

Customer Agreement

This Customer Agreement (“Agreement”) is entered into as of [effective date of Agreement] (“**Effective Date**”) by and between Energy Transportation Exchange Inc., an Alberta corporation with a place of business at 600 6th Ave SW, Calgary, AB T2P 0S5 (“**ETEX**”) and [customer name], a [incorporation jurisdiction] corporation with a place of business at [corporate address] (“**Customer**”). ETEX and Customer are referred to in this Agreement individually as a “Party” and together as the “Parties”.

WHEREAS ETEX owns and operates a web based electronic exchange offered on the ETEX website, www.etexexchange.ca (“**Website**”), which facilitates the exchange of natural gas transportation capacity on the Nova Gas Transportation System (“**NGTS**”) owned and operated by TC Energy Corporation (“**TC Energy**”);

AND WHEREAS ETEX has agreed, subject to the terms and conditions of this Agreement, to provide Customer the Services as set out in Schedule "A" attached hereto and incorporated herein.

NOW THEREFORE, in considerations of the premises, covenants and agreements of the Parties hereinafter contained, the Parties agree as follows:

1) Definitions. In this Agreement, in addition to the capitalized terms defined elsewhere in the Agreement, the following terms shall have the meanings ascribed to them as follows:

“**Administrator**” means a person designated by Customer in accordance with this Agreement who are authorized to designate Authorized Representatives (including but not limited to employees, consultants and agents of Customer) that are authorized to enter into Transactions for trading and/or clearing on behalf of the Customer and thus bind the Customer to their respective Agreement obligations.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**”, for purposes of this Agreement, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

“**Assignee**” or “**Buyer**” means a Customer who is the assignee of Transportation under the NGTS assignment process pursuant to the terms of a Transaction.

“**Assignor**” or “**Seller**” means a Customer who is the assignor of Transportation under the NGTS assignment process pursuant to the terms of a Transaction.

“**Authorized Representatives**” means representatives of Customer as designated on Schedule “B” or specified by the Administrator who are authorized to enter into Transactions on behalf of Customer pursuant to this Agreement.

“**Benchmark Equalization Payment**” means, for any Transaction, the per unit quantity difference between actual tolls paid by Offering Customer to NGTS and the Benchmark Price Point tolls, multiplied by the total quantity of Transportation to be assigned pursuant to the Transaction over the entire term of the applicable Transportation assignment. Where the actual tolls paid by Offering

Customer to NGTS are lower than the Benchmark Price Point, the Benchmark Equalization Payment is payable by the Assignee. Where the actual tolls paid by Offering Customer to NGTS are higher than the Benchmark Price Point, the Benchmark Equalization Payment is payable by the Assignor.

“**Benchmark Price Point**” means, for any Transaction, Price Point “B” for FT-R and Price Point “Z” for FT-D, at the time the Order is Completed including abandonment surcharges.

“**Business Day**” means any day except Saturday, Sunday and statutory holidays in the Province of Alberta.

“**Code of Conduct**” means the Exchange code of conduct document available via the Website.

“**Completion Payment**” means an amount that is payable upon completion of an Order consisting of: (1) a Benchmark Equalization Payment; or (2) a Premium or Discount payment; or (3) both of the above. Where amounts are payable pursuant to each of items (1) and (2) above, the amounts will be netted against one another such that the Completion Payment will consist of a single payment amount.

“**Confidential Information**” means any and all information provided directly or indirectly by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) that a reasonable business person would consider confidential, including but not limited to data, plans, reports, computer programs, drawings, procedures, contracts, specifications or forecasts or which originated or was otherwise acquired by the Receiving Party in connection with, as a result of, or incidental to the operation of this Agreement but does not include information which: (i) is or becomes, through no fault of the Receiving Party, part of the public domain; (ii) is already in the Receiving Party’s possession in written form without restriction on use or disclosure and was not received in anticipation of this Agreement; or (iii) was lawfully acquired from a third party (as evidenced by the Receiving Party’s written records) having no obligation of secrecy or restriction on use from that third party.

“**Critical Exchange Trading System Issue**” means any event or events that cause the Exchange Trading System to be unavailable to multiple Customers, or an action by ETEX to make the Exchange Trading System unavailable to all Customers, for a consecutive fifteen minute period during any day the Exchange is made available to Customers, and a “**Non-Critical Exchange Trading System Issue**” means any Exchange Trading System issue that is not a Critical Exchange Trading System Issue.

