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August 28, 2013

VIA COURIER & E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.
Open Bill Access Application and Evidence
Ontario Energy Board File No. EB-2013-0099**

Further to Enbridge Gas Distribution's filing on May 9, 2013 enclosed please find the following updated exhibit.

Exhibit B, Tab 1, Schedule 1, page 14, Table 2 only.

This information is being filed through the Board's RESS system today and will be available on the Company's website at www.enbridgegas.com/ratecase.

Yours truly,

(Original Signed)

Lorraine Chiasson
Regulatory Coordinator

cc: All interested parties in EB-2011-0354

EXHIBIT LIST

A – ADMINISTRATIVE

<u>Exhibit</u>	<u>Tab</u>	<u>Schedule</u>	<u>Contents</u>
A	1	1	Exhibit List
	2	1	Application

B – EVIDENCE

<u>Exhibit</u>	<u>Tab</u>	<u>Schedule</u>	<u>Contents</u>
B	1	1	Open Bill Access Services

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an order or orders approving its proposal for open billing services;

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an order or orders amending or varying the rates charged to customers for the sale, distribution, transmission, and storage of gas commencing as of January 1, 2014

APPLICATION

1. The Applicant, Enbridge Gas Distribution Inc. ("Enbridge" or the "Company"), is an Ontario corporation with its head office in the City of Toronto. It carries on the business of selling, distributing, transmitting and storing natural gas within Ontario.
2. Enbridge hereby applies to the Ontario Energy Board (the "OEB" or the "Board"), pursuant to section 36 of the *Ontario Energy Board Act, 1998* as amended (the "Act"), for an Order or Orders approving its proposal for continuing Open Bill Access ("OBA") services, and the sharing of net revenues from those services with ratepayers.
3. In the EB-2011-0354 proceeding, the Company and interested parties reached a full settlement of issues related to OBA services for 2013, which was approved by the OEB as Issue D11 within the Amended Settlement Agreement and Supplementary Settlement Agreement in that proceeding (the "2013 OBA Settlement").
4. The 2013 OBA Settlement provided for the continuation of OBA services in 2013 under the terms of the EB-2009-0043 Settlement Agreement (the "2009 OBA Settlement"), subject to updates for 2013 related to the determination of Enbridge's Fees and Costs to be used for the purpose of determining net income amounts to be shared between Enbridge and ratepayers. As evidenced in the 2013 OBA Settlement Agreement, the parties also accepted an updated form of OBA Agreement between Enbridge and Billers.

5. The 2013 OBA Settlement required that if Enbridge wishes to continue OBA services beyond December 31, 2013, then it must bring forward an Application to the Board, setting out the terms under which the Company proposes to continue the program.
6. The Company has determined that it wishes to continue OBA services. During Enbridge's coming 2nd Generation Incentive Regulation ("IR") term, Enbridge proposes to continue the OBA program under substantially the same terms as in previous years, subject to updates to Enbridge's Fees and Costs to be used for the purpose of determining net income amounts to be shared between Enbridge and ratepayers. As required by the 2013 OBA Settlement, Enbridge is proposing a Verification Call requirement within the OBA Agreement to confirm the validity of new contracts between Billers and customers.
7. Enbridge seeks approval to continue the OBA program indefinitely, subject to notification to the Board at some future time that the OBA program will be wound down. This will remove the requirement for the Company to seek ongoing approval for the operation of the OBA program. Enbridge requests that the ratemaking implications of its proposal be approved to continue for a period to coincide with the Company's pending 2nd Generation Incentive Regulation term, which will begin in 2014 and run for three years or more.
8. Enbridge therefore applies to the Board for such final and interim Orders and deferral and variance accounts as may be necessary to implement its proposal for OBA services. The Company further applies to the Board pursuant to the provisions of the Act and the Board's *Rules of Practice and Procedure* for such final and interim Orders and directions as may be necessary in relation to the Application and the proper conduct of this proceeding.
9. The persons affected by this Application are Billers and Enbridge's customers. It is impractical to set out the names and addresses of these persons because they are too numerous.
10. Enbridge Gas Distribution requests that a copy of all documents filed with the Board by each party to this proceeding be served on the Applicant and the Applicant's counsel as follows:

Mr. Norm Ryckman
Director, Regulatory Affairs
Enbridge Gas Distribution Inc.

Address for personal service: 500 Consumers Road
Willowdale, Ontario M2J 1P8
Mailing address: P.O. Box 650
Scarborough, Ontario M1K 5E3
Telephone: 416-495-5499 or 1-888-659-0685
Fax: 416-495-6072
E-mail: egdregulatoryproceedings@enbridge.com

The Applicant's counsel:

Mr. David Stevens
Aird & Berlis LLP

Address for personal service and mailing address: Brookfield Place, PO Box 754
Suite 1800, 181 Bay Street
Toronto, Ontario
M5J 2T9

Telephone: 416-865-7783
Fax: 416-863-1515
E-mail: dstevens@airdberlis.com

DATED May 9, 2013 at Toronto, Ontario.

ENBRIDGE GAS DISTRIBUTION INC.

(Original Signed)

Per: _____

OPEN BILL ACCESS SERVICES

A. Overview

1. Enbridge Gas Distribution Inc. (“Enbridge” or the “Company”) requests Ontario Energy Board (“OEB”, or the “Board”) approval to continue to offer Open Bill Access (“OBA”) Services beyond December 31, 2013, until such time as the Company notifies the Board that Enbridge intends to wind down the OBA program. OEB approval in this regard will streamline future proceedings, by removing the requirement for Enbridge to make separate application to the Board for approval to continue the program beyond any particular year or Incentive Regulation (“IR”) term.
2. For the duration of its upcoming 2nd Generation IR term, Enbridge requests OEB approval for ratemaking purposes to continue to operate the OBA program under the terms of the EB-2009-0043 Settlement Agreement (as updated in Enbridge’s 2013 rate case Settlement Agreements), with modest updates. This means that Enbridge expects to continue to provide a benefit of at least \$5.4 million to ratepayers during each year of the 2nd Generation IR term.
3. Enbridge’s proposed updates to the OBA program, to be effective during the years of its 2nd Generation IR term, include the following:
 - a. The Billing Fees to be applicable in future years (which form the major portion of the annual net revenues of the OBA program) will be subject to annual increases equal to the annual percentage change in the Canadian Consumer Price Index (“CPI”), All Items, but not to exceed 2.5% per year;

- b. The costs to be used for determining annual net revenues of the OBA program, to be used for sharing purposes, will be updated based on the forecast costs set out in an updated Open Bill and Bill Insert Costing Study; and
 - c. An update will be made to the terms of the Open Bill Revenue Variance Account (“OBRVA”), to allow Enbridge full recovery of any under-collection of net revenues below the \$5.4 million ratepayer OBA benefit amount starting in the year after net revenues fall below that level.
4. Enbridge has also made some modest changes to the form of the OBA contract between the Company and Billers, which changes are being presented to the Board for information purposes. The most significant of these is the addition of a Contract Verification process to confirm contracts between Billers and Consumers before associated amounts can be billed through the OBA program.
5. Enbridge has met with interested stakeholders to present its proposal for the OBA program that is detailed in this Application. Following that meeting, stakeholders provided comments to Enbridge, which have been taken into account in the drafting of this Application.

B. Background

6. Enbridge has offered third-party billing services, OBA Services, since 2007. OBA Services allow third parties to access the Enbridge bill for the purposes of billing charges, and for the purpose of distributing third party marketing information in the form of bill inserts.

7. For the past 4 years, OBA Services have been provided by the Company in accordance with the terms of a Settlement Agreement approved by the OEB in EB-2009-0043. A copy of the Board's Order in the EB-2009-0043 proceeding (which appends the Settlement Proposal) is included with this evidence as Appendix A. The EB-2009-0043 OBA Settlement Agreement ("2009 OBA Settlement") expired on December 31st, 2012.
8. Enbridge filed its 2013 Rate Application on January 31, 2012 (updated June 8, 2012) with the Board. The Application was assigned file number EB-2011-0354. Part of the Application addressed Enbridge's proposal for the continuation of and changes to the OBA program for 2013. The most significant of the changes related to amendments to the Open Bill Access Billing and Collection Services Agreement ("OBA Agreement") between Enbridge and Billers, primarily to provide Enbridge with better ability to take action in the event of inappropriate behaviour by Billers. Updates were also proposed to the costing and pricing of OBA Services for 2013. To effect the proposed changes to costing and pricing, Enbridge proposed updates to certain aspects of the 2009 OBA Settlement and sought to extend the Board's approval of the OBA program to the end of 2013.
9. After Enbridge filed its evidence in relation to the OBA issue in its 2013 Rate Case, the OEB approved a process for discovery and Alternate Dispute Resolution ("ADR") on the OBA issue (Issue D11 within the 2013 Rate Case). The active participants in that process were the largest Billers in the OBA program (Direct Energy, EnerCare, Just Energy, Summitt Energy and Vista Credit) as well as Enbridge, HVAC Coalition, VECC and Board Staff. GEC, LIEN and Pollution Probe also participated in relation to discussions about on-bill financing for DSM measures.

10. As a result of the ADR process, the parties were able to reach a partial settlement, which was presented to the Board in October 2012, and approved on November 2, 2012 (as Issue D11 within the Revised Settlement Agreement for the 2013 Rate Case). This partial settlement of the OBA issue addressed three items:
 - a. The agreement that Enbridge would continue the OBA Services in 2013 under the terms of the 2009 OBA Settlement, with updates to the Fees charged by Enbridge for Billing Services, and updates to the Costs to be used to determine net income amounts for the purpose of sharing between Enbridge and ratepayers;
 - b. The agreement that Enbridge would undertake a consultative process to work towards the possibility of offering on-bill financing for DSM measures, as part of the OBA program; and
 - c. The agreement that Enbridge would make application to the Board if it wishes to continue OBA Services beyond 2013, along with a commitment to meet with stakeholders in advance of such application to communicate the Company's proposal and receive comments that may be relevant to the preparation of the application.

11. The partial settlement indicated that the parties were continuing to discuss the proposed updated terms of the OBA Agreement, and would report back to the OEB. A copy of the partial settlement of the OBA issue (Issue D11 within the broader 2013 Rate Case Settlement Agreement) is included as part of this evidence as Appendix B.

12. As a result of their continued discussions, the parties were able to agree on the form of OBA Agreement to be used for 2013. The parties filed a Supplementary Settlement Agreement with the Board, attaching the new form of OBA Agreement and indicating that the Open Bill issue was therefore completely settled within the 2013 Rate Case. As part of the Supplementary Settlement Agreement, the parties agreed that if Enbridge proposed to continue OBA services for 2014 and beyond, then its OBA Agreement would have to include a “verification process” which Billers would follow in prescribed circumstances to confirm contracts made with customers as a prerequisite for such contracts being eligible to be billed through the OBA program. The Board accepted the Supplementary Settlement Agreement on November 26, 2012, indicating that it was not making any specific approval of the OBA Agreement itself. A copy of the Supplementary Settlement Agreement (including the updated OBA Agreement) is included as part of this evidence as Appendix C. Collectively, the partial settlement and Supplementary Settlement Agreement for the OBA issue in the 2013 Rates Case are referred to in this evidence as the “2013 OBA Settlement”.
13. In late 2012, the Company met with interested stakeholders to discuss whether and how on-bill financing for DSM measures could be implemented. These meetings did not result in any consensus or agreement on how to proceed, and it was determined that Enbridge would not move forward with that endeavour.
14. On April 4, 2013, Enbridge met with interested stakeholders to present its proposal for OBA services over the 2nd Generation IR term, and invited stakeholders to provide comments in response. All of the comments received relate to Enbridge’s proposed Contract Verification process. While some of the comments objected to

Enbridge's proposal, or suggested amendments, other comments supported some or all of Enbridge's proposal. In the result, Enbridge has not made any changes to its Contract Verification proposal from what was presented at the stakeholder meeting.

C. Enbridge's Proposal for OBA Services for the 2nd Generation IR Term and Beyond

15. In the 2013 rates proceeding, Enbridge indicated that it was reviewing the terms and viability of the OBA program, to determine whether the Company wished to continue with the program over coming years. That review is now complete. Given the better protection offered by the updated OBA Agreement negotiated during the 2013 rates proceeding, Enbridge has determined that it wishes to continue with the OBA program.
16. Enbridge seeks OEB approval of its continuation of the OBA program in two respects.
17. First, Enbridge seeks OEB approval to continue with the OBA program indefinitely, subject to notifying the Board at a later date that the Company intends to wind down the program.
18. Second, Enbridge seeks OEB approval for certain updates to the financial terms under which the OBA program will operate during the 2nd Generation IR term, in order to maintain the viability of the program.
19. Specifically, beginning in 2014 and continuing through the 2nd Generation IR term, the Company proposes that:

- a. Subject to the amendments and updates set out below, Enbridge's OBA program will continue to be governed by the terms and conditions of 2009 OBA Settlement, as updated by the changes set out in the 2013 OBA Settlement.
 - b. The 2011 Open Bill and Bill Insert Costing Study Update will be adopted as the basis for the costing of the OBA program for the purpose of determining the net revenues of the program in respect of the application of the OBA earnings sharing.
 - c. The Billing Fees to be applicable in future years will be subject to annual increases equal to the annual percentage change in CPI, but not to exceed 2.5% per year.
 - d. The terms of the OBRVA will be updated to ensure that Enbridge is only at risk for subsidizing the OBA ratepayer benefit for one year (in an amount not to exceed \$500,000) in the event that Enbridge finds that the program's net revenues are not sufficient to maintain the basic annual ratepayer benefit of \$5.4 million. The proposed changes would allow Enbridge full recovery of any under-collection of net revenues below the \$5.4 million OBA ratepayer benefit amount starting in the year after net revenues fall below that level.
20. As it did in the 2013 Rate Case (EB-2013-0354), Enbridge is providing an updated version of the OBA Agreement with its filing, for the Board's information. The updated form of OBA Agreement is to be effective January 6, 2014.

21. The main changes to the OBA Agreement are designed to implement the ongoing operation of the OBA program and update the Billing Fees. These changes will provide for an annual renewal process for OBA Agreements and for a revised Billing Fee Adjustment mechanism.
22. In addition, as promised in the 2013 OBA Settlement, Enbridge has introduced a Biller Contract Verification Process. The “verification process” will require that Billers make “Verification Calls” to confirm contracts made between Billers and their customers as a prerequisite for charges associated with such contracts being eligible to be billed through the OBA program.
23. Details of each aspect of Enbridge’s proposal to continue the OBA program are set out below.

D. Continuation of the OBA program

24. As noted, the Company seeks OEB approval to continue the OBA program indefinitely, such that there will no requirement for ongoing requests to the Board for the continuation of the program in future years. This will reduce regulatory burden associated with ongoing applications seeking permission to continue the OBA program. To keep the Board informed, the Company will file updated copies of the OBA Agreement in the event that changes are made to that contract in coming years.
25. In the event that Enbridge determines that it plans to wind down the OBA program, then Enbridge will notify the Board of the Company’s intention to do so. In that regard, Enbridge proposes that it will notify the Board at least 60 days before it intends to commence the Program Termination Transition activities set out at

section 8.9.3 of the OBA Agreement. It should be noted that the Program Termination Transition provisions of the OBA Agreement mandate that the wind-down of the OBA program will take place over a period of at least one year, and that the transition services offered will apply to all interested Billers.

26. Enbridge notes that beyond receiving OEB approval to continue to operate the OBA program, the Company must also seek OEB approval of the financial consequences (for ratemaking purposes) of operating the OBA program. This will be done on an ongoing basis, as part of Enbridge's rate proceedings, since the ratemaking implications of the OBA program may change over time.

E. Financial Terms for OBA Program during Enbridge's 2nd Generation IR term

27. Enbridge's proposal for the operation of the OBA program during its upcoming 2nd Generation IR term is designed to ensure the ongoing financial viability of the program. Most importantly, the proposal will ensure that ratepayers will continue to enjoy an annual benefit of approximately \$5.4 million each year. At the same time, Enbridge will maintain a level of OBA earnings similar to past years, providing a proper incentive for continuing this activity.
28. For the most part, Enbridge proposes to continue the OBA program in accordance with the items agreed upon between stakeholders and approved by the Board in the 2009 OBA Agreement and updated in the 2013 OBA Settlement.
29. Among the key items that will continue to govern the Company's OBA program are the following:

- a. The rules related to the Bill Insert program, as set out in the 2009 OBA Settlement;
 - b. The rules related to Affiliate Participation for OBA Services, as set out in 2009 OBA Settlement;
 - c. The form of OBA Agreement included with the EB-2013-0354 Supplementary Settlement Agreement (subject to the additional changes proposed in this proceeding); and
 - d. Revenue sharing as set out in the 2009 OBA Settlement, such that ratepayers will continue to receive a benefit of \$5.389M per year, embedded in rates, attributable to Enbridge's OBA Services, and Enbridge will be entitled to retain any net revenues received from OBA Services in excess of \$5.389M per year, to a maximum of \$2.0M per year, with net revenues above that level to be shared 50/50 with ratepayers.
30. The determination of the net revenues of the OBA program requires information about the revenues and costs of the program. The revenues are simply a reflection of amounts collected by Enbridge from OBA program participants in relation to the Billing and Bill Insert Services. The amounts collected depend upon the Fees charged for the services as well as the level of usage. The costs are calculated based on agreed estimates of unit costs for each billing transaction and bill insert.
31. Below is a description of the updates that Enbridge proposes to the Fees and costs to be used for the determination of net revenues of the OBA program during Enbridge's 2nd Generation IR term.

a. Updated Billing Fees

32. The current form of OBA Agreement provides for annual increases in Billing Fees not to exceed one-half of the annual change in CPI, to a maximum of 2% per year. This does not reflect the growth of the Company's costs. Continued use of this adjustment will impair the financial performance of the OBA program, and in some years will not allow Enbridge to recover increased costs of operating the program.
33. Enbridge proposes that, for the years of the Company's 2nd Generation IR term, the Billing Fee adjustment be amended such that it is based on the annual percentage change in CPI to a maximum amount equal to 2.5%, as opposed to the current annual fee adjustment.

b. Updated Open Bill Costs

34. In the 2009 OBA Settlement, the parties agreed that the costs to be used to calculate net revenues would be based on the costs forecasted in the Open Bill and Bill Insert Cost Study prepared at that time by TMG Consulting. The TMG Study set out the forecast unit costs for Billing and Bill Insert Services from 2009 to March 2012.
35. In advance of the 2013 Rates Case, Enbridge engaged InQvis Consultants to review and update the TMG Open Bill and Bill Insert Cost Study that had been prepared in 2008. The intention of this engagement was to determine appropriate costing of the Billing and Bill Insert Services beyond March 2012. The 2011 cost study prepared by InQvis extended the analysis of these costs to the end of 2018. InQvis followed the same costing templates for these programs that had been originally used by TMG. Assessments of both direct and indirect levels of effort expended by Enbridge in respect of these programs were updated and projected

into future years. The study took into account fees payable by Enbridge to Accenture under the extended Customer Care Services Agreement (the "CCSA"). A copy of the 2011 Open Bill and Bill Insert Costing Study Update prepared by InQvis is included with this evidence as Appendix D.

36. The 2011 Open Bill and Bill Insert Costing Study Update projected the costs of operating the Billing and Bill Insert Services programs from April 1, 2012 through December 31, 2018. The per unit forecast costs determined by InQvis for 2014 to 2018 (as well as the costs applicable to previous years) are set out in Table 1, below:

Table 1: Open Bill Unit Costs

Open Bill Unit Costs								
	<u>EB-2009-0043</u>	<u>EB-2011-0354</u>	<u>Proposed</u>	<u>Proposed</u>	<u>Proposed</u>	<u>Proposed</u>	<u>Proposed</u>	<u>Proposed</u>
	<u>2011/ 2012²</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	
Cost per Shared Bill	\$0.5112	\$0.6052	\$0.6043	\$0.6133	\$0.6334	\$0.6563	\$0.7195	
Cost per Standalone Bill	\$1.3454	\$1.5052	\$1.5410	\$1.5891	\$1.6484	\$1.7113	\$1.8186	
Bill Insert Unit Costs								
Bill Insert Cost per Bill		\$0.0139	\$0.0141	\$0.0143	\$0.0145	\$0.0147	\$0.0149	

37. As part of the 2013 OBA Settlement, the parties accepted the use of the costs set out in the 2011 Open Bill and Bill Insert Costing Study Update for the purpose of determining the net revenues of the OBA program for 2013.
38. Enbridge proposes to adopt the 2011 Open Bill and Bill Insert Costing Study Update as the basis for the costing of the OBA program during the Company's 2nd

Generation IR term and for the purpose of determining the net revenues of the program in respect of the application of the OBA net revenues sharing for the OBA program.

c. Impact of Updated Costs and Billing Fees

39. The implementation of the changes to Billing Fees and costs will improve the financial performance of the OBA program, and allow for Enbridge and ratepayers to achieve similar revenue sharing results to what has been earned in recent years. In the event of increased interest in the OBA program, the updated Billing Fees also provide for an increased opportunity for “extended sharing” of net OBA revenues for ratepayers (which is applicable when total net revenues exceed \$7.4M).

40. The Company’s 2nd Generation IR term is expected to include some or all of the years from 2014 to 2018 (inclusive). Tables 2, 3 and 4 below sets out Enbridge’s forecast of OBA program net revenues and earnings sharing for the 2014 to 2018 period. The forecasts set out below use the proposed updated costs from the 2011 Open Bill and Bill Insert Costing Study Update prepared by InQvis, as well as the proposed updated Billing Fees.

Table 2 – Billing Services Contribution Margin & Earning Sharing

Billing Services Contribution Margin & Earnings Sharing

	<u>Actual</u> <u>2012</u>	<u>Budget</u> <u>2013</u>	<u>Budget</u> <u>2014</u>	<u>Budget</u> <u>2015</u>	<u>Budget</u> <u>2016</u>	<u>Budget</u> <u>2017</u>	<u>Budget</u> <u>2018</u>
Revenues							
<u>Open Bill</u>							
- Operating	\$ 20,372,927	\$ 19,755,699	\$ 20,083,786	\$ 20,370,228	\$ 20,665,685	\$ 20,963,328	\$ 21,263,603
- Ex-franchise Postage Recovery	182,009						
Total Revenues	\$ 20,554,935	\$ 19,755,699	\$ 20,083,786	\$ 20,370,228	\$ 20,665,685	\$ 20,963,328	\$ 21,263,603
Expenses							
Total Expenses	\$ 13,693,033	\$ 13,439,178	\$ 13,456,995	\$ 13,619,811	\$ 13,977,699	\$ 14,381,861	\$ 15,492,434
Net Income	\$ 6,861,902	\$ 6,316,522	\$ 6,626,791	\$ 6,750,417	\$ 6,687,986	\$ 6,581,467	\$ 5,771,169
Enbridge Earnings Share	\$ 1,329,340	\$ 926,918	\$ 1,237,187	\$ 1,360,813	\$ 1,298,382	\$ 1,191,863	\$ 381,565
Ratepayer Benefit	\$ 5,532,561	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604

Table 3 – Billing Insert Contribution Margin & Earning Sharing

Bill Insert Contribution Margin & Earnings Sharing							
	<u>Actual</u> <u>2012</u>	<u>Budget</u> <u>2013</u>	<u>Budget</u> <u>2014</u>	<u>Budget</u> <u>2015</u>	<u>Budget</u> <u>2016</u>	<u>Budget</u> <u>2017</u>	<u>Budget</u> <u>2018</u>
Revenues	\$ 129,417	\$ 100,000					
Total Expenses	\$ 25,927	\$ 26,338	\$ 26,748	\$ 27,158	\$ 27,568	\$ 27,979	\$ 28,389
Net Income	\$ 103,490	\$ 73,662	\$ 73,252	\$ 72,842	\$ 72,432	\$ 72,021	\$ 71,611

Table 4 – Billing Services & Bill Insert Benefits Summary

Billing Services & Bill Insert Benefits Summary							
	Actual	Budget	Budget	Budget	Budget	Budget	Budget
	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
<u>Total Operating Benefit</u>							
Open Bill	\$ 6,861,901	\$ 6,316,522	\$ 6,626,791	\$ 6,750,417	\$ 6,687,986	\$ 6,581,467	\$ 5,771,169
Less: Ex-Franchise Net Income	\$ (285,915)						
Bill Insert	\$ 103,490	\$ 73,662	\$ 73,252	\$ 72,842	\$ 72,432	\$ 72,021	\$ 71,611
Total - Re. In-Franchise Sharing	\$ 6,679,476	\$ 6,390,184	\$ 6,700,043	\$ 6,823,259	\$ 6,760,418	\$ 6,653,488	\$ 5,842,780
Extended Sharing Threshold	\$ 7,389,604	\$ 7,389,604	\$ 7,389,604	\$ 7,389,604	\$ 7,389,604	\$ 7,389,604	\$ 7,389,604
Extended Ratepayer Sharing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Benefit Details							
Ratepayer Benefit- In-Franchise	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604
Ratepayer Benefit- Ex-Franchise	\$ 142,957	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Combined							
Ratepayer Benefit	\$ 5,532,561	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604	\$ 5,389,604
Shareholder Benefit	\$ 1,432,830	\$ 1,000,580	\$ 1,310,439	\$ 1,433,655	\$ 1,370,814	\$ 1,263,884	\$ 453,176

41. As can be seen from the foregoing, Enbridge’s proposal in this case will allow for the continuation of the status quo in relation to the earnings attributed to ratepayers and the Company from the operation of the OBA program during the 2nd Generation IR term.

d. Open Bill Revenue Variance Account (“OBRVA”)

42. The final proposed ratemaking-related change to the OBA program for the 2nd Generation IR term relates to the terms of the OBRVA that would apply in the circumstance where net revenues fall significantly below the ratepayer OBA benefit amount (\$5.4 million).

43. The provisions of the 2009 OBA Settlement set out the agreed-upon net revenues sharing between Enbridge and ratepayers as follows:

... ratepayers will continue to receive a benefit of \$5.389M per year, embedded in rates, attributable to Enbridge's Open Bill services (defined herein to include both Bill Inserts and Billing Services).

Enbridge will be entitled to retain any net revenues received from Open Bill services in excess of \$5.389M per year, to a maximum of \$2.0M per year. Any net revenues received from Open Bill services in excess of \$7.389M per year will be shared 50/50 with ratepayers. If net revenues for Open Bill services in any year are more than \$500,000 below the ratepayer benefit of \$5.389M, then Enbridge will be entitled to recover the difference between actual net revenues and \$4.889M.

44. The rationale for providing protection to Enbridge in the event that net revenues fell below \$4.889M was that such reduced level of net revenues from the OBA program would most likely occur if there was a significant drop in the number of customers served by the OBA program. It would be unfair for Enbridge to have to continue to provide the \$5.389M ratepayer benefit, when corresponding net revenues were no longer being received. The Settlement Agreement provided, though, that Enbridge would be at risk for the first \$500,000 of under-recovery of net revenues as compared to the \$5.389M basic OBA ratepayer benefit amount already included as an offset to rates.
45. While Enbridge acknowledges its acceptance of the risk described above, the Company does not believe that it is fair or appropriate that it bear that risk over multiple years during the 2nd Generation IR term. Instead, Enbridge believes that it should only have to absorb the \$500,000 loss during the first year that this occurs.
46. To accomplish the foregoing, Enbridge proposes that the terms of the Open Bill Revenue Variance Account will be updated to ensure that Enbridge is only at risk for one year of net revenue losses not to exceed \$500,000 in the event that one or

more of the largest Billers decide to end or limit their billing activities with Enbridge. The relevant proposed wording for the 2014 Open Bill Revenue Variance Account is set out below (the underlined sections represent changes from previous years):

The purpose of the 2014 OBRVA is to track and record the ratepayer portion of net revenue for Open Bill Services. The account allows for net annual revenue amounts in excess of \$7.389 million to be shared 50/50 with ratepayers, and allows for a credit to Enbridge in the event that net annual revenues are less than \$4.889 million, equal to the shortfall between actual net revenues and \$4.889 million. In the event that net revenues fall below \$4.889 million in any one Enbridge fiscal year, then in the remaining fiscal years up to and including the final year of Enbridge's 2nd Generation IR term, then Enbridge will be entitled to a credit equal to the shortfall between actual net revenues and \$5.389 million. The net revenue amounts will be determined in accordance with the EB-2009-0043 Board Approved Open Bill Access Settlement Proposal dated October 15, 2009, with updated Fees and Costs as determined in the EB-2012-0459 proceeding.

F. Updated OBA Agreement

47. As explained above, the Company is filing the proposed updated OBA Agreement in this case for the information of the Board and interested parties.
48. Significant changes were introduced within the OBA Agreement for 2013. For the most part these changes were required to better enable the Company to address conflicts that occasionally arise between Billers and their customers concerning third-party charges that are conveyed via the Enbridge bill. Given the implementation of these changes to the OBA Agreement, the Company does not believe that significant further amendments are required at this time.
49. There are, however, four categories of changes that are proposed for 2014 and beyond, to allow for the continued viable operation of the program and to address the commitment made in the EB-2011-0354 Settlement Agreement to include a contract verification requirement. Each of the proposed changes is described below. All of these changes are planned to become effective as of January 6, 2014.

An updated form of OBA Agreement, in blacklined form to show the proposed changes, is attached as Appendix E.

50. First, Enbridge intends to amend section 8.1 of the OBA Agreement to include an automatic, one year, contract extension provision subject to a ninety (90) day prior notice period of termination. Individual OBA Agreements with Billers can, however, be terminated at an earlier date through the application of other terms and conditions of the OBA Agreement.
51. Second, in order to implement the updated Billing Fee increase mechanism described above, the Company proposes to revise the annual Billing Fee Adjustment set out in Appendix B of the OBA Agreement. Appendix B to the OBA Agreement, the Billing Fee Adjustment, is to be modified so that it is based on the annual percentage change in CPI, All Items, as published by Statistics Canada to a maximum amount equal to two and one half percent (2.5 percent) of the aggregate Billing Fees paid or payable.
52. Third, the Company propose to update the OBA Agreement to address the scenario where a Biller is terminated, and customer refund requests to Enbridge related to that Biller continue after the final billing. To ensure that Enbridge is kept whole in this situation, the Company proposes to update the OBA Agreement to allow Enbridge to exercise rights against the Biller's security to recover any disputed amounts refunded to customers during the six months after a Biller's final billing to customers.
53. Fourth, in response to the commitment made in the EB-2011-0354 Supplementary Settlement Agreement regarding the OBA, Enbridge has prepared a new Appendix

to the Open Bill Manual which is associated with the OBA Agreement setting out the contract “verification process” which Billers will follow in prescribed circumstances. The “verification process” will require that Billers make “Verification Calls” to confirm contracts made between Billers and their customers as a prerequisite for charges associated with such contracts being eligible to be billed through the OBA program. An exception from the Verification Call requirements will apply in circumstances where the customer contacts the Biller to initiate the contracting process.

54. The specific Verification Call requirements that will be included within the Open Bill Manual are reproduced below:

Verification Calls

Billers will be required to perform Verification Calls for Customer Service Agreements that are initiated by the Biller and meet the definition of a “direct agreement” or “remote agreement” under the Consumer Protection Act. For greater clarity, if a Customer contacts the Biller to initiate the Customer Service Agreement there is no requirement on the part of the Biller to perform a Verification Call. Furthermore, an internet agreement entered into in the presence of a sales agent will be considered a “direct agreement” and requires a Verification Call.

The Verification Call must meet the following requirements:

- *be performed by a representative who shall not receive any remuneration or other compensation or benefit that is determined, directly or indirectly, by reference to the number of contracts verified or the percentage of contracts that are verified (“Qualified Party”)*
- *be performed before the submission of any billing transaction to the OBA interface*
- *be recorded and accessible for the duration of the contract plus 6 months*
- *contain confirmation of the product/service, length of the agreement as well as the agreed to price*
- *confirm compliance with the Enbridge Name Restriction guidelines*
- *confirm that they are speaking to the Customer as identified on the Customer Service Agreement*
- *for “direct agreements” (ie. Door-to-door sales or internet sales entered into in the presence of a sales agent) the Verification Call must be an outbound call and be performed by a Qualified Party no earlier than 48 hours after the Customer Service Agreement is entered in to by the Customer*

- for “remote agreements” (ie. outbound telesales from the Biller or their sales agent to a Customer) that result in a Customer Service Agreement, may be transferred to a Qualified Party for the Verification Call, however; the Biller or their sales agent cannot be party to the Verification Call.

55. The intention of the “Verification Call” process is to ensure that Customers understand the nature and key terms of the contract that they have made in response to a Biller’s solicitation. The proposed requirements are similar to those that exist under the *Energy Consumer Protection Act* in relation to verification of gas and electricity supply contracts.
56. As noted, the requirements of the proposed “Verification Call” would be included within a new Appendix to the Open Bill Manual. In addition, the Company proposes that Section 2.6 of the OBA Agreement shall be amended to include a new Biller obligation to comply with the Company verification call requirements set forth in the Open Bill Manual.

APPENDICES

Appendix A	Board's Order in the EB-2009-0043 proceeding (which appends the Settlement Proposal)
Appendix B	Partial Settlement of OBA Issue in EB-2011-0354 (2013 Rates Case)
Appendix C	Supplementary Settlement Agreement (including the updated OBA Agreement) of OBA Issue in EB-2011-0354 (2013 Rates Case)
Appendix D	2011 Open Bill and Bill Insert Costing Study Update prepared by InQvis
Appendix E	An updated form of OBA Agreement, in blacklined form to show the proposed changes

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2009-0043

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Enbridge Gas
Distribution Inc. for an order or order approving its proposal
for open billing services.

BEFORE: Paul Vlahos
Presiding Member

DECISION

The Application and Background

Enbridge Gas Distribution Inc. (“Enbridge” or the “Company”) filed an application, dated March 27, 2009 (the “Application”), with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, S.O.1998, c.15, Schedule B* for an order or orders approving its proposal for continuing open billing services, and the sharing of earnings from those services. In its Application, Enbridge applied to the Board for such final and interim Orders and deferral and variance accounts as may be necessary to implement its proposal for Open Bill Services, commonly referred to as Open Bill Access. The Board assigned Board File No. EB-2009-0043 to this Application.

Open Bill Access refers to third party access to the Enbridge bill for the purposes of billing charges on behalf of third parties, and for the purpose of distributing third party marketing information in the form of bill inserts. Billing services were once under the exclusive right of Direct Energy Essential Home Services (“DEEHS”) as a result of an agreement between Enbridge and DEEHS. By the Board’s EB-2005-0001 Decision, DEEHS’ exclusive access concluded February 9, 2006. In that Decision, the Board concluded that the issue required further examination, citing among other things, that

Enbridge must demonstrate that there are net benefits for ratepayers and the Open Bill Access issue was deferred to the 2007 rates proceeding.

In the January 29, 2007 settlement agreement in the EB-2006-0034 proceeding, the Open Bill Access issue was not settled. However, on February 12, 2007, Enbridge and several interested parties reached a supplementary settlement on the Open Bill Access issue that contained an interim solution to the issue, which is the current system in place. As part of the interim solution, Enbridge was to bring forward a comprehensive solution to the Open Bill Access issue once the new Customer Information System ("CIS") was in place.

Having received the March 29 Application, by way of a letter dated April 16, 2009 the Board deemed the Application incomplete as it omitted Appendix J, the "Pro Forma Copy of the Proposed New Standard Form Open Bill Access Service Agreement" (the "OBA Service Agreement"). The Board indicated that it would resume processing Enbridge's Application once the OBA Service Agreement was filed.

The Settlement Proposal and the Board's Process

On October 15, 2009, Enbridge filed a complete Settlement Proposal, which is attached as Appendix A and includes the OBA Service Agreement. The Settlement Proposal contains a complete settlement of all outstanding issues related to Open Bill Access. The parties to the Settlement Proposal are reported to be: Direct Energy Marketing Limited, the Heating, Refrigeration and Air Conditioning Institute of Canada, LivClean Corporation, National Energy Corporation, Reliance Comfort LP, and the Vulnerable Energy Consumers Coalition (the "core members"). These core members were the core members of the consultative.

After the settlement was reached with the core members, the Settlement Proposal outlining the comprehensive solution was circulated to all intervenors involved in Enbridge's 2009 rates proceeding (EB-2008-0219) and to all parties in the Open Bill Access consultative. Enbridge provided its own process to ask questions on the Settlement Proposal. Enbridge provided the responses to these questions, and attached a copy of these responses to the Settlement Proposal.

It was noted in the October 15, 2009 cover letter to the Settlement Proposal that all members of the Open Bill Access consultative, as well as two other stakeholders (the Canadian Manufacturers & Exporters, and the Consumers Council of Canada) have

indicated that they support the Settlement Proposal and that no intervenor or consultative member has registered objection to the Settlement Proposal.

The Settlement Proposal outlines an agreement on the rates to be charged and the parameters under which Open Bill Access would be made available to parties. The agreement would be in effect until December 31, 2012. The Settlement Proposal includes a \$5.389 million ratepayer benefit, which is already built into the calculation of revenue requirement as part of the interim solution.

The Settlement Proposal includes a \$2 million “deadband” for net revenues from \$5.389 million to \$7.389 million which the Company will not be required to share. Any revenues in excess of \$7.389 million will be shared 50/50 with ratepayers. In the event that net revenues are less than \$4.889 million, which Enbridge indicates would occur with the unforeseen loss of a large Open Bill Access customer, then Enbridge will not recover the first \$500,000 of the difference between actual revenues and the ratepayer benefit of \$5.389 million, but Enbridge will be entitled to recover the difference between actual net revenues and \$4.889 million from ratepayers. The earnings sharing arrangement primarily impacts the Rate 1 residential class, with negligible effects on other rate classes.

The Settlement Proposal takes steps to ensure that no party taking Open Bill Access will be advantaged over another. Some of these aspects include:

- the same prices will be offered to all Open Bill Access customers with no volume discounts;
- affiliate access will be on the same terms as others through notice and “open season”;
- there will be no access to bill inserts when a safety notice or rate change is included with the bill, and bill inserts can be system-wide, or sent in specific business forward sortation areas (FSAs); and
- Enbridge may change cost per bill annually at rate of half CPI, and in any event the increase will be no greater than 2% per year.

On November 12, 2009, the Board issued its Notice and Procedural Order No.1. The Board invited parties to comment if they opposed the Settlement Proposal, setting the deadline for such comments as November 26, 2009. No comments were received in response to the Notice.

Board Findings

The Settlement Proposal before the Board is the result of a lengthy and involved negotiation among the members of the consultative group, and in particular the core members of the group. The Board's own process confirmed that there is no opposition to the Settlement Proposal.

The Board accepts the results of the Settlement Proposal as reasonable. The Board accepts the establishment of the deferral and variance accounts necessary to implement Enbridge's proposal and will approve the associated accounting orders once the review process set out below is completed.

THE BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. shall file the accounting orders that are necessary to implement its proposal for Open Bill Access by December 4, 2009.
2. Any party wishing to comment on the accounting orders must file such comments by December 11, 2009.
3. Enbridge Gas Distribution Inc. may respond to any comments by December 18, 2009.

Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas Distribution shall immediately pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, December 2, 2009

Original signed by

Paul Vlahos
Presiding Member

APPENDIX "A" TO
DECISION
BOARD FILE NO. EB-2009-0043
Settlement Proposal Documents
DATED December 2, 2009

October 15, 2009

DELIVERED

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms Walli:

Re: EB-2009-0043: Enbridge Gas Distribution application re. Open Bill issues

We represent Enbridge Gas Distribution Inc. ("Enbridge").

On March 27, 2009, Enbridge filed its Application and supporting evidence in this matter. At that time, Enbridge did not file Appendix J to its Application (a new form of Open Bill contract), as that document was still being negotiated. The contract documents have now been settled, and today Enbridge filed Appendix J to its Application. The evidence for this Application is now complete.

As previously noted, this Application relates to commitments made in settlement agreements approved by the Ontario Energy Board ("Board" or "OEB") in Enbridge's 2007 rates application (EB-2006-0034). Among other things, Enbridge is required to report on its experience with Open Bill services since 2007 and to present its proposal for how Open Bill services will be offered in the future, once its new Customer Information System ("CIS") is operational. Enbridge's Application contains the required reporting, and sets out its proposal for how Open Bill services will be provided during the balance of the incentive regulation term (to December 31, 2012).

For more than a year, Enbridge has been working closely with core members of a stakeholder committee on issues related to its Open Bill services. Discussions with the core members of the stakeholder committee continued after Enbridge filed its Application. As a result of these discussions, a complete settlement of all issues related to Enbridge's Open Bill services has been reached. Among other things, the settlement modifies Enbridge's proposal from the Application for how Open Bill services will be offered, in a way that is acceptable to all Open Bill stakeholders. Attached is the Settlement Proposal that describes the settlement.

After the settlement was reached with core members of the stakeholder committee, the Settlement Proposal was circulated to all intervenors involved in Enbridge's 2009 rate adjustment proceeding (EB-2008-0219), and to all parties involved in the Open Bill stakeholder committee, in order that they could raise any questions or concerns that they may have. Intervenors and stakeholders asked a number of questions, which Enbridge

October 15, 2009
Page 2

addressed in a memorandum sent to all interested parties on August 18, 2009. A copy of that memorandum is attached.

At this time, Enbridge is pleased to report that all members of the Open Bill stakeholder committee, as well as two other stakeholders (Canadian Manufacturers & Exporters and Consumers Council of Canada) have indicated that they support the Settlement Proposal. Some other parties have indicated that they take no position on the Settlement Proposal. No intervenor or Open Bill stakeholder committee member has indicated their objection to this Settlement Proposal.

Enbridge requests that the Board establish a process to consider and approve the Settlement Proposal. Enbridge's preference is for a written proceeding (rather than an oral hearing) to consider the approval of the Settlement Proposal. Given that the Application materials have already been circulated to all stakeholders, and that Enbridge has already invited and addressed information requests and questions from stakeholders, Enbridge submits that there is no need for a "discovery" phase of this process.

As the Board is aware, Enbridge's new CIS is now operational. This means that Enbridge's new Open Bill activities can now be undertaken in the manner contemplated by the Settlement Proposal. As well, there are aspects of the Settlement Proposal that relate to Enbridge's 2009 deferral and variance accounts. With these things in mind, Enbridge respectfully requests that the Board consider the Settlement Proposal at its earliest convenience.

Assuming that the Board deems it appropriate to approve the Settlement Proposal, Enbridge requests that it be given the opportunity to prepare a draft Order setting out the approval, including the matters related to 2009 deferral and variance accounts. Once that is done, there could be an opportunity for all interested parties to comment on the draft Order before it is considered for approval by the Board.

Should you have any questions, please do not hesitate to contact me.

