

**October 13, 2009**

**ENBRIDGE GAS DISTRIBUTION INC.**

- and -

**[OPEN BILL PARTICIPANT]**

**OPEN BILL ACCESS**  
**BILLING AND COLLECTION SERVICES AGREEMENT**

ver. 2.0

**OPEN BILL ACCESS  
BILLING AND COLLECTION SERVICES AGREEMENT**

**THIS AGREEMENT** made as of the • day of •, 20●●

**B E T W E E N :**

**ENBRIDGE GAS DISTRIBUTION INC.,**  
an Ontario corporation

(the “**Company**”)

- and -

●,  
a ● [corporation]

(the “**Biller**”)

**BACKGROUND:**

- A. The Biller is engaged in the business of providing the Customer Services to the Customers.
- B. Each Customer has entered into a Customer Services Agreement whereby such Customer has agreed, among other things, (1) to pay certain stipulated amounts in respect of the Customer Services provided to such Customer under the Customer Services Agreement; and (2) to allow the Biller to share information regarding such Customer with the Company.
- C. The Biller desires to engage the Company to provide the Billing Services, including the billing and collecting of amounts payable by each Customer pursuant to the Customer Services Agreements.
- D. The Customer Services are in compliance with the requirements set out in the Open Bill Manual and therefore the Company has agreed to provide the Billing Services to the Biller.
- E. The Biller and the Company are parties to the Trust Agreement.

**NOW THEREFORE IN CONSIDERATION** of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I – INTERPRETATION**

### **1.1 Definitions**

In this Agreement,

“**Actual Billed Amount**” means the aggregate amount actually billed by the Company to Customers in respect of (a) Customer Services provided to the Customers, or (b) Customer Directed Payments, plus applicable Taxes thereon, as specified in the Service Bill rendered on the relevant Business Day, provided however, for certainty, in no event will an amount specified on a Service Bill that is a re-issuance of a previously billed Actual Billed Amount (for example, the re-issuance to a Customer of a Service Bill for Customer Services following a reversal of a previously issued Service Bill for those same Customer Services and, for further example, the issuance of a Service Bill to a Customer that is about to be “red-locked” by the Company for purposes of aggregating amounts that were specified on previously issued Service Bills for the same Customer Services but for which payment had not been made by the Customer) constitute an Actual Billed Amount for purposes hereof and the Trust Agreement, provided, further, that if and to the extent any amount that does not constitute an Actual Billed Amount by virtue of the foregoing proviso is included as a Deemed Proceed hereunder or under the Trust Agreement, and some or all of such amount is subsequently billed on a Service Bill, the amount on such subsequent Service Bill shall constitute an Actual Billed Amount notwithstanding the foregoing proviso;

“**Adjusted Settlement**” has the meaning given to such term in Section 4.4;

“**Agreement**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this Agreement, the Appendices attached hereto and any other documents attached hereto or incorporated herein by reference, each as amended from time to time in accordance with this Agreement, and do not refer to any particular article, section, paragraph or other portion hereof;

“**Annual Forecast**” has the meaning given to such term in Section 2.5;

“**Applicable Laws**” means any and all applicable federal, provincial and municipal laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally binding, affecting the obligations of either of the Parties under this Agreement, from time to time;

“**Arbitration Notice**” has the meaning given to such term in Section 7.7.4;

“**At-Issue Amount**” has the meaning given to such term in Section 7.6.1(c)(i);

“**At-Issue Receivable**” has the meaning given to such term in Section 7.6.1(c)(i);

“**Beneficial Interest**” has the meaning given to such term in the Trust Agreement;

“**Biller Insurance Policies**” has the meaning given to such term in Section 9.4.1;

“**Biller Proceeds**” has the meaning given to such term in the Trust Agreement;

“**Biller Receivable**” has the meaning given to such term in the Trust Agreement;

“**Biller Records**” has the meaning given to such term in Section 4.10;

“**Billing Fee**” has the meaning given to such term in Appendix “B”;

“**Billing Fee Adjustment**” has the meaning given to such term in Appendix “B”;

“**Billing Fee Invoice**” has the meaning given to such term in Section 4.6;

“**Billing Period**” in respect of a Customer means each consecutive period of approximately one month established by the Company for such Customer in accordance with the Company’s customary billing procedures;

“**Billing Services**” means, collectively, the billing and collection services and associated customer care activities set out on Appendix “A”, as the same may be amended, revised, modified, supplemented or superseded by the Company from time to time in accordance with the terms of this Agreement;

“**Business Continuity Plan**” means one or more logistical plans which have been created and validated by an entity setting out how the relevant entity will recover and restore partially or completely interrupted operational functions within a predetermined time after the occurrence of a disaster or similar disruption, and which plan or plans form part of the entity’s risk management practices;

“**Business Day**” means a day other than a Saturday, Sunday or statutory or civic holiday in the City of Toronto;

“**Company Insurance Policies**” has the meaning given to such term in Section 9.4.2;

“**Company Records**” has the meaning given to such term in Section 4.9;

“**Confidential Information**” means all information concerning the business, operations or assets of a Party which a Party regards as confidential and proprietary and desires to protect from unauthorized disclosure or use, whether orally transmitted or written (including information in machine readable form), that is disclosed or made available by one Party (the “**Owning Party**”) to the other (the “**Receiving Party**”) in connection with the Purpose, but for certainty, does not include any information:

- (a) that, at the time of disclosure, is in or, after disclosure, becomes part of the public domain, other than by the breach of this Agreement;
- (b) that, prior to disclosure by the Owning Party, was already in the lawful possession of the Receiving Party without any obligation of confidentiality, as evidenced by written records kept by the Receiving Party in the ordinary course of its business, or as evidenced by proof of actual prior use by the Receiving Party;
- (c) independently developed by the Receiving Party, by persons having no direct or indirect access to the Owning Party’s Confidential Information

provided that the Receiving Party shall have the burden of so proving on a reasonable basis; or

- (d) which, subsequent to disclosure, is obtained from a third party: (i) who is lawfully in possession of the Confidential Information; (ii) who is not, to the best of the knowledge and belief of the Receiving Party, in violation of any contractual, legal, or fiduciary obligation to either Party, as applicable with respect to that Confidential Information; and (iii) who does not prohibit the Receiving Party from disclosing the Confidential Information to others;

**“Consumer Protection Act”** means the *Consumer Protection Act, 2002*, S.O. 2002, c. 30 and the Regulations thereto, as the same may be amended or replaced from time to time;

**“Customer”** means an active customer of the Biller receiving Customer Services at a Service Address, and which customer has not had its gas distribution service terminated for non-payment on more than one previous occasion;

**“Customer Billing Dispute”** has the meaning given to such term in Section 7.6.1;

**“Customer Data”** has the meaning given to such term in Section 3.4(a);

**“Customer Directed Payment”** means any payment made by a Customer for which the Biller has received written or recorded instructions from such Customer that such payment is in respect of an amount outstanding pursuant to such Customer’s Financing Plan with the Biller;

**“Customer Services”** means any one or more of the products and/or services for which there is a corresponding ‘Bill Type Code’ in the Open Bill Manual, as the same may be amended in accordance with this Agreement from time to time, provided by the Biller to Customers within the Company’s gas distribution franchise area in accordance with the terms of a Customer Services Agreement;

**“Customer Services Agreement”** means an agreement between a Customer and the Biller with respect to the provision of Customer Services;

**“Cycle Day”** means a billing cycle day of the Company;

**“Deemed Proceeds”** has the meaning given to such term in the Trust Agreement;

**“Dispute Notice”** has the meaning given to such term in Section 7.7.2;

**“Distribution Charges”** means all charges of the Company in respect of gas, gas distribution services or related items provided by, or on behalf of, the Company to a Customer from time to time;

**“Distribution Entitlement”** means all of the Beneficial Interest of the Biller relating to the Biller Receivables billed on a particular Business Day;

**“EGD Receivable”** has the meaning given to such term in the Trust Agreement;

“**Event of Default**” has the meaning given to such term in Section 8.6;

“**Financial Assurances**” has the meaning given to such term in Section 9.1;

“**Financing Plan**” means an arrangement evidenced by an agreement between the Biller and a Customer pursuant to which the Biller has agreed, *inter alia*, to finance such Customer’s acquisition of one or more of the Customer Services and which agreement has been entered into in accordance with, and which complies with, the *Consumer Protection Act*;

“**Governmental Authority**” means any government, regulatory body or authority, agency, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having jurisdiction or control on behalf of Canada or any provincial, regional or local governmental, or other subdivision thereof;

“**GST**” means the tax imposed under Part IX of the *Excise Tax Act* (Canada);

“**Liens**” has the meaning given to such term in the Trust Agreement;

“**Material Variation**” has the meaning given to such term in Section 2.5.2;

“**Minimum Credit Rating**” for a potential Customer or Customer means a rating of 550 or above based on the BEACON scoring system maintained by Equifax Canada Inc., or a rating of 550 or above based on the Empirica scoring system maintained by TransUnion Canada Inc.;

“**Monthly Statement**” has the meaning given to such term in Section 4.5;

“**Notice**” has the meaning given to such term in Section 11.1;

“**OEB**” means the Ontario Energy Board, or any successor regulatory authority;

“**Open Bill Manual**” means the manual of rules, technical specifications and requirements, policies and procedures established by the Company and applicable to the Biller and every other Person desiring to avail themselves of any of the Billing Services, and which manual is currently titled “CIS Open Bill Access Biller User Manual”, as the same may be amended, revised, modified, supplemented or superseded by the Company from time to time in accordance with the terms of this Agreement;

“**Owning Party**” has the meaning given to such term in the definition of “Confidential Information” in Section 1.1;

“**Party**” means the Company or the Biller, and “**Parties**” means both of them;

“**Payment Date**” has the meaning given to such term in Section 4.2.1;

“**Permitted Liens**” has the meaning given to such term in the Trust Agreement;

“**Person**” includes an individual, sole proprietorship, partnership, unincorporated association or organization, trust and a body corporate;

“**Purpose**” has the meaning given to such term in Section 10.1.1;

**“Receiving Party”** has the meaning given to such term in the definition of “Confidential Information” in Section 1.1;

**“Reconciliation”** has the meaning given to such term in Section 4.4;

**“Regulatory Approval”** means the approval, consent or agreement of a Governmental Authority, to the extent required under Applicable Laws;

**“Regulatory Proceedings”** has the meaning given to such term in Section 10.2.1;

**“Related Calculation Day”** has the meaning given to such term in the Trust Agreement;

**“Renewal Term”** has the meaning given to such term in Section 8.2;

**“Representatives”** has the meaning given to such term in Section 10.1.3(a);

**“Retained Confidential Information”** has the meaning given to such term in Section 10.2.1;

**“Scheduled Payment Amount”** has the meaning given to such term in the Trust Agreement, provided that, for purposes hereof, it shall not include any Unpaid Amounts (as defined in the Trust Agreement);

**“Scheduled Settlement”** has the meaning given to such term in Appendix “B”;

**“Service Address”** means an address located within the Company’s franchise area at which the Biller provides Customer Services;

**“Service Bill”** means the bill that is sent to the Customer by the Company each Billing Period which shall include, among other things, the charges for the Customer Services, and, where applicable, Distribution Charges;

**“Service Levels”** means the service levels set forth on Appendix “C”; 4.2.1

**“Servicer”** has the meaning given to such term in the Trust Agreement;

**“Services Dispute”** has the meaning given to such term in Section 7.7.1;

**“Settlement Amount”** has the meaning given to such term in Section 4.2.1;

**“Standard Transition Plan”** means the transition plan set out in Appendix “G”;

**“Tax”** or **“Taxes”** means all taxes, assessments, charges, dues, duties, and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority under any Applicable Laws, including, Canadian federal, provincial, territorial, municipal and local, foreign or other income, capital, capital gains, goods and services, sales, use, consumption, excise, value-added, GST, business, real property, personal property, transfer, franchise, withholding, payroll, or employer health taxes, customs, import, anti-dumping or countervailing duties, Canada Pension Plan contributions, employment insurance premiums, and provincial workers’ compensation payments, including any interest, penalties and fines associated therewith, and excluding the

Company's income taxes or employment insurance, statutory or other taxes for the benefit of the Company;

**"Term"** has the meaning given to such term in Section 8.1;

**"Termination Transition"** has the meaning given to such term in Section 8.9.1(a);

**"Third Party Open Bill Agreement"** has the meaning given to such term in Section 6.4;

**"Third Party Provider"** has the meaning given to such term in Section 8.9.1(a);

**"Transition Notice Period"** has the meaning given to such term in Section 8.9.1(a);

**"Transition Plan"** has the meaning given to such term in Section 8.9.1(b);

**"Trust Agreement"** means the Proceeds Transfer, Servicing and Trust Agreement entered into among the Company, CIBC Mellon Trust Company, Accenture Business Services for Utilities Inc., the Biller and the other parties set forth on Schedule "F" thereto dated March 10, 2008, as the same may be amended, modified or replaced from time to time;

**"Trustee"** has the meaning given to such term in the Trust Agreement; and

**"Trust Property"** has the meaning given to such term in the Trust Agreement.

## 1.2 **Rules of Interpretation**

In this Agreement the following rules shall apply to the interpretation thereof:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words "include", "includes" and "including" and other similar words and expressions shall in all cases be deemed to be followed by the words "without limitation";
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded;
- (e) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency;
- (f) the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of



reference only and shall not affect the construction or interpretation of this Agreement; and

- (g) except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

### 1.3 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario. For the purpose of any legal actions or proceedings brought by either Party in respect of this Agreement, each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### 1.4 **Entire Agreement**

This Agreement and all appendices, exhibits, attachments, and addenda contemplated herein or specifically referred to herein constitute the entire agreement among the Parties pertaining to all the matters herein, and supersede all prior agreements, understandings, negotiations, discussions and other communications, whether oral or written, of the Parties.

### 1.5 **Severability**

If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any Applicable Laws, then (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Party or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

### 1.6 **Order of Priority**

In the event of any inconsistency between any of the provisions of the main terms and conditions of this Agreement and the Appendices and the Open Bill Manual, the inconsistency will be resolved by reference to the following descending order of priority:

- (a) the terms and conditions of this Agreement (excluding the Appendices); then
- (b) the Appendices; and
- (c) the Open Bill Manual.

### 1.7 **Ontario Energy Board Act**

The Parties acknowledge that this Agreement shall be subject to any rule or order applicable to the Company or the Biller enacted by the OEB pursuant to the *Ontario Energy Board Act*, S.O. 1998, c.15, Schedule B., s.44.

## **ARTICLE II– BASIC AGREEMENT**

### **2.1 Billing Services**

The Company shall perform for the benefit of the Biller the Billing Services in accordance with this Agreement and all Applicable Laws.

### **2.2 Transfer of Distribution Entitlements**

In the manner and to the extent provided for herein, the Company hereby agrees to purchase the Biller's Distribution Entitlement from the Biller and to pay to the Biller the Settlement Amount in consideration thereof and upon, and subject to, receipt thereof, and on the terms and subject to the conditions contained herein, the Biller hereby agrees to transfer to the Company its Distribution Entitlement for each Business Day.

### **2.3 No Liabilities to Customers**

The Biller acknowledges and agrees that in agreeing to purchase the Distribution Entitlements in the manner contemplated by this Agreement, the Company does not, will not and shall not be deemed to, assume any liabilities or other obligations of the Biller or any other Person to any of the Customers under any Customer Services Agreement.

### **2.4 Expenses**

Except as specifically provided otherwise herein, the Company shall bear and pay all expenses incurred by it in the performance of the Billing Services. The Company shall bear no responsibility for expenses which may be incurred as a direct result of the failure of the Biller to fulfill any of its obligations under this Agreement, and the Company shall incur no costs or expenses as a result of, or in connection with, a Customer Billing Dispute, except in the manner and to the extent specifically provided for herein.

### **2.5 Forecast of Services**

2.5.1 Subject to Subsection 2.5.4, the Biller shall provide to the Company, by no later than June 30 and December 31 in each year, a forecast of the number of Service Bills to be sent to the Customers by the Company, on a month-by-month basis, for the next following 12-month period (the "**Annual Forecast**").

2.5.2 The Biller shall notify the Company, as promptly as is reasonable in the circumstances, of any expected or anticipated variance in a particular month (or months) of 20% or more (a "**Material Variation**") from the volumes set out in the then most current Annual Forecast provided to the Company. In the event of a negative Material Variation for a particular month (or months), and notwithstanding any reduced volume of Service Bills distributed by the Company as a result of such negative Material Variation, the Biller shall be liable to pay to the Company, on the terms herein specified, 80% of the charges that would have been payable by it to the Company for the relevant month(s) had such Annual Forecast been accurate, and the volume of Service Bills contemplated by such Annual Forecast been circulated. In the event of a positive Material Variation, the Company shall use commercially reasonable efforts to accommodate such increased volume of Service Bills, provided that such accommodations shall

in no manner require, or be interpreted so as to require, the Company to alter or revise its regular billing cycle.

2.5.3 The initial Annual Forecast of the Biller, if applicable, as of the date of execution of this Agreement is set forth on Appendix "E".

2.5.4 The requirement in Section 2.5.1 to provide an Annual Forecast shall not apply to any Biller if the total number of Service Bills for which the Company provided Billing Services in the six completed Billing Periods prior to, but not including, the date referred to in that Section, was less than thirty thousand (30,000). On the execution of this Agreement, a Biller who anticipates that its annual Service Bills in the first year will not exceed sixty thousand (60,000) is not required to prepare an initial Annual Forecast. For certainty, Section 2.5.2 will apply to a Biller only during a period to which a required Annual Forecast applies.

## 2.6 **Obligations of the Biller**

In addition to and without limiting any of its obligations set forth elsewhere in this Agreement, the Biller hereby covenants and agrees that it shall:

- (a) comply with all of the obligations and requirements of a Biller set out in this Agreement and the Open Bill Manual, and without limitation provide to the Company billing information for each Customer in accordance with the content, format and timing requirements set forth in the Open Bill Manual;
- (b) comply with the Company name restrictions set forth in Appendix F – ‘Company Name Restrictions’ of the Open Bill Manual;
- (c) ensure that there is in place at all times a Customer Service Agreement with each Customer to whom the Biller provides any Customer Services or in respect of whom the Biller requests that the Company provide any Billing Services;
- (d) use commercially reasonable efforts to avoid being in default, and to not knowingly remain in default, under any Customer Services Agreement;
- (e) provide to the Company the Financial Assurances, if any, in accordance with Article IX hereof;
- (f) act in compliance with all Applicable Laws;
- (g) comply with its privacy obligations under the *Personal Information Protection and Electronic Documents Act* (Canada) and under any and all equivalent and applicable provincial legislation;
- (h) notify each Customer (i) that the charges for Customer Services under the Customer Services Agreements shall appear on the Service Bill, and (ii) that the Company shall be receiving payments in respect of such charges in accordance with the terms set forth on the Service Bill and in

accordance with Applicable Laws, including amounts owing in respect of Customer Services;

- (i) ensure each Customer is provided current and accurate Biller contact information including: a telephone number and address for service, a fax number and an email address and/or internet website address through which Customer queries can be directed, and, ensure that such methods of communication are capable of receiving Customer queries during regular hours on each Business Day, and, promptly respond to all such queries made by Customers;
- (j) perform the Customer Services in accordance with good customer service practices reflected by current market standards; provided that this covenant of the Biller shall not create a separate obligation of the Biller to the Company in respect of the performance of the Customer Services, and where there is a Customer Billing Dispute pursuant to which the Customer has stated that the Biller's breach of this covenant is the subject of all or a part of that Customer Billing Dispute, then the Company may rely on this covenant solely for purposes of Section 7.6;
- (k) use commercially reasonable efforts to facilitate the transactions contemplated by this Agreement, including by supplying the Company with all information and assistance that may be necessary or helpful to the Company in verifying the accuracy of any Customer account information or in correcting any errors; and
- (l) ensure that each Customer has a credit rating at or above the Minimum Credit Rating where: (i) such Customer has a Financing Plan; or (ii) an existing Customer's aggregate charges for Customer Services over any twelve (12) month period (whether or not pursuant to a Financing Plan) on a Service Bill are in excess of one thousand eight hundred dollars (\$1,800.00), unless otherwise agreed by the Company in its sole discretion.

## 2.7 **Obligations of the Company**

2.7.1 **General Obligations** – In addition to and without limiting any of its obligations set forth elsewhere in this Agreement, the Company hereby covenants and agrees that it shall:

- (a) act in compliance with Applicable Laws;
- (b) comply with its privacy obligations under the *Personal Information Protection and Electronic Documents Act* (Canada) and under any and all equivalent and applicable provincial legislation;
- (c) perform the Billing Services in accordance with this Agreement;
- (d) pay to the Biller, in accordance with the terms of this Agreement, the Settlement Amount; and

- (e) use commercially reasonable efforts to facilitate the transactions contemplated by this Agreement.

**2.7.2 Service Levels** – In addition to and without limiting any of its obligations set forth elsewhere in this Agreement, the Company shall perform the Billing Services in accordance with the Service Levels. The Company shall report on its performance and the provision of the Billing Services in accordance with the requirements set out in Appendix “C”. If the Company fails to perform any of the Billing Services in accordance with an applicable Service Level, as disclosed in any such report, then the Company shall perform an analysis to identify the cause of such failure and shall take reasonable steps to correct such failure and to comply with the relevant Service Level thereafter.

**2.7.3 Subcontractors** – The Biller acknowledges and agrees that the Company may subcontract the performance of all or a portion of the Billing Services to a third party subcontractor, or subcontractors. Notwithstanding the Company’s use of any subcontractor, the Company shall retain responsibility for performing the Billing Services and for carrying out its obligations under this Agreement.

## **2.8 Business Continuity Plans**

The Biller shall have the right, at its own cost and upon reasonable prior notice to the Company during the usual business hours of the Company and, in any event, no more than once per twelve (12) month period during the Term, to review at the Company’s premises a copy of the Company’s then current Business Continuity Plan relating to the delivery of the Billing Services, provided that: (A) the Biller shall be bound by obligations of confidentiality in respect of such plan(s), and that such plan(s) shall not be copied, reproduced or summarized in any form, or stored in a retrieval system or database, by the Biller without the prior written consent of the Company; and (B) the Company may redact such part or parts of such Business Continuity Plan as it considers necessary or advisable, in its sole discretion, in order to protect the security or confidentiality thereof. The Company shall thereafter provide to the Biller details of any material change in its then current Business Continuity Plan relating to the delivery of the Billing Services which may occur during the Term. For certainty, the Company shall ensure that every third-party service provider providing a material component of the Billing Services shall have in place a business continuity plan, and the Company shall so notify the Biller of the existence of each such plan.

## **ARTICLE III- BILLING**

### **3.1 Timing**

Prior to the delivery of any Service Bill to a Customer, the Biller shall provide to the Company billing information for such Customer in accordance with the content, format and timing requirements set forth in the Open Bill Manual. The Company will then render a Service Bill for each Cycle Day in accordance with the Company’s regular Cycle Day billing schedule in effect from time to time to those Customers for which the Biller has provided such requisite information.

### 3.2 **Service Bill Content and Format**

The Company shall format the Service Bill so as to present the content of the Biller portion of the Service Bill in a manner consistent with the terms of this Agreement and the Open Bill Manual.

### 3.3 **License to Use Intellectual Property**

3.3.1 The Biller hereby grants to the Company during the Term a royalty-free, limited, non-exclusive license to use the Biller's intellectual property set out in Appendix "F" hereto, on the terms set out therein.

3.3.2 The Biller acknowledges that, in connection with the performance by the Company of Billing Services, and in particular the provision to the Company by the Biller of billing information for each Customer, the Biller at its option may utilize certain software provided by the Company, from time to time, and any such use of same by the Biller shall constitute the Biller's acceptance of, and agreement to strictly comply with, the license terms, use restrictions and limitations set forth in Appendix H – 'Terms of Use for the OBA Transaction Tool' of the Open Bill Manual. The Biller's use or non-use of such software shall not alter either the Biller's or the Company's obligations under this Agreement. However, the Biller acknowledges that the Company's ability to deliver Billing Services is dependent upon the Biller's delivery of transaction interface files which meet the technical specifications described in the Open Bill Manual.

### 3.4 **Customer Information**

The Company shall:

- (a) not use any Customer proprietary or personal information and/or data provided by the Biller that it obtains solely as a result of the provision of Billing Services (the "**Customer Data**") other than as contemplated by, and as necessary to fulfill its obligations under, this Agreement;
- (b) not disclose any Customer Data other than (i) any disclosure that is authorized by the Biller, (ii) as required by Applicable Laws, (iii) to the extent reasonably necessary to collect in respect of Distribution Entitlements which have been transferred to the Company hereunder, or (iv) to any third party sub-contracted by the Company to assist in provision of the Billing Services;
- (c) refer any Customers with inquiries or complaints about, or seeking access to or correction of, their personal information to the Biller and promptly notify the Biller about such complaint or request upon receiving same; and
- (d) use reasonable security measures to protect the Customer Data against loss, theft, unauthorized access, disclosure, copying, use or modification.