“**Customer Data**” means any electronic data or information of Customer, including any of Customer’s personal information, that is collected by or submitted to ETEX via the Services.

“**Discount**” means, with respect to a Transaction, a negotiated amount (not including a Benchmark Equalization Payment) payable by Assignor to Assignee in relation to the Transaction.

“**Exchange**” means the electronic trading platform operated by ETEX.

“**ETEX Data**” means the data or information resulting or derived from Customer’s use of the Exchange to make Transactions (including, but not limited to bids and offers for Transactions and information related to Transactions entered into by Customer through the Exchange) which is available to Customer via the Exchange, excluding TC Energy Data and Customer Data.

“**Fees**” means the fees to be charged for Services, as specified in attached Schedule “A”, and including any Penalties or fees charged under Section 5(b)(ii).

“**General Suspension**” means the termination of access to the Exchange for all Customers, whether on a temporary or longer basis.

“**Long Term Transaction**” means Transactions for a term of longer than three (3) months.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Market Price Band**” means the Benchmark Price Point plus or minus 50% or less.

“**Offering Customer**” means a Customer which posts an offer on the Exchange to dispose of Transportation.

“**Order**” means any bid or offer, posted by a Customer on the Exchange, to assign or accept an assignment of Transportation.

“**Premium**” means, with respect to a Transaction, a negotiated amount (not including a Benchmark Equalization Payment) to be paid by Assignee to Assignor in conjunction with the Transaction.

“**Regulatory Body**” means any governmental authority or regulatory agency which oversees and/or regulated natural gas transportation and trades thereof.

“**Regulatory Approvals**” means all approvals, authorizations, consents, notices, licenses, permits, qualifications, exemptions or orders of any Regulatory Body or government agency required to be obtained in connection with the Services.

“**Services**” means the ETEX services offered to Customer, including but not limited to the Exchange and the databases, computer systems, hardware and software that facilitate the entering into of Transactions, as further described in the Supplementary Terms and on the Website.

“**Short Term Transaction**” Transactions with for a term of three (3) months or less.

“**Supplementary Terms**” means the following Services usage guides and policies, as updated from time to time and accessible via the Website: (i) “Services”; (ii) “Code of Conduct”; (iii) “ETEX Credit Policy”; and (iii) “System Requirements and Recommendations”.

“**System Specifications**” means the technical specifications required to use the Services.

“**TC Energy Data**” means any and all information and data made publicly available by TC Energy which is incorporated or made available via the Services.

“**Transaction**” means a trade entered into by Customer on the Exchange or otherwise in accordance with this Agreement pursuant to which Transportation is assigned from one ETEX Customer to another.

“**Transportation**” means rights to transport natural gas on NGTS, as evidenced by a valid and binding agreement with TC Energy.

“**UserID**” means the user identification assigned to each of Customer’s authorized personnel for access to the Exchange.

2) Services.

- a) **Provision of Services.** Conditioned on the terms of this Agreement, including payment of any applicable Fees, ETEX hereby grants Customer a non-exclusive, non-transferable, limited license to access and use the Services during the Term solely for Customer’s internal business use. Customer’s use of the Services shall be in accordance with Supplemental Terms and will depend on the tier of access purchased. Certain aspects of the Services may require Customer to pay additional Fees.
- b) **Use Guidelines.** Customer shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than as contemplated by this Agreement; (ii) use the Services to send spam or otherwise duplicative or unsolicited messages in violation of any applicable laws; (iii) use the Services to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third-party privacy or publicity rights; (iv) use the Services to send or transmit Malicious Code; (v) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (vi) attempt to gain unauthorized access to the Services or its related systems or networks. Customer shall comply with Supplemental Terms at all times while using the Services.
- c) **Affiliates.** Customer Affiliates and Authorized Representatives may use the Services subject to the terms of this Agreement. Customer shall cause each Customer Affiliate and/or Authorized Representative to comply with this Agreement (including Supplemental Terms and TC Energy Terms) to the full extent as if such Customer Affiliate and/or Authorized Representative were a party hereto, and any act or omission relating to this Agreement by such Customer Affiliate and/or Authorized Representative shall be deemed an act or omission of Customer. In addition, each Party may use one or more Affiliates to perform its obligations under this Agreement, provided that such use shall not affect such Party’s obligations hereunder.
- d) **Publicity.** Neither Party may issue press releases relating to this Agreement without the other Party’s prior written consent, such consent not to be unreasonably withheld. During the Term, each Party may include the name and logo of the other Party in public lists of customers or vendors in accordance with the other Party’s standard trademark guidelines (if any).