Yours very truly,

AIRD & BERLIS LLP



David Stevens

cc. Enbridge Gas Distribution
Members of the Open Bill Consultative
All parties registered in EB-2008-0219

5851594.1

SETTLEMENT PROPOSAL
OPEN BILL ACCESS

OCTOBER 15, 2009

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I. PREAMBLE

This Settlement Proposal is filed with the Ontario Energy Board (the "OEB" or the "Board") in connection with the application of Enbridge Gas Distribution Inc. ("Enbridge" or the "Company"), for an order or orders approving its proposal for open billing services. The Company's Application was filed to comply with commitments made in the EB-2006-0034 proceeding and the Board's Directive in the EB-2005-0001 proceeding.

Enbridge and the following stakeholders (collectively, the "OBA Consultative Group") have participated in a consultative process to discuss, among other things, the terms under which Enbridge would offer open billing services over the next several years:

DIRECT ENERGY MARKETING LIMITED (DE)
HEATING, REFRIGERATION AND AIR CONDITIONING INSTITUTE OF CANADA (HRAI)
LIVCLEAN CORP. (LivClean)
NATIONAL ENERGY CORP. (National)
RELIANCE COMFORT LIMITED PARTNERSHIP (Reliance)
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

As a result of the consultative process, the OBA Consultative Group was able to reach agreement on all outstanding issues, including the terms under which Enbridge would offer open billing services over the next several years. Board Staff did not participate in this process, although they were kept apprised of the status of discussions.

The Settlement Proposal deals with all of the issues that the OBA Consultative Group believes are engaged by Enbridge's Application, namely:

1. Has Enbridge complied with the requirements of the 2007 Open Bill Access Settlement Agreements, by filing the following information:
 - (a) A detailed report on the experience with the Interim Solutions
 - (b) Results of any customer communications activities and any customer or industry surveys
 - (c) Minutes and/or reports of the activities of the Open Bill stakeholder committee
 - (d) Consultant reports with respect to costing and/or market pricing
2. Has Enbridge made an acceptable proposal on the terms on which it will continue Open Bill Services ?

The Settlement Proposal describes the agreements reached by the OBA Consultative Group on the issues. The Settlement Proposal provides a direct link between each settled issue and the supporting evidence in Enbridge's Application. In this regard, the parties are of the view that the evidence provided is sufficient to support the Settlement Proposal in relation to the settled issues

and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the Board to make findings agreeing with the proposed resolution of the settled issues.

The parties to the settlement all agree that this Settlement Proposal is a package: the individual aspects of this agreement are inextricably linked to one another and none of the parts of this settlement are severable. As such, there is no agreement among the parties to settle any aspect of the issues addressed in this Settlement Proposal in isolation from the balance of the issues addressed herein. The parties agree, therefore, that in the event that the Board does not accept this Settlement Proposal in its entirety, then (in accordance with the Board's Settlement Conference Guidelines) the Board will reject the Settlement Proposal in its entirety and proceed to hearing on all of the issues listed above.

While the consultative process under which this settlement was reached was not formally initiated by the Board under Rule 31 of the *Ontario Energy Board Rules of Practice and Procedure*, the parties agree that it is appropriate that Rules 31.09, 31.10 and 32 apply to the settlement process and this Settlement Proposal.

None of the parties can withdraw from the Settlement Proposal except in accordance with Rule 32 of the *Ontario Energy Board Rules of Practice and Procedure*. Finally, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions parties might take with respect to the same issue in future proceedings.

II. BACKGROUND AND CONTEXT

In Enbridge's F2007 rate proceeding, settlements were reached between interested parties in respect of certain issues related to "open bill access" issues.¹ These settlements were reached as a result of a consultative process involving Enbridge and interested stakeholders, and were approved by the Board as part of the Decision with Reasons in the EB-2006-0034 proceeding.²

The settlement of the "open bill access" issues in EB-2006-0034 was in response to a Board Directive in the EB-2005-0001 proceeding. The parties in EB-2006-0034 agreed that the appropriate response to that Directive was in two stages. First, Enbridge would implement interim solutions for third party billing (Billing Services) and Bill Inserts using the Company's existing CIS system. Subsequently, these approaches would be replaced by a "comprehensive solution" to be put in place when Enbridge's new CIS system ("nCIS") is operating, which occurred in September 2009.

The settlements contemplated that Enbridge would undertake a number of steps to arrive at this comprehensive solution. One was the establishment of a "stakeholder committee", including users of Billing Services/Bill Inserts and ratepayer representatives, to meet with the Company to

¹ EB-2006-0034, Ex. N1-1-1, Schedules C and D.

² The billing services settlement was agreed to by all parties, and was approved by the Board; there was some opposition to the settlement related to bill inserts, but it too was approved by the Board, with modest changes (see EB-2006-0034 Decision with Reasons, as pp. 35-37). Copies of the open bill access settlements from Enbridge's F2007 proceeding (EB-2006-0034) are attached as Appendix 1.

address issues related to open bill services. Another was that an independent consultant would be retained to undertake a costing and pricing analysis for Enbridge's Billing Services and Bill Inserts. Ultimately, the settlements directed Enbridge to file an application to the OEB "prior to the end of 2008"³ proposing comprehensive Billing Services and Bill Inserts offerings, as well as (i) a report on Enbridge's experience under the "interim solutions"; (ii) the independent consultant's report(s); and (iii) reports or minutes of meetings with the stakeholder committee.

The stakeholder committee, which is largely comprised of members of the consultative that reached the open bill access settlements in the 2007 rate proceeding, continued its work in 2008 and 2009. All parties agreed on retaining TMG Consulting (TMG) as the independent consultant to undertake the costing and pricing analysis of Enbridge's Billing Services and Bill Insert services. The stakeholder committee met regularly, and provided input to and received updates from TMG as it prepared its report.

After the OBA Consultative Group⁴ received TMG's final report on the costing and pricing of open billing services, it continued to meet with Enbridge to discuss the manner in which Enbridge would offer open billing services over the next several years, to the end of the current Incentive Regulation term (December 31, 2012, which is the end date for the current IRM term, assuming it is not extended). The meetings and discussions between Enbridge and the OBA Stakeholder Group provided Enbridge with substantial and constructive input which assisted Enbridge in preparing the "comprehensive proposal" that it included in this Application.

Since the date when the Application in this proceeding was filed, the OBA Consultative Group has continued to meet, to discuss outstanding details related to Enbridge's "comprehensive proposal". The members of the OBA Consultative Group, who represent clients using Enbridge's open billing services and ratepayers, have now reached agreement on all issues related to this Application. Unlike the approach used in 2007, parties have addressed both Billing Services and Bill Inserts at the same time, and this Agreement relates to both Billing Services and Bill Inserts.

This Settlement Proposal has been circulated to all intervenors involved in Enbridge's 2009 rate adjustment proceeding (EB-2008-0219), and to all parties involved in the Open Bill stakeholder committee, in order that they could raise any questions or concerns that they may have. Intervenors and stakeholders asked a number of questions, which Enbridge addressed in a memorandum sent to all interested parties on August 18, 2009. A copy of that memorandum is being filed with the Board along with this Settlement Proposal.

In addition to the OBA Consultative Group, two parties, Canadian Manufacturers & Exporters and Consumers Council of Canada, have indicated that they support the Settlement Proposal. Some other parties have indicated that they take no position on the Settlement Proposal. No intervenor or stakeholder committee member has indicated their objection to this Settlement Proposal.

³ In response to requests from Enbridge and members of the Open Bill Consultative Group, the Board approved extensions of the filing date for this Application to March 27, 2009.

⁴ The OBA Consultative Group is comprised of all members of the stakeholder committee who indicated that they wished to participate in ongoing discussions and negotiations with Enbridge.

III. TERMS OF SETTLEMENT

Against that background, the OBA Consultative Group has agreed that all issues associated with this Application have been resolved, as set out in the following sections.

1. Has Enbridge complied with the requirements of the 2007 Open Bill Access Settlement Agreements, by filing the following information:

(a) **A detailed report on the experience with the Interim Solutions**

All parties agree that Enbridge has met this obligation, through the evidence filed in this Application at Exhibit B, Tab 1, Schedule 2, titled "Experience with the Interim Solutions", along with associated Appendices. The agreement of the parties should not be interpreted as complete agreement with the contents of the evidence of Enbridge, nor with how Enbridge has characterized its experience or conclusions.

(b) **Results of any customer communications activities and any customer or industry surveys**

All parties agree that Enbridge has met this obligation, through the evidence filed in this Application at Exhibit B, Tab 1, Schedule 3, titled "Customer Experience – Billing Services and Bill Inserts", along with associated Appendices. The agreement of the parties should not be interpreted as complete agreement with the contents of the evidence of Enbridge, nor with how Enbridge has characterized its experience or conclusions.

(c) **Minutes and/or reports of the activities of the Open Bill stakeholder committee**

All parties agree that Enbridge has met this obligation, through the evidence filed in this Application at Exhibit B, Tab 1, Schedule 4, titled "Minutes/Reports of the Stakeholder Committee", along with associated Appendices. The minutes and reports were drafted and produced by Enbridge, and the agreement of the parties should not be interpreted as complete agreement with the contents of the minutes and reports produced by Enbridge.

(d) **Consultant reports with respect to costing and/or market pricing**

All parties agree that Enbridge has met this obligation, through the evidence filed in this Application at Exhibit B, Tab 1, Schedule 5, titled "Open Bill/Bill Insert Costing and Market Pricing Study", along with associated Appendices, which include TMG's Costing and Market Pricing Study. The agreement of the parties should not be interpreted as complete agreement with the contents of the evidence of Enbridge, nor with how Enbridge has characterized its experience or conclusions.

2. Has Enbridge made an acceptable proposal on the terms on which it will continue Open Bill Services ?

The proposal made by Enbridge is detailed at Exhibit B, Tab 1, Schedule 6 to this Application. Enbridge's proposal was shaped by, and evolved as a result of comments and suggestions made by members of the OBA Consultative Group, but did not at that time constitute an agreed resolution of all issues. The OBA Consultative Group continued to discuss the issues after the original proposal was filed, and some changes were made as a result of those continued discussions. As a result, the original proposal by Enbridge is no longer operative, as it has been replaced by a revised and agreed-upon proposal. All parties agree that the revised proposal, as described below, constitutes an acceptable proposal on the terms to continue to offer Open Bill services. The details of the proposal that is agreed to by all parties are set out below.

All parties agree that it is appropriate for Enbridge to continue to offer Open Bill services under the terms of this proposal, from the date that this proposal is approved by the Board until December 31, 2012 (which is the end of the current IRM term, assuming it is not extended). None of the provisions of this proposal are intended to limit or set the terms of Enbridge's Open Bill services, as well as Enbridge's ex-franchise third party billing services, or the treatment of net revenues from those services, following that time. In the event that the IRM term is extended, then Enbridge or other parties may seek to extend the end date for this proposal, under the same or modified terms. In any event, Enbridge will file an application with the Board if it intends to continue provision of the Open Bill services past December 31, 2012.

The details of the proposal agreed to by all parties include the following:

- (a) Enbridge will offer Billing Services in the manner described below:
 - (i) Enbridge will offer the same pricing to all Billing Services clients ("Billers"). The pricing, which will be effective as of the time that Enbridge implements the new CIS⁵, will be \$.88 per bill for shared bills, and \$2.05 per bill for standalone bills, exclusive of bad debt flow-through costs. Bad debt flow through costs are set at 0.53% of revenues for 2009, and are subject to adjustment each year. The pricing will be adjusted each year (on January 1st) by an amount equal to one half of CPI (but not to exceed 2% per year). This pricing is consistent with the range of pricing recommended by TMG. All parties agree that, because the pricing of the Billing Services is the subject of a binding and enforceable agreement between the parties, it is no longer relevant in this proceeding whether or not these prices must, legally, be established or approved by the Board.
 - (ii) All Billers will move to a new form of Open Bill Access Service Agreement that will be effective as of the implementation date of the new CIS. The

⁵ Enbridge will continue to charge its current pricing for Billing Services, as set out in the EB-2006-0034 Settlement Proposal for Issue 7.5 (attached at Appendix 1), until this Settlement Proposal is approved by the Board. After this Settlement Proposal is approved, Enbridge will make any adjustments necessary to collect from Billers the difference between (i) what each Biller paid during the period from the "go live" date for the nCIS to the date when this Settlement Proposal is approved and (ii) what the Biller would have paid during that period had the pricing under this Agreement been charged starting on the "go live" date.

form of Open Bill Access Service Agreement that is agreed upon by all parties and that will apply to all Billers is attached to this Settlement Proposal as Appendix 2.

- (iii) The goods and services that are eligible to be billed using the Billing Services will be those set out from time to time in the Open Bill Manual, as amended from time to time in compliance with the Open Bill Access Service Agreement.
- (iv) Logos and bill messaging in compliance with the Open Bill Access Service Agreement will be provided to all participants in the Billing Services at no charge to facilitate entry of new users and help consumers differentiate the various parties with amounts billed on the Enbridge bill.
- (v) The Company will continue to abide by rules similar to those set in the Interim Solution related to "Affiliate Participation". Affiliates of the Company (including, for the purpose of this Proposal, related parties such as limited partnerships or trusts that are not technically affiliates) may use the Billing Services on the same terms as any other third party Biller. However, the Company will continue to ensure that the Billing Services are provided in a manner that avoids ratepayer and/or consumer confusion, and, to the extent possible, prevents any participant from gaining any unfair market advantage by reason of their association with the Company, if any. The Company agrees that it will implement such measures as may be necessary to achieve this principle, including but not limited to enforcing in a commercially reasonable manner the following service rules:
 - (a) No person, whether affiliate or otherwise, may use or associate itself with any name or logo on the bill that is the same as, similar to, or confusing with any name or logo that is associated with the Company.
 - (b) No person may use the Billing Services in an abusive or unfair manner in that it deliberately creates the impression that it has a preferred position relative to other market participants because of its relationship with the Company.

These restrictions apply only to this Proposal, and in no way shape or form create any precedent to rely upon in respect of Billing Services after December 31, 2012.

- (b) Enbridge will offer Bill Insert services in the manner described below:
 - (i) Enbridge's Bill Insert services will be made available to all interested parties, regardless of whether they are Billers.
 - (ii) Enbridge will continue its current procedures in terms of the non-financial requirements for a party to participate in its Bill Insert program. The current

procedures are those operational, technical, and timeline rules set out in the Open Bill Manual and the Company's written agreement with Bill Insert customers. As per the Company's written agreement with the interested third party, a number of criteria must be met for a party to be eligible to secure a Bill Insert position in the monthly Enbridge bill. A copy of the Company's written agreement with Bill Insert customers is attached to this Settlement Proposal as Appendix 3.

- (iii) The goods and services that may be advertised using Bill Inserts will be as set forth in the Open Bill Manual, as amended from time to time in compliance with the Open Bill Access Service Agreement. For greater certainty, commodity bill inserts and marketing will not be allowed in the billing envelope unless Enbridge or one of its affiliates receives OEB approval to promote and/or market gas commodity (system gas or otherwise), in which case retailers, marketers and vendors will be allowed to promote and/or market their commodity offers through Bill Inserts.
- (iv) Enbridge will continue to abide by rules similar to those set in the Interim Solution related to "Affiliate Participation". Affiliates of the Company (including, for the purpose of this proposal, related parties such as limited partnerships or trusts that are not technically affiliates) may use the Bill Insert service on the same terms as any other third party. However, the Company will continue to ensure that the Bill Insert service is implemented in a manner that avoids ratepayer and/or consumer confusion, and, to the extent possible, prevents any participant from gaining any unfair market advantage by reason of their association with the Company, if any. The Company will implement such measures as may be necessary to achieve this principle, including but not limited to enforcing in a commercially reasonable manner the following service rules:
 - (a) Except as set out in subparagraphs (c) and (d), no person, whether affiliate or otherwise, may use or associate itself with any name or logo in the billing envelope that is the same as, similar to, or confusing with any name or logo that is associated with the Company.
 - (b) Except as set out in subparagraphs (c) and (d), no person may use the Bill Insert service in an abusive or unfair manner in that it deliberately creates the impression that it has a preferred position relative to other market participants because of its relationship with the Company.
 - (c) The Company (but not its affiliates) may use its name and logo on Bill Inserts, including Bill Inserts where the Company is offering a service itself or in partnership with others who are not affiliates (as, for example, is currently the case with DSM initiatives).

- (d) It shall not be considered to be improper for any party using the Bill Insert service to reference Enbridge in the Bill Insert for appropriate commercial purposes, such as making an offer that a customer can place the charges related to the service being offered on their Enbridge Bill.

These restrictions apply only to this Proposal, and in no way shape or form create any precedent to rely upon in respect of Bill Inserts after December 31, 2012.

- (v) As is currently the case, Enbridge will offer Bill Insert services during each month of the year when the Enbridge billing envelope does not contain safety and rate information inserts. Currently, this means that Bill Insert services will be available seven months each year. As described in the TMG report, a maximum of seven Bill Insert slots will be available in each such month.
- (vi) The Bill Insert slots will be available for system-wide Bill Inserts, or for Bill Inserts targeted at particular FSAs. In the case of Bill Inserts that are intended to target a Biller's own customers (for example, water heater rate notices), the Bill Inserts can be sent to those customers only.
- (vii) Enbridge will propose the Bill Insert pricing in response to market demand, and it will be up to Bill Insert clients to decide whether to use the service at the proposed price. All Bill Insert prices will be on a per-insert basis, and there will be no volume discounts, minimums, or fixed charges. During any given reservation period, Enbridge will offer the same pricing to all Bill Insert clients who reserve Bill Insert spots for a particular month. Thus, while there is no set or capped price, Bill Insert clients will be protected by the fact that all will have equal opportunity to obtain Bill Insert prices at the same price as of the same time. All parties agree with this approach.
- (viii) Enbridge will use an iterative process, described below, to make Bill Insert spots available to interested clients.
- (a) Enbridge will use a dedicated electronic system to ensure that all Bill Insert spots will be available on a first come first serve basis, at a firm price which would be set by Enbridge for the different months of the year.
- (b) Enbridge will establish a list of all persons who indicate any interest in Enbridge's Bill Insert service, and will notify all persons on that list by email that Enbridge will be offering Bill Insert spots for particular months, and will specify the price(s) for the spots. Anyone who asks to be put on this list of interested persons will be put on, and kept on, that list and will be given the same notifications as all other persons on that list.

- (c) As a first step, Enbridge intends to offer Bill Insert spots for available months for a one year (or other shorter) period to interested persons. Enbridge will set the price for each such month (the prices for different months may be different).⁶
- (d) Notification will be sent by email to all persons on the list of interested persons at least one week in advance of the “open season period” during which the Bill Insert spots are to be made available. The “open season period” will be at least 5 business days long.
- (e) Once the “open season period” commences, any interested person may send a request by email, indicating that the person wishes to reserve one or more Bill Insert spots. Bill Insert spots will be awarded on a first come, first served basis, using the time that the email requests are received.
- (f) After the end of the first “open season period”, if Bill Insert spots are still available, Enbridge will follow a similar process, giving reasonable notice to all persons on the interested persons list, but using a different set price and potentially a shorter “open season period” (not to be less than 3 business days), to offer available Bill Insert spots for particular months or seasons/groups of months.
- (g) Following the second “open season period”, if additional Bill Insert spots are still available for a given month, Enbridge will move proactively to contact and sell any remaining spots (either on a month by month, or seasonal basis) to energy product and service providers through emails and direct telephone contacts. At the same time, before contacting other potentially interested persons, Enbridge will give reasonable notice to all persons on the interested persons list that there are remaining available Bill Insert spots for a particular month, and will indicate the proposed price for each such spot. Enbridge will indicate that any interested party may contact Enbridge to reserve a spot or spots at the proposed price, or may make an offer for less than the proposed price. At any given time during this stage of the process, Enbridge will offer the same pricing to all Bill Insert clients who reserve Bill Insert spots for a particular month (although the pricing may evolve over time). This means that if Enbridge accepts an offer for a Bill Insert spot for a particular month at a price that is less than Enbridge had proposed, then that lower price will also be available to all other persons for any other remaining spots for that month. The timing for this stage of the process will depend on the number of spots available, and on how much time remains in advance of the months in which the spots are available.

⁶ For Bill Insert spots for 2010, Enbridge intends to initiate the “open season” process in January 2010.

- (h) In all cases, Bill Insert spots must be sold no later than six weeks before the month in which they are to be included in an Enbridge bill.⁷
 - (ix) No Bill Insert client will be permitted to purchase more than 50% of the available Bill Insert spots in any available month. Assuming 7 available spots per month, this means that no Bill Insert client will be permitted to purchase more than 3 spots in any one month.
 - (x) At or about the time that a Bill Insert client reserves one or more Bill Insert spots, the client will be required to pay for the Bill Insert spot(s) in full. The payment will be non-refundable, and the spot(s) will be non-transferable. This is intended to prevent clients from reserving spots that they have no intention of using at a given price, in order to prevent others from using the spot.
- (c) Revenue sharing from Open Bill activities will be calculated using the following approach:
- (i) Subject to the particular terms of the proposal, ratepayers will continue to receive a benefit of \$5.389M per year, embedded in rates, attributable to Enbridge's Open Bill services (defined herein to include both Bill Inserts and Billing Services).
 - (ii) Enbridge will be entitled to retain any net revenues received from Open Bill services in excess of \$5.389M per year, to a maximum of \$2.0M per year. Any net revenues received from Open Bill services in excess of \$7.389M per year will be shared 50/50 with ratepayers. If net revenues for Open Bill services in any year are more than \$500,000 below the ratepayer benefit of \$5.389M, then Enbridge will be entitled to recover the difference between actual net revenues and \$4.889M.
 - (iii) Net revenues for Open Bill services will be determined by summing the annual revenues (including bad debt charges) received from both Bill Inserts and Billing Services, and then subtracting the costs for those services (including the bad debt charges).
 - (iv) The costs of the services will be calculated in accordance with TMG's Open Bill Costing and Pricing Model Study, with some minor modifications to remove internal overhead costs related to Billing Services already being notionally recovered in rates. For the purposes of determining net revenues for Billing Services, Enbridge will use a cost of \$.5112 per shared bill and \$1.3454 per standalone bill. These costs will remain constant for the term of this Agreement, unless postage costs change, in which case the cost for standalone bills will be adjusted to account for the change in

⁷ The process that is followed to allow third party participants to use the Bill Insert service is set out at Ex. B-1-2, para. 43.

postage costs. For the purposes of determining net revenues for Bill Inserts, Enbridge will include the incremental postage costs associated with the Bill Inserts (estimated at \$151,232 per month where the inclusion of Bill Inserts causes the weight of the bill envelope to exceed 30 grams) as well as the incremental staffing costs incurred for marketing and communications (estimated at \$20,121 per applicable month⁸) and any cost associated with the dedicated electronic system used to solicit and receive offers for Bill Insert spots.

- (v) For the F2009 year only, net revenues (to be treated in accordance with subparagraph (ii) above) will be calculated two ways. Net revenues for the period from January 1, 2009 to the “go-live” date for the nCIS will be calculated in accordance with the provisions of the “open bill access” Settlement Proposals in the EB-2006-0034 proceeding (attached at Appendix 1). Net revenues for the balance of the year will be calculated in accordance with subparagraphs (iii) and (iv) above. During the remaining term of this Settlement Proposal, net revenues will be calculated in accordance with subparagraphs (iii) and (iv) above.
- (vi) Amounts related to Open Bill services will be outside the ambit of the Earnings Sharing Mechanism set out in Enbridge’s IRM Settlement Agreement, in the same manner as those items listed at page 27 of the IRM Settlement Agreement (such as DSM accounts, TS accounts and tax changes).
- (vii) As part of this new approach to revenue sharing for Open Bill services, all parties agree that the existing and forecast balances in the Open Bill deferral and variance accounts shall be borne equally by ratepayers and the Company over the years from 2010 to 2012. The allocation of Open Bill deferral and variance accounts (as well as the ratepayer benefit) is based on customer numbers. Specifically, as described at paragraph 44 of Exhibit B, Tab 1, Schedule 6, the balance of \$309,370 (plus accrued interest) in the 2008 Open Bill Service Deferral Account and the balance of \$476,667 (plus accrued interest) in the 2008 Open Bill Access Variance Account will be shared equally by Enbridge and ratepayers. Enbridge will be responsible for one half of the balance in these accounts (with any accrued interest), to be paid in equal amounts in 2010, 2011 and 2012. Similarly, one half of the balance in the accounts (with any accrued interest) will be cleared in equal amounts in 2010, 2011 and 2012, along with the clearance of other deferral and variance accounts.
- (viii) The balance that will be tracked in the 2009 Open Bill Service Deferral Account (which will relate to TMG consulting charges, OBA stakeholder group invoices and startup legal charges) will be split between ratepayers and Enbridge, with one half to be cleared along with other 2009 deferral

⁸ This is discussed at section 6.2.2.1 of the TMG Report.

and variance accounts in 2010, and with Enbridge being responsible for payment of the other half.

- (ix) A new Open Bill Revenue Variance Account will be created for the years 2009 to 2012, to track net revenues for Open Bill services. In accordance with the terms set out herein, this new variance account will allow for net annual revenues in excess of \$7.389M to be shared 50/50 with ratepayers, and will allow for a credit to Enbridge in the event that net annual revenues are less than \$4.889M (the credit will be equal to the shortfall between actual net annual revenues and \$4.889M).
- (x) Enbridge will track revenues from its ex-franchise third party billing services⁹ separately from Open Bill services, and will share net revenues from its ex-franchise third party billing services 50/50 with ratepayers. The costs to be used to determine net revenues from Enbridge's ex-franchise third party billing services will be the total amount of incremental costs associated with such services. A new Ex-Franchise Third Party Billing Services Deferral Account will be created for the years from 2009 to 2012 to track net revenues from ex-franchise third party billing services, and allow for the net revenues to be shared 50/50 with ratepayers. Amounts related to its ex-franchise third party billing services will be outside the ambit of the Earnings Sharing Mechanism set out in Enbridge's IRM Settlement Agreement.
- (d) These terms will govern Enbridge's Open Bill services, as well as Enbridge's ex-franchise third party billing services, from the date that this proposal is approved by the Board until December 31, 2012 (which is the end of the current IRM term, assuming it is not extended). None of the provisions of this proposal are intended to limit or set the terms of Enbridge's Open Bill services, as well as Enbridge's ex-franchise third party billing services, or the treatment of net revenues from those services, following that time. In the event that the IRM term is extended, then Enbridge or other parties may seek to extend the end date for this proposal, under the same or modified terms.

⁹ Ex-franchise billing service is a billing-only service for services provided by third parties outside of Enbridge's service area. The service is limited to calculating biller charges, printing, inserting, mailing and payment processing. The bills are branded in the name of the billing client, with no reference to Enbridge or Enbridge printed on the bills. Enbridge takes no role in the collection of amounts invoiced and there is no collection guarantee. Enbridge's proposed ex-franchise billing service is described at Appendix K to the Application.

APPENDIX 1

to

SETTLEMENT PROPOSAL
OPEN BILL ACCESS

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SUPPLEMENTARY SETTLEMENT PROPOSAL : ISSUE 7.5

The issues related to Issue 7.5 (“Is the Applicant’s proposal of open bill access appropriate and consistent with the Board’s direction in RP-2005-0001?”) have been the subject of the ongoing Open Bill Consultative. Parties have been able to come to an agreement to settle aspects of this issue.

This incomplete settlement, if approved by the Board, will be added to the Settlement Proposal (Ex. N1-1-1) approved by the Board on January 29, 2007 (the “January 29th Settlement Proposal”) and the provisions of this incomplete settlement will supersede the reference at page 43 of 47 of the January 29th Settlement Proposal which states that there is no settlement of Issue 7.5.

Parties agree that the provisions of the Introduction and Overview sections of the January 29th Settlement Proposal apply to this Supplementary Settlement Proposal, except for (i) the chart of settled issues, which does not reflect this incomplete settlement of Issue 7.5; and (ii) any references to revenue deficiency and rate impact of the settlement, which would have to be changed to reflect the incremental financial impact of this Supplementary Settlement Proposal.

With that preamble, the following section represents the incomplete settlement that has been agreed upon.

7.5 Is the Applicant’s proposal of open bill access appropriate and consistent with the Board’s direction in RP-2005-0001?

(Incomplete Settlement)

There is an agreement to settle aspects of this issue, as follows:

The parties agree to settle the third party billing component (“Billing Services”) of Issue 7.5 Open Bill Access on the basis that the Company can proceed with the Billing Services on the following terms:

1. **Compliance with Board Directive.** All parties accept the Company’s decision to respond to the Board’s directive in EB-2005-0001 in two stages: an interim solution, using the Company’s existing CIS, and a comprehensive solution, using the Company’s planned new CIS. This settlement constitutes the interim solution until otherwise ordered by the Board in the Board review referred to in #2 below. Subject to the

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- presentation to the Board of the comprehensive solution, discussed in #2 below, all parties agree that this settlement constitutes an appropriate response to the Board's directive.
2. **Comprehensive Solution.** The Company agrees that it will file an application to the Board prior to the end of 2008 proposing the comprehensive Billing Services offering. Such application should include: a) a detailed report on the experience with the interim solution, b) any available consultants' reports with respect to costing and/or market pricing, c) the results of any customer communications activities and any customer or industry surveys, d) minutes and/or reports of the activities of the stakeholder committee referred to in #8 below, and e) the Company's proposal on whether the Billing Services should continue, and if so on what terms. Without limiting the generality of the foregoing, the Company's proposal may include changes to pricing, costing, shareholder incentive, and any other aspects of the Billing Services. In the event that in the Company's application the Company or any party proposes that the Billing Services should not continue, that party must also propose a reasonable transition period to reflect the time required for anyone using the Billing Services to shift to alternate billing arrangements. Nothing in this settlement implies that any party admits to either the relevance or the appropriate weight to be given to any particular evidence in this subsequent application, and all parties will be free to argue as they see fit with respect to any proposed evidence.
 3. **Pricing.** During the interim period, but at least until December 31, 2008 parties accept the prices proposed by the Company, \$0.829 for shared bills and \$1.389 for standalone bills. All participants using the Billing Services will pay the same prices for the same services. The parties agree that prices for the Billing Services and any changes from time to time to the rules relating to the OBSDA referred to in #4 below must be approved by the Board.
 4. **Startup Costs.** The shareholder will bear the startup and bill re-design costs associated with the Billing Services but will be allowed to recover 4 cents/bill from the Open Bill Service Deferral Account (OBSDA) over a two year period until the costs are recovered. The shareholder will not bear the costs associated with adding the Billing Services to the new CIS. The latter costs will be included in the costs of the Billing Services and recovered in revenues from the service.

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5. **Ratepayer Benefit.** Subject to the shareholder incentive, set forth below, all net benefits, whether through mitigation of common costs, or net profits from the OBA services, will accrue to the benefit of the ratepayers. The Company agrees to include in its 2007 revenue requirement a net benefit of the service of \$5.35 million. This number is derived from calculations found in JT.5, as updated to reflect this settlement. To be sure, all parties also agree If the net benefit of the service is greater or less than the amount included in rates, the difference will be credited or debited, as the case may be, to a new variance account, the Open Bill Access Variance Account (OBAVA) and refunded or charged to ratepayers in the following year. The net benefit shall be calculated as the total revenues from Billing Services, less
- a. the incremental costs to deliver those services;
 - b. the amount referred to in #4 above; and,
 - c. the shareholder incentive referred to in #6 below.
6. **Shareholder Incentive.** The Company will receive no incentive for Billing Services provided to any affiliate of the Company. For the Billing Services by any other person, the Company will be paid a commission as follows subject to an annual maximum calculated as 50% of the program's net margin:
- a. With respect to any bill on which Direct Energy (which for all purposes of these terms should be interpreted as including any successor to Direct Energy's water heater business) is the sole third party billing entity, \$0.02 per bill;
 - b. With respect to any bill on which there is any third party billing entity charge other than Direct Energy on the bill:
 - i. \$0.10 per bill in any month that the Billing Services service has only one active billing entity other than affiliates or Direct Energy;
 - ii. \$0.15 per bill in any month that the Billing Services service has two active billing entities other than affiliates or Direct Energy;
 - iii. \$0.20 per bill in any month that the Billing Services service has three active billing entities other than affiliates or Direct Energy;
 - iv. \$0.25 per bill in any month that the Billing Services service has more than three active billing entities other than affiliates or Direct Energy;

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An entity will only be considered an “active billing entity” in any month in which it is billing products or services on at least 500 EGD bills.

7. **Costing and Pricing Studies:** The Company agrees that it will retain an independent consultant or consultants to undertake costing and pricing analyses for the Billing Services. The consultant’s work will include assistance in determining a market price, and a review and analysis of the incremental and fully-allocated costs of these services. The Company will solicit the stakeholder group’s input on the independent consultant(s), and statement of work for those consultant(s), but the Company will retain the right to make the final selection and define the terms of the reference. The cost of these studies will be included in the OBSDA.
8. **Stakeholder Input.** The Company will establish a stakeholder committee that includes users of the Billing Services, as well as ratepayer and industry representatives, to review the rules associated with participation in Billing Services. All parties to the agreement will be invited to become members of the stakeholder committee. The committee will meet from time to time as required to consider changes to the rules. Any changes to the rules that materially change the nature of the service will be reviewed by the stakeholder committee and reported to the Board to determine if their approval is required. The stakeholder committee will also be solicited for input into the Company’s proposed communications plan, and other issues as they arise.
9. **Affiliate Participation.** Affiliates of the Company (including for the purpose of this settlement related parties such as limited partnerships or trusts that are not technically affiliates) may use the Billing Services on the same terms as any other third party biller. However, all parties agree with the principle that the Billing Services should be implemented in a manner that avoids ratepayer and/or consumer confusion, and, to the extent possible, prevents any participant from gaining any unfair market advantage by reason of their association with the utility, if any. The Company agrees that during the interim period it will implement such measures as may be necessary to achieve this principle, including but not limited to including in the Billing Services and enforcing in a commercially reasonable manner the following service rules:
 - (a) No person, whether affiliate or otherwise, may use or associate itself with any name or logo on the bill that is the same as,

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similar to, or confusing with any name or logo that is associated with the Company (e.g. the “Enbridge” name and swirl logo).

- (b) No person may use the Billing Services in an abusive or unfair manner in that it deliberately creates the impression that it has a preferred position relative to other market participants because of its relationship with the utility.

Notwithstanding, these restrictions in no way shape or form creates any future precedent to rely upon regarding the use of the Enbridge name or logo.

The parties acknowledge their mutual intention to bring issues with respect to affiliate participation to the stakeholder committee for resolution, but this statement will not limit any rights any party may have, whether under the Affiliate Relationships Code or otherwise, to have disputes resolved in any forum.

10. **EnergyLink™ Relevance.** If the Board in this proceeding approves the EnergyLink™ program proposed by the Company, the parties agree that whether a company is an EnergyLink™ participant or not will not affect whether that company can use the Billing Services, nor the rules or conditions under which they use the service.
11. **Information.** The Company will develop with input from the stakeholder committee an appropriate customer communication plan specific to Billing Services. The Company shall provide to the Board and make available to all parties to this settlement agreement a report that includes revenues from Billing Services, and the costs of the services on a fully-allocated basis, an incremental basis and in a manner when known that is consistent with the methodology recommended in the study noted in paragraph 7, to the extent that this is different .

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12. Logos and Bill Messaging. Logos and bill messaging will be provided to all participants in the Billing Services at no charge to facilitate entry of new users and help consumers differentiate the various parties with amounts billed on the EGD bill. Any provision of logos and bill messaging for the Billing Services will apply in the same manner to commodity vendors using the ABC Services for a reasonable charge, but commodity messaging will not be allowed unless EGD or one of its affiliates starts to market system gas.

Participating Parties: All parties participated in the negotiation and settlement of this issue except Energy Probe, IGUA, OAPPA, Superior, TransAlta, TransCanada and Union Gas,

Approval: All participating parties accept and agree with the proposed settlement of this issue except that GEC and Pollution Probe reserve the right to pursue in the Hearing whether the Board should order that third parties not be allowed to use the Billing Services for the billing of specific products on the basis of their environmental attributes.

Evidence: The evidence in relation to this issue includes the following:

D1-11-1	Open Bill Access
D1-11-2	Statement of Principles, Objectives and Operating Arrangements for the Consultation Process for Enbridge Gas Distribution's Open Bill Access Proposal
D1-11-3	Open Bill Access Consultative Process
D1-11-4	Meeting Minutes
D1-11-5	Third Party Access Report
D1-11-6	Open Bill Access Update
D1-11-7	Summary Notes from Consultative Meeting on Wednesday July 26, 2006
D1-11-8	Open Bull Access Update – July 26 th , 2006
D1-11-9	Summary Notes from Consultative Meeting on Tuesday November 14 th , 2006
D1-11-10	Presentation – Consultative Meeting on Tuesday November 14 th , 2006
D1-11-11	Open Bill Access Standard Bill Service Consultative November 14 th , 2006
D1-11-12	Bill Insert Agreement
D1-11-13	Open Bill Standard Bill Service Description – Meeting November 14 th , 2006 – Additional Request for Information
D1-11-14	Bill Inserts
D1-11-15	Bill Insert Agreement Draft
D1-11-16	Initial Draft for Discussion Binding request for Bids – Third Party Bill Inserts for 2007
D1-11-17	Presentation – Consultative Meeting on November 23 rd , 2006
D1-11-18	Open Bill Access – Summary Notes from Consultative Meeting on November 23 rd , 2006

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D1-11-19	Presentation – November 30 th , 2006
D1-11-20	Criteria for Bill Inserts
D1-11-21	Open Bill Access – Summary Notes from Conference Call between EGD, Intervenor, and Consultants on Friday, December 1 st , 2006
D1-11-22	Shared Bill Benefit Calculation
D1-11-23	Presentation – December 5 th , 2006 Corrected Forecast
D1-11-24	Bill Inserts
D1-11-25	Bill Inserts
D1-11-26	Bill Inserts
D1-11-27	Request for Binding Bids – 2007 Third Party Bill Insert Service
D1-11-28	Binding Service Request and Bid Form – 2007 Third Party Bill Insert Service
D1-11-29	Third Party Access to the Bill Customer Communication Plan
D1-11-30	Billing Insert Customer Communication Plan
I-1-74 to 77	Board Staff Interrogatories 74 to 77
I-2-52	CCC Interrogatory 52
I-4-1 to 12	Direct Energy Interrogatories 1 to 12
I-16-60 to 61	SEC Interrogatories 60 to 61
I-18-1 to 5	Superior Interrogatories 1 to 5
I-22-1 to 5	Union Energy Interrogatories 1 to 5
I-24-74 to 75	VECC Interrogatories 74 to 75
I-26-12 to 20	HVAC Interrogatories 12 to 20
L-4-1	Evidence of Direct Energy
L-22-1	Evidence of Union Energy
L-26-1	Evidence of HVAC
I-27-1 to 35	Enbridge Gas Distribution Interrogatories of Union Energy 1 to 35
I-29-1 to 5	Enbridge Gas Distribution Interrogatories of Direct Energy 1 to 5
I-30-22 to 24	Enbridge Gas Distribution Interrogatories of HVAC 22 to 24
I-32-1 to 5	HVAC Interrogatories of Direct Energy 1 to 5
I-33-1 to 12	Superior Energy Management Interrogatories 1 to 12
I-34-1 to 21	Union Energy Interrogatories of Direct Energy 1 to 21
I-35-1 to 11	Direct Energy Interrogatories of Union Energy 1 to 11
I-36-1 to 16	Direct Energy Interrogatories of HVAC 1 to 16
JT1-JT22	Transcript of January 10, 2007 Technical Conference
	Undertakings from January 10, 2007 Technical Conference

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SUPPLEMENTARY SETTLEMENT PROPOSAL : ISSUE 7.5

The issues related to Issue 7.5 (“Is the Applicant’s proposal of open bill access appropriate and consistent with the Board’s direction in RP-2005-0001?”) have been the subject of the ongoing Open Bill Consultative. Parties have been able to come to an agreement to settle aspects of this issue.

This incomplete settlement, if approved by the Board, will be added to the Settlement Proposal (Ex. N1-1-1) approved by the Board on January 29, 2007 (the “January 29th Settlement Proposal”) and the provisions of this incomplete settlement will supersede the reference at page 43 of 47 of the January 29th Settlement Proposal which states that there is no settlement of Issue 7.5.

Parties agree that the provisions of the Introduction and Overview sections of the January 29th Settlement Proposal apply to this Supplementary Settlement Proposal, except for (i) the chart of settled issues, which does not reflect this incomplete settlement of Issue 7.5; and (ii) any references to revenue deficiency and rate impact of the settlement, which would have to be changed to reflect the incremental financial impact of this Supplementary Settlement Proposal.

With that preamble, the following section represents the incomplete settlement that has been agreed upon.

7.5 Is the Applicant’s proposal of open bill access appropriate and consistent with the Board’s direction in RP-2005-0001?

(Incomplete Settlement)

There is an agreement of some parties to settle aspects of this issue, as follows:

Proposed Billing Insert Settlement

The parties agree to settle the billing insert (“Insert Service”) component of Issue 7.5 Open Bill Access on the basis that the Company can proceed with the Insert Service on the following terms:

- 1. Compliance with Board Directive.** All parties accept the Company’s decision to respond to the Board’s directive in EB-2005-0001 in two stages: an interim solution, using the Company’s existing CIS, and a comprehensive solution, using the Company’s planned new CIS. This settlement constitutes

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the interim solution until otherwise ordered by the Board in the Board review referred to in #2 below. Subject to the presentation to the Board of the comprehensive solution, discussed in #2 below, all parties agree that this settlement constitutes an appropriate response to the Board's directive as it pertains to bill inserts.

2. **Comprehensive Solution.** The Company agrees that it will file an application to the Board prior to the end of 2008 proposing the comprehensive Billing Insert Service offering. Such application should include: a) a detailed report on the experience with the interim solution, b) any available consultants' reports with respect to costing and/or market pricing, c) the results of any customer communications activities and any customer or industry surveys, d) minutes and/or reports of the activities of the stakeholder committee referred to in #8 below, and e) the Company's proposal on whether the Insert Service should continue, and if so on what terms. Without limiting the generality of the foregoing, the Company's proposal may include changes to pricing, costing, shareholder incentive, and any other aspects of the Insert Service. Nothing in this settlement implies that any party admits to either the relevance or the appropriate weight to be given to any particular evidence in this subsequent application, and all parties will be free to argue as they see fit with respect to any proposed evidence.
3. **Pricing.** For the interim period of 2007 and 2008, the Company agrees to reduce the minimum bids for bill inserts by one cent resulting in an average insert charge of 4 cents. For greater clarity, there shall be no right of first refusal for parties using the Company's Insert Service. The parties agree that prices for the Insert Service, and any changes thereto from time to time, must be approved by the Board.
4. **Costing and Pricing.** The Company agrees that it will retain an independent consultant to undertake a costing and pricing analysis for the Bill Insert Service for the comprehensive period. The consultant's work will include assistance in determining a market price, and a review and analysis of the incremental and fully-allocated costs of these services for the new CIS. The Company will solicit the stakeholder group's input on the independent consultant, and statement of work for that consultant, but the Company will retain the right to make the final selection and define the terms of the reference. The cost of this study will be included in the Open Bill Service Deferral Account (OBSDA).
5. **Startup Costs.** The shareholder will record the startup costs associated with the Insert Service in 2007 in the OBSDA. The startup costs associated with

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adding the Insert Service to the new CIS will be included in the costs of the Insert Service and recovered in revenues from the service.

