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Barristers and Solicitors

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September 12, 2013

BY EMAIL AND FILED VIA RESS

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

Dear Ms Walli:


Re: Enbridge Gas Distribution Inc. - EB-2013-0099

We write to file with the Board the Settlement Agreement arising out of the Settlement Conference and subsequent discussions in this case.

Should you have any questions, please contact me.

Yours truly,

AIRD & BERLIS LLP



David Stevens

DS/hm

cc: All parties registered in EB-2013-0099

15393797.1

SETTLEMENT AGREEMENT

Enbridge Gas Distribution Open Bill Access Application

September 12, 2013

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 Enbridge's open billing services proposal for the period beginning January 1, 2014.

In Procedural Order No. 2, the Board established the process to address the application. A Settlement Conference was held between August 14 and 21, 2013. This Settlement Agreement arises from the Settlement Conference, and subsequent discussions among the parties.

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

CANADIAN MANUFACTURERS & EXPORTERS (CME)
DIRECT ENERGY MANAGEMENT LIMITED (Direct Energy)
ENERCARE INC. (EnerCare)
ENERGY PROBE RESEARCH FOUNDATION (Energy Probe)
HEATING, VENTILATION, AND AIR CONDITIONING COALITION (HVAC)
JUST ENERGY ONTARIO L.P. (Just Energy)
LOW-INCOME ENERGY NETWORK (LIEN)
VISTA CREDIT CORP. (Vista)
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

There is no Issues List for this proceeding. The Settlement Agreement deals with all aspects of Enbridge's Application.

All intervenors listed above participated in part or all of the Settlement Conference and subsequent discussions.

Any reference to "parties" in this Settlement Agreement is intended to refer to Enbridge and the intervenors listed above. Board Staff takes no position on any item and, as a result, is not a party to the Settlement Agreement. Enbridge and all intervenors listed above have agreed to the comprehensive settlement as described on the following pages. As noted, Energy Probe takes no position in relation to Item 3 below ("Changes to the OBA contract").

The evidence in support of Enbridge's Application is set out in the pre-filed evidence. The parties are of the view that the evidence provided is sufficient to support the Settlement Agreement in relation to the settled items 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 item. In the event that the Board does not accept the proposed settlement of any item, then subject to the parties' agreement on non-severability set out in the final paragraph below, further evidence may be required on the item 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 item 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 item in this proceeding is without prejudice to the positions parties might take with respect to the same item 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 have reached agreement on the items set out in Enbridge's Application. The overall impact of this Settlement Agreement, if approved, is to set the financial terms under which Enbridge's Open Bill Access (OBA) program will continue to operate through its upcoming Incentive Regulation ratemaking term (2014 to 2018), and to allow for the ongoing operation of the OBA program, on an indefinite basis.

The areas of settlement fall into four categories:

1. Ongoing operation of the Open Bill Access (OBA) program

All parties have agreed that it is appropriate for the Board to approve the ongoing operation of the OBA program, on an indefinite basis. It will remain open at any time for any interested party to make application to the OEB asking for the OBA program to be terminated or changed. In the event that Enbridge decides to wind down the OBA program, Enbridge shall give notice of that intention to the OEB at least 60 days before the Company begins any Program Termination Transition activities.

Under the terms of this Settlement Agreement, the OBA program will continue to operate in accordance with the prior OBA Settlement Agreements, subject to a number of changes. Those changes include updates to Billing Fees, changes to the costs to be used to determine net revenues of the OBA program and changes to the OBA contract (including the addition of a contract verification requirement). Parties have also agreed to consider updates to the rules and procedures related to the Bill Insert service, and that

Enbridge should be evaluated for each year from 2016 to 2018 on the level of market participation within the Bill Insert program. In the event that any one Bill Insert customer provides more than 75% of the Bill Insert revenues during any of those years, then Enbridge will either discontinue the Bill Insert program, or make application to continue the Bill Insert program in a manner that will allow it to obtain greater market participation

2. Financial consequences of the OBA program for 2014 to 2018

All parties have agreed that the base credit amount of \$5.389 million each year for ratepayers from the net revenues from the OBA program will continue for the years from 2014 to 2018, subject to adjustment through the Open Bill Revenue Variance Account. There will, however, be an update to the contractual mechanism by which Billing Fees to be charged for billing services each year are determined, and updates to the costs to be included for the purpose of determining OBA program net revenues. The terms of the Open Bill Revenue Variance Account will remain unchanged. The agreement in relation to the financial consequences of the OBA program runs until the end of 2018. It will be incumbent on Enbridge to seek approval of financial consequences for future years as part of a future rate or other proceeding.

3. Changes to OBA contract

All parties have agreed to an updated form of Open Bill Access Billing and Collection Services Agreement (OBA contract) between Enbridge and Billers, to be effective as of January 6, 2014. Clean and blacklined copies of the OBA contract are attached.

4. Contract verification process

All parties have agreed to a requirement and process for Billers to verify certain types of contracts before such contracts are eligible to be billed through the OBA program.

Details of each of these items are provided below.

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.

THE SETTLED ITEMS

1. Ongoing operation of the Open Bill Access (OBA) program

[Complete Settlement]

All parties agree that it is appropriate for the Board to approve the ongoing operation of the OBA program, on an indefinite basis. This takes away any requirement for Enbridge to seek annual or periodic OEB approval to continue to operate the program. It will remain open at any time for any interested party to make application to the OEB asking for the OBA program to be terminated or

changed. In the event that Enbridge decides to wind down the OBA program, it shall give notice of that intention to the OEB (and to all Billers and to registered participants in this proceeding and in Enbridge's most recent rate proceeding) at least 60 days before the Company begins any Program Termination Transition activities (set out in section 8.9.3 of the OBA contract).