3) Responsibilities of Customer.

- a) General.** Customer shall (i) be solely responsible and liable for all telecommunications costs used to access and use the Services; (ii) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of any Customer Data submitted to ETEX in connection with the Services; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and notify ETEX promptly of any such unauthorized access or use; (iv) comply with all applicable local, provincial, federal and foreign laws in using the Service; and (v) not create any security interest, pledge or otherwise encumber any amount deposited as collateral, any amount payable by the Customer, or any Transportation to be delivered by or received by the Customer, under any Transaction.
- b) Supplementary Terms.** Customer acknowledges that it has read the Supplementary Terms and agrees to comply with them. This Agreement shall govern to the extent of any inconsistency or conflict between this Agreement and the Supplemental Terms. Further, Customer acknowledges that the collection and processing of Customer Information shall be governed by the ETEX Privacy Policy available on the Website.
- c) TC Energy Terms.** Customer acknowledges and agrees that Customer's use of the Services is dependent on and subject to (i) TC Energy's continued provision of the NGTS; and (ii) any TC Energy rules and regulations governing the NGTS, Transportation, and trades and other actions involving Transportation, whether made available via the Services or otherwise ("TC Energy Terms"). Customer agrees to abide by TC Energy Terms at all times and shall be solely responsible for determining any applicable TC Energy Terms and complying with them. Customer hereby releases ETEX from all liability and/damages that may arise from (I) TC Energy modifying the TC Energy Terms or modifying or discontinuing the NGTS; and (II) TC Energy's actions or inactions that affect Customer's receipt of the Services, including but not limited to approving or failing to approve a particular Transaction or making Transportation available to Customer. Except as expressly set forth in this Agreement, ETEX shall not be responsible for receipt of products or services from TC Energy or for Customer's reliance on the information available or services provided by TC Energy.
- d) Transactions Binding.** Customer acknowledges and accepts that unless explicitly noted on the Exchange to the contrary, all Transactions entered into by the Customer through the Exchange shall be binding upon the Customer.
- e) Credit.** Per the Supplementary Terms, as a prerequisite for Customer's use of the Services, ETEX may, in its sole discretion, require that Customer provide ETEX with financial security including, without limitation, cash or a letter of credit ("**Credit**") as financial security against Customer's payment obligations arising from Customer's use of the Services. In the event Customer fails to pay a Completion Payment, Fees or other amounts owing under this Agreement: (i) ETEX will have the right to take payment owing out of Customer's Credit; and (ii) Customer shall be deemed to have committed a material breach of this Agreement.

f) **Non-Clearable Transactions.** The Customer acknowledges and agrees that ETEX may determine, in its sole discretion, that it is unable to clear certain Transactions, including but not limited to Trades in Error. In the event that ETEX makes this determination, the Transaction will be cancelled and any Customers party to the Transaction will be promptly notified of the cancellation by ETEX.

4) **Responsibilities of ETEX.**

a) **ETEX Responsibilities.** ETEX shall (i) maintain the security and integrity of the Services and the Customer Data; (ii) provide basic support to Customer at no additional charge; (iii) electronically post the appropriate particulars of Customer's Transaction as soon as reasonably possible after Customer's entering into a Transaction; and (iv) use commercially reasonable efforts to make the Services available during the hours of operation, which may change from time to time with notice via the Website, except for: (A) any General Suspensions, Critical Exchange Trading System Issues, or Non-Critical Exchange Trading System Issues; (B) planned downtime (of which ETEX shall aim to provide at least eight (8) hours' notice via the Website; or (C) any unavailability caused by circumstances beyond ETEX's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving ETEX's employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within ETEX's possession or reasonable control, and denial of service attacks.

b) **Network Security.** ETEX will take commercially reasonable steps to prevent fraud and breaches of security of the Services and will notify Customers of any security breaches in accordance with applicable laws. Upon learning of or suspecting any such fraud or breaches of security, ETEX may take all commercially reasonable steps to remedy the situation, including without limitation halting Customer access to the Services and withdrawing all of the Customers's Orders from the Exchange.