6. **Ratepayer Benefit.** The Company agrees to record the costs and revenues from the Insert Service in 2007 in the OBSDA and that the net proceeds will be shared 50/50. The parties agree that the shareholder incentive mechanism for Insert Service may need to be revised after the interim period and after the cost/price review to be consistent with the Board's rules for natural gas incentive regulation.
7. **Inserts.** Bill inserts would be allowed as proposed by EGD but revised to limit the number of external inserts to five (5) when safety inserts are scheduled. In all months, two inserts would be reserved for parties wishing to purchase bill inserts in a limited geographic area based on price per insert bidding.
8. **Stakeholder Input.** The Company will establish a stakeholder committee that includes users of the Insert Service, as well as ratepayer and industry representatives, to review the rules associated with participation in the Insert Services. All parties to the agreement will be invited to become members of the stakeholder committee. The committee will meet from time to time as required to consider changes to the rules. Any changes to the rules that materially change the nature of the service will be reviewed by the stakeholder committee and reported to the Board to determine if their approval is required. The stakeholder committee will also be solicited for input into the Company's proposed communications plans, and other issues as they arise. To ensure that consumer interests are being addressed, EGD will conduct focus groups and customer surveys on inserts as soon as possible in 2007 and report the findings to the stakeholder committee to determine if remedial action is required. EGD will also prescreen insert users and review the content of their bill inserts to ensure proper use of its billing envelope.
9. **Problem Resolution.** If the revised bidding and allocation processes restrict access in three consecutive months or the number of customer complaints on inserts increases significantly in the first two months of operation, the stakeholder committee would be convened to address the concern(s), and if the problem cannot be resolved within two (2) additional months that aspect of the Insert Service would be discontinued until the problem is addressed.
10. **Affiliate Participation.** Affiliates of the Company (including for the purpose of this settlement related parties such as limited partnerships or trusts that are

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not technically affiliates) may use the Insert Service on the same terms as any other third party biller. However, all parties agree with the principle that the Insert Service should be implemented in a manner that avoids ratepayer and/or consumer confusion, and, to the extent possible, prevents any participant from gaining any unfair market advantage by reason of their association with the utility, if any. The Company agrees that during the interim period it will implement such measures as may be necessary to achieve this principle, including but not limited to including in the Insert Services and enforcing in a commercially reasonable manner the following service rules::

- (a) No person, whether affiliate or otherwise, may use or associate itself with any name or logo in the billing envelope that is the same as, similar to, or confusing with any name or logo that is associated with the Company (e.g. the “Enbridge” name and swirl logo).
- (b) No person may use the Insert Service in an abusive or unfair manner in that it deliberately creates the impression that it has a preferred position relative to other market participants because of its relationship with the utility.

Notwithstanding, these restrictions in no way shape or form creates any future precedent to rely upon regarding the use of the Enbridge name or logo.

The parties acknowledge their mutual intention to bring issues with respect to affiliate participation to the stakeholder committee for resolution, but this statement will not limit any rights any party may have, whether under the Affiliate Relationships Code or otherwise, to have disputes resolved in any forum.

11. **EnergyLinkTM Relevance.** If the Board in this proceeding approves the EnergyLinkTM program proposed by the Company, the parties agree that whether a company is an EnergyLinkTM participant or not will not affect whether that company can use the Insert Service, nor the rules or conditions under which they use the service, subject to the restriction on use of the Enbridge name and logo as described in Item 10 above.

12. This agreement should not be construed as a settlement of any aspect of issue 3.4, including but not limited to, arguments to restrict the Company’s ability to promote EnergyLinkTM by bill insert or otherwise. Notwithstanding, the Company agrees to provide a schedule of EnergyLinkTM inserts on an annual basis, as part of the Binding Request for Bids process.

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13. **Commodity Marketing.** Commodity bill inserts and marketing will not be allowed in the billing envelope unless EGD or one of its affiliates receives OEB approval to promote and/or market system gas commodity, in which case retailers, marketers and vendors will be allowed to promote and/or market their commodity offers through the Insert Service.

Participating Parties: All parties participated in the negotiation and settlement of this issue except Energy Probe, IGUA, OAPPA, TransAlta, TransCanada and Union Gas,

Approval: Enbridge Gas Distribution, Direct Energy, OESLP and Union Energy accept and agree with this proposed settlement. HVAC, VECC and Schools do not agree with the proposed settlement. CCC opposes the proposed settlement in order that it may be permitted to pursue cross-examination on the issue. GEC and Pollution Probe reserve the right to pursue in the Hearing whether the Board should order that third parties not be allowed to use the Billing Services for the billing of specific products on the basis of their environmental attributes. Superior opposes the proposed settlement on the principle that it is not supportive of a settlement position that would allow for the Company to promote system gas through billing inserts as contemplated in Paragraph 13.

Evidence: The evidence in relation to this issue includes the following:

D1-11-1	Open Bill Access
D1-11-2	Statement of Principles, Objectives and Operating Arrangements for the Consultation Process for Enbridge Gas Distribution's Open Bill Access Proposal
D1-11-3	Open Bill Access Consultative Process
D1-11-4	Meeting Minutes
D1-11-5	Third Party Access Report
D1-11-6	Open Bill Access Update
D1-11-7	Summary Notes from Consultative Meeting on Wednesday July 26, 2006
D1-11-8	Open Bill Access Update – July 26 th , 2006
D1-11-9	Summary Notes from Consultative Meeting on Tuesday November 14 th , 2006
D1-11-10	Presentation – Consultative Meeting on Tuesday November 14 th , 2006
D1-11-11	Open Bill Access Standard Bill Service Consultative November 14 th , 2006
D1-11-12	Bill Insert Agreement
D1-11-13	Open Bill Standard Bill Service Description – Meeting November 14 th , 2006 – Additional Request for Information
D1-11-14	Bill Inserts
D1-11-15	Bill Insert Agreement Draft
D1-11-16	Initial Draft for Discussion Binding request for Bids – Third Party Bill Inserts for 2007

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D1-11-17	Presentation – Consultative Meeting on November 23 rd , 2006
D1-11-18	Open Bill Access – Summary Notes from Consultative Meeting on November 23 rd , 2006
D1-11-19	Presentation – November 30 th , 2006
D1-11-20	Criteria for Bill Inserts
D1-11-21	Open Bill Access – Summary Notes from Conference Call between EGD, Intervenors, and Consultants on Friday, December 1 st , 2006
D1-11-22	Shared Bill Benefit Calculation
D1-11-23	Presentation – December 5 th , 2006 Corrected Forecast
D1-11-24	Bill Inserts
D1-11-25	Bill Inserts
D1-11-26	Bill Inserts
D1-11-27	Request for Binding Bids – 2007 Third Party Bill Insert Service
D1-11-28	Binding Service Request and Bid Form – 2007 Third Party Bill Insert Service
D1-11-29	Third Party Access to the Bill Customer Communication Plan
D1-11-30	Billing Insert Customer Communication Plan
I-1-74 to 77	Board Staff Interrogatories 74 to 77
I-2-52	CCC Interrogatory 52
I-4-1 to 12	Direct Energy Interrogatories 1 to 12
I-16-60 to 61	SEC Interrogatories 60 to 61
I-18-1 to 5	Superior Interrogatories 1 to 5
I-22-1 to 5	Union Energy Interrogatories 1 to 5
I-24-74 to 75	VECC Interrogatories 74 to 75
I-26-12 to 20	HVAC Interrogatories 12 to 20
L-4-1	Evidence of Direct Energy
L-22-1	Evidence of Union Energy
L-26-1	Evidence of HVAC
I-27-1 to 35	Enbridge Gas Distribution Interrogatories of Union Energy 1 to 35
I-29-1 to 5	Enbridge Gas Distribution Interrogatories of Direct Energy 1 to 5
I-30-22 to 24	Enbridge Gas Distribution Interrogatories of HVAC 22 to 24
I-32-1 to 5	HVAC Interrogatories of Direct Energy 1 to 5
I-33-1 to 12	Superior Energy Management Interrogatories 1 to 12
I-34-1 to 21	Union Energy Interrogatories of Direct Energy 1 to 21
I-35-1 to 11	Direct Energy Interrogatories of Union Energy 1 to 11
I-36-1 to 16	Direct Energy Interrogatories of HVAC 1 to 16
JT1-JT22	Transcript of January 10, 2007 Technical Conference Undertakings from January 10, 2007 Technical Conference

APPENDIX 2

to

SETTLEMENT PROPOSAL
OPEN BILL ACCESS

October 13, 2009

ENBRIDGE GAS DISTRIBUTION INC.

- and -

[OPEN BILL PARTICIPANT]

OPEN BILL ACCESS
BILLING AND COLLECTION SERVICES AGREEMENT

**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 (21st) 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 (5th) 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 (6th) 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 (3rd) 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 (6th) 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 Owing Party, including all discoveries, concepts and ideas derived from the Confidential Information, are the exclusive property of the Owing Party.

10.1.3 Use - The disclosure of Confidential Information by the Owing 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 Owing 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 Owing 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.

Billing and Collection Services Agreement

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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
<p>Account Set Up & Management</p>	<p>Billers 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>
<p>Call Centre</p>	<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>
Billing Hotline	<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>
Billing	<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
	<p>Billers shall be entitled to have aggregated statements (i.e. information relating to multiple accounts) to be presented on one or more Service Bill(s) rendered and issued each month.</p>
Bill Presentment	<p>Billers 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>
Bill Print & Mailing	<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>
Rental Equipment	<p>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.</p>
Finance	<p>Company will purchase the Distribution Entitlements from Biller on the applicable Payment Date.</p>
Settlement	<p>Company will pay the Settlement Amount to Biller in accordance with the Agreement.</p>

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>I - Bill Delivery for Service Bills</i>	
<i>Objective</i>	To deliver Service Bills in a timely manner to the Biller’s customers.
<i>Definition</i>	<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>
<i>Data Capture</i>	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.
<i>Measurement Interval</i>	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.
<i>Method of Calculation</i>	<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>
<i>Reporting Period</i>	Monthly and annual reporting
<i>Service Level</i>	<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>	
<i>Objective</i>	To make certain that there are no incorrect bill messages included on the Service Bills.
<i>Definition</i>	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.
<i>Data Capture</i>	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.
<i>Measurement Interval</i>	Reviewed daily and measured monthly at the end of each Billing Period.
<i>Method of Calculation</i>	The total number of mailing envelope message infractions divided by the total number of mailing envelopes mailed, times 100%
<i>Reporting Period</i>	Monthly
<i>Service Level</i>	Zero infractions 98% of the time.

<i>3 – Billing Exceptions Processing</i>	
<i>Objective</i>	To make certain that all billing exceptions are completed in a timely manner.
<i>Definition</i>	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.
<i>Data Capture</i>	The Company will track and report all billing exceptions.
<i>Measurement Interval</i>	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.
<i>Method of Calculation</i>	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.
<i>Reporting Period</i>	Monthly.
<i>Service Level</i>	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]

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

• **Billers' 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 Obligor;

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 Obligors 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 Obligors 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 Settlers;

“**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 Settlers 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 (21st) 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 (21st) 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 Settlers, 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:

Proceeds Transfer, Servicing and Trust Agreement

[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.]

SCHEDULE “D”

FORM OF ALLOCATION CERTIFICATE

TO: CIBC Mellon Trust Company

Related Calculation Day:

<u>Billor to which payment to be made (subject to Transfer to EGD pursuant to Section 4.5(b))</u>	<u>Effective Dates of Payment Transactions</u>	<u>Bank Account Number of Biller</u>	<u>Scheduled Payment Amount</u> <u>[insert relevant Payment Date]</u>	<u>Scheduled Payment Amount</u> <u>[insert relevant Payment Date]</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 st 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 st 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 st 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>Biller</u>	<u>Contact Information</u>	<u>Designated Bank Account</u>
Direct Energy Marketing Limited	•	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●.

APPENDIX 3

to

SETTLEMENT PROPOSAL
OPEN BILL ACCESS

ENBRIDGE GAS DISTRIBUTION INC.
500 Consumers Road
Toronto, Ontario
M2J 1P8

Date:

Company's name & address

Attention:

Dear:

Bill Insert Agreement

The purpose of this letter agreement (the "**Agreement**") is to confirm our agreement with respect to the inclusion of a promotional insert ("**Bill Insert**") of _____ ("**_____**") in Enbridge Gas Distribution Inc.'s ("**Enbridge**") _____ 2009 residential Rate Class 1 bills but which scope of Bill Insert delivery only includes delivery to Enbridge service area _____, (the geographic scope of which has been previously provided to _____, but which includes for greater certainty, the Cities of _____) (the in-scope residential Rate Class 1 bills described above collectively referred to as the "**Eligible Enbridge Bills**").

_____ execution and delivery to us of the attached duplicate copy of this Agreement will confirm _____ desire to utilize the Bill Insert service for the month of _____ 2009 as more fully described below (the "**Service**"), and _____ agreement to do so in the manner set out in this Agreement.

The following are the terms and conditions on which the Service will be provided:

- 1. Service.** The Service will consist of the insertion of a single Bill Insert in each of the Eligible Enbridge Bills and the distribution of same to recipients of Eligible Enbridge Bills in the ordinary course of the phased distribution of such Eligible Enbridge Bills using existing Enbridge processes, procedures and timeframes. For greater certainty however the Service will not include insertion of Bill Inserts to those Enbridge customers whom Enbridge has determined do not desire to receive third party bill insert material. The Service is provided on a non-exclusive basis.
- 2. Form and Content of Bill Insert.** _____ will be responsible for delivering to Enbridge for its review in pdf format no later than 3:00 pm on _____, 2009 the proposed form and content and other specifications for the Bill Insert (including but not limited to paper size, stock, and folds) that it proposes for inclusion in Enbridge's _____ bill. Enbridge has the right to accept or reject at its sole discretion the Bill Insert or to require changes or modifications to the form and content and specifications of the

- Bill Insert. _____ acknowledges that the Bill Insert must minimally meet the specifications set out in Schedule A. The final agreed upon form, format and specifications on the Bill Insert must be acknowledged and agreed upon in writing by both parties. In the event Enbridge and _____ are unable to agree upon the form and content and specifications of the Bill Insert, by 3:00 pm on _____, 2009 (the “**Cut-Off Date**”) then this Agreement will automatically terminate as provided for in Section 11 (b).
3. Bill Insert Printing and Delivery. In the event the parties have agreed upon the form and content of the Bill Insert, _____ shall be responsible for any and all costs and expenses associated with the design, printing and delivery of the Bill Insert (and the formatting of the eBill version of the Bill Insert which must be provided to Enbridge no later than 3:00pm on _____, 2009) in such quantity and to such specifications (including without limitation as to paper stock and size, print font and format and paper folds) and location(s) as Enbridge may specify and within such time period(s) as Enbridge may specify. _____ must arrange for the printed Bill Inserts to be delivered to Enbridge’s customer care provider no later than 9:00am on _____, 2009. _____ acknowledges and agrees that Enbridge shall have no responsibility or liability for the performance or non-performance of any contractor selected by _____ to complete the design, printing and delivery of the Bill Insert.
 4. Service Fee. _____ shall remit to Enbridge a service fee (the “**Service Fee**”) of _____ (\$ _____) plus applicable taxes for the Service. The Service Fee shall be paid within thirty (30) days of the applicable invoice issuance date, which issuance date is currently expected to be no later than _____, 2009.
 5. Compliance with Laws. _____ shall comply with all laws, rules, regulations and policies of all applicable governmental authorities, and obtain any necessary consents of such governmental authorities or of any applicable third parties, in respect of _____’ obligations and conduct pursuant to or in respect of this Agreement, including without limitation the *Competition Act*, the *Consumer Protection Act*, and applicable Canadian advertising standards.
 6. No Rights in Eligible Enbridge Bill. Nothing in this Agreement shall grant _____ any rights in respect of the design, development, promotion or administration of the Eligible Enbridge Bills.
 7. Use of Enbridge Name. _____ shall not use and shall not have the right to use the Enbridge name or any trade-mark, logo or other proprietary intellectual property of Enbridge in any manner, including in any advertising or promotional materials.
 8. Endorsements. _____ will not, directly or indirectly suggest or indicate in any manner that Enbridge endorses or otherwise approves any

_____ product or service. Enbridge does not and shall not be required to endorse any _____ product or service. Enbridge disclaims any warranties or liabilities for _____ products and services. _____ agrees that the Bill Insert will include the following statement or such variation thereof as Enbridge may require (in such location and with such design and font as Enbridge may require at its sole discretion): “_____ is not owned by or affiliated with Enbridge Inc. or Enbridge Gas Distribution Inc.”

9. No Liability of Enbridge. **ENBRIDGE SHALL NOT BE LIABLE TO _____ (OR ANY OF ITS SUCCESSORS OR ASSIGNS) FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF OPPORTUNITIES, LOSS OF DATA, OR LOSS OF USE DAMAGES, EVEN IF ENBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ENBRIDGE’S MAXIMUM LIABILITY FOR DIRECT DAMAGES SHALL BE LIMITED TO THE FEES PAID BY _____ FOR THE SERVICES.**

10. Indemnity. _____ shall indemnify and hold Enbridge, its parent and affiliates and their respective, directors, officers and employees harmless from any and all claims, liability, costs or expenses arising directly or indirectly from the Bill Insert, including but not limited to those relating to: (i) the infringement of any copyright, trademark, industrial design, patent or any other third party intellectual property right; (ii) any misrepresentation or misleading statement contained in the Bill Insert; (iii) any breach of applicable law, including but not limited to the *Competition Act* and the *Consumer Protection Act*; or (iv) claims arising out of the products and services offered or provided by _____ and any warranties related thereto, regardless of _____’ negligence or absence thereof.

ENBRIDGE DISCLAIMS ANY REPRESENTATION, EITHER EXPRESSED OR IMPLIED, OF ANY NATURE OR KIND RELATED IN ANY WAY TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION THAT USE OF THE SERVICES WILL RESULT IN INCREASED SALES FOR _____ OR ANY OTHER PERSON OR ENTITY.

11. Enbridge disclaims any representation, either expressed or implied, of any nature or kind related in any way to the Services, including without limitation any representation that use of the Services will result in increased sales for _____ or any other person or entity.
12. Termination.
- (a) Either party may, at its sole discretion, immediately terminate this Agreement for convenience by delivering to the other party prior to the Cut-Off Date written notice of termination of the Service for the Bill Insert.

- (b) In the event the parties are unable to agree as to the form, content and specifications of either of the Bill Insert, in the manner and within the timeframes contemplated in Section 2 of this Agreement, then this Agreement will automatically terminate as it relates to the Bill Insert.
- (c) Enbridge may, at its sole discretion, immediately terminate this Agreement for convenience as it relates to the Bill Insert after the Cut-Off Date by delivering notice of termination to _____. In such event, if the Bill Insert has already been printed or is in the process of being printed, Enbridge's maximum liability to _____ will be the lesser of: (i) \$_____ and (ii) the actual cost of printing the Bill Insert (the "**Printing Cost**"). In the event _____ has not completed the printing of the Bill Insert at the time of receipt of such written notice of termination, _____ will use reasonable efforts to mitigate the Printing Cost. If such termination by Enbridge occurs after distribution of the Bill Insert has commenced, Enbridge may, at its sole cost and expense take such steps it deems appropriate to halt the further distribution of the Bill Insert. In such event, _____ will only be invoiced on a pro rata basis for that portion of the distribution of the Bill Insert that has occurred, if any, and such pro rata invoiced amount will be deducted from the Printing Cost. Any printed Bill Inserts that are not distributed with Eligible Enbridge Bills, whether as a result of termination or otherwise, shall not be used by _____ for any other purpose other than with the prior written consent of Enbridge, and _____ shall, if directed by Enbridge, promptly destroy all such Bill Inserts.
- (d) Either party may terminate this Agreement in case of a breach by the other party of its obligations hereunder, provided that the breach is not cured within five (5) days of written notification by the non-defaulting party to the defaulting party setting out the particulars of the breach.
- (e) Either party may terminate this Agreement upon written notice to the other party if: (i) the other party is subject to proceedings in bankruptcy or insolvency, whether voluntary or involuntary; (ii) a receiver is appointed in respect of all or a substantial portion of the other party's assets; or (iii) the other party assigns its property to its creditors or generally becomes unable to pay its debts as they become due.
13. **Confidentiality.** _____ agrees to keep all aspects of this Agreement and the terms and circumstances surrounding the Service, including the payment of the Service Fee confidential. By executing this Agreement, _____ acknowledges that _____ and its employees, representatives, contractors may receive or be provided with information in respect of the Services and its particulars (the "**Information**"). _____ agrees to use or disclose the Information only as reasonably required for the purposes of _____, receipt of the Service. _____ agrees not to copy, duplicate,

reproduce or further develop the Information, or to exploit, sell, assign or transfer the Information in any form, in whole or in part, or use or disclose the Information in any manner contrary to the intention and spirit of this Agreement.

14. General Provisions. This Agreement constitutes the entire agreement between Enbridge and _____ pertaining to the Service. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated as an Ontario contract. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns. Sections 8, 9, 10, 11, 12 shall survive any termination of this Agreement. Nothing in this Agreement is intended to create, and this Agreement does not create, a partnership, joint venture, trust or joint enterprise of any kind between Enbridge and _____.

15. Notices. All notices, directions, documents of any nature required or permitted to be given by one part 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 Enbridge, to it at: the address referenced on page 1 of this Agreement, Fax Number: (416) 495-8350, Attention Paul Green with a copy to Fax Number: (416) 495-5994, Attention Corporate Secretary; and
- (b) in the case of _____, to _____ at: the address referenced on page 1 of this Agreement, Fax Number: _____, Attention _____, _____.

A Notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile. If such day is not a normal business day in Toronto 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.

16. Binding Agreement. This Agreement, following _____’ acceptance thereof, shall, and is intended to, constitute a legally binding obligation on the part of each of Enbridge and _____, to implement and provide and receive the Service in the manner and to the extent contemplated in this Agreement.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

If the foregoing is acceptable to _____ and reflects our agreement, please indicate the same by executing and returning the enclosed duplicate copy of this Agreement.

ENBRIDGE GAS DISTRIBUTION INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

We have the authority to bind the Corporation.

The terms and conditions of this Agreement are agreed to and accepted on behalf of _____, this _____ day of _____, 2009.

By: _____

Name:

Title:

I have the authority to bind the Corporation.

SCHEDULE A

Bill Insert Material Specifications

1. **Size:** 1 panel – flat 3-1/4” Wide x 6-1/4” High
2 panels – flat 6-1/2” Wide x 6-1/4” High
2. **Folding:** All items, except for the 1 panel, all fold to a final finished size of 3-1/4” Wide x 6-1/4” High
There should be a **hard closed edge**. No Z-fold
3. **Stock:** 1 panel – 70 lb. Recycled Offset Book
2 panels – 60 lb. Recycled Offset Book
4. **Weight:** Not to exceed 5 grams each
5. **Bindery:** Cut fold and box without the use of any elastics – each layer must be separated with a .025 stiffener and sealed for shipping.
6. **Quantity:** _____ inserts to be printed and delivered
7. No Staples

Bill Insert Specifications (eBill format)

1. eBill insert – 8.5”Wide x 11”High
2. eBill icon – height 95 pixels, width 235 pixels, horizontal and vertical resolution 96 dpi
3. eBill insert and eBill icon to be emailed to warren.fisher@enbridge.com no later than 3:00 p.m. on _____, 2009

Bill Insert Packaging and Shipping Specifications

1. Full quantity of enclosed bill inserts must be clearly identified on the outside of each box
2. Company Name and Bill Insert Name must be clearly identified on the outside of each box

Example: _____ Insert
 Quantity in Box: _____

SCHEDULE A (continued)

3. Packing Slip is to clearly identify all of the above information as well as the total quantity of bill inserts delivered and the total quantity of boxes delivered
4. Shipping Address: Symcor – Mississauga, 1625 Tech Avenue, Mississauga, ON. L4W 5P5, Attention: Terrence Denny, tdenny@symcor.com (289-360-2157)
5. All deliveries to Symcor – Mississauga are by appointment only. Delivery appointment must be arranged 48 hours in advance of delivery with Terrence Denny, tdenny@symcor.com (289-360-2157)
6. Bill inserts to be delivered to Symcor – Mississauga no later than 9:00 a.m. on _____, 2009
7. A shipment of 50 inserts must be sent to: Christine McLean, Marketing Communications, Enbridge Gas Distribution, 500 Consumers Road, North York, ON. M2J 1P8

Bill Insert Copy Statement

Bill insert must include the following statement that shall be no less than 8 point font size and with sufficient white space surrounding the statement, at a location acceptable to Enbridge:

Example:

“These offers and savings are made by _____ alone.
_____ is not owned by or affiliated with Enbridge Inc. or
Enbridge Gas Distribution Inc.”

Open Bill Settlement Proposal : Response to Questions and Comments Received

Thank you to all parties who have provided questions, comments and endorsement of the Settlement Proposal.

We have collected all the questions received and are responding to all of them in this email.

Before addressing the specific questions, though, we would like to provide a bit of context.

The Settlement Proposal that was circulated in late July was the result of a very lengthy consultative process (lasting more than one year). All of Enbridge's stakeholders were invited to participate in that process. Those parties who are most directly impacted by Open Bill matters did participate and contribute to the process.

For example, the main users of Open Bill services (HVAC Coalition, Direct Energy and Reliance) were active participants at every stage of discussions and had substantial input into the commercial terms that will apply to Enbridge's Open Bill service offerings. These parties all endorse the Settlement Proposal – we hope that this provides comfort to other users of Open Bill service offerings.

VECC was also a very active member of the consultative group, ensuring that the revenue sharing with ratepayers is fair and appropriate. Additionally, CCC graciously agreed to participate in final discussions about the revenue sharing component of the agreement, and endorses the Settlement Proposal. Given that VECC and CCC are among the most significant representatives of Enbridge's Rate 1 customers, and given that it is Enbridge's Rate 1 customers who are primarily impacted by the revenue sharing for Open Bill activities, we hope that all parties can be reassured that ratepayer interests are served by the Settlement Proposal.

While we do not mean to suggest that questions asked about the Settlement Proposal are inappropriate or unwarranted, we do think that the context set out above is important to keep in mind when considering the Settlement Proposal.

Set out below are responses to questions received.

1. OEB Staff

Question: Page 7 – Para 2 – OBA in 2013 and beyond

“In any event, if Enbridge wishes to continue to offer Open Bill services after December 31, 2012, it must obtain Board approval to do so.”

The end-date of the contract appears to be out of convenience for the IR term, rather than imposed by Board decision. Perhaps Enbridge would consider wording reflecting that Enbridge will file an application with the Board if it intends to continue provision of the services past December 31, 2012?

Answer: Enbridge is open to including the proposed revised wording, subject to agreement by other members of the Open Bill Consultative. Please note that questions about this provision of the Settlement Proposal are also addressed below.

Question: Page 11 – 2 (b) (viii) (b) – Soliciting of unsold spots at less than proposed price
“Enbridge will move to proactively contact and sell any remaining spots to energy product and service providers through emails and direct telephone contacts...any interested party may contact Enbridge to reserve a spot or spots at the proposed price, or may make an offer for less than the proposed price.”

Has Enbridge considered adding language with respect to ARC to the proposed framework for soliciting on unsold billing spots? Would Enbridge extend this requirement further to related companies not specifically covered as affiliates under ARC? There is mention of affiliates elsewhere in the proposal; it may also provide clarity here.

Answer: Enbridge does not believe that any additional wording is required. As with its other activities, Enbridge Gas Distribution must comply with all relevant provisions of the Affiliates Relationship Code for Gas Utilities in offering Open Bill services. Adding a reference to that obligation as part of the Settlement Proposal is not necessary to make it applicable. Enbridge is not prepared to expand any obligations that it might otherwise have under the ARC to “related companies not specifically covered as affiliates under ARC” as it does not see that as necessary. Enbridge believes that the Settlement Proposal related to Bill Inserts provides fair opportunity for any party to reserve a Bill Insert spot at the same price as other parties at any particular time. This addresses any concern that might exist about Enbridge dealing differently with “related” parties.

Question: Page 13/14 - Deferral Accounts

Can Enbridge clarify that it will be filing separate applications to establish the following accounts that are mentioned in the settlement proposal? This is not clear from the evidence/settlement proposal.

- (a) The Ex-Franchise Third Party Billing Services deferral account for the 2009-2012 period.
- (b) The Open Bill Revenue Variance Account for the 2009 – 2012 period. (Is this the same as the Open Bill Variance Account?)

Answer: Enbridge seeks approval for the establishment of the Ex-Franchise Third Party Billing Services Deferral Account and the Open Bill Revenue Variance Account for 2009 as part of an Order approving the Settlement Proposal in this proceeding. Enbridge also seeks approval of the disposition of the existing Open Bill deferral and variance accounts in the manner set out in the Settlement Proposal. Enbridge will seek approval for the establishment of the Ex-Franchise Third Party Billing Services Deferral Account and the Open Bill Revenue Variance Account for 2010 to 2012 as part of its rate adjustment applications in each of those years.

2. Direct Energy and Just Energy:

Question : Both Direct Energy and Just Energy raised a concern about to the wording found on page 7 of 14, in Section 2. The section reads as follows:

"All parties agree that it is appropriate for Enbridge to continue to offer Open Bill services under the terms of this proposal, from the date that this proposal is approved by the Board until December 31, 2012 (which is the end of the current IRM term, assuming it is not extended).

None of the provisions of this proposal are intended to limit or set the terms of Enbridge's Open Bill services, as well as Enbridge's ex-franchise third party billing services, or the treatment of net revenues from those services, following that time. In the event that the IRM term is extended, then Enbridge or other parties may seek to extend the end date for this proposal, under the same or modified terms. In any event, if Enbridge wishes to continue to offer Open Bill services after December 31, 2012, it must obtain Board approval to do so."

In particular, these parties are concerned that the last sentence of this provision leaves an open question about whether Open Bill services will continue beyond December 31, 2012.

Answer : As noted by Mr. Shepherd in his email dated August 10th in respect of this issue, the last sentence in the provision reproduced above was inserted to address concerns raised by some users of Open Bill services that the current commercial arrangements should not continue indefinitely. Notwithstanding, Enbridge recognizes that it will be in all parties' interest to ensure that there is no uncertainty about whether, and on what terms, Open Bill services will continue after the end date. With that in mind, Enbridge expects to seek approval for the continuation of these services well in advance of the December 31, 2012 date.

Enbridge also agrees with Mr. Shepherd's comment that there does not seem to be any remaining opposition to the question of whether Enbridge ought to be offering Open Bill services, and (barring unexpected new developments) Enbridge does not expect that issue to be raised in the future.

3. CME:

Question: *Prices for Billing Services*

In subparagraph (a)(i) on page 7, there is a sentence which reads as follows:

"All parties agree that, because the pricing of the Billing Services is the subject of a binding and enforceable agreement between the parties, it is no longer relevant in this proceeding whether or not these prices must, legally, be established or approved by the Board."

Q1. What is the intended effect of this sentence? If the Settlement Proposal is approved, will the prices set out in subparagraph (a)(i) on page 7 become Board approved prices which can only be changed with Board approval?

Q2. What happens a year from now if an existing or new business, not a party to these proceedings, wishes to obtain Billing Services from EGD? Will that entity be able to acquire the services at the Board approved prices set out in this Settlement Proposal, even though that entity is not a party to this Proposal?

Answer : Q1. The intended effect of this sentence is to signal that parties do not think that it is necessary to wade into the potentially contentious question of whether or not the OEB ought to be setting and approving pricing for Billing Services in the context of this Application. Parties (both users of Billing Services and ratepayer groups who are interested in the revenue sharing aspect of the settlement) are satisfied with the pricing mechanism that is contained within the Open Bill contract document and do not believe that there is any need to debate pricing before the OEB. The effect of the Settlement Proposal, if approved, is that the Open Bill contract document, including the pricing mechanism, will be in place until December 31, 2012.

Q2. The form of contract that is attached to the Settlement Proposal, which includes the price-setting mechanism, will apply to all businesses who wish to obtain Billing Services from Enbridge up to December 31, 2012.

Question *Revenue Sharing*

The Revenue Sharing from Open Bill activities is described in subparagraph (c) on pages 12, 13 and 14 of the Settlement Proposal. The revenues currently attributable to Open Bill services and embedded in rates are described in subparagraph (c)(i) and are in an amount of \$5.389M per year.

Q3. Is this amount a "net" revenue amount or is it a "gross" revenue amount? If it is a "net" revenue amount, then what are the current "gross" revenues being recovered from this activity and what are the costs of providing the current level of Open Bill services which are deducted from the "gross" revenues? Are these costs calculated on an incremental basis? If so, then please quantify the fully allocated costs of providing the current level of Open Bill services.

Q4. If the \$5.389M of revenues currently embedded in rates is a "gross" revenue amount, then are the incremental and fully allocated costs of providing the current level of Open Bill services to be provided in response to Q3 currently embedded in rates for distribution services?

Answer : Q3: The amount of \$5.389M currently embedded in rates is a "net" amount. This amount is simply an estimate of the net revenues from Billing Services, as agreed in the "Interim Solution" (which is described in Supplementary Settlement Proposal for Billing Services from EB-2006-0034, which was attached to the email circulating the Settlement Proposal in this matter). Pursuant to the Interim Solution, the \$5.389M amount is subject to adjustment, through the Open Bill

Access Variance Account, so that the actual ratepayer benefit paid each year is calculated as the total revenues from Billing Services less: (a) the incremental costs to deliver the services; (b) the startup costs (calculated in the manner set out in paragraph 4 of the Interim Solution related to Billing Services); and (c) the shareholder (Enbridge) incentive (calculated in the manner set out in paragraph 6 of the Interim Solution related to Billing Services).

The calculation of annualized Billing Services "net" revenues using this approach is set out in the Application, at Exhibit B, Tab 1, Schedule 6, Page 13, and reproduced below:

Annualized Billing Services Earnings			
	2007	2008	2009 (Based on current approach)
Revenues Including Bad Debt Recoveries	\$15,864,431	\$16,360,722	\$16,728,442
Costs Including Bad Debt Expense	\$9,637,330	\$10,428,763	\$10,771,679
Net Income	\$6,227,101	\$5,931,959	\$5,956,763
Ratepayer Benefit	\$5,389,604	\$5,389,604	\$5,389,604
EGD Earnings Sharing - OBA	\$328,088	\$348,602	\$450,715
Start-up Cost Recovery	\$656,174	\$670,420	\$683,059
Variance (OBAVA)	\$(146,765)	\$(476,667)	\$(566,615)

As noted, the costs set out in the table are Enbridge's incremental costs for Billing Services. The figures for 2009 are estimates, based on using the approach set out in the Interim Solution for the full year.

Enbridge does not have a calculation of the fully allocated cost of its Billing Services during any particular year. It should be noted, however, that TMG Consulting created a fully allocated cost model for Billing Services to set out its view of the current level of fully allocated costs on a per bill basis. That analysis is set out at pages 22 to 24 of the TMG Report (which is found in the Application package at Exhibit C, Appendix G, pp. 297-299).

Q4: See above.

Question: The Settlement Proposal provides that EGD keeps the first \$2M of any "net" revenues in excess of \$5.389M per year. It appears to allow EGD to recover \$500,000 from ratepayers if "net" revenues are \$4.889M or less in any year. "Net" revenues in excess of \$7.389M in any year are to be shared 50/50 between EGD and its ratepayers. The Settlement Proposal describes the costs that are to be taken into account in determining "net" revenues in a fixed amount per bill in the case of Open Bill services.

Q5. Does the "per bill" approach to costing mean that, as long as EGD sells some Open Bill services, there will always be some "net" revenues from these activities?

Q6. Are all of the capital costs associated with the new Open Bill capability covered by the per bill cost amount specified in the Settlement Proposal? Are all of the Open Bill capability capital costs excluded from the ambit of the new CIS project costs?

Q7. What is the rationale for the \$2M deadband above \$5.389M of "net" revenues? What is the rationale for allowing EGD to recover \$500,000 from ratepayers if "net" revenues fall below \$4.889M?

Answer : Q5. Yes, as long as some Billing Services are sold, then Enbridge will have some "net" revenues.

Q6. The capital costs associated with the Open Bill capability are not part of the \$.5118 cents per bill that is applied to determine net revenues. The reason for this is that those costs are part of the overall CIS costs that are already going to be recovered in rates. If Enbridge was able to recover those costs through the calculation of net revenues for Open Bill activities, then it would be getting credit twice for the same costs. In the same way as the postage costs and embedded overhead costs attributed to Open Bill are "backed out" of the cost per bill used to determine net revenues, Enbridge is not including associated CIS costs in the calculation of net revenue for Open Bill activities, to ensure that it does not "double-count" these costs that are already being recovered in rates. Members of the consultative group agreed that it is appropriate to proceed in this manner because it is not possible, in the middle of the IRM term, to separate out costs currently being recovered in distribution rates that might be said to relate to Open Bill activities.

Q7. The revenue sharing approach creates a "deadband" where Enbridge can keep up to \$2M of any net revenues above \$5.389M of net revenues, and must absorb up to \$.5M if net revenues are below \$5.389M. If net revenues exceed \$7.389M, then any amount above that level is shared 50/50 with ratepayers. If net revenues are less than \$4.889M, then Enbridge is entitled to recover any shortfall below that amount from ratepayers.

The revenue sharing approach was the subject of much debate during the consultative process. The agreement reached is a compromise of different positions and includes the Company's agreement to absorb half of the balance of the accrued deferral and variance accounts. The approach provides Enbridge with an incentive to continue to offer Open Bill services, which is in all parties' interest since it likely ensures that ratepayers will continue to enjoy a significant benefit in terms of additional revenue that is credited to reduce rates. Enbridge's incentive to productively offer this service is also underlined by the fact that it is at risk for up to \$500,000 in the event that the net revenues from Open Bill services total less than \$5.389M. The agreement to allow Enbridge to recover any shortfall below \$4.889M is intended to protect Enbridge from the situation where its major customer ceases to use Billing Services. In that situation, it was acknowledged that it would no longer be fair for ratepayers to receive the ratepayer benefit in respect of a service that no longer generates anything close

to the anticipated revenues. It should be noted though, that members of the consultative group view this as being a remote possibility, given the agreement of all parties to the new form of Open Bill contract, including the pricing mechanism.

4. Vista Credit

Question: Page 7 of 14 – section (a) (i)

The bad debt rate is set at 0.53% for 2009 and subject to annual adjustment.

Q1. Is the bad debt rate of 0.53% based on Enbridge Gas Distribution's actual experience of bad debt ?

Q2 We would ask that the wording be specific as to the basis of the annual adjustment of the bad debt rate.

Answer: Q1. Yes, the bad debt rate for 2009 is based on Enbridge Gas Distribution's actual experience.

Q2 The annual adjustment of the bad debt rate will be done in accordance with Appendix "B" to the Open Bill contract document, which sets out the adjustment mechanism.

Question: Page 8 of 14 – section (v)

Vista Capital asserts that, during the Interim Solution period, there was a "clear violation" of the name association rules that prohibited parties from using the Enbridge name, brand or "swirl" as part of any Billing Services or Bill Inserts. Vista Capital requests that language be added to the Settlement Proposal to "mandate the Company to act, upon receiving notice of a violation on the use of the logo, by sending a written demand to cease improper use of the logo and to suspend billers who do not comply".

Answer: Enbridge denies that there has been any violation of the name association rules in the Interim Solution. Enbridge has always taken care to ensure that no person has used the Billing Services or Bill Insert programs in a manner that associated itself with Enbridge or used the Enbridge logo. No complaint has ever been received by Enbridge asserting any such violation.

Enbridge does not believe that there is any need to add wording to the Settlement Proposal in respect of this issue. The Settlement Proposal sets out Enbridge's assurances that, as the provider of Open Bill services, it will ensure that there is no mis-use of its name or logo. To the extent that Enbridge becomes aware of an issue in this regard, it will take steps to remedy the issue.

APPENDIX "B" TO
DECISION
BOARD FILE NO. EB-2009-0043
Intervenor List
DATED December 2, 2009

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Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2011-0354

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Enbridge Gas
Distribution Inc. for an Order or Orders approving or fixing
just and reasonable rates and other charges for the sale,
distribution, transmission and storage of gas commencing
January 1, 2013.

**DECISION ON REVISED SETTLEMENT AGREEMENT
AND
PROCEDURAL ORDER NO. 6
November 2, 2012**

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application on January 31, 2012 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2013. The Board assigned file number EB-2011-0354 to the application and issued a Notice of Application dated March 2, 2012 (the “Notice”). The application was filed on the basis of US Generally Accepted Accounting Principles.

The Board issued its Decision on Preliminary Issue and Procedural Order No. 2 on May 16, 2012 which provided for, among other things, a settlement conference to be held between September 11 and 21, 2012. The Board directed that any settlement proposal arising from the settlement conference be filed on September 28, 2012. Enbridge advised the Board on September 28, 2012 and again on October 2, 2012 that the parties would need additional time to complete the settlement agreement. The Board

received a settlement agreement dated October 3, 2012. The Board issued its Decision on Settlement Agreement and Procedural Order No. 5 on October 15, 2012. In that decision, the Board accepted the settlement agreement with the exception of one settled item, that being the matter of the Pension True-up Variance Account (the "PTUVA"). The Board indicated it would accept the settlement agreement if certain wording related to pension costs beyond 2013 was removed. The Board directed Enbridge to file a revised settlement agreement by October 26, 2012 incorporating new wording for the PTUVA, and allowed parties the option to consider other changes to the settlement agreement.

The revised Settlement Agreement dated October 26, 2012

The Board received a revised settlement agreement on October 26, 2012 (the "Settlement Agreement") together with a covering letter and appendices containing financial statements, submitted on behalf of Enbridge and all other parties to the Settlement Agreement. The Settlement Agreement, including the financial statement appendices, is attached as Appendix "A".

The Settlement Agreement included new wording on Issue D1, "Is the 2013 O&M budget appropriate?" but was otherwise unchanged from the original settlement agreement filed on October 3, 2012. The Settlement Agreement also indicated that there was a complete settlement on Issue D1. A key feature of the revised settlement is a new variance account, the Post-Retirement True-up Variance Account (the "PTUVA")¹, that would function to true-up both pension and other post-employment benefits ("OPEBs") in 2013 and successive years, throughout the term of Enbridge's upcoming Incentive Regulation Plan.

