Information; and Transaction Data;

provided, however, that Confidential Information shall not include any information which:

- (ii) at the time of receipt or development by the receiving Party is in the public domain as evidenced by printed publication or otherwise;
- (iii) after receipt or development by the receiving Party becomes part of the public domain as evidenced by printed publication, or which the receiving Party can show by reasonable evidence otherwise becomes part of the public domain, through no fault of the receiving Party;
- (iv) the receiving Party can show by reasonable evidence was in the receiving Party’s possession at the time of disclosure by the disclosing Party to the receiving Party and was not previously acquired from the disclosing Party on a confidential basis; or
- (v) the receiving Party can show by reasonable evidence has been disclosed to the receiving Party by a third party after receipt or development by the receiving Party, such information being rightfully disclosed to the receiving Party by such third party and which the receiving Party is not required to maintain in confidence;

further provided that, specific information shall not be deemed to be in the public domain or the receiving Party’s possession merely because it is embraced by a more general disclosure; and combinations of information shall not be deemed in the public domain or the receiving Party’s possession, as the case may be, merely because individual features are in the public domain or the receiving Party’s possession, unless the combination of features or nexus are in the public domain or the receiving Party’s possession.

(c) “Electronic Agent” means a computer program or any electronic or automated means used to initiate an action or to respond to an action, without review by an individual at the time of the initiation or response.

(d) “Party” means a party to this Agreement, and “Parties” means both of them.

(e) “Primary Contact” has the meaning set forth in Section 4.01. Only one Primary Contact may be specified by Customer per business role. (e.g. nominations, invoices). For greater clarity, Customer may designate a Primary Contact for each functional area of the Site or with respect to any given Service offered through the Site.

(f) “Services” means those services described on the Site, as may be amended from time to time.

(g) “Site” means the Internet site operated by TransCanada and through which TransCanada offers the Services.

(h) “System Specifications” means the documentation for the Site (as found on the Site) that outlines the functional operation of the Services and the data structure used within the Services.

- (i) “Technical Requirements are those technical requirements that TransCanada may provide on the Site from time to time, relating to the use of or access to the Site or Services.
- (j) “Transaction Data” means such data and information as Customer may provide to or through the Site or by way of the Services.
- (k) “UserID” means the user identification assigned to each of Customer’s authorized personnel for access to the Site.

# **APPENDIX “B”: AGENCY**

## **ARTICLE I. Appointment of Agent**

Customer may appoint an agent (or be appointed an agent for a third party) to manage any matters pertaining to this Agreement, provided that Customer shall have provided to TransCanada such notice thereof as TransCanada shall designate as acceptable from time to time (the “Agency Form”). TransCanada shall make available (either on the Site or otherwise) the Agency Form, and the Customer shall complete and execute such Agency Form in the manner provided prior to any agency relationship becoming effective. No agency relationship shall be effective until TransCanada has accepted the executed Agency Form, except for any agency relationship already in existence at the time of this Agreement and previously acknowledged by TransCanada.

## **ARTICLE II. Period of Agency**

After TransCanada has accepted the executed Agency Form, TransCanada shall for all purposes be entitled to rely upon the acts of such agent until TransCanada has received notice from Customer either replacing the agent or terminating the agency relationship. Customer shall provide at least five (5) business days prior written notice of that date on which it intends to change an agency relationship. Customer shall indemnify and hold harmless TransCanada, its officers, directors, employees and agents from and against any and all claims arising out of or attributable to the failure of Customer to comply with the provisions of this appendix.

## **ARTICLE III. Customer as Agent**

Customer represents and warrants that when it conducts transactions on behalf of a principal, it has the proper authorization from a principal in all matters in which Customer purports to act on behalf of a principal. The Customer shall be wholly responsible and liable for all transactions entered into on behalf of a principal, and shall indemnify and hold harmless TransCanada, its directors, officers, employees and agents from and against any and all claims and damages arising from or reasonably attributable to claims from a principal relating to transactions entered into by Customer.

## **ARTICLE IV. Third Party Data Providers**

In the event that the Customer provides Transaction Data through an agent or any other third party service provider, the Customer shall be responsible to ensure the accuracy and timeliness of such Transaction Data, and shall indemnify and hold harmless TransCanada, its officers, directors, employees and agents from and against any and all claims arising out of or attributable to the failure of Customer to comply with the provisions of this Article.

## **ARTICLE V. Electronic Agents**

To the extent that the Customer uses an Electronic Agent, such Electronic Agent shall for all purposes be deemed to be an agent within the meaning of this Appendix and the Agreement.