c) **UserIDs and Passwords.** ETEX shall provide a distinct UserID and password to the Administrator. The Administrator establishes Authorized Representatives for the Customer and provides them access to the Exchange. Any person accessing the Service utilizing a UserID assigned by the Administrator shall be deemed to have been given authority to do so by the Customer 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 has been compromised, the Administrator shall remove the UserID from their list of eligible Authorized Representatives and shall so inform ETEX immediately. Customer shall remain liable for Transactions entered into using such UserID until such UserID is terminated. In the event of a dispute regarding a UserID owner, ETEX reserves the right to request documentation to determine account ownership. ETEX retains the right to temporarily disable a UserID until the account owner is determined.

d) **Regulatory Approvals.** Customer acknowledges and agrees that provision of the Services is dependent on (i) Regulatory Bodies permitting ETEX to provide the Services to its customers; and (ii) any applicable Regulatory Approvals required for ETEX to provide the

- e) Services to its customers. ETEX hereby agrees to give notice of any prohibition issued by a Regulatory Body or termination of any Regulatory Approval in respect of the performance of this Agreement by ETEX to any Customer whose receipt of the Service under this Agreement is affected by such prohibition and/or termination.

5) Trading.

- a) **Novation of Transportation.** Provided Customer obtains ETEX's prior written consent, Customer may transfer Transportation to an entity ("**Transferee**") in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Customer's stock or assets on the terms of this Section 5(a). Such a transfer must take place at the same prices that appear on the books of the transferring Customer and the transfer records must indicate the date when the Transaction for the relevant Transportation was made. Any transfer contemplated in this Section 5(a) is contingent on: (i) ETEX's satisfaction that Transferee is a legal entity capable of assuming Customer's rights and obligations under the applicable transfer and complying with all Supplemental Terms; and (ii) Transferee entering into and complying with a customer agreement governing use of the Services and/or a novation agreement governing the proposed transfer (at ETEX's sole discretion). Transferring Customer must retain all records related to the transfer for a period of five (5) years.

- b) **Trades in Error.**

- i) **General.** If Customer enters into a Transaction in error through the Exchange ("**Trade in Error**"), ETEX will provide notice via the Customer inbox function of the Exchange that the trade is under investigation and may cause a General Suspension in its sole discretion. A General Suspension will require a system wide notice being issued via the Exchange. Further, ETEX will follow the following procedure in Section 5(b), as applicable:

- (1) **Trade in Error Within Reporting Time.** If a Trade in Error is brought to the attention of ETEX within thirty (30) minutes after such error occurs ("**Reporting Time**"), ETEX will provide notice to the parties involved via the Exchange that a Trade in Error has been reported and is under investigation and may cause a General Suspension. Customer may notify ETEX by email or phone using the ETEX contact information available on the Website. If the Trade in Error is outside the Market Price Band, ETEX will be entitled (in its sole discretion), but not obligated, to cancel the Trade in Error. If the Trade in Error is within the Market Price Band, ETEX will cancel the Trade in Error only if consent is first given by all of the Customers that are party to such Trade in Error within thirty (30) minutes of the Reporting Time. If consents for a Trade in Error are not received from the relevant parties within thirty (30) minutes of the Reporting Time, the Trade in Error will not be cancelled and will remain valid and binding upon all Customers to the Trade in Error.

- (2) **Trades in Error Outside Reporting Time.** If a Trade in Error is brought to the attention of ETEX outside of the Reporting Time, ETEX will cancel the Trade in Error only if consent is first given by all of the Customers that are party to such

Trade in Error within thirty (30) minutes of the Reporting Time. If consents for a Trade in Error are not received from the relevant parties within thirty (30) minutes of the Reporting Time, the Trade in Error will not be cancelled and will remain valid and binding upon all Customers to the Trade in Error.

(3) Other Trades in Error. If a Trade in Error occurs other than as described in Section 5(b)(i)(1)-(2), ETEX will be entitled (in its sole discretion), but not obligated, to cancel the Trade in Error.

ii) Liquidated Damages. Without limitation to any other rights or remedies of ETEX under this Agreement or at law, equity or otherwise, ETEX, in its sole discretion, may charge Customer a one-time fee of up to CAD \$2,000 payable by Customer who has entered into, caused (directly or indirectly), or failed to prevent a Trade in Error, representing the pre-estimated amount of the costs of Trade in Error investigation and reputational and loss of business damages suffered by ETEX as a result.

