

**COLUMBIA GAS OF OHIO, INC.  
AGGREGATION AGREEMENT ASSOCIATED  
WITH TRANSPORTATION SERVICE**

**AGGREGATION SERVICE – OPTION 2**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2 \_\_, between Columbia Gas of Ohio, Inc., an Ohio Corporation, 290 W Nationwide Blvd, Columbus, Ohio 43215, hereinafter “Company,” and \_\_\_\_\_ an \_\_\_\_\_ (state) corporation \_\_\_\_\_ (address), hereinafter “Agent”.

WHEREAS, Agent has secured supplies of natural gas which it intends to supply and sell to gas customers located on the Company’s system, all within the parameters established by the Company for its Transportation Service Customers.

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its city gate receipt points by Agent and to redeliver such gas supplies to Agent’s aggregations of customers, all of whom have elected transportation service from the Company under its transportation service rates.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations of customers and Agent hereby agrees to aggregate in accordance with the following terms and conditions for all aggregations served under this agreement:

**ARTICLE I**

**Definitions**

For purposes of interpreting this Agreement, the following definitions shall apply:

1. Agent. Agent means a Marketer that Customer has authorized to act on its behalf by executing the Company’s Appointment of Agent form or a Customer acting on its own behalf.
2. Aggregation Service – Option 2. Service provided by the Company that allows Agents to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the requirements of Transportation Customers that comprise the membership of the Aggregation Pool for participation in the Company’s Transportation Service program, In accordance with rules that the Company has established regarding delivery requirements, banking, billing and payments, Agent performance requirements, and other similar requirements for participation as an Agent in the Company’s transportation service as described in Section VI of the Company’s transportation service tariffs (“Company’s tariffs”). Option 2 Customers in the Agent’s Aggregation Pool remain ultimately responsible for payment of any charges that the Agent fails to pay within the guidelines in Section VI of the Company’s Tariff, Aggregation Agreement, or other Agreements in the event the Agent defaults, as defined in paragraph 6 of this Agreement,

on its obligations to Columbia.

Agent will provide Company with an Appointment of Agent properly executed by its Customer(s), which shall indicate Customer's agreement to be responsible for all charges due by Agent to Company in the event of Agent's default under this Agreement for Aggregation Service – Option 2.

3. The Aggregation. The Aggregation referred to herein shall mean all customer groups that Agent establishes under this Agreement or Section VI of the Company's tariffs.

4. Customer(s). Customer(s) means a recipient of transportation service provided by the Company under its transportation service tariff rates.

5. Operational Orders. Operational Flow Orders ("OFOs") and Operational Matching Orders ("OMOs") as defined in Section VI of the Company Tariffs and have the same meaning in this Agreement.

6. Default. Default is defined as one or more of the following conditions not cured within five (5) days of receipt of written notice as provided in Article XIV of this Agreement.

- A determination, in Company's sole discretion, that Agent is not operating under this Agreement in an ethical or legal manner. Such determination may be made based upon a customer complaint, the Company's own investigation and/or by Agent's admission.
- The failure, potential failure or anticipated failure of Agent to deliver volumes of gas to Company in accordance with the provisions of Article IV or Article V of this Agreement.
- The failure to pay to Company amounts due under this Agreement as described in Article VI of this Agreement.
- The failure to maintain Requirements for Program Participation, including the provision of financial security instruments, as described in Article III of this Agreement and/or pursuant to Section VI of the Company's tariffs in effect at the time such determination is made.
- The Agent's voluntary filing of a bankruptcy petition or the filing of an involuntary bankruptcy petition by the Agent's creditors.
- To the extent not specifically identified above, the failure of either Company or Agent to perform, to a material extent, any of the obligations imposed upon either party under this Agreement.

7. Program. Program is defined as Columbia's transportation service program and all applicable requirements under Section VI of Columbia's tariffs.

## **ARTICLE II**

### **Term**

The term of this Agreement shall commence on the first day of the month after execution hereof and, subject to Agent's continued compliance with the requirements outlined herein for participation in the Program, shall continue in effect thereafter for a primary term of twelve (12) months. Thereafter, this Agreement shall continue from month-to-month, unless terminated by either party, upon at least thirty (30) days written notice. However, Agent may not terminate this Agreement during a winter month (November through March) unless such a winter termination is agreed to in writing by the Company.