The covering letter explained the rationale underpinning the parties' approach to addressing the Board's Decision on Issue D1, including the reasons why the on-going true-up of post-retirement expenses is supported by all the parties, and why OPEBs is now included in the PTUVA.

¹ The Board acknowledges that the "PTUVA" acronym used in the revised settlement is the same as that which appears in the original settlement agreement, but now represents "post-retirement" amounts as opposed to only "pension" amounts.

The language in the Settlement Agreement addressed the Board's concerns about the on-going nature of the pension true-up feature and its concerns about the broad implications of pension recoverability.

The Board notes that for a number of issues the parties have agreed that they will make no objection should another party seek to raise the issue in the 2014 proceeding. In all cases the parties also acknowledge that the 2014 proceeding is anticipated to be an application for approval of an IR methodology during which such issues would not ordinarily be raised. The Board cautions parties that although they may not object if another party seeks to raise a particular issue within the context of such a proceeding, the Board panel in that proceeding will retain the discretion to determine the appropriate scope of that proceeding, and will not be bound by that aspect of this Settlement Agreement.

The Board has considered the Settlement Agreement and the context provided in the covering letter and finds that it adequately addresses the concerns raised in its October 15, 2012 Decision. The Board therefore accepts the Settlement Agreement.

Open Bill Access ADR Discussions

The Board is in receipt of a letter from Enbridge dated October 31, 2012 concerning the ADR discussions on the Open Bill Access agreement. The letter requested an extension to November 9, 2012 to allow parties to continue their discussions and raised the possibility of filing a Supplementary Settlement Agreement in respect of the outstanding issues on Issue D11 (the Open Bill Access Program issue). The Board grants the extension request.

Experts' Conference

The Board is in receipt of a letter from Enbridge dated October 31, 2012 concerning the filing of the experts' Joint Written Statement which was required on October 31, 2012. The letter requested an extension to November 9, 2012 to file the statement. The Board grants the extension request.

The Board also understands that parties may wish an extension to file submissions with respect to the process for the oral hearing of the evidence of the concurrent experts witness panel. The Board will extend the submissions deadline to November 13, 2012.

Draft Rate Order

The Board notes that the Settlement Agreement proposes that interim rates be established for January 1, 2013 on the basis that final rates would be set once the Board hears and determines cost of debt and capital structure issues (Issues E1 and E2). The Settlement Agreement refers to a Draft Rate Order (the "Draft Rate Order") for circulation by October 26, 2012. The Board notes that the circulation of this document is being withheld pending the Board's direction on the revised Settlement Agreement. The Draft Rate Order shall be circulated forthwith. As previously noted in Procedural Order No. 5, the Board will consider the appropriateness of the Draft Rate Order with a view to issuing an Interim Rate Order to allow for new rates commencing January 1, 2013.

The dates for the oral hearing announced in Procedural Order No. 5 shall remain.

THE BOARD ORDERS THAT:

1. The Joint Written Statement of the experts shall be filed with the Board and delivered to all parties on or before **November 9, 2012**.
2. Parties participating in the Open Bill Access Program ADR may continue their discussions until **November 9, 2012**.
3. Parties may file submissions with respect to process for the oral hearing of the evidence of the concurrent experts witness panel by **November 13, 2012**.
4. The oral hearing will commence at 9:30 a.m. in the Board's hearing room at 2300 Yonge Street Toronto on **November 19, 2012** and will continue on **November 20, 2012**.
5. An updated case timetable is attached as Appendix "B".

All filings to the Board must quote file number **EB-2011-0354**, be made through the Board's web portal at www.pes.ontarioenergyboard.ca/eservice/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address.

All filings shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available the document may be emailed to BoardSec@ontarioenergyboard.ca. Persons who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Persons who do not have computer access are required to file seven paper copies. If a document has been submitted through the Board's web portal an e-mail is not required. For all electronic correspondence and materials related to this proceeding, parties must include in their distribution the Case Manager, Colin Schuch at colin.schuch@ontarioenergyboard.ca and Senior Legal Counsel, Kristi Sebalj at kristi.sebalj@ontarioenergyboard.ca.

All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

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DATED at Toronto November 2, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"
Enbridge Gas Distribution Inc.

EB-2011-0354

Settlement Agreement dated October 26, 2012

SETTLEMENT AGREEMENT
Enbridge Gas Distribution 2013 Rate Application

October 26, 2012

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PREAMBLE

This Settlement Agreement is filed with the Ontario Energy Board (the "OEB" or the "Board") in connection with the Application of Enbridge Gas Distribution Inc. ("Enbridge" or the "Company"), for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2013.

In Procedural Order No. 2, the Board established the process to address the application, and in a Decision and Order dated June 15, 2012, the Board established the Issues List for this application.

A Settlement Conference was held between September 11 and 20, 2012. Ken Rosenberg acted as the OEB-appointed facilitator for the Settlement Conference. This Settlement Agreement arises from the Settlement Conference.

Enbridge and the following intervenors, as well as Ontario Energy Board technical staff ("Board Staff"), participated in the Settlement Conference:

ASSOCIATION OF POWER PRODUCERS OF ONTARIO (APPrO)
BUILDING OWNERS AND MANAGERS ASSOCIATION TORONTO (BOMA)
CANADIAN MANUFACTURERS & EXPORTERS (CME)
CONSUMERS COUNCIL OF CANADA (CCC)
DIRECT ENERGY MANAGEMENT LIMITED (Direct Energy)
ENERCARE INC. (EnerCare)
ENERGY PROBE RESEARCH FOUNDATION (Energy Probe)
FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO (FRPO)
GREEN ENERGY COALITION (GEC)
HEATING, VENTILATION, AND AIR CONDITIONING COALITION (HVAC)
JUST ENERGY ONTARIO LP (Just Energy)
LOW-INCOME ENERGY NETWORK (LIEN)
POLLUTION PROBE (Pollution Probe)
SCHOOL ENERGY COALITION (SEC)
SUMMITT ENERGY (Summit)
VISTA CREDIT CORP. (Vista)
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

The Settlement Agreement deals with all of the issues on the Issues List. Each of these issues from the Issues List is listed in the Table of Contents, above.

All intervenors listed above participated in part or all of the Settlement Conference and subsequent discussions. Certain of the intervenors participated only in the "open bill" issue (Issue D11) and not in discussions on any other issues. Those intervenors are referred to herein as the "open bill issue participants". The "open bill issue participants" are Direct Energy, EnerCare, GEC, HVAC, Just Energy, LIEN, Pollution Probe, Summitt and Vista. (As noted in Issue D11, other intervenors also participated in Issue D11. Those other intervenors also participated in the other issues, and are therefore not listed as "open bill issue participants".)

Any reference to “parties” in this Settlement Agreement is intended to refer to Enbridge and the intervenors listed above, with one exception. That exception relates to the fact that the “open bill issue participants” only participated in the negotiation of Issue D11, and did not participate in the negotiation of any other issue. Therefore, within the “Issues” section of this Settlement Agreement (Issues B1 to O6), references to “all parties” are intended to refer to Enbridge and all intervenors listed above, except for (and not including) the open bill issue participants. .

Board Staff takes no position on any issue and, as a result, is not a party to the Settlement Agreement. Enbridge and all intervenors listed above have agreed to the settlement of the issues as described on the following pages. The open bill issue participants have only participated in the negotiation of Issue D11, and take no position on any other issue.

Best efforts have been made to identify all of the evidence that relates to each issue. The supporting evidence for each issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit B1, Tab 3, Schedule 1 is referred to as B1-3-1. The identification and listing of the evidence that relates to each settled issue is provided to assist the Board.

The Settlement Agreement describes the agreements reached on the issues. The Settlement Agreement provides a direct link between each settled issue and the supporting evidence in the record to date. In this regard, the parties are of the view that the evidence provided is sufficient to support the Settlement Agreement in relation to the settled issues and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the Board to make findings agreeing with the proposed resolution of the settled issues. In the event that the Board does not accept the proposed settlement of any issue, then subject to the parties’ agreement on non-severability set out in the final paragraph below, further evidence may be required on the issue for the Board to consider it fully.

According to the Board's *Settlement Conference Guidelines* (p. 3), the parties must consider whether a settlement proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. Enbridge and the other parties who participated in the Settlement Conference consider that no settled issue requires an adjustment mechanism other than those expressly set forth herein.

None of the parties can withdraw from the Settlement Agreement except in accordance with Rule 32 of the *Ontario Energy Board Rules of Practice and Procedure*. Finally, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions parties might take with respect to the same issue in future proceedings, unless explicitly stated otherwise.

The parties agree that all positions, negotiations and discussion of any kind whatsoever that took place during the Settlement Conference and all documents exchanged during the conference that were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Settlement Agreement.

It is fundamental to the agreement of the parties that none of the provisions of this Settlement Agreement are severable. If the Board does not, prior to the commencement of the hearing of the evidence in this proceeding, accept the provisions of the Settlement Agreement in their entirety, there is no Settlement Agreement (unless the parties agree that any portion of the Settlement Agreement that the Board does accept may continue as a valid Settlement Agreement).

OVERVIEW

Through the Settlement Conference, and as set out in this Settlement Agreement, the parties (except for the open bill issue participants, who take no position on any issue except for D11) have reached agreement on 53 of the 56 issues in Enbridge's 2013 rate rebasing application (referred to herein as the "Settled Issues").

The overall impact of the Settled Issues is to reduce the revenue deficiency from the as-filed amount of \$92.9 million (Exhibit M2, Tab 1, Schedule 2) to an amount of approximately \$17.9 million. The revenue requirement and deficiency impact of the Settled Issues are set out in the ADR Financial Statements attached to this Settlement Agreement as Appendix A (Exhibit N1, Tab1, Schedule 1, Appendix A, part 1).

As noted above, all parties agree that the Settled Issues are a package. This means that none of the components of the Settlement Agreement should be considered in isolation, but instead they should be considered as a complete package. All parties agree that the package of Settled Issues represents a fair and reasonable agreement that is in the public interest.

There are three outstanding issues (the "Unsettled Issues").

One of these Unsettled Issues, relating to the Open Bill Access Program (Issue D11), is listed as "Partially Settled" because the aspects of the issue with ratemaking implications are settled, while one aspect of the issue with no ratemaking impact remains unsettled (related to the terms of the Open Bill Agreement for 2013).

The other two Unsettled Issues, related to equity thickness and cost of capital under a new thickness (Issues E1 and E2), have a potential revenue deficiency impact of up to \$21.9 million. This means that if Enbridge is successful in its request for an increase in equity thickness from the current 36% level to the requested 42% level, then the final 2013 revenue deficiency will be approximately \$17.9 million. If Enbridge is not completely successful in this regard, then the 2013 revenue deficiency will be reduced by up to \$21.9 million, depending on the level of equity thickness and associated capital structure approved by the Board.

All parties agree that Enbridge should implement interim rates on January 1, 2013 that reflect the impact of the Settled Issues. For the purpose of interim rate implementation, all parties have agreed that Enbridge will use the current level of equity thickness (36%). All parties agree that the agreement to use the current level of equity thickness (36%) and associated capital structure ratios for implementation of interim rates is not intended as an indication or suggestion to the Board that 36% is the appropriate level of equity thickness for Enbridge in 2013. That issue is to be determined by the Board based upon the evidence and argument presented.

The revenue requirement and deficiency impact of the agreement for interim rates is set out in the ADR Financial Statements attached to this Settlement Agreement as Appendix A (Exhibit N1, Tab1, Schedule 1, Appendix A, part 2). The overall result of the implementation of the Settled Issues is a revenue sufficiency of approximately \$4.0 million (using the current 36% level of equity thickness). This Agreement also includes Appendix B (Gas Costs) and Appendix C (Average Use Forecasts). All of the Appendices are incorporated into and form part of this Settlement Agreement.

The Appendices were prepared by Enbridge for the assistance of the Board and the other parties. The parties to this Agreement, other than Enbridge, are relying on the accuracy and completeness of the Appendices in entering into this Settlement Agreement.

All parties agree that any financial impact of the determination of the Unsettled Issues (Issues E1 and E2) should be implemented as part of Enbridge's first QRAM Application following the Board's decision on those matters.

THE ISSUES

B: RATE BASE

1. Is Enbridge's forecast level of capital spending in 2013 appropriate?

[Complete Settlement]

All parties agree that Enbridge's capital budget for 2013 is appropriately set at \$387 million. Amounts to be spent in relation to the GTA Reinforcement and Ottawa Reinforcement projects, which projects will be considered by the Board in separate Leave to Construct Applications, will, if approved, be in addition to the \$387 million capital budget. Those two projects have no rate impact in 2013.

This 2013 capital budget is approximately \$97 million less than the as-filed budget of \$483.9 million, to take account of the assumed \$46 million impact from the agreed-upon \$23 million property, plant and equipment related reduction to 2013 rate base (set out in Issue B2 below), as well as the fact that the forecast \$51 million to be spent in 2013 on the GTA and Ottawa Reinforcement projects (Exhibit B1, Tab 3, Schedule 3) is outside of the \$387 million budget.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
A2-1-2	Benchmarking Study
A2-2-1	2013 Regulatory Budget Assumptions and Guidelines Directive
B1-2-1	Rate Base – Capital Budget
B1-2-2	Details of Capital Budget Expenditures and Justification for Projects over \$500,000
B1-2-3	Comparison of Capital Expenditures 2007 to 2013
B1-3-1	Asset Plan
B1-3-2	Asset Plan and 2013 Capital Budget
B1-3-3	Leave to Construct Projects

B1-4-1	Information Technology Capital Budget
B1-5-1	Storage Capital Expenditure
B2-2-1	EGD Asset Plan 2012 to 2021
B3-2-1	Utility Capital Expenditures Comparison 2013 Test Year and 2012 Estimate
B3-2-2	2013 Capital Expenditures by Project (Projects Exceeding \$500,000)
B3-2-4	System Expansion Monitoring - 2013 Test Year
B4-2-1	Utility Capital Expenditures Comparison 2012 Bridge Year and 2011 Historical Year
B4-2-2	2012 Capital Expenditures by Project (Projects Exceeding \$500,000)
B4-2-4	System Expansion Monitoring - 2012 Bridge Year
B5-2-1	Utility Capital Expenditures Comparison 2011 Historic and 2007 Board Approved
B5-2-2	2011 Capital Expenditures by Project (Projects Exceeding \$500,000)
B5-2-4	System Expansion Portfolio - 2011 Historic Year
I-B1-1.1 to 20.4	Interrogatories on Issue B1
I-B2-4.4 and 4.5	CME Interrogatories #4 and 5
I-B2-8.1	FRPO Interrogatory #1
I-B3-1.1 to 14.1	Interrogatories on Issue B3
I-B4-1.1 to 14.1	Interrogatories on Issue B4
I-B5-1.1 to 20.1	Interrogatories on Issue B5
I-B6-8.1 to 14.1	Interrogatories on Issue B6
I-B7-5.1 to 20.1	Interrogatories on Issue B7
I TR 5 to 80	Evidence at Technical Conference (September 5, 2012)
JT1.1 to 1.9	Undertakings from Technical Conference (September 5, 2012)

2. Is the proposed Test Year Rate Base appropriate?

[Complete Settlement]

All parties agree that Enbridge's 2013 utility rate base, on an average of averages basis, is appropriately set at \$4,162.0 million, as compared to the amount of \$4,174.2 million set out at Exhibit M2, Tab 1, Schedule 3). This amount is derived as follows.

First, it reflects an agreed-upon reduction of \$23 million in the average of averages 2013 rate base related to property, plant and equipment (i.e. \$3,935.1 million, as compared to the amount of \$3,958.1 million set out at Exhibit M2, Tab 1, Schedule 3, which was part of an overall rate base of \$4,174.2 million).

Second, it reflects an increase in rate base of \$10.2 million that results from the agreed-upon changes to depreciation rates set out at Issue D7 below.

Third, it reflects an increase in rate base of \$0.6 million that results from a change in working capital, as discussed at Issue B7 below.

The updated Test Year Rate Base, reflecting the impact of these changes, is seen in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, parts 1 and 2) at pages 2 through 5.

Evidence: The evidence in relation to this issue includes the following:

B1-1-1	Rate Base Evidence and Summaries
B1-2-2	Details of Capital Budget Expenditures and Justification for Projects over \$500,000
B1-2-3	Comparison of Capital Expenditures 2007 to 2013

B3-1-1	Ontario Utility Rate Base – Comparison of 2013 Test Year to 2012 Bridge Year
B3-1-2	Property, Plant and Equipment Summary Statement – Average of Monthly Averages 2013 Test Year
B4-1-1	Ontario Utility Rate Base – Comparison of 2012 Bridge Year to 2011 Historical Year
B4-1-2	Property, Plant and Equipment Summary Statement – Average of Monthly Averages 2012 Bridge Year
B5-1-1	Ontario Utility Rate Base – Comparison of 2011 Historic to 2007 Board Approved
B5-1-2	Property, Plant and Equipment Summary Statement – Average of Monthly Averages 2011 Historic Year
I-B1-1.4 and 1.6	Board Staff Interrogatories #4 and 6
I-B1-2.1	APPPrO Interrogatory #1
I-B1-3.1	BOMA Interrogatory #1
I-B1-4.1 to 4.2	CME Interrogatories #1 and 2
I-B1-5.3- 5.4 and 5.11-5.14 and 5.16	CCC Interrogatories #3 and 4 and 11 to 14 and 16
I-B1-7.1 to 7.2 and 7.4	Energy Probe Interrogatories #1, 2 and 4
I-B1-14.1	SEC Interrogatory #1
I-B1-20.1	VECC Interrogatory #1
I-B2-1.1 to 8.1	Interrogatories on Issue B2
I-B4-5.1	CME Interrogatory #1
I-B6-8.1 to 14.1	Interrogatories on Issue B6

3. Is the proposed Information Technology Capital Budget appropriate?

[Complete Settlement]

See Issue B1, above. The Information Technology Capital Budget is part of the overall agreed-upon capital budget of \$387 million for 2013.

Evidence: The evidence in relation to this issue includes the following:

B1-2-2	Details of Capital Budget Expenditures and Justification for Projects over \$500,000
B1-4-1	Information Technology Capital Budget
I-B1-20.2	VECC Interrogatory #2
I-B2-1.14 to 1.16	Board Staff Interrogatories #14 to 16
I-B3-1.1 to 14.1	Interrogatories on Issue B3
I-B6-8.1 to 14.1	Interrogatories on Issue B6
I TR 66 to 71	Evidence at Technical Conference (September 5, 2012)
JT1.8	Undertaking from Technical Conference (September 5, 2012)

4. Is the proposed budget for Storage Capital Expenditure appropriate?

[Complete Settlement]

See Issue B1, above. The Storage Capital Expenditure Budget is part of the overall agreed-upon capital budget of \$387 million for 2013.

Evidence: The evidence in relation to this issue includes the following:

B1-2-2	Details of Capital Budget Expenditures and Justification for Projects over \$500,000
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B1-5-1	Storage Capital Expenditure
I-B4-1.1 to 14.1	Interrogatories on Issue B4
I TR 5 to 43	Evidence at Technical Conference (September 5, 2012)
JT1.1 to 1.5	Undertakings from Technical Conference (September 5, 2012)

5. Is the forecast of Customer Additions appropriate?

[Complete Settlement]

All parties agree that Enbridge's forecast of 38,896 customer additions for 2013, as set out at Exhibit B3, Tab 2, Schedule 3, is appropriate for capital budget purposes.

Evidence: The evidence in relation to this issue includes the following:

B2-1-1	Economic Feasibility Procedure and Policy
B3-2-3	Gross Customer Additions and Average Cost per Customer Addition Budget 2013 and 2012 Estimate
B4-2-3	Gross Customer Additions and Average Cost per Customer Addition 2012 Estimate and 2011 Historic
B5-2-3	Gross Customer Additions and Average Cost per Customer Addition Actual 2011 and 2011 Board Approved
I-B5-1.1 to 20.1	Interrogatories on Issue B5

6. Is the allocation of the cost and use of capital assets between utility and non-utility ("unregulated") operations appropriate?

[Complete Settlement]

All parties agree to the overall 2013 capital and O&M budgets (as set out at Issues B1 and D1), which include the impact of allocations of costs between utility and non-utility ("unregulated") storage operations.

In relation to the EB-2012-0055 case (Enbridge's 2011 ESM case), all parties agree that because this Settlement Agreement does not result in any change to Enbridge's approach to the allocation of costs between regulated and unregulated storage activities that, when applied to the 2011 allocations would affect the 2011 ESMDA, there is no need for any adjustment to the 2011 ESMDA in relation to allocation of storage costs. (Reference, OEB Decision and Order on Settlement Agreement in EB-2012-0055, dated September 17, 2012 at page 2).

It is agreed that EGD will not raise any procedural objection if any party seeks approval of different methodologies for allocation of the cost and use of capital assets or O&M allocations between utility and non-utility storage operations in the 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology, which is not the type of case where such issues would ordinarily be raised). All parties are free to take whatever positions they determine with respect to this issue at that time.

Evidence: The evidence in relation to this issue includes the following:

B1-2-2	Details of Capital Budget Expenditures and Justification for Projects over \$500,000
B1-5-1	Storage Capital Expenditure
D2-5-1	Regulated Unregulated Storage Cost Allocation – Black & Veatch
I-B4-5.1	CCC Interrogatory #1
I-B5-5.3	CCC Interrogatory #3
I-B6-8.1 to 14.1	Interrogatories on Issue B6
C1-1.2-1	Board Staff Interrogatory #2
I TR 5 to 43	Evidence at Technical Conference (September 5, 2012)
JT1.1 to 1.5	Undertakings from Technical Conference (September 5, 2012)
2 TR 25 to 39 and 197 to 202	Evidence at Technical Conference (September 6, 2012)
JT2.1 and 30	Undertakings from Technical Conference (September 6, 2012)

7. Is the proposed working capital allowance appropriate?

[Complete Settlement]

All parties agree that the proposed 2013 working capital allowance of \$216.1 million (as set out at Exhibit M2, Tab 1, Schedule 3, page 1) will be increased by \$0.6 million, to take account of two settled items.

First, there is an increase in working cash allowance of \$1.5 million that results from the agreed-upon changes to the overall O&M budget amount, as discussed at Issue D1 below. This outcome results from the fact that the net lag day credit within the working cash calculation will be applied to a lower level of O&M budget as compared to the pre-filed evidence.

Second, there is a decrease in gas in storage of \$0.9 million to take account of the agreed-upon changes to the gas volume budget, as discussed at Issue C2 below.

Evidence: The evidence in relation to this issue includes the following:

B1-1-1	Rate Base Evidence and Summaries
B3-1-3	Working Capital Components of Average of Monthly Averages 2013 Test Year
B4-1-3	Working Capital Components of Average of Monthly Averages 2012 Bridge Year
B4-1-3	Working Capital Components of Average of Monthly Averages 2013 Historic Year
I TR 72 to 74	Evidence at Technical Conference (September 5, 2012)
JT1.9	Undertaking from Technical Conference (September 5, 2012)

C: OPERATING REVENUE

1. Is Enbridge's revenue forecast appropriate?

[Complete Settlement]

Subject to changes set out below related to Gas Volume Forecast (Issue C2) and Transactional Services (Issue C6), all parties agree that Enbridge's revenue forecast is appropriate. The

updated revenue forecast, reflecting the impact of these changes, is seen in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, parts 1 and 2) at page 6.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
A2-2-1	2013 Regulatory Budget Assumptions and Guidelines Directive
C1-1-1	Operating Revenue Summary
C1-2-1	Revenue Forecast
C1-4-1	Transactional Services
C1-5-1	Other Service and Late Payment Penalty Revenue
C3-1-1	Utility Operating Revenue 2013 Test Year
C3-1-2	Comparison of Utility Operating Revenue Budget 2013 and Estimate 2012
C3-2-1	Customers, Volumes and Revenues by Rate Class - 2013 Budget
C3-2-2	Comparison of Average Customer Numbers by Rate Class 2013 Budget and 2012 Estimate
C3-3-1	Details of Other Revenue Budget 2013 and Estimate 2012
C3-4-1	Transactional Services 2013 Test Year Budget Revenue and Cost Components
C3-5-1	NGV Rate of Return 2013 Test Year
C4-1-1	Utility Operating Revenue 2012 Bridge Year
C4-1-2	Comparison of Utility Operating Revenue 2012 Estimate and 2011 Historic
C4-1-3	Comparison of Utility Operating Revenue 2012 Estimate and Board 2007 Budget Approved
C4-2-1	Customers, Volumes and Revenues by Rate Class - 2012 Estimate
C4-2-2	Comparison of Average Customer Numbers by Rate Class 2012 Estimate and 2011 Historic
C4-3-1	Details of Other Revenue 2012 Estimate and 2011 Historic
C4-3-2	Details of Other Revenue 2012 Estimate and 2007 Board Approved
C4-4-1	Transactional Services 2012 Bridge Year Estimate vs. 2007 Board Approved Budget Revenue and Cost Components
C4-5-1	NGV Rate of Return 2012 Bridge Year
C5-1-1	Utility Operating Revenue 2011 Historic (Estimate)
C5-1-2	Comparison of Utility Operating Revenue 2011 Historic Year and 2007 Board Approved
C5-2-1	Customers, Volumes and Revenues by Rate Class –2011 Historic
C5-3-1	Details of Other Revenue 2011 Historic vs. 2007 Board Approved
C5-4-1	Transactional Services 2011 Historic vs. 2007 Board Approved Budget Revenue and Cost Components
C5-5-1	NGV Rate of Return 2011 Historic Year
I-C1-1.1 to 5.1	Interrogatories on Issue C1
I-C5-1.1 to 20.1	Interrogatories on Issue C6
I-C5-1.1 to 20.1	Interrogatories on Issue C7

2. Is Enbridge's gas volume forecast appropriate?

[Complete Settlement]

All parties agree that Enbridge will increase its forecast number of customers (active customer meters, or “unlocks”) for 2013 by 4,500 from the estimate set out at Exhibit C1, Tab 3, Schedule 2 (page 1), such that the forecast total customers for 2013 will be 2,025,462. This change arises from the agreement of all parties that Enbridge's forecast of customers for 2012 was understated by 4,500, which agreement results in an increase to the forecast starting number of customers for 2013. This change has no impact on the customer additions forecast for 2013, which is settled under Issue B5 above.

All parties also agree that Enbridge's gas volume forecast for 2013 will be updated to take account of the changes to degree day forecasts in Issue C3 (below).

Enbridge's updated gas volume forecast reflecting the changes noted above is seen in the updated Summary of Gas Costs to Operations attached as Appendix B (Exhibit N1, Tab 1, Schedule 1, Appendix B).

Evidence: The evidence in relation to this issue includes the following:

C1-3-1	Gas Volume Budget
C1-3-2	2013 Gas Volume Budget Update
C2-3-1	Budget Degree Days
C2-3-2	Updated 2013 Budget Degree Days
C4-2-3	Comparison of Gas Sales and Transportation Volume by Rate Class 2012 Estimate and 2011 Historic
C4-2-4	Comparison of Gas Sales and Transportation Revenue by Rate Class 2012 Estimate and 2011 Historic
C4-2-5	Comparison of Gas Sales and Transportation Volume by Rate Class 2012 Estimate and 2007 Board Approved
C5-2-2	Comparison of Gas Sales and Transportation Volume by Rate Class 2011 Historic and 2010 Historic
C5-2-3	General Service System-Wide Normalized Average Use
C5-2-4	Comparison of Gas Sales and Transportation Volume by Rate Class 2011 Historic and 2007 Board Approved
C5-2-5	General Service Average Uses Historical Normalized Actual and Board Approved Fiscal and Calendar Years
C5-2-6	Large Volume (Contract) Customer Demand Historical Normalized Actual and Board Approved Fiscal and Calendar Years
D2-6-1	Unaccounted For Gas Study
D3-4-1	Unbilled and Unaccounted-for Gas Volumes
D4-4-1	Unbilled and Unaccounted-for Gas Volumes
D5-4-1	Unbilled and Unaccounted-for Volumes 2011 Historic vs. 2007 Board Approved
I-C1-4.1	CME Interrogatory #1
I-C2-5.1 to 11.1	Interrogatories on Issue C2
I-C3-7.1 to 20.1	Interrogatories on Issue C3
I-C4-1.1 to 20.2	Interrogatories on Issue C4
I-C5-1.1 to 20.2	Interrogatories on Issue C5
I-C5-1.1 to 20.2	Interrogatories on Issue C5

3. Is Enbridge's degree day forecast for each of the Company's delivery areas (EDA, CDA, and Niagara) appropriate?

[Complete Settlement]

All parties agree that Enbridge's degree day forecasts for 2013 for the Eastern Delivery Area and the Niagara Delivery Area, as set out in the Company's updated evidence at Exhibit C2, Tab 3, Schedule 2 (page 2), are appropriate.

All parties agree that for 2013, Enbridge will use the 10 year moving average model to forecast degree days for the Central Delivery Area. That agreement is based upon the Company's evidence in response to Exhibit I, Issue C3, Schedule 7.1 which indicates that the 10 year moving

average model is currently the highest ranked forecasting model (using data up to and including 2011) for the Central Delivery Area. As set out in response to Exhibit I, Issue C3, Schedule 7.1 (page 3), this will result in a 2013 Environment Canada degree day forecast of 3,713 for the Central Delivery Area, which is 201 degree days higher than had been indicated the Company's updated evidence, which used the 20 year trend model.

It is agreed that no party will raise any procedural objection if Enbridge seeks approval of different degree day methodologies for any of its delivery areas in its 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology, which is not the type of case where such issues would ordinarily be raised). All parties are free to take whatever positions they determine with respect to this issue at that time.

Evidence: The evidence in relation to this issue includes the following:

C2-3-1	Budget Degree Days
I-C3-7.1 to 20.1	Interrogatories on Issue C3
JT2.28 and 2.33 to 2.34	Undertakings from Technical Conference (September 6, 2012)
JT2-EP1	Supplementary Undertaking from Technical Conference (September 6, 2012)
2 TR 189 to 196 and 207 to 211	Evidence at Technical Conference (September 6, 2012)
JT2.28, 2.33 and 2.34	Undertaking from Technical Conference (September 6, 2012)

4. Is the Average Use forecast appropriate?

[Complete Settlement]

All parties agree that Enbridge's average use forecast for 2013, which has been updated to take account of the changes in degree day forecast as set out at Issue C3 above, is appropriate. The updated average use forecast is set out at Appendix C (Exhibit N1, Tab 1, Schedule 1, Appendix C).

Evidence: The evidence in relation to this issue includes the following:

C1-3-1	Gas Volume Budget
C5-2-6	Large Volume (Contract) Customer Demand Historical Normalized Actual and Board Approved Fiscal and Calendar Years
I-C4-1.1 to 20.2	Interrogatories on Issue C4
2 TR 202 to 206	Evidence at Technical Conference (September 6, 2012)
JT2.32	Undertaking from Technical Conference (September 6, 2012)

5. Is the forecast level of Unaccounted For (UAF) gas volumes appropriate?

[Complete Settlement]

For the purpose of settlement, all parties accept the level of UAF forecast by Enbridge.

Evidence: The evidence in relation to this issue includes the following:

D2-6-1	Unaccounted For Gas Study
D3-4-1	Unbilled and Unaccounted-for Gas Volumes
D4-4-1	Unbilled and Unaccounted-for Gas Volumes
D5-4-1	Unbilled and Unaccounted-for Volumes 2011 Historic vs. 2007 Board Approved
I-C5-1.1 to 20.2	Interrogatories on Issue C5
2 TR 155 to 189 and 196 to 197	Evidence at Technical Conference (September 6, 2012)
JT2.21 to 2.23; 2.25 to 2.26; and 2.29	Undertakings from Technical Conference (September 6, 2012)
	Supplementary Undertakings from Technical Conference (September 6, 2012)

6. Is the proposal for the treatment and sharing of Transactional Services revenues, and the forecast of those revenues, appropriate?

[Complete Settlement]

All parties agree to a change in Enbridge's Transactional Services (TS) sharing methodology for 2013. The changes are the following:

- a. All TS net revenues (total storage and transportation TS revenues less associated costs) will be shared 90/10 between ratepayers and Enbridge's shareholder.
- b. Enbridge will include a credit of \$12 million in revenue requirement for 2013 related to an anticipated ratepayer share of TS net revenues, with a guarantee of \$8 in ratepayer share.
- c. The ratepayer share of 2013 TS net revenues will be tracked in the 2013 Transactional Services Deferral Account. In the event that the ratepayer share of 2013 TS net revenues exceeds \$12 million, then such amounts over \$12 million will be credited to ratepayers along with the clearance of the Company's other 2013 deferral and variance accounts. In the event that the ratepayer share of 2013 TS net revenues is less than \$12 million, then Enbridge will be credited with the difference between the actual ratepayer share of 2013 TS net revenues and \$12 million, to a maximum credit to Enbridge of \$4 million.

It is agreed that no party will raise any procedural objection if Enbridge or any other party requests a different TS sharing methodology in Enbridge's 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology, which is not the type of case where such issues would ordinarily be raised). All parties are free to take whatever positions they determine with respect to this issue at that time.

All parties agree that the acceptance of the inclusion of TS revenues related to FT long haul optimization in the determination of Enbridge's net TS revenues for 2013 is without prejudice to the position that any party may take on any issues related to the determination of Enbridge's net TS revenues within the 2011 and 2012 ESM proceedings, or in Enbridge's 2014 rate proceeding.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
C1-4-1	Transactional Services
C3-4-1	Transactional Services 2013 Test Year Budget Revenue and Cost Components
C4-4-1	Transactional Services 2012 Bridge Year Estimate vs. 2007 Board Approved Budget Revenue and Cost Components
C5-4-1	Transactional Services 2011 Historic vs. 2007 Board Approved Budget Revenue and Cost Components
I-C5-1.1 to 20.1	Interrogatories on Issue C6
I-DV1-8.2	FRPO Interrogatory #2

7. Is Enbridge’s forecast of other service and late payment penalty revenues, including the methodologies used to cost and price those services, appropriate?

[Complete Settlement]

For the purposes of settlement, all parties accept Enbridge’s forecast of other service and late payment penalty revenues, as set out at Exhibit C1, Tab 5, Schedule 1, including the methodologies used to cost and price those services.

Evidence: The evidence in relation to this issue includes the following:

C1-5-1	Other Service and Late Payment Penalty Revenue
C3-3-1	Details of Other Revenue Budget 2013 and Estimate 2012
C4-3-1	Details of Other Revenue 2012 Estimate and 2011 Historic
C4-3-2	Details of Other Revenue 2012 Estimate and 2007 Board Approved
C5-3-1	Details of Other Revenue 2011 Historic vs. 2007 Board Approved
I-C5-1.1 to 20.1	Interrogatories on Issue C7

D: OPERATING COSTS

1. Is the 2013 O&M budget appropriate?

[Complete Settlement]

In its prefiled evidence, Enbridge requested a total O&M budget of \$438.1 million, comprised of five elements as set out below (Exhibit D1, Tab 3, Schedule 1):

Customer Care service charges	\$89.4 million
DSM	\$31.4 million
Pension costs	\$37.3 million
RCAM	\$32.1 million
All other O&M	\$247.8 million
	\$438.1 million

As set out below (Issues D9 and D13), the DSM and Customer Care costs have already been approved in separate proceedings. All parties agree that the amounts for the RCAM and “All

other O&M” budgets will be combined, that Enbridge will include its OPEB costs of \$5.5 million with pension costs (and not with the “All other O&M” costs) and that Enbridge will reduce the resulting combined “All other O&M” budget for 2013 by \$22.8 million. All parties agree, for the purposes of settlement, that Enbridge’s O&M budget for pension costs and OPEB costs is accepted as filed, subject to the variance account treatment described below.

As a result, parties agree, for the purposes of settlement, that Enbridge’s 2013 O&M budget is appropriately set at \$414.9 million, which represents a reduction of \$22.8 million from the as-filed budget as set out in Impact Statement #2 (Exhibit M2). The budget is comprised of the following:

Customer Care service charges	\$89.4 million
DSM	\$31.4 million
Pension and OPEB costs	\$42.8 million
All other O&M	\$251.3 million
	\$414.9 million

The “All other O&M” amount is an envelope amount, and is not specifically allocated to any particular O&M expenses.

The updated O&M budget, reflecting the impact of these changes, is seen in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, parts 1 and 2) at page 6.

The parties acknowledge that issues related to pension and OPEBs expenses, including the volatility of such expenses (the “Pensions Issue”) affect many entities regulated by the Board, and that the Board may determine at the appropriate time to institute a generic review of the Pensions Issue. Unless and until the Board issues a generic decision or other policy determination on the Pensions Issue, applicable to regulated entities that would include Enbridge during the term of its upcoming IR plan, the parties have agreed to a variance account that will function so as to effect a true-up of pension and OPEBs expenses, as well as a smoothing of pension and OPEBs differences over future years. All parties agree that if the Board does undertake a generic review of the Pensions Issue, then all parties will support Enbridge’s continuing recovery of its pension and OPEB expenses throughout the term of Enbridge’s upcoming IR plan, provided that such recovery is designed in a manner to ensure that Enbridge recovers no more or less than its actual pension and OPEB expenses during each year of the IR plan.

To effect this result, all parties agree that the 2013 pension expenses and OPEBs expenses, totalling \$42.8 million (\$37.3 million in pension expenses plus \$5.5 million in OPEBs expenses, both determined on an accrual basis) are to be trued-up, such that Enbridge ultimately recovers in rates only the actual amounts of its 2013 pension and OPEBs expense. All parties agree to the creation of a Post-Retirement True-Up Variance Account (PTUVA) which will record any differences between the Company’s forecast pension and OPEBs expense and the actual pension and OPEBs expense (both determined on an accrual basis). In future years, and in the absence of any new Board decision or policy on the Pensions Issue that is made to apply to Enbridge during the term of its upcoming IR plan, the PTUVA will include any uncleared balances from previous years, as well as the difference between the amount otherwise included in that year’s rates, and actual pension and OPEBs expenses for that year (again, on an accrual basis). For the Test Year, the 2013 PTUVA will record differences between the forecast 2013 pension

and OPEBs expense of \$42.8 million and the actual 2013 pension and OPEBs expense. To be clear, the OPEBs expenses that are subject to the true-up approach described in this paragraph are the current year OPEBs expenses. This true-up approach does not apply to the \$90 million of OPEBs costs allowed for recovery commencing in 2013, which is addressed in Issues D4 and DV2, below.

The parties agree that the 2013 PTUVA will be cleared in a manner that will allow for all variances between \$42.8 million and actual pension and OPEBs expenses to be recorded and cleared, subject to the condition that any amounts in excess of \$5 million (credit or debit) will be transferred into the next year's account, so that large variances can be cleared over time (smoothed). Under this approach, the maximum amount (debit or credit) that will be cleared from the 2013 PTUVA will be \$5 million, and any remaining amounts will be transferred to the 2014 PTUVA for future clearance.

There is no agreement as to the clearance methodology that will be applied to the PTUVA in future years beyond 2013. No party will raise any procedural objection if Enbridge or any other party seeks approval of a different clearance methodology for the PTUVA as part of Enbridge's 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology, which is not the type of case where such issues would ordinarily be raised). All parties are free to take whatever positions they determine with respect to the PTUVA clearance methodology at that time.

The parties agree that this approach will continue until the earlier of a) a decision by the Board to implement a policy respecting the Pensions Issue that is applicable to Enbridge during the term of its upcoming IR plan, and b) the next rebasing application for Enbridge.

The parties further agree that their commitment to support Enbridge's recovery of pension and OPEB expenses on an actual basis during the term of its upcoming IR plan should not be interpreted as any broad precedent or endorsement of that approach. To the contrary, the parties are agreeing to this approach in the specific circumstances of the overall settlement of this case, which include tradeoffs and compromises on a variety of items to arrive at an overall resolution in the interest of ratepayers and the Company.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
A2-1-2	Benchmarking Study
A2-2-1	2013 Regulatory Budget Assumptions and Guidelines Directive
D1-1-1	Operating Cost Summary
D1-3-1	Operating Maintenance Costs
D1-3-2	Employee Expenses and Workforce Demographics
D1-4-1	Corporate Cost Allocation ("CAM")
D1-4-2	Updated Corporate Cost Allocation ("CAM")
D1-24-1	Regulatory Adjustments and Eliminations – CAM Elimination to Adjust for RCAM
D1-24-2	Updated Regulatory Adjustments and Eliminations - CAM Elimination to Adjust for RCAM
D1-7-1	Demand Side Management Budget
D1-9-1	Open Bill Access
D1-10-1	Finance Department - O&M Budget
D1-12-1	CIS / Customer Care – A Review of the Treatment of CIS/Customer Care Costs as a Result of the

	ADR Settlement in EB-2011-0226
D1-13-1	Energy Supply, Storage Development and Regulatory – O&M Budget
D1-14-1	Law Department – O&M Budget
D1-15-1	Operations – O&M Budget
D1-16-1	Information Technology – O&M Budget
D1-17-1	Business Development and Corporate Strategy
D1-18-1	Human Resources – O&M Budget
D1-20-1	Pipeline Integrity and Safety – O&M Budget
D1-21-1	Public and Government Affairs – O&M Budget
D1-22-1	Non Departmental Expenses – O&M Budget
D2-3-1	Compensation Study – A Comparison of the EGDI Compensation Program
D3-1-1	Cost of Service 2013 Test Year
D3-2-1	Cost of Service Comparison of Utility Cost and Expenses Budget 2013 and Estimate 2012
D3-2-2	Operating and Maintenance Expense by Department 2013 Test Year
D3-2-3	Operating and Maintenance Expense by Cost Type - 2013 Test Year vs. 2012 Bridge Year
D3-2-4	Salaries and Wages and FTE Forecast 2013 Test Year
D4-1-1	Cost of Service 2012 Bridge Year
D4-2-1	Cost of Service Comparison of Utility Cost and Expenses 2012 Estimate and 2011 Historic
D4-2-3	Operating and Maintenance Expense by Department 2012 Estimate
D4-2-4	Operating and Maintenance Expense by Cost Type 2012 Estimate and 2011 Historic
D4-2-5	Salaries and Wages and FTE Estimate 2012 Bridge Year
D5-1-1	Cost of Service 2011 Historic
D5-2-1	Cost of Service Comparison of Utility Costs and Expenses Actual 2011 and 2007 Board Approved
D5-2-2	Operating and Maintenance Expense by Department 2011 Historic
D5-2-3	Operating and Maintenance Expense by Cost Type 2011 Historic and 2007 Board Approved
D5-2-4	Salaries and Wages and FTE 2011 Historic
D5-2-5	O&M Variances 2007 - 2011
I-D1-1.1 to 20.5	Interrogatories on Issue D1
I-D2 to D26	Other Interrogatories on D series issues
I TR 82 to 160	Evidence at Technical Conference (September 5, 2012)
JT1.11 to 1.22	Undertakings from Technical Conference (September 5, 2012)
2 TR 182 to 184	Evidence at Technical Conference (September 6, 2012)
JT2.27	Undertaking from Technical Conference (September 6, 2012)

2. Is Enbridge's gas supply plan, including the forecast of gas, transportation and storage costs appropriate?

[Complete Settlement]

For the purposes of settlement, all parties accept Enbridge's gas supply plan, including the forecast of gas, transportation and storage costs, when updated to take account of the updated gas volume budget (Issue C2).