6) Term and Termination.

a) Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect until terminated by a Party in accordance with the terms of this Agreement.

b) Termination for Cause. Either Party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other Party if such breach remains uncured at the expiration of such period; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. ETEX may terminate this Agreement immediately upon notice to Customer: (I) upon TC Energy altering or discontinuing the NGTS or modifying the TC Energy Terms in a manner which prevents ETEX from offering the Services as contemplated herein; (II) upon direction from TC Energy or a Regulatory Body; (III) upon a change implemented by TC Energy or a Regulatory Body, or in ETEX's Regulatory Approvals which prevent ETEX from offering the Services as contemplated herein.

c) Termination for Convenience. Either Party may terminate this Agreement at any time by giving the other Party thirty (30) days' prior written notice.

d) Effect of Termination. Upon termination, any licenses granted to Customer by ETEX hereunder will terminate. If, upon termination of this Agreement, one or more of Customer's Transactions have not been completed, then this Agreement will continue to be in full force and effect in respect of all Customer's outstanding Transactions until all such Transactions have been completed. Termination shall not relieve Customer of the obligation to pay Fees accrued or payable to ETEX prior to the effective date of termination. The following provisions shall survive any termination or expiration of this Agreement: 1-3, 5, 6(d), 7-15, and Schedules A and B.

7) Fees. Except as expressly set forth in Schedule "A", terms governing Fees shall be as follows:

a) Fees. In consideration for the receipt of the Service, Customer shall pay ETEX the Fees as specified in Schedule "A". All amounts are payable in Canadian dollars. Except as otherwise specified herein or in Schedule "A", Fees are invoiced based on actual usage, payment obligations are non-cancelable, and Fees paid are non-refundable. If Customer does not have sufficient funds or Credit to cover Completion Payments for a particular

Transaction, ETEX may, in its sole discretion, assess Customer a one-time fee of up to CAD \$2,000 (“**Penalty**”).

- b) **Invoicing and Payment.** Fees will be invoiced to Customer on the fifteenth (15th) of every calendar month. Unless otherwise stated in an invoice, invoiced Fees are due net ten (10) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information with ETEX.
 - c) **Overdue Payments.** Any Fees not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at ETEX’s discretion, late charges at the rate of 1.5% of the outstanding balance per month (19.57% per annum), or the maximum rate permitted by law, whichever is lower, from the date such Fees were due until the date paid. ETEX reserves the right to use Customer’s Credit to collect Customer’s outstanding invoiced Fees.
 - d) **Taxes.** Unless otherwise stated, Fees do not include any direct or indirect local, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, goods and services, harmonized, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on ETEX’s net income or property. If ETEX has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides ETEX with a valid tax exemption certificate authorized by the appropriate taxing authority.
 - e) **Suspension of Service.** If Customer's account is one Business Day or more overdue (except with respect to Fees then under reasonable and good faith dispute) or if Customer cannot cover a Completion Payment, in addition to any of its other rights or remedies, ETEX reserves the right to suspend provision of the Services to Customer, without liability to Customer, until all Fees are paid in full.
 - f) **Set-Off.** Each Party shall be entitled to set-off and deduct from amounts payable to the other Party, including but not limited to Customer Fees or any other amounts owed to ETEX hereunder, pursuant to this Agreement.
- 8) **Proprietary Rights.**
- a) **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, ETEX reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
 - b) **Restrictions.** Customer shall not (and shall not allow any Customer Affiliate, Authorized Representative or a third party to): (i) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Services, except to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary; (ii) circumvent any limits, timing or use restrictions that are built into the Services; (iii) remove any proprietary notices, labels, or marks from the Services or Supplemental Terms; (iv) frame or mirror any content forming part of the Services; (v)

access the Services in order to build a competitive product or service, or (vi) copy any ideas, features, functions or graphics of the Services.