For certainty, nothing in this Agreement shall preclude the Company from utilizing, for any purpose, in accordance with Applicable Laws, any Customer information

acquired by the Company in association with or as a result of its provision of services to its customers.

### 3.5 **Software and Proprietary Know-How**

Except for Customer Data supplied by the Biller to the Company pursuant to this Article III, or as otherwise provided herein or agreed upon by the Parties, the Company acknowledges and agrees that it is responsible for developing or acquiring (by purchase or license) at its cost, all software and proprietary know-how which may be required to provide the Billing Services in the manner and to the extent set out in this Agreement. For certainty, the Company's obligation hereunder shall commence at the Company's demarcation point, being the interface at which the Customer billing information to be provided by the Biller in accordance with Section 3.1 enters the Company's customer information system.

## **ARTICLE IV- COLLECTION AND SETTLEMENT**

### 4.1 **Collection of Amounts from Customers**

The Company shall render a Service Bill to each Customer, which Service Bill shall be prepared, delivered and payable in compliance with this Agreement, the Open Bill Manual and the Company's customary billing procedures. The Service Bill may be comprised of charges for Customer Services, Distribution Charges and any other amounts payable by the Customer to the Company or any other party with which the Company has an agreement therefor. Each Customer shall be required by the Company to pay the aggregate amount shown as payable (including all Taxes thereon) in each Service Bill in accordance with the payment terms set out therein.

### 4.2 **Acquisition of Distribution Entitlements**

4.2.1 Subject to and in accordance with the other terms and conditions of this Agreement, the Company shall acquire the Distribution Entitlements of the Biller in respect of each Business Day on which a Service Bill is rendered during the Term. To this end, the Company shall acquire the Distribution Entitlement of the Biller in respect of a particular Related Calculation Day by paying to the Biller, on or before 9:00 a.m. (Toronto time) on the twenty-first (21<sup>st</sup>) day immediately following such Related Calculation Day (the "**Payment Date**") the Settlement Amount for such Related Calculation Day, all in accordance with the Trust Agreement. The '**Settlement Amount**' shall be an amount equal to: (a) the Actual Billed Amount for such Related Calculation Day, multiplied by (b) the Scheduled Settlement, as adjusted in accordance with the terms of this Agreement.

4.2.2 Upon, and subject to, the Biller's receipt of the Settlement Amount, the Biller shall immediately thereafter transfer to the Company all of its Beneficial Interest relating to the Biller Receivables billed on such Related Calculation Day. In order to effect the transfer of such Beneficial Interest to the Company from a Biller, the Servicer shall, unless it has received from a Biller no earlier than 9:00 a.m. (Toronto time) but no later than 9:15 a.m. (Toronto time) on the relevant Payment Date written confirmation that such Biller has not received the Settlement Amount in accordance with the preceding paragraph, concurrently and irrevocably re-direct the Trustee to pay any Scheduled Payment Amount otherwise payable to the Biller in respect of its

Beneficial Interest for the relevant Related Calculation Day to the Company on or before the close of business on the relevant Payment Date. Notwithstanding the foregoing, if the Payment Date is not a Business Day, payment shall be made on the first Business Day next following such day.

#### 4.3 **Billing Fee**

For the Billing Services rendered by the Company to the Biller hereunder, the Biller shall pay to the Company the Billing Fee. The Billing Fee, together with all Taxes payable by the Biller thereon, shall be paid by the Biller to the Company pursuant to the terms of this Agreement. Subject to Regulatory Approval, if required, the Billing Fee may be amended from time to time in the manner contemplated in this Agreement.

#### 4.4 **Monthly Reconciliation**

On or before the fifth (5<sup>th</sup>) Cycle Day of each Billing Period, the Company shall perform a reconciliation of the Actual Billed Amounts for the immediately preceding Billing Period (a “**Reconciliation**”), taking into account any adjustments required as a result of (i) any At-Issue Amounts for which the Company has not previously taken into account an adjustment pursuant to this Section 4.4 and (ii) any Deemed Proceeds that are allocated to the Biller Receivables of the Biller during such Billing Period. To the extent the Reconciliation indicates that the aggregate Settlement Amount paid to the Biller during the Billing Period is greater than the Adjusted Settlement (as defined below) for such Billing Period, the Company shall be entitled to deduct or net out such overpayment from the Settlement Amount otherwise to be paid to the Biller in accordance with this Agreement. For purposes of this Section 4.4, “**Adjusted Settlement**” shall be an amount equal to the aggregate Settlement Amount for the relevant Billing Period adjusted, where applicable (without duplication) (i) in accordance with Section 7.6.1(c)(i) hereof to account for any At-Issue Amount (ii) to account for any Deemed Proceeds allocated to the Biller Receivables of the Biller during such Billing Period (iii) to account for any amounts owing by the Biller pursuant to Section 4.6 hereof.

#### 4.5 **Monthly Statements**

On or before the sixth (6<sup>th</sup>) Cycle Day of each Billing Period, the Company shall issue to the Biller a statement (the “**Monthly Statement**”) for the immediately preceding Billing Period which sets forth any amounts owed to the Company by the Biller resulting from the Reconciliation, which amounts shall, on the third (3<sup>rd</sup>) Business Day following the date of the Monthly Statement, be set-off against the Settlement Amount to be paid by the Company to the Biller on such Business Day. In the event that the amount to be set-off pursuant to the preceding sentence is greater than the Settlement Amount to be paid on such Business Day, the Company shall set-off any such residual amount against the Settlement Amount to be paid by the Company to the Biller on the Business Day immediately following, and so on, until all such amounts owed to the Company by the Biller as a result of such Reconciliation are recovered. For certainty, the Monthly Statement shall also include the basis of calculation of any At-Issue Amount and any Adjusted Settlement.



#### 4.6 **Billing Fee Invoices**

On or before the sixth (6<sup>th</sup>) Cycle Day of each Billing Period, the Company shall issue to the Biller an invoice (the “**Billing Fee Invoice**”) which sets forth any amounts owed to the Company by the Biller in respect of the Billing Fees or any other charges payable by the Biller pursuant to this Agreement, together with all Taxes payable by the Biller thereon, or otherwise payable by the Biller pursuant to Section 5.1, for the immediately preceding Billing Period. For certainty, the Billing Fee Invoice shall include details of the basis of calculation of the Billing Fee including (a) the number of Service Bills that included Distribution Charges delivered in the relevant month, and (b) the number of Service Bills that did not include Distribution Charges delivered in such month. Any Billing Fees together with Taxes payable by the Biller as set forth on any Billing Fee Invoice that are not paid by the Biller within thirty (30) days of the date of such invoice may be set-off against the Settlement Amount otherwise to be paid by the Company to the Biller during the next following payment period.

#### 4.7 **Method of Payment**

4.7.1 **By Bank Transfer** – Except as otherwise provided herein or agreed by the Parties, all payments made under this Agreement by the Company to the Biller or by the Biller to the Company shall be made by bank transfer (by electronic or other means) to an account designated from time to time by the Biller to the Company or the Company to the Biller, as applicable and, other than as expressly set forth herein, shall be made in full, without set-off or counterclaim, and free of and without deduction or withholding.

4.7.2 **Optional Set-Off** – Notwithstanding the provisions of Section 4.7.1, if the Biller provides to the Company: (A) a notice that the Company is to set-off payment of the Billing Fee Invoice against payment to the Biller of the Settlement Amount; and (B) such direction or authorization addressed to the Servicer or the Trustee as the Company reasonably requests; then the Company will take steps to effect such set-off as soon as is reasonably practicable, and any such set-off shall be considered to be an adjustment to the Settlement Amount otherwise required to be paid by the Company.

#### 4.8 **Management Reports**

The Company shall provide the Biller with the management and operating reports regarding the performance of the Billing Services in the format and frequency set out in the Open Bill Manual. The Parties shall meet to discuss such reports on an as-required basis. The Biller may request additional reports and, if the Company agrees to prepare same, such reports shall be prepared at the expense of the Biller. Any additional reports which the Company, may, in its discretion, produce from time to time in connection with its provision of billing services generally may be provided to the Biller at no additional charge to the Biller.

#### 4.9 **Biller’s Examination of Books and Records**

Subject to Applicable Laws, the Biller shall have the right, at its own cost and upon reasonable prior notice to the Company during the usual business hours of the Company and, in any event, no more than twice per calendar year, to examine and review the books and records (in any form whatsoever) of the Company that relate solely to the delivery of Billing Services hereunder (the “**Company Records**”) to the extent necessary to verify the accuracy of

any statement, charge or computation made pursuant to this Agreement. For these purposes, the Biller shall have the right, at its own cost, to use such external advisers and representatives to perform such examination, provided that such advisers and representatives must first agree to be bound by a confidentiality agreement in respect of the Company Records, which agreement shall contain such terms as the Company may reasonably require. Such Company Records shall be maintained in accordance with the records retention policies of the Company from time to time in effect and in accordance with Canadian generally accepted accounting principles. Any Company Records provided by the Company shall not be copied, reproduced or summarized in any form, or stored in a retrieval system or database, by the Biller or its external advisers or representatives without the prior written consent of the Company.

#### 4.10 **Company's Request for Documentation**

Subject to Applicable Laws, if (A) the Company determines, acting reasonably and in good faith, that the Biller has failed or may have failed to perform or observe either of the obligations referred to below in this Section 4.10 or (B) there occurs a Customer Billing Dispute as contemplated in Section 7.6.1(d), then the Company shall have the right, to examine and review, and the Biller shall, within five (5) Business Days of a receipt of a request from the Company therefore, deliver to the Company, such evidence, which must be satisfactory to the Company, acting reasonably, (the "**Biller Records**") as the Company considers necessary to verify the Biller's compliance with the obligations referred to below in this Section 4.10; and for certainty, if the Company's request is in respect of a Customer Billing Dispute, then such Biller Records shall relate only to such Customer Billing Dispute and the Customer to which the Customer Billing Dispute applies. For these purposes, the obligations in respect of which the Biller is required to provide such Biller Records to the Company are the Biller's obligations: (A) to have a Customer Service Agreement with each Customer, and (B) to ensure that as applicable, Customers have a Minimum Credit Rating. Such Biller Records shall be maintained by the Biller in accordance with commercially reasonable records retention policies of parties in similar circumstances. Any Biller Records provided by the Biller shall not be copied, reproduced or summarized in any form, or stored in a retrieval system or database, by the Company or its external advisors or representatives without the prior written consent of the Biller.

#### 4.11 **Scheduled Cycle Days**

The Company shall provide the Biller, Servicer and Trustee with a copy of its scheduled Cycle Days for each fiscal year of the Company during the Term, prior to the commencement of such fiscal year. For certainty, the Company reserves the right in its sole discretion to amend any such schedule at any time and from time to time during the Term, provided that it will deliver an updated schedule to the Biller, the Servicer and the Trustee as soon as reasonably practicable but in any event prior to the effective date of any such amendment and provided it amends such schedule for all parties under contact with the Company for the provision of services similar to the Billing Services.

## **ARTICLE V– TAXES AND RECOURSE FOR NON-PAYMENT**

### **5.1 Taxes and Other Charges**

Any Taxes which may become payable on the Billing Services or the Billing Fee shall be borne and paid by the Biller. The Company shall not make any refund or credit to the Biller of GST in respect of any subsequent reductions to the Billing Fee. The Biller shall be responsible to remit to the relevant Governmental Authority as and when required by Applicable Laws, any Taxes payable by Customers in respect of Customer Services including GST. For certainty, in the absence of specific provisions providing to the contrary, the payor (be it the Company or the Biller) of any payment (including payments effected through set-off and/or discount) will pay, in addition to the payment, any applicable GST imposed on the payor. If, as a result of an amendment or proposed amendment to applicable commodity tax legislation or a Governmental Authority's change in administrative practices regarding same, the sales tax implications of any of the payments under the Agreement are materially altered, the Parties will work together in good faith to restructure the billing and collection arrangements under this Agreement to optimize the sales tax consequences for both Parties.

### **5.2 Interest on Overdue Amounts**

**5.2.1 By Customers** - Any amount owing pursuant to a Service Bill by a Customer that is not paid on or before the date on which it is due shall be subject to the Company's standard late payment provisions as approved by the OEB from time to time and as recited in the Service Bill. The Parties hereby acknowledge and agree that any amounts received by the Trustee or the Servicer from Customers in respect of interest or other penalty charges levied in accordance with such late payment provisions of the Company shall not comprise part of the Actual Billed Amount nor the Trust Property, but rather shall be the exclusive property of the Company to be distributed to the Company in accordance with the Trust Agreement.

**5.2.2 By the Company or the Biller** - Any amount to be paid by the Company to the Biller or to be paid by the Biller to the Company that is not paid on or before the date on which it is due shall thereafter bear interest at an annual rate equal to the prime rate of interest of the Toronto Dominion Bank (Toronto, Main Branch) on the due date plus one per cent (1%), from the date on which it is due until payment in full. For certainty, the Company agrees that no interest shall accrue where the Company fails to set-off against the Settlement Amount (in the manner contemplated in this Agreement) any amounts owing to the Company by the Biller under this Agreement.

### **5.3 Non-Recourse Against the Biller**

The Company acknowledges that its recourse with respect to the payment of any amounts by a Customer pursuant to a Service Bill shall be limited to it or the Trustee making and enforcing a claim against the Customer. Subject to the Trust Agreement and Section 7.6 hereof, the Company shall have no recourse against the Biller with respect to the payment of any amounts by a Customer pursuant to a Service Bill.

#### 5.4 **Authority to Recover Payment**

The Biller has irrevocably appointed the Trustee as the Biller's lawful attorney, with full authority in the name and on behalf of the Biller, its successors and assigns, but for the benefit of the Biller, its successors and assigns, to sue for and to recover from each Customer the amounts owing under each Service Bill delivered to such Customer. Such authority shall be in addition to, and not in substitution for, any rights the Company may have in law to enforce or recover payment, including the right to suspend gas deliveries.

### **ARTICLE VI- CHANGES AND MODIFICATIONS**

#### 6.1 **Changes to Billing Services**

The Open Bill Manual may be amended from time to time by the Company, in its sole discretion and acting reasonably, on not less than sixty (60) days prior notice to the Biller detailing the nature and extent of the change, provided that:

- (a) each such amendment is applicable to all third parties under contract with the Company for the provision of services similar to the Billing Services,
- (b) the implementation of such amendment will have no material adverse effect on the Billing Services or the Service Levels, or, in the case of any amendment to the list of Billing Services, will have no adverse effect on the Biller,
- (c) in the case of a proposed change to the products and/or services included as Customer Services, a Customer Service will not be removed from the list of Customer Services if such Customer Service is being offered by any Biller to any of its Customers, and
- (d) in the case of a proposed amendment to the Financial Assurances Policy, the implementation of such amendment will have no material adverse effect on the Biller.

Any such amendment for which the Biller has been provided such notice shall, for all purposes of this Agreement be, and be deemed to be, a part of the Open Bill Manual effective as of the date set forth in such notice and the rights and obligations of the Biller and the Company hereunder shall be amended accordingly and the Biller covenants and agrees to comply with such amendments thereafter. The Company may, in its sole discretion, expand the list of Customer Services upon the request of a Biller.

#### 6.2 **Charges Payable by Customers**

Subject to the following terms of this Section 6.2, the Biller may increase or decrease charges for the Customer Services which are to be billed by the Company to Customers pursuant to this Agreement. Where the Biller has provided to the Company a 'rate ready' list of standard rental or similar charges to be billed to its Customers, then each increase or decrease in such charges shall become effective not later than the date of the Customer's second Service Bill after the Company receives such notice or, if a later date is specified, then such later date.

### 6.3 **Changes to Billing Fee**

The Billing Fee may, at Company's sole discretion, be adjusted in the manner and by the amount described in the Billing Fee Adjustment.

### 6.4 **Most Favoured Customer**

Where (A) the Company enters, or has entered, into an Open Bill Access Billing and Collections Services Agreement with any other third party receiving the Billing Services (a "**Third Party Open Bill Agreement**"), and (B) the Billing Fee in such Third Party Open Bill Agreement is lower than the then current Billing Fee set out in this Agreement, then (C) the Billing Fee set out in this Agreement shall be downwardly adjusted by the Company to equal such lower Billing Fee, effective as of the later of (i) the effective date of this Agreement and (ii) the effective date of such Third Party Open Bill Agreement.

## **ARTICLE VII– REPRESENTATIONS, INDEMNITIES AND DISPUTES**

### 7.1 **Representations and Warranties by the Biller**

The Biller hereby represents and warrants to the Company, on a continuous basis, as follows and acknowledges that the Company is relying upon the accuracy of each of such representations and warranties in connection with the execution of this Agreement by the Company and the acceptance of its rights and obligations hereunder:

- (a) at the date hereof and at all times during the Term all necessary action has been taken by the Biller to authorize the execution, delivery and performance by the Biller of this Agreement and the Trust Agreement and each of this Agreement and the Trust Agreement constitutes a legal, valid and binding obligation enforceable against the Biller in accordance with its terms;
- (b) the Biller has all necessary right, power and authority to transfer to the Company all of its Distribution Entitlements in the manner contemplated hereby;
- (c) in all material respects, each Customer Services Agreement has been entered into in accordance with, and complies with, the *Consumer Protection Act* and, to the Biller's knowledge, is a valid and binding on all of the parties thereto, and each such Customer Services Agreement shall be in full force and effect, for as long as the Company provides Billing Services in respect of such Customer Services Agreement;
- (d) the Biller has clearly and unambiguously established the charges for the Customer Services being, or to be, billed to each Customer pursuant to the relevant Customer Services Agreement as required by Applicable Law, including the *Consumer Protection Act*;

- (e) all Customer account and other information provided or made available to the Company by the Biller from time to time shall be correct and complete in every material respect;
- (f) at the time of any transfer to the Company by the Biller of any Distribution Entitlements of the Biller or Beneficial Interest relating to Biller Receivables as contemplated in this Agreement, including pursuant to Section 4.2, the Biller has good title thereto and is entitled to so transfer such Distribution Entitlements or Beneficial Interest, as the case may be, without notice to or consent of the relevant Customer or any other party, and each such transfer shall be made free and clear of all Liens (other than Permitted Liens);
- (g) the Biller is solely responsible to provide the Company all the necessary and correct information required by the Company in respect of each Customer to permit the Company to fulfill its obligations under this Agreement and the Company is entitled to rely solely on such information in that regard;
- (h) each Customer Services Agreement (i) does not expressly contemplate or permit any right of deduction or set-off pursuant to invoices; (ii) does not allow for any grace period in making payments thereunder; and (iii) includes the obligation of the Customer to make regular payments during the period and at the rate set out therein and communicated to the Company as contemplated herein; and
- (i) the Biller will remit to the relevant Governmental Authority all Taxes payable by Customers in respect of Customer Services in accordance with Section 5.1 of this Agreement.

## 7.2 **Representations and Warranties by the Company**

The Company hereby represents and warrants to the Biller, on a continuous basis, as follows and acknowledges that the Biller is relying upon the accuracy of each of such representations and warranties in connection with the execution of this Agreement by the Biller and the acceptance of its rights and obligations hereunder:

- (a) at the date hereof and at all times during the Term all necessary action has been taken by the Company to authorize the execution, delivery and performance by the Company of this Agreement and the Trust Agreement and each of this Agreement and the Trust Agreement constitutes a legal, valid and binding obligation enforceable against the Company in accordance with its terms;
- (b) the Company has all necessary right, power and authority to purchase from the Biller the Distribution Entitlements and to render accounts to and receive payments from the Customers in accordance with the provisions of this Agreement;

- (c) subject to the terms and conditions hereof, the Company shall be solely responsible for obtaining, at its own expense, rights to use the necessary customer information and billing services systems as required to provide the Billing Services contemplated herein; and
- (d) the employees, agents or subcontractors of the Company who will be providing the Billing Services shall possess such skills and qualifications as are necessary or desirable for the performance of the Billing Services.

### 7.3 **Indemnity**

7.3.1 **Indemnification of the Company** - The Biller hereby agrees to save harmless and indemnify the Company, its directors, officers, employees and agents (the “**Company Indemnified Parties**”) from and against all damage, loss, deficiency, cost, liability and expense to the Company, howsoever caused, which the Company may suffer or incur as a result of, in respect of or arising out of:

- (a) any material breach of this Agreement by the Biller;
- (b) any breach by the Biller of any of the covenants set out in Section 2.6 or Section 5.1 or any of the representations and warranties set out in Section 7.1;
- (c) the failure by the Biller to satisfy its obligations to Customers in connection with any of the Customer Services;
- (d) the negligence or wilful misconduct of the Biller, or any of the Biller’s employees or agents or other persons acting on the authority or with the permission of the Biller;
- (e) a Customer Billing Dispute, including any At-Issue Amount; and
- (f) any breach by the Biller whatsoever of any confidentiality and/or privacy obligations set forth in this Agreement.

Notwithstanding the foregoing or any provision of this Agreement to the contrary, in no event shall the Biller have any duty to indemnify, defend or hold harmless any Company Indemnified Party for the negligent or intentional act or omission of any Company Indemnified Party.

7.3.2 **Indemnification of the Biller** - The Company hereby agrees to save harmless and indemnify the Biller, its directors, officers, employees and agents (the “**Biller Indemnified Parties**”) from and against all damage, loss, deficiency, cost, liability and expense to the Biller, howsoever caused, which the Biller may suffer or incur as a result of, in respect of or arising out of:

- (a) any material breach of this Agreement by the Company;
- (b) any breach by the Company of any of the covenants set out in Section 2.7 or any of the representations and warranties set out in Section 7.2;

- (c) the negligence or wilful misconduct of the Company, or any of the Company's employees or agents or other persons acting on the authority or with the permission of the Company; and
- (d) any breach by the Company whatsoever of any confidentiality and/or privacy obligations set forth in this Agreement.

Notwithstanding the foregoing or any provision of this Agreement to the contrary, in no event shall the Company have any duty to indemnify, defend or hold harmless any Biller Indemnified Party for the negligent or intentional act or omission of any Biller Indemnified Party.

#### 7.4 **Third Party Claim**

If a Company Indemnified Party or a Biller Indemnified Party (in either case, the "**Indemnified Party**") receives notice of the commencement of any claim by any Person who is not a party to this Agreement in respect of which the Indemnified Party intends to make a claim under either Section 7.3.1 or 7.3.2, as applicable, (other than a Customer Billing Dispute, which shall be dealt with in the manner contemplated by Section 7.6 hereof), the Indemnified Party shall promptly notify the other Party (in this instance, the "**Indemnifier**"). Such notice to the Indemnifier must describe in writing the third party claim in reasonable detail and indicate, to the extent reasonably practical, the estimated amount of the loss that has been or may be sustained by the Indemnified Party. The Indemnifier will then have a period of sixty (60) days within which to satisfy such third party claim, upon the prior written approval of the Indemnified Party of such settlement. Failing any settlement of the third party claim, the Indemnifier shall within ten (10) days of the end of such period give notice to the Indemnified Party as to whether it intends to dispute such third party claim and participate in or assume the defense thereof or not so dispute, participate in or assume. If the Indemnifier fails to provide such notice, the Indemnifier will be deemed to have provided notice that it will not so dispute, participate in or assume.

#### 7.5 **Limitations**

7.5.1 Subject only to Subsection 7.5.2, and notwithstanding any other provision of this Agreement, (A) the liability of each Party and their respective directors, officers, employees and agents to the other Party, whether founded in tort or breach of contract or otherwise, shall be limited to the loss sustained by such other Party as a result of direct damage sustained by such other Party, and (B) each Party's maximum aggregate liability to the other Party under any provision of this Agreement, whether founded in tort or breach of contract or otherwise, shall not exceed an amount equal to the last twelve (12) months of Billing Fees paid under this Agreement, or, where less than twelve (12) months have elapsed, twelve (12) times the average of the monthly fees paid or payable by the Biller during such shorter period.

7.5.2 The limitation in Subsection 7.5.1 shall not apply in respect of: (A) the obligation of the Company to pay any Settlement Amount to the Biller as provided in this Agreement, (B) the liability of either party for a breach of its obligations under ARTICLE X; and (C) the liability of a party for any claim to the extent arising as a result of (i) the fraud, gross negligence or wilful misconduct of such party, or (ii) the misappropriation, unlawful disclosure, or use of a third-party's intellectual property (except that the exception in clause 7.5.2(C)(ii) shall not apply



in respect of the Biller's use of certain software made available to the Biller by the Company as contemplated in Subsection 3.3.2).