Agent shall be required to incorporate sufficient flexibility into its agreements with its end-user customers that it serves, so that the operation of the above provision will not contravene end-user customers' rights under those agreements.

In the event of a Default, as defined in Article I of this Agreement, this Agreement may be terminated in accordance with the provisions of Article VIII of this Agreement. In the event of a termination pursuant to an event of Default, all outstanding obligations of Agent and amounts due under this Agreement shall become due and payable.

In the event this Agreement, in its entirety, is terminated in accordance with the procedures contained herein, and Agent no longer supplies natural gas to those customers hereunder aggregated, Agent's customers shall be given the option of either electing an alternate Agent, or returning to the Company's system supply. A customer shall be permitted to return to the Company's system supply on a firm basis under the terms of Section VI of the Company's tariffs.

## **ARTICLE III**

### **Requirements For Program Participation**

The standards for participation in this Program shall be the creditworthiness standards specified in Section VI of the Company's tariffs. Accordingly, in order to participate as an Agent in the Company's Aggregation Service – Option 2 Agent shall, upon request, periodically provide the Company, on a confidential basis, a balance sheet and other financial statements and appropriate trade and banking preferences. Agent shall allow the Company to conduct a credit investigation as to Agent's credit worthiness. Agents providing service pursuant to Part No. 20(E)(2) in Section VI of this tariff are not required to provide bond or other financial security instrument in order to participate in this Aggregation Service program unless based upon the Company's creditworthiness assessment, the need for such financial security instrument in the amount requested by the Company is found to be reasonable and necessary. The Company shall be entitled to refuse Aggregation Service if Agent does not provide the financial security instrument requested. This option is limited to those Agents whose Customers have agreed to contract terms with the Agent that provide for indemnification of the Company for any tariff charges owed to the Company and arising from the Agent's participation in this Aggregation Service program in the event of the Agent's

default. Such indemnification shall be demonstrated to the Company through Agent's Customers' affirmative election of Aggregation Service Option 2 in the Company's 'Appointment of Agent' agreement. Any tariff charges remaining unpaid by the Agent will be assessed to Customers within each Aggregation Pool on a pro rata basis based on the ratio of each Customer's gas usage to the usage of all Customers participating in that Aggregation Pool during the month for which the charge is applied. The fees and charges to which this provision applies include, but are not limited to, commodity costs, demand costs, balancing fees, OMO/OFO charges, gas transfer service fees, monthly bank transfer fees, or other charges billed to the Agent. Prior to billing the Agent's Customers, the Company shall provide the Agents with written notice via facsimile or e-mail as well as regular mail of any such default and a minimum period of five (5) business days to cure such default upon receipt of such notice. Failure to cure such default by the Agent within the five (5) business days shall result in the Company's notification of Agent's Customers via facsimile, e-mail or regular mail of its intention to directly invoice the Agent's Customers for all tariff charges owed to the Company arising from the Agent's participation in this program. Notwithstanding any provision of this Tariff to the contrary, the Company shall not be entitled to directly invoice any Customer so long as the Agent continues to be entitled to aggregate under its Aggregation Service Agreement with the Company. The Company may impose reasonable standards of conduct for Agents, as a prerequisite for their participation in the program. Agent acknowledges that in its capacity as an "Agent" in this program, it has a continuing responsibility to conduct its business in a legal and ethical manner. If, as a result of Customers' complaints, and/or from its own investigation, the Company determines, in its sole judgment, that Agent is not operating under this Agreement in an ethical and/or legal manner then the Company shall have the right to cancel this Agreement and deny Agent's further participation in this pooling program pursuant to Section VI in the Company's Tariff and/or Aggregation Service Agreement. In addition to the above financial requirement, the Company may impose reasonable standards of conducts for Agents, as a prerequisite for their participation in the Program. Agent acknowledges that in its capacity as an Agent in the Program it has a continuing responsibility to conduct its business in a legal and ethical manner.

Company will maintain a list of Agents who have met the Program's financial and performance requirements. This list will be made available to customers upon request.