- c) **ETEX Data.** Customer acknowledges and agrees that as between the Customer and ETEX, the ETEX Data shall be the exclusive property ETEX and its Affiliates or licensors to use as it deems fit, and except as expressly set forth in this Agreement, the Customer shall have no rights to use ETEX Data without ETEX's or its Affiliates' or licensors' prior written consent. ETEX Data shall be considered ETEX's Confidential Information under this Agreement. ETEX hereby grants Customer a limited, revokable, restricted, non-exclusive license to use ETEX Data for Customer's internal business purposes during the Term.
- d) **Customer Data.** As between ETEX and Customer, Customer and its licensors exclusively owns all rights, title, and interest in and to all Customer Data. Customer Data is deemed Customer's Confidential Information under this Agreement. ETEX shall not use or process Customer Data except to respond to service or technical problems, at Customer's request or as necessary for the operation of the Services or billing. Customer hereby grants ETEX a non-exclusive, non-transferable, irrevocable, worldwide, royalty-free, fully paid-up license for the Term (and for thirty (30) days thereafter) to use and otherwise exploit the Customer Data as reasonably required to provide the Services. The forgoing license shall include the right for ETEX to use Customer Data to create aggregated statistical analytics in respect to Services use and other Services and Customer use parameters and characteristics ("**Aggregated Statistics**"). ETEX shall own all Aggregated Statistics created from the Customer Data.
- e) **Feedback.** ETEX shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, unrestricted license to use or incorporate into the Services and/or any other ETEX products or services any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Affiliates or Authorized Representatives relating to the Services.

9) Confidentiality.

- a) **No Disclosure.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.
- b) **Protection.** Receiving Party agrees to protect the confidentiality of the Confidential Information of Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).
- c) **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- d) **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections in this Agreement, the Disclosing Party shall have the right, in addition to any other remedies

available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

10) Warranties.

- a) Mutual Warranties; ETEX Warranties.** Each Party warrants that (i) it has the legal power to enter into this Agreement; and (ii) it has all rights and licenses necessary to perform its obligations hereunder and has the rights to grant the licenses contemplated hereunder. ETEX warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof.
- b) Customer Warranties.** In addition to Section 10(a), Customer warrants (i) that it is not insolvent and is capable of meeting its legal and financial obligations hereunder; (ii) to fully comply with any and all TC Energy Terms, Supplemental Terms, and Regulatory Approvals to which Customer is subject by receiving the Services; (iii) that it has necessary access to the NGTS in accordance with TC Energy Terms and any other TC Energy requirements, including all necessary contracts and financial security in place with TC Energy (as may be put in place by TC Energy and amended at TC Energy's sole discretion), which TC Energy requires to approve any given Transaction; and (iv) when posting available Transportation as Assignor, that Customer is the holder of the legal rights to such Transportation, including the right to assign the Transportation as contemplated.

11) Disclaimers.

- a) Transportation Assignments.** To the extent that TC Energy Terms require ETEX to accept assignments of Transportation to facilitate Transactions between Customers, such assignments are intended only to facilitate a confidential exchange between its customers. Customer acknowledges that ETEX accepts a Transportation assignment from Customer to ETEX on the express condition that a binding permanent Transportation assignment back to the Customer is entered into at the time the Transportation assignment to ETEX is made. If, during the intervening period between execution of the permanent Transportation assignment from ETEX back to Customer, and the Transportation assignment's effective date, Customer is petitioned into bankruptcy or receivership, is subject to other occurrences or proceedings of a similar nature, or otherwise becomes unable to accept assignment of Transportation as contemplated herein, the permanent Transportation assignment will continue to be binding upon Customer and its successors and assigns, notwithstanding the future effective date.
- b) General Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ETEX MAKES NO REPRESENTATIONS AND PROVIDES NO WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, INCLUDING ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12) Indemnification.