7.5.3 For certainty, (A) a Party shall not be liable for any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties, and (B) in no event shall a Party be liable for any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

7.5.4 The limitation in Subsection 7.5.3, shall not apply in respect of: (A) the liability of either party for a breach of its obligations under ARTICLE X; and (B) the liability of a party for any claim to the extent arising as a result of the misappropriation, unlawful disclosure, or use of a third-party's intellectual property (except that the exception in clause 7.5.4(B) shall not apply in respect of the Biller's use of certain software made available to the Biller by the Company as contemplated in Subsection 3.3.2).

## 7.6 Disputes between Customer and Biller

7.6.1 Subject to Subsection 7.6.2, the following provisions shall apply if any Customer shall: (A) make any claim in relation to any breach of a Customer Services Agreement by the Biller, or (B) cancel or repudiate a Customer Services Agreement or claim the right to do so, or (C) dispute the existence of a Customer Services Agreement, or (D) assert any counterclaim, defense, or offset against amounts due for the Customer Services, or refuse to pay any amount for which it is invoiced hereunder based on any of the foregoing (each, a "**Customer Billing Dispute**"):

- (a) the Company shall forthwith notify the Biller of the existence of the Customer Billing Dispute, and to the extent the Biller, rather than the Company, receives notice of the Customer Billing Dispute, the Biller shall forthwith notify the Company of the existence of such Customer Billing Dispute;
- (b) thereafter, the Biller shall: (i) use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer; and (ii) if the Customer Billing Dispute is resolved, notify the Company of the resolution of the Customer Billing Dispute, and the particulars thereof;
- (c) subject to Subsection 7.6.1(d), if the Customer Billing Dispute is not resolved within sixty (60) days of such notification from the Company pursuant to Section 7.6.1(a), or the shorter time frame set out in Subsection 7.6(d) where applicable, then, pending the resolution of the Customer Billing Dispute the Company shall:
  - (i) be entitled, at any time thereafter, as part of the monthly Reconciliation pursuant to Section 4.4 hereof, to deduct or net out from the amount otherwise to be paid to the Biller an amount equal to the Customer Services charges (including applicable Taxes) at issue in the dispute (the "**At-Issue Receivable**") multiplied by the Scheduled Settlement (the product being the "**At-Issue Amount**"),

which deduction or net-out shall reduce the Company's obligation to pay the Settlement Amount by an amount equal to the At-Issue Amount;

- (ii) include on the Monthly Statement the particulars of each Customer Billing Dispute, including the At-Issue Amount, which arose in the relevant month; and
- (iii) be entitled, at any time and from time to time thereafter, to request that the Biller fully inform the Company regarding the status of any Customer Billing Dispute (including particulars of the matter at issue, the Biller's position and the reasons therefore, and how the Biller intends to resolve it), and the Biller shall comply with such request forthwith, and in any event within two (2) Business Days of receipt of such request;
- (d) if the Customer Billing Dispute is in respect of any matter to which the *Consumer Protection Act* applies, or which the Company determines, in its sole discretion, the *Consumer Protection Act* applies, then the Company shall notify the Biller of such determination and such Customer Billing Dispute must be resolved by the Biller within fifteen (15) days of the initiation of such Customer Billing Dispute by the Customer;
- (e) if a Customer contacts the Company in respect of a Customer Billing Dispute at any time after the notification to be provided pursuant to Section 7.6.1(a), then the Company shall be entitled, at any time and from time to time thereafter, to contact the Customer directly to discuss the status and particulars of the relevant Customer Billing Dispute;
- (f) upon adjusting the Settlement Amount as aforesaid in respect of the At-Issue Amount, the Company shall:
  - (i) have the At-Issue Receivable removed from the relevant Customer bill; and
  - (ii) adjust the Company's records accordingly;
- (g) if a Customer Billing Dispute is thereafter resolved, then the Biller shall so notify the Company, including the particulars of such resolution, and any amount to be billed to the Customer by the Company as a result of such resolution shall be treated in the usual manner under this Agreement;
- (h) a Customer Billing Dispute shall not be considered to have been resolved if the Company is notified by the Biller that a Customer Billing Dispute has been resolved, and the Company is subsequently advised by the Customer, or its representative, that the Customer Billing Dispute has not been resolved; and
- (i) in no event, and notwithstanding any action or inaction by the Company in respect thereof, shall the Company have any responsibility or liability with

respect to any Customer Billing Dispute or any At-Issue Receivable or any action taken by the Company pursuant to this Section 7.6 or in respect of such Customer Billing Dispute, provided the Company has acted reasonably in the circumstance.

7.6.2 Notwithstanding the foregoing, if (A) there occurs a Customer Billing Dispute, and (B) the Biller instructs the Company to (i) refund to the relevant Customer the full amount of any At-Issue Receivable and (ii) remove from the Service Bill for such Customer the relevant Customer Services which are the subject of the Customer Billing Dispute, then the provisions of Subsection 7.6.1 shall not apply in respect of such Customer Billing Dispute.

## 7.7 Disputes Between the Parties

7.7.1 Mechanism for Resolution of Disputes - With the exception of (A) disputes arising in respect of any distribution of Trust Property in accordance with the Allocation Formula or any other payment to be made pursuant to the Trust Agreement (which disputes shall be settled in accordance with Section 8.3 of the Trust Agreement), and (B) the exercise of rights of termination arising pursuant to Sections 8.4 or 8.5, all disputes, claims, questions or differences between the Parties arising out of or in connection with this Agreement or its performance, enforcement or breach (each a “**Services Dispute**”), shall be resolved in the manner set out in this Section 7.7. For certainty, if a Party gives to the other Party a notice pursuant to Section 8.6, then such other Party shall not be entitled to pursue resolution of any Service Dispute related thereto pursuant to this Section 7.7.

7.7.2 Notice of Dispute - A Party claiming that a Services Dispute has arisen must forthwith give written notice (a “**Dispute Notice**”) to the other Party specifying the nature of the dispute, the relief sought and the basis for the relief sought.

7.7.3 Meeting between Parties - Within five (5) Business Days following delivery of a Dispute Notice by either Party, the Parties must commence the process of attempting to resolve the Services Dispute by referring such Services Dispute to their respective representatives within their organizations and shall cause their respective representatives to meet, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to both Parties.

7.7.4 Binding Arbitration - If the Services Dispute is not resolved to the satisfaction of the Parties within fifteen (15) Business Days after delivery of the Dispute Notice, then either Party may, upon notice to the other Party (the “**Arbitration Notice**”), at any time thereafter require the Services Dispute to be resolved by binding arbitration pursuant to this Section 7.7.4:

- (a) The Services Dispute shall be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) based upon the provisions of this Section 7.7.
- (b) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties, acting reasonably, within ten (10) Business Days following delivery of the Arbitration Notice. If the Parties are unable to mutually agree on an arbitrator within such period, either Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator.

The arbitrator shall be qualified by education and training to rule upon the particular matter to be decided, shall be independent of each of the Parties and shall have reasonable experience in arbitrating business disputes;

- (c) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within sixty (60) days of the receipt by one of the Parties of the Arbitration Notice;
- (d) The arbitration shall take place in Toronto, Ontario, and the language of the arbitration shall be English;
- (e) To the fullest extent permitted by Applicable Laws, any controversy concerning whether a Services Dispute is an arbitral matter or as to the interpretation or enforceability of this Section 7.7 shall be determined by the arbitrator. The arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrator's fees and expenses, the provision of a reporter and transcripts, reasonable legal fees and disbursements and reasonable costs of preparation. After completion of the arbitration an action may be initiated by the Parties in court only for the purpose of enforcing the decision of the arbitrator and recovery of the costs incidental to the arbitration;
- (f) Subject to ARTICLE X, and except as may lawfully be required in judicial proceedings relating to the arbitration or otherwise or as may be required by Applicable Laws, the Parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, the Parties, their counsel and any person necessary to the conduct of the proceeding; and
- (g) In no case shall the Company delay, cease or threaten to delay or cease the provision of any Billing Service pending the resolution of a Services Dispute, other than where the estimated aggregate monetary value of the then outstanding Services Disputes exceeds either 20% of the Billing Fee otherwise owing by the Biller to the Company for the relevant Billing Periods or 20% of the Actual Billed Amounts for the relevant Billing Periods, (as applicable, depending on the nature of the Services Disputes(s)). Subject to the foregoing, pending the resolution of any Services Disputes, the Biller shall pay to the Company one-half of the Billing Fee plus applicable Taxes otherwise payable pursuant to Article IV in respect of the Billing Services provided by the Company that relate specifically to the Services Dispute. Following resolution of the Services Dispute, the Biller shall reimburse the Company for any underpayment and the Company shall reimburse the Biller for any overpayment, as the case may be, but in each case the payment shall be subject to interest at the

rate provided in Section 5.2 calculated from the due date of the initial payment.

## **ARTICLE VIII– TERM AND TERMINATION**

### **8.1 Term**

Subject to the other terms and conditions of this Agreement, the term of this Agreement (the “**Term**”) shall be deemed to have commenced on Cycle Day ●, for the month of ●, 20●● and shall terminate on the earlier of (a) Cycle Day 21, for the month of ●, 20●●, and (b) such earlier date as may be mutually agreed between the Parties, unless terminated prior to such date in accordance with the terms hereof.

### **8.2 Renewal**

Subject to the other terms and conditions of this Agreement including Section 8.3, this Agreement shall be automatically renewed for successive periods of one year (each a “**Renewal Term**”), each Renewal Term commencing on Cycle Day 1, for the month of ● of the then current year and terminating on Cycle Day 21, for the month of ● of the next following calendar year, unless terminated prior to such date in accordance with the terms hereof.

### **8.3 Conditions of Renewal**

This Agreement shall not be renewed automatically pursuant to Section 8.2 if:

- (a) the Biller is not in good standing under (i) the Financial Assurances, if any, to be provided by the Biller pursuant to this Agreement or (ii) the Trust Agreement;
- (b) the Biller is not in material compliance with all of its obligations, or the Biller is in material breach of any of its representations or warranties, set out in this Agreement or the Open Bill Manual; or
- (c) the Biller has not provided to the Company the Annual Forecast in accordance with this Agreement, where required to do so; provided that if the Biller has not so provided such Annual Forecast, where required, the Company shall notify the Biller and the Biller shall have seven (7) days following delivery of such notice to provide such Annual Forecast to the Company, and if the Biller does so, it shall be considered to have complied with such requirement.

### **8.4 Company’s Rights of Early Termination**

Subject to the other provisions of this Article VIII and in addition to the Company’s rights of termination set out elsewhere in this Agreement, the Company shall have the right to terminate this Agreement:

- (a) at the expiry of the Term, or the then current Renewal Term, upon not less than six (6) months prior written notice to the Biller, to that effect;

- (b) at any time upon the occurrence of an Event of Default of the Biller, provided such Event of Default is continuing at the time the Company exercises its right; or
- (c) at any time, upon thirty (30) days prior written notice or such other notice period required by an order of the OEB, upon the occurrence of a regulatory change established by a Governmental Authority which causes, results in, requires or necessitates such termination. In such circumstances the Company shall, where it has determined in its sole discretion that it is in its best interests to do so, make reasonable efforts to co-operate with the Biller to maximize the notice period for any such mandatory termination.

#### 8.5 **Biller's Rights of Early Termination**

Subject to the other provisions of this Article VIII and in addition to the Biller's rights of termination set out elsewhere in this Agreement, the Biller shall have the right to terminate this Agreement:

- (a) at the expiry of the Term, or the then current Renewal Term, upon not less than six (6) months prior written notice to the Company, to that effect;
- (b) at any time upon the occurrence of an Event of Default of the Company, provided such Event of Default is continuing at the time the Biller exercises its right; or
- (c) at any time upon the termination of the Trust Agreement.

#### 8.6 **Events of Default**

In addition to any other events set out in this Agreement, the occurrence of any one or more of the following events shall constitute a default by the Biller or the Company, as applicable, under this Agreement and shall be considered an event of default (an "**Event of Default**") if such default is not remedied prior to the expiry of the relevant notice period (if any) or the relevant cure period (if any) applicable to such default as hereinafter set out:

- (a) if (A) a Party fails to perform or observe any of its obligations under this Agreement on its part to be observed or performed, and (B) such failure is capable of being cured using reasonable diligence, and (C) such failure or breach shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the non-defaulting Party to the defaulting Party: (1) for a period of thirty (30) days; or (2) such longer period as may be reasonably necessary to cure such failure, provided that the defaulting Party has demonstrated that:
  - (i) it is proceeding with all due diligence to cure or cause to be cured such failure,
  - (ii) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable time frame acceptable to the non-defaulting Party, acting reasonably, and

- (iii) it shall thereafter cure such failure with all due diligence and within the time frame acceptable to the non-defaulting Party, acting reasonably;
- (b) if (A) the Biller fails to perform or observe its obligations set out in any of Sections 2.6(b) (Name Restrictions); 2.6(c) (Customer Service Agreement); 2.6(i) (Biller Contact Information), 4.10 (Company's Request for Documentation) or 7.6 (Disputes between Customer and Biller), and (B) such failure is capable of being cured using reasonable diligence, and (C) such failure or breach shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Biller for a period of ten (10) days; except where such failure is a direct result of a failure of the Company to fulfill any of the Company's obligations hereunder;
- (c) if (A) the Biller fails to perform or observe any of its obligations under this Agreement on its part to be observed and performed, and (B) such failure has or shall have a material adverse effect on the Company or the Company's ability to deliver the Billing Services, and (C) such failure shall continue unremedied following notice thereof (giving particulars of the failure in reasonable detail) from the Company to the Biller for: (1) a period of ten (10) days; or (2) such longer period as the Company, in its sole discretion, may agree;
- (d) if (A) any representation or warranty made by the Biller hereunder or any information provided by Biller in this Agreement shall prove to have been incorrect or misleading in any material respect when made, or at any time during the Term, and (B) the same has or shall have an adverse effect on the Company or the Company's ability to deliver the Billing Services;
- (e) if a Party files a petition in bankruptcy, makes application or files a petition seeking any re-organization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors, or if a receiver or receiver and manager, trustee or similar officer is appointed for the business or property of the Party or any part thereof, or if any involuntary petition, application or other proceeding under any bankruptcy or insolvency laws is instituted against the Party and is not stayed, otherwise enjoined or discharged within thirty (30) days;
- (f) if any execution, distress or other enforcement process, whether by court order or otherwise, which would have a material adverse effect on the financial viability of a Party becomes enforceable against any property of such Party;
- (g) if a Party commits any act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or is wound up;

- (h) if a Party ceases 'carrying on business in the ordinary course'; and for this purpose, a Party shall be considered to be 'carrying on business in the ordinary course' if it continues to meet all of its obligations and comply with all of its representations, in all material respects, under this Agreement and each Customer Services Agreement;
- (i) if for any reason a Party ceases to be a party to the Trust Agreement; or
- (j) if a Party fails to perform or observe any of its obligations under the Trust Agreement on its part to be observed and performed or is in breach of any of its representations or warranties made thereunder and such failure or breach shall continue unremedied following notice thereof (giving particulars of the failure or breach in reasonable detail) from the non-defaulting Party to the defaulting Party, for a period of thirty (30) days, except where such failure is a result of a failure of the other Party to fulfil any of such other Party's obligations thereunder,

provided that each of the above-noted Events of Default have been inserted for the benefit of the non-defaulting Party and may be waived by the non-defaulting Party in whole or in part at any time by notice to the defaulting Party. The non-defaulting Party may, in its sole discretion, extend the period for the remediation of any such Event of Default (if any).

#### 8.7 **Effect of Termination**

Notwithstanding the expiration or termination of this Agreement, for any reason, each Party shall:

- (a) continue to be liable to pay, on the terms herein specified, any amount accrued or accruing and payable by such Party to the other up to the time of termination; and
- (b) in good faith use commercially reasonable efforts to assist the other Party to provide for the transition of the Billing Services from the Company to a Person designated by the Biller.

#### 8.8 **Additional Rights of Company on Event of Default**

Upon the occurrence of an Event of Default of the Biller, the Company shall consider, and may discuss with the Biller, the appropriateness of the Company taking any one or more of the following actions:

- (a) suspension of the Billing Services, in whole or in part;
- (b) refusing to accept any new Customers for which Billing Services have been requested; or
- (c) making corrections or reversals to charges on Service Bills to correct Billing errors, including duplicate or erroneous charges,



provided that the Company shall not take any of such action or actions without the prior consent of the Biller.

## 8.9 **Transition Plan**

### 8.9.1 Termination Transition

- (a) Subject to Subsection 8.9.1(d), in connection with the expiration or termination of this Agreement for any reason or cause, in accordance with this Article VIII the Company will, upon receipt of reasonable advance notice in respect thereof (the “**Transition Notice Period**”), co-operate with the Biller to effect the orderly transition and migration from the Company to the Biller (or a third-party service provider undertaking, on behalf of the Biller, to provide the Billing Services (the “**Third Party Provider**”)) of all Billing Services then being performed by the Company (the “**Termination Transition**”) provided that (i) all amounts owed by the Biller to the Company under this Agreement have been paid, except for those amounts which are subject to a dispute under Section 7.7, and that (ii) the Company is paid for any additional services as provided in this Section 8.9.1. The Termination Transition will be provided for a reasonable period of time. The Biller will co-operate in good faith with the Company in connection with the Company’s obligations under this Section 8.9 and will perform its obligations under the Transition Plan (as such term is defined below) and as set out in this Agreement.
- (b) In furtherance of the parties obligations in Subsection 8.9.1(a), the Company and the Biller will work together to develop a transition plan (the “**Transition Plan**”) setting forth the respective tasks to be accomplished by each Party in connection with the Termination Transition and a schedule pursuant to which such tasks are to be completed, and the Billing Services to be provided by the Company, including the fees and expenses to be charged by the Company therefor in addition to those payable under this Agreement for Billing Services that continue to be provided or that are otherwise outstanding. In the event the Company and the Biller are unable to agree upon a transition plan during the Transition Notice Period, the Standard Transition Plan will be implemented and the Company will at the time of such implementation notify the Biller as to the fees and expenses to be charged by the Company therefor in addition to those payable under this Agreement for Billing Services that continue to be provided or that are otherwise outstanding.
- (c) The Company will assist the Biller at the Biller’s expense in the provision of the Biller’s data in such formats as the Biller may reasonably require in order to facilitate the transition of such data to another system.
- (d) Notwithstanding Subsection 8.9.1(a), if the Company terminates the Agreement as a result of the occurrence of any Event of Default set out in Section 8.6(b) or 8.6(c), then the Company shall only be obligated to provide transition assistance to the Biller for the period from (A) the date

on which Company provides Biller notice that services under this Agreement will be terminated, until (B) the Final Billing Date, as provided in the Standard Transition Plan.

## 8.9.2 Transition Assurances

- (a) Prior to the Company providing any termination assistance to a Third Party Provider, as contemplated in Subsection 8.9.1(a), the Biller will cause the Third Party Provider to provide the Company with written assurances, in form and substance satisfactory to the Company acting reasonably, that the Third Party Provider (i) will maintain the confidentiality of any Company proprietary information incidentally or otherwise disclosed or provided to, or learned by, the Third Party Provider in connection with the Termination Transition and (ii) will use such information exclusively for the provision of applicable services for the Biller during the Termination Transition or, where such Third Party Provider is not a competitor of the Company, such longer period of time agreed to by the Company acting reasonably. The Company will provide the Biller with the form of confidentiality agreement which it would find acceptable in order to facilitate the Termination Transition.
- (b) For so long as this Agreement remains in effect and during the Termination Transition but subject to the last sentence of this Section 8.9.2(b), the Biller will pay to the Company the charges set forth in this Agreement and in the Transition Plan. If the Termination Transition provided by the Company under this Section 8.9 or the Transition Plan requires personnel or other resources in excess of those resources being provided by the Company under this Agreement at the effective date of expiration or termination, the Biller will pay the Company for such additional personnel and resources at the Company's then current commercial billing rates on such periodic basis as required by the Company.

## **ARTICLE IX– FINANCIAL ASSURANCES AND INSURANCE**

### 9.1 **Requirement for Financial Assurances**

Contemporaneously with the execution of this Agreement and at any time during the Term, the Company may, upon notice to the Biller, require the Biller to provide the Company, and the Biller shall provide if the Company so requests, financial assurances in respect of the Biller's obligations hereunder in the amount and of the type required by the Company (the "**Financial Assurances**"), all in accordance with the terms set out in Appendix "D". Initially, the Financial Assurances required by the Company to be provided by the Biller shall be those set out in Appendix "D".

## 9.2 Nature of Financial Assurances

Any request for such Financial Assurances shall be based upon the creditworthiness of the Biller, and shall be consistent with the Company's then current 'Financial Assurances Policy for Open Bill Services', and which Policy shall be a part of the Open Bill Manual. Such Financial Assurances may consist of an irrevocable letter of credit in a form and from an issuer acceptable to the Company and/or such other security as the Company may specify. Such Financial Assurances may relate to the Biller's obligations hereunder or to the Biller's requests of the Company for an extension of the Term or for other revisions to the terms hereof.

## 9.3 Realization Upon Financial Assurances

The Company shall be entitled to realize upon any Financial Assurances in the manner and to the extent provided for and set out in this Agreement, including Appendix "D", and such Financial Assurances.

## 9.4 Insurance

9.4.1 Biller Insurance – The Biller shall, at its own expense, maintain and keep in full force and effect during the Term commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least two million dollars (\$2,000,000). Subject to the terms of the following sentence, the Company shall be added as an additional insured in the Biller's insurance policy, which should be extended to cover contractual liability, products/completed operations liability, owner's/contractor's protective liability and must also contain a cross-liability clause. The Biller shall, forthwith after entering into this Agreement, and from time to time thereafter at the request of the Company (but no more often than twice per year), furnish to the Company a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter described as the "**Biller Insurance Policies**") maintained by the Biller in order to satisfy the requirements of this Section 9.4.1. The Biller shall arrange the Biller Insurance Policies with insurers acceptable to the Company, acting reasonably. The Biller shall not cancel, terminate or materially alter the terms of any of the Biller Insurance Policies without giving prior notice in writing to, and obtaining the consent of, the Company. The Biller shall cause or arrange for each of the insurers under the Biller Insurance Policies to oblige itself contractually in writing to the Company to provide thirty (30) days prior notice in writing before cancelling or terminating the Biller Insurance Policies under which it is an insurer.

9.4.2 Company Insurance – The Company shall, at its own expense, maintain and keep in full force and effect during the Term commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least two million dollars (\$2,000,000). Subject to the terms of the following sentence, the Biller shall be added as an additional insured in the Company's insurance policy, which should be extended to cover contractual liability, products/completed operations liability, owner's/contractor's protective liability and must also contain a cross-liability clause. The Company shall from time to time at the request of the Biller (but no more often than twice per year), furnish to the Biller a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter described as the "**Company Insurance Policies**") maintained by the Company in order to satisfy the requirements of this

Section 9.4.2. The Company shall not cancel, terminate or materially alter the terms of any of the Company Insurance Policies without giving prior notice in writing to, and obtaining the consent of, the Biller. The Company shall cause or arrange for each of the insurers under the Company Insurance Policies to oblige itself contractually in writing to the Biller to provide thirty (30) days prior notice in writing before cancelling or terminating the Company Insurance Policies under which it is an insurer.

## **ARTICLE X– Confidentiality**

### **10.1 Purpose, Title and Use**

10.1.1 Purpose - Each Party may disclose to the other Confidential Information for the sole purpose of the Biller being provided with the Billing Services by the Company (collectively the “**Purpose**”).

10.1.2 Title - Each Party agrees that all right, title and interest in the Confidential Information disclosed by the Owning Party, including all discoveries, concepts and ideas derived from the Confidential Information, are the exclusive property of the Owning Party.