The impact of the updated gas volume budget on Enbridge's gas supply requirements can be seen in the updated Summary of Gas Costs to Operations (Exhibit N1, Tab 1, Schedule 1, Appendix B) and the impact to Enbridge's gas costs are seen in the ADR Financial Statements (Exhibit N1, Tab 1, Schedule 1, Appendix A, parts 1 and 2) at page 6.

All parties agree that the acceptance of Enbridge's 2013 gas supply plan is without prejudice to the position that parties may take in Enbridge's 2014 rates proceeding, or in Enbridge's 2011 and 2012 ESM proceedings, in relation to the issue described above at Issue C6 related to FT long haul optimization in the determination of Enbridge's net TS revenues.

Evidence: The evidence in relation to this issue includes the following:

D1-1-1	Operating Cost Summary
D1-2-1	Gas Costs, Transportation and Storage
D1-2-2	Status of Transportation Contracts
D1-2-4	Curtailement Compliance Report
D3-1-1	Cost of Service 2013 Test Year
D3-2-1	Cost of Service Comparison of Utility Cost and Expenses Budget 2013 and Estimate 2012
D3-3-1	Summary of Gas Cost to Operations
D3-3-2	Summary of Storage and Transportation Costs Fiscal 2013
D3-3-3	Peak Day Supply Mix
D3-3-4	Monthly Pricing Information
D3-3-5	Gas Supply/Demand
D4-1-1	Cost of Service 2012 Bridge Year
D4-2-1	Cost of Service Comparison of Utility Cost and Expenses 2012 Estimate and 2011 Historic
D4-3-1	Summary of Gas Cost to Operations 2012 Bridge Year
D4-3-2	Summary of Storage & Transportation Costs Fiscal 2012
D4-3-3	Peak Day Supply Mix – 2012 Forecast
D5-1-1	Cost of Service 2011 Historic
D5-2-1	Cost of Service Comparison of Utility Costs and Expenses Actual 2011 and 2007 Board Approved
D5-3-1	Summary of Gas Cost to Operations 2011 Historic Year
D5-3-2	Summary of Storage & Transportation Costs Fiscal 2011 Historic
D5-3-3	Canadian Peak Day Supply Mix 2011 Historic
I-D2-1.1 to 8.10	Interrogatories on Issue D2
I-D6-20.2	VECC Interrogatory #2
I-DV1-7.2	Energy Probe Interrogatory #2
2 TR8 to 91	Evidence at Technical Conference (September 6, 2012)
JT2.2 to 2.11	Undertakings from Technical Conference (September 6, 2012)

3. Are the proposed changes to Peak Gas Day Design Criteria (PGDDC) and methods of cost recovery appropriate?

[Complete Settlement]

In its prefiled evidence (at Exhibit D1, Tab 2, Schedule 3), Enbridge applied to increase its peak gas day design criteria (PGDDC) to utilize updated design criteria using a 1 in 10 recurrence interval. For the purposes of settlement, all parties agree that Enbridge will increase its PGDDC to utilize the updated design criteria set out at Exhibit D1, Tab 2, Schedule 3 using a 1 in 5 recurrence interval. As set out at Tables 1 and 5 (pages 7 and 16) to Exhibit D1, Tab 2, Schedule 3, this will result in an increase of heating degree days (HDDs) for the Company's three weather zones as follows:

	Current Design Criteria	Updated Design Criteria
Central Weather Zone	39.5	41.4
Eastern Weather Zone	45.1	48.2
Niagara Weather Zone	36.3	38.8

All parties agree that Enbridge will phase in the change to HDDs equally over the 2013 and 2014 years, as follows:

	Current	1st 'Step'	2013	2nd 'Step'	2014
Central Weather Zone	39.5	0.9	40.4	1.0	41.4
Eastern Weather Zone	45.1	1.6	46.7	1.5	48.2
Niagara Weather Zone	36.3	1.3	37.6	1.2	38.8

In order to meet the increased requirements resulting from the 2013 and 2014 increases to PGDDC, the Company will have to acquire increased transportation capacity. All parties agree that the cost consequences of unutilized transportation capacity related to this incremental transportation capacity will be recorded in the 2013 and 2014 Design Day Criteria Transportation Deferral Account (DDCTDA). Enbridge estimates that the cost consequences of unutilized transportation capacity will be approximately \$5 million in 2013 and \$15 million in 2014. The balances in the 2013 and 2014 DDCTDAs, together with carrying charges, will be disposed of in a manner determined by the Board in a future rate hearing.

Evidence: The evidence in relation to this issue includes the following:

- A2-1-1 Introductory Evidence
- D1-2-3 Design Criteria Evidence
- D2-4-1 Gas System Design Criteria Analysis For Enbridge Gas Distribution
- D2-4-2 Analysis of Peak Gas Day Design Criteria
- I-D2-4.1 CME Interrogatory #1
- I-D2-8.5 to 8.9 FRPO Interrogatory #5 to 9
- I-D3-1.1 to 20.1 Interrogatories on Issue D3
- 2 TR 4 to 8; 39 to 63; 67 to 72 ;and 76 to 91 Evidence at Technical Conference (September 6, 2012)
- JT.2.2 to 2.5 and 2.10 to 2.11 Undertakings from Technical Conference (September 6, 2012)

4. Is the forecast of Employee Future Benefit costs which will be incurred under USGAAP appropriate, including the request to recover Pension Expense and Other Post-Employment Benefits (“OPEB”) Expense on an accrual basis commencing January 1, 2013?

[Complete Settlement]

All parties agree that the recovery of Pension and Other Post-Employment Benefits expense on an accrual basis commencing January 1, 2013 is appropriate. All parties further agree that Enbridge shall recover the Other Post-Employment Benefits (OPEB) expenses described at Exhibit A2, Tab 3, Schedule 1 equally over a twenty year period commencing January 1, 2013. The OPEB expenses of \$90 million will be recorded in the Transition Impact of Accounting Changes Deferral Account (TIACDA), and will be cleared to the credit of Enbridge at the rate of \$4.5 million per year (no interest will be applicable to the amounts recorded in the TIACDA).

Evidence: The evidence in relation to this issue includes the following:

A2-3-1	Change in Accounting Methodology – Other Post Employment Benefits (“OPEB”)
A2-3-2	Change in Accounting Methodology – Pension Expense
I-D1-1.6	Board Staff Interrogatory #6
I-D4-1.1 to 14.2	Interrogatories on Issue D4
I-DV2-1.1 to 4.1	Interrogatories on Issue DV2
I TR 138 to 153	Evidence at Technical Conference (September 5, 2012)
T1.23	Undertaking from Technical Conference (September 5, 2012)

5. Is the corporate cost allocation (“RCAM”) appropriate?

[Complete Settlement]

See Issue D1, above. The RCAM corporate cost allocation for 2013 is part of the overall agreed-upon “All other O&M budget” of \$256.8 million. It is agreed that no party will raise any procedural objection if any party requests changes to RCAM in Enbridge’s 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology, which is not the type of case where such issues would ordinarily be raised). All parties are free to take whatever positions they determine with respect to this issue at that time.

Evidence: The evidence in relation to this issue includes the following:

D1-4-1	Corporate Cost Allocation (“CAM”)
D1-4-2	Updated Corporate Cost Allocation (“CAM”)
D1-24-1	Regulatory Adjustments and Eliminations – CAM Elimination to Adjust for RCAM
D1-24-2	Updated Regulatory Adjustments and Eliminations - CAM Elimination to Adjust for RCAM
D2-1-1	Regulatory Corporate Cost Allocation (“RCAM”) Update - MNP
I-D1-1.12	Board Staff Interrogatory #12
I-D1-1-20.5	VECC Interrogatory #5
I-D5-1.1 to 20.5	Interrogatories on Issue D5
I-D12-14.2	SEC Interrogatory #2
I-D15-14.3 and 14.4	SEC Interrogatories #3 and 4
I TR 108 to 117 and 121 to 123	Evidence at Technical Conference (September 5, 2012)
JT1.17 to 1.19	Undertakings from Technical Conference (September 5, 2012)

6. Are the affiliate charges appropriate?

[Complete Settlement]

See Issue D1 above. The financial impact of affiliate charges for 2013 is part of the overall agreed-upon “All other O&M budget” of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

A1-9-1	List of Affiliate Charges
I-D6-20.1 to 20.2	Interrogatories on Issue D6

I-D14-5.3	CCC Interrogatory #3
I-D14-7.1	Energy Probe Interrogatory #1
I-D14-14.1	SEC Interrogatory #1
I-D18-5.1 to 5.2	CCC Interrogatories #1 and 2
I-D19-14.2	SEC Interrogatory #2
I TR 135 to 138	Evidence at Technical Conference (September 5, 2012)
JT1.21	Undertaking from Technical Conference (September 5, 2012)

7. Are the proposed depreciation rate changes appropriate?

[Complete Settlement]

All parties accept Enbridge's proposed depreciation rates for 2013, as set out at Exhibit D2, Tab 5, Schedule 1 and Exhibit D2, Tab 2, Schedule 1 (Gannett Fleming Depreciation Study), with two exceptions.

First, the service lives for 475.20 Distribution Mains – Plastic will be increased from 55 to 65 years.

Second, the service lives for 473/474 Distribution Services & Meter Installations will be increased from 40 to 45 years.

All parties agree that the use of the depreciation rates set out in the Gannett Fleming Depreciation Study, as modified for the two adjustments set out above, is appropriate for ratemaking purposes for 2013 (including for determination of rate base) and that Enbridge shall be entitled to adopt such adjusted depreciation rates for purposes of financial accounting. The impact of this change for 2013 is to reduce depreciation expense by \$20.3 million.

It is agreed that no party will raise any procedural objection if Enbridge files a new depreciation study, and seeks approval of updated depreciation rates based upon such new study, in its 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology, which is not the type of case where such issues would ordinarily be raised). All parties are free to take whatever positions they determine with respect to this issue at that time.

Evidence: The evidence in relation to this issue includes the following:

D1-5-1	Depreciation Rate Change
D2-2-1	Depreciation Study – Gannett Fleming
D2-2-2	Schedule Depreciation Rates
D3-1-1	Cost of Service 2013 Test Year
D3-2-1	Cost of Service Comparison of Utility Cost and Expenses Budget 2013 and Estimate 2012
D4-1-1	Cost of Service 2012 Bridge Year
D4-2-1	Cost of Service Comparison of Utility Cost and Expenses 2012 Estimate and 2011 Historic
D5-1-1	Cost of Service 2011 Historic
D5-2-1	Cost of Service Comparison of Utility Costs and Expenses Actual 2011 and 2007 Board Approved
I-D1-1.2	Board Staff Interrogatory #2
I-D5-2.1 to 5.1	Interrogatories on Issue D7
I TR 103 to 108	Evidence at Technical Conference (September 5, 2012)
JT1.13 to 1.14	Undertakings from Technical Conference (September 5, 2012)

8. Is the municipal taxes expense appropriate?

[Complete Settlement]

All parties agree that Enbridge will reduce its municipal taxes forecast by \$800,000, such that the 2013 municipal tax amount to be included in operating costs is \$39.3 million.

Evidence: The evidence in relation to this issue includes the following:

D1-1-1	Operating Cost Summary
D1-6-1	Municipal Taxes
D3-1-1	Cost of Service 2013 Test Year
D3-2-1	Cost of Service Comparison of Utility Cost and Expenses Budget 2013 and Estimate 2012
D4-1-1	Cost of Service 2012 Bridge Year
D4-2-1	Cost of Service Comparison of Utility Cost and Expenses 2012 Estimate and 2011 Historic
D5-1-1	Cost of Service 2011 Historic
D5-2-1	Cost of Service Comparison of Utility Costs and Expenses Actual 2011 and 2007 Board Approved
I-D8-1.1 to 20.1	Interrogatories on Issue D8

9. Is the demand side management budget appropriate?

[Complete Settlement]

All parties agree that Enbridge's demand side management budget for 2013 is \$31.4 million, as set out in the Board-approved Settlement Agreement in the EB-2011-0295 proceeding. This amount is part of the overall O&M budget set out at Issue D1.

Evidence: The evidence in relation to this issue includes the following:

D1-7-1	Demand Side Management Budget
I-D1-1.12	Board Staff Interrogatory #12
I-D9-1.1	Board Staff Interrogatory #1

10. Is the income tax expense forecast appropriate?

[Complete Settlement]

All parties agree that Enbridge's income tax expense forecast is appropriate, subject to adjustments to be made to reflect the changes between Enbridge's pre-filed evidence (as set out in Impact Statement #2 at Exhibit M2) and the Settled Issues in this Settlement Agreement. The revised income tax expense is reflected in the ADR Financial Statements (Exhibit N1, Tab 1, Schedule 1, Appendix A, parts A and B at page 8).

Evidence: The evidence in relation to this issue includes the following:

D1-1-1	Operating Cost Summary
D3-1-1	Cost of Service 2013 Test Year
D3-2-1	Cost of Service Comparison of Utility Cost and Expenses Budget 2013 and Estimate 2012
D4-1-1	Cost of Service 2012 Bridge Year
D4-2-1	Cost of Service Comparison of Utility Cost and Expenses 2012 Estimate and 2011 Historic
D5-1-1	Cost of Service 2011 Historic
D5-2-1	Cost of Service Comparison of Utility Costs and Expenses Actual 2011 and 2007 Board Approved
I-D10-1.1 to 1.4	Interrogatories on Issue D10
I TR 123 to 132	Evidence at Technical Conference (September 5, 2012)
JT1.20	Undertaking from Technical Conference (September 5, 2012)

11. Is the proposal for the Open Bill Access Program appropriate?

[Partial Settlement]

All parties, as well as the open bill issue participants, agree to the resolution of the Open Bill Access issue on the following terms.

Enbridge will continue to offer open bill services in 2013, under the terms of the Board-approved Settlement Agreement in EB-2009-0043 subject to the following two changes:

- a. The Fees to be charged for Billing Services will be updated as set out at Table 4 of Exhibit D1, Tab 9, Schedule 14.
- b. The Costs to be used for determining net income amounts for the purpose of sharing between Enbridge and ratepayers will be updated as set out at Table 4 of Exhibit D1, Tab 9, Schedule 14.

The terms of the OBA Agreement that governs the relationship between Enbridge and Billers are being discussed between Enbridge and the open bill issue participants. These parties hope to be able to reach resolution on the terms of contract by the end of October 2012, and will advise the Board in that regard. In the event that no agreement can be reached, then these parties may ask the Board to consider and determine issues related to the terms of the OBA Agreement, as contemplated in Procedural Order No. 4.

All parties, as well as the open bill issue participants, agree that as of January 1, 2013 Enbridge will continue to use the current form of OBA Agreement until such time as either: (i) Enbridge and the open bill issue participants agree on an updated form of OBA Agreement; or (ii) the Board makes a determination on any outstanding issues related to the OBA Agreement.

All parties, as well as the open bill issue participants, agree that if Enbridge wishes to continue to offer open bill services beyond December 31, 2013, then Enbridge must make application to the Board to do so. It is expected that such application (which might be part of a rates application, or might be a stand-alone application), will set out the terms upon which Enbridge proposes to continue the open bill program over a longer term or the terms upon which Enbridge proposes to wind down the program. Enbridge agrees that it will meet with all interested parties (including

open bill issue participants) at least one month before it files the application contemplated in this paragraph. The purpose of such meeting is to provide information about Enbridge's plans and intentions to interested parties and to allow Enbridge to receive comments from those parties that may be relevant in the preparation of Enbridge's application.

In response to a proposal made by certain open bill issue participants to have Enbridge initiate an on-bill financing program for DSM measures (such as energy efficient equipment and building envelope upgrades), all parties, as well as the open bill issue participants, agree to the following next steps to work towards the possibility of offering on-bill financing for DSM measures with the intention of starting in January 2014:

- a. By November 15, 2012, a consultative group will be formed to further consider the proposal. Any intervenor participating in this EB-2011-0354 case or in the ongoing DSM consultative would be eligible to participate in the consultative group.

The consultative group will have at least three meetings in 2012, with the stated goal of creating a project plan setting out how Enbridge would offer on-bill financing for DSM measures at the lowest feasible interest rates.

- b. In creating a project plan, the consultative group will consider the appropriate program design for an on-bill financing program for DSM measures to allow for such a program to be feasible, viable and effective. Items that may be considered include, but are not limited to, the following items which have been proposed by certain open bill issue participants:
 - a. Whether and, if appropriate, how to issue an RFP seeking one or more financiers to offer financing to underpin the on-bill financing program activities involving the on-bill financing DSM consultative.
 - b. Whether and, if appropriate, how to ensure that the DSM on-bill financing program will only provide financing for DSM measures, with the goal of having such products sold and installed by reputable professionals.
 - c. Whether and, if appropriate, how to ensure that an accurate energy rating system (e.g., NRCan's EnerGuide Rating system) is used to: a) forecast; and b) measure the post-installation actual savings of DSM measures that are financed by the DSM on-bill financing program.
 - d. Whether and, if appropriate, how to ensure that DSM on-bill financing charges can be transferred to a new homeowner or tenant.
- c. Once the project plan is completed, which is anticipated by early 2013, Enbridge will then lead the execution of the project plan.

All parties, as well as the open bill issue participants, acknowledge that Enbridge has not yet made any determination as to whether it plans to continue open bill services beyond 2013 or whether Enbridge will seek to wind down the program at that time. All parties, as well as the open bill issue participants further acknowledge that while the continuation of Enbridge's open bill

services is not a pre-requisite to offering DSM on-bill financing, the question of whether open bill services continue in 2014 may impact on the feasibility and viability of offering DSM on-bill financing. In that regard all parties, as well as the open bill issue participants, acknowledge that Enbridge has not yet made any determination about whether it will proceed with on-bill financing for DSM measures in 2014 and acknowledge that such determination is contingent, at least in part, on the DSM on-bill financing program being feasible and viable to implement. If the decision is made to proceed with on-bill financing for DSM measures, Enbridge will aim to launch the DSM on-bill financing program in January 2014.

Evidence: The evidence in relation to this issue includes the following:

D1-9-1	Open Bill Access
I-D11-1.1 to 20.11	Interrogatories on Issue D11
I-D11-23.1 to 24.17	Supplementary Interrogatories on Issue D11

12. Is the proposed O&M budget for Finance appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Finance is part of the overall agreed-upon "All other O&M budget" of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-10-1	Finance Department - O&M Budget
I-D12-5.1 to 14.3	Interrogatories on Issue D12

13. Has Enbridge properly implemented the revenue requirement associated with the Customer Care and CIS Settlement Agreement (per EB-2011-0226)?

[Complete Settlement]

All parties agree that Enbridge has properly implemented the revenue requirement associated with the Customer Care and CIS ("CC/CIS") Settlement Agreement (per EB-2011-0226).

All parties agree that the 2013 Customer Care O&M component of \$89.4 million within the total CC/CIS revenue requirement is part of the overall O&M budget set out at Issue D1.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
D1-12-1	CIS / Customer Care – A Review of the Treatment of CIS/Customer Care Costs as a Result of the ADR Settlement in EB-2011-0226
D1-12-2	EB-2011-0226 Settlement Agreement Enbridge Customer Care and CIS Costs 2013 to 2018 - September 2, 2011
I-D1-1.12	Board Staff Interrogatory #12
I-D13-1.1	Board Staff Interrogatory #1

14. Is the proposed O&M budget for Energy Supply, Storage Development and Regulatory appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Energy Supply, Storage Development and Regulatory is part of the overall agreed-upon “All other O&M budget” of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-13-1	Energy Supply, Storage Development and Regulatory – O&M Budget
I-D14-1.1 to 20.1	Interrogatories on Issue D14
1 TR 116 to 120	Evidence at Technical Conference (September 5, 2012)

15. Is the proposed O&M budget for Law appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Law is part of the overall agreed-upon “All other O&M budget” of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-14-1	Law Department – O&M Budget
I-D15-1.1 to 14.4	Interrogatories in Issue D25

16. Is the proposed O&M budget for Operations appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Operations is part of the overall agreed-upon “All other O&M budget” of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-15-1	Operations – O&M Budget
I-D16-1.1 to 14.4	Interrogatories on Issue D16

17. Is the proposed O&M budget for Information Technology appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Information Technology is part of the overall agreed-upon “All other O&M budget” of \$256.8 million.

21. Is the proposed O&M budget for Public and Government Affairs appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Public and Government Affairs is part of the overall agreed-upon "All other O&M budget" of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-21-1	Public and Government Affairs – O&M Budget
I-D1-1-14.9	SEC Interrogatory #9
I-D21-5.1 to 14.2	Interrogatories on Issue D21

22. Is the proposed O&M budget for Non-Departmental O&M Expenses appropriate?

[Complete Settlement]

See Issue D1, above. The O&M budget for Non-Departmental O&M Expenses is part of the overall agreed-upon "All other O&M budget" of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-22-1	Non Departmental Expenses – O&M Budget
I-D22-1.1 to 14.1	Interrogatories on Issue D22

23. Is the forecast of Provision for Uncollectable Amounts for 2013 appropriate?

[Complete Settlement]

See Issue D1, above. The Provision for Uncollectable Amounts for 2013 is part of the overall agreed-upon "All other O&M budget" of \$256.8 million.

Evidence: The evidence in relation to this issue includes the following:

D1-3-1	Operating Maintenance Costs
I-D1-1.9	Board Staff Interrogatory #9
I-D1-1-14.3	SEC Interrogatory #3

24. Is the allocation of O&M costs between utility and non-utility ("unregulated") operations appropriate?

[Complete Settlement]

See Issue B6, above.

Evidence: The evidence in relation to this issue includes the following:

A1-9-1	List of Affiliate Transactions for the 2013 Test Year, 2012 Bridge Year and 2011 Historic Year
I-D18-1.1	Board Staff Interrogatory #1
I-D24-1.1 to 5.1	Interrogatories on Issue D24
1 TR 132 to 135	Evidence at Technical Conference (September 5, 2012)

DV: DEFERRAL AND VARIANCE ACCOUNTS

1. Are Enbridge's existing and proposed deferral and variance accounts appropriate?

[Complete Settlement]

Subject to the exceptions set out below, all parties agree to the establishment of Enbridge's deferral and variance accounts, on the basis as described in evidence at Exhibit D1, Tab 8, Schedule 1.

Within the Purchased Gas Variance Account (PGVA), all parties have agreed to one methodology change. With respect to dispositions of long Banked Gas Account (BGA) balances, all parties agree that when a long BGA balance is purchased by Enbridge from a customer, Enbridge will credit the difference between the purchase price and the Empress price embedded in the PGVA to a load balancing component of the PGVA (rather than to the commodity component of the PGVA, which is the current methodology).

As set out in Issue C6 above, all parties agree to the changes described in determining amounts to be included in the 2013 Transactional Services Deferral Account (TSDA).

As set out in Issue D1 above, all parties agree to the creation of a 2013 Pension True-Up Variance Account (PTUVA).

As set out in Issue D3 above, all parties agree to the parameters described in determining amounts to be included in the 2013 and 2014 Design Day Criteria Transportation Deferral Account (DDCTDA).

Evidence: The evidence in relation to this issue includes the following:

A1-6-1	Accounting Orders
D1-8-1	Deferral and Variance Accounts
D1-8-3	Deferral and Variance Account Forecast Balances
I-DV1-5.1 to 20.1	Interrogatories on Issue DV1

2. Is Enbridge's request to recover from ratepayers an approximate \$90 million forecasted balance as at December 31, 2012 in the 2012 Transition Impact of Accounting Changes Deferral Account ("TIACDA") appropriate?

[Complete Settlement]

See Issue D4, above.

Evidence: The evidence in relation to this issue includes the following:

D1-8-1	Deferral and Variance Accounts
D1-8-3	Deferral and Variance Account Forecast Balances
I-DV2-1.1 to 4.1	Interrogatories on Issue DV2
2 TR 138 to 153	Evidence at Technical Conference (September 6, 2012)

E: COST OF CAPITAL

1. Is the forecast of the cost of debt for the Test Year, including the mix of short and long term debt and preference shares, and the rates and calculation methodologies for each, appropriate?

[Partial Settlement]

All parties agree with Enbridge's forecasts of the cost rates for 2013 long and medium term debt, short term debt and preference shares.

All parties also agree with the forecast of the cost of debt for the Test Year, based upon Enbridge's current 36% level of deemed common equity (as set out in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, part 2 at page 9). In that regard, if the OEB were to determine that no change to Enbridge's current 36% level of deemed common equity is appropriate, then it is agreed that the long term debt component of Enbridge's capital structure will increase to \$2,461.9 million as a result of a required \$400 million debt issuance, to occur in August 2013, at agreed upon forecast coupon and effective interest rates of 4.10% and 4.18%. As a result of the new debt issuance with interest rates that are lower than the average interest rate for Enbridge's existing outstanding debt, Enbridge's average long term debt cost rate is reduced to 5.80% from the forecast 5.90%.

In the event that the Board approves a different level of common equity from the current 36%, in response to Issue E2, then there is no agreement on the appropriate capital structure. This issue is to be heard by the Board. In particular, there is no agreement as to the mix of short and long term debt and preference shares, and the resulting cost of capital, in the event that the Board approves a different level of deemed common equity from the current 36%, in response to Issue E2. All parties are free to take whatever position they deem appropriate in relation to this question when Issue E2 is considered by the Board.

Evidence: The evidence in relation to this issue includes the following:

E1-1-1	Cost of Capital Summary
E1-2-1	Cost of Capital
E3-1-2	Summary Statement of Principal and Carrying Costs of Term Debt 2013 Test Year
E3-1-3	Unamortized Debt Discount and Expense Average of Monthly Averages 2013 Test Year
E3-1-4	Preference Shares Summary Statement of Principal and Carrying Cost 2013 Test Year
E3-1-5	Unamortized Preference Share Issue Expense Average of Monthly Averages 2013 Test Year
E4-1-1	Cost of Capital 2012 Bridge Year
E4-1-2	Summary Statement of Principal and Carrying Cost of Term Debt 2012 Bridge Year
E4-1-3	Unamortized Debt Discount and Expense Average of Monthly Averages 2012 Bridge Year
E4-1-4	Preference Shares Summary Statement of Principal and Carrying Cost 2012 Bridge Year
E4-1-5	Unamortized Preference Shares Issue Expense Average of Monthly Averages 2012 Bridge Year
E5-1-2	Summary Statement of Principal and Carrying Cost of Term Debt 2011 Historic
E5-1-3	Unamortized Debt Discount and Expense Average of Monthly Averages 2011 Historic
E5-1-4	Preference Shares Summary Statement of Principal and Carrying Cost 2011 Historic
E5-1-5	Unamortized Preference Share Issue Expense Average of Monthly Averages 2011 Historic
F3-1-1	Cost of Capital 2013 Test Year
I-E1-1.1 to 21.2	Interrogatories on Issue E1
I-E2-2.1	APPrO Interrogatory #1
2 TR 118 to 121 and 137 to 145	Evidence at Technical Conference (September 6, 2012)
JT2.15 to 2.17	Undertakings from Technical Conference (September 6, 2012)

2. Is the proposed change in capital structure increasing Enbridge's deemed common equity component from 36% to 42% appropriate?

[No settlement]

All parties agree that this issue shall proceed to hearing. The attached ADR Financial Statements show the impact of this Settlement Agreement based upon a 42% equity thickness and a 36% equity thickness (Exhibit N, Tab 1, Schedule 1, Appendix A, parts 1 and 2) at pages 1 and 9.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
A3-9-1	DBRS and S&P Reports
E1-2-1	Cost of Capital
E2-1-2	Capital Structure: Equity Ratio
E2-2-1	Concentric Energy Advisors : Equity Thickness Evaluation & Recommendation
L1-1-1	Business Risk And Capital Structure For Enbridge Gas Distribution Inc (EGDI) – Dr. Booth
I-E1-7.1 and 7.5	Energy Probe Interrogatories #1 and 5
I-E1-20.1 and 20.3	VECC Interrogatories #1 and 3
I-E1-21.1 and 21.2	CME et al Interrogatories #1 and 2
I-E2-1.1 to 21.12	Interrogatories on Issue E2
I-E2-22.1 to 22.52	EGD Interrogatories to Dr. Booth
2 TR91 to 155	Evidence at Technical Conference (September 6, 2012)
JT2.12 to 2.20	Undertakings from Technical Conference (September 6, 2012)

3. Is the proposal to use the Board's formula to calculate return on equity appropriate?

[Complete Settlement]

All parties agree that Enbridge will use the Board's formula from the December 2009 Report of the Board on the Cost of Capital for Ontario's Regulated Utilities to calculate return on equity (ROE). All parties agree that, as set out in that Report, the calculation of ROE to be used for the purpose of setting rates for 2013 shall be determined using Consensus October 2012 inputs, which are based on September data, once such information is available in October 2012. As set out at Issue O6 below, if timing permits Enbridge will implement the updated ROE as part of the draft Rate Order process in November 2012, so that this becomes part of the interim rates to be implemented on January 1, 2013. If that timing is not possible, then the updated ROE will be implemented as part of final rates.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
E2-1-1	Return on Equity Calculation for 2013
I-E3-1.1 to 21.3	Interrogatories on Issue E3

F: REVENUE SUFFICIENCY / DEFICIENCY

1. Is the revenue requirement and revenue deficiency or sufficiency for the Test Year calculated correctly?

[Complete Settlement]

All parties agree that the revenue deficiency for the Test Year arising from the Settled Issues, as set out in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, parts 1 and 2), is calculated correctly.

Evidence: The evidence in relation to this issue includes the following:

A2-4-1	Drivers of Deficiency / (Sufficiency)
E3-1-1	Revenue Deficiency Calculation And Required Rate Of Return 2013 Test Year
E5-1-1	Revenue Sufficiency Calculation And Required Rate Of Return 2011 Historical Year (Estimate)
F1-1-1	Revenue (Deficiency) / Sufficiency Summary
F3-1-1	Cost of Capital 2013 Test Year
F3-1-2	Utility Income 2013 Test Year
F3-1-3	Utility Rate Base 2013 Test Year
F4-1-1	Revenue Sufficiency Calculation and Required Rate of Return 2012 Bridge Year
F4-1-2	Utility Income 2012 Bridge Year
F4-1-3	Utility Rate Base 2012 Bridge Year
F5-1-1	Revenue Sufficiency and Recalculated Rate of Return 2011 Historic
F5-1-2	Utility Income 2011 Historic
F5-1-3	Utility Rate Base 2011 Historic
M1-1-1	Impact Statement No. 1
M1-1-2	Change in Revenue Requirement 2013 Test Year

M1-1-3	Utility Rate Base 2013 Test Year
M1-1-4	Utility Income 2013 Test Year
M1-1-5	Ontario Utility Capital Structure 2013 Test Year
I-F1-5.1 to 20.1	Interrogatories on Issue F1

2. Is the overall change in revenue requirement reasonable given the impact on consumers?

[Complete Settlement]

The overall changes in revenue requirement arising from the Settled Issues assuming a 36% and a 42% equity thickness is set out in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, parts 1 and 2). All parties agree that the overall change in revenue requirement is reasonable given the impact on consumers.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
I-F2-4.1 to 20.1	Interrogatories on Issue F2

G: COST ALLOCATION

1. Is Enbridge's utility Cost Allocation Study, including the methodologies and judgements used and the proposed application of that study with respect to Test Year rates, appropriate?

[Complete Settlement]

For the purposes of settlement, all parties accept Enbridge's utility Cost Allocation Study, including the methodologies and judgements used and the proposed application of that study with respect to Test Year rates.

Evidence: The evidence in relation to this issue includes the following:

G1-1-1	2013 Cost Allocation Methodology
G2-1-1	Fully Allocated Cost Study - 2013 Test Year
G2-2-1	Revenue to Cost/Rate of Return Comparisons
G2-2-2	Revenue to Cost/Rate of Return Comparisons Excluding Gas Supply Commodity
G2-3-1	Functionalization of Utility Rate Base
G2-3-2	Functionalization of Utility Working Capital
G2-3-3	Functionalization of Utility Net Investments
G2-3-4	Functionalization of Utility O&M
G2-4-1	Classification of Rate Base
G2-4-2	Classification of Net Investment
G2-4-3	Classification of O&M Costs
G2-5-1	Allocation of Rate Base
G2-5-2	Allocation of Return & Taxes
G2-5-3	Allocation of Total Cost of Service
G2-6-1	Rate Base Functionalization Factors

G2-6-2	Classification of Gas Costs to Operations
G2-6-3	Allocation Factors
G2-6-4	Allocation of DSM Program Costs General Costs Including Fringe Benefits and A&G
G2-7-1	Tecumseh – Functionalization and Classification of Rate Base
G2-7-2	Tecumseh – Functional Allocation of Cost of Service - 2013 Test Year
G2-7-3	Tecumseh – Classification of Cost of Service 2013 Test Year
G2-7-4	Tecumseh Gas Rate Derivation 2013 Test Year
G2-7-5	Tecumseh Gas Isolation of Transmission Related Rate Base 2013 Test Year
G2-7-6	Tecumseh Gas Isolation of Transmission Related Operating Cost 2013 Test Year
G2-7-7	Functionalization of Short Cycle Net Revenues to In/Ex Franchise Customers 2013 Test Year
I-G1-2.1 to 20.1	Interrogatories on Issue G1

2. Are the Cost Allocation Study methodology relating to Customer Care and CIS costs appropriate?

[Complete Settlement]

For the purposes of settlement, all parties accept the Cost Allocation methodology relating to Customer Care and CIS costs.

Evidence: The evidence in relation to this issue includes the following:

G1-1-1	2013 Cost Allocation Methodology
G2-1-1	Fully Allocated Cost Study - 2013 Test Year

3. Are the principles applied in the utility Cost Allocation Study consistent where appropriate with the principles applied in allocating costs between utility and non-utility (“unregulated”) businesses?

[Complete settlement]

See Issue B6, above.

Evidence: The evidence in relation to this issue includes the following:

G1-1-1	2013 Cost Allocation Methodology
G2-1-1	Fully Allocated Cost Study - 2013 Test Year
D2-5-1	Regulated Unregulated Storage Cost Allocation – Black & Veatch
G2-7-1	Tecumseh – Functionalization and Classification of Rate Base
G2-7-2	Tecumseh – Functional Allocation of Cost of Service - 2013 Test Year
G2-7-3	Tecumseh – Classification of Cost of Service 2013 Test Year
G2-7-4	Tecumseh Gas Rate Derivation 2013 Test Year
G2-7-5	Tecumseh Gas Isolation of Transmission Related Rate Base 2013 Test Year
G2-7-6	Tecumseh Gas Isolation of Transmission Related Operating Cost 2013 Test Year
G2-7-7	Functionalization of Short Cycle Net Revenues to In/Ex Franchise Customers 2013 Test Year

H: RATE DESIGN

1. Are the rates proposed for implementation effective January 1, 2013 and appearing in Exhibit H just and reasonable?

[Complete Settlement]

See Issue O6, below.

Evidence: The evidence in relation to this issue includes the following:

H1-1-1	2013 Proposed Rates
H2-1-1	Revenue Comparison – Current Revenue vs. Proposed Revenue
H2-2-1	Proposed Revenue Recovery by Rate Class
H2-3-1	Summary of Proposed Rate Change by Rate Class
H2-4-1	Calculation of Gas Supply Charges by Rate Class
H2-5-1	Detailed Revenue Calculations by Rate Class
H2-6-1	Rate Handbook
H2-7-1	Annual Bill Comparison

2. Are the proposed levels of customer charges, including the fixed/variable split, appropriate?

[Complete Settlement]

For the purposes of settlement, all parties accept the fixed/variable split of customer charges, and agree with the process set out in response to Issue O6 for the implementation of interim rates as of January 1, 2013.

Evidence: The evidence in relation to this issue includes the following:

H1-1-1	2013 Proposed Rates
H2-6-1	Rate Handbook
H2-7-1	Annual Bill Comparison

O: OTHER ISSUES

1. Has Enbridge responded appropriately to all relevant Board directions from previous proceedings, including any commitments from prior settlement agreements?

[Complete Settlement]

All parties accept Enbridge's evidence that it has responded appropriately to all relevant Board directions from previous proceedings.

Evidence: The evidence in relation to this issue includes the following:

A1-13-1 Status of Board Directives from Previous Board Decisions and/or Board Orders
I-O1-8.1 FRPO Interrogatory #1

2. Are Enbridge's economic and business planning assumptions for the Test Year appropriate?

[Complete Settlement]

In relation to the Settled Issues, no party takes issue with whether Enbridge's economic and business planning assumptions for the Test Year are appropriate.

Any party is free to take whatever position they deem appropriate about the economic and business planning assumptions applied by Enbridge in relation to Issues E1 and E2.

Evidence: The evidence in relation to this issue includes the following:

A2-2-1	2013 Regulatory Budget Assumptions and Guidelines Directive
B2-1-1	Economic Feasibility Procedure and Policy
C2-1-1	Key Economic Assumptions
I-B1-5.15	CCC Interrogatory #15
I-C2-11.2	Energy Probe Interrogatory #2
I-O2-5.1 to 5.2	CCC Interrogatories #1 and 2

3. Are sustainable productivity and efficiency gains achieved under incentive regulation appropriately reflected in Enbridge's Cost of Service estimates?

[Complete Settlement]

All parties agree that Enbridge's 2013 cost of service rates, as agreed through the Settled Issues in this Settlement Agreement, reflect productivity and efficiency gains that have been achieved from the incentive regulation term. The parties accept the estimates of productivity and efficiency gains prepared by Enbridge in response to JT1.28. Enbridge agrees that, as part of its 2014 rates proceeding (which is anticipated to be an application for approval of an IR methodology), it will address ways to establish and maintain records of productivity and efficiency initiatives that would be useful for the Board in a subsequent rebasing application or other proceeding where such information would be useful.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
A2-1-2	Benchmarking Study (Concentric)
A2-1-3	Analytical Review of the September 2011 PEG-R Report (PSE)
I-O3-1.1 to 20.1	Interrogatories on Issue O3
I TR 160 to 200	Evidence at Technical Conference (September 5, 2012)
JT1.25 to 1.28	Undertakings from Technical Conference (September 5, 2012)

4. Are Enbridge's Conditions of Service (i.e. customer service policies including security deposits, late payment penalty, etc.) compatible with Board directives?

[Complete Settlement]

No party takes issue with whether Enbridge's Conditions of Service are compatible with Board directives. As indicated in response to JT1.24, Enbridge will update its Conditions of Service to address low-income customer service policy amendments, as required in the EB-2010-0280 proceeding.

Evidence: The evidence in relation to this issue includes the following:

A1-14-1	Conditions of Service
I-O4-5.1 to 5.2	Interrogatories on Issue O4
I TR 156 to 158	Evidence at Technical Conference (September 5, 2012)
JT1.24	Undertaking from Technical Conference (September 5, 2012)

5. Have all impacts of the conversion of regulatory and financial accounting from CGAAP to USGAAP been identified, and reflected in the appropriate manner in the application, the revenue requirement for the Test Year, and the proposed rates?

[Complete Settlement]

See Issue B4 above.

Evidence: The evidence in relation to this issue includes the following:

Procedural Order #2	Decision on Preliminary Issue, May 16, 2012
A1-6-2	Accounting for Rate Regulated Operations Current and Future Changes
I-O5-1.1 to 1.4	Clearance of Deferral and Variance Account Balances

6. How should the Board implement the rates relevant to this proceeding if they cannot be implemented on or before January 1, 2013?

[Complete Settlement]

All parties agree that the revenue requirement and rate impact of the Settled Issues should be implemented into rates as of January 1, 2013, using an assumed 36% equity thickness. The overall change in revenue requirement arising from the Settled Issues assuming a 36% equity thickness is set out in the attached ADR Financial Statements (Exhibit N, Tab 1, Schedule 1, Appendix A, part 2). As noted in the Overview, all parties agree that the agreement to use the current level of equity thickness (36%) and associated capital structure ratios for implementation of interim rates is not intended as an indication or suggestion to the Board that 36% is the appropriate level of equity thickness for Enbridge in 2013. That issue is to be determined by the Board based upon the evidence and argument presented.

Enbridge will provide a draft Rate Order (setting out the interim rates reflecting the Settled Issues) to all parties on or before Friday, October 26, 2012. Parties will provide comments on the draft Rate Order by Wednesday, November 7, 2012. Enbridge will then provide any required response and updates, in order to allow the Board to consider the draft Rate Order shortly thereafter. Assuming that the Board approves the draft Rate Order before the end of November 2012, then the interim rates reflecting the Settled Issues will be implemented in conjunction with Enbridge's January 1, 2013 QRAM Application. If timing permits, Enbridge will implement the updated ROE (see issue E3, above) as part of the draft Rate Order process in November 2012. That would allow for the updated ROE to become part of the interim rates to be implemented on January 1, 2013. If that timing is not possible, then the impact of the updated ROE will be implemented as part of final rates, as described below.

The rates to be implemented on January 1, 2013 will be interim rates, to be adjusted subsequently to take account of the full year effect of the determination of Issue E2 (Enbridge's request to increase deemed common equity component from 36% to 42%), and any related impacts from Issue E1 (cost of debt). If necessary, the interim rates will also be adjusted to reflect the updated ROE that will be determined in November 2011 in accordance with process described at Issue E3, above). All parties agree that any financial impact of the determination of Issues E1 and E2 (and Issue E3, if necessary) shall be implemented as part of Enbridge's first QRAM Application following the Board's decision (or if time does not permit, as part of the following QRAM Application).