## **ARTICLE IV**

### **Aggregation Service**

This service is for Agent(s) that have been engaged by Customers receiving Transportation Service from the Company to be responsible for the delivery of natural gas to the Company's city gates on behalf of Customers. This service provides for the aggregation of Customers by their Agent for purposes of scheduling and nominating gas, banking and balancing, and compliance with Operational Flow Orders and Operational Matching Orders. All Agents who wish to act on behalf of Customers must be certified by the Company. as defined in Section VI of the Company's Tariffs.

## **ARTICLE V**

## **Operational Flow Orders and Operational Matching Orders**

Agent agrees to deliver gas supplies into the Company's designated city gate receipt points on a daily basis, in accordance with the aggregate usage requirements of all those customers that comprise the Agent's aggregations. For those transportation customers that are members of Agent's aggregations without daily measurement, Agent must agree to the Company's estimate of takes, and must pay all charges assessed by the Company as provided in Section VI of the Company's tariffs.

In the event Agent discovers or determines that it may not be able to deliver gas supplies into the Company's designated city gate receipt points, it shall immediately provide notice to Company of such potential failure.

Agent shall also be required to balance on a monthly basis its gas deliveries into the Company's system with the estimated overall usage levels of each of Agent's customer aggregations, as specified in Section VI of the Company's tariffs.

## **ARTICLE VI**

### **Billing and Charges**

The Company will provide Agents with individual aggregation customers' actual usage data for the customers' most recent billing period as billed by the Company under its transportation service tariff rates.

Agent's transportation quantities shall be determined from a Company-provided monthly billing report. The monthly billing report reflects customers' billed transport volumes as reported to Agent, as generated within the Company's revenue reporting system.

The billings and charges related to the volume banking and balancing services provided by the Company, and Operational Orders, as defined in Section VI of the Company's tariffs.

## **Billing Options**

The Agent has three (3) billing options in rendering a bill to a customer, as detailed below. The Agent's three (3) options are: (Option 1) the Agent may issue the total bill itself, provided the Agent enters into an agreement with the Company for the electronic transfer of funds to the Company, with the Company sending the customer a memo bill; or (Option 2), the Agent may bill its portion of the bill with the Company continuing to bill the non-gas portion of the bill or (Option 3) a combination of the options listed above.

**Agent Selection: (Circle One)   Option 1   Option 2   Option 3**

**In the event that neither Option 1 nor Option 2 is expressly selected, the provisions of Option 2 shall apply.**

## **ARTICLE VII**

### **Payment**

The Company shall render to Agent a monthly statement of the quantities delivered and amounts owed by Agent, if any. Payment terms of such statement shall be governed by the provisions of Section VI of the Company's tariff.

If Agent does not pay the Company in full by the due date of the invoice, the Company will send Agent a notification letter regarding all past due amounts. The notification letter will advise the Agent that new customer enrollments or additions into the Aggregation(s) served pursuant to the Agreement will not be accepted until all outstanding amounts are paid to the Company. Agent will be required to continue to serve its existing customers. In the event a bona fide dispute exists as to whether Agent owes money to the Company, the above process will be tolled pending a good faith review of the dispute. Agent shall provide a detailed description of the dispute, including disputed amounts, to the Company in writing by the invoice due date. All undisputed amounts must be paid without delay.

Company and Agent agree that Company may offset and/or recoup from Agent's receivables check all fees, costs charges and penalties owed to the Company. The Company shall have the right to offset and/or recoup: 1) all amounts or costs that are incurred by Agent related to participation in the Program; 2) all amounts or costs owed directly to the Company; and 3) all amounts or costs for which the Company is or will be responsible if not paid by Agent, including, but not limited to, capacity charges billed by interstate pipeline companies. In calculating the payment due Agent under this Agreement, said fees, costs, charges and/or penalties shall be deducted from the amount to be paid to Agent after the discount has been applied to the total amount billed by the Company.

## ARTICLE VIII

### Termination and Remedies

1. Termination. In the event of a Default, an alleged Default, or a reasonably anticipated Default, written notice via facsimile, e-mail, or regular mail of such Default shall be served on the other party, describing the Default and declaring it to be the intention of the party giving the notice to terminate this Agreement unless the Default is cured to the satisfaction of the non-defaulting party. In the event a party receives notice of Default, the party alleged to be in default shall have five (5) business days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of five (5) business days, the party in default does so remedy or remove said causes to the satisfaction of the other party, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of five (5) business days, then, at the option of the party giving notice, this Agreement shall terminate immediately as of the expiration of said five (5) business-day period. Any termination or cancellation of this Contract, pursuant to this Article VIII shall be without waiver of any remedy, whether at law or in equity, to which the party not in default otherwise may be entitled for breach of this Agreement.