10.1.3 Use - The disclosure of Confidential Information by the Owning Party is in strictest confidence and thus the Receiving Party agrees:

- (a) to use the Confidential Information only for the Purpose and shall not disclose the Confidential Information to any third party other than the employees, officers, directors, contractors or consultants (subject to the obligations of this Section 10.1.3(a)) of the Receiving Party (collectively referred to as the “**Representatives**”) who have a need to know the Confidential Information in order to accomplish the Purpose or with the prior written consent of the Owning Party;
- (b) to advise each Representative, before he or she receives access to the Confidential Information, of the obligations of the Receiving Party under this Agreement;
- (c) with respect to contractors or consultants, to obtain in advance of any disclosure of Confidential Information the prior written agreement of the Owning Party, as well as the written agreement from such contractor or consultant to comply with the terms and conditions set forth in this Agreement; and provided that this provision shall not apply in respect of a Party’s legal advisors or auditors;
- (d) to be responsible for the breach of any provision of this Agreement by any Representatives;
- (e) to use at least the same degree of care to maintain the Confidential Information as confidential as the Receiving Party uses in maintaining its own confidential information, but always at least a reasonable degree of care;

- (f) subject to the Parties' potential obligations under Section 10.2, within fifteen (15) days following the request of the Owning Party, to return to the Owning Party all materials to the extent containing any portion of the Confidential Information or confirm to the Owning Party, in writing, the destruction of such materials, except where such Confidential Information is stored electronically or otherwise in a manner which would render the return or destruction of such Confidential Information not reasonably possible, provided it shall remain subject to the confidentiality obligations hereof; and
- (g) that the Confidential Information provided by the Owning Party shall not be copied, reproduced or summarized in any form, or stored in a retrieval system or database, by the Receiving Party or its Representatives without the prior written consent of the Owning Party, except for such copies, reproductions, summaries and storage as are strictly required for the Purpose and for evaluating the matters under discussion, it being agreed, however, that such copies, reproductions, summaries and storage shall be accorded the same confidential treatment as the originals thereof.

## 10.2 **No Disclosure to Other Persons**

10.2.1 The Parties acknowledge and agree that each of the Parties shall have the right to retain necessary Confidential Information which it may determine acting reasonably (the "**Retained Confidential Information**") is required for use by such Party in connection with any submission made to or proceeding made before the OEB whether through written or oral hearing or technical conference (collectively referred herein as the "**Regulatory Proceedings**"). Each of the Parties further agree that it shall not disclose all or any portion of the Retained Confidential Information in connection with Regulatory Proceedings, whether in order to respond to interrogatories or cross-examination of the Parties' witnesses or otherwise, without first seeking the consent of the Owning Party. If such consent is not provided, the Receiving Party shall seek confidential treatment for the Retained Confidential Information pursuant to the OEB's Practice Direction on Confidential Filings. The Receiving Party shall use all reasonable commercial efforts to promptly notify the Owning Party, prior to disclosing any Confidential Information, including the Retained Confidential Information, pursuant to this Section 10.2.1.

10.2.2 Except as provided in Section 10.2.1, in the event a Receiving Party becomes legally compelled, after having exhausted all reasonable commercial efforts as provided in Section 10.2.1 (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process by court order of a court of competent jurisdiction, or in order to comply with applicable requirements of any stock exchange, government department or agency or other regulatory authority, or by requirements of any Applicable Laws) to disclose any Confidential Information, the Receiving Party will (i) promptly notify the Owning Party of the obligation to make such disclosure and (ii) assert the confidentiality of such Confidential Information, in order to permit the Owning Party to seek an appropriate protective order or other protective remedy. The Receiving Party shall not oppose any action by the Owning Party to obtain an appropriate protective order or other remedy. In the event that either such protective order or other remedy is not obtained by Owning Party or Owning Party waives compliance with the provisions of this Agreement, the Receiving Party will disclose only that portion of the

Confidential Information which the Receiving Party is legally obliged (based on advice of legal counsel) to disclose to the appropriate authorities.

10.2.3 For the purpose of Sections 10.2.1 and 10.2.2, a Party who is at the relevant time a member of a trade, professional, or business organization (an “**Association**”) that participates in Regulatory Proceedings as representative of or on behalf of such Party may disclose Retained Confidential Information to that Association for the purposes of participating in Regulatory Proceedings as long as that Association becomes bound by the same obligations of confidentiality as such Party has pursuant to this Agreement with respect to that Retained Confidential Information.

### 10.3 **Remedies**

10.3.1 Each Party acknowledges and agrees that the Owning Party will suffer irreparable harm if the Receiving Party fails to comply with any of the obligations under this Article X and that monetary damages will be inadequate to compensate the Owning Party for any breach or attempted breach. Accordingly, in addition to any other remedies available to the Owning Party at law or in equity, or under the terms of this Agreement, each Party, as a Receiving Party, agrees that the Owning Party shall be entitled, as a matter of right, and the Receiving Party shall not oppose the Owning Party’s right, to seek equitable relief including an interim injunction, specific performance or other similar relief against the Receiving Party. No waiver of any violation shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided on an Event of Default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

10.3.2 Further, the Receiving Party shall indemnify and hold the Owning Party harmless against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered, sustained, paid or incurred by the Owning Party as a result of any breach of this Article X by the Receiving Party or any other Person receiving Confidential Information under this Agreement.

### 10.4 **Of Agreement**

Except to the extent necessary to perform its obligations hereunder or to comply with any Applicable Laws, no Party shall, without the prior written consent of the other Party, disclose to any third party the terms or conditions of this Agreement; and provided that this provision shall not apply in respect of a Party’s legal advisors or auditors.

## **ARTICLE XI– GENERAL CONTRACT PROVISIONS**

### 11.1 **Notice**

All notices, directions, documents of any nature required or permitted to be given by one Party to the other pursuant to this Agreement (in each case, a “**Notice**”) shall be in writing and shall be delivered personally or by courier or sent by facsimile as follows:

- (a) in the case of the Company, to it at:

Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York, ON M2J 1P8  
Fax Number: (416) 495-5657  
Attention: Director, Customer Care

With a copy to:

Enbridge Gas Distribution Inc.  
Fax Number: (416) 495-5994  
Attention: Vice President, Gas Distribution Law &  
Deputy General Counsel

(b) in the case of the Biller, to it at:

•

With a copy to:

•

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 11.1. A Notice may be delivered by electronic internet communication provided the Parties have agreed in writing in advance to do so and have established in writing in advance their respective addresses for such communication. A Notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or by electronic internet communication. If such day is not a Business Day or if the Notice is received after ordinary office hours (at the time of place of receipt), the Notice shall be deemed to have been sent and received on the next Business Day.

## 11.2 **Further Assurances**

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

## 11.3 **Waiver**

No waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a Party shall constitute a waiver of such Party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. For certainty, and without in any way limiting the foregoing, no default by a Party in fulfilling any of its obligations will be waived or deemed to have been waived by any examination, inspection or review by the other Party. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

#### 11.4 **Amendments**

Unless indicated otherwise in this Agreement, no additions, deletions, extensions or modifications of this Agreement shall be binding on either Party unless made in writing and signed by both Parties.

#### 11.5 **Amended and Restated Trust Agreement**

Following delivery of a notice by EGD to the Biller, and effective as of the date set out in such notice, (A) this Agreement shall automatically be amended in the manner and to the extent set forth on Appendix "H" hereto, and (B) the Trust Agreement shall automatically be replaced by the Amended and Restated Trust Agreement attached as Appendix "I" hereto without creating a new trust or otherwise resulting in a novation of the Trust Agreement. From and after the effective date of such amendments, this Agreement shall be and shall be deemed to be amended as set forth on Appendix "H" and all other provisions hereof shall remain in full force and effect, unamended. For certainty, no further action is required by any party hereunder in order for the amendments set forth on Appendix "H" to become effective other than the delivery of such notice by EGD.

#### 11.6 **Relationship between the Parties**

Except as expressly and specifically provided for in this Agreement or the Trust Agreement, neither the Company nor the Biller will be deemed by virtue of this Agreement an agent of the other. Any and all joint venture or partnership status between the Parties is hereby expressly denied, and the Parties acknowledge that they have not formed either expressly or impliedly, a joint venture or partnership.

#### 11.7 **Successors and Assignment**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, but neither Party shall transfer or assign this Agreement, or any of the rights, duties, or obligations under this Agreement, to any Person without the prior written consent of the other Party, acting reasonably.

#### 11.8 **Counterparts**

This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original, and such counterparts together shall constitute but one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

#### 11.9 **Time of the Essence**

Time is of the essence of this Agreement and of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.



**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

**ENBRIDGE GAS DISTRIBUTION INC.**

By: \_\_\_\_\_  
Name: Arunas Pleckaitis  
Title: Vice President, Business Development &  
Customer Strategy

By: \_\_\_\_\_  
Name: Mark Boyce  
Title: Vice President, Gas Distribution Law &  
Deputy General Counsel

**[OPEN BILL PARTICIPANT]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX “A”**  
**BILLING SERVICES**

The Company is providing billing services, the scope of which is described below. The Billing Services will produce either a shared monthly bill that includes Distribution Charges or a standalone monthly bill which does not include Distribution Charges for each Customer identified by the Biller in the manner contemplated herein. ALL BILLING SERVICES ARE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THE OPEN BILL MANUAL. THE BILLER ACKNOWLEDGES RECEIPT OF A COPY OF THE OPEN BILL MANUAL AS OF THE DATE OF THIS AGREEMENT.

Service Function Provided	Description of Service
<b>Account Set Up &amp; Management</b>	<p>Biller will initiate and Company will receive and process requests for the establishment of a customer account (as either shared or standalone) through the use of transaction interface files communicated by Biller to Company, for customer accounts within Company’s franchise territory.</p> <p>If, in any twelve (12) month period, the effort to set up Customer accounts (for Customers receiving a standalone Service Bill that does not include Distribution Charges) exceeds one hundred (100) hours, then Biller will be charged by Company for such incremental effort at a rate that is the lesser of: (i) the actual cost to set up such accounts based on an hourly rate of \$60.00 (sixty dollars) per hour; and (ii) a flat charge of \$20.00 (twenty dollars) per Customer account set up.</p> <p>Company will process updates to the customer record (i.e. names, phone numbers, etc.).</p> <p>Company will support rate ready transactions, financing and rental contracts in Company’s CIS system in a rate ready format.</p> <p>Company will support all bill ready transactions in Company’s CIS system received from Biller.</p>
<b>Call Centre</b>	<p>Company will provide “core” Customer billing inquiries (e.g. amount billed, when billed, etc).</p> <p>For product/service specific information, Customer will be directed to the Biller for response.</p> <p>Company will handle “core” Customer billing inquiries redirected by Biller to Company.</p> <p>Company will direct customers to call Biller when detailed product information is required by Customer.</p>

Service Function Provided	Description of Service
	<p>Company will respond to any written or email inquiries that are "core" Customer billing inquiries (e.g. amount billed, when billed, etc).</p> <p>Any product/service specific inquiries will be directed to Biller for response.</p>
<b>Billing Hotline</b>	<p>Company will provide Biller with dedicated support for billing inquiries. This service is for use by Biller personnel only and will provide consultation on Customer billing information, account status and account details held within Company's CIS system.</p> <p>Hours of the "hotline" operation will match Company's current billing inquiries hours (8AM - 6PM – during Business Days).</p>
<b>Billing</b>	<p>All transactions must be in the format specified in the Open Bill Manual.</p> <p>All transactions must pass a Company edit in order to be input on a Service Bill.</p> <p>Rejected transactions will be sent back to Biller via an electronic file.</p> <p>All transactions to be presented on the Service Bill will be comprised of charges related only to Customer Services.</p> <p>All Company billing exceptions (i.e. unpostables , no bills, etc.) will be reviewed and resolved.</p> <p>Company will process all adjustment transactions from Biller that are communicated to Company in the form of a transaction interface file that complies with the requirements of the Open Bill Manual and passes the Company's edit requirements.</p> <p>Company will process billing adjustments as a result of a CIS processing or Company error and issue an incremental Service Bill to Customer to correct such billing error, if required.</p> <p>Company will provide Biller with backbilling services, for items such as rate ready rental equipment, for the period the gas meter is turned off due to non payment, when the account is resumed in the same name.</p> <p>Company will randomly review Service Bills on a daily basis to ensure billing accuracy for Biller's rate ready charges.</p> <p>Company will process move transactions initiated by Customer via telephone or written correspondence.</p> <p>All rate ready transactions will be calculated based on rates and charges provided by Biller. The rate change process will be provided in accordance with the Open Bill Manual.</p> <p>If Customer disputes Biller's charge, Company will transfer the dispute to Biller for investigation and resolution.</p>

Service Function Provided	Description of Service
	Biller shall be entitled to have aggregated statements (i.e. information relating to multiple account to be presented on one or more Service Bill(s)) rendered and issued each month.
<b>Bill Presentment</b>	<p>Biller charges/credits will be displayed on the Biller's portion of the "Charges from Other Companies" section of the Service Bill.</p> <p>Line items to be presented on the Service Bill will be limited to the Customer Services. Company will print Biller specific logos, based on Company's pre-determined printing requirements.</p> <p>Up to six items per Biller may be presented on each Service Bill per month. Bills that exceed the six item limit will be subject to an additional charge.</p> <p>Company will provide Biller with space for a monthly four line bill message, incremental to the product description line, which will be located on the right side of the Service Bill opposite Biller's charges.</p>
<b>Bill Print &amp; Mailing</b>	<p>Company will support all aspects of bill print, including a daily audit of print quality, and will provide corrections if necessary.</p> <p>Company's bill mailing will be compliant with Canada Post standards.</p> <p>Returned mail will be reviewed and information updated, when available.</p>
<b>Rental Equipment</b>	Where rate ready rental equipment is attached to Customer's premises within the CIS system, Company will transfer the rental to the new Customer when a Customer move occurs, and inform Biller.
<b>Finance</b>	Company will purchase the Distribution Entitlements from Biller on the applicable Payment Date.
<b>Settlement</b>	Company will pay the Settlement Amount to Biller in accordance with the Agreement.

## **APPENDIX "B"**

### **CHARGES**

For purposes of the Agreement:

**"Billing Fee"** is (i) if the Term commences in 2009, **eighty-eight cents (\$0.88)** for each Service Bill delivered pursuant to the Agreement which includes Distribution Charges, and **two dollars and five cents (\$2.05)** for each Service Bill delivered pursuant to the Agreement which does not include Distribution Charges, in each case, as adjusted by the Billing Fee Adjustment, from time to time, or (ii) if the Term commences in 2010 or later, those fees specified in subitem (i) as the same would have been adjusted through application of the Billing Fee Adjustment as if the Term had originally commenced in 2009;

**"Billing Fee Adjustment"** means, an increase to the Billing Fee, to be applied at the Company's sole discretion effective as of January 1 in each calendar year upon delivery of notice to the Biller, in an amount not to exceed an amount equal to one half of the annual change in The Canadian Consumer Price Index, All Items, as published by Statistics Canada to a maximum amount equal to two percent (2%) of the aggregate Billing Fees paid or payable, in each case, for the preceding calendar year, as measured in November of such preceding calendar year, provided that such Billing Fee adjustment is applicable to all third parties under contract with the Company for the provision of services similar to the Billing Services;

**"Scheduled Settlement"** is 99.47%, as such percentage may be adjusted at its sole discretion based on the Company's actual bad debt incurred in the prior calendar year, effective as of January 1 in each calendar year, upon delivery of written notification to the Biller; provided that such change is applicable to all third parties under contract with the Company for the provision of services similar to the Billing Services; and provided that in no event shall the Scheduled Settlement be less than 100% minus the sum of: (A) the Company's actual bad debt, expressed as a percentage of the Company's total accounts receivable in the prior calendar year; plus (B) 0.03%.

**APPENDIX “C”**  
**SERVICE LEVELS**

<i>1 - Bill Delivery for Service Bills</i>	
<b><i>Objective</i></b>	To deliver Service Bills in a timely manner to the Biller’s customers.
<b><i>Definition</i></b>	<p>Service Bills are to be delivered to Canada Post (at the point of entry into the Canada Post system and at the time of day required by Canada Post as defined by Canada Post) on the same day as printed.</p> <p>Service Bills conveyed electronically (“e-bills”) are to be posted to the Company’s e-bill service provider’s website on the same day they are generated.</p>
<b><i>Data Capture</i></b>	The Company will track and report the timely delivery to Canada Post of each cycle (or part thereof) of all bills printed by the Company that include Distribution Charges together with printed Service Bills that do not contain Distribution Charges (collectively the “Total Printed Bills”) to Canada Post and the timely posting of e-bills to the Company’s e-bill service provider’s website each day.
<b><i>Measurement Interval</i></b>	Bill delivery statistics (volumes and date/time of day) for Total Printed Bills will be monitored and maintained for all billing cycles daily and aggregated on a monthly basis and assessed annually.
<b><i>Method of Calculation</i></b>	<p>Delivery Same Day as Printed:</p> <p>For each billing day, (the aggregate number of Total Printed Bills that are delivered to Canada Post same day as printed + the total number of e-bills that are posted to the Company’s e-bill service provider’s website for same day delivery), divided by (the aggregate number of Total Printed Bills due to be delivered to Canada Post for each billing cycle + the total number of e-bills due to be posted to the Company’s e-bill service provider’s website), times 100.</p> <p>Delivery Next Business Day:</p> <p>For each billing day, (the aggregate number of Total Printed Bills that are delivered to Canada Post same day as printed + the total number of e-bills that are posted to the Company’s e-bill service provider’s website for same day delivery + the aggregate number of Total Printed Bills that are delivered to Canada Post by next Business Day + the total number of e-bills posted to the Company’s e-bill service provider’s website by next Business Day) divided by (the aggregate number of Total Printed Bills due to be delivered to Canada Post for each billing cycle + the total number of e-bills due to be posted to the Company’s e-bill service provider’s website), times 100.</p>
<b><i>Reporting Period</i></b>	Monthly and annual reporting
<b><i>Service Level</i></b>	<p>95% of Total Printed Bills delivered to Canada Post and 95% of e-bills posted to the Company’s e-bill service provider’s website for same day as printed and delivery, with 100% being delivered by next Business Day.</p> <p>This must occur 98% of the time for the total annual number of billing cycle days.</p>

<i>2 - Bill Messages for Service Bills</i>	
<b><i>Objective</i></b>	To make certain that there are no incorrect bill messages included on the Service Bills.
<b><i>Definition</i></b>	An incorrect bill message is any bill message printed on the Service Bill that was delivered to the Customer and not scheduled to appear on the Service Bill or a bill message that was scheduled to appear on the Service Bill that was not printed on the Service Bill.
<b><i>Data Capture</i></b>	The Company will track the number of infractions that occur on the Service Bills by physically reviewing a representative sampling of completed mailings and posted e-bills each billing cycle day.
<b><i>Measurement Interval</i></b>	Reviewed daily and measured monthly at the end of each Billing Period.
<b><i>Method of Calculation</i></b>	The total number of mailing envelope message infractions divided by the total number of mailing envelopes mailed, times 100%
<b><i>Reporting Period</i></b>	Monthly
<b><i>Service Level</i></b>	Zero infractions 98% of the time.

<i>3 – Billing Exceptions Processing</i>	
<b><i>Objective</i></b>	To make certain that all billing exceptions are completed in a timely manner.
<b><i>Definition</i></b>	A billing exception is a condition that causes the Service Bill to not be issued for delivery to the Customer as per the Company's meter reading and billing schedule.
<b><i>Data Capture</i></b>	The Company will track and report all billing exceptions.
<b><i>Measurement Interval</i></b>	All billing exceptions will be identified and measured to determine if they have been resolved on or before the Customer's next regularly scheduled billing cycle day.
<b><i>Method of Calculation</i></b>	The total number of billing exceptions that are completed on or before the Customer's next regularly scheduled billing cycle day, divided by the total number of billing exceptions to be completed on or before the Customer's next regularly scheduled billing cycle day, times 100.
<b><i>Reporting Period</i></b>	Monthly.
<b><i>Service Level</i></b>	Fix 95% of billing exceptions before the Customers' next regular Service Bill is issued for delivery to the Customer as per the Company's meter reading and billing schedule.



## **APPENDIX "D"**

### **FINANCIAL ASSURANCES**

#### **PART 1 - FINANCIAL ASSURANCES**

[Note to draft: This Part 1 will be completed for each Biller in accordance with the requirements of the Company's then-current policies relating to customer creditworthiness.]

Pursuant to Section 9.1 of the Agreement, but subject to the following paragraph, [the Biller][the Guarantor] will be required to post and maintain, at all times during the Term and Termination Transition (if applicable) and for a period of three (3) Billing Periods thereafter, [a parental guarantee] [an irrevocable Letter of Credit] [cash equivalent satisfactory to the Company], to the benefit of the Company, [substantially on the terms attached hereto]. [Such Letter of Credit to be provided by the Biller shall be for an amount which is not less than the following: \$●]

Notwithstanding the following paragraph, the requirement to provide Financial Assurances set out in Section 9.1 of the Agreement shall not apply to any Biller if: (A) during any Billing Period, the total number of Service Bills for which the Company provided Billing Services in the six completed Billing Periods prior to, but not including, such Billing Period, was less than seven thousand two hundred (7,200); and (B) such Biller has provided to the Company a notice pursuant to Section 4.7.2 of the Agreement to set-off payment of the Billing Fee Invoice against payment to the Biller of the Settlement Amount as contemplated therein.

Subject to the preceding paragraph, the requirement to provide Financial Assurances set out in Section 9.1 of the Agreement shall not apply to any Biller if, at the time of execution of this Agreement: (A) the Biller anticipates that the number of Service Bills for which the Company will provide Billing Services during the first twelve (12) Billing Periods of this Agreement will not exceed fourteen thousand four hundred (14,400), and (B) such Biller has provided to the Company a notice pursuant to Section 4.7.2 of the Agreement to set-off payment of the Billing Fee Invoice against payment to the Biller of the Settlement Amount as contemplated therein.

#### **PART 2 - REALIZATION ON FINANCIAL ASSURANCES**

In addition to any other rights in respect thereof set out in the Agreement, the Company shall be able to liquidate or exercise all or any part of any Financial Assurances then held by or for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of the Biller:

- (a) in respect of any obligation of the Biller to pay any amount to the Company, and which obligation has become an Event of Default of the Biller;
- (b) in respect of any claim for indemnity made by the Company pursuant to Section 7.3.1 and in respect of which the Biller does not dispute the claim or the claim is

the subject of a final and binding arbitration decision made pursuant to Section 7.7 or by a court of competent jurisdiction; or

- (c) in respect of any cost or expense incurred by the Company as a result of the Biller's failure to fulfill or comply with any of its obligations pursuant to this Agreement.

### **PART 3 - ADJUSTMENT OF FINANCIAL ASSURANCES**

- (d) The amount and type of the Financial Assurances may be adjusted from time to time in accordance with the provisions of Article IX and this Appendix "D". Without in any way limiting the foregoing, if, at any time during the Term: (A) the Company has reasonable grounds to believe that the Biller's creditworthiness or performance under this Agreement has or may become unsatisfactory; (B) there is a material adverse change in market conditions; (C) there occurs a change in OEB policies or requirements; or (D) for any other reason set out in this Appendix "D", the Company may provide the Biller with notice requiring the Biller to post additional or increased Financial Assurances in a form, amount and for a duration identified by the Company in a commercially reasonable manner and agreed upon with the Biller.
- (e) Upon receipt of such notice, the Company and the Biller shall have the period of days specified in the notice to settle and agree upon the form, amount and duration of such additional or increased Financial Assurances.
- (f) If the additional or increased Financial Assurances are agreed upon or, if agreed upon, not provided to the Company within the specified period, the Biller shall thereupon be deemed to be in default under this Agreement and the Company shall, in addition to any of its other rights hereunder, thereafter have the option to terminate this Agreement in accordance with the terms hereof.

**APPENDIX “E”**

**ANNUAL FORECAST – 20●●**

Billers’ 12 month forecast for Service Bills.

[note to draft: insert Biller forecast for the relevant 12 month period]

	<b>Year X</b>					
<b>Service</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
Number of Service Bills						
<b>Service</b>	<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>
Number of Service Bills						
	<b>Year X + 1</b>					
<b>Service</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
Number of Service Bills						
<b>Service</b>	<b>July</b>	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>
Number of Service Bills						

Annual Forecast:

[Note to draft: The table above should contain forecasts, where possible or commercially reasonable, for both shared bills (i.e., those including Company distribution charges) as well as stand-alone bills (those not including EGD distribution charges).]

**APPENDIX “F”**

**BILLER’S INTELLECTUAL PROPERTY**

See attached Trademark License Agreement.

## **APPENDIX “G”**

### **STANDARD TRANSITION PLAN**

#### **Definitions**

For the purposes of this Standard Transition Plan the following terms shall have the meanings set out below.

“**Notice Date**” means the date on which Company provides Biller notice that services under this Agreement will be terminated.

“**Final Billing Date**” means either:

- (i) in the case of a Biller for which the Company provides Billing Services with respect to less than an average of 5,000 Services Bills per Billing Period in the three Billing Periods immediately prior to the implementation of the Standard Transition Plan, the earlier of (a) the Notice Date plus sixty (60) calendar days, and (b) the end of the next complete Billing Period after the Notice Date; or
- (ii) in the case of a Biller for which the Company provides Billing Services with respect to an average of 5,000 or more but less than 250,000 Services Bills per Billing Period in the three Billing Periods immediately prior to the implementation of the Standard Transition Plan, the earlier of (a) the Notice Date plus ninety (90) calendar days, and (b) the end of the second complete Billing Period after the Notice Date; or
- (iii) in the case of a Biller for which the Company provides Billing Services with respect to an average of 250,000 or more but less than 500,000 Services Bills per Billing Period in the three Billing Periods immediately prior to the implementation of the Standard Transition Plan, the earlier of (a) the Notice Date plus one hundred and twenty (120) calendar days, and (b) the end of the third complete Billing Period after the Notice Date; or
- (iv) in the case of a Biller for which the Company provides Billing Services with respect to 500,000 or more Services Bills per Billing Period in the three Billing Periods immediately prior to the implementation of the Standard Transition Plan, the Notice Date plus one hundred and eighty (180) calendar days.

