**CAPACITY USAGE AGREEMENT**

This CAPACITY USAGE AGREEMENT (together with any and all Confirmations entered into hereunder, which are hereby made a part hereof, the “Agreement”) is made and entered into this [\_\_] day of [\_\_\_\_], [\_\_\_\_] (“Effective Date”), by and between NEXUS Capacity Services, ULC, a British Columbia unlimited liability company (“NEXUS”), and [\_\_\_\_\_\_\_\_](“Customer”). NEXUS and Customer are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

**WITNESSETH**:

**WHEREAS,** NEXUS’s affiliate, NEXUS Gas Transmission, LLC (“NEXUS US”) has developed and operates or causes to be operated a natural gas pipeline system on which NEXUS US (together with its affiliates, including NEXUS) provides natural gas transportation service from certain receipt point(s) in and around Kensington, OH and other points, to certain delivery points (such new pipeline system, collectively, the “NEXUS Project”);

**WHEREAS**, NEXUS US provides transportation service on the NEXUS Project pursuant to its FERC gas tariff as the same is and shall be on file from time to time and effective with the Federal Energy Regulatory Commission (“FERC”) (such tariff the “NEXUS FERC Tariff”);

**WHEREAS**, NEXUS is a party to that certain FT-1 Firm Transportation Agreement with Vector Pipeline Limited Partnership (“Vector Canada”) pursuant to which NEXUS has the right to receive certain firm transportation service on the Vector Canada pipeline system from the primary receipt point of St. Clair to the primary delivery point of Dawn, Ontario (“Dawn”, and the capacity for such firm transportation service, the “NEXUS Vector Canada Capacity”), subject to Vector Canada’s effective Toll Schedule FT-1 and the applicable General Terms and Conditions of Vector Canada’s Gas Tariff on file with the National Energy Board (as the same is in effect from time to time, the “Vector Canada Tariff”) (such agreement, the “NEXUS Vector Canada Agreement”); and

**WHEREAS,** NEXUS desires to use certain of the NEXUS Vector Canada Capacity to provide transportation service for Customer’s gas in an amount up to the MDQ (as defined herein), consistent with the terms of any and all confirmations in effect from time to time subject to this Agreement in the form of Exhibit A hereto (each, a “Confirmation”), and Customer desires to have NEXUS use a portion of the NEXUS Vector Canada Capacity in order to provide such transportation service to Customer in Canada.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the Parties do hereby covenant and agree as follows:

1. CAPACITY USAGE SERVICE
	1. Capacity Usage and Right to Deliver Gas. Commencing on [\_\_\_\_\_] (“Service Commencement Date”), NEXUS shall, in accordance with this Agreement (including each Confirmation in effect from time to time hereunder), use certain of the NEXUS Vector Canada Capacity for receipt at the nominatable receipt point(s) (the “Receipt Point(s)”), and re-delivery to Customer at the nominatable delivery point(s) (the “Delivery Point(s)”) (as such Receipt Points and Delivery Points are specified in Section 2.3 below), subject to the level of priority applicable to Customer’s service under Section 2.1 below, of the quantity of natural gas nominated by Customer in accordance with this Agreement, up to the maximum daily quantity (the “MDQ”) as set forth on an applicable and effective Confirmation (such receipt and redelivery, and such transportation service, collectively, the “Capacity Usage Service”).
2. LEVELS OF SERVICE
	1. Service Level. Customer and NEXUS hereby agree that the service level applicable to the Capacity Usage Service shall be Level 3, as further described below. The priority of each level of service provided by NEXUS using the NEXUS Vector Canada Capacity is as follows:
		1. **Level 1**: firm transportation service of the highest priority among all levels of Capacity Usage Service. A customer’s volumes subject to such Level 1 service shall not be subject to bumping, and shall only be subject to curtailment in the event that curtailment is required under Section 3.1(b), or for a Force Majeure event as otherwise provided herein.
		2. **Level 2**: transportation service of the second-highest priority among all levels of Capacity Usage Service. A customer’s volumes subject to such Level 2 service shall be subject to bumping to accommodate nominations of customers who have agreed to Level 1 service, and shall be subject to curtailment in the event that curtailment is required under Section 3.1(b), or for a Force Majeure event as otherwise provided herein.
		3. **Level 3**: transportation service of the lowest priority among all levels of Capacity Usage Service. A customer’s volumes subject to such Level 3 service (including, without limitation, Customer’s volumes subject to the Capacity Usage Service hereunder) shall be subject to bumping to accommodate nominations of customers who have agreed to Level 1 or Level 2 service, and shall be subject to curtailment in the event that curtailment is required under Section 3.1(b), or for a Force Majeure event as otherwise provided herein.
	2. Bumping. Where bumping of any customer’s volumes is required in accordance with Section 2.1 above, the bumping of affected customers’ volumes (including, without limitation, Customer’s volumes subject to the Capacity Usage Service hereunder) within the same service level shall be based on the applicable rate(s) for Monthly Charges for Customer as compared with other customers.
	3. Nominatable Points. Customer may nominate volumes for Capacity Usage Service from or to all available receipt and delivery points on the Vector Canada system, subject to and to the extent permitted under the Vector Canada Tariff and the NEXUS Vector Canada Agreement.
	4. Delivery Pressure and Uniform Hourly Flows. Gas flows for purposes of the Capacity Usage Service hereunder shall be subject to the delivery pressure and uniform hourly flow requirements set forth in Sections 15 and 16 of the General Terms and Conditions of the Vector Canada Tariff.
3. OPERATING PROCEDURES
	1. Nominations, Scheduling and Curtailment.
		1. Customer shall submit nominations to NEXUS in accordance with Section 11 of the General Terms and Conditions of the NEXUS FERC Gas Tariff; provided, however, that NEXUS may require Customer to provide nominations on a different schedule in order to ensure timely nominations with, and otherwise to ensure compliance with, Section 5 of the General Terms and Conditions of the Vector Canada Tariff. NEXUS shall not be obligated to deliver a quantity of gas at any Delivery Point, regardless of any daily nomination by Customer, that exceeds the quantity of gas actually received for Customer’s account at the corresponding nominated Receipt Point (less any applicable fuel reimbursement quantities). Customer acknowledges that scheduling of all volumes for the Capacity Usage Service shall be subject to and in accordance with Section 7 of the General Terms and Conditions of the Vector Canada Tariff.
		2. Other than as a result of Force Majeure in accordance with Article VI of this Agreement, NEXUS shall have the right to curtail, interrupt or discontinue service to the extent that service to NEXUS under the NEXUS Vector Canada Agreement is curtailed by Vector Canada, on a pro rata basis among Customer and all other customers based on such customers’ confirmed nominations, subject to the priority of each level of service (including bumping) as set forth in Sections 2.1 and 2.2.
		3. Customer agrees that NEXUS shall have no liability for any curtailment of the Capacity Usage Service due to the action or inaction of Vector Canada, regardless of whether the same is in accordance with the Vector Canada Tariff; provided however that Customer shall have the same rights with respect to NEXUS as NEXUS has with respect to Vector Canada for any curtailment pursuant to the Vector Canada Tariff.