2. Remedies. Any charges remaining unpaid by the Agent will be assessed to Customers within each aggregation pool on a pro rata basis based on the ratio of each customer's gas usage to the usage of all customers participating in that aggregation pool during the month for which the charge is applied. The fees and charges to which this provision applies include, but are not limited to, commodity costs, demand costs, balancing fees, Operational Order charges, gas transfer service fees, bank transfer service fees, or other charges billed to the aggregation marketer. Prior to billing the Agent's customers, the Company shall provide the Agent with written notice via facsimile or e-mail, as well as regular mail, of any such default and a minimum period of five (5) business days to cure such default upon receipt of such notice. Notwithstanding any provision of this Agreement to the contrary, the Company shall not be entitled to directly invoice any customer so long as the Agent continues to be entitled to aggregate under its Aggregation Agreement with the Company.

In the event that Agent files a bankruptcy petition, or the Agent's creditors file an involuntary bankruptcy petition during the term of this Agreement, then the Company's right to terminate this Agreement is subject to the restrictions or requirements regarding such termination imposed by the applicable provisions of federal bankruptcy statutes, if any.

## **ARTICLE IX**

### **Force Majeure**

Neither of the parties to the Aggregation Service Agreement hereto shall be liable in damages to the other, except for the actual delivered costs, plus shrinkage, of replacement supplies and flow through of penalty charges, for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, gas curtailment imposed by interstate or intrastate pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Agent from its obligations to make payments of amounts due hereunder.

## **ARTICLE X**

### **Title to Gas**

Agent warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

## **ARTICLE XI**

### **Limitation of Third Party Rights**

This Agreement is entered into solely for the benefit of the Company and the Agent and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the customer groups that Agent establishes under this Agreement.

## **ARTICLE XII**

### **Succession and Assignment**

This Agreement shall be binding upon and inure to the benefit of the successors



and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without the prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

### **ARTICLE XIII**

#### **Applicable Law and Regulations**

This Agreement shall be construed under the laws of the State of Ohio and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law.

## ARTICLE XIV

### **Notices and Correspondence**

Written notices and correspondence shall be sent via facsimile, e-mail, or regular mail. Faxed notices shall be deemed to have been received upon receipt by sending party of facsimile transmission confirmation.

Written notice and correspondence to the Company shall be addressed as follows:

Columbia Gas of Ohio, Inc.

Attn: Debbie Vair, Manager of Gas Transportation & Nominations

290 W Nationwide Blvd

Columbus, Ohio 43215

Telephone notices to the Company shall be directed to (614) 460-4881. Dispatch notices to the Company shall be directed to the above address, Attention: Manager of Gas Transportation & Nominations, telephone (614) 460-4881. Fax notices to the Company shall be directed to (614) 460-8447.

Written notices and correspondence to the Agent shall be addressed as follows:

Company\_\_\_\_\_

Attention/Title\_\_\_\_\_

Mailing Address\_\_\_\_\_

City, State, ZIP\_\_\_\_\_

Telephone notices to the Agent shall be directed to (    ) \_\_\_\_\_.

Fax notices to the Agent shall be directed to (    ) \_\_\_\_\_.

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

**Article XV**

**MISCELLANEOUS**

No waiver by either party of any Default under this Agreement, or any other breach, shall be held to be a waiver of any other or subsequent Default or breach.

In the event that any provision of this Agreement is determined to be invalid, void, or otherwise unenforceable by any court or agency having jurisdiction over any of the matters contained herein, such determination shall not invalidate, void, or make unenforceable any other provision or requirement under this Agreement.

**IN WITNESS WHEREOF**, the parties hereto executed this Agreement on the day and year first above written.

WITNESS:

**COLUMBIA GAS OF OHIO, INC.**

\_\_\_\_\_  
Signature

BY \_\_\_\_\_  
Signature

WITNESS:

**AGENT:** \_\_\_\_\_

\_\_\_\_\_  
Signature

BY \_\_\_\_\_  
Signature

PRINTED NAME & TITLE

\_\_\_\_\_