“**Final Invoice Date**” means the Final Billing Date plus 6 Cycle Days.

#### **Assumptions**

- Biller will not require services from Company to migrate their billing data to Biller or to a third party service provider. Should this not be the case Company will respond to any request for the provision of such data on or before [Notice Date + 30 calendar days].

**Customer Related Transition Actions to be completed on or before the following dates:****• Biller's Actions:**

- o On [Notice Date] - No further Customers will be accepted for billing service enrollment as of this date.
- o By [Final Billing Date + 30 calendar days] - Update call centre scripts to communicate that charges will no longer appear on the Service Bill.
- o No later than [15 calendar days prior to the Final Billing Date] – Biller will send letters to all Customers to communicate that their charges will no longer appear on the Service Bill after [Final Billing Date].
- o Until [Final Billing Date + 30 calendar days] – Biller will respond to customer inquiries in a timely and professional manner.
- o By [Notice Date + 7 calendar days] - If required, Biller will extend their Financial Assurances until at least [Final Billing Date + 60 calendar days]
- o By [Final Invoice Date + 30 calendar days] – Payment of all Billing Fees together with actual costs incurred by Company in respect of termination services on a time and materials basis (including applicable Taxes thereon) without mark-up.

**• Company's Actions:**

- o Until [Final Billing Date] - Continue to provide Billing Services for valid charges that were provided before [Notice date].
- o By [Notice date + 7 calendar days] - Update call centre scripts for Biller related calls to communicate that these charges will no longer appear on the Service Bill after [Final Billing Date].
- o By [Final Invoice Date] – Complete invoicing to Biller for all Billing Fees together with actual costs incurred by Company in respect of termination services on a time and materials basis (including applicable Taxes thereon) without mark-up.
- o Throughout the Transition Period - In the event Biller does not fulfill its obligations under this transition plan, Company reserves the right to take such actions, as required, in order to finalize the transition.

**Open Bill Operations Transition Actions to be completed on or before the following dates:****• Company's Actions:**

- o On [Final Billing Date] - Remove Biller's security access to their SFTP Input folder.
- o Until [Final Billing Date + 21 calendar days] – Daily net remittances to Biller continue.
- o Until [Final Billing Date] - Reporting continues as required by the Agreement. Biller's access to Company's SFTP Server will be discontinued at the end of this period.

- 
- o On [Final Billing Date + 1 calendar day] - Revise all of Company's Biller lists to show that Biller's charges will no longer appear on the Service Bill.
  - o On [Final Billing Date] - For all remaining rate ready charges, submit rate ready delete transactions for remaining Customers.

**APPENDIX “H”**  
**FURTHER AMENDMENTS TO AGREEMENT**

Pursuant to Section 11.5, effective as of the date specified by EGD in accordance with Section 11.5, this Agreement shall be automatically amended as follows:

2. In Section 1.1, the definition of “Trust Agreement” is hereby deleted and replaced with the following:

“ ‘Trust Agreement’ means the Amended and Restated Proceeds Transfer, Servicing and Trust Agreement entered into among the Company, CIBC Mellon Trust Company, the Biller and the other parties set forth on Schedule “F” thereto effective as of [● ●, ●], as the same may be amended, modified or replaced from time to time; ”

For certainty, the date above in square brackets will be changed to the actual date of such Trust Agreement.

3. In Section 1.1, the definition of “Servicer” is hereby deleted.
4. Section 4.2.1 is hereby amended by deleting the words “on or before 9:00 a.m. (Toronto time)” from the fifth line thereof and replacing them with the words “on or before the close of business (Toronto time)”.
5. Section 4.2.2 is hereby deleted in its entirety and the following substituted in its place:

4.2.2 Upon, and subject to, the Biller’s receipt of the Settlement Amount, the Biller shall immediately thereafter transfer to the Company all of its Beneficial Interest relating to the Biller Receivables billed on such Related Calculation Day. In order to effect the transfer of such Beneficial Interest to the Company from a Biller, the Company shall, unless the Company has received from a Biller no later than the close of business on the Business Day immediately following the relevant Payment Date a statutory declaration delivered pursuant to Section 4.5(b) of the Trust Agreement, concurrently and irrevocably re-direct the Trustee to pay any Scheduled Payment Amount otherwise payable to the Biller in respect of its Beneficial Interest for the relevant Related Calculation Day to the Company on or before the close of business on the relevant Payment Date. In the event of delivery of such a statutory declaration, the provisions of the Trust Agreement shall apply to the payment of the applicable Scheduled Payment Amount. Notwithstanding the foregoing, if the Payment Date is not a Business Day, payment shall be made on the first Business Day next following such day.

6. Section 4.7.2 is hereby amended by deleting the words “addressed to the Servicer or the Trustee as the Company reasonable requests” from the fourth line thereof and replacing them with the words “addressed to the Company and the Trustee”.



- 
7. Section 4.11 is hereby amended by deleting the words “, the Servicer” from each of the first and fifth lines thereof.
  8. Section 5.2.1 is hereby amended by deleting the words “or the Servicer” from the fourth and fifth lines thereof.
  9. Section 7.7.1 is hereby deleted in its entirety and the following substituted in its place:
    - 7.7.1 Mechanism for Resolution of Disputes - With the exception of the exercise of rights of termination arising pursuant to Sections 8.4 or 8.5, all disputes, claims, questions or differences between the Parties arising out of or in connection with this Agreement or its performance, enforcement or breach (each a “**Services Dispute**”), shall be resolved in the manner set out in this Section 7.7. For certainty, if a Party gives to the other Party a notice pursuant to Section 8.6, then such other Party shall not be entitled to pursue resolution of any Services Dispute related thereto pursuant to this Section 7.7.

**APPENDIX “I”**  
**AMENDED AND RESTATED TRUST AGREEMENT**

**AMENDED AND RESTATED  
PROCEEDS TRANSFER, SERVICING  
AND TRUST AGREEMENT**

**BETWEEN**

**ENBRIDGE GAS DISTRIBUTION INC.,  
as a provider of certain services and as a Beneficiary**

**- and -**

**THE PARTIES SET FORTH ON SCHEDULE “E” HERETO,  
each as a Beneficiary**

**- and -**

**CIBC MELLON TRUST COMPANY,  
as Trustee for the Beneficiaries**

**Effective as of ● ●, ●**

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**AMENDED AND RESTATED PROCEEDS TRANSFER, SERVICING AND TRUST AGREEMENT** is effective as of ● ●●, 20●,

**BETWEEN:**

**THE PARTIES SET FORTH ON SCHEDULE "E" HERETO**, each as a Beneficiary

- and -

**ENBRIDGE GAS DISTRIBUTION INC.**, a corporation incorporated under the laws of Ontario ("**EGD**"), as a provider of certain services and as a Beneficiary

- and -

**CIBC MELLON TRUST COMPANY**, a trust company governed by the laws of Canada (the "**Trustee**"), as trustee for and on behalf of the Beneficiaries

**WHEREAS** EGD is the owner of the EGD Receivables, each of the Billers is the owner of its respective Biller Receivables, and in each case such party is the owner of the Related Security pertaining thereto;

**AND WHEREAS** the EGD Receivables and the Biller Receivables shall be billed by EGD on its own behalf and on behalf of the Billers in a single bill sent to Obligors;

**AND WHEREAS** EGD and each Biller have agreed upon arrangements pursuant to which EGD shall provide certain billing services to such Biller pursuant to the terms of an Open Bill Agreement entered into between EGD and such Biller;

**AND WHEREAS** each of the Beneficiaries wishes to undertake to one another that the Trust Property existing up to the Termination Date will be divided between the Beneficiaries in accordance with the Allocation Formula so that each Beneficiary will receive, subject to the terms hereof, certain amounts resulting from collection of the Receivables of such Beneficiary;

**AND WHEREAS** because the EGD Receivables and the Biller Receivables shall be, in accordance with the Open Bill Agreement, collected together and commingled upon receipt, the parties hereto have agreed to set up and enter into the structure and arrangements set out in this Agreement with the specific intent of ensuring that:

1. EGD is the only party hereto that has any interest in, or right to, the EGD Receivables;
2. except as otherwise disclosed in writing to EGD, each Biller is the only party hereto that has any interest in, or right to, its Biller Receivables;
3. all of the right, title and interest of each Biller in and to the Biller Proceeds is completely and effectively assigned to the Trustee, such that no other party hereto has any direct

- claim to such Biller Proceeds, whether generated previously or to be generated in the future from the Biller Receivables and whether paid to EGD or any of the Beneficiaries;
4. all of the right, title and interest of EGD in and to the EGD Proceeds is completely and effectively assigned to the Trustee, such that none of the Billers has any direct claim whatsoever to the EGD Proceeds, whether generated previously or to be generated in the future from the EGD Receivables and whether paid to EGD or any of the Beneficiaries;
  5. each Beneficiary is the only party hereto that has any interest in or right to the Scheduled Payment Amounts to be distributed to such Beneficiary pursuant to the Allocation Formula;
  6. subject to Section 4.5 hereof, the sole entitlement of each Beneficiary to Proceeds shall be the respective right to receive distributions of Trust Property in accordance with the Allocation Formula;
  7. EGD, as a provider of certain services hereunder (and for certainty, not as a Beneficiary hereunder), shall have no entitlement to any Scheduled Payment Amounts of a Beneficiary or to any distributions of Trust Property and, in providing such services, is doing so on behalf of the Trustee and not as a Beneficiary;
  8. each Beneficiary is entering into this Agreement primarily for purposes of ensuring that their respective rights to their Receivables, Related Security and the Proceeds generated by or from their respective Receivables are specifically preserved, and to ensure that, with respect to their entitlements to their respective Receivables and Related Security only, none of the Billers nor EGD is in any way prejudiced by having assigned its respective Proceeds to the Trustee, and by having limited its rights irrevocably to receiving the amount determined in accordance with the Allocation Formula; and
  9. none of the Beneficiaries (including EGD), EGD (as a provider of certain services hereunder), nor any insolvency administrator or other similar person acting in respect of any of them in the event of the insolvency of any of them (including EGD) (collectively the “**Insolvent**”), will be entitled to claim an interest in the Proceeds or the Trust Property greater than the entitlement of the Insolvent as a Beneficiary to distributions pursuant to Sections 4.3 and 9.7 hereof;

**AND WHEREAS** the Beneficiaries will instruct the Trustee to appoint EGD (on behalf of the Trustee) to perform certain duties specified in this Agreement, including the invoicing of and collection from Obligor of the amounts due under the Receivables and the deposit of the EGD Proceeds and the Biller Proceeds in the Trust Account and the disbursement of monies from the Trust Account in the manner provided for in this Agreement;

**AND WHEREAS** the foregoing Recitals are made as statements of fact by the parties hereto other than the Trustee;

**AND WHEREAS** the Servicer under the Original Trust Agreement has, or will have at the effective date of this Agreement, resigned as the Servicer thereunder with the consent of each of the Beneficiaries;

**AND WHEREAS**, in respect of all of the forgoing, the parties hereto (among others) are parties to the Proceeds Transfer, Servicing and Trust Agreement dated as of March 10, 2008 (the “**Original Trust Agreement**”), and wish to amend and restate the terms thereof as contemplated and provided herein, effective as of the date of this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT**, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

## **ARTICLE ONE**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1** Definitions

Except as otherwise specified herein the following terms have the respective meanings set forth below for all purposes of this Agreement:

“**Acknowledgment**” means an acknowledgment by a Biller substantially in the form attached hereto at Schedule “C” and otherwise in a form satisfactory to EGD and the Trustee;

“**Actual Billed Amount**” has the meaning given thereto in the Open Bill Agreement;

“**Agreement**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this Agreement, the Schedules attached hereto and any other documents attached hereto or incorporated herein by reference, each as amended from time to time in accordance with this Agreement, and do not refer to any particular article, section, paragraph or other portion hereof;

“**Allocated Payments of Red-Locked Customers**” means payments of Red-Locked Customers that have been designated by an Obligor for payment to an EGD Receivable to the exclusion of all other amounts owing in respect of charges on a Service Bill, including to the exclusion of any Biller Receivable that may be outstanding from such Obligor, to an amount not exceeding the amount required to be paid for such Obligor to cease to be a Red-Locked Customer;

“**Allocation Certificate**” means the written notice of EGD certifying the results of the application of the Allocation Formula on a particular Business Day in respect of the relevant Related Calculation Day, which certificate shall be in a form substantially similar to the sample attached hereto at Schedule “D”, and, for certainty, includes any revised Allocation Certificate provided pursuant to Section 4.3;

“**Allocation Formula**” means the formula for calculating the entitlement of each of the Beneficiaries to distributions of the Trust Property, as set out in Schedule “B”;

“**Applicable Law**” means any and all applicable federal, provincial and municipal laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of the parties pursuant to the terms of this Agreement, as applicable, from time to time;



“**Area 83**” means the geographic area outside of EGD’s gas distribution franchise area;

“**Area 83 Payments**” means any and all payments made by those Obligor of a Biller, or of any other Person identified in the Open Bill Agreement as one on whose behalf such Biller provides Customer Services, in Area 83 who do not receive any services from EGD;

“**Beneficial Interest**” means the beneficial interest of a Beneficiary in the Trust Property as provided for in this Agreement;

“**Beneficiary**” means any of EGD or the Billers in its capacity as a beneficiary of the trusts established under this Agreement, and “**Beneficiaries**” means EGD and the Billers in such capacities, collectively;

“**Beneficiary Direction**” has the meaning given thereto in Section 6.3;

“**Beneficiary Termination Date**” means, in respect of a particular Biller, the date of termination of the Open Bill Agreement between EGD and such Biller;

“**Biller**” means the parties identified from time to time on Schedule “E” hereto, which Schedule shall include (i) all of the parties hereto other than the Trustee and EGD and (ii) any Person that has duly executed and delivered an Acknowledgment following the date of the Original Trust Agreement, and “**Billers**” means all of such parties, collectively;

“**Biller Proceeds**” means, in respect of a particular Biller, all payments made or value provided in any form, by or on behalf of Obligor in respect of the Biller Receivables of such Biller and the Related Security including Deemed Proceeds with respect to the Biller Receivables of such Biller;

“**Biller Receivable**” means, in respect of a particular Biller, all payment obligations of an Obligor to such Biller or to any other Person identified in the Open Bill Agreement as one on whose behalf the Biller provides Customer Services, arising on or after the date of the Original Trust Agreement which obligations, and in certain cases a payment obligation of the same Obligor to EGD, have been billed up to the Termination Date in a Service Bill to such Obligor, other than, for certainty, payment obligations in respect of Area 83 Payments;

“**Business Day**” means any day other than a Saturday or Sunday, statutory holiday or day on which banks generally are not open for business in the Province of Ontario;

“**Collections**” means, with respect to any Receivable, all cash collections and other cash proceeds by way of (i) an over-the-counter payment at a financial institution; (ii) a telephone or internet directed payment at or through a financial institution; (iii) a pre-authorized direct debit arrangement or banking arrangement; or (iv) cheques received by mail at a dedicated post office box controlled by EGD on behalf of the Trustee, including, without limitation in each such case, all cash proceeds of Related Security received from or on behalf of an Obligor in respect of such Receivable;

“**Customer Services**” shall have the meaning given thereto in the Open Bill Agreement;

“**Cycle Day**” means a billing cycle day of EGD;

“**DBRS**” means Dominion Bond Rating Service Limited;

“**DE**” means Direct Energy Marketing Limited;

“**Deemed Proceeds**” means, with respect to an EGD Receivable, any amount by which the outstanding balance thereof is either reduced or cancelled by EGD, and, in the case of a particular Biller Receivable, any amount by which the outstanding balance thereof is either reduced or cancelled by such Biller;

“**EGD**” means Enbridge Gas Distribution Inc.;

“**EGD Proceeds**” means all payments made or value provided in any form, by or on behalf of Obligor in respect of the EGD Receivables and the Related Security including Deemed Proceeds with respect to an EGD Receivable;

“**EGD Receivable**” means all payment obligations of an Obligor to EGD or its affiliates arising on or after the date of the Original Trust Agreement hereof which obligations, and in certain cases a payment obligation of the same Obligor to a Biller, have been billed up to the Termination Date in a Service Bill to such Obligor;

“**Eligible Deposit Account**” means, in respect of the Trust Account, an account that is a segregated trust account with an Eligible Institution;

“**Eligible Institution**” means the Trustee, or any other trust company or Schedule I chartered bank incorporated under the laws of Canada (including an affiliate or related party of the Trustee) or any province thereof (i) which has either (A) a long-term unsecured debt rating of AA (low) or better by DBRS and AA- or better from S&P or (B) a certificate of deposit or short-term credit rating of R-1 (middle) or better by DBRS and A-1+ by S&P, and (ii) whose deposits are insured by Canada Deposit Insurance Corporation or its successors;

“**Governmental Authority**” means any government regulatory body, authority, agency, department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of Canada or any provincial, regional or local governmental, or other subdivision thereof;

“**Insolvency Event**” means, with respect to a Person, any of the following:

- (a) (i) the commencement or filing of an application, petition, action, case or other proceeding (including a notice of intention to file a proposal) before any court or Governmental Authority, with or without the application or consent of such Person, under any Applicable Law relating to bankruptcy, insolvency, receivership, reorganization, debt arrangement, dissolution, liquidation, winding up or composition or adjustment of it or its debts, provided that any such proceeding commenced or filed by a Person other than the Person who is the subject of the proceeding shall not constitute an Insolvency Event as long as the proceeding is being contested in good faith, provided that the same shall be an Insolvency Event if the proceeding has not been stayed or dismissed within 45 days of its commencement or filing (effective on the first day following such

- (b) a general assignment for the benefit of creditors, becoming insolvent or failing to, or admitting in writing its inability to, pay its debts generally as they become due; or
- (c) taking any corporate or other action to authorize any of the actions described in clause (a) or (b) above;

**“Interest”** means interest earned on monies held in the Trust Account from time to time;

**“Lien”** means any mortgage, deed of trust, pledge, hypothecation, hypothec, assignment (whether absolute or by way of security), deposit arrangement, encumbrance, lien (statutory or other), preference, deemed trust, participation interest, security interest, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement and any financing lease having substantially the same economic effect as any of the foregoing;

**“Material Adverse Effect”** means any effect upon the business, operations, property or financial or other condition of the Trustee or a Beneficiary (including EGD), as applicable, which could reasonably be expected to materially adversely affect the Trust Property, the interest of the Beneficiaries in the Trust Property or a Beneficiary (including EGD) hereunder, or the ability of the Trustee or a Beneficiary (including EGD) to perform their respective obligations hereunder;

**“Monthly Fee”** has the meaning given thereto in Section 6.6;

**“Obligor”** means, with respect to a Receivable, the Person or Persons obligated to make payments of amounts owing from time to time under such Receivable, including any guarantor thereof;

**“OEB”** means the Ontario Energy Board, or any successor regulatory authority;

**“Officers’ Certificate”** means, in the case of a certificate executed by any Person, unless otherwise specified in this Agreement, a certificate executed by two officers of such Person, duly authorized to execute such certificate and conforming to the applicable requirements specified in Section 9.4;

**“Open Bill Agreement”** means the Open Bill Access Billing and Collection Services Agreement entered into between EGD and each Biller, as the same may be amended, modified or replaced from time to time;

**“Original Trust Agreement”** has the meaning given thereto in the Recitals to this Agreement;

**“Original Trust Property”** means the sum of ten dollars (\$10.00), settled on the trust by the Settlor;

**“Payment Date”** has the meaning given thereto in Section 4.3;

**“Payment Date Withdrawal Amount”** has the meaning given thereto in Section 4.3;

**“Permitted Liens”** means, with respect to the property of a Person, any of the following liens at any particular time;

- (a) liens imposed by law by any Governmental Authority, including Liens or privileges for taxes, rates, levies, assessments or other charges, which are not delinquent at such time or which are being contested in good faith by appropriate action promptly initiated and diligently conducted and for which adequate reserves, in accordance with Canadian generally accepted accounting principles in effect at such time applicable to such Person shall have been set aside on such Person's books; and
- (b) liens (inchoate or otherwise) which individually or in the aggregate are not material and arise or are incurred in such Person's ordinary course of business in respect of obligations which are not overdue;

**“Person”** means any individual, corporation, estate, partnership, joint venture, association, joint-stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof;

**“PPSA”** means, in respect of each province or territory in Canada (other than Quebec), the *Personal Property Security Act* as from time to time in effect in such province or territory and, in respect of Quebec, the Civil Code of Quebec as from time to time in effect in such province; provided, however, that, in the case of the Northwest Territories and Nunavut, until such time as a *Personal Property Security Act* or other similar legislation comes into force in such territories, the term “PPSA” in respect of such territories shall mean the *Assignment of Book Debts Act* as from time to time in effect in such territories;

**“Proceeds”** means the EGD Proceeds and the Biller Proceeds, collectively, other than Area 83 Payments;

**“Rating Agency”** means the credit rating agency or agencies engaged by a Beneficiary to rate any securities which may be issued and incorporated in or are secured by the Beneficial Interest of such Beneficiary provided that notice thereof is provided, or has been provided, by such Beneficiary to EGD and the Trustee;

**“Receivables”** means collectively the EGD Receivables and the Biller Receivables and “Receivable” means either an EGD Receivable or a Biller Receivable;

**“Records”** means all books, records, reports and other documents and information (including to the extent obtainable by way of existing software controlled by EGD, hard copies of all data maintained in databases of EGD, tapes, disks, punch cards and CD-ROM) maintained by or for

EGD in respect of the Trust Property, the distributions to the Beneficiaries therefrom and the calculations, determinations and certificates made in respect of the Allocation Formula;

**“Red-Locked Customer”** means a Customer of EGD that has had, or is about to have, his/her/its supply of natural gas discontinued as a result of non-payment of an EGD Receivable;

**“Related Calculation Day”** means, in respect of any Business Day, including for purposes of applying the Allocation Formula for such Business Day, the day which is the twelfth Cycle Day immediately preceding such Business Day;

**“Related Security”** means, in respect of a Receivable, all contracts, securities, bills, notes, guarantees and other documents now held or owned or which may be hereafter taken, held or owned by a Beneficiary, or anyone acting on its behalf in respect of such Receivable, including all conditional sale agreements, lease agreements and other instruments (negotiable or otherwise) and agreements made or entered into respecting the sale or lease of gas, goods (including water heaters) or merchandise or respecting the rendering of the services in connection with which such Receivable is owing, any renewals thereof, any substitutions therefor, all proceeds thereof, all monies payable thereunder, all rights and claims of a Beneficiary thereunder, in respect thereof or evidenced thereby, all the right, title and interest of a Beneficiary in and to the respective chattels and moveable property in respect of which such instruments or agreements were entered into or given and the benefit of all insurance and claims for insurance effected or held for the protection of a Beneficiary in respect of such chattels and moveable property, together with the records evidencing, recording, or in any way relating to such Receivable and all contracts, securities, bills, notes, agreements and other documents relating to such Receivable;

**“S&P”** means Standard & Poor’s Rating Service;

**“Scheduled Payment Amount”** means the amount determined by EGD in accordance with the Allocation Formula as the distribution from Trust Property to which a stated Beneficiary is entitled in respect of its Beneficial Interest for a particular Related Calculation Day, which amount shall be set forth in the Allocation Certificate for the relevant Related Calculation Day;

**“Scheduled Settlement”** has the meaning given thereto in the Open Bill Agreement;

**“Service Bill”** has the meaning given thereto in the Open Bill Agreement;

**“Settlement Amount”** has the meaning given thereto in the Open Bill Agreement;

**“Settlers”** means, collectively, EGD and each of the Billers executing the Original Trust Agreement as of the date of the Original Trust Agreement;

**“Shortfall Amount”** has the meaning given thereto in Schedule “B” to this Agreement;

**“Termination Date”** means the earlier of:

- (a) the date specified in a Termination Notice delivered pursuant to Section 6.4 hereof;

- (b) the date specified by EGD as the Termination Date by written notice to the other parties if EGD is prohibited by a Governmental Authority from participating as a Beneficiary in the trust arrangement contemplated by this Agreement; or
- (c) the date which is 21 years after the death of the last surviving grandchild of Queen Elizabeth II living on the date of the Original Trust Agreement.