	2. Quality of Gas.
		1. All natural gas quantities tendered by Customer for the Capacity Usage Service at the Receipt Point hereunder shall conform with the natural gas quality specifications set forth in Section 2.1 of the General Terms and Conditions of the Vector Canada Tariff.
		2. If the gas delivered by or for the account of Customer at the Receipt Point fails to meet the quality specifications referenced in Section 3.2(a) hereof, then Customer acknowledges that the Capacity Usage Service may be interrupted or curtailed in accordance with Section 2.3 of the General Terms and Conditions of the Vector Canada Tariff and Section 3.1 hereof; provided further that Customer agrees to fully indemnify and hold NEXUS harmless from any and all costs incurred by NEXUS as a result of any gas delivery by or for the account of Customer that does not meet the quality specifications referenced in Section 3.2(a) hereof if such delivery by or for the account of Customer results in Vector Canada refusing such gas and/or NEXUS incurring costs for which NEXUS is required to reimburse Vector Canada under Section 2.3 of the General Terms and Conditions of the Vector Canada Tariff.
	3. Measurement Equipment and Principles of Measurement. The measurement and testing of quantities of natural gas transported for purposes of the Capacity Usage Service shall be conducted in accordance with the Vector Canada Tariff.
	4. LINK® System Agreement. On or prior to the Effective Date, Customer has or shall execute a LINK® System Agreement in the form to be posted on the NEXUS LINK® System website, and shall maintain compliance with such agreement for the duration of the Term.
4. TITLE TO AND POSSESSION OF GAS AND RISK
	1. Warranty of Title / Right to Deliver. Customer warrants that it owns or controls, or has the right to deliver or have delivered for its account, the gas that is delivered to any Receipt Point for Capacity Usage Service hereunder. Customer shall indemnify and hold NEXUS harmless from and against all claims, actions or damages arising from any adverse claims by third parties claiming an interest in such gas. Customer hereby agrees that throughout the Term hereof and for all purposes of the Vector Canada Tariff, NEXUS shall have the right to have all gas to be transported hereunder on the Vector Canada system delivered for its account to Vector Canada for transportation in accordance with the Vector Canada Tariff.
	2. Control and Possession. Customer acknowledges that Customer’s gas shall be in the control and possession of Vector Canada from and after delivery to the nominated Receipt Point and until redelivery at the nominated Delivery Point, and that such gas may be commingled with other natural gas while in the possession of Vector Canada.
	3. Responsibility. Customer hereby agrees that NEXUS shall have no responsibility with respect to natural gas prior to its delivery to Vector Canada at the nominated Receipt Point, or after its redelivery by Vector Canada at the nominated Delivery Point, or on account of anything which may be done, happen or arise with respect to said natural gas prior to such receipt and/or redelivery or while such gas is in the control and possession of Vector Canada.
5. TERM OF AGREEMENT; TERMINATION
	1. Effectiveness. This Agreement shall be effective as of the Effective Date (provided that the provision of the Capacity Usage Service shall not begin until the Service Commencement Date) and shall remain in effect until the later of: the termination date of the latest terminating Confirmation that remains in effect hereunder; or on a month to month basis subject to termination by either Party on no less than thirty days’ prior written notice (the term of effectiveness of this Agreement, including any extensions thereof, the “Term”). In addition, any Confirmation hereunder may be terminated prior to its stated termination date upon the agreement of NEXUS and Customer, with this Agreement continuing in effect unless otherwise agreed by the Parties.
	2. NEXUS Right to Amend Agreement. NEXUS may, upon no less than forty-five (45) days’ prior written notice to Customer, amend the terms of this Agreement or any Confirmation hereunder other than with respect to the amount of the rate(s) for the applicable Monthly Charges, the MDQ, and the Term, as NEXUS deems necessary or desirable in order to effectuate the Capacity Usage Service. Customer may exercise its right to terminate this Agreement under Section 5.1, and may terminate any outstanding Confirmation hereunder subject to the same notice period, if Customer objects to any such amendment; provided, however, that no such termination of this Agreement may be effective until the termination date of the latest terminating Confirmation hereunder. Otherwise, this Agreement will be deemed amended as provided in NEXUS’ notice to Customer upon the date specified in such notice.
6. CHARGES, PAYMENT AND IMBALANCES
	1. Transportation Charges, Fuel and Additional Charges.