- a) Indemnification by ETEX.** ETEX shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) awarded to a third party against Customer by a court of competent jurisdiction in any claims, demands, suits, or proceedings made or brought against Customer by a third party alleging that the use of the Services as contemplated hereunder infringes the intellectual property rights of a third party (all such claims, “**IP Claims**”), subject to the condition that Customer (a) promptly gives written notice of each IP Claim to ETEX; (b) gives ETEX sole control of the defense and settlement of each IP Claim (provided that ETEX may not settle or defend any IP Claim unless it unconditionally releases Customer of all liability); and (c) provides to ETEX, at ETEX's cost, all reasonable assistance in respect to each IP Claim.
- b) Mitigation.** If (i) ETEX becomes aware of an actual or potential IP Claim, or (ii) Customer provides ETEX with notice of an actual or potential IP Claim, Provider may (or in the case of an injunction against Customer, shall), at ETEX’s sole option and determination: (I) procure for Customer the right to continue to use the Services; or (II) replace or modify the Services with equivalent or better functionality so that Customer’s use is no longer infringing; or (III) if (I) or (II) are not commercially reasonable, terminate provision of the Services and refund to Customer any pre-paid Fees for any periods after the termination of the Service, less any outstanding Fees owed by Customer to ETEX.
- c) Exclusions.** The obligations in Sections 12(a) and 12(b) do not extend to (i) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Services with other products, software or services not provided by ETEX; (ii) any IP Claim related to Customer Data or TC Energy Data, or (iii) any IP Claim related to any use or exercise of any other right in respect to the Services outside the scope of the rights granted to Customer in this Agreement.
- d) Indemnification by Customer.** Customer shall defend, indemnify and hold ETEX and its Affiliates, directors, officers, employees, and agents (“**ETEX Indemnitees**”) harmless against any and all loss, damage or costs (including, without limitation, reasonable attorneys’ fees and expenses and all costs of litigation), whether direct or indirect, that they or any related party may sustain as a result of any acts, errors or omissions of Customer, its Affiliates and its Authorized Representatives, including but not limited to: (i) breach of any of the provisions of this Agreement; (ii) negligence or other tortious conduct; (iii) breach of a third party’s intellectual property rights or privacy rights; (iv) claims arising in connection with Customer Data; (v) claims arising as a result of Customer’s dispute with TC Energy, a Regulatory Body, or another customer; (vi) claims arising (directly or indirectly) from TC Energy’s or a Regulatory Body’s actions or inactions; and (vii) claims arising in connection with the TC Energy Terms (each a “**Customer Claim**”), provided, that ETEX (1) promptly gives written notice of each Customer Claim to Customer; (2) gives Customer sole control of the defense and settlement of each Customer Claim (provided that Customer may not settle or defend any Customer Claim unless it unconditionally releases ETEX of all liability); and (3) provides to Customer, at Customer's

cost, all reasonable assistance in respect to each Customer Claim. For the purposes of this Section 12(d), Customer acknowledges that ETEX is acting as agent and trustee of ETEX Indemnitees.

13) Limitation of Liability.

- a) **Limitation of Liability.** In no event shall either Party's aggregate liability arising out of or related to this Agreement, whether in contract, tort (including negligence) or under any other theory of liability, exceed the lesser of \$100 or the amounts actually paid by and due from Customer hereunder in the twelve months preceding the incident giving rise to liability.
- b) **Exclusion of Consequential and Related Damages.** In no event shall either Party have any liability to the other Party for any lost profits or for any indirect, special, incidental, or consequential damages (including, without limitation, damages for loss of business, loss of profits, business interruption, loss of data, lost savings or other similar pecuniary loss) however caused and, whether in contract, tort (including negligence) or under any other theory of liability, whether or not the Party has been advised of the possibility of such damages.
- c) **Certain Damages Not Excluded.** Notwithstanding the foregoing, no limitation of either Party's liability set forth in this Agreement shall apply to (i) damages arising from a Party's breach of its confidentiality obligations, (ii) damages arising from any infringement and/or misappropriation of a Party's intellectual property rights or privacy rights under applicable laws; (iii) any claims for non-payment; or (iv) each Party's indemnification obligations pursuant to this Agreement.

14) Customer Service and Disputes.

- a) **TC Energy Disputes.** ETEX will use commercially reasonable efforts to provide Customer with customer support to help resolve disputes and other issues relating to the Services. TC Energy retains sole and exclusive responsibility for approving and processing Transactions, but ETEX will provide reasonable assistance in liaising between Customer and TC Energy, as needed.
- b) **Customer Disputes.** Customers are solely responsible for interactions with any other Customer in connection with the Services and ETEX shall have no liability or responsibility with respect thereto. Notwithstanding the foregoing, ETEX reserves the right, but has no obligation, to become involved in any way with disputes between its customers.

15) General.

- a) **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- b) **No Third-Party Beneficiaries; Headings.** Except as expressly set out herein, there are no third-party beneficiaries to this Agreement. The provision of headings in this Agreement is for convenience of reference only, and such shall not have any interpretive value.
- c) **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second Business Day after mailing; (iii) the

second Business Day after sending by confirmed facsimile; or (iv) the second Business Day after sending by email. Notices shall be addressed to the respective signatory of this Agreement unless otherwise designated below.