Evidence: The evidence in relation to this issue includes the following:

N1-1-1, App. A to C

Appendices to Settlement Agreement

CHANGE IN REVENUE REQUIREMENT
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	ADR Adjustments	Excl. CIS Adjusted ADR Impact Statement (\$Millions)	Cust. Care / CIS (Note 2) (\$Millions)	ADR Impact Statement EGD Total (\$Millions)	
Cost of capital						
1.	Rate base	4,103.7	(12.2)	4,091.5	70.5	4,162.0
2.	Required rate of return	7.19	-	7.19	6.44	7.18
3.		<u>295.1</u>	<u>(0.9)</u>	<u>294.2</u>	<u>4.6</u>	<u>298.8</u>
Cost of service						
4.	Gas costs	1,307.9	34.9	1,342.8	-	1,342.8
5.	Operation and maintenance	348.3	(22.8)	325.5	89.4	414.9
6.	Depreciation and amortization	288.1	(21.5)	266.6	12.7	279.3
7.	Fixed financing costs	2.3	-	2.3	-	2.3
8.	Debt redemption premium amortization	-	-	-	-	-
9.	Company share of IR agreement tax savings	-	-	-	-	-
10.	Municipal and other taxes	40.1	(0.8)	39.3	-	39.3
11.		<u>1,986.7</u>	<u>(10.2)</u>	<u>1,976.5</u>	<u>102.1</u>	<u>2,078.6</u>
Miscellaneous operating and non-operating revenue						
12.	Other operating revenue	(38.3)	(6.0)	(44.3)	-	(44.3)
13.	Interest and property rental	-	-	-	-	-
14.	Other income	(0.7)	-	(0.7)	-	(0.7)
15.		<u>(39.0)</u>	<u>(6.0)</u>	<u>(45.0)</u>	<u>-</u>	<u>(45.0)</u>
Income taxes on earnings						
16.	Excluding tax shield	73.7	12.8	86.5	9.0	95.5
17.	Tax shield provided by interest expense	(35.8)	(0.2)	(36.0)	(0.9)	(36.9)
18.		<u>37.9</u>	<u>12.6</u>	<u>50.5</u>	<u>8.1</u>	<u>58.6</u>
Taxes on sufficiency / (deficiency)						
19.	Gross sufficiency / (deficiency)	(81.9)	75.0	(6.9)	-	(6.9)
20.	Net sufficiency / (deficiency)	(60.2)	55.1	(5.1)	-	(5.1)
21.		<u>21.7</u>	<u>(19.9)</u>	<u>1.8</u>	<u>-</u>	<u>1.8</u>
22.	Sub-total revenue requirement	2,302.4	(24.4)	2,278.0	114.8	2,392.8
23.	Customer Care Rate Smoothing V/A Adjustment	-	-	-	(4.6)	(4.6)
24.	Total revenue requirement	<u>2,302.4</u>	<u>(24.4)</u>	<u>2,278.0</u>	<u>110.2</u>	<u>2,388.2</u>
Revenue at existing Rates						
25.	Gas sales	1,923.9	45.6	1,969.5	80.2	2,049.7
26.	Transportation service	294.9	4.9	299.8	19.0	318.8
27.	Transmission, compression and storage	1.7	-	1.7	-	1.7
28.	Rounding adjustment	-	0.1	0.1	-	0.1
29.	Revenue at existing rates	<u>2,220.5</u>	<u>50.6</u>	<u>2,271.1</u>	<u>99.2</u>	<u>2,370.3</u>
30.	Gross revenue sufficiency / (deficiency)	<u>(81.9)</u>	<u>75.0</u>	<u>(6.9)</u>	<u>(11.0)</u>	<u>(17.9)</u>

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 2, Page 1, Filed: 2012-09-12.

Note 2: Information from Col. 3 of Exhibit F3, Tab 1, Schedule 1, Page 2, Filed: 2012-01-31.

UTILITY RATE BASE
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	ADR Adjustments (\$Millions)	Excl. CIS Adjusted Impact Statement Number 2 (\$Millions)	Cust. Care / CIS (Note 2) (\$Millions)	Total Adjusted ADR Impact Statement Rate Base Including CIS (\$Millions)
<u>Property, Plant, and Equipment</u>					
1.	6,645.6	(23.3)	6,622.3	127.1	6,749.4
2.	(2,758.0)	10.5	(2,747.5)	(56.6)	(2,804.1)
3.	<u>3,887.6</u>	<u>(12.8)</u>	<u>3,874.8</u>	<u>70.5</u>	<u>3,945.3</u>
<u>Allowance for Working Capital</u>					
4.	-	-	-	-	-
5.	1.3	-	1.3	-	1.3
6.	31.9	-	31.9	-	31.9
7.	0.2	-	0.2	-	0.2
8.	(68.7)	-	(68.7)	-	(68.7)
9.	1.8	-	1.8	-	1.8
10.	249.3	(0.9)	248.4	-	248.4
11.	<u>0.3</u>	<u>1.5</u>	<u>1.8</u>	<u>-</u>	<u>1.8</u>
12.	<u>216.1</u>	<u>0.6</u>	<u>216.7</u>	<u>-</u>	<u>216.7</u>
13.	<u>4,103.7</u>	<u>(12.2)</u>	<u>4,091.5</u>	<u>70.5</u>	<u>4,162.0</u>

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 3, Page 1, Filed: 2012-09-12.

Note 2: Information from Col. 2 of Exhibit F3, Tab 1, Schedule 3, page 1, Filed: 2012-01-31.

EXPLANATION OF ADJUSTMENTS TO UTILITY RATE BASE
2013 TEST YEAR

Line No.	Adj'd Adjustment (\$Millions)	Explanation
1.	(23.3)	Cost or redetermined value Change is the result of the settlement of issues B1 through B7 and related descriptions contained within the Agreement.
2.	10.5	Accumulated depreciation Change is the result of the settlement of issue D7 and the related description contained within the Agreement.
10.	(0.9)	Gas in storage Change is the result of the settlement of issue B7 and the related description contained within the Agreement.
11.	1.5	Working cash allowance Change is the result of the settlement of issue B7 and the related description contained within the Agreement.

WORKING CAPITAL COMPONENTS - WORKING CASH ALLOWANCE
2013 TEST YEAR

Line No.	Col. 1 Reference	Col. 2 Disburse- ments (\$Millions)	Col. 3 Net Lag-Days (Days)	Col. 4 Allowance (\$Millions)
1.	Gas purchase and storage and transportation charges	1,350.9	4.0	14.8
2.	Items not subject to working cash allowance (Note 1)	<u>(8.1)</u>		
3.	Gas costs charged to operations M2.T1.S4.P1.Col.3	<u>1,342.8</u>		
4.	Operation and Maintenance M2.T1.S4.P1.Col.3	325.5		
5.	Less: Storage costs	<u>(7.9)</u>		
6.	Operation and maintenance costs subject to working cash	317.6		
7.	Ancillary customer services	<u>-</u>		
8.		<u>317.6</u>	(18.7)	<u>(16.3)</u>
9.	Sub-total			<u>(1.5)</u>
10.	Storage costs	7.9	62.5	1.4
11.	Storage municipal and capital taxes	2.2	24.4	<u>0.1</u>
12.	Sub-total			<u>1.5</u>
13.	Harmonized sales tax			1.8
14.	Total working cash allowance			<u><u>1.8</u></u>

Note 1: Represents non cash items such as amortization of deferred charges, accounting adjustments and the T-service capacity credit.

GAS IN STORAGE
 MONTH END BALANCES AND AVERAGE OF MONTHLY AVERAGES
2013 TEST YEAR

Line No.	Volume 10*6 M*3	Col. 1	Col. 2		Col. 3	
		Impact Statement Number 2 (\$Millions)	ADR Adjustments 10*6 M*3	ADR Adjustments (\$Millions)	Adjusted ADR Impact Statement (\$Millions)	
1. January 1	1,425.1	328.4	(0.1)	(0.1)	1,425.0	328.3
2. January 31	872.6	211.7	(33.0)	(7.3)	839.6	204.4
3. February	446.8	120.1	(8.2)	(3.9)	438.6	116.2
4. March	95.9	51.7	30.8	2.3	126.7	54.0
5. April	44.4	50.2	25.2	1.8	69.6	52.0
6. May	330.9	105.4	19.4	1.4	350.3	106.8
7. June	720.0	178.2	13.9	0.9	733.9	179.1
8. July	1,241.2	272.1	8.2	0.6	1,249.4	272.7
9. August	1,763.8	366.3	2.3	0.1	1,766.1	366.4
10. September	2,141.1	437.3	(3.2)	(0.4)	2,137.9	436.9
11. October	2,246.7	462.6	(9.0)	(0.8)	2,237.7	461.8
12. November	1,957.2	412.2	(36.1)	(5.2)	1,921.1	407.0
13. December	1,478.4	318.6	(2.6)	(0.6)	1,475.8	318.0
14. Avg. of monthly avgs.	<u>1,109.4</u>	<u>249.3</u>	<u>0.7</u>	<u>(0.9)</u>	<u>1,110.1</u>	<u>248.4</u>

UTILITY INCOME
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	ADR Adjustments (\$Millions)	Excl. CIS Adjusted Impact Statement Number 2 (\$Millions)	Cust. Care / CIS (Note 2) (\$Millions)	Total Adjusted ADR Impact Statement Utility Income (\$Millions)
1. Gas sales	1,923.9	45.6	1,969.5	80.2	2,049.7
2. Transportation of gas	294.9	4.9	299.8	19.0	318.8
3. Transmission, compression and storage revenue	1.7	-	1.7	-	1.7
4. Other operating revenue	38.3	6.0	44.3	-	44.3
5. Interest and property rental	-	-	-	-	-
6. Other income	0.7	-	0.7	-	0.7
7. Total operating revenue	2,259.5	56.5	2,316.0	99.2	2,415.2
8. Gas costs	1,307.9	34.9	1,342.8	-	1,342.8
9. Operation and maintenance	348.3	(22.8)	325.5	89.4	414.9
10. Depreciation and amortization expense	288.1	(21.5)	266.6	12.7	279.3
11. Fixed financing costs	2.3	-	2.3	-	2.3
12. Debt redemption premium amortization	-	-	-	-	-
13. Company share of IR agreement tax savings	-	-	-	-	-
14. Municipal and other taxes	40.1	(0.8)	39.3	-	39.3
15. Interest and financing amortization expense	-	-	-	-	-
16. Other interest expense	-	-	-	-	-
17. Total costs and expenses	1,986.7	(10.2)	1,976.5	102.1	2,078.6
18. Ontario utility income before income taxes	272.8	66.7	339.5	(2.9)	336.6
19. Income tax expense	37.9	12.6	50.5	8.1	58.6
20. Utility net income	234.9	54.1	289.0	(11.0)	278.0

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 4, Page 1, Filed: 2012-09-12.

Note 2: Information from Col. 2 of Exhibit F3, Tab 1, Schedule 2, page 1, Filed: 2012-01-31.

EXPLANATION OF ADJUSTMENTS TO UTILITY INCOME
2013 TEST YEAR

Line No.	Adj'd Adjustment (\$Millions)	Explanation
1.	45.6	Gas sales Change is the result of the settlement of issues C1 through C5 and related descriptions contained within the Agreement.
2.	4.9	Transportation of gas Change is the result of the settlement of issues C1 through C5 and related descriptions contained within the Agreement.
4.	6.0	Other operating revenue Change is the result of the settlement of issues C6 and C7 and related descriptions contained within the Agreement.
8.	34.9	Gas costs Change is the result of the settlement of issues C1 through C5 and D2 & D3 and related descriptions contained within the Agreement.
9.	(22.8)	Operation and maintenance Change is the result of the settlement of issues C1 through C5 and D2 & D3 and related descriptions contained within the Agreement.
10.	(21.5)	Depreciation and amortization expense Change is due to the settlement of issues D1, D5, D9, D11 through D24 and related descriptions contained within the Agreement.
14.	(0.8)	Municipal and other taxes Change is the result of the settlement of issues D8 and the related description contained within the Agreement.
19.	12.6	Income tax expense Change is due to the impact on taxable income as a result of the settlement of all the issues identified above.

CALCULATION OF UTILITY TAXABLE INCOME AND INCOME TAX EXPENSE
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	Adjustments (\$Millions)	Excl. CIS Adjusted ADR Impact Statement Utility Tax (\$Millions)
1. Utility income before income taxes (M2, T1, S3, P1)	272.8	66.7	339.5
Add			
2. Depreciation and amortization	288.1	(21.5)	266.6
3. Accrual based pension and OPEB costs	42.1	-	42.1
4. Other non-deductible items	2.2	-	2.2
5. Total Add Back	332.4	(21.5)	310.9
6. Sub total	605.2	45.2	650.4
Deduct			
7. Capital cost allowance - Federal	234.8	(3.1)	231.7
8. Capital cost allowance - Provincial	234.8	(3.1)	231.7
9. Items capitalized for regulatory purposes	46.3	-	46.3
10. Deduction for "grossed up" Part VI.1 tax	5.0	-	5.0
11. Amortization of share/debenture issue expense	3.6	-	3.6
12. Amortization of cumulative eligible capital	0.4	-	0.4
13. Amortization of C.D.E. and C.O.G.P.E	0.4	-	0.4
14. Cash based pension and OPEB costs	42.6	-	42.6
15. Total Deduction - Federal	333.1	(3.1)	330.0
16. Total Deduction - Provincial	333.1	(3.1)	330.0
17. Taxable income - Federal	272.1	48.3	320.4
18. Taxable income - Provincial	272.1	48.3	320.4
19. Income tax rate - Federal	15.00%	0.00%	15.00%
20. Income tax rate - Provincial	11.50%	0.00%	11.50%
21. Income tax provision - Federal	40.8	7.3	48.1
22. Income tax provision - Provincial	31.3	5.5	36.8
23. Income tax provision - combined	72.1	12.8	84.9
24. Part V1.1 tax			1.7
25. Investment tax credit			(0.1)
26. Total taxes excluding tax shield on interest expense			86.5
Tax shield on interest expense			
27. Rate base (M2.T1.S2.P1)			4,091.5
28. Return component of debt (M2.T1.S4.P1)			3.32%
29. Interest expense			135.7
30. Combined tax rate			26.50%
31. Income tax credit			(36.0)
32. Total income taxes			50.5

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 4, page 3, Filed: 2012-09-12.

UTILITY CAPITAL STRUCTURE
2013 TEST YEAR

Line No.	Col. 1 Principal Excl. CC/CIS (\$Millions)	Col. 2 Component %	Col. 3 Indicated Cost Rate %	Col. 4 Return Component %	
1.	Long and medium term debt	2,312.8	56.53	5.90	3.335
2.	Short term debt/(investment)	<u>(39.7)</u>	<u>-0.97</u>	2.00	<u>(0.019)</u>
3.		2,273.1	55.56		3.316
4.	Preference shares	100.0	2.44	3.20	0.078
5.	Common equity	<u>1,718.4</u>	<u>42.00</u>	9.03	<u>3.793</u>
6.		<u><u>4,091.5</u></u>	<u>100.00</u>		<u><u>7.187</u></u>
7.	Utility income	(\$Millions)			289.0
8.	Rate base	(\$Millions)			4,091.5
9.	Indicated rate of return				7.063%
10.	(Deficiency) in rate of return				(0.124)%
11.	Net (deficiency)	(\$Millions)			(5.1)
12.	Gross (deficiency)	(\$Millions)			(6.9)
13.	Customer Care/CIS deficiency	(\$Millions)			(11.0)
14.	Total gross (deficiency)	(\$Millions)			(17.9)
15.	Revenue at existing rates	(\$Millions)			2,370.3
16.	Revenue requirement	(\$Millions)			2,388.2
17.	Total gross revenue (deficiency)	(\$Millions)			(17.9)

CHANGE IN REVENUE REQUIREMENT
2013 TEST YEAR

Line No.	Col. 1 Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	Col. 2 ADR Adjustments	Col. 3 Excl. CIS Adjusted ADR Impact Statement (\$Millions)	Col. 4 Cust. Care / CIS (Note 2) (\$Millions)	Col. 5 ADR Impact Statement EGD Total (\$Millions)	
Cost of capital						
1.	Rate base	4,103.7	(12.2)	4,091.5	70.5	4,162.0
2.	Required rate of return	7.19	(0.34)	6.85	6.44	6.85
3.		295.1	(14.8)	280.3	4.6	284.9
Cost of service						
4.	Gas costs	1,307.9	34.9	1,342.8	-	1,342.8
5.	Operation and maintenance	348.3	(22.8)	325.5	89.4	414.9
6.	Depreciation and amortization	288.1	(21.5)	266.6	12.7	279.3
7.	Fixed financing costs	2.3	-	2.3	-	2.3
8.	Debt redemption premium amortization	-	-	-	-	-
9.	Company share of IR agreement tax savings	-	-	-	-	-
10.	Municipal and other taxes	40.1	(0.8)	39.3	-	39.3
11.		1,986.7	(10.2)	1,976.5	102.1	2,078.6
Miscellaneous operating and non-operating revenue						
12.	Other operating revenue	(38.3)	(6.0)	(44.3)	-	(44.3)
13.	Interest and property rental	-	-	-	-	-
14.	Other income	(0.7)	-	(0.7)	-	(0.7)
15.		(39.0)	(6.0)	(45.0)	-	(45.0)
Income taxes on earnings						
16.	Excluding tax shield	73.7	12.7	86.4	9.0	95.4
17.	Tax shield provided by interest expense	(35.8)	(2.3)	(38.1)	(0.9)	(39.0)
18.		37.9	10.4	48.3	8.1	56.4
Taxes on sufficiency / (deficiency)						
19.	Gross sufficiency / (deficiency)	(81.9)	96.9	15.0	-	15.0
20.	Net sufficiency / (deficiency)	(60.2)	71.2	11.0	-	11.0
21.		21.7	(25.7)	(4.0)	-	(4.0)
22.	Sub-total revenue requirement	2,302.4	(46.3)	2,256.1	114.8	2,370.9
23.	Customer Care Rate Smoothing V/A Adjustment	-	-	-	(4.6)	(4.6)
24.	Total revenue requirement	<u>2,302.4</u>	<u>(46.3)</u>	<u>2,256.1</u>	<u>110.2</u>	<u>2,366.3</u>
Revenue at existing Rates						
25.	Gas sales	1,923.9	45.6	1,969.5	80.2	2,049.7
26.	Transportation service	294.9	4.9	299.8	19.0	318.8
27.	Transmission, compression and storage	1.7	-	1.7	-	1.7
28.	Rounding adjustment	-	0.1	0.1	-	0.1
29.	Revenue at existing rates	2,220.5	50.6	2,271.1	99.2	2,370.3
30.	Gross revenue sufficiency / (deficiency)	<u>(81.9)</u>	<u>96.9</u>	<u>15.0</u>	<u>(11.0)</u>	<u>4.0</u>

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 2, Page 1, Filed: 2012-09-12.

Note 2: Information from Col. 3 of Exhibit F3, Tab 1, Schedule 1, Page 2, Filed: 2012-01-31.

UTILITY RATE BASE
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	ADR Adjustments (\$Millions)	Excl. CIS Adjusted Impact Statement Number 2 (\$Millions)	Cust. Care / CIS (Note 2) (\$Millions)	Total Adjusted ADR Impact Statement Rate Base Including CIS (\$Millions)
<u>Property, Plant, and Equipment</u>					
1.	6,645.6	(23.3)	6,622.3	127.1	6,749.4
2.	(2,758.0)	10.5	(2,747.5)	(56.6)	(2,804.1)
3.	<u>3,887.6</u>	<u>(12.8)</u>	<u>3,874.8</u>	<u>70.5</u>	<u>3,945.3</u>
<u>Allowance for Working Capital</u>					
4.	-	-	-	-	-
5.	1.3	-	1.3	-	1.3
6.	31.9	-	31.9	-	31.9
7.	0.2	-	0.2	-	0.2
8.	(68.7)	-	(68.7)	-	(68.7)
9.	1.8	-	1.8	-	1.8
10.	249.3	(0.9)	248.4	-	248.4
11.	<u>0.3</u>	<u>1.5</u>	<u>1.8</u>	<u>-</u>	<u>1.8</u>
12.	<u>216.1</u>	<u>0.6</u>	<u>216.7</u>	<u>-</u>	<u>216.7</u>
13.	<u>4,103.7</u>	<u>(12.2)</u>	<u>4,091.5</u>	<u>70.5</u>	<u>4,162.0</u>

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 3, Page 1, Filed: 2012-09-12.

Note 2: Information from Col. 2 of Exhibit F3, Tab 1, Schedule 3, page 1, Filed: 2012-01-31.

EXPLANATION OF ADJUSTMENTS TO UTILITY RATE BASE
2013 TEST YEAR

Line No.	Adj'd Adjustment (\$Millions)	Explanation
1.	(23.3)	Cost or redetermined value Change is the result of the settlement of issues B1 through B7 and related descriptions contained within the Agreement.
2.	10.5	Accumulated depreciation Change is the result of the settlement of issue D7 and the related description contained within the Agreement.
10.	(0.9)	Gas in storage Change is the result of the settlement of issue B7 and the related description contained within the Agreement.
11.	1.5	Working cash allowance Change is the result of the settlement of issue B7 and the related description contained within the Agreement.

WORKING CAPITAL COMPONENTS - WORKING CASH ALLOWANCE
2013 TEST YEAR

Line No.	Col. 1 Reference	Col. 2 Disburse- ments (\$Millions)	Col. 3 Net Lag-Days (Days)	Col. 4 Allowance (\$Millions)
1.	Gas purchase and storage and transportation charges	1,350.9	4.0	14.8
2.	Items not subject to working cash allowance (Note 1)	<u>(8.1)</u>		
3.	Gas costs charged to operations M2.T1.S4.P1.Col.3	<u>1,342.8</u>		
4.	Operation and Maintenance M2.T1.S4.P1.Col.3	325.5		
5.	Less: Storage costs	<u>(7.9)</u>		
6.	Operation and maintenance costs subject to working cash	317.6		
7.	Ancillary customer services	<u>-</u>		
8.		<u>317.6</u>	(18.7)	<u>(16.3)</u>
9.	Sub-total			<u>(1.5)</u>
10.	Storage costs	7.9	62.5	1.4
11.	Storage municipal and capital taxes	2.2	24.4	<u>0.1</u>
12.	Sub-total			<u>1.5</u>
13.	Harmonized sales tax			1.8
14.	Total working cash allowance			<u><u>1.8</u></u>

Note 1: Represents non cash items such as amortization of deferred charges, accounting adjustments and the T-service capacity credit.

GAS IN STORAGE
 MONTH END BALANCES AND AVERAGE OF MONTHLY AVERAGES
2013 TEST YEAR

Line No.	Volume 10*6 M*3	Col. 1		Col. 2		Col. 3	
		Impact Statement Number 2 (\$Millions)	ADR Adjustments 10*6 M*3	ADR Adjustments (\$Millions)	Adjusted Volume 10*6 M*3	Adjusted ADR Impact Statement (\$Millions)	
1. January 1	1,425.1	328.4	(0.1)	(0.1)	1,425.0	328.3	
2. January 31	872.6	211.7	(33.0)	(7.3)	839.6	204.4	
3. February	446.8	120.1	(8.2)	(3.9)	438.6	116.2	
4. March	95.9	51.7	30.8	2.3	126.7	54.0	
5. April	44.4	50.2	25.2	1.8	69.6	52.0	
6. May	330.9	105.4	19.4	1.4	350.3	106.8	
7. June	720.0	178.2	13.9	0.9	733.9	179.1	
8. July	1,241.2	272.1	8.2	0.6	1,249.4	272.7	
9. August	1,763.8	366.3	2.3	0.1	1,766.1	366.4	
10. September	2,141.1	437.3	(3.2)	(0.4)	2,137.9	436.9	
11. October	2,246.7	462.6	(9.0)	(0.8)	2,237.7	461.8	
12. November	1,957.2	412.2	(36.1)	(5.2)	1,921.1	407.0	
13. December	<u>1,478.4</u>	<u>318.6</u>	<u>(2.6)</u>	<u>(0.6)</u>	<u>1,475.8</u>	<u>318.0</u>	
14. Avg. of monthly avgs.	<u>1,109.4</u>	<u>249.3</u>	<u>0.7</u>	<u>(0.9)</u>	<u>1,110.1</u>	<u>248.4</u>	

UTILITY INCOME
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	ADR Adjustments (\$Millions)	Excl. CIS Adjusted Impact Statement Number 2 (\$Millions)	Cust. Care / CIS (Note 2) (\$Millions)	Total Adjusted ADR Impact Statement Utility Income (\$Millions)
1. Gas sales	1,923.9	45.6	1,969.5	80.2	2,049.7
2. Transportation of gas	294.9	4.9	299.8	19.0	318.8
3. Transmission, compression and storage revenue	1.7	-	1.7	-	1.7
4. Other operating revenue	38.3	6.0	44.3	-	44.3
5. Interest and property rental	-	-	-	-	-
6. Other income	0.7	-	0.7	-	0.7
7. Total operating revenue	<u>2,259.5</u>	<u>56.5</u>	<u>2,316.0</u>	<u>99.2</u>	<u>2,415.2</u>
8. Gas costs	1,307.9	34.9	1,342.8	-	1,342.8
9. Operation and maintenance	348.3	(22.8)	325.5	89.4	414.9
10. Depreciation and amortization expense	288.1	(21.5)	266.6	12.7	279.3
11. Fixed financing costs	2.3	-	2.3	-	2.3
12. Debt redemption premium amortization	-	-	-	-	-
13. Company share of IR agreement tax savings	-	-	-	-	-
14. Municipal and other taxes	40.1	(0.8)	39.3	-	39.3
15. Interest and financing amortization expense	-	-	-	-	-
16. Other interest expense	-	-	-	-	-
17. Total costs and expenses	<u>1,986.7</u>	<u>(10.2)</u>	<u>1,976.5</u>	<u>102.1</u>	<u>2,078.6</u>
18. Ontario utility income before income taxes	272.8	66.7	339.5	(2.9)	336.6
19. Income tax expense	37.9	10.4	48.3	8.1	56.4
20. Utility net income	<u>234.9</u>	<u>56.3</u>	<u>291.2</u>	<u>(11.0)</u>	<u>280.2</u>

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 4, Page 1, Filed: 2012-09-12.

Note 2: Information from Col. 2 of Exhibit F3, Tab 1, Schedule 2, page 1, Filed: 2012-01-31.

EXPLANATION OF ADJUSTMENTS TO UTILITY INCOME
2013 TEST YEAR

Line No.	Adj'd Adjustment (\$Millions)	Explanation
1.	45.6	Gas sales Change is the result of the settlement of issues C1 through C5 and related descriptions contained within the Agreement.
2.	4.9	Transportation of gas Change is the result of the settlement of issues C1 through C5 and related descriptions contained within the Agreement.
4.	6.0	Other operating revenue Change is the result of the settlement of issues C6 and C7 and related descriptions contained within the Agreement.
8.	34.9	Gas costs Change is the result of the settlement of issues C1 through C5 and D2 & D3 and related descriptions contained within the Agreement.
9.	(22.8)	Operation and maintenance Change is the result of the settlement of issues C1 through C5 and D2 & D3 and related descriptions contained within the Agreement.
10.	(21.5)	Depreciation and amortization expense Change is due to the settlement of issues D1, D5, D9, D11 through D24 and related descriptions contained within the Agreement.
14.	(0.8)	Municipal and other taxes Change is the result of the settlement of issues D8 and the related description contained within the Agreement.
19.	10.4	Income tax expense Change is due to the impact on taxable income as a result of the settlement of all the issues identified above.

CALCULATION OF UTILITY TAXABLE INCOME AND INCOME TAX EXPENSE
2013 TEST YEAR

Line No.	Col. 1	Col. 2	Col. 3
	Excl. CIS Impact Statement Number 2 (Note 1) (\$Millions)	Adjustments (\$Millions)	Excl. CIS Adjusted ADR Impact Statement Utility Tax (\$Millions)
1. Utility income before income taxes (M2, T1, S3, P1)	272.8	66.7	339.5
Add			
2. Depreciation and amortization	288.1	(21.5)	266.6
3. Accrual based pension and OPEB costs	42.1	-	42.1
4. Other non-deductible items	2.2	-	2.2
5. Total Add Back	<u>332.4</u>	<u>(21.5)</u>	<u>310.9</u>
6. Sub total	605.2	45.2	650.4
Deduct			
7. Capital cost allowance - Federal	234.8	(3.1)	231.7
8. Capital cost allowance - Provincial	234.8	(3.1)	231.7
9. Items capitalized for regulatory purposes	46.3	-	46.3
10. Deduction for "grossed up" Part VI.1 tax	5.0	-	5.0
11. Amortization of share/debenture issue expense	3.6	0.2	3.8
12. Amortization of cumulative eligible capital	0.4	-	0.4
13. Amortization of C.D.E. and C.O.G.P.E	0.4	-	0.4
14. Cash based pension and OPEB costs	42.6	-	42.6
15. Total Deduction - Federal	<u>333.1</u>	<u>(2.9)</u>	<u>330.2</u>
16. Total Deduction - Provincial	<u>333.1</u>	<u>(2.9)</u>	<u>330.2</u>
17. Taxable income - Federal	272.1	48.1	320.2
18. Taxable income - Provincial	272.1	48.1	320.2
19. Income tax rate - Federal	15.00%	0.00%	15.00%
20. Income tax rate - Provincial	11.50%	0.00%	11.50%
21. Income tax provision - Federal	40.8	7.2	48.0
22. Income tax provision - Provincial	31.3	5.5	36.8
23. Income tax provision - combined	<u>72.1</u>	<u>12.7</u>	<u>84.8</u>
24. Part V1.1 tax			1.7
25. Investment tax credit			<u>(0.1)</u>
26. Total taxes excluding tax shield on interest expense			86.4
Tax shield on interest expense			
27. Rate base (M2.T1.S2.P1)			4,091.5
28. Return component of debt (M2.T1.S4.P1)			3.52%
29. Interest expense			143.9
30. Combined tax rate			<u>26.50%</u>
31. Income tax credit			<u>(38.1)</u>
32. Total income taxes			<u>48.3</u>

Note 1: Information from Col. 3 of Exhibit M2, Tab 1, Schedule 4, page 3, Filed: 2012-09-12.

UTILITY CAPITAL STRUCTURE
2013 TEST YEAR

Line No.	Col. 1 Principal Excl. CC/CIS (\$Millions)	Col. 2 Component %	Col. 3 Indicated Cost Rate %	Col. 4 Return Component %	
1.	Long and medium term debt	2,461.9	60.17	5.80	3.490
2.	Short term debt/(investment)	<u>56.7</u>	<u>1.39</u>	2.00	<u>0.028</u>
3.		2,518.6	61.56		3.518
4.	Preference shares	100.0	2.44	3.20	0.078
5.	Common equity	<u>1,472.9</u>	<u>36.00</u>	9.03	<u>3.251</u>
6.		<u><u>4,091.5</u></u>	<u><u>100.00</u></u>		<u><u>6.847</u></u>
7.	Utility income	(\$Millions)			291.2
8.	Rate base	(\$Millions)			4,091.5
9.	Indicated rate of return				7.117%
10.	Sufficiency in rate of return				0.270 %
11.	Net sufficiency	(\$Millions)			11.0
12.	Gross sufficiency	(\$Millions)			15.0
13.	Customer Care/CIS deficiency	(\$Millions)			(11.0)
14.	Total gross sufficiency	(\$Millions)			4.0
15.	Revenue at existing rates	(\$Millions)			2,370.3
16.	Revenue requirement	(\$Millions)			2,366.3
17.	Total gross revenue sufficiency	(\$Millions)			4.0

Summary of Gas Cost to Operations
 Year ended December 31, 2013

Item #	Col. 1 10 ³ m ³	Col. 2 \$(000)	Col. 3 \$/10 ³ m ³ (Col.2 / Col.1)	Col. 4 \$/GJ (Col.3 / 37.69)
<u>Western Canadian Supplies</u>				
1.1	Alberta Production	0.0	0.0	0.000
1.2	Western - @ Empress - TCPL	2,062,200.2	232,482.7	112.735
1.3	Western - @ Nova - TCPL	938,105.2	112,398.0	119.814
1.4	Western Buy/Sell - with Fuel	1,849.7	225.9	122.138
1.5	Western - @ Alliance	954,694.8	119,568.5	125.243
1.6	Less TCPL Fuel Requirement	(70,759.0)	0.0	3.323
1.	<u>Total Western Canadian Supplies</u>	<u>3,886,090.9</u>	<u>464,675.1</u>	<u>119.574</u>
2.	<u>Peaking Supplies</u>	<u>37,998.7</u>	<u>9,406.9</u>	<u>247.560</u>
3.	<u>Ontario Production</u>	<u>730.0</u>	<u>144.4</u>	<u>197.809</u>
4.	<u>Chicago Supplies</u>	<u>1,832,109.7</u>	<u>253,812.3</u>	<u>138.536</u>
5.	<u>Delivered Supplies</u>	<u>1,553,462.5</u>	<u>221,208.9</u>	<u>142.397</u>
6.	<u>Total Supply Costs</u>	<u>7,310,391.8</u>	<u>949,247.6</u>	<u>129.849</u>
<u>Transportation Costs</u>				
7.1	TCPL - FT - Demand		232,978.8	
7.2	- FT - Commodity	2,931,396.1	15,884.3	5.419
7.3	- Parkway to CDA		3,238.4	
7.4	- STS - CDA		5,793.8	
7.5	- STS - EDA		4,687.0	
7.6	- Dawn to CDA		9,471.0	
7.7	- Dawn to EDA		22,582.0	
7.8	- Dawn to Iroquois		7,063.3	
7.9	Other Charges		0.0	
7.10	Nova Transmission		7,039.6	
7.11	Alliance Pipeline		42,819.4	
7.12	Vector Pipeline		24,970.4	
7.	<u>Total Transportation Costs</u>		<u>376,528.0</u>	
8.	Total Before PGVA Adjustment	7,310,391.8	1,325,775.6	181.355
9.	PGVA Adjustment		(175,419.3)	4.812
10.	<u>Total Purchases & Receipt</u>	<u>7,310,391.8</u>	<u>1,150,356.3</u>	<u>157.359</u>

Summary of Gas Cost to Operations
 Year ended December 31, 2013

Item #	Col. 1	Col. 2	Col. 3	Col. 4	
	10 ³ m ³	\$(000)	\$/10 ³ m ³ (Col.2 / Col.1)	\$/GJ (Col.3 / 37.69)	
10.	Total Purchases & Receipt	7,310,391.8	1,150,356.3	157.359	4.175
11.	Storage Fluctuation	(50,729.1)	(7,982.7)		
12.	Commodity Cost to Operations	7,259,662.7	1,142,373.6	157.359	
13.	Storage and Transportation Costs		107,679.1		
14.	Gas Cost to Operations	7,259,662.7	1,250,052.7	172.192	4.569
15.	Ontario T-Service Credits		0.0		
16.	Western T-Service		92,706.0		
17.	Forecasted Gas Costs	7,259,662.7	1,342,758.8	184.962	4.907

Reconciliation Of Natural Gas Sendout Volumes
 To Sales Volumes
 Year ended December 31, 2013

1.	Sendout To Operations	7,259,662.7
2.	T-Service Volumes	4,316,708.5
3.	Total Sendout	11,576,371.2
4.1	Residential Sales	4,095,952.3
4.2	Commercial Sales	2,499,322.9
4.3	Industrial Sales	437,628.5
4.4	T-Service	4,277,267.2
4.5	Rate 200 T-Service (Gazifere)	38,849.3
4.6	Rate 200 Sales (Gazifere)	124,230.8
4.7	Company Use	5,176.3
4.8	Unaccounted For (UAF)	73,092.0
4.9	Unbilled Forecast - Sales	496.3
4.10	Unbilled Forecast - T-Service	592.0
4.11	Lost and Unaccounted For (LUF)	23,763.6
4.	Total System Requirements	11,576,371.2

Summary of Storage & Transportation Costs
 Fiscal 2013

Item #	Units - \$(000)	Col. 1	Col. 2	Col. 3	Col. 4
		Storage & Transportation Charges Incurred in Fiscal 2013	Fiscal 2013 Storage Charges Recovered in Fiscal 2013	Fiscal 2012 Storage Charges Recovered in Fiscal 2013	Total Storage & Transportation Charges Recovered in Fiscal 2013
<u>Storage</u>					
1.1	Chatham D	132.3	74.6	57.3	131.9
1.2	Injection	122.7	38.1	87.8	126.0
1.3	Withdrawal	121.2	121.2	0.0	121.2
1.4	Market Based Storage	19,592.0	10,691.8	8,747.6	19,439.4
1.5	Unutilized Transportation Costs	0.0	0.0	0.0	0.0
1.6	Other	827.2	827.2	0.0	827.2
1.	Total Storage	20,795.4	11,752.9	8,892.8	20,645.7
2.	Total Transportation	65,550.7	35,832.5	29,496.5	65,328.9
<u>Dehydration</u>					
3.1	Demand	1,001.1	547.2	450.5	997.7
3.2	Commodity	189.5	189.5	0.0	189.5
3.	Total Dehydration	1,190.6	736.8	450.5	1,187.2
4.	Total Storage & Other Costs	87,536.8	48,322.1	38,839.7	87,161.9
<u>Fuel Costs</u>					
5.1	Tecumseh	3,411.2	2,235.0	1,349.4	3,584.4
5.2	Union Storage	1,074.3	696.0	413.6	1,109.6
5.3	Union Transportation	15,815.1	15,508.8	314.5	15,823.2
5.	Total Fuel Costs	20,300.6	18,439.9	2,077.4	20,517.3
6.	Total Storage & Transportation	107,837.3	66,762.0	40,917.1	107,679.1
8.	Storage and Transportation Costs Charged to Gas Cost to Operations				107,679.1

GENERAL SERVICE
SYSTEM-WIDE TOTAL NORMALIZED AVERAGE USE*

	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9	Col. 10	Col. 11	Col. 12	Col. 13	Col. 14	Col. 15
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u> <u>Historic</u> <u>Year</u>	<u>2012</u> <u>Bridge</u> <u>Year</u> <u>Estimate</u> <u>e</u>	<u>2013</u> <u>As Filed</u>	<u>2013</u> <u>ADR</u>
Residential	2,975	2,869	2,844	2,831	2,786	2,716	2,680	2,670	2,640	2,593	2,562	2,523	2,492	2,491	2,568
Change		-106	-25	-13	-45	-70	-36	-10	-30	-47	-31	-39	-31	-1	77
% Change		-3.56%	-0.87%	-0.46%	-1.59%	-2.51%	-1.33%	-0.37%	-1.12%	-1.78%	-1.20%	-1.52%	-1.23%	-0.04%	3.09%
Apartment	79,237	79,588	80,512	81,828	81,783	78,307	85,577	99,377	123,734	141,644	161,844	150,684	159,642	151,222	154,877
Change		351	924	1,316	-45	-3,476	7,270	13,800	24,357	17,910	20,200	-11,160	8,958	-8,420	3,655
% Change		0.44%	1.16%	1.63%	-0.05%	-4.25%	9.28%	16.13%	24.51%	14.47%	14.26%	-6.90%	5.94%	-5.27%	2.42%
Commercial	17,249	17,042	17,001	17,000	16,877	16,470	16,614	17,066	17,931	18,530	19,203	19,461	19,772	19,648	20,230
Change		-207	-41	-1	-123	-407	144	452	865	599	673	258	311	-124	582
% Change		-1.20%	-0.24%	-0.01%	-0.72%	-2.41%	0.87%	2.72%	5.07%	3.34%	3.63%	1.34%	1.60%	-0.63%	2.96%
Industrial	57,075	54,320	51,791	54,856	50,563	51,424	53,620	58,779	73,938	88,264	106,163	108,872	113,866	108,350	109,481
Change		-2,755	-2,529	3,065	-4,293	861	2,196	5,159	15,159	14,326	17,899	2,709	4,994	-5,516	1,131
% Change		-4.83%	-4.66%	5.92%	-7.83%	1.70%	4.27%	9.62%	25.79%	19.38%	20.28%	2.55%	4.59%	-4.84%	1.04%

* All historical average uses are on a calendar-year basis and have been normalized to the 2013 Budget degree days as filed.

Filed: 2012-10-26
 EB-2011-0354
 Exhibit N1
 Tab 1
 Schedule 1
 Appendix C
 Page 2 of 2

GENERAL SERVICE
SYSTEM-WIDE TOTAL NORMALIZED AVERAGE USE*

	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9	Col. 10	Col. 11	Col. 12	Col. 13	Col. 14	Col. 15
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2013</u>
												<u>Historic</u>	<u>Bridge</u>	<u>As Filed</u>	<u>ADR</u>
												<u>Year</u>	<u>Year</u>	<u>Estimate</u>	<u>ADR</u>
												<u>Year</u>	<u>Estimate</u>	<u>Estimate</u>	<u>ADR</u>
												<u>Year</u>	<u>Estimate</u>	<u>Estimate</u>	<u>ADR</u>
												<u>Year</u>	<u>Estimate</u>	<u>Estimate</u>	<u>ADR</u>
												<u>Year</u>	<u>Estimate</u>	<u>Estimate</u>	<u>ADR</u>
Rate 1	2,975	2,869	2,844	2,831	2,786	2,716	2,680	2,670	2,640	2,593	2,562	2,523	2,492	2,491	2,568
Change		-106	-25	-13	-45	-70	-36	-10	-30	-47	-31	-39	-31	-1	77
% Change		-3.56%	-0.87%	-0.46%	-1.59%	-2.51%	-1.33%	-0.37%	-1.12%	-1.78%	-1.20%	-1.52%	-1.23%	-0.04%	3.09%
Rate 6	21,565	21,221	21,093	21,275	20,970	20,447	20,960	22,243	24,871	26,685	28,873	29,007	29,941	29,132	29,878
Change		-344	-128	182	-305	-523	513	1,283	2,628	1,814	2,188	134	934	-809	746
% Change		-1.60%	-0.60%	0.86%	-1.43%	-2.49%	2.51%	6.12%	11.81%	7.29%	8.20%	0.46%	3.22%	-2.70%	2.56%

* All historical average uses are on a calendar-year basis and have been normalized to the 2013 Budget degree days as filed.

APPENDIX "B"
Enbridge Gas Distribution Inc.

EB-2011-0354

Case Timetable
Date: November 2, 2012

	Event	Date
1.	File experts' Joint Written Statement	November 9
2.	Final day for Open Bill Access ADR discussions	November 9
3.	File proposals on concurrent experts' hearing process	November 13
4.	Oral Hearing	November 19 and 20

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2011-0354

IN THE MATTER OF the *Ontario Energy Board Act*
1998, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Enbridge
Gas Distribution Inc. for an Order or Orders approving or
fixing just and reasonable rates and other charges for the
sale, distribution, transmission and storage of gas
commencing January 1, 2013.

**DECISION ON SUPPLEMENTARY SETTLEMENT AGREEMENT
OPEN BILL ACCESS PROGRAM**

November 26, 2012

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application on January 31, 2012 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2013. The Board assigned file number EB-2011-0354 to the application and issued a Notice of Application dated March 2, 2012 (the “Notice”). The application was filed on the basis of US Generally Accepted Accounting Principles.

Background

Issue D11 on the Issues List in this proceeding relates to Enbridge’s Open Bill Access Program and certain changes that Enbridge had proposed to the program. The issue was framed as follows: “Is the proposal for the Open Bill Access Program appropriate?” (the “Open Bill issue”).

On August 16, 2012 Enbridge filed a letter with the Board indicating that Enbridge had reached agreement with an intervenor, the Heating, Ventilation, and Air-Conditioning Coalition (the "HVAC Coalition") for a process to address Issue D11. The Board accepted the proposal in its Procedural Order No. 4 dated August 29, 2012 but made the process inclusive of any of the other interested parties for the Open Bill issue.