		1. Beginning on the Service Commencement Date and continuing during the Term, Customer shall on a monthly basis pay to NEXUS a reservation charge (the “Reservation Charge”) and a usage charge (the “Usage Charge”) as set forth on the applicable Confirmation hereunder (along with any applicable charges in accordance with Sections 6.1(b) or (c) below, the “Monthly Charges”).
		2. In the event that Vector Canada imposes a fuel charge (whether in-kind or otherwise) on NEXUS pursuant to the NEXUS Vector Canada Agreement, Customer shall pay such charge to NEXUS for Customer’s capacity hereunder on a monthly basis or with such other frequency as NEXUS shall specify in a notice provided in accordance with Section 11.8.
		3. Commencing on the Service Commencement Date, Customer shall pay to NEXUS for the amount of the MDQ or the delivered quantity, as applicable, all applicable Abandonment Cost Surcharge(s) and other surcharges imposed on NEXUS by Vector Canada in accordance with the Vector Canada Tariff under the NEXUS Vector Canada Agreement.
	2. Invoices and Payment. No later than thirty (30) days following NEXUS’ payment to Vector Canada of amounts owed by NEXUS to Vector Canada under the NEXUS Vector Canada Agreement for a given calendar month, NEXUS shall invoice Customer for the Monthly Charges owed by Customer for such calendar month under the applicable Confirmation(s), and Customer shall pay NEXUS by check or electronic transfer of federal funds no later than ten (10) days from the date of the invoice as specified above, except when such day is a Saturday, Sunday or bank holiday, in which case payment is due the following business day.
	3. Overrun Charges. If and to the extent that NEXUS is subject to any overrun charges under Section 9.2 of the General Terms and Conditions of the Vector Canada Tariff as a result of the provision of the Capacity Usage Service hereunder, Customer shall upon invoice from NEXUS promptly reimburse NEXUS for such charges in full.
	4. Imbalances. Any imbalance that arises under this Agreement as between NEXUS and Customer on the one hand and Vector Canada on the other shall be accounted for and resolved by NEXUS pursuant to and in accordance with Section 9 of the General Terms and Conditions of the Vector Canada Tariff, and/or any applicable Operational Balancing Agreement in effect from time to time between NEXUS and Vector Canada. Customer agrees that if and to the extent NEXUS is required to pay any imbalance charges pursuant to Section 9.1 of the General Terms and Conditions of the Vector Canada Tariff as a result of the provision of the Capacity Usage Service hereunder, Customer shall upon invoice from NEXUS promptly reimburse NEXUS for such charges in full.
	5. Credit. Section 4 of the General Terms and Conditions of the NEXUS FERC Tariff shall apply to this Agreement and is hereby incorporated by reference herein, and Customer shall comply with the same from and after the Effective Date and continuing throughout the Term. With respect to Customer, the amount of any required security shall be as set forth in Section 4.2(B)(2) of such General Terms and Conditions.
7. FORCE MAJEURE
	1. Force Majeure. Any Force Majeure (as defined in Section 1.19, and as further provided in Section 18, of the General Terms and Conditions of the Vector Canada Tariff) declared by Vector Canada under the NEXUS Vector Canada Agreement shall constitute a NEXUS Force Majeure hereunder (and the term “Force Majeure” as used herein shall have the meaning given in Section 1.19 the General Terms and Conditions of the Vector Canada Tariff, and Section 18 of the same shall apply in full to this Agreement as between NEXUS and Customer; provided however that for all purposes of this Agreement, the term Force Majeure shall also include an outage or disruption affecting the functioning of the LINK® System, as the same is defined in Section 1 of the General Terms and Conditions of the NEXUS FERC Tariff). Customer’s payment obligations in the event of a Force Majeure hereunder shall only be relieved to the extent that NEXUS’ payment obligations under the NEXUS Vector Canada Agreement are relieved. For the avoidance of doubt, other than as stated in the previous sentence, no event of Force Majeure shall relieve Customer of any obligation to make payments hereunder.
8. INDEMNIFICATION AND RELEASE
	1. Indemnification by NEXUS. NEXUS shall fully indemnify, hold harmless and defend Customer and its directors, officers, agents, employees, representatives, consultants, successors and assigns (the “Customer Indemnified Parties”), from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation reasonable legal fees (collectively, the “Damages”), directly or indirectly arising out of or resulting from any damage to or destruction of property of, or death of or bodily injury to, third parties (including employees of NEXUS and Customer and subcontractors of NEXUS and Customer); all to the extent caused or contributed to by (a) any breach by NEXUS of the terms of this Agreement, or (b) the negligence or willful misconduct of NEXUS in connection with its actions, omissions or the fulfillment of its obligations in connection with this Agreement.