- d) **Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- e) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- f) **Assignment.** Subject to Section 5(a), Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of ETEX (not to be unreasonably withheld). Notwithstanding the foregoing, ETEX may assign this Agreement in its entirety without Customer's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its shares or assets. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- g) **Governing Law.** This Agreement shall be governed by the laws of the Province of Alberta, Canada, without regard to its conflict of law principles. No choice of laws rules of any jurisdiction shall apply to this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.
- h) **Venue; Waiver of Jury Trial.** The provincial and federal courts located in Calgary, Alberta, Canada, shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts. Each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- i) **Export.** Customer acknowledges and agrees that the Services may be subject to export and import controls under the regulations of Canada, the United States and other countries, and Customer shall comply with all export and import control regulations of such countries. Customer shall not use the Services (including, but not limited to, Transportation acquired via the Services) for any purposes prohibited by export laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Customer shall be responsible for procuring all required permissions for any subsequent export, import or use of the Services and/or Transportation.
- j) **Eligible Financial Contract.** This Agreement, including each Transaction hereunder, shall be construed as an "eligible financial contract" within the meaning of the Companies' Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) and the Winding-up and Restructuring Act (Canada).

- k) Entire Agreement.** This Agreement, including Schedules A and B hereto, constitutes the entire agreement between the Parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any schedule, the terms of such schedule shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- l) Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the Parties' authorized signatories have duly executed this Agreement as of the Effective Date:

ENERGY TRANSPORTATION

EXCHANGE INC.

[CUSTOMER]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



SCHEDULE A

FEE SCHEDULE

Fee Schedule

	View Only	Full Access
Exchange Access Fee -Per User ID	\$400	\$800
Transaction Fee		5% of Transaction value

If a Customer’s Transaction Fees in any given month surpass the Customer’s Full Access Exchange Access Fees, the Full Access Exchange Fees for the applicable month will be waived.

Effective Date

Effective Start Date of Contract: [Publish Date]

Exchange Access Fees

View Only Subscription: 1 X \$400 =\$400

Full Access Subscription: 1 X \$800 = \$800

Effective start date of Exchange Access Fees will not be charged for three full months after the platform is open for transactions as will be communicated by ETEX staff. After three months the Exchange Access Fees will be applied.

ENERGY TRANSPORTATION EXCHANGE [Title]

INC. Initials:

Initials:

SCHEDULE B
CUSTOMER DATA SHEET

PARTY A		PARTY B
XYZ Corp	PARTY	Energy Transportation Exchange Inc.
_____	Address 1	_____ Suite 600, 600 6 th Ave SW
_____	Address 2	_____
_____	City	_____ Calgary
_____	State / Province	_____ Alberta
_____	Zip / Postal Code	_____ T2P 0S5
_____	Base Contract #	_____
_____	Duns #	_____
_____	Canadian GST #	_____
_____	US Federal Tax ID #	_____
_____	BANKING INFORMATION	
_____	Bank	_____ Royal Bank of Canada
_____	Branch	_____ 339 8 th Ave SW, Calgary AB, T2P1C9
_____	Account	_____
_____	NOTICES	
_____	Name	_____ Jamie Varghese
_____	Phone	_____ 403-827-2680
_____	Email	_____ Etex-Admin@etexchange.ca
_____	24 HOUR OPERATIONS	
_____	Gas Scheduling	
_____	Name	_____ Sheryl Dawson
_____	Phone	_____ 403-991-2900
_____	Email	_____ operations@etexchange.ca
_____	INVOICES & PAYMENTS	
_____	Accounting	
_____	Contact	_____ Adrienne Albrecht
_____	Phone	_____ 403-829-4223
_____		_____



	Fax/Email	Accounting@etexchange.ca
	CONFIRMATIONS	
	Name	Sheryl Dawson
	Phone	403-991-2900
	Email	Operations@etexchange.ca
	AUTHORIZED REPRESENTATIVES	
	Administrator Name	Jamie Varghese
	Phone	403-827-2680
	Email	jamie@etexchange.ca
	OTHER INFORMATION	
	Location of incorporation (Entity Description)	Alberta