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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.

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## 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.

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## 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.

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### Schedule A – Imbalance Purchases/Sales Charges

#### 1.0 Tolerance Zone Percentage

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

#### 2.0 Tolerance Zone

The daily *Tolerance Zone* 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 *Tolerance Zone* percentage (*Tolerance Zone* determinant):

- a) If the result is 0 (zero), the daily *Tolerance Zone* quantity will be 0 GJ;
- b) If the result is greater than 0, and less than or equal to 50, the daily *Tolerance Zone* quantity will be  $\pm 50$  GJ;
- c) If the result is greater than 50, and less than or equal to 100, the daily *Tolerance Zone* quantity will be  $\pm 100$  GJ;
- d) If the result is greater than 100, and less than or equal to 150, the daily *Tolerance Zone* quantity will be  $\pm 150$  GJ;
- e) If the result is greater than 150, and less than or equal to 200, the daily *Tolerance Zone* quantity will be  $\pm 200$  GJ;
- f) If the result is greater than 200, the daily *Tolerance Zone* quantity will be  $\pm 400$  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 reported on the *NGX* for the *Gas Day*, as reported by the *NGX* as the "ICE NGX AB-NIT Same Day INDEX" and "ICE NGX AB-NIT Yesterday Index" obtained from the "ICE NGX Price Indices" website.
- b) For an *Imbalance Sale*, the price used by *AUI* will be the highest *Same Day Market* or *Yesterday Market* trade price that occurs on the *NGX* for the *Gas Day* as reported by the *NGX* as the "ICE NGX AB-NIT Same Day Index" and "ICE NGX AB-NIT Yesterday Index" obtained from the "ICE NGX Price Indices" website.

**4.0 Change to Tolerance Zone Percentage and Minimum Energy Tolerance Zone**

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 *Tolerance Zone* as follows:

TCPL Balance Zone		AUI Account Tolerance on TCPL		Tolerance Zone Determinant > 0 and <= 50		Tolerance Zone Determinant > 50 and <= 100		Tolerance Zone Determinant > 100 and <= 150		Tolerance Zone Determinant > 150 and <= 200		Tolerance Zone 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 *Tolerance Zone* as a result of a change in the *Tolerance Zone* 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.