	2. Indemnification by Customer. Without limiting any of its other indemnification obligations set forth in this Agreement, Customer shall fully indemnify, hold harmless and defend NEXUS and NEXUS’ members and its and their respective directors, officers, agents, employees, representatives, consultants, successors and assigns (the “NEXUS Indemnified Parties”), from and against any and all Damages, directly or indirectly arising out of or resulting from any damage to or destruction of property of, or death of or bodily injury to, third parties (including employees of Customer and NEXUS and subcontractors of Customer and NEXUS); all to the extent caused or contributed to by (a) any breach by Customer of the terms of this Agreement, or (b) the negligence, or willful misconduct of Customer in connection with its actions, omissions or the fulfillment of its obligations in connection with this Agreement.
	3. Indemnitor Responsibilities. Promptly after receipt by a Customer Indemnified Party or NEXUS Indemnified Party, as the case may be (collectively, the “Indemnified Parties”), of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Sections 8.1 or 8.2 hereof may apply, the Indemnified Party shall notify NEXUS or Customer, as the case may be (in such capacity, the “Indemnitor”), in writing of such fact. The Indemnitor shall assume on behalf of the Indemnified Party and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to the Indemnified Party; provided, that the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both the Indemnitor and the Indemnified Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnitor, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its own behalf and at the Indemnitor’s expense.
	4. Indemnified Party Rights. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in Sections 8.1 or 8.2 hereof may apply, and the applicable Indemnitor fails to assume the defense of such claim, action, proceeding or investigation, then the Indemnified Party may at such Indemnitor’s expense contest such claim, or, with the prior written consent of such Indemnitor, settle such claim; provided, that settlement or full payment of any such claim, action, proceeding or investigation may be made without such Indemnitor’s consent (with such Indemnitor remaining obligated to indemnify the Indemnified Party under Sections 8.1 and 8.2) if the Indemnified Party reasonably believes, after consultation with counsel, such claim is meritorious. All costs and expenses incurred by a NEXUS Indemnified Party or a Customer Indemnified Party, as the case may be, in connection with any such contest, settlement or payment shall be deducted from any amounts payable to the Indemnitor pursuant to this Agreement with all such costs in excess of the amount so deducted to be reimbursed by the Indemnitor promptly following the Indemnified Party’s demand therefore.
	5. Release of Claims.
		1. Notwithstanding anything to the contrary herein, Customer agrees that NEXUS shall have no liability to Customer for any failure by Vector Canada to provide transportation service to NEXUS under the NEXUS Vector Canada Agreement, whether the same is due to a Force Majeure event or not, unless such failure is the result of service to NEXUS under the NEXUS Vector Canada Agreement being suspended or terminated by Vector Canada as a result of the breach by or default of NEXUS under such Agreement, and Customer hereby releases NEXUS from any and all such claims that may arise hereunder.
		2. In the absence of negligence, bad faith, fault or willful misconduct on the part of NEXUS, Customer waives any and all claims and demands against NEXUS, its members, officers, employees or agents, arising out of or in any way connected with (i) the quality, use or condition of Customer’s gas after delivery from Vector Canada for the account of Customer at the Delivery Point, and (ii) any losses or shrinkage of gas during or resulting from the provision of the Capacity Usage Service hereunder.
	6. Survival. The indemnity obligations set forth in this Article VII shall survive the termination of this Agreement.
9. REPRESENTATIONS AND WARRANTIES
	1. General. Each Party represents and warrants to the other Party that, as of the date of this Agreement:
		1. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business;
		2. the execution, delivery and performance of the Agreement and the performance of its obligations hereunder are within its power, have been duly authorized by all necessary action and do not violate its governing documents or any law or material agreement applicable to it;
		3. the Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
		4. there are no Bankruptcy Proceedings (as defined herein) pending or contemplated by it or to its knowledge, threatened against it; and
		5. there are no pending or, to its knowledge, threatened legal proceedings that materially adversely affect its ability to perform under the Agreement.
10. EVENTS OF DEFAULT