**“Termination Event”** means:

- (a) provided EGD notifies the parties hereto that such event constitutes a Termination Event, the termination or expiration of the Open Bill Agreement between EGD and DE; or
- (b) the resignation of EGD from the performance of its duties and obligations hereunder pursuant to Section 6.5.

**“this Agreement”**, **“herein”**, **“hereby”**, **“hereunder”**, **“hereof”** and similar expressions shall mean this Agreement and that the expressions **“Article”**, **“Section”** and **“Schedule”** followed by a number shall mean the specified Article, Section or Schedule in this Agreement; and the term **“including”** shall mean “including without limitation”;

**“Transfer”** means, in respect of the EGD Proceeds or the Biller Proceeds, the absolute and irrevocable transfer, assignment and conveyance thereof, and **“Transferor”**, **“Transferee”**, **“Transferred”** and **“Transferring”** shall have corresponding meanings when used as a verb or noun;

**“Trust Account”** means the account maintained by EGD on behalf of the Trustee pursuant to Section 4.1(a) hereof;

**“Trustee Expenses”** has the meaning given thereto in Section 6.6(c);

**“Trust Property”** means:

- (a) the Original Trust Property settled on the Trustee by the Settlers; and
- (b) the Proceeds,

and shall not include funds in the Trust Account from time to time in respect of Area 83 Payments;

**“Trustee”** means CIBC Mellon Trust Company, in its capacity as trustee hereunder, and not in its individual capacity, and any successor trustee appointed in accordance with Sections 7.4 and 7.5; and

**“Unpaid Amounts”** has the meaning given thereto in Schedule “B” to this Agreement.

## **1.2 Calculations and Allocations**

All calculations and determinations of amounts pursuant to the provisions hereof shall be made as of the close of business on the day as of which any such calculation or determination is to be made after posting all transactions for such day, unless otherwise specified in this Agreement. When determining an amount in respect of any period of days by reference to its receipt by EGD and/or Trustee, amounts shall only be considered received on a day if such amounts have been received by EGD and/or Trustee before the close of business of EGD and/or Trustee on such day.

## **1.3 Currency**

Unless expressly provided to the contrary in this Agreement, all amounts expressed in terms of money refer to Canadian dollars and any payment contemplated by this and any other document made or delivered pursuant hereto or thereto shall be made in such money by cash, certified cheque, wire transfer or any other method that provides immediately available funds. References to an "amount" shall mean a stated Canadian dollar amount unless the context requires otherwise.

## **1.4 Non-Business Days**

Unless expressly provided to the contrary in this Agreement, whenever any distribution to be made hereunder shall be required to be made, any period of time would begin or end, any calculation is to be made or any other action is to be taken on, or as of, or from a period beginning or ending on, a day other than a Business Day, such distribution shall be made, such period of time shall begin or end, such calculation shall be made and such other actions shall be taken, as the case may be, on, or as of, or from a period beginning or ending on, the next following Business Day.

## **1.5 Reference to Statutes**

Unless expressly provided to the contrary in this Agreement, all references in this Agreement to any statute or any provision thereof shall include all regulations or policies made thereunder or in connection therewith from time to time, and shall include such statute or provision as the same may be amended, restated, re-enacted or replaced from time to time.

## **1.6 Number and Gender**

Words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

## **1.7 Schedules**

The following Schedules referred to herein and annexed hereto are incorporated herein by reference and are deemed to be a part hereof:

Schedule A - Identification of the Initial Trust Account

Schedule B	-	Allocation Formula
Schedule C	-	Form of Acknowledgement
Schedule D	-	Form of Allocation Certificate
Schedule E	-	Billers

## 1.8 English Language

The parties hereto acknowledge that this Agreement and each document related hereto and thereto (whether or not any of such documents is also drawn up in French) has been drawn up in English at the express will of the parties, and where there is an English version and a French version of any document, the English version of that document prevails to the extent of any discrepancy between those versions. Les parties à ces présents conviennent que ces présents ainsi que tout document qui s'y rattache (incluant tout document rédigé en français et en anglais) soient rédigés en langue anglaise à la volonté expresse des parties.

## 1.9 Discontinuance, Changes and Additions of Ratings

In applying any definition or other term or provision hereof which contemplates a specific rating of a Rating Agency at any time,

- (a) each Rating Agency specified will include any successor thereof at the time (whether as a result of a change in name, an amalgamation, merger or other reorganization, or otherwise),
- (b) if a specified Rating Agency and any successor ceases to exist, the reference to such Rating Agency and its ratings shall not be applicable,
- (c) if a specified Rating Agency changes the designation of its debt rating categories, the debt rating categories specified will refer to each debt rating category of the Rating Agency at the time which can reasonably be determined to be equivalent to the specified rating categories of the Rating Agency, and
- (d) if a Rating Agency is engaged by a Beneficiary which is not referenced in this Agreement then any reference to a debt rating category of another Rating Agency in this Agreement shall be deemed to include a reference to the equivalent rating category of such other Rating Agency engaged by the Beneficiary.

## 1.10 General

The division of this Agreement into Articles and Sections and the provision of a table of contents and list of Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## 1.11 Role of the Trustee

In this Agreement, any reference to a Transfer to the Trustee of any property, or the holding or ownership by the Trustee of any property, instrument or other document shall be deemed to refer to any such Transfer, holding or ownership, as the case may be, for the benefit of the Beneficiaries. It is acknowledged by the Beneficiaries and EGD that the Beneficiaries shall



be entitled to rely upon and shall be entitled to the benefit of all representations, warranties, covenants, certificates and reports made by the Beneficiaries and EGD to the Trustee hereunder.

### **1.12 Ontario Energy Board Act**

The parties hereto acknowledge that this Agreement shall be subject to any rule or order applicable to EGD or any Beneficiary enacted by the OEB pursuant to the *Ontario Energy Board Act*, S.O. 1998, c.15, Schedule B, s.44.

### **1.13 Interpretation**

Notwithstanding any other provision of this Agreement, this Agreement is not intended to restrict or limit the rights, privileges, obligations, liabilities or remedies of any Person under the Open Bill Agreement. Nothing in this Agreement shall be interpreted in a manner that results in any such restriction or limitation. Provided, further, that no action by any party hereto to exercise any rights or remedies under this Agreement shall be interpreted as restricting or limiting that party's to exercise any rights or remedies under the Open Bill Agreement.

## **ARTICLE TWO** **THE TRANSFER OF PROCEEDS**

### **2.1 Confirmation**

Each of the Beneficiaries confirms the truth and accuracy of the Recitals as they relate to such Beneficiary and EGD, as provider of certain services hereunder, confirms the truth and accuracy of the Recitals as they relate to EGD.

### **2.2 Transfer of EGD Proceeds and Biller Proceeds**

- (a) EGD hereby Transfers to the Trustee, all of its right, title and interest in and to the EGD Proceeds whether now existing or hereafter created up to the Termination Date.
- (b) Each Biller hereby Transfers to the Trustee, all of such Biller's right, title and interest in and to the Biller Proceeds whether now existing or hereafter created up to the Termination Date.
- (c) It is hereby confirmed that the Transfer of the EGD Proceeds and the Biller Proceeds made pursuant to Sections 2.2(a) and (b), respectively, is intended to constitute an absolute, unconditional and irrevocable Transfer of an interest in property and is not intended by the parties to be, and should not be construed as, a loan, or other form of indebtedness owing to EGD or any of the Billers, as the case may be.

## **2.3 Registration**

- (a) Each Beneficiary shall register and file this Agreement and all instruments supplementary or ancillary hereto or thereto, or financing statements or other documents in respect thereof, without delay, in each province and territory of Canada where registration thereof may be necessary or of material advantage in preserving, protecting and perfecting the Transfer of the EGD Proceeds or Biller Proceeds or any interest therein, respectively, made pursuant to this Agreement. Following the date hereof, each Beneficiary shall renew such registrations and make such additional registrations and filings and obtain any required approvals from time to time as and when required. Each of the Beneficiaries agrees to provide to each of the other parties hereto upon the request of another party evidence of its compliance with the foregoing. For certainty, the Trustee shall not be obligated to make any registrations or filings contemplated by this Section 2.3.
- (b) In respect of the foregoing, each Beneficiary hereby specifically and irrevocably authorizes and directs EGD in the name of and on behalf of such Beneficiary to register and file the documents described in this Section 2.3. EGD shall provide to a Beneficiary and the Trustee copies of each registration made by EGD on behalf of such Beneficiary pursuant to the terms of this authority and direction. To the extent that EGD incurs any out-of-pocket expenses in respect of such registrations and filings, DE shall reimburse EGD for such expenses, to a maximum amount of \$12,500 per calendar year.

## **2.4 Alternate Payments**

If for any reason any amount which, under the terms hereof, is intended to be the property of the Trustee (including Proceeds and Deemed Proceeds) is paid to a Beneficiary otherwise than by EGD or the Trustee in respect of that Beneficiary's Beneficial Interest, if any, such Beneficiary hereby declares itself to be a trustee of such amount for the benefit of, and agrees to hold the same for the benefit of, and to forthwith pay such amount to, the Trustee or EGD (on behalf of the Trustee).

## **2.5 Effect of Transfer of Proceeds**

A Transfer by a Beneficiary of Proceeds, or any interest it may have therein, as applicable, pursuant to the terms of this Agreement shall not entitle any of the other Beneficiaries, the Trustee or EGD to any contractual privity with any Obligor and, for certainty, shall not constitute an assignment of the EGD Receivables, the Biller Receivables or the Related Security.

### **ARTICLE THREE**

### **SETTLEMENT AND DECLARATION OF TRUST AND RIGHTS OF BENEFICIARIES**

#### **3.1 Settlement of Original Trust Property and Declaration of Trust**

- (a) The Trustee hereby acknowledges receipt from the Settlor of the Original Trust Property and hereby irrevocably declares that it will continue to hold the Original

Trust Property and all other assets from time to time constituting the Trust Property in accordance with this Agreement, in trust for the benefit of the Beneficiaries in accordance with their respective entitlements as set out herein.

- (b) The Trustee hereby accepts, and hereby agrees to accept from time to time, the Transfer of the Proceeds as additional Trust Property.

### 3.2 Rights of Beneficiaries

The Beneficial Interest of each of the Billers and EGD shall constitute a beneficial interest in the Trust Property entitling such Beneficiary to participate to the extent of such Beneficiary's entitlement in distributions made from the Trust Property in accordance with Article Four hereof. The relationship of the Beneficiaries to each other, to the Trustee and to the Trust Property shall be solely the relationship that arises from their capacity as beneficiaries of a trust in accordance with the rights conferred upon the Beneficiaries hereunder and is not and shall not be treated as that of partners, joint venturers, members of a society, association, limited partnership or corporation or that of shareholders of a corporation or other joint stock company. The Beneficiaries shall have no right to call for any partition or division of any portion of the Trust Property. No Beneficiary shall have any entitlement to the Trust Property other than its specific entitlement pursuant to the Allocation Formula and otherwise pursuant to this Agreement.

## **ARTICLE FOUR**

### **ALLOCATIONS, DISTRIBUTIONS AND OTHER ENTITLEMENTS**

#### 4.1 Establishment of the Trust Account

- (a) EGD on behalf of the Trustee and for the benefit of the Beneficiaries has established, and shall maintain or cause to be maintained, in the name of the Trustee, an Eligible Deposit Account bearing a designation clearly indicating that the funds deposited therein are held by the Trustee as trustee for the Beneficiaries (the "**Trust Account**"). Schedule "A" hereto identifies the Trust Account by setting forth the account number of such account, the account designation of such account and the name and address of the institution with which such account has been established. On the commencement date of the Original Trust Agreement the Trust Account had a nil balance.
- (b) The Trustee shall possess all title documents to and other evidence of ownership of, all funds from time to time on deposit in the Trust Account. The Trustee shall have sole signing authority in respect of the Trust Account. If, at any time, the Trust Account ceases to be an Eligible Deposit Account, within thirty (30) days of the determination that the Trust Account ceases to be an Eligible Deposit Account, the Trustee shall establish a substitute Eligible Deposit Account as the Trust Account, transfer any funds in the existing Trust Account to such new Trust Account and, from the date any such substitute account is established and funds transferred, such account shall be the Trust Account. If a substitute Trust Account is established pursuant to this Section 4.1(b), EGD shall provide to the parties

hereto an amended Schedule "A", setting forth the relevant information for such substitute Trust Account.

- (c) EGD hereby agrees and acknowledges that it shall have no interest in or right to the Proceeds, the Trust Property, the Trust Account or the funds therein, in its capacity as distributor of the proceeds of the Trust Account. For certainty, the forgoing shall in no way effect EGD's interest in or right to its Beneficial Interest, including its beneficial interest in the Trust Property as a Beneficiary.

#### 4.2 Requirement to Make Deposits into the Trust Account

EGD on behalf of the Trustee shall deposit, or cause to be deposited, the Proceeds directly into the Trust Account as and when received. EGD shall not commingle Trust Property nor other funds paid or payable into the Trust Account with its own assets.

#### 4.3 Distributions of Proceeds Deposited to the Trust Account

- (a) EGD shall, in respect of each Business Day, determine in accordance with the Allocation Formula the respective amounts to be distributed to the Beneficiaries from the Trust Property for the Related Calculation Day. EGD shall, not less often than once a week, deliver to the Trustee an Allocation Certificate in respect of each Business Day (and the relevant Related Calculation Days) for the period since the last delivery of an Allocation Certificate to the Trustee by EGD. If, at any time, a Shortfall Amount is determined to be owing to a Beneficiary, whether pursuant to Section 4.5(d) or otherwise, and such Shortfall Amount has not been accounted for in an Allocation Certificate previously delivered by EGD hereunder, then, forthwith following the determination of such Shortfall Amount being owing, EGD shall deliver to the Trustee a re-stated Allocation Certificate accounting for such Shortfall Amount.
- (b) The Trustee shall, on or before the close of business on each Business Day, withdraw from the Trust Account an amount equal to:
  - (i) all amounts deposited into the Trust Account prior to the close of business (Toronto time) on such Business Day; plus
  - (ii) the aggregate of all Beneficiaries Scheduled Payment Amounts actually paid (for certainty, including any Unpaid Amounts and Shortfall Amounts included in the determination thereof) for the twenty-first (21<sup>st</sup>) day immediately prior to such Business Day (the "**Payment Date Withdrawal Amount**"); less
  - (iii) the aggregate Settlement Amount for all other Beneficiaries for the Related Calculation Day,

in each case in accordance with the Allocation Certificate, and shall (subject to Section 4.5) deposit such amounts for same day value to the account of EGD designated in writing to the Trustee. The date on which the payment of the

amount referred to in subsection (b)(iii) above is made shall be referred to as the “**Payment Date**”. For certainty, the Payment Date for a Scheduled Payment Amount shall be the twenty-first (21<sup>st</sup>) day immediately following the Related Calculation Day as set out in the relevant Allocation Certificate.

- (c) Each of the Beneficiaries agrees to establish and maintain a bank account to which distributions are to be deposited hereunder, in the circumstances set out in this Agreement, at the same financial institution at which the Trust Account is maintained. Unless a Beneficiary notifies the Trustee and EGD to the contrary in writing, the particulars of the account established by such Beneficiary for this purpose shall be as set forth on Schedule “E” hereto.
- (d) Concurrently with the delivery by EGD of the Allocation Certificate(s) to the Trustee (including, for certainty, any revised Allocation Certificate delivered pursuant to Section 4.3(a)), EGD shall deliver to each Beneficiary a statement, prepared as of the close of business on the immediately prior Business Day, setting forth the amount that will be allocated to such Beneficiary for each relevant Business Day, calculated as follows:
  - (i) there shall be credited to the Trust Account, in respect of such Beneficiary, the Settlement Amount for such Beneficiary for the Related Calculation Day; and
  - (ii) there shall be debited from the Trust Account, in respect of such Beneficiary, the Payment Date Withdrawal Amount for such Beneficiary.
- (e) For certainty, the mechanism established by this Agreement, including pursuant to the foregoing provisions of this Section, do not limit or alter in any way any payment obligation of EGD to a Biller set out in the Open Bill Agreement between EGD and such Biller.

#### **4.4 Distributions Final**

Subject to Section 4.5(d) and Section 4.6, distributions made in accordance with Section 4.3 shall be final, and none of the Beneficiaries will have recourse to any distribution made to any other Beneficiary in respect of its Beneficial Interest after such distribution has been made.

#### **4.5 Transfer of Beneficial Interest**

- (a) EGD shall, on or prior to the close of business (Toronto time) on the Payment Date, pay to each Biller an amount equal to the Settlement Amount payable on such Payment Date to such Biller in respect of a specified Related Calculation Day, whereupon, and only after receipt by such Biller of such Settlement Amount, each such Biller shall immediately thereafter, and shall be deemed to, Transfer to EGD all of its Beneficial Interest relating to the Biller Receivables billed on such Related Calculation Day.

- (b) In order to effect the Transfer of such Beneficial Interest to EGD from a Biller, unless EGD and the Trustee have each received from a Biller a statutory declaration signed by a senior officer of such Biller that such Biller has not received payment of the relevant Settlement Amount pursuant to Section 4.5(a), then the Trustee shall, and shall be deemed to, Transfer such Beneficial Interest to EGD. Such declaration must be delivered on or before close of business (Toronto time) on the Business Day immediately following the relevant Payment Date, failing which the relevant Settlement Amount will be deemed for purposes of this Section 4.5 to have been received by the Biller on the applicable Payment Date.
- (c) EGD shall pay the Settlement Amounts to which a Biller is entitled pursuant to this Section 4.5 to the account identified by such Biller pursuant to Section 4.3. Each of the parties hereto hereby confirms that any Transfer of Beneficial Interest made pursuant to this Section 4.5 is intended to constitute an absolute, unconditional and irrevocable Transfer of an interest in property and is not intended by the parties to be, and should not be construed as, a loan, or other form of indebtedness owing to EGD or any of the Billers, as the case may be.
- (d) In the event that EGD and the Trustee have each received from a Biller a statutory declaration signed by a senior officer of such Biller pursuant to Section 4.5(b), then the Trustee shall not Transfer (and shall not be deemed to so Transfer) such Beneficial Interest to EGD, and the Trustee and EGD are each hereby directed to hold in the Trust Account an amount equal to the Settlement Amount payable on such Payment Date to such Biller, which amount shall thereupon be designated as a Shortfall Amount, and the Trustee is hereby directed to thereafter transfer such Beneficial Interest to EGD only upon payment of such Shortfall Amount (as part of a Settlement Amount pursuant to this Section 4.5).

#### **4.6 Payment of Non-Trust Property**

If for any reason any amount which, under the terms hereof, is not intended to be Trust Property is deposited in the Trust Account and/or paid incorrectly to a Beneficiary, including without limitation any funds relating to Area 83 Payments, the Trustee and/or the applicable Beneficiary hereby agrees to hold such amount for the benefit of, shall declare itself to be a trustee of, and shall pay such amount to, the rightful owner, where applicable in accordance with this Section 4.6. Without limiting the foregoing, where the Trustee inadvertently distributes funds from the Trust Account which do not constitute Trust Property to a Beneficiary that is not entitled to such funds, EGD shall promptly (A) deliver notice of such improper distribution to each of the Beneficiaries; and (B) instruct in writing the Beneficiary to which such funds have been improperly distributed to comply with its obligations pursuant to this Section 4.6. For certainty, and without limiting the foregoing, EGD shall deliver a written direction to the Trustee to withdraw any funds from the Trust Account which result from Area 83 Payments, and to pay such amounts promptly following the identification thereof to the appropriate Biller to the account of such Biller identified on Schedule "E" hereto. References to identification of funds in this Section 4.6 are intended to include identification by any of a Beneficiary, the Trustee or EGD. In the event a Biller receives the Settlement Amount in respect of a particular Related Calculation Day following receipt by it of the Scheduled Payment Amount pursuant to Section 4.3 (that is, following delivery by it of a notice of non-payment in respect thereof pursuant to

Section 4.5), the Biller shall hold such Scheduled Payment Amount (other than Unpaid Amounts and Shortfall Amounts) in trust for EGD (as a Beneficiary) pursuant to this Section 4.6 and shall promptly remit such amount to EGD (as a Beneficiary) and the Transfer of Beneficial Interest by such Biller to EGD (as a Beneficiary) in relation to such Scheduled Payment Amount contemplated pursuant to Section 4.5 shall apply thereto. In the event a Biller fails to provide notice of non-payment by the close of business on any Business Day but does not actually receive the Settlement Amount in respect of a particular Related Calculation Day on the immediately preceding Business Day, upon notice thereof given by such Biller, EGD shall hold the Scheduled Payment Amount Transferred to it pursuant to Section 4.5 in trust for such Biller pursuant to this Section 4.6 and shall promptly remit such amount to such Biller and the Transfer of Beneficial Interest by such Biller to EGD (as a Beneficiary) in relation to such Scheduled Payment Amount contemplated pursuant to Section 4.5 shall be deemed to be of no force or effect until such amount has been remitted to such Biller.

## **ARTICLE FIVE**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BENEFICIARIES**

#### **5.1 Representations and Warranties of the Beneficiaries**

- (a) Each Beneficiary represents and warrants to the other Beneficiaries and the Trustee on a continuous basis (except if expressly stated to apply as at a specific time), and acknowledges that such Persons have entered into this Agreement in reliance thereon, that it is a valid and subsisting corporation under the jurisdiction of its incorporation, and it is duly qualified to carry on business in each jurisdiction in which the failure to be so would reasonably be expected to have a Material Adverse Effect.
- (b) Each Beneficiary represents and warrants to the Trustee on a continuous basis (except if expressly stated to apply as at a specific time), and acknowledges that the Trustee has entered into this Agreement in reliance thereon, that immediately prior to the Transfers contemplated by Section 2.2, it had good title to the EGD Proceeds or (except as otherwise disclosed in writing to EGD) the Biller Proceeds, as the case may be, free and clear of all Liens (other than Permitted Liens), and it was entitled to Transfer the EGD Proceeds or (except as otherwise disclosed in writing to EGD) the Biller Proceeds, as the case may be, without notice to or the consent of the related Obligor.
- (c) The representations and warranties set forth in this Section 5.1 shall survive the Transfers of the Proceeds to the Trustee. Upon discovery by a Beneficiary or the Trustee of a breach of any of the foregoing representations and warranties, the party discovering such breach shall give prompt written notice to the other parties.

#### **5.2 Covenants of the Beneficiaries**

Each Beneficiary hereby covenants with the other Beneficiaries and the Trustee:

- (a) subject to Section 5.2(k), to preserve and maintain its corporate existence and to qualify and remain qualified to carry on business in each jurisdiction in which the failure to do so would reasonably be expected to have a Material Adverse Effect;
- (b) to not, other than as expressly permitted or contemplated herein (i) take any action which may cause the rights of the Trustee or the Beneficiaries in the Trust Property to be impaired; or (ii) take or omit to take any action which may cause a Lien to attach or extend to or otherwise burden any part of the Trust Property;
- (c) to comply with all Applicable Law relating to the EGD Receivables or the Biller Receivables, the Related Security or the Trust Property;
- (d) to promptly notify each of the other parties at least seven (7) Business Days prior to changing its corporate name;
- (e) to promptly notify each of the other parties at least twenty (20) Business Days prior to changing the jurisdiction in which its chief place of business or chief executive office is located;
- (f) to promptly notify each of the other parties if it becomes aware of the occurrence of a Termination Event, or an event which with the passage of time or the delivery of notice would become a Termination Event;
- (g) to promptly notify each of the other parties of any amendment, limitation or restriction of any license issued to it by a regulatory authority relating to the carrying on by it of its business if such amendment, limitation or restriction would reasonably be expected to have a Material Adverse Effect;
- (h) to indicate in its records that the EGD Proceeds or the Biller Proceeds, as applicable, have been Transferred to the Trustee;
- (i) not to sell, assign, Transfer or convey any interest in the EGD Receivables or the Biller Receivables, as applicable, and the Related Security or any instrument, security or chattel paper (each as defined in the *Personal Property Security Act* (Ontario)) evidencing such a Receivable or this Agreement except (i) to a Person who agrees to become a Beneficiary in respect of all or a portion of the EGD Proceeds or Biller Proceeds or any interest therein, as applicable, and be bound by the provisions hereof and further agrees not to further sell, assign, transfer or convey any portion thereof except as otherwise permitted pursuant to this Section 5.2(i); or (ii) as a necessary adjunct to a transaction permitted pursuant to Section 5.2(k);
- (j) to remit all Proceeds required to be deposited to the Trust Account received by it otherwise than in its capacity as a Beneficiary hereunder, if any, to EGD as soon as practicable after receipt thereof;
- (k) not to amalgamate or enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other



corporation (herein called a “**successor corporation**”) whether by way of reconstruction, reorganization, recapitalization, consolidation, merger, transfer, sale or otherwise, unless (i) prior to or contemporaneously with the consummation of such transaction, it or the successor corporation shall have executed such instruments and done such things as, in the opinion of counsel to the Trustee, acting reasonably, are necessary or advisable to establish that, upon the consummation of such transactions, the successor corporation will have assumed all of its covenants and obligations under this Agreement and this Agreement will be a valid and binding obligation of the successor corporation entitling the other parties, as against the successor corporation, to exercise all their respective rights under this Agreement; and (ii) such transaction shall be on such terms and shall be carried out in such manner as would not reasonably be expected to have a Material Adverse Effect as evidenced by an Officer’s Certificate of the applicable Beneficiary; and

- (l) to take all steps and proceedings as may be reasonably necessary to cause the irrevocable transfer to the Trustee of the ownership and control of all accounts, locations and collection arrangements under which Collections are currently obtained, collected or otherwise received by the respective Beneficiaries, as applicable. Each of the Beneficiaries hereby further constitutes and appoints the Trustee, and EGD as agent of the Trustee, as its attorney, with full power to carry out the actions required of such Beneficiary pursuant to this Section 5.2(l), for and in the name of such Beneficiary. Such appointment represents a power coupled with an interest, and shall be irrevocable by such Beneficiary unless and until the obligations of such Beneficiary described in this Section 5.2(l) have been satisfied in full, as acknowledged in writing by the other Beneficiaries. Provided that the transferring Beneficiary is actively and diligently attending to the completion of such matters, neither the Trustee nor EGD shall independently exercise its power of attorney granted hereunder. Any party may rely on the power of attorney granted to the Trustee and EGD granted hereunder, without requiring further evidence or confirmation of the authority of the Trustee to act on behalf of the Beneficiaries hereunder.