The Board received a Revised Settlement Agreement dated October 26, 2012 that included a partial settlement of the Open Bill issue. The Board accepted the Revised Settlement Agreement, including the "Partial Settlement" of the Open Bill issue, in its Decision on Revised Settlement Agreement and Procedural Order No. 6 dated November 2, 2012. The Revised Settlement Agreement noted that the Open Bill issue had an outstanding matter which was the Open Bill Access Agreement that governs the relationship between Enbridge and the billers using the billing system (the "OBA Agreement"). The Board was made aware that the interested parties were continuing their discussions on the OBA Agreement. In the November 2, 2012 Decision on Revised Settlement Agreement and Procedural Order No. 6, the Board granted the parties an extension until November 9, 2012 to continue settlement discussions on the outstanding matters with respect to the OBA Agreement.

The Supplementary Settlement Agreement - Issue D11

On November 9, 2012 the Board received a Supplementary Settlement Agreement regarding the OBA Agreement stating that all issues with respect to the OBA agreement had been resolved by the parties. The Supplementary Settlement Agreement is attached to this Decision as Appendix A. The Supplementary Settlement Agreement stated that the effect of the agreement is, in combination with the "Partial Settlement" of Issue D11 in the October 26, 2012 Settlement Agreement mentioned above, to make Issue D11 a completely settled issue in all respects. The Supplementary Settlement Agreement also stated that the parties do not believe it to be necessary for the Board to review and approve each provision of the OBA Agreement, which was attached to the Supplementary Settlement Agreement. This understanding was confirmed in a November 12, 2012 email communication from Enbridge to the Board, made after consulting the other interested parties.

The Board has reviewed the Supplementary Settlement Agreement and accepts it. In accepting the Supplementary Settlement Agreement, the Board is not approving the OBA Agreement itself.

DATED at Toronto November 26, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A
Enbridge Gas Distribution Inc.

EB-2011-0354

Supplementary Settlement Agreement Re. Issue D11
dated November 9, 2012

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**SUPPLEMENTARY SETTLEMENT AGREEMENT
RE. ISSUE D11 (OBA Agreement)**

Enbridge Gas Distribution 2013 Rate Application

November 9, 2012

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SUPPLEMENTARY SETTLEMENT AGREEMENT : ISSUE D11

Most of Issue D11 (“Is the proposal for the Open Bill Access Program appropriate?”) was resolved through the “Partial Settlement” of Issue D11 that is set out in the overall Settlement Agreement in this proceeding, which was filed on October 3, 2012. There were no changes to the provisions of that “Partial Settlement” in the updated Settlement Agreement filed with the Board on October 26, 2012, and approved on November 2, 2012. For reference, the terms of the “Partial Settlement” of Issue D11 are reproduced as Appendix A to this Supplementary Settlement Agreement.

As noted in the “Partial Settlement” of Issue D11, the terms of the Open Bill Access (“OBA”) Agreement that governs the relationship between Enbridge and Billers was the topic of ongoing discussions between Enbridge and the open bill issue participants. Those parties have now reached agreement on the terms of the OBA Agreement, as set out in this Supplementary Settlement Agreement.

The parties who participated in the discussions and resolution of this remaining item, and accept and agree with this Supplementary Settlement Proposal are listed below (and are referred to herein as “the Parties”):

ENBRIDGE GAS DISTRIBUTION
DIRECT ENERGY MARKETING LIMITED
ENERCARE INC.
HEATING, VENTILATION, AND AIR CONDITIONING COALITION
JUST ENERGY ONTARIO LP
SUMMITT ENERGY
VISTA CREDIT CORP.
VULNERABLE ENERGY CONSUMERS COALITION

All other parties to the overall Settlement Agreement did not participate in the discussions and resolution of this remaining item, and take no position on the Supplementary Settlement Proposal.

The Parties agree that the form of OBA Agreement (the Billing and Collection Services Agreement) that will apply to all Billers, commencing January 4, 2013, is that which is attached to this Supplementary Settlement Agreement as Appendix B.

The Parties further agree that the attached form of OBA Agreement is accepted for 2013 only. As set out at Issue D11 of the overall Settlement Agreement, if Enbridge wishes to continue to offer open bill services beyond December 31, 2013, then Enbridge must make application to the Board to do so. As part of that application, Enbridge will include its proposed form of OBA Agreement. The Parties agree that one item which Enbridge will include in its proposed form of OBA Agreement for 2014 and beyond is a “verification process” which Billers will follow in prescribed circumstances, to confirm contracts made with customers as a prerequisite for such contracts being eligible to be billed through the OBA program. Enbridge agrees that the “verification process” which is accepted as part

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of the future form of OBA Agreement will be implemented as of January 1, 2014. The Parties further agree that, if Enbridge deems this appropriate, Enbridge's proposed form of OBA Agreement for 2014 and beyond may revisit changes made to section 7.6(c) related to refund of disputed amounts billed more than two years prior.

The Parties agree that the effect of this Supplementary Settlement Agreement, if approved, would be to make Issue D11 in this proceeding a "Completely Settled" issue, thereby supplementing the "Partial Settlement" of Issue D11 approved by the Board on November 2, 2012. It is for that reason, and not because the Parties believe that it is necessary for the Board to review and approve each provision of the OBA Agreement, that this Supplementary Settlement Agreement is being presented to the Board for approval. This approach is consistent with the EB-2009-0043 Settlement Agreement, which approved the terms under which Enbridge's OBA program would operate from 2009 to 2012, and simply attached the form of OBA Agreement that the parties had agreed upon.

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Appendix A

Terms of the "Partial Settlement" of the OBA Issue (D11), as set out in the Settlement Agreement in this proceeding, filed on October 26, 2012.

1. Is the proposal for the Open Bill Access Program appropriate?

[Partial Settlement]

All parties, as well as the open bill issue participants, agree to the resolution of the Open Bill Access issue on the following terms.

Enbridge will continue to offer open bill services in 2013, under the terms of the Board-approved Settlement Agreement in EB-2009-0043 subject to the following two changes:

- a. The Fees to be charged for Billing Services will be updated as set out at Table 4 of Exhibit D1, Tab 9, Schedule 14.
- b. The Costs to be used for determining net income amounts for the purpose of sharing between Enbridge and ratepayers will be updated as set out at Table 4 of Exhibit D1, Tab 9, Schedule 14.

The terms of the OBA Agreement that governs the relationship between Enbridge and Billers are being discussed between Enbridge and the open bill issue participants. These parties hope to be able to reach resolution on the terms of contract by the end of October 2012, and will advise the Board in that regard. In the event that no agreement can be reached, then these parties may ask the Board to consider and determine issues related to the terms of the OBA Agreement, as contemplated in Procedural Order No. 4.

All parties, as well as the open bill issue participants, agree that as of January 1, 2013 Enbridge will continue to use the current form of OBA Agreement until such time as either: (i) Enbridge and the open bill issue participants agree on an updated form of OBA Agreement; or (ii) the Board makes a determination on any outstanding issues related to the OBA Agreement.

All parties, as well as the open bill issue participants, agree that if Enbridge wishes to continue to offer open bill services beyond December 31, 2013, then Enbridge must make application to the Board to do so. It is expected that such application (which might be part of a rates application, or might be a stand-alone application), will set out the terms upon which Enbridge proposes to continue the open bill program over a longer term or the terms upon which Enbridge proposes to wind down the program. Enbridge agrees that it will meet with all interested parties (including open bill issue participants) at least one month before it files the application contemplated in this paragraph. The purpose of such meeting is to provide information about Enbridge's plans and intentions to interested parties and to allow Enbridge to receive comments from those parties that may be relevant in the preparation of Enbridge's application.

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In response to a proposal made by certain open bill issue participants to have Enbridge initiate an on-bill financing program for DSM measures (such as energy efficient equipment and building envelope upgrades), all parties, as well as the open bill issue participants, agree to the following next steps to work towards the possibility of offering on-bill financing for DSM measures with the intention of starting in January 2014:

- a. By November 15, 2012, a consultative group will be formed to further consider the proposal. Any intervenor participating in this EB-2011-0354 case or in the ongoing DSM consultative would be eligible to participate in the consultative group.

The consultative group will have at least three meetings in 2012, with the stated goal of creating a project plan setting out how Enbridge would offer on-bill financing for DSM measures at the lowest feasible interest rates.

- b. In creating a project plan, the consultative group will consider the appropriate program design for an on-bill financing program for DSM measures to allow for such a program to be feasible, viable and effective. Items that may be considered include, but are not limited to, the following items which have been proposed by certain open bill issue participants:
 - a. Whether and, if appropriate, how to issue an RFP seeking one or more financiers to offer financing to underpin the on-bill financing program activities involving the on-bill financing DSM consultative.
 - b. Whether and, if appropriate, how to ensure that the DSM on-bill financing program will only provide financing for DSM measures, with the goal of having such products sold and installed by reputable professionals.
 - c. Whether and, if appropriate, how to ensure that an accurate energy rating system (e.g., NRCan's EnerGuide Rating system) is used to: a) forecast; and b) measure the post-installation actual savings of DSM measures that are financed by the DSM on-bill financing program.
 - d. Whether and, if appropriate, how to ensure that DSM on-bill financing charges can be transferred to a new homeowner or tenant.
- c. Once the project plan is completed, which is anticipated by early 2013, Enbridge will then lead the execution of the project plan.

All parties, as well as the open bill issue participants, acknowledge that Enbridge has not yet made any determination as to whether it plans to continue open bill services beyond 2013 or whether Enbridge will seek to wind down the program at that time. All parties, as well as the open bill issue participants further acknowledge that while the continuation

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of Enbridge's open bill services is not a pre-requisite to offering DSM on-bill financing, the question of whether open bill services continue in 2014 may impact on the feasibility and viability of offering DSM on-bill financing. In that regard all parties, as well as the open bill issue participants, acknowledge that Enbridge has not yet made any determination about whether it will proceed with on-bill financing for DSM measures in 2014 and acknowledge that such determination is contingent, at least in part, on the DSM on-bill financing program being feasible and viable to implement. If the decision is made to proceed with on-bill financing for DSM measures, Enbridge will aim to launch the DSM on-bill financing program in January 2014.

Evidence: The evidence in relation to this issue includes the following:

D1-9-1
I-D11-1.1 to 20.11
I-D11-23.1 to 24.17

Open Bill Access
Interrogatories on Issue D11
Supplementary Interrogatories on Issue D11

ENBRIDGE GAS DISTRIBUTION INC.

- and -

[OPEN BILL PARTICIPANT]

[[AMENDED AND RESTATED¹]]
OPEN BILL ACCESS
BILLING AND COLLECTION SERVICES AGREEMENT

ver. 3.0

¹ NTD: this text to be included only in version of OBA to be signed by existing Billers

**[[AMENDED AND RESTATED²]]
OPEN BILL ACCESS
BILLING AND COLLECTION SERVICES AGREEMENT**

THIS AGREEMENT is made and effective as of the [4th] day of January, 2013

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.
- F. [[The Biller and the Company are also party to an Open Bill Access Billing and Collection Service Agreement, as amended and extended to Cycle Day 21 for the month of December 2012, (the "**Original Agreement**"), and wish to amend and restate the terms thereof as contemplated and provided herein, effective as of the date of this Agreement.³]]

² NTD: this text to be included only in version of OBA to be signed by existing Billers

³ NTD: this text to be included only in version of OBA to be signed by existing Billers

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(c)(iii);

"At-Issue Receivable" has the meaning given to such term in Section 7.6(c)(iii);

"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 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;

"**Corrective Costs**" has the meaning given to such term in Appendix "B";

"**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;

"**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;

"**Fee Invoice**" has the meaning given to such term in Section 4.6;

"**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/HST**" means the taxes (including goods and services tax and harmonized sales 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;

[[**"Original Agreement"** has the meaning given thereto in the Background to this Agreement;⁴]]

"**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;

[[**"Pre-Payment Amount"** has the meaning given to such term in Appendix "B";⁵]]

⁴ NTD: this text to be included only in version of OBA to be signed by existing Billers

⁵ NTD: this text to be included only in version of OBA to be signed by new Billers

"**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**" means any renewal term of the Agreement agreed upon by the Parties;

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

"**Resolution Period**" has the meaning given to such term in Section 7.6(d);

"**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";

"**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, 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 Amended and Restated Proceeds Transfer, Servicing and Trust Agreement entered into among the Company, BNY Trust Company of Canada (assignee of CIBC Mellon Trust Company), the Biller and the other parties set forth on Schedule "F" thereto effective as of February 4, 2010, 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.

1.8 Application

The Parties acknowledge that this Agreement is one of a series of substantially identical agreements entered into between the Company and others relating to the provision of Billing Services, and that it is an underlying principle of the Company that it provide services to those with whom it contracts in a reasonable, fair and consistent manner. Therefore, except as specifically contemplated in Section 8.9.1 and Appendix "D", the Company shall exercise and enforce its rights (including its right to make determinations in its sole or sole and absolute discretion) under this Agreement in a manner which is fair and consistent amongst all the participants in the Company's 'Open Bill Program'.

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 (i) 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, and (ii) such Customer Service Agreement is, and has been entered into, in compliance with all Applicable Laws, including the Consumer Protection Act, and (iii) it delivers a copy of such Customer Service Agreement to the Customer if required by Applicable Laws, including the Consumer Protection Act;
- (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 that (i) the charges for Customer Services under the Customer Services Agreements shall appear on the Service Bill, and (ii) 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 satisfy its rights or 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 (21st) 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 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.

4.3 Fees

Amounts payable by the Biller to the Company pursuant to, and in accordance with, this Agreement include the following:

- (a) for Billing Services rendered by the Company to the Biller hereunder, the Billing Fee;
- (b) [[the Pre-Payment Amount, which will be payable by the Biller to the Company contemporaneously with the entering into of this Agreement, and the Company shall setoff all Billing Fees invoiced to the Biller hereunder against such Pre-Payment Amount until the Pre-Payment amount has been reduced to zero⁶]]; and
- (c) Corrective Costs.

Each of the foregoing fees may be amended from time to time in the manner contemplated in this Agreement.

4.4 Monthly Reconciliation

On or before the fifth (5th) 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

⁶ NTD: this text to be included only in version of OBA to be signed by new Billers

Section 7.6(c)(iii) 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 (6th) 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 or for Corrective Costs, which amounts shall, on the third (3rd) 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 Fee Invoices

On or before the sixth (6th) Cycle Day of each Billing Period, the Company shall issue to the Biller an invoice (the "**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 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, Corrective Costs and any other charges payable by the Biller pursuant to this Agreement, together with Taxes payable by the Biller thereon, as set forth on any 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 Fee Invoice against payment to the Biller of the Settlement Amount; and (B) such direction or authorization addressed to the Company and the Trustee; 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

4.10.1 Right to Examine Biller Records - Subject to Applicable Laws, (A) if the Company determines, acting reasonably and in good faith, that the Biller has failed or may have failed to perform or observe any of the obligations referred to below in this Section 4.10, or (B) if there occurs a Customer Billing Dispute as contemplated in Section 7.6, or (C) if, at any time, the Company, acting reasonably, elects to audit or to verify that the Biller has complied with or is complying with any of its covenants, obligations, representations or warranties in Section 2.6 or Section 7.1, then the Company shall have the right to examine and review, and the Biller shall, within seven (7) Business Days of a receipt of a request from the Company therefore, deliver to the Company, such evidence (the "**Biller Records**") as the Company considers necessary to verify the Biller's compliance with such covenants, obligations, representations or warranties.

4.10.2 Maintenance of Biller Records - 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.

4.10.3 Right to Contact Customers - In fulfillment of its rights under this Section 4.10, the Company shall also be entitled to contact and communicate with: (i) any Customer or

former Customer with respect to any matter in issue between the Biller and such Customer or former Customer, or (ii) any person who has made a complaint to the Company, if such matter relates to the Customer Services, the Billing Services, the Biller's covenants, obligations, representations or warranties under this Agreement, or is otherwise the subject of this Agreement.

4.10.4 Informing Biller – If the Company intends to take any action or to enforce any of its rights in respect of the Biller pursuant to Sections 8.4 or 8.8 as a result of the Company's review of the Biller Records or its communication with any Customer, former Customer or other person, in either case pursuant to this Section 4.10, then, the Company shall ask such person for their consent to disclose all or part of the relevant information to the Biller and, subject to obtaining any necessary consent from such person, the Company shall disclose to the Biller the relevant information and other documentation (including any available call recordings) which the Company has obtained in respect of the Biller or its activities and upon which it is relying in taking such action or enforcing such right.

4.11 **Scheduled Cycle Days**

The Company shall provide the Biller 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 services provided and amounts invoiced pursuant to this Agreement shall be borne and paid by the Biller. The Company shall not make any refund or credit to the Biller of GST/HST 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/HST. 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/HST 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 Limited 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, except as specifically contemplated in this Section 5.3, be limited to it or the Trustee making and enforcing a claim against the Customer. Subject to the Trust Agreement, Section 7.6 hereof and the following sentence, 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. If the Biller, upon receipt of a request from the Company therefore, is unable or unwilling to provide to the Company satisfactory evidence of a valid credit check for any Customer as contemplated in Section 2.6(l), and the Company is unable, after exercising its normal or usual degree of diligence, to collect any amount owing by such Customer in respect of any Customer Services within sixty (60) days of the date of the relevant original invoice to such Customer, then the Company shall be entitled to claim against the Biller for such amount, and the Biller hereby authorizes the Company to set off, appropriate and apply any amount owing by the Company to the Biller pursuant to this Agreement against the amount owing by such Customer.

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

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) the Company shall notify the Biller of the particulars of each Customer Billing Dispute, including the At-Issue Amount, as and to the extent the Company becomes aware of such particulars;
- (c) the Company shall be entitled, in its sole and absolute discretion, at any time thereafter and upon notice to the Biller, to:
 - (i) not make any changes to the Service Bill for such Customer in respect of the relevant Customer Services, or the corresponding future Customer Services charges, which are the subject of the Customer Billing Dispute; or
 - (ii) remove from the Service Bill for such Customer the relevant Customer Services, and the corresponding future Customer Services charges, which are the subject of the Customer Billing Dispute; or
 - (iii) (A) remove from the Service Bill for such Customer the relevant Customer Services, and the corresponding future Customer Services charges, which are the subject of the Customer Billing Dispute; and (B) as part of the relevant Reconciliation pursuant to Section 4.4, 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; and (C) refund to the relevant Customer the full amount of any At-Issue Receivable, in respect of which the At-Issue Amount has been so deducted or netted-out; and (D) have such At-Issue Receivable removed from the Customer's bill; and (E) adjust the Company's records accordingly;

notwithstanding the Company's right in Subsection 7.6(c)(iii)(C) to refund to the Customer the full amount of the At-Issue Receivable, if the At-Issue Receivable which is part of the Customer Billing Dispute includes Customer Services charges

which were billed to the Customer more than two (2) years prior to the date on which the notification is given pursuant to Subsection 7.6(a), then, except where the matter is the subject of litigation involving the Customer Billing Dispute, the Company shall not refund that part of such At-Issue Receivable which was billed to the Customer more than two (2) years prior to such notification date;

for certainty, if the Company takes the actions and exercises its rights as set out in Subsection 7.6(c)(i), it shall not be precluded, in its sole and absolute discretion at any time thereafter, from taking the action and exercising its rights as set out in Subsection 7.6(c)(ii) or Subsection 7.6(c)(iii), and if the Company takes the actions and exercises its rights as set out in Subsection 7.6(c)(ii), it shall not be precluded, in its sole and absolute discretion at any time thereafter, from taking the action and exercising its rights as set out in Subsection 7.6(c)(iii);

- (d) the Biller shall use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer, and
 - (i) where the Customer Billing Dispute is not in respect of any matter to which the Company determines, in its sole discretion, the *Consumer Protection Act* applies, then the Biller shall use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer within forty-five (45) days of the notification given pursuant to Subsection 7.6(a); or
 - (ii) where the Customer Billing Dispute is in respect of any matter to which the Company determines, in its sole discretion, the *Consumer Protection Act* applies, then the Company shall notify the Biller of such determination and the Biller shall use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer within fifteen (15) days of the notification given pursuant to Subsection 7.6(a);

in either case, the "**Resolution Period**";
- (e) if the Customer Billing Dispute is not resolved within the applicable Resolution Period, then the Company shall be entitled thereafter to take the actions and exercise its rights as set out in Subsection 7.6(c);
- (f) the Biller shall regularly and fully inform the Company regarding the status of each 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, without limiting the foregoing obligation of the Biller, the Biller shall fully inform the Company regarding such status of any Customer Billing Dispute within two (2) Business Days of receipt of a request from the Company in such regard;
- (g) at any time and from time to time, the Company may contact the Customer directly to discuss the status and particulars of the relevant Customer Billing Dispute;

- (h) if a Customer Billing Dispute is resolved, then the Biller shall forthwith 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;
- (i) 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
- (j) 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.

7.7 Disputes Between the Parties

7.7.1 Mechanism for Resolution of Disputes - With the exception of i) the exercise of rights by the Company pursuant to Section 7.6 or ii) the exercise of rights of termination 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 the Company exercises its rights under Section 7.6 or if a Party gives to the other Party a notice pursuant to Section 8.4 or 8.5, then the Biller or such other Party, as the case may be, shall not be entitled to pursue resolution of any Services 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.

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- (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 1, for the month of January, 2013 and shall terminate on the earlier of (a) Cycle Day 21, for the month of December, 2013, 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 [Intentionally Deleted]

8.3 [Intentionally Deleted]

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 within one (1) year of the Company discovering the occurrence of an Event of Default of the Biller and upon written notice to the Biller that the Company is terminating this Agreement as a result of the occurrence of such Event of Default; 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 within one (1) year of the Biller discovering the occurrence of an Event of Default of the Company and upon written notice to the Company that the Biller is terminating this Agreement as a result of the occurrence of such Event of Default; 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, or upon the occurrence of the relevant event if there is no notice or cure period applicable:

- (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) if such failure or breach is also an obligation of the Party under the Consumer Protection Act, and a shorter period is prescribed by the Consumer Protection Act, then such shorter period as is prescribed, or (3) 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 the Biller fails to perform or observe its obligations set out in Section 2.6(e) [Financial Assurances];
- (c) if (A) the Biller fails to perform or observe its obligations set out in any of Sections 2.6(i) [Biller contact information], 2.6(l) [assurance of Minimum Credit Ratings], 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;

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- (d) if 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(f) [compliance with Applicable Laws], 2.6(g) [compliance with privacy obligations], 4.10 [Company's Request for Documentation] or 7.6 [Disputes between Customer and Biller]:
- (i) on three (3) or more occasions in any consecutive twelve (12) month period, with respect to the same obligation; or
 - (ii) on an aggregate of ten (10) or more occasions in any consecutive twelve (12) month period, with respect to any of such obligations;
- and in respect of each of which failures the Company has provided a notice to the Biller, regardless of whether any of such failures have been remedied;
- (e) 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, or could reasonably be expected to have, an adverse effect on the Company (including the public's perception of the Company) or the Company's ability to deliver the Billing Services (in each case, in the sole discretion of the Company), 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;
- (f) if any representation or warranty made by the Biller hereunder or any information provided by Biller pursuant to this Agreement shall prove to have been incorrect or misleading in any respect when made, or at any time during the Term;
- (g) if a compliance order is issued against or in respect of the Biller or the Biller is the subject of any other order made under the Consumer Protection Act;
- (h) 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;
- (i) 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;
- (j) if a Party commits any act of bankruptcy under the *Bankruptcy and Insolvency Act (Canada)* or is wound up;

- (k) 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;
- (l) if for any reason a Party ceases to be a party to the Trust Agreement; or
- (m) 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, in addition to any other rights it may have hereunder, the Company shall have the right, following written notice to the Biller of the Company's determination in this regard, to take any one or more of the following actions, as it may in its sole discretion determine necessary or appropriate:

- (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.

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 other than in accordance with Subsection 8.9.3, 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 Subsection 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 Subsection 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 Subsection 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.

8.9.3 Program Termination Transition

- (a) If the Company determines to terminate the 'Open Bill Program' for all billers who obtain Billing Services pursuant to an agreement in the form of, or substantially in the form of, this Agreement (collectively, the "**Program Billers**"), then the Company shall 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) of all Billing Services then being performed by the Company pursuant to the program transition plan established by the Company pursuant to this Subsection 8.9.3.
- (b) Upon the Company determining to terminate the 'Open Bill Program' and following the Company providing notification to the Biller and all other Program Billers of such determination, the Company shall make reasonable efforts to consult with the Biller and all other Program Billers to establish a program transition plan which is generally acceptable to all Program Billers; provided that if the Company is not able to establish such a plan within sixty (60) days of such notification, then, subject only to paragraph (d) of this Subsection 8.9.3, the Company shall be entitled to establish such a program transition plan, as it

may determine, in its sole discretion, most completely meets the requirements and requests of the Company and the Program Billers.

- (c) Upon the Company establishing the program transition plan, it shall notify the Biller and all other Program Billers thereof.
- (d) Notwithstanding to paragraph (b) of this Subsection 8.9.3, the transition services provided by the Company pursuant to the program transition plan (the "**Transition Services**") will be provided (A) in the same manner, *mutatis mutandis*, to all Program Billers and (B) to the Biller for the longer of (i) twelve (12) months following delivery of notification of the program transition plan pursuant to paragraph (c) of this Subsection 8.9.3, and (ii) the longest period of time for which the Company provides such Transition Services to any of the Program Billers.
- (e) The Biller will co-operate in good faith with the Company in connection with the Company's obligations under this Subsection 8.9.3 and will perform its obligations in connection with any such Transition Services. The Company's obligation to provide Transition Services shall be subject to the Biller's continued compliance with the relevant terms and conditions of this Agreement.

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 Owing Party, including all discoveries, concepts and ideas derived from the Confidential Information, are the exclusive property of the Owing Party.

10.1.3 Use - The disclosure of Confidential Information by the Owing 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 Owing 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 Owing 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 Owing Party, to return to the Owing Party all materials to the extent containing any portion of the Confidential Information or confirm to the Owing 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 Confidentiality 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.
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, Law & Information Technology

(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 Force Majeure

If the Company's performance of any of its obligations under to this Agreement is prevented, hindered or delayed by reason of fire, flood, earthquake, explosion or other casualty or accident or act of God, war or other violence, or any laws or regulations, order, proclamation, regulation, ordinance, demand or requirement of any Governmental Authority or other similar event outside the Company's reasonable control (including, without limitation, labour unrest with respect to the labour force of the Company or a third party) (in each case, a "**Force Majeure Event**"), then the Company will be excused for such non-performance, hindrance or delay, as applicable, of those obligations for as long as such Force Majeure Event continues.

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 [[Substitution of Agreement]]

[[The Original Agreement is hereby amended and restated effective as of the date of this Agreement, and thereafter replaced by this Agreement. As of and from the date of this Agreement, all references to the Original Agreement shall be to the Original Agreement as amended and restated by this Agreement. For certainty, the execution and delivery of this Agreement shall not affect any action taken, payment made under or pursuant to, or reliance on the Original Agreement. Any conduct of either Party prior to the effective date of this Agreement and discovered by the other Party prior to the effective date of this Agreement shall be governed by the terms of the Original Agreement; any conduct of either Party prior to the effective date of this Agreement and discovered by the other Party within six (6) months after such effective date shall be governed by the terms of this Agreement; and any conduct of either Party prior to the effective date of this Agreement and discovered by the other Party more than six (6) months after such effective date shall be governed by the terms of the Original Agreement.⁷]]

⁷ NTD: this text to be included only in version of OBA to be signed by existing Billers

11.10 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:
Title: Vice President, Business Development & Customer Strategy

By: _____
Name:
Title: Vice President, Law & Information Technology

[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
Account Set Up & Management	<p>Billers 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>
Call Centre	<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> <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</p>

Service Function Provided	Description of Service
	response.
Billing Hotline	<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>
Billing	<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> <p>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.</p>

Service Function Provided	Description of Service
Bill Presentment	<p>Billers 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>
Bill Print & Mailing	<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>
Rental Equipment	<p>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.</p>
Finance	<p>Company will purchase the Distribution Entitlements from Biller on the applicable Payment Date.</p>
Settlement	<p>Company will pay the Settlement Amount to Biller in accordance with the Agreement.</p>

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;

"**Corrective Costs**" means the reasonable, incremental third-party costs incurred by the Company, acting reasonably, to investigate, correct or otherwise address breaches or possible breaches by the Biller of any of its covenants, obligations, representations or warranties in Section 2.6 or Section 7.1; and such costs may include the cost of outside legal advice, auditors, consultants and investigators engaged by the Company to investigate or follow-up on such breaches; for certainty, such third-party costs shall not be considered 'incremental' if they are in regard to the regular and recurring services provided by the Company or by the relevant third-party to the Company in connection with the Open Bill Program;

["**Pre-Payment Amount**" means the Billing Fee pre-payment in the amount of \$2,500. The Pre-Payment Amount is an amount to be paid by the Biller to the Company prior to the initial provision of services by the Company to the Biller under this Agreement in recognition of costs to be incurred by the Company with respect to putting in place the Billing Services. The Company shall set-off the Billing Fee, as invoiced to the Biller from time to time against the Pre-Payment Amount until the Pre-Payment Amount has been reduced to zero. If this Agreement is terminated prior to end of its Term and there remains any unapplied Pre-Payment Amount, then fifty per cent (50%) of such amount may be retained by the Company;⁸] and

"**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

⁸ NTD: this text to be included only in version of OBA to be signed by new Billers

Appendix "B"
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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>	
Objective	To deliver Service Bills in a timely manner to the Biller's customers.
Definition	<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>
Data Capture	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.
Measurement Interval	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.
Method of Calculation	<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>
Reporting Period	Monthly and annual reporting
Service Level	<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>	
Objective	To make certain that there are no incorrect bill messages included on the Service Bills.
Definition	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.
Data Capture	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.
Measurement Interval	Reviewed daily and measured monthly at the end of each Billing Period.
Method of Calculation	The total number of mailing envelope message infractions divided by the total number of mailing envelopes mailed, times 100%
Reporting Period	Monthly
Service Level	Zero infractions 98% of the time.

<i>3 – Billing Exceptions Processing</i>	
Objective	To make certain that all billing exceptions are completed in a timely manner.
Definition	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.
Data Capture	The Company will track and report all billing exceptions.
Measurement Interval	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.
Method of Calculation	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.
Reporting Period	Monthly.
Service Level	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 six (6) 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 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 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

- (a) 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.
- (b) 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.
- (c) If the additional or increased Financial Assurances are:
- (i) not agreed upon, or
 - (ii) 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●●

Biller's 12 month forecast for Service Bills.

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

<u>Year X</u>						
Service	January	February	March	April	May	June
Number of Service Bills						
Service	July	August	September	October	November	December
Number of Service Bills						
<u>Year X + 1</u>						
Service	January	February	March	April	May	June
Number of Service Bills						
Service	July	August	September	October	November	December
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 an average of 500,000 or more but less than 750,000 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; or
- (v) in the case of a Biller for which the Company provides Billing Services with respect to 750,000 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 three hundred and sixty-five (365) 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:**
 - On [Notice Date] - No further Customers will be accepted for billing service enrollment as of this date.
 - By [Final Billing Date + 30 calendar days] - Update call centre scripts to communicate that charges will no longer appear on the Service Bill.
 - No later than [15 calendar days prior to the Final Billing Date] – Biller will send a written notice to all Customers to communicate that their charges will no longer appear on the Service Bill after [Final Billing Date].
 - Until [Final Billing Date + 30 calendar days] – Biller will respond to customer inquiries in a timely and professional manner.
 - By [Notice Date + 7 calendar days] - If required, Biller will extend their Financial Assurances until at least [Final Billing Date + 6 Billing Periods]
 - 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:**
 - Until [Final Billing Date] - Continue to provide Billing Services for valid charges that were provided before [Notice date].
 - 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] and may notify Customers advising them that charges will no longer appear on the Service Bill after [Final Billing Date] .
 - 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.
 - 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:**
 - On [Final Billing Date] - Remove Biller's security access to their SFTP Input folder.
 - Until [Final Billing Date + 21 calendar days] – Daily net remittances to Biller continue.
 - 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.
 - 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.
 - On [Final Billing Date] - For all remaining rate ready charges, submit rate ready delete transactions for remaining Customers.
 - As determinable – Advise Biller regarding transition costs to be passed on to Biller.
-



Open Bill Project

- Billing and Bill Insert Services Costing Study Update

Date Distributed: October 27, 2011

Version: Final



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Open Bill Project

- Billing and Bill Insert Services Costing Study Update



1 Purpose

The purpose of this document is to update the cost study originally developed in 2008 by TMG Consulting (“TMG”) for both Billing Services (Open Bill) and Bill Insert Services for the time period from 2012 through 2018. Where applicable, it identifies any key differences with the initial study.

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



2 Introduction

Enbridge Gas Distribution (“EGD”) is currently in the process of re-examining the pricing model for the Open Bill Access and Bill Insert service which was approved by the OEB in 2009. The original exercise was conducted by TMG Consulting who had been engaged to develop a cost model, conduct Market Analysis and propose pricing model recommendations by the Consultative in 2008.

The purpose of this study is to re-examine the cost models with the hindsight of three years of operational experiences and the benefit of doing so with a fully implemented new Customer Information System (the “nCIS”). This study does not re-produce the Market Analysis produced by TMG Consulting nor does it propose pricing recommendations. This report clarifies where applicable, any major differences between it and the previous costing models developed.

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



3 Project Approach

This section outlines the approach taken by InQvis and the work plan used to achieve the purpose/goal of this project.

3.1 Project Process Steps

The project was a two month engagement, September to October 2011 which included the following major process steps:

- Project Kickoff Session with representatives from EGD's Customer Care, Finance, IT, Legal, Marketing and Communications and Public and Government Affairs.
- Detailed review of the existing cost model approach
- Consultation with EGD Departments to review and validate each of the initially established processes
- Clarification of the appropriate resource, level of effort required and the determining variable associated to that effort (i.e. per biller vs per bill)
- Development of a revised cost model
- Data gathering of the forecasts for the time period in question (2012-2018) with the teams managing Open Bill and Bill Insert Services
- Review of the cost model with each management team
- Preparation of the corresponding narrative report

Bi-weekly meetings were scheduled as part of the project plan. These meetings were conducted to provide project status updates and used as a forum to discuss any project issues and receive directions for this project.

3.2 Deliverables

The identified deliverables attached to this project include this narrative report and cost models for each of the two services containing:

- A list of the processes which combine to form the full life-cycle of the service as per the revised knowledge gained over the past three years of service.
- The activities/steps in the processes along with an identified resource, effort and appropriate effort determining variable.
- A forecast and other current inputs. For Open Bill the additional inputs are expected CPI, postage rates, expected biller and bill volumes for both shared and standalone, ABSU service costs, as well as the number of Billers per Customer Care Full Time Equivalent assumption. For Bill Insert Services, the additional inputs are expected CPI, postage rates, number of interested parties, and number of distinct inserts and volume of inserts as well as the number of Third Parties demonstrating interest and eventually following-through with a bill insert submission per year.
- A summary of each cost model as an annual and per unit break down of costs per component

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



InQvis was successful in providing a comprehensive cost model and final cost values for both the Billing Services and Bill Insert Services which reflect the last three years of operational experience within EGD.

4 Open Bill Service Cost Model

This section describes the cost model of the Open Bill service only. For details on this model see Appendix A.

4.1 Model Period

The cost model is designed to cover a six year period equating to six annual periods from January 2013 to December 2018. The annual periods are in line with each calendar year. However, given that the previous study ended in March 2012, this study begins by determining costs for the nine month period from April to December 2012. Therefore, year 1 referred to in this report is 2012. Unless stated otherwise, a CPA rate of 2% has been applied to establish the values beyond year 1.

4.2 Cost Components

The cost model includes the following cost components:

- *Customer Care Costs:* These are the costs associated with the internal management of Billing services by EGD Customer Care which includes biller relationship, Accenture Business Services for Utilities (“ABSU”) contract management etc.
- *CIS Functional and IT Costs:* These costs are associated with the functional and technical management of the nCIS by EGD Customer Care and IT departments.
- *OBA Enhancements Cost:* These costs are associated with the improvements to the overall service which have proven important in maintaining the value of the offering to the Open Bill Service clients. This includes ensuring bi-annual feedback sessions with clients and more active engagement and training to ensure the service can be optimized.
- *EGD Support Costs:* These costs are associated with the management of administrative services provided by other groups within EGD such as Legal, Finance and Corporate Communications.
- *Allocated IT:* This cost is associated with specific IT activities necessary to assist with Biller Setup and Changes in nCIS which were not identifiable at the time of the initial study. It is determined by the number of new billers added to the service.
- *Postage:* This is the cost associated with the mailing of shared and standalone bills.
- *ABSU:* This cost is associated with the management of the customer care services by ABSU. It includes services for Account Management, Billing, Payment Processing and Collections Operations.

Additional key differences from the original cost model include the elimination of the following:

- *OBA Tool:* These costs were associated with the management and security of biller charge files to the EGD server by IT. This included the development and maintenance of an application that enable the biller to easily transfer/receive files more effectively to and from the EGD server. This costs associated to this tool have been accounted for during the initial three year time period covered during the TMG study.

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- Billing and Bill Insert Services Costing Study Update



- *Contingency*: This cost component allowed for a measure of flexibility surrounding the uncertainty related to the future nCIS processes whose design was not completed at the time of the study. The experience of the last three years provides a measure of certainty which makes this cost component unnecessary at this time.

4.2.1 Customer Care Costs

As established by TMG, there is fixed effort required to manage/provide biller relationship management regardless of the number of customer each biller may have. Based on work effort estimation, TMG calculated a total of six open billers can be managed with one full time equivalent (FTE). Given this assumption, the current volume of billers signed up for service is equal to 46. While not all currently active, this would imply the need for 7.6 FTEs to manage and support the daily operations of this service. Similar to the model used by TMG, the cost for these function were calculated by applying a yearly full loaded cost for the 7.6 FTEs. This value would be approximately \$1,036M or \$0.0576 per shared bill.

4.2.2 CIS Functional and CIS IT

Initially, this value was established by allocating a 20% portion of the \$2M split equally between CIS Functional and CIS IT groups as the best estimate. However, the experience of the past three years suggests that going forward, utilizing the value of one FTE from each group as being more representative of the effort used to support the program. At an average fully loaded rate of \$144.8K this equates to a combined total of \$0.0162 per shared bill.

4.2.3 OBA Enhancement Costs

This cost did not appear in the initial study. Going forward, it was determined by using an estimate that it would require approximately \$110,000 annually to specifically target improvements in the Open Bill service. This would be achieved through increased training and formal engagement of clients to gather feedback and exchange ideas on possible improvements. This value applies approximately \$0.0061 per shared bill.

4.2.4 EGD Support Costs

The cost for these support functions were calculated by applying an hourly rate to the time spent to complete each activity within the support function. The hourly rate was based on the EGD fully loaded hourly rates in the table below:

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



EGD Staff Position	Full Loaded Hourly Rate (\$)
Senior Council	127.38 \$
Senior Manager (Range 10)	118.76 \$
Senior Manager (Range 9)	105.72 \$
Middle Manager	98.70 \$
Program Manager/Supervisor	87.98 \$
Senior Analyst	83.93 \$
Analyst	78.34 \$
Junior Analyst	73.73 \$
Administrative	67.82 \$

These rates are inclusive of administration, facilities, short term incentive pay and general overhead costs. The cost for Year 1 is approximately \$39K or approximately \$0.0023 per shared bill.

4.2.5 Allocated IT

This cost was not separated in the initial study as it was not visible at the time of the completion of the exercise. Focusing primarily on efforts associated to nCIS configuration activities for new billers, this value is established by multiplying the effort in hours by the fully allocated hourly rate of the involved resource multiplied by the number of new billers added in a given year. The total cost for year 1 is approximately \$25k or \$0.0014 per shared bill.

4.2.6 Postage

This is the cost associated with mailing a shared bill. The postage cost is based on the total percentage of the Open Bill revenue amount as a percentage of total revenue billed. This was determined to be approximately 9% in the TMG study.

The cost for Year 1 is approximately \$916K or approximately \$0.0522 per shared bill. Pre-established Canada Post increases have been estimated for subsequent years (\$0.02 per year for years 1-2 and \$0.03 per year for years 3-6). A standalone bill will incorporate the full cost of postage (\$0.58).

It should be noted, as discussed in the initial study, the standard postage rate is based upon bills maintaining a weight beneath 30 grams. Through a random sampling method, Canada Post

measures the bills on a daily basis. If they are found to exceed this weight; a surcharge of \$0.09 per unit applies to all of the mailing during that cycle.

4.2.7 ABSU

The ABSU Customer Care operational rates are included as per EGD's current Customer Care Services Agreement (the "CCSA") and are in place until at least December 31, 2017.

The cost for Year 1 is approximately \$9,069K or \$0.5167 per shared bill, rates for subsequent years will change based on the approved agreement.

4.2.8 Open Bill Service Cost¹

The total annual costs and cost per bill for a shared customer is presented below.

¹ It should be noted that the Open Bill and Bill Insert Settlement Proposal approved by the Ontario Energy Board in EB-2009-0043 recognized that internal costs related to billing services already being notionally recovered in EGD rates would not be included for the purpose of determining the costs of these services (EB-2009-0043, Settlement Proposal, Page 12)



Total Cost/Year – Shared

Cost item	Cost type	Apr - Dec '12	2,013	2,014	2,015	2,016	2,017	2,018
Customer Care	Incremental	\$758,689	\$1,099,113	\$1,189,738	\$1,283,549	\$1,380,636	\$1,481,094	\$1,585,019
CIS Functional	Allocated	\$106,049	\$144,227	\$147,112	\$150,055	\$153,056	\$156,118	\$159,241
CIS IT	Allocated	\$106,049	\$144,227	\$147,112	\$150,055	\$153,056	\$156,118	\$159,241
OBA Service Enhancements	Incremental	\$80,527	\$109,517	\$111,708	\$113,942	\$116,221	\$118,546	\$120,918
EGD Support Cost	Allocated	\$29,652	\$42,737	\$46,035	\$49,432	\$52,927	\$56,520	\$60,210
Allocated IT	Allocated	\$18,412	\$25,382	\$26,225	\$27,078	\$27,941	\$28,815	\$29,698
Postage	Allocated	\$687,158	\$934,669	\$953,498	\$972,706	\$992,302	\$1,012,292	\$1,032,685
ABSU	Incremental	\$6,801,816	\$9,128,309	\$9,012,563	\$9,072,378	\$9,322,464	\$9,616,532	\$10,613,360
Total		\$8,588,352	\$11,628,180	\$11,633,991	\$11,819,194	\$12,198,604	\$12,626,034	\$13,760,372

Cost/Bill - Shared

Cost item	Cost type	Apr - Dec '12	2013	2014	2015	2016	2017	2018
Customer Care	Incremental	\$0.0576	\$0.0626	\$0.0678	\$0.0731	\$0.0786	\$0.0843	\$0.0902
CIS Functional	Allocated	\$0.0081	\$0.0082	\$0.0084	\$0.0085	\$0.0087	\$0.0089	\$0.0091
CIS IT	Allocated	\$0.0081	\$0.0082	\$0.0084	\$0.0085	\$0.0087	\$0.0089	\$0.0091
OBA Service Enhancements	Incremental	\$0.0061	\$0.0062	\$0.0064	\$0.0065	\$0.0066	\$0.0067	\$0.0069
EGD Support Cost	Allocated	\$0.0023	\$0.0024	\$0.0026	\$0.0028	\$0.0030	\$0.0032	\$0.0034
Allocated IT	Allocated	\$0.0014	\$0.0014	\$0.0015	\$0.0015	\$0.0016	\$0.0016	\$0.0017
Postage	Allocated	\$0.0522	\$0.0532	\$0.0543	\$0.0554	\$0.0565	\$0.0576	\$0.0588
ABSU	Incremental	\$0.5167	\$0.5200	\$0.5133	\$0.5167	\$0.5308	\$0.5475	\$0.6042
Total		\$0.6524	\$0.6624	\$0.6626	\$0.6731	\$0.6946	\$0.7188	\$0.7833

As in the initial study, standalone costs are calculated by adding the additional ABSU and postage charges to the administration cost to manage the Billing service. Administration cost is comprised of the following cost items; Customer Care Costs, CIS Functional, CIS IT, OBA Enhancement Costs, EGD Support Costs, and Allocated IT. These costs are identified below.