	1. Events of Default. Any rights of a non-defaulting Party under this Article IX shall be in addition to such Party’s other rights under this Agreement and at law to the extent not waived hereunder. An “Event of Default” shall be deemed to have occurred upon the occurrence of any of the following:
		1. The failure of either Party to perform any of the covenants or obligations imposed on it herein;
		2. Any representation or warranty made by a Party under this Agreement is false or misleading in any material respect when made; or
		3. Any Party (i) makes an assignment or general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, reorganization, debt restructuring, insolvency, liquidation or other law for the protection of debtors or creditors (or analogous proceedings in the jurisdiction of such Party), (iii) has such a petition filed against it and such petition is not withdrawn or dismissed within thirty (30) Days after such filing, (iv) otherwise becomes bankrupt or insolvent (howsoever evidenced), (v) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (vi) has any order for relief entered against it, or (vii) is generally unable to pay its debts as they become due (all of the foregoing, “Bankruptcy Proceedings”).
	2. Effect of Event of Default. Upon the occurrence and during the continuation of an Event of Default on the part of one Party, the non-defaulting Party may, in its sole discretion, cause a written notice to be served on the Party in default stating specifically the Event of Default and declaring it to be the intention of such Party giving the notice to terminate this Agreement; thereupon, except in the case of an Event of Default involving Bankruptcy Proceedings, the Party in default shall have 10 days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the default notice, and if within said 10 day period the party in default does so remove and remedy said cause or causes and fully indemnifies the party not in default, such default notice shall be withdrawn and the Agreement shall continue in full force and effect. In the event the Party in default does not so remedy and remove the cause or causes, then, at the option of the Party giving such default notice, the Agreement shall terminate.
	3. Damages. In addition to any other remedies that may be available to NEXUS at law or in equity in the event of a Customer default, Customer agrees to reimburse NEXUS for, and/or indemnify and hold NEXUS harmless for any Damages that NEXUS suffers or amounts NEXUS is required to pay to Vector Canada (to the extent the same are not Damages) under Section 30.3 or 30.4 of the General Terms and Conditions of the Vector Canada Tariff as a result of any acts or omissions of Customer.
11. MISCELLANEOUS
	1. Incorporation by Reference. All Vector Canada Tariff provisions to which provisions of this Agreement are made subject by the terms hereof, and which are applicable to NEXUS under the terms of the NEXUS Vector Canada Agreement, and all NEXUS FERC Tariff provisions to which provisions of this Agreement are made subject by the terms hereof, are hereby incorporated by reference and made a part hereof as if set forth herein in their entirety. To the extent that additional or revised terms of this Agreement are deemed reasonably necessary or appropriate by NEXUS in order to effectuate the Capacity Usage Service, whether due to changes in the NEXUS Vector Canada Tariff, the NEXUS FERC Tariff, or otherwise, and except as otherwise provided in Section 5.2, the Parties agree to cooperate and negotiate in good faith to amend the terms hereof to effectuate such additional or revised terms.
	2. Assignment. This Agreement is not assignable by either Party hereto.
	3. Confirmation(s). Each and every Confirmation executed by the Parties in the form of Exhibit A forms an integral part of the Agreement and is hereby expressly incorporated.
	4. Governing Law. This Agreement shall be interpreted according to the laws of the Province of Ontario.
	5. No Waiver. No waiver by a Party of any default by the other Party in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition or requirement herein, nor shall such waiver be deemed to be a waiver of, or in any manner a release of, the defaulting Party from future performance of the same provision, condition or requirement. Any delay or omission of any Party to exercise any right hereunder shall not impair the exercise of any such right or any like right accruing to it thereafter.
	6. Amendments or Modifications. No amendments or modifications of the terms and provisions of this Agreement shall be effective except by the execution of a supplementary written agreement executed by Customer and NEXUS, except as permitted and provided for in Section 5.2 hereof.
	7. Relationship between the Parties. Nothing in this Agreement or any related agreement shall be deemed to create a partnership or joint venture between the Parties or to constitute one Party as the agent of the other for any purpose.
	8. Notices. Unless otherwise specifically provided in this Agreement, any written notice or other communication shall be deemed given and received on the date on which such notice or communication is given by electronic mail, or the date received if given by registered or certified mail, postage prepaid, addressed:

 If to Customer:

[\_\_\_\_\_\_\_\_\_\_]

 If to NEXUS:

5400 Westheimer Court

Houston, TX 77056

Phone: (713) 627-5400

Attention: Contract Administration

Email: ContractAdminLINK@enbridge.com

Each Party hereto has the right to change its address for all purposes of this Agreement by notifying the other Party thereof in writing. For all purposes of this Agreement, notices shall be deemed given when received on a business day by the receiving Party. In the absence of proof of the actual receipt date, the following presumption will apply: Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving Party.

* 1. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
	2. Limitation of Liability. NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE, OR FOR ANY LOST PROFITS, HOWEVER ARISING, EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR LOST PROFITS.
	3. Entire Agreement. This Agreement contains the entire agreement respecting the subject matter hereof, and supersedes any and all prior understandings and agreements, whether oral or written, concerning the subject matter hereof.
	4. Severability. If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby and the Parties shall promptly negotiate to restore this Agreement as near as possible to its original intent and economic effect.
	5. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers, the day and year first above written.

**[CUSTOMER]:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NEXUS CAPACITY SERVICES, ULC:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

**Form of Capacity Usage Service Confirmation**

This Confirmation, pursuant to that certain Capacity Usage Agreement by and between NEXUS Capacity Services, ULC, a British Columbia unlimited liability company (“NEXUS”), and [\_\_\_\_\_\_\_\_](“Customer”), is agreed to between NEXUS and Customer this [\_\_] day of [\_\_\_\_\_], 20[\_\_], and replaces and supersedes that certain Confirmation between NEXUS and Customer dated [\_\_\_\_] / [Not Applicable].

The terms of this Confirmation for Capacity Usage Service are as set forth below. Capitalized terms used but not defined in this Confirmation have the meanings given in the Capacity Usage Agreement.

**1.** **MDQ**: [\_\_\_\_\_\_\_\_\_\_] GJ / Day

**2. Term**: [\_\_\_\_\_\_\_\_\_\_\_]

**3. Monthly Charges:**

Reservation Charge: [CA$ \_\_] / GJ / month of MDQ;

 Usage Charge: [CA$ \_\_] / GJ delivered, plus any applicable Usage Charge assessed to NEXUS by Vector Canada on account of Customer’s volumes delivered for the Capacity Usage Service, with such additional Usage Charge multiplied by the quantity actually transported hereunder in the relevant month;

 In each case, exclusive of any Abandonment Cost Surcharge (ACS) charge and any other future surcharges which are imposed and/or approved by a regulatory agency such as the National Energy Board and imposed by Vector Canada on NEXUS pursuant to the NEXUS Vector Canada Agreement, which shall apply to this Agreement and shall be payable in accordance with Section 6.1(c).

 Fuel Charge and Surcharges: as provided and as applicable under Sections 6.1(b) - (c) of the Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Confirmation to be executed by their respective duly authorized officers on [\_\_\_\_\_\_\_\_\_\_\_].

**[CUSTOMER]:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NEXUS CAPACITY SERVICES, ULC:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_