### **5.3 Indemnification by the Beneficiaries**

Without limiting any other rights that the Trustee and the Beneficiaries may have hereunder or under Applicable Law, each of the Beneficiaries shall indemnify and hold harmless the Trustee, its directors, employees and officers, and the other Beneficiaries from and against any loss, liability, expense, damage, claim or injury of any kind whatsoever suffered or sustained by reason of:

- (a) reliance on any representation or warranty made by such Beneficiary in this Agreement or any report which was incorrect in any material respect when made;
- (b) the failure by such Beneficiary to comply with Applicable Law with respect to the EGD Proceeds or Biller Proceeds or any interest therein, as applicable;

- (c) any product liability claim, claim for taxes exigible on the sale of any service or merchandise, or personal injury or property damage suit or other similar or related claim or action of whatsoever sort arising out of or in connection with any merchandise or services which are the subject of any Receivable giving rise to EGD Proceeds or Biller Proceeds, as applicable; and
- (d) any failure of such Beneficiary to perform or observe any of its duties, covenants or obligations hereunder.

Any right to indemnification under this Section 5.3 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

## **ARTICLE SIX**

### **SERVICING ARRANGEMENTS**

#### **6.1 EGD Duties**

- (a) The Beneficiaries hereby direct the Trustee to appoint EGD and the Trustee hereby appoints EGD to perform on behalf of the Trustee the duties to be performed by EGD as a provider of certain services hereunder. The Beneficiaries hereby acknowledge such appointment. EGD agrees to act in such capacity and to carry out such obligations.
- (b) The Trustee shall administer the Trust Property, collect all payments due in respect of the Proceeds and deposit them, together with any Trust Property that may be delivered to it by a Beneficiary, immediately into the Trust Account so that such Trust Property does not pass through an account of the Trustee, EGD or any of the Beneficiaries (including EGD) or any of their respective affiliates. EGD shall monitor and reconcile funds deposited into the Trust Account. EGD, on behalf of the Trustee, shall determine in respect of each Business Day the amount to be distributed to the Beneficiaries from the Trust Property in accordance with the Allocation Formula and provide the Allocation Certificate to the Trustee in respect thereof, and (unless there has occurred a Termination Event) direct the Trustee to make all distributions to which the Beneficiaries, in respect of their respective Beneficial Interests, are entitled hereunder.
- (c) EGD shall promptly notify the other parties upon becoming aware of any miscalculation or error in the calculation of amounts distributed or distributable in accordance with the Allocation Formula.
- (d) EGD may delegate some or all of its duties under this Agreement to any Person unrelated to the Beneficiaries that agrees to perform such duties in accordance with this Agreement. Such delegation shall not relieve EGD of its liability or responsibility with respect to such duties, and shall not constitute a resignation of EGD within the meaning of Section 6.5.
- (e) Without limiting any other rights that the Trustee and the Beneficiaries may have hereunder or under Applicable Law, EGD shall indemnify and hold harmless:

- (i) the Trustee, its directors, officers and employees from and against any loss, liability, expense, damage, claim or injury of any kind whatsoever suffered or sustained by reason of any acts or omissions arising out of activities of EGD (other than as a Beneficiary) pursuant to this Agreement, including by reason of any judgment, award, settlement, legal fees and disbursements (on a solicitor and his own client basis) and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim resulting from any failure of EGD to observe or perform any of its duties, covenants or obligations hereunder (other than as a Beneficiary) in any material respect or in accordance with Applicable Law; and
- (ii) the Beneficiaries from and against any loss, liability, expense, damage, claim or injury of any kind whatsoever suffered or sustained by reason of the gross negligence, willful misconduct or fraud of EGD in the performance of its duties (other than as a Beneficiary) pursuant to this Agreement.

Any right to indemnification under this Section 6.1(e) shall survive the termination of this Agreement and the resignation or removal of the Trustee or EGD.

## 6.2 Records and Reports

EGD shall maintain Records in respect of the Trust Property, the information necessary to perform the calculations required under the Allocation Formula, distributions made to the Beneficiaries and payments under Section 4.5 which will be sufficient to provide accurate and timely data and information, to enable EGD to perform its duties hereunder and permit the Beneficiaries, the Trustee, if directed by the Beneficiaries, and the auditors of the Beneficiaries to verify the performance of its duties hereunder as contemplated by Section 6.3 and, where applicable, will be prepared in accordance with Canadian generally accepted accounting principles as endorsed by the OEB from time to time.

## 6.3 Access to Records by the Trustee, the Beneficiaries and their Auditors

EGD shall afford the Trustee, if directed by a written direction signed by a Beneficiary (in this Section 6.3, a “**Beneficiary Direction**”), and its authorized representatives and the auditors of such Beneficiary, and the officers, directors, employees or other agents of such Beneficiary, reasonable access (in any event on not less than five Business Days’ prior written notice) to the Records for the purpose of verifying EGD’s performance of its duties hereunder and will cause its personnel to assist in any such examination provided that only the respective auditors of the Billers (and not the officers, directors, employees or other agents of the Billers) shall have access to Records related to the EGD Receivables, the Related Security and the EGD Proceeds and the auditors of EGD (and not the officers, directors, employees or other agents of EGD) shall have access to Records related to the Biller Receivables, the Related Security and the Biller Proceeds; provided however that a Beneficiary may deliver a Beneficiary Direction no more than twice in each calendar year. The Trustee, if directed by EGD, at EGD’s

expense, or if directed by a Beneficiary Direction, at the expense of the relevant Beneficiary, shall cause the Trustee's representatives to have access to such Records sufficient to enable them to verify and confirm the calculations and reports to be made and delivered by EGD hereunder. Prior to obtaining access to the Records, each Person obtaining access shall sign a confidentiality agreement confirming that he/she will not disclose or use any information obtained from such review except that the Trustee and the applicable auditors, may disclose to its principal, data and information relating to the EGD Proceeds in the case of EGD and the Biller Proceeds in the case of a Biller, and may advise EGD, the relevant Biller(s) and the Trustee whether the distributions to the Beneficiaries from the Trust Property have been made in accordance with the Allocation Formula.

#### **6.4 Termination Events**

If a Termination Event has occurred, the Trustee shall give notice to each of the Beneficiaries (a "**Termination Notice**") of the termination of all rights and obligations of EGD in respect of the Trust Property, other than EGD's rights as a Beneficiary and its obligation to collect the Proceeds in respect of the Receivables outstanding on the Termination Date and direct the Trustee to make distributions and withdrawals from the Trust Account as herein provided until all such Proceeds have been collected and distributed to the Beneficiaries or such Receivables have been written off by the applicable Beneficiary.

#### **6.5 Resignation of EGD**

Provided EGD has received the prior written approval of DE, which approval shall not be unreasonably withheld, EGD may resign from the performance of its duties and obligations hereunder at any time on not less than six (6) months' prior written notice to each of the Beneficiaries and the Trustee, which notice shall specify the date on which EGD shall cease to perform such duties and obligations and that the approval of DE has been obtained as aforesaid; and for certainty, such resignation shall in no way affect or have any impact on EGD's rights or obligations as a Beneficiary hereunder.

#### **6.6 EGD and Trustee Compensation**

- (a) The parties hereto agree that EGD shall be paid a fee for the performance of the services rendered by it hereunder in the amount of \$25,000 per month (the "**Monthly Fee**") during each month that it performs such services. Further, EGD shall be reimbursed upon its request for all reasonable third-party legal, accounting and trustee fees and expenses incurred or made by it in the performance of such services, including the Trustee Expenses; provided, however, that no such payment or reimbursement shall be paid to EGD if such fee or expense arises from the gross negligence, wilful misconduct or reckless disregard of the obligations of EGD.
- (b) The fees, expenses, disbursements and advances provided for in the preceding paragraph shall be paid by solely DE and shall be paid within thirty (30) days following delivery by EGD of a copy of EGD's invoice therefor to DE, and the covenant and obligation to pay such expenses, disbursements and advances shall survive the termination of this Agreement. Subject to Section 6.6(d), if DE fails

to pay any such invoice within such thirty (30) day period, then, upon five (5) Business Days prior notice to DE, EGD shall be entitled to deduct the amount of such invoice from the next following Settlement Amount otherwise payable to DE pursuant to this Agreement. The maximum aggregate amount which DE shall be obligated to pay to EGD for such fees, costs and expenses (excluding the Trustee Expenses) shall not exceed \$500,000 in respect of any calendar year, as increased by the actual amount of any increase in the Monthly Fee pursuant to the following sentence. The Monthly Fee may be increased at the discretion of EGD not more than once in any calendar year by an amount not to exceed the percentage increase in the Consumer Price Index (Toronto – all items) during the 12 month period prior to the implementation of such increase.

- (c) The Trustee shall be entitled to be paid such compensation as may be agreed upon from time to time for all services rendered by it in the exercise and performance of any of its powers and duties hereunder, and shall be entitled to be reimbursed upon its request for all such reasonable expenses, disbursements and advances incurred or made by it in the exercise and performance of any of its powers and duties hereunder, including, without limitation, all reasonable costs and expenses associated with (i) the establishment and administration of the trust arrangements contemplated by this Agreement (ii) the addition or removal of parties to the trust and this Agreement following the initial date of execution hereof (collectively, the “**Trustee Expenses**”); provided, however, that no such payment or reimbursement shall be paid to the Trustee if such Trustee Expenses arise from the gross negligence, wilful misconduct or reckless disregard of the obligations of the Trustee. The Trustee Expenses shall be paid by EGD promptly upon delivery by the Trustee of an invoice therefor to EGD, and the covenant and obligation to pay such expenses, disbursements and advances shall survive the termination of this Agreement. The Trustee shall not be entitled to deduct from or set-off against the Trust Property any amounts due to it hereunder.
- (d) DE shall have the right to dispute any compensation, expenses, disbursements and advances of EGD contemplated by Section 6.6(a) above. In the event DE disputes any of the compensation, expenses, disbursements or advances contemplated by Section 6.6(a), above:
  - (i) DE may seek recourse in accordance with the process contemplated by Section 8.3 hereof;
  - (ii) EGD agrees to continue to perform its obligations hereunder notwithstanding such dispute, provided that DE meets its payment obligations contemplated by Section 6.6(a); and
  - (iii) the continued fulfillment by DE of its payment obligations contemplated by Section 6.6(a) during the course of any such dispute shall not compromise the ability of DE, and DE hereby reserves the right, to thereafter make a claim in respect of any such disputed amount.

- (e) The Trustee hereby acknowledges that its compensation for the services to be provided by it hereunder, and its reimbursement for the expenses, disbursements and advances incurred or made by it in the exercise and performance of any of its powers and duties hereunder shall be the sole responsibility of EGD.
- (f) For certainty, in no event will any Biller, other than DE, be liable to EGD or the Trustee for payment of all or any part of the compensation contemplated or provided for in this Section 6.6.
- (g) Notwithstanding the foregoing, DE's obligations under this Section 6.6 shall cease upon the termination or expiration of the Open Bill Agreement between EGD and DE; and for certainty, DE shall be responsible for and shall reimburse EGD for all fees, expenses, disbursements and advances incurred in respect of the period up to the time of such termination or expiration.

## **6.7 No Liability of EGD**

Except as specifically provided in Section 6.1(e) or Section 8.5, EGD shall assume and shall have no liability to any of the Beneficiaries under, as a result of, or in respect of, its provision of any services or its performance or fulfillment of any duties pursuant to the terms of this Agreement, other than as may arise pursuant to the terms of the relevant Open Bill Agreement. For certainty, except as specifically provided in Section 6.1(e) or Section 8.5, the sole remedy available to a Beneficiary for any failure of EGD to provide, perform or fulfill any of such services or duties shall be pursuant to the terms of such Open Bill Agreement.

## **ARTICLE SEVEN** **THE TRUSTEE**

### **7.1 Duties of Trustee**

- (a) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement. The Trustee shall at all times hold the Trust Property subject to the same degree of care as the Trustee would exercise in respect of its own property and, in the performance of its obligations hereunder, the Trustee shall exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. The Trustee shall segregate the Trust Property and not commingle it with its own assets. The performance by the Trustee of its obligations pursuant to any directions given, or on the basis of information provided, by EGD in accordance with this Agreement shall be deemed to satisfy such standards. The Trustee shall have no duty to verify the calculations and determinations made by EGD in the performance of its duties hereunder. The Trustee shall monitor funds distributed by it from the Trust Account.
- (b) The Trustee, upon receipt of all resolutions, certificates, Officers' Certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee which are specifically required to be furnished pursuant to any

provision of this Agreement, shall examine them to determine whether they substantially conform in form to the requirements of this Agreement.

- (c) Subject to Section 7.1(a), no provision of this Agreement shall be construed to relieve the Trustee from liability for its own gross negligence, wilful misconduct or reckless disregard of its obligations; provided, however, that the Trustee shall not be personally liable for an error of judgment made in good faith by an officer, employee or agent of the Trustee unless it shall be proved that the Trustee was grossly negligent.
- (d) The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its authority, rights or powers if there is reasonable ground for believing that the repayment of such funds or adequate indemnity from the Beneficiaries against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Agreement shall in any event require the Trustee to perform, or be responsible for the manner of performance of, any obligations of EGD under this Agreement.
- (e) Except for actions expressly authorized by this Agreement, the Trustee shall take no action reasonably likely to impair the interests of the Beneficiaries in any of the Trust Property now existing or hereafter created or to impair the value of any of the Trust Property now existing or hereafter created.
- (f) Except as expressly provided in this Agreement, the Trustee shall have no power or authority to vary the Trust Property or, in particular, the power or authority to withdraw any of the Trust Property except for the purpose of making distributions to Beneficiaries. For certainty, the Trustee shall have no duty to make distributions from the Trust Account on a particular Business Day unless it has received the Allocation Certificate for such Business Day from EGD in accordance with Section 6.1(b).
- (g) The Trustee hereby agrees not to disclose to any Person or use any information delivered to the Trustee or of which the Trust may become aware, from time to time, as a result of its role hereunder except:
  - (i) as required by Applicable Law,
  - (ii) to its external auditors,
  - (iii) in connection with the performance of the Trustee's duties hereunder, or
  - (iv) in enforcing the obligations of a Beneficiary or the rights of the Beneficiaries.

The Trustee agrees to take such measures as the Trustee would customarily take to protect its own confidential or proprietary information

to protect and maintain the security and confidentiality of such information and, in connection therewith, shall allow the Beneficiaries to inspect the Trustee's security and confidentiality arrangements from time to time during business hours. The Trustee shall provide the Beneficiaries with notice five (5) Business Days prior to disclosure of any information of the type described in Section 7.1(g)(i) in relation to the Trust Property.

- (h) The Trustee shall have no power to create, assume or incur indebtedness or other liabilities relating to the Trust Property or to Transfer or otherwise deal with the Trust Property other than as contemplated in this Agreement.

## **7.2 Certain Matters Affecting the Trustee**

Except as otherwise provided in Section 7.1:

- (a) the Trustee may rely on and shall be protected in acting on, or in refraining from acting in accordance with, any resolution, Officers' Certificate, Allocation Certificate, certificate of auditors, direction or calculation made by EGD or any other certificate, statement, instrument, opinion, report, notice, statutory declaration, request, direction, consent, order, appraisal, bond or other paper or document believed by the Trustee to be genuine and to have been signed or presented to it pursuant to this Agreement by the proper party or parties;
- (b) the Trustee may consult with counsel and other experts and professional advisors and rely and act upon any statement, report or opinion prepared by or any advice received from such Persons and shall not be responsible or held liable for any loss or damage resulting from so relying or acting (or failing to rely or act) if the Trustee acted in good faith in relying or acting (or failing to rely or act) upon the advice received and has complied with the standard of care referred to in Section 7.1(a) in the selection of such counsel, expert or professional adviser and in the decision to rely or act or not to rely or act on the advice received;
- (c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto, at the request, order or direction of any of the Beneficiaries, pursuant to the provisions of this Agreement, unless such Persons shall have provided to the Trustee reasonable funding and an indemnity against the costs, expenses and liabilities which may be incurred therein or thereby which is reasonably satisfactory to the Trustee;
- (d) the Trustee shall not be personally liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it under this Agreement;
- (e) the Trustee shall not be bound to verify the accuracy or completeness of or to make any investigation whatsoever into the facts of matters stated in any resolution, certificate, Officers' Certificate, statement, instruction, instrument,



opinion, report, notice, statutory declaration, request, direction, calculation, consent, order, approval, bond or other paper or document;

- (f) the Trustee may exercise the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys or a sub-trustee, provided that the Trustee shall be responsible for any misconduct or negligence on the part of any such agent, attorney or trustee appointed by it hereunder other than EGD; and
- (g) except as may be required by Section 7.1(b), the Trustee shall not be required to make any initial or periodic examination of any documents or Records for the purpose of establishing the presence or absence of defects, the compliance by a Beneficiary or EGD with its representations and warranties or for any other purpose.

### **7.3 Eligibility Requirements for Trustee**

The Trustee hereunder shall at all times be a Schedule I chartered bank or a trust company or insurance company organized and doing business under the laws of Canada or any province thereof and, in each case, authorized under Applicable Law to exercise corporate trust powers, having a combined capital and surplus of at least \$10,000,000 or be a subsidiary of a Schedule 1 chartered bank and be subject to supervision or examination by federal or provincial authorities. If such corporation publishes reports of its financial condition at least annually, pursuant to Applicable Law or to the requirements of the aforesaid supervising or examining authorities, then, for the purpose of this Section 7.3, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of its financial condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.3, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.4.

### **7.4 Resignation or Removal of Trustee**

- (a) Subject to the provisions of Section 7.4(c), the Trustee may, at any time, tender its resignation by giving written notice thereof to the Beneficiaries and, upon the receipt and acceptance thereof by the Beneficiaries, shall be discharged from its obligations and duties hereunder. Upon receiving such notice, the Beneficiaries shall promptly seek to retain a successor Trustee and, subject to acceptance by the Beneficiaries of the resignation of the resigning Trustee, shall appoint such Person by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor Trustee. If no successor Trustee shall have been so appointed or shall have accepted an appointment within 30 days after the giving of such notice of resignation, at the expense of the Beneficiaries the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. The Beneficiaries shall not accept the resignation of the resigning Trustee until a successor Trustee has been appointed and has agreed to act as Trustee in accordance with the terms hereof.

- (b) If at any time the Trustee shall cease to be eligible in accordance with the provisions of Section 7.3 and shall fail to resign after written request therefor by the Beneficiaries, or if at any time the Trustee shall be legally unable to act, or an Insolvency Event occurs with respect to the Trustee, then the Beneficiaries may remove the Trustee and promptly appoint a successor Trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee. The Trustee may also be removed for any other reason at any time upon the direction of EGD, delivered to the Trustee, with a copy to the other Beneficiaries.
- (c) Any resignation or removal of the Trustee and appointment of the successor Trustee pursuant to any of the provisions of this Section 7.4 shall not become effective until acceptance of appointment by the successor Trustee as provided in Section 7.5.

## **7.5 Successor Trustee**

- (a) Any successor Trustee appointed as provided in Section 7.4 shall execute, acknowledge and deliver to the Beneficiaries and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee shall have all the authority, rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein. The predecessor Trustee shall deliver to the successor Trustee all documents or copies thereof and statements held by it hereunder; and the parties hereto and the predecessor Trustee shall execute and deliver such instruments and do such other things as may reasonably be required for the successor Trustee to have all such authority, rights, power, duties and obligations.
- (b) No successor Trustee shall accept appointment as provided in this Section 7.5 unless at the time of such acceptance such successor Trustee shall be eligible under the provisions of Section 7.3 and legally able to act as such.

## **7.6 Merger, Amalgamation or Consolidation of Trustee**

Any Person into which the Trustee may be merged or converted or with which it may be consolidated or amalgamated, or any Person resulting from any merger, conversion, amalgamation or consolidation to which the Trustee shall be a party, shall be the successor of the Trustee hereunder, provided such Person shall be eligible under the provisions of Section 7.3 and legally able to act as such, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## **7.7 Representations, Warranties of Trustee**

The Trustee represents and warrants, on a continuing basis, that:

- (i) the Trustee is a trust company or an insurance company, or if applicable, is a Schedule 1 Canadian chartered bank, organized,

existing and in good standing under the laws of Canada or a province thereof and is authorized under Applicable Law to exercise corporate trust powers;

- (ii) the Trustee has full power, authority and right to execute, deliver and perform this Agreement, and has taken all necessary action to authorize the execution, delivery and performance by it of this Agreement;
- (iii) this Agreement has been duly executed and delivered by the Trustee and constitutes a legal, valid and binding obligation of the Trustee enforceable against the Trustee in accordance with their respective terms, except as such enforceability and the legality thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting the enforcement of creditors' rights in general and to the extent such laws render contractual provisions ineffective, and except as such enforceability may be limited by general principles of equity; and
- (iv) the Trustee satisfies the eligibility requirements set out in Section 7.3.

## **7.8 Maintenance of Office or Agency**

The Trustee will maintain at its expense in the City of Toronto, an office or offices or agency or agencies where notices and demands to or upon the Trustee contemplated under this Agreement may be served. The Trustee initially designates its office at 320 Bay Street, P.O. Box 1, Toronto, Ontario, M5H 4A6 as its office for such purpose. The Trustee will give prompt written notice to the Beneficiaries of any change in the location of any such office or agency.

## **7.9 Indemnification by the Beneficiaries**

Each of EGD and DE, in its capacity as a Beneficiary, agrees to indemnify and hold harmless the Trustee, its directors, employees and officers, from and against any loss, liability, expense, damage, claim or injury of any kind whatsoever suffered or sustained by it in performing its role as Trustee hereunder, provided that such Person shall not indemnify the Trustee from any loss, liability, expense, damage, claims or injury of any kind arising from fraud, gross negligence, breach of fiduciary duty or wilful misconduct by the Trustee. Any right to indemnification under this Section 7.9 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

**ARTICLE EIGHT**  
**SETTLEMENT OF DISPUTES AND ENFORCEMENT**

**8.1 Acknowledgement**

Each of the Beneficiaries hereby acknowledges and agrees:

- (a) the truth and accuracy of the Recitals; and
- (b) that the failure of the Trustee to distribute the Trust Property in accordance with this Agreement will result in one or more of the Beneficiaries incurring damages.

**8.2 Enforcement**

Each of the Trustee, the Beneficiaries and EGD (as a provider of certain services hereunder) agrees that the provisions of this Agreement relating to the collection of Proceeds and the distribution of the Trust Property to the Beneficiaries are binding on it, and each of the Trustee, the Beneficiaries and EGD (as a provider of certain services hereunder) shall:

- (a) take all reasonable steps to ensure that they observe the provisions of this Agreement applicable to them relating to the collection of Proceeds and the distribution of Trust Property;
- (b) be estopped from and shall not sell, assign, transfer, convey, grant a security interest in, pledge or otherwise enter into a transaction in relation to a Beneficial Interest except in accordance with this Agreement;
- (c) not, in any manner, challenge or bring into question the validity, priority, perfection or enforceability of the Transfer of the Proceeds to the Trustee or the fact that the only interest any of them has in the Trust Property is the right to distributions in accordance with the Allocation Formula and such other rights as may be expressly provided for hereunder;
- (d) not enforce any right (except as provided herein) pursuant to any Applicable Law to apply for partition of the Trust Property or the wind up of the trusts established hereunder, except in accordance with this Agreement; and
- (e) unless mutually agreed in writing by the Beneficiaries, take any steps or commence any proceedings to cause the Trust Property to be distributed to the Beneficiaries otherwise than in accordance with this Agreement.