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Total Cost/Year - Standalone

Cost item	Cost type	Apr - Dec '12	2013	2014	2015	2016	2017	2018
Customer Care	Incremental	\$18,590	\$26,928	\$29,144	\$31,438	\$33,811	\$36,266	\$38,805
CIS Functional	Allocated	\$2,599	\$3,534	\$3,604	\$3,675	\$3,748	\$3,823	\$3,899
CIS IT	Allocated	\$2,599	\$3,534	\$3,604	\$3,675	\$3,748	\$3,823	\$3,899
OBA Service Enhancements	Incremental	\$1,973	\$2,683	\$2,736	\$2,791	\$2,846	\$2,903	\$2,960
EGD Support Cost	Allocated	\$727	\$1,047	\$1,128	\$1,211	\$1,296	\$1,384	\$1,474
Allocated IT	Allocated	\$451	\$622	\$642	\$663	\$684	\$706	\$727
Postage	Allocated	\$187,084	\$258,047	\$270,950	\$283,852	\$296,755	\$309,657	\$322,559
ABSU	Incremental	\$263,423	\$352,665	\$352,665	\$358,041	\$368,076	\$379,545	\$410,009
Total		\$477,446	\$649,059	\$664,473	\$685,346	\$710,964	\$738,105	\$784,331

Cost/Bill - Standalone

Cost item	Cost type	Apr - Dec '12	2013	2014	2015	2016	2017	2018
Customer Care	Incremental	\$0.0576	\$0.0626	\$0.0678	\$0.0731	\$0.0786	\$0.0843	\$0.0902
CIS Functional	Allocated	\$0.0081	\$0.0082	\$0.0084	\$0.0085	\$0.0087	\$0.0089	\$0.0091
CIS IT	Allocated	\$0.0081	\$0.0082	\$0.0084	\$0.0085	\$0.0087	\$0.0089	\$0.0091
OBA Service Enhancements	Incremental	\$0.0061	\$0.0062	\$0.0064	\$0.0065	\$0.0066	\$0.0067	\$0.0069
EGD Support Cost	Allocated	\$0.0023	\$0.0024	\$0.0026	\$0.0028	\$0.0030	\$0.0032	\$0.0034
Allocated IT	Allocated	\$0.0014	\$0.0014	\$0.0015	\$0.0015	\$0.0016	\$0.0016	\$0.0017
Postage	Incremental	\$0.5800	\$0.6000	\$0.6300	\$0.6600	\$0.6900	\$0.7200	\$0.7500
ABSU	Incremental	\$0.8167	\$0.8200	\$0.8200	\$0.8325	\$0.8558	\$0.8825	\$0.9533
Total		\$1.4802	\$1.5092	\$1.5450	\$1.5935	\$1.6531	\$1.7162	\$1.8237

4.3 Cost Model Assumptions

The following are the assumptions used in the development of the Open Bill service cost model.

- Unlike the original study, costs associated with contract termination and off-set processes are included here. In the case of contract termination all efforts are only multiplied by the number of terminated billers per year and the off-set processes are factored in using a probability in proportion to the number of billers using an off-set payment process. Both of these factors were not well enough understood in the original study but the experiences of the past three years have clarified these to a better degree.
- Current cost based on the CCSA.
- EGD Customer Care staffing to manage biller relations, pursuit and setup will amount to approximately one full time employee for every 6 billers. All activities are predominantly fixed costs and it does not matter how many customers that the new biller may have
- It is forecasted that the number of billers will be 46 with a total of 17,982,020 bills as of the launch date of the identified time period. All cost model calculations are based on this number. Any increase/decrease in billers/bills will impact overall costing
- CIS implementation costs and SAP licensing costs associated with OBA are included as part of the Billing Services cost model. However, these costs are not included in the programs margin and earning sharing calculations.
- The cost model does not include the revenue billed for bad debt
- Unlike the initial study, there is no contingency built into this cost model.

5 Bill Insert Service Cost Model

This section discusses cost model of Bill Insert services only. For more details on this model please see Appendix B.

5.1 Model Period

The cost model is designed to cover a six year period equating to six annual periods from January 2013 to December 2018. The annual periods are in line with each calendar year. However, given that the previous study ended in March 2012, this study begins by determining costs for the nine month period from April to December 2012. Therefore, year 1 referred to in this report is 2012.

5.2 Cost Components

The cost model includes the following cost items:

- *EGD Support Costs:* These are the costs associated with the management of Bill Insert Services by EGD staff which includes Marketing Communications, Business Development Research, Customer Care and Legal
- *Postage:* This is the cost associated with the mailing of a bill with 3rd party inserts

5.2.1 EGD Support Costs

The cost for these support functions were calculated by applying an hourly rate to the time spent to complete each activity within the support function. The hourly rate was based on the EGD fully loaded hourly rates.

Unlike the initial study, support costs are calculated here as contingent on either the number of interested third parties, the number of actual third parties who pursue the process up to committing to include an insert and the number of distinct inserts which are submitted for inclusion with EGD invoices. They are not contingent on the number of panels an insert may have. As suggested by the initial study, the time spent to review, approve and sign a contract for an insert is the same regardless of the number of panels used.

5.2.2 Postage

As identified in the TMG study, applying the postage rate to the Bill Insert service would have a dramatic impact on the overall viability of the program. As such, postage costs that could potentially be associated with bill inserts have not been added in this model.

The bill insert total annual and per insert costs on contained in the tables below.

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



Total Cost/Year

Cost Item	Cost type	Apr-Dec'12	2013	2014	2015	2016	2017	2018
EGD Support Costs	Allocated	\$19,446	\$26,338	\$26,748	\$27,158	\$27,568	\$27,979	\$28,389
Postage	Incremental	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000
Total		\$19,446	\$26,338	\$26,748	\$27,158	\$27,568	\$27,979	\$28,389

Cost/Insert

Cost Item	Cost type	Apr-Dec'12	2013	2014	2015	2016	2017	2018
EGD Support Costs	Allocated	\$0.0136	\$0.0139	\$0.0141	\$0.0143	\$0.0145	\$0.0147	\$0.0149
Postage	Incremental	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000	\$0.0000
Total		\$0.0136	\$0.0139	\$0.0141	\$0.0143	\$0.0145	\$0.0147	\$0.0149

5.3 Cost Model Assumptions

The following are the assumptions used in the Bill Insert service cost model:

- Inserts will be mailed seven times a year and will not be included when EGD safety and rate notices are mailed
- EGD’s bill printing and insertion service provider does not charge EGD any fee for including inserts as part of the bill
- Current cost based on the CCSA.
- All calculations in the cost model are limited to a maximum of seven inserts per bill
- It is assumed if the weight is beyond the Canada Post threshold even for one FSA, the postal rate for all bills for that month will increase accordingly. This would lead to a surcharge of \$0.09 per unit. Currently, EGD distributes mail to all FSAs/Regions evenly across each bill cycle
- Currently up to three pages are used for bills which can be accommodated in two sheets with an additional page available to accommodate a few more biller charges. It is assumed that no more than two sheets of paper will be required for bills
- If more than two sheets are used, there will be no room for any inserts without increasing the postal rate

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



6 Fully Allocated Cost Model

This section reviews additional cost components which may be allocated to the Open Bill and Bill Insert service.

6.1 Fully Allocated Cost Components for Open Bill

The previous study identified several IR items and nCIS implementation costs which could have been considered for allocations to the Open Bill service based upon the percentage of total revenue billed which equated to approximately 9%. In particular, the total implementation cost attributable to the Open Bill service at the time of the original study was approximately \$3.4M. However, given the final costs associated to the nCIS implementation, the actual cost was approximately \$3.7M or 2.93% of the total cost. Applying this percentage to the annual nCIS OEB Approved Revenue Requirement results in the following:

Allocation of nCIS Annual Revenue Requirement	2012	2013	2014	2015	2016	2017	2018
Annual nCIS OEB Approved Revenue Requirement (000's)	\$24,910	\$25,420	\$24,380	\$23,320	\$22,320	\$21,310	\$20,260
Open Bill Specific (2.93%) (000's)	\$729	\$744	\$714	\$683	\$654	\$624	\$594
Additional cost per bill	\$0.0406	\$0.0414	\$0.0397	\$0.0380	\$0.0363	\$0.0347	\$0.0330

By including this allocation, the revised cost per unit for shared services for Year 1 would be \$0.6930 and standalone would be \$1.5208.

6.2 Fully Allocated Cost Components – Bill Insert Services

As identified in the TMG study, the main costs not accounted for in the Bill Insert service is postage. The method suggested allocating these charges in proportion to the weight of the insert versus the remaining contents. Given the price sensitivity of this service, the fully allocated cost for this service has not been repeated. However, for completeness, the initial study identified an additional charge \$0.137 would be required above and beyond the existing charges to accommodate a full allocation.

Open Bill Project

- Billing and Bill Insert Services Costing Study Update



7 Conclusion

This study has been performed on the Open Bill and Bill Insert services with the benefit of three years of operational experience and a fully implemented nCIS. Despite the additional information available, the costs for these services determined by this review are quite similar to those originally identified in 2008. In fact, with respect to Open Bill, despite the cost components which have been completely removed (OBA Tool and Contingency) or net new components not available at the time of the original study (Allocated IT, OBA Enhancement Costs) there is only an incremental difference between the overall values calculated.

The originally proposed value for the year ending March 2012 was \$0.6045 per shared bill and the value for the year beginning April 2012 calculated by this study is \$0.6524 per shared bill. This represents a net difference of \$0.0479 per shared bill or 7.34%. However, this difference must also be considered in the light of the expected annual increase of costs expected from year to year suggested in the original report of 2%. As such, the net difference for the time period of April-Dec 2012 using the original model and this current model is 5.34%.

Draft: ~~November~~ May 8, 2012 2013
(re 2014 OBA)

ENBRIDGE GAS DISTRIBUTION INC.

- and -

[OPEN BILL PARTICIPANT]

[[AMENDED AND RESTATED¹]]
OPEN BILL ACCESS
BILLING AND COLLECTION SERVICES AGREEMENT

¹ NTD: this text to be included only in version of OBA to be signed by existing Billers

ver. ~~3.0~~4.0

**[[AMENDED AND RESTATED²]]
OPEN BILL ACCESS
BILLING AND COLLECTION SERVICES AGREEMENT**

THIS AGREEMENT is made and effective as of the [46th] day of January, ~~2013~~2014

B E T W E E N :

ENBRIDGE GAS DISTRIBUTION INC.,
an Ontario corporation

(the "**Company**")

- and -

●,

a ● [corporation]

(the "**Bill**er")

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.
- F. [[The Biller and the Company are also party to an Open Bill Access Billing and Collection Service Agreement, [[[as amended and extended to expire³]]] [[[expiring⁴]]] on Cycle Day 21 for the month of December ~~2012~~,2013, (the "**Original Agreement**")], and wish to amend and restate

² NTD: this text to be included only in version of OBA to be signed by existing Billers

³ NTD: this text to be included only in version of OBA to be signed by existing Billers that entered into the OBA prior to January 1, 2013

⁴ NTD: this text to be included only in version of OBA to be signed by existing Billers that entered into the OBA during 2013¹

the terms thereof as contemplated and provided herein, effective as of the date of this Agreement.³⁵]]

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(c)(iii);

³⁵ NTD: this text to be included only in version of OBA to be signed by existing Billers

"**At-Issue Receivable**" has the meaning given to such term in Section 7.6(c)(iii);

"**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 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 and any other Applicable Laws in respect of or applicable to the Customer Services or the delivery or sale thereof by the Biller to Customers, as any of the same may be brought into force](#), amended or replaced from time to time;

"**Corrective Costs**" has the meaning given to such term in *Appendix "B"*;

"**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;

"**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;

"**Fee Invoice**" has the meaning given to such term in Section 4.6;

"**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/HST**" means the taxes (including goods and services tax and harmonized sales 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;

[[**"Original Agreement"** has the meaning given thereto in the Background to this Agreement;⁴⁶]]

"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;

[[**"Pre-Payment Amount"** has the meaning given to such term in *Appendix "B"*;⁵]]

"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" ~~means any renewal term of the Agreement agreed upon by the Parties~~ [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);

"Resolution Period" has the meaning given to such term in Section 7.6(d);

"Retained Confidential Information" has the meaning given to such term in Section 10.2.1;

["Run-Off Period" has the meaning given to such term in Section 8.7.2;](#)

["Run-Off Financial Assurances" has the meaning given to such term in Section 8.7.2;](#)

"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);

⁴⁶ NTD: this text to be included only in version of OBA to be signed by existing Billers

~~⁵ NTD: this text to be included only in version of OBA to be signed by new Billers~~

"**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"*;

"**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, 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 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 Amended and Restated Proceeds Transfer, Servicing and Trust Agreement entered into among the Company, BNY Trust Company of Canada (assignee of CIBC Mellon Trust Company), the Biller and the other parties set forth on Schedule "F" thereto effective as of February 4, 2010, 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.

1.8 Application

The Parties acknowledge that this Agreement is one of a series of substantially identical agreements entered into between the Company and others relating to the provision of Billing Services, and that it is an underlying principle of the Company that it provide services to those with whom it contracts in a reasonable, fair and consistent manner. Therefore, except as specifically contemplated in Section 8.9.1 and *Appendix "D"*, the Company shall exercise and enforce its rights (including its right to make determinations in its sole or sole and absolute discretion) under this Agreement in a manner which is fair and consistent amongst all the participants in the Company's 'Open Bill Program'.

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 (i) 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, and (ii) such Customer Service Agreement is, and has been entered into, in compliance with all Applicable Laws, including the *Consumer Protection Act*, and (iii) it delivers a copy of such Customer Service Agreement to the Customer if required by Applicable Laws, including the *Consumer Protection Act*;
- (d) [comply with the Company's verification call requirements set forth in Appendix K – 'Verification Calls' of the Open Bill Manual](#);
- (e) ~~(d)~~ use commercially reasonable efforts to avoid being in default, and to not knowingly remain in default, under any Customer Services Agreement;
- (f) ~~(e)~~ provide to the Company the Financial Assurances, if any, in accordance with Article IX hereof;
- (g) ~~(f)~~ act in compliance with all Applicable Laws;
- (h) ~~(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;

- (i) ~~(h)~~ notify each Customer that (i) the charges for Customer Services under the Customer Services Agreements shall appear on the Service Bill, and (ii) 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;
- (j) ~~(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;
- (k) ~~(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;
- (l) ~~(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
- (m) ~~(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 satisfy its rights or 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 (21st) 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 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.

4.3 Fees

Amounts payable by the Biller to the Company pursuant to, and in accordance with, this Agreement include the following:

- (a) for Billing Services rendered by the Company to the Biller hereunder, the Billing Fee;
- (b) ~~the~~ Pre-Payment Amount, if any, which will be payable by the Biller to the Company contemporaneously with the entering into of this Agreement, and the Company shall setoff all Billing Fees invoiced to the Biller hereunder against such Pre-Payment Amount until the Pre-Payment amount has been reduced to zero⁶; and
- (c) Corrective Costs.

Each of the foregoing fees may be amended from time to time in the manner contemplated in this Agreement.

4.4 Monthly Reconciliation

On or before the fifth (5th) 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(c)(iii) hereof to account for any At-Issue Amount (ii) to account for any Deemed

⁶NTD: this text to be included only in version of OBA to be signed by new Billers

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 (6th) 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 or for Corrective Costs, which amounts shall, on the third (3rd) 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 Fee Invoices

On or before the sixth (6th) Cycle Day of each Billing Period, the Company shall issue to the Biller an invoice (the "**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 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, Corrective Costs and any other charges payable by the Biller pursuant to this Agreement, together with Taxes payable by the Biller thereon, as set forth on any 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 Fee Invoice against payment to the Biller of the Settlement Amount; and (B) such direction or authorization addressed to the Company and the Trustee; 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

4.10.1 Right to Examine Biller Records - Subject to Applicable Laws, (A) if the Company determines, acting reasonably and in good faith, that the Biller has failed or may have failed to perform or observe any of the obligations referred to below in this Section 4.10, or (B) if there occurs a Customer Billing Dispute as contemplated in Section 7.6, or (C) if, at any time, the Company, acting reasonably, elects to audit or to verify that the Biller has complied with or is complying with any of its covenants, obligations, representations or warranties in Section 2.6 or Section 7.1, then the Company shall have the right to examine and review, and the Biller shall, within seven (7) Business Days of a receipt of a request from the Company therefore, deliver to the Company, such evidence (the "**Biller Records**") as the Company considers necessary to verify the Biller's compliance with such covenants, obligations, representations or warranties.

4.10.2 Maintenance of Biller Records - 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.

4.10.3 Right to Contact Customers - In fulfillment of its rights under this Section 4.10, the Company shall also be entitled to contact and communicate with: (i) any Customer or former Customer with respect to any matter in issue between the Biller and such Customer or former Customer, or (ii) any person who has made a complaint to the Company, if such matter relates to the Customer Services, the Billing Services, the Biller's covenants, obligations, representations or warranties under this Agreement, or is otherwise the subject of this Agreement.

4.10.4 Informing Biller – If the Company intends to take any action or to enforce any of its rights in respect of the Biller pursuant to Sections 8.4 or 8.8 as a result of the Company's review of the Biller Records or its communication with any Customer, former Customer or other person, in either case pursuant to this Section 4.10, then, the Company shall ask such person for their consent to disclose all or part of the relevant information to the Biller and, subject to obtaining any necessary consent from such person, the Company shall disclose to the Biller the relevant information and other documentation (including any available call recordings) which the Company has obtained in respect of the Biller or its activities and upon which it is relying in taking such action or enforcing such right.

4.11 Scheduled Cycle Days

The Company shall provide the Biller 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 services provided and amounts invoiced pursuant to this Agreement shall be borne and paid by the Biller. The Company shall not make any refund or credit to the Biller of GST/HST 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/HST. 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/HST 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 Limited 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, except as specifically contemplated in this Section 5.3, be limited to it or the Trustee making and enforcing a claim against the Customer. Subject to the Trust Agreement, Section 7.6 hereof and the following sentence, 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. If the Biller, upon receipt of a request from the Company therefore, is unable or unwilling to provide to the Company satisfactory evidence of a valid credit check for any Customer as contemplated in Section 2.6([lm](#)), and the Company is unable, after exercising its normal or usual degree of diligence, to collect any amount owing by such Customer in respect of any Customer Services within sixty (60) days of the date of the relevant original invoice to such Customer, then the Company shall be entitled to claim against the Biller for such amount, and the Biller hereby authorizes the Company to set off, appropriate and apply any amount owing by the Company to the Biller pursuant to this Agreement against the amount owing by such Customer.

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

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) the Company shall notify the Biller of the particulars of each Customer Billing Dispute, including the At-Issue Amount, as and to the extent the Company becomes aware of such particulars;
- (c) the Company shall be entitled, in its sole and absolute discretion, at any time thereafter and upon notice to the Biller, to:
 - (i) not make any changes to the Service Bill for such Customer in respect of the relevant Customer Services, or the corresponding future Customer Services charges, which are the subject of the Customer Billing Dispute; or
 - (ii) remove from the Service Bill for such Customer the relevant Customer Services, and the corresponding future Customer Services charges, which are the subject of the Customer Billing Dispute; or
 - (iii) (A) remove from the Service Bill for such Customer the relevant Customer Services, and the corresponding future Customer Services charges, which are the subject of the Customer Billing Dispute; and (B) as part of the relevant Reconciliation pursuant to Section 4.4, 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; and (C) refund to the relevant Customer the full amount of any At-Issue Receivable, in respect of which the At-Issue Amount has been so deducted or netted-out; and (D) have such At-Issue Receivable removed from the Customer's bill; and (E) adjust the Company's records accordingly;

notwithstanding the Company's right in Subsection 7.6(c)(iii)(C) to refund to the Customer the full amount of the At-Issue Receivable, if the At-Issue Receivable which is part of the Customer Billing Dispute includes Customer Services charges which were billed to the Customer more than two (2) years prior to the date on which the notification is given pursuant to Subsection 7.6(a), then, except where the matter is the subject of litigation involving the Customer Billing Dispute, the Company shall not refund that part of such At-Issue Receivable which was billed to the Customer more than two (2) years prior to such notification date;

for certainty, if the Company takes the actions and exercises its rights as set out in Subsection 7.6(c)(i), it shall not be precluded, in its sole and absolute discretion at any time thereafter, from taking the action and exercising its rights as set out in Subsection 7.6(c)(ii) or Subsection 7.6(c)(iii), and if the Company takes the actions and exercises its rights as set out in Subsection 7.6(c)(ii), it shall not be precluded, in its sole and absolute discretion at any time thereafter, from taking the action and exercising its rights as set out in Subsection 7.6(c)(iii);

- (d) the Biller shall use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer, and
- (i) where the Customer Billing Dispute is not in respect of any matter to which the Company determines, in its sole discretion, the *Consumer Protection Act* applies, then the Biller shall use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer within forty-five (45) days of the notification given pursuant to Subsection 7.6(a); or
 - (ii) where the Customer Billing Dispute is in respect of any matter to which the Company determines, in its sole discretion, the *Consumer Protection Act* applies, then the Company shall notify the Biller of such determination and the Biller shall use commercially reasonable efforts to resolve the Customer Billing Dispute with the Customer within fifteen (15) days of the notification given pursuant to Subsection 7.6(a);

in either case, the "**Resolution Period**";

- (e) if the Customer Billing Dispute is not resolved within the applicable Resolution Period, then the Company shall be entitled thereafter to take the actions and exercise its rights as set out in Subsection 7.6(c);
- (f) the Biller shall regularly and fully inform the Company regarding the status of each 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, without limiting the foregoing obligation of the Biller, the Biller shall fully inform the Company regarding such status of any Customer Billing Dispute within two (2) Business Days of receipt of a request from the Company in such regard;
- (g) at any time and from time to time, the Company may contact the Customer directly to discuss the status and particulars of the relevant Customer Billing Dispute;
- (h) if a Customer Billing Dispute is resolved, then the Biller shall forthwith 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;
- (i) 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
- (j) 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.

7.7 Disputes Between the Parties

- 7.7.1 Mechanism for Resolution of Disputes - With the exception of i) the exercise of rights by the Company pursuant to Section 7.6 or ii) the exercise of rights of termination 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 the Company exercises its rights under Section 7.6 or if a Party gives to the other Party a notice pursuant to Section 8.4 or 8.5, then the Biller or such other Party, as the case may be, shall not be entitled to pursue resolution of any Services 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 1, for the month of January, ~~2013~~2014 and shall terminate on the earlier of (a) Cycle Day 21, for the month of ~~December, 2013, March, 2015~~, 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 ~~Intentionally Deleted~~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 April of the then current year and terminating on Cycle Day 21, for the month of March of the next following calendar year, unless terminated prior to such date in accordance with the terms hereof.

8.3 ~~Intentionally Deleted~~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~~ninety (690) ~~months~~days prior written notice to the Biller, to that effect;
- (b) at any time within one (1) year of the Company discovering the occurrence of an Event of Default of the Biller and upon written notice to the Biller that the Company is terminating this Agreement as a result of the occurrence of such Event of Default; 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~~ninety (690) ~~months~~days prior written notice to the Company, to that effect;

- (b) at any time within one (1) year of the Biller discovering the occurrence of an Event of Default of the Company and upon written notice to the Company that the Biller is terminating this Agreement as a result of the occurrence of such Event of Default; 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, or upon the occurrence of the relevant event if there is no notice or cure period applicable:

- (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) if such failure or breach is also an obligation of the Party under the *Consumer Protection Act*, and a shorter period is prescribed by the *Consumer Protection Act*, then such shorter period as is prescribed, or (3) 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 the Biller fails to perform or observe its obligations set out in Section 2.6(ef) [Financial Assurances];
- (c) if (A) the Biller fails to perform or observe its obligations set out in any of Sections 2.6(ij) [Biller contact information], 2.6(lm) [assurance of Minimum Credit Ratings], 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;

(d) if 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(f)(d) [Verification Calls], 2.6(g) [compliance with Applicable Laws], 2.6(gh) [compliance with privacy obligations], 4.10 [Company's Request for Documentation] or 7.6 [Disputes between Customer and Biller]:

(i) on three (3) or more occasions in any consecutive twelve (12) month period, with respect to the same obligation; or

(ii) on an aggregate of ten (10) or more occasions in any consecutive twelve (12) month period, with respect to any of such obligations;

and in respect of each of which failures the Company has provided a notice to the Biller, regardless of whether any of such failures have been remedied;

(e) 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, or could reasonably be expected to have, an adverse effect on the Company (including the public's perception of the Company) or the Company's ability to deliver the Billing Services (in each case, in the sole discretion of the Company), 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;

(f) if any representation or warranty made by the Biller hereunder or any information provided by Biller pursuant to this Agreement shall prove to have been incorrect or misleading in any respect when made, or at any time during the Term;

(g) if a compliance order is issued against or in respect of the Biller or the Biller is the subject of any other order made under the *Consumer Protection Act*;

(h) 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;

(i) 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;

- (j) if a Party commits any act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or is wound up;
- (k) 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;
- (l) if for any reason a Party ceases to be a party to the Trust Agreement; or
- (m) 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 [Expiration or Termination](#)

8.7.1 [Mutual Obligations](#) - 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.

8.7.2 [Rights of Company](#) – Upon the expiration or termination of this Agreement, for any reason, and notwithstanding, and without in any way limiting, any provision of this Agreement in furtherance hereof or to the contrary, for the period commencing on the earlier of:

- (i) the expiration date of this Agreement, and

(ii) the date on which either Party gives notice to the other in accordance with the terms of this Agreement that it intends to terminate this Agreement pursuant to the terms hereof,

and continuing until the later of:

(iii) six (6) Billing Periods following the end of the Termination Transition (if applicable), and

(iv) one hundred and eighty (180) days following the last date on which any Billing Services are provided to the Biller (including any Billing Services provided during the Termination Transition, if any).

(the "Run-Off Period") the Company shall be entitled:

- (a) to exercise all of its rights, and the Biller shall continue to comply with all of its obligations, under Sections 4.10 and 7.6;
- (b) to the benefit of the Company's rights under Section 7.3.1;
- (c) to require that the Biller post and maintain (in addition to any other Financial Assurances already provided to the Company hereunder) an irrevocable Letter of Credit or cash equivalent in an amount established by the Company pursuant to Part 3 of Appendix "D" (the "Run-Off Financial Assurances"); and for certainty, such requirement may apply, in the Company's sole discretion, notwithstanding that the Biller may not have otherwise been required to provide any Financial Assurances pursuant to the provisions of Appendix "D" prior to the commencement of the Run-Off Period;
- (d) to liquidate or exercise all or any part of the Financial Assurances then held by or for the benefit of the Company (including the Run-Off Financial Assurances) free from any claim of set-off or otherwise or right of any nature whatsoever of the Biller in respect of any Customer Billing Dispute which arises during the Run-Off Period and which is not resolved to the satisfaction of the Company in its sole discretion; and
- (e) without demand for payment, and without any other formality, all of which are hereby waived by the Biller, at any time and from time to time, to set off, appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) or security, including any cash or other amounts at any time held by the Company, and any and all amounts to be remitted by the Company to the Biller, together with any other obligations (in whatever currency) at any time owing by the Company to or for the credit or the account of the Biller under this Agreement, against any and all of the obligations of the Biller to the Company now or hereafter existing under this Agreement, irrespective of whether or not the Company has made any demand under this Agreement and although such obligations of the Biller may be

contingent or unmatured; and in this regard, each of the Parties hereto hereby waives, to the extent lawful, any "reasonable period" which may be imposed by a court prior to the exercise of such set-off, appropriation and application; and for certainty, the rights of the Company under this Subsection 8.7.2(e) are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and liens) that the Company may have; and the Company agrees to promptly notify the Biller at the time of or forthwith following any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application.

For certainty, the provisions of this Section 8.7.2 shall survive the expiration or termination of this Agreement for the duration of the Run-Off Period.

8.8 Additional Rights of Company on Event of Default

Upon the occurrence of an Event of Default of the Biller, in addition to any other rights it may have hereunder, the Company shall have the right, following written notice to the Biller of the Company's determination in this regard, to take any one or more of the following actions, as it may in its sole discretion determine necessary or appropriate:

- (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.

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 other than in accordance with Subsection 8.9.3, 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 Subsection 8.9.1. The Termination Transition will be provided for a reasonable period of time as agreed by the Parties and in any event until the period ending ninety (90) days after the final billing date (the "**Transition Period**"). 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 Subsection 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 Subsection 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.

8.9.3 Program Termination Transition

- (a) If the Company determines to terminate the 'Open Bill Program' for all billers who obtain Billing Services pursuant to an agreement in the form of, or substantially in the form of, this Agreement (collectively, the "**Program Billers**"), then the Company shall 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) of all Billing Services then being performed by the Company pursuant to the program transition plan established by the Company pursuant to this Subsection 8.9.3.
- (b) Upon the Company determining to terminate the 'Open Bill Program' and following the Company providing notification to the Biller and all other Program Billers of such determination, the Company shall make reasonable efforts to consult with the Biller and all other Program Billers to establish a program transition plan which is generally acceptable to all Program Billers; provided that if the Company is not able to establish such a plan within sixty (60) days of such notification, then, subject only to paragraph (d) of this Subsection 8.9.3, the Company shall be entitled to establish such a program transition plan, as it may determine, in its sole discretion, most completely meets the requirements and requests of the Company and the Program Billers.
- (c) Upon the Company establishing the program transition plan, it shall notify the Biller and all other Program Billers thereof.
- (d) Notwithstanding to paragraph (b) of this Subsection 8.9.3, the transition services provided by the Company pursuant to the program transition plan (the "**Transition Services**") will be provided (A) in the same manner, *mutatis mutandis*, to all Program Billers and (B) to the Biller for the longer of (i) twelve (12) months following delivery of notification of the program transition plan pursuant to paragraph (c) of this Subsection 8.9.3, and (ii) the longest period of time for which the Company provides such Transition Services to any of the Program Billers.
- (e) The Biller will co-operate in good faith with the Company in connection with the Company's obligations under this Subsection 8.9.3 and will perform its obligations in connection with any such Transition Services. The Company's

obligation to provide Transition Services shall be subject to the Biller's continued compliance with the relevant terms and conditions of this Agreement.

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 Transition Period and the Run-Off Period](#), 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

Billers 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 Owing 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 Owing 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 Owing Party of the obligation to make such disclosure and (ii) assert the confidentiality of such Confidential Information, in order to permit the Owing Party to seek an appropriate protective order or other protective remedy. The Receiving Party shall not oppose any action by the Owing 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 Owing Party or Owing 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 Owing 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 Owing Party for any breach or attempted breach. Accordingly, in addition to any other remedies available to the Owing Party at law or in equity, or under the terms of this Agreement, each Party, as a Receiving Party, agrees that the Owing Party shall be entitled, as a matter of right, and the Receiving Party shall not oppose the Owing 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 Confidentiality 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.

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, Law & Information Technology

(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 Force Majeure

If the Company's performance of any of its obligations under to this Agreement is prevented, hindered or delayed by reason of fire, flood, earthquake, explosion or other casualty or accident or act of God, war or other violence, or any laws or regulations, order, proclamation, regulation, ordinance, demand or requirement of any Governmental Authority or other similar event outside the Company's reasonable control (including, without limitation, labour unrest with respect to the labour force of the Company or a third party) (in each case, a "**Force Majeure Event**"), then the Company will be excused for such non-performance, hindrance or delay, as applicable, of those obligations for as long as such Force Majeure Event continues.

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 [[Substitution of Agreement]]

[[The Original Agreement is hereby amended and restated effective as of the date of this Agreement, and thereafter replaced by this Agreement. As of and from the date of this Agreement, all references to the Original Agreement shall be to the Original Agreement as amended and restated by this Agreement. For certainty, the execution and delivery of this Agreement shall not affect any action taken, payment made under or pursuant to, or reliance on the Original Agreement. Any conduct of either Party prior to the effective date of this Agreement and discovered by the other Party prior to the effective date of this Agreement shall be governed by the terms of the Original Agreement; any conduct of either Party prior to the effective date of this Agreement and discovered by the other Party within six (6) months after such effective date shall be governed by the terms of this Agreement; and any conduct of either Party prior to the effective date of this Agreement and discovered by the other Party more than six (6) months after such effective date shall be governed by the terms of the Original Agreement.⁷]]

⁷ NTD: this text to be included only in version of OBA to be signed by existing Billers

11.10 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:

~~Title: Vice President, Business Development & Customer Strategy~~

By: _____

Name:

Title: Vice President, Law & Information Technology

By: _____

Name:

Title:

[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
<p>Account Set Up & Management</p>	<p>Billor 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 Billor 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 Billor 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 Billor.</p>
<p>Call Centre</p>	<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 Billor for response.</p> <p>Company will handle "core" Customer billing inquiries redirected by Billor to Company.</p> <p>Company will direct customers to call Billor 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>
Billing Hotline	<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>
Billing	<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</p>

Service Function Provided	Description of Service
	<p>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, and otherwise handle such dispute in accordance with Section 7.6.</p> <p>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.</p>
Bill Presentment	<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>
Bill Print & Mailing	<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>
Rental Equipment	<p>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.</p>
Finance	<p>Company will purchase the Distribution Entitlements from Biller on the applicable Payment Date.</p>

Service Function Provided	Description of Service
Settlement	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 (\$0.880.**)⁸ for each Service Bill delivered pursuant to the Agreement which includes Distribution Charges, and two** dollars and five** cents (\$2.05**.)⁹ 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 ~~and one-half~~ percent (~~22.5~~%) 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;

"Corrective Costs" means the reasonable, incremental third-party costs incurred by the Company, acting reasonably, to investigate, correct or otherwise address breaches or possible breaches by the Biller of any of its covenants, obligations, representations or warranties in Section 2.6 or Section 7.1; and such costs may include the cost of outside legal advice, auditors, consultants and investigators engaged by the Company to investigate or follow-up on such breaches; for certainty, such third-party costs shall not be considered 'incremental' if they are in regard to the regular and recurring services provided by the Company or by the relevant third-party to the Company in connection with the Open Bill Program;

~~["Pre-Payment Amount" means the Billing Fee pre-payment in the amount of \$2,500.[\$2,500¹⁰] [either: (i) \$2,500 (or the balance thereof remaining from the Pre-Payment Amount, if any, paid under the Original Agreement), or (ii) if the Original Agreement was entered into prior to January 1, 2013, nil¹¹].~~ The Pre-Payment Amount is an amount to be paid by the Biller to the Company prior to the initial provision of services by the Company to the Biller under this Agreement in recognition of costs to be incurred by the Company with respect to putting in place the Billing Services. The Company shall set-off the Billing Fee, as invoiced to the Biller from time to time against the Pre-Payment Amount until the Pre-Payment Amount has been reduced to zero. If this Agreement is terminated prior to end of its Term and there

⁸ NTD: the current Billing Fee in effect at the time of execution of the Agreement would be inserted

⁹ NTD: the current Billing Fee in effect at the time of execution of the Agreement would be inserted

¹⁰ NTD: this text to be included only in version of OBA to be signed by new Billers

¹¹ NTD: this text to be included only in version of OBA to be signed by existing Billers

remains any unapplied Pre-Payment Amount, then fifty per cent (50%) of such amount may be retained by the Company;^{8}}} and

"Scheduled Settlement" is ~~99.47~~^{**.*}%, as such percentage may be adjusted at ~~its~~^{the} [Company's](#) 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%.

⁸-NTD: this text to be included only in version of OBA to be signed by new Billers

APPENDIX "C"

SERVICE LEVELS

<i>1 - Bill Delivery for Service Bills</i>	
Objective	To deliver Service Bills in a timely manner to the Biller's customers.
Definition	<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>
Data Capture	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.
Measurement Interval	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.
Method of Calculation	<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>
Reporting Period	Monthly and annual reporting
Service Level	<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>	
Objective	To make certain that there are no incorrect bill messages included on the Service Bills.
Definition	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.
Data Capture	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.
Measurement Interval	Reviewed daily and measured monthly at the end of each Billing Period.
Method of Calculation	The total number of mailing envelope message infractions divided by the total number of mailing envelopes mailed, times 100%
Reporting Period	Monthly
Service Level	Zero infractions 98% of the time.

<i>3 – Billing Exceptions Processing</i>	
Objective	To make certain that all billing exceptions are completed in a timely manner.
Definition	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.
Data Capture	The Company will track and report all billing exceptions.
Measurement Interval	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.
Method of Calculation	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.
Reporting Period	Monthly.
Service Level	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 six (6) Billing Periods thereafter, [\(please check appropriate box below\)](#):

INITIALS

~~[[a parental guarantee],~~ [substantially on the terms attached hereto¹²\]](#)

an irrevocable Letter of Credit~~],~~ [substantially on the terms attached hereto](#)

a 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 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 Fee Invoice against payment to the Biller of the Settlement Amount as contemplated therein.

[\[\[At the time of execution of this Agreement, the requirement to provide Financial Assurances set out in Section 9.1 of the Agreement does not apply to the Biller as 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 \(14,400\). Pursuant to Section 4.7.2 of this Agreement, the Biller hereby notifies the Company that the Company is to set-off payment of the Billing Fee Invoice against payment to the Biller of the Settlement Amount.](#)

¹² NTD: [The reference to parental guarantee may be inserted if the Guarantor has been approved by the Company pursuant to the Open Bill Manual](#)

[The Biller confirms that it will promptly provide to the Company such direction or authorization addressed to the Company and the Trustee.^{13\]}](#)

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

- (a) The amount and type of the Financial Assurances may be adjusted from time to time in accordance with the provisions of Article IX and [Section 8.7.2\(d\) and this Appendix "D"](#).
- (b) 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. [Upon receipt of a notice pursuant to this subsection, 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.](#)
- ~~(b) 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.~~
- (c) [As contemplated in Section 8.7.2\(d\), in connection with the expiration or termination of this Agreement for any reason, the Company may, in its sole discretion, provide the](#)

¹³ NTD: [this text to be included for Billers that are not required to provide Financial Assurances as 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 the Agreement will not exceed fourteen thousand four hundred \(14,400\)](#)

Billor with notice requiring the Biller to post new, additional or increased Financial Assurances for the duration of the Run-Off Period in a form and amount determined by the Company and which amount is based on the Company's reasonable expectation of the amounts which the Company may determine to pay out as a result of any Customer Billing Disputes arising during the Run-Off Period, and the Biller acknowledges and agrees to accept such amount as determined by the Company, acting reasonably. Upon receipt of a notice pursuant to this subsection, the Biller shall have the period of days specified in the notice to provide the Financial Assurances set out in such notice.

(d) ~~(c)~~ If the new, additional or increased Financial Assurances contemplated in this Appendix are:

- (i) not agreed upon, or
- (ii) ~~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●●

[[As of the date of execution of this Agreement, the Biller anticipates that its annual Service Bills in the first year will not exceed sixty thousand (60,000) and therefore, pursuant to Section 2.5.4, the Biller is not required to prepare an initial Annual Forecast. The form to be used to prepare an Annual Forecast pursuant to Section 2.5.1 for those periods, if any, to which a required Annual Forecast applies is set out below.¹⁴]]

Biller's 12 month forecast for Service Bills.

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

Year X						
Service	January	February	March	April	May	June
Number of Service Bills						
Service	July	August	September	October	November	December
Number of Service Bills						
Year X + 1						
Service	January	February	March	April	May	June
Number of Service Bills						
Service	July	August	September	October	November	December
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).]

¹⁴ NTD: this text to be included only where the Biller anticipates that its annual Services Bills in the first year will not exceed sixty thousand (60,000)

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 an average of 500,000 or more but less than 750,000 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; or
- (v) in the case of a Biller for which the Company provides Billing Services with respect to 750,000 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 three hundred and sixty-five (365) 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:**
 - On [Notice Date] - No further Customers will be accepted for billing service enrollment as of this date.
 - By [Final Billing Date + 30 calendar days] - Update call centre scripts to communicate that charges will no longer appear on the Service Bill.
 - No later than [15 calendar days prior to the Final Billing Date] – Biller will send a written notice to all Customers to communicate that their charges will no longer appear on the Service Bill after [Final Billing Date].
 - ~~Until [Final Billing Date + 30 calendar days] – Biller will respond to customer inquiries in a timely and professional manner.~~
 - By [Notice Date + 7 calendar days] - If required, Biller will extend their Financial Assurances until at least [Final Billing Date + 6 Billing Periods].
 - 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:**
 - Until [Final Billing Date] - Continue to provide Billing Services for valid charges that were provided before [Notice date].
 - 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] and may notify Customers advising them that charges will no longer appear on the Service Bill after [Final Billing Date] .
 - 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.
 - 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:**
 - On [Final Billing Date] - Remove Biller's security access to their SFTP Input folder.
 - Until [Final Billing Date + 21 calendar days] – Daily net remittances to Biller continue.
 - 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.
 - 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.
 - On [Final Billing Date] - For all remaining rate ready charges, submit rate ready delete transactions for remaining Customers.
 - As determinable – Advise Biller regarding transition costs to be passed on to Biller.

[2339741_2|NATDOCS](#)

Document comparison by Workshare Compare on 8-May-13 5:40:59 PM

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Document 2 ID	interwovenSite://NDCDMS01.LAW.FIRM/NATDOCS/2339741/2
Description	#2339741v2<NATDOCS> - Open Bill Agreement - 2014 version - Draft May 8, 2013
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Deletion	
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Moved to	
Style change	
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Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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