**8.3 Settlement of Disputes Relating to Distributions and Payments**

Subject to Section 8.3(e), Section 8.4 and Section 8.5:

- (a) If any dispute arises respecting any distribution of the Trust Property in accordance with the Allocation Formula or any other payment to be made hereunder (each, a “**Dispute**”), then the Person initiating the dispute shall deliver a written notice (in this Section 8.3, a “**Dispute Notice**”) to the relevant parties

specifying the nature of the dispute, the relief sought and the basis for the relief sought. Subject to Section 8.3(e) and Section 8.5, following the delivery of a Dispute Notice and until such time as the items in dispute are resolved in accordance with this Section, unless the relevant Beneficiary (or Beneficiaries, as applicable), the Trustee and EGD agree otherwise, the Allocation Certificate or invoice, as applicable, relating to the disputed amount shall be deemed to be correct.

- (b) Within five (5) Business Days following delivery of a Dispute Notice, the relevant parties must commence the process of attempting to resolve the Dispute by referring such Dispute to their respective representatives within their organizations and shall cause their respective representatives to meet, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to each of such parties.
- (c) If the Dispute is not resolved to the satisfaction of such parties within fifteen (15) Business Days after delivery of the Dispute Notice, then any party to the Dispute may, upon notice to the other parties (the “**Arbitration Notice**”), at any time thereafter require the Dispute to be resolved by binding arbitration pursuant to this Section 8.3(c):
  - (i) The Dispute shall be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) based upon the provisions of this Section.
  - (ii) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the relevant parties, acting reasonably, within ten (10) Business Days following delivery of the Arbitration Notice. If such parties are unable to mutually agree on an arbitrator within such period, any such party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to rule upon the particular matter to be decided, shall be independent of each of such parties and shall have reasonable experience in arbitrating business disputes.
  - (iii) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within sixty (60) days of the receipt by one of the relevant parties of the Arbitration Notice.
  - (iv) The arbitration shall take place in Toronto, Ontario, and the language of the arbitration shall be English.
  - (v) To the fullest extent permitted by Applicable Laws, any controversy concerning whether a Dispute is an arbitral matter or as to the interpretation or enforceability of this Section shall be determined by the arbitrator. The arbitration award shall be given

in writing and shall be final and binding on the relevant parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrator's fees and expenses, the provision of a reporter and transcripts, reasonable legal fees and disbursements and reasonable costs of preparation. After completion of the arbitration an action may be initiated by the parties to the Dispute in court only for the purpose of enforcing the decision of the arbitrator and recovery of the costs incidental to the arbitration.

- (vi) Except as may lawfully be required in judicial proceedings relating to the arbitration or otherwise or as may be required by Applicable Laws, the parties to the Dispute agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, such parties, their counsel and any person necessary to the conduct of the proceeding.
- (d) Following agreement of the parties to the Dispute, or the final decision of the arbitrator, as the case may be, as to the item(s) in dispute, EGD shall:
  - (i) where the dispute relates to allocation of Trust Property, forthwith direct the Trustee to make any required adjustments by way of distribution(s) from the Trust Account to the applicable party or parties, as applicable; or
  - (ii) where the dispute relates to a payment obligation contemplated by Section 6.6 hereof, forthwith adjust its next invoice (or invoices where necessary) to reflect the adjusted payment obligation of DE,

in respect of the amount agreed upon by the relevant parties or the amount finally determined by the arbitrator referred to above. If, in the opinion of the Trustee, a matter that is the subject of a dispute does not involve or otherwise directly affect a particular Beneficiary, such Beneficiary shall not be a "relevant party" for purposes of this Section 8.3.

- (e) For certainty, if a dispute involves only EGD and a Biller, then such dispute shall be resolved solely in accordance with the provisions of Section 7.7 of the Open Bill Agreement.

#### **8.4 Limitation on Rights of Beneficiaries**

The Beneficiaries shall not have any right by virtue of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement or the Trust Property, unless a Beneficiary shall have previously requested the Trustee to institute such action, suit or proceeding and such Beneficiary shall have

provided to the Trustee such reasonable funding and indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for thirty (30) days after such request and provision of funding and indemnity, shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by the Beneficiaries and the Trustee, that the Beneficiaries shall not have any right in any manner whatever by virtue or by availing itself of any provisions of this Agreement to enforce any right under this Agreement or pursuant to Applicable Law, including applying for partition of the Trust Property, except in the manner herein provided and for the equal, ratable and common benefit of the Beneficiaries except as otherwise expressly provided in this Agreement.

## **8.5 Equitable Remedies**

EGD agrees that nothing in this Agreement shall limit or prevent the Trustee and, subject to Section 8.4, any Beneficiary, from seeking to enforce the performance by EGD of its duties and obligations under this Agreement, as a provider of certain services hereunder, by application to a court of competent jurisdiction for injunctive relief, specific performance and/or other equitable remedy and that such shall be without prejudice to the rights of EGD to oppose such application and of the Trustee and/or any such Beneficiary to pursue any other remedies available to them hereunder, under the Open Bill Agreement or at law.

## **ARTICLE NINE** **GENERAL**

### **9.1 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each of the parties hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### **9.2 Notices**

- (a) Notice to EGD. Any notice, document or other communication required or permitted to be given to EGD under the provisions of this Agreement shall be in writing and shall be valid and effective if delivered or sent by facsimile transmission (with receipt confirmed), to EGD, at:

Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York, Ontario M2J 1P8

Attention: Assistant General Counsel and Corporate Secretary  
Facsimile No.: (416) 495-5994

and such notice, document or other communication shall be deemed to have been received, where given by delivery, on the day of delivery, and, where sent by facsimile transmission, on the day of transmittal thereof if given during normal business hours of the recipient and on the next succeeding Business Day if not

transmitted during such business hours. EGD may from time to time notify the other parties to this Agreement of a change in address or facsimile number by notice given as provided in this Section 9.2.

- (b) Notice to the Beneficiaries. Any notice, document or other communication required or permitted to be given to the Beneficiaries under the provisions of this Agreement shall be in writing and shall be valid and effective if delivered or sent by facsimile transmission (with receipt confirmed), to the Beneficiaries in accordance with the respective contact information set forth opposite such Beneficiary's name on Schedule "E" hereto, and such notice, document or other communication shall be deemed to have been received, where given by delivery, on the day of delivery, and, where sent by facsimile transmission, on the day of transmittal thereof if given during normal business hours of the recipient and on the next succeeding Business Day if not transmitted during such business hours. The Beneficiaries may from time to time notify the other parties to this Agreement of a change in address or facsimile number by notice given as provided in this Section 9.2.
- (c) Notice to Trustee. Any notice, document, direction or other communication required or permitted to be given to the Trustee under the provisions of this Agreement shall be in writing and shall be valid and effective if delivered or sent by facsimile transmission (with receipt confirmed), to the Trustee, at:

CIBC Mellon Trust Company  
320 Bay Street  
P.O. Box 1  
Toronto, Ontario M5H 4A6

Attention: Assistant Vice President, Client Services (Bonds)  
Facsimile No.: (416) 643-5570

and such notice, document or other communication shall be deemed to have been received, where given by delivery, on the day of delivery and, where sent by facsimile transmission, on the day of transmittal thereof if given during normal business hours of the recipient and on the next succeeding Business Day if not transmitted during such business hours. The Trustee may from time to time notify the other parties to this Agreement of a change in address or facsimile number by notice given as provided in this Section 9.2.

### 9.3 Assignment

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided herein and as a necessary adjunct to a transaction permitted pursuant to Section 5.2(k), this Agreement shall not be assigned by the Trustee without the prior written consent of all of the other parties hereto, which consent shall not be unreasonably withheld. The Beneficiaries shall not assign this Agreement nor their respective Beneficial Interests in whole or in part without the prior written consent of EGD, which consent shall not be unreasonably withheld. The assignment by a



Beneficiary of its Beneficial Interest shall not relieve the Beneficiary of its indemnification covenant in favour of the Trustee set out in Section 7.9, without the written consent of the Trustee.

#### **9.4 General Provisions as to Officers' Certificates, etc.**

- (a) Each Officers' Certificate, written request or direction made or delivered to any party pursuant to any provision of this Agreement shall specify the Section under which such certificate, opinion or written request or direction is being made and shall include:
  - (i) a statement that the Person signing such certificate or opinion has read and is familiar with those provisions of this Agreement relating to the conditions precedent with respect to compliance with which such evidence is being given;
  - (ii) a statement that, in the belief of the Person giving the evidence, such Person has made such examination or investigation as is necessary to enable such Person to make the statements or give the opinions contained or expressed therein; and
  - (iii) if the Officer's Certificate is being delivered to the Trustee, an acknowledgement by the officer or counsel, as applicable, that such certificate or opinion has been delivered to the Trustee, as trustee for the Beneficiaries and that the Beneficiaries may rely upon and are entitled to the benefit of such certificate or opinion.
- (b) Whenever the delivery of an Officers' Certificate or other document is a condition precedent to the taking of any action by the Trustee under this Agreement, the truth and accuracy of the facts and opinions stated in such certificate or opinion shall in each case be conditions precedent to the obligation of the Trustee to take such action.
- (c) Any certificate of any expert, insofar as it relates to matters outside of such expert's competence or responsibility, may be based upon a certificate or opinion of or upon representations by legal counsel or some other qualified expert, unless such first-mentioned expert knows that the certificate or opinion or representations with respect to the matters upon which the certificate may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

#### **9.5 Severability**

If one or more provisions in this Agreement shall be invalid, illegal or unenforceable in any respect under any Applicable Law, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not be affected or impaired thereby. Each of the provisions of this Agreement is hereby declared to be separate and distinct.

## 9.6 Further Assurances

All parties hereto shall execute such further assurances from time to time as shall be necessary or advisable to evidence or affect the Transfer to the Trustee by the Beneficiaries of the Proceeds and to vest in the Beneficiaries the Beneficial Interests.

## 9.7 Termination of Trust Arrangement

- (a) The trusts created hereunder and the respective obligations and responsibilities of the Beneficiaries, EGD and the Trustee created hereby (other than those obligations which expressly continue following the termination of this Agreement including, without limitation, the obligation of EGD on behalf of the Trustee to withdraw the amounts from Proceeds as determined in accordance with Article Four from the Trust Account and (subject to Section 4.5 hereof) deposit such amounts into accounts specified by the applicable Beneficiary on the certification of such amounts by EGD, and EGD's obligation to make such certification) shall terminate on the day following the Termination Date on which, after giving effect to the distributions to Beneficiaries on such day in accordance with the terms hereof, no other amounts are distributable to the Beneficiaries in respect of any Beneficial Interest pursuant to this Agreement. Upon the termination of the trusts, all right, title and interest in the Trust Property held by the Trustee will be assigned to the Beneficiaries in respect of their respective Beneficial Interests.
- (b) Following the resignation or termination of EGD from the performance of its duties and obligations hereunder, and after all amounts are paid out to the Beneficiaries as provided in this Agreement in respect of the period to and including the effective date of such resignation or termination, the Trust Account shall cease to be the Trust Account hereunder (but only following payment in full of such amounts) and the Trustee shall (but only following the payment to the Trustee of all the Trustee Expenses) transfer all title documents to and other evidence of ownership of all funds thereafter on deposit in the Trust Account to EGD, and all monies thereafter on deposit in or deposited into the Trust Account shall no longer be subject to the trust hereby created. For certainty, following such resignation or termination, and subject only to the payment of all amounts to the Beneficiaries as provided in this Agreement, the bank account designated as the Trust Account shall become the sole property, and be for the sole use, of EGD.

## 9.8 Addition and Removal of Beneficiaries

Except in respect of the Settlor, a Person shall become a Beneficiary for purposes of this Agreement upon duly executing and delivering to the Trustee and each of the Beneficiaries an Acknowledgment in a form satisfactory to EGD. Upon the occurrence of a Beneficiary Termination Date, the term "Termination Date" in Section 2.2 and 9.7 shall be interpreted to refer to the relevant "Beneficiary Termination Date", and the term "Beneficiaries" in Section 9.7 shall be interpreted to refer to the Biller in respect of which such Beneficiary Termination Date has occurred, *mutatis mutandis*. Upon any such addition or removal of a

Beneficiary, Schedule "E" hereto shall be amended accordingly, and the Trustee shall be so notified.

## **9.9 No Waiver**

No failure by a party to exercise and no delay by any party in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exhaustive of any rights, remedies, powers and privileges provided by law.

## **9.10 Limitation of Liability of the Trustee**

The Trustee has entered into this Agreement in its capacity as trustee for and on behalf of the Beneficiaries. Except as provided in Section 7.1(c), any obligations of the Trustee hereunder are limited solely to the Trust Property and to the Beneficiaries. No property or assets of the Trustee, whether beneficially owned by it in its individual capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any of its obligations hereunder. No recourse may be had or taken, directly or indirectly, against the Trustee, in its individual capacity except as provided in Section 7.1(c), or any incorporator, shareholder, officer, director, employee or agent of the Trustee or of any predecessor or successor of the Trustee or its respective property and assets with regard to any of its obligations hereunder. Any reference in this Section 9.10 to "the Trustee" shall mean "the Trustee and its successors and permitted assigns".

## **9.11 Substitution of Agreement**

The Servicer under the Original Trust Agreement has, or will have at the effective date of this Agreement, resigned as the Servicer thereunder with the consent of each of the Beneficiaries, the Original Trust Agreement is hereby amended and restated effective as of the coming into force of this Agreement, and thereafter replaced by this Agreement. For certainty, the execution and delivery of this Agreement shall not affect any action taken, payments made under or pursuant to, or reliance on the Original Trust Agreement, and all assets constituting the Trust Property and the Trust Account established pursuant to the Original Trust Agreement shall be and shall be deemed to be the Trust Property and the Trust Account established pursuant to this Agreement. EGD confirms to each Beneficiary and the Trustee that the amounts to be distributed pursuant to Section 4.3(b) of this Agreement represent the same amounts as would have been distributed to such Beneficiaries pursuant to the Original Trust Agreement.

*[The balance of this page is intentionally left blank – the next page being the signing page.]*

## 9.12 Counterparts

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be March 10, 2008, with effect as of ● ●, 20●.

IN WITNESS WHEREOF the parties have executed this Agreement.

### ENBRIDGE GAS DISTRIBUTION INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

### DIRECT ENERGY MARKETING LIMITED

By: \_\_\_\_\_  
Name:  
Title:

### CIBC MELLON TRUST COMPANY

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[insert current Biller name]**

By: \_\_\_\_\_  
Name:  
Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

**[insert current Biller name]**

By: \_\_\_\_\_

Name:

Title:

## **SCHEDULE “A”**

### **IDENTIFICATION OF THE INITIAL TRUST ACCOUNT**

Account No. ● [NTD: add existing account number] established in the name of CIBC Mellon Trust Company with The Toronto-Dominion Bank, 55 King Street West, Toronto, Ontario M5K 1A2, Institution No. 004, Transit No. 1020 and designated as CIBC Mellon Trust Company Trust Account, in trust.

## SCHEDULE "B"

### ALLOCATION FORMULA

This Schedule "B" is to be read in association with and constitute a part of the Amended and Restated Proceeds Transfer, Servicing and Trust Agreement entered into among Enbridge Gas Distribution Inc., the parties set forth on Schedule "E" thereto and CIBC Mellon Trust Company dated as of ● ●, ● (the "**Agreement**"). Capitalized terms used but not defined in this Schedule "B" shall have the meanings given to them in the Agreement.

1. The Trust Property in respect of each Related Calculation Day shall be allocated as follows (and in the following order of priority):
  - (a) first, EGD shall be entitled to receive a distribution of an amount equal to the Allocated Payments of Red-Locked Customers on deposit in the Trust Account on such Related Calculation Day;
  - (b) second, each Biller shall be entitled to receive a distribution in an amount equal to Unpaid Amounts;
  - (c) third, each Biller shall be entitled to receive a distribution in an amount equal to any Shortfall Amount (as defined below);
  - (d) fourth, each Biller shall be entitled to receive a distribution of an amount equal to the product of the Actual Billed Amount of such Biller for the Related Calculation Day multiplied by the Scheduled Settlement, less any Deemed Proceeds of such Biller for such Related Calculation Day; and
  - (e) fifth, EGD shall be entitled to receive a distribution of an amount equal to the Trust Property less the aggregate amounts allocated pursuant to 1(a), (b), (c) and (d) above.

For purposes hereof, "**Unpaid Amounts**" means the aggregate of all amounts then due to be paid by EGD to a Biller in respect of the first 15 Cycle Days preceding Cycle Day 1 for March 2008 (being Cycle Day 7 to 21 of February, 2008, in turn being February 15, 2008 to March 7, 2008) which are not paid by 9:00 a.m. (Toronto time) on the applicable due date therefor, all pursuant to that certain Transition Agreement dated as of March 10, 2008 between, among others, EGD, DE and the Trustee.

If, on any Related Calculation Day, amounts on deposit in the Trust Account are insufficient to pay in full the amounts distributable to the Billers pursuant to 1(d) above, funds in the Trust Account shall be paid pro rata to the Billers based on the Actual Billed Amount of each Biller on the relevant Related Calculation Day as compared to the aggregate of all Actual Billed Amounts on such Related Calculation Day.

The amount distributable to the Billers pursuant to 1(d) above but not paid on a Related Calculation Day, whether as a result of their being insufficient amounts on deposit in the Trust Account or as a result of EGD's failure to pay all or any part of such amount as



contemplated in the Agreement (such amount being the “**Shortfall Amount**”), shall be paid on the next succeeding Related Calculation Day pursuant to 1(c) above, and so on until the Shortfall Amount is paid in full.

2. For certainty and notwithstanding the foregoing any and all Area 83 Payments are not to be included in Trust Property, and shall be dealt with in the manner contemplated by Section 4.6 of the Agreement.

## SCHEDULE "C"

### ACKNOWLEDGMENT

**TO:** The parties to the Amended and Restated Proceeds Transfer, Servicing and Trust Agreement made among Enbridge Gas Distribution Inc. ("**EGD**"), the parties identified on Schedule "E" thereto and CIBC Mellon Trust Company dated as of ● ●, ● (the "**Trust Agreement**").

**WHEREAS** pursuant to the terms of the Trust Agreement there can be no addition of Beneficiaries to the trust arrangements contemplated by the Trust Agreement except in certain circumstances and unless the proposed Beneficiary first executes and delivers to EGD, the Trustee and each of the Beneficiaries this Acknowledgment (the "**Agreement**");

**AND WHEREAS** the undersigned has agreed to observe and to be bound by the terms of the Trust Agreement applicable to a Beneficiary so that the provisions thereof will govern the rights and obligations among the parties thereto including, *inter alia*, in respect of the administration of the Trust Property;

**AND WHEREAS** the undersigned has entered into an Open Bill Access Billing and Collection Service Agreement with EGD on or as of the date hereof;

**AND WHEREAS** initially capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Trust Agreement;

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the undersigned, intending to be legally bound hereby, hereby covenants and agrees as follows:

1. The foregoing Recitals are true and correct;
2. It has received and reviewed a copy of the Trust Agreement;
3. It shall be a party to and bound by all of the provisions of the Trust Agreement as if the undersigned were an original party thereto, and to the same extent as the original Billers thereunder;
4. It represents and warrants to the other Beneficiaries and the Trustee on a continuous basis, and acknowledges that such Persons have entered into the Trust Agreement in reliance thereon, that it is a valid and subsisting [**corporation**] under the jurisdiction of its [**incorporation**], and it is duly qualified to carry on business in each jurisdiction in which the failure to be so would reasonably be expected to have a Material Adverse Effect;
5. It represents and warrants to the Trustee on a continuous basis, and acknowledges that the Trustee has entered into the Trust Agreement in reliance thereon, that immediately prior to the Transfers contemplated by Section 2.2 of the Trust Agreement, it has good title to

the Biller Proceeds free and clear of all Liens (other than Permitted Liens), and it is entitled to Transfer such Proceeds without notice to or the consent of the related Obligor;

6. All notices, requests, demands or other communications by the terms of the Trust Agreement required or permitted to be given by one party to any other shall be given to the undersigned in accordance with the terms of Section 9.2 of the Trust Agreement is as follows:

**[Name of new Open Bill Participant] at:**

**[contact information]**

Telecopier Number:

7. Unless the undersigned notifies the Trustee to the contrary in writing, the particulars of the account established by such Biller for purposes of Section 4.3 of the Agreement which shall be set forth on Schedule "E" to the Agreement are:

**[new Open Bill Participant bank account information]**

8. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be binding upon the undersigned and its heirs, executors, administrators, successors, permitted assigns and legal representatives. The undersigned hereby submit to the exclusive jurisdiction of the Courts of the Province of Ontario in connection with this Agreement, on the terms set out in the Trust Agreement.

**IN WITNESS WHEREOF** the undersigned has duly executed this Acknowledgment **[as of]** the < day of <, 20<.

**[Name new Open Bill Participant]**

By:\_\_\_\_\_

Name:

Title:

**[TO BE EXECUTED IN CONNECTION WITH ADDITION OF A NEW OPEN BILL PARTICIPANT AS A BENEFICIARY.]**

[DRAFT: additional changes to follow]

## SCHEDULE "D"

### FORM OF ALLOCATION CERTIFICATE

**TO: CIBC Mellon Trust Company**

**Related Calculation Day:**

<u><b>Billers to which payment to be made (subject to Transfer to EGD pursuant to Section 4.5(b))</b></u>	<u><b>Effective Dates of Payment Transactions</b></u>	<u><b>Bank Account Number of Biller</b></u>	<u><b>Scheduled Payment Amount</b></u>  <u><b>[insert relevant Payment Date]</b></u>	<u><b>Scheduled Payment Amount</b></u>  <u><b>[insert relevant Payment Date]</b></u>
Enbridge Gas Distribution Inc.	[this will commence on the Business Day preceding the date of this certificate, set forth below]	TD Canada Trust – Toronto Main Branch, Toronto Bank ID: 004 Transit Number: 1020 Account Number: ●	\$●	\$●
Direct Energy Marketing Limited	[this date will commence on the first Payment Date, being the 21 <sup>st</sup> day after the Related Calculation Day set forth above]	TD Canada Trust – Toronto Main Branch, Toronto Bank ID: 004 Transit Number: 1020 Account Number: ●		
[Open Bill Participant 2]	[this date will commence on the first Payment Date, being the 21 <sup>st</sup> day after the Related Calculation Day set forth above]	TD Canada Trust – Toronto Main Branch, Toronto Bank ID: 004 Transit Number: 1020 Account Number: ●	\$●	\$●
[Open Bill Participant 3]	[this date will commence on the first Payment Date, being the 21 <sup>st</sup> day after the Related Calculation Day set forth above]	TD Canada Trust – Toronto Main Branch, Toronto Bank ID: 004 Transit Number: 1020 Account Number: ●	\$●	\$●

In accordance with and subject to the Amended and Restated Proceeds Transfer, Servicing and Trust Agreement entered into among Enbridge Gas Distribution Inc., the parties set forth on *Schedule "E"* thereto and CIBC Mellon Trust Company dated as of ● ●, ● (the "Agreement"), CIBC Mellon Trust Company is hereby directed to, on the date(s) specified above (subject to the terms of the Agreement): (i) withdraw from the Trust Account the funds required in order to make the payment of the amounts shown above, and (ii) pay such amounts in accordance with the instructions and on the dates set forth above. Capitalized terms used in this Allocation Certificate that are not otherwise defined herein shall have the respective meanings attributed thereto in the Agreement.

Certified this ● day of ●, 20●.

**ENBRIDGE GAS DISTRIBUTION INC.**

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE “E”

### BILLERS

<u><b>Biller</b></u>	<u><b>Contact Information</b></u>	<u><b>Designated Bank Account</b></u>
<b>Direct Energy Marketing Limited</b>	•	TD Canada Trust – Toronto Main Branch, Toronto Bank ID: 004 Transit Number: 1020 Account Number: •

The date upon which this Schedule “E” to the Amended and Restated Proceeds Transfer, Servicing and Trust Agreement entered into among Enbridge Gas Distribution Inc., the parties set forth on this Schedule “E” and CIBC Mellon Trust Company dated as of ● ●, ● was most recently updated is ●, 200●.