Subject to certain changes detailed below, and under Items 2, 3 and 4, all parties agree that the OBA program will continue to operate in accordance with parameters set out in the 2009 OBA Settlement Agreement from the EB-2009-0043 proceeding (Ex. A-2-1, Appendix A), as supplemented within the settlement of the OBA issues within the EB-2011-0354 proceeding (Ex. A-2-1, Appendices B and C).

Enbridge will continue to offer Billing Services under the approach set out in the 2009 Open Bill Settlement Agreement, at item 2(a). All parties generally consider the Billing Services to have been a successful program. There are two changes that will be implemented.

- a) The pricing will be updated, with Billing Fees to be determined using the 2012 Billing Fees (as approved in the 2013 Open Bill Settlement Agreement, EB-2012-0354, Exhibit N1-1-1, Issue D11) as a starting point, with annual adjustments to be equal to the change in the Consumer Price Index (CPI), to a maximum of 2.5% per year.
- b) The form of OBA contract that will apply between Enbridge and Billers is the updated form that is discussed below at Item 3.

The manner in which Enbridge will offer Bill Insert services is set out in the 2009 Open Bill Settlement Agreement, at item 2(b). Enbridge will continue to offer Bill Insert services under that approach, subject to the following conditions:

- a) Enbridge will more actively market the Bill Insert program starting in 2014;
- b) Enbridge and any interested intervenors within this EB-2013-0099 proceeding will participate in one or more workshop sessions beginning between January and March 2014 to determine whether changes can be made to the rules and procedures related to the Bill Insert service, as set out in the 2009 Open Bill Settlement Agreement, that would be intended to make the Bill Insert service more broadly successful.
 - i. In the event that all participating parties are able to agree upon changes to the rules and procedures related to the Bill Insert service, then an updated Settlement Agreement in relation to the rules and procedures related to Bill Insert services shall be presented to the Board for approval, either as part of Enbridge's 2015 Rate Adjustment application, or as part of a separate application.
 - ii. In the event that all participating parties are unable to agree upon changes to the rules and procedures related to the Bill Insert service, then the rules and procedures set out at item 2(b) of the 2009 Open Bill Settlement Agreement will continue to apply.
- c) In relation to the years 2016 and 2017 and 2018, Enbridge will report within its annual deferral and variance account proceedings (or in another proceeding before June 30th of

the following year) about what proportion of its Bill Insert revenues are from the largest client. If that proportion is greater than 75% for the prior year, then Enbridge will take one of the following steps by June 30th of the following year (for example, by June 30, 2017 if the threshold is exceeded for 2016):

- i. Discontinue the Bill Insert program; or
 - ii. Make application (within the deferral and variance account proceeding or as a separate application) to continue the Bill Insert program in a manner that will allow it to obtain greater market participation.
- d) It will be open to any party to take any position they deem appropriate in relation to the continuation of the Bill Insert program within Enbridge's next rebasing application (which is expected to be made in relation to 2019 rates). The inclusion of issues related to the Bill Insert program within a 2019 rebasing application would satisfy Enbridge's obligation under point (c) above in relation to addressing the situation where Bill Insert revenues for any one client in 2018 are greater than 75%.

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

B-1-1	Open Bill Access Services
B-1-1, App. A	Board's Order in the EB-2009-0043 proceeding (which appends the Settlement Proposal)
B-1-1, App. B	Partial Settlement of OBA issue in EB-2011-0354 (2013 Rates Case)
B-1-1, App. C	Supplementary Settlement Agreement (including the updated OBA Agreement) of OBA Issue in EB-2011-00354 (2013 Rates Case)

2. Financial consequences of the OBA program for 2014 to 2018

[Complete Settlement]

All parties have agreed that the revenue sharing of net revenues from OBA activities will continue for the years 2014 to 2018, in accordance with the approach set out at item 2(c) in the 2009 OBA Settlement Agreement (Exhibit A-1-1, Appendix A, pages 19 to 21 of 166), subject to two changes, as described below. This means that the OBA program is forecast to provide a credit of at least \$5.389 million each year for ratepayers from the net revenues of the OBA program, subject to adjustment through the Open Bill Revenue Variance Account (OBRVA).

The first change is that for Billing Services, the Billing Fees that will apply from 2014 to 2018 will be determined in the manner set out above, in Item 1.

The second change is an update to the costs that will be used to determine OBA net revenues from 2014 to 2018. The costs to be used to determine net revenues for Billing Services and Bill Inserts for 2014 to 2018 are those that are set out below (reproduced from Table 1 at Ex. B-1-1):

Open Bill Unit Costs							
	EB-2009-0043	EB-2011-0354	Proposed	Proposed	Proposed	Proposed	Proposed
	<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

All parties agree that, with one exception, the current terms of the OBRVA, as described in item 2(c)(ix) in the 2009 OBA Settlement Agreement (Exhibit A-1-1, Appendix A, page 21 of 166), and as most recently approved within the EB-2011-0354 proceeding (EB-2011-0354, Final Rate Order dated March 5, 2013, at Appendix D, page 23), will continue from 2014 to 2018. The only difference in the OBRVA is that the Fees and costs to be used to determine net revenues will be the Fees and costs approved in this EB-2013-0099 proceeding.

The agreement in relation to the financial consequences of the OBA program runs until the end of 2018. It will be incumbent on Enbridge to seek approval of financial consequences for future years as part of a future rate or other proceeding.

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

B-1-1	Open Bill Access Services
B-1-1, App. A	Board's Order in the EB-2009-0043 proceeding (which appends the Settlement Proposal)
B-1-1, App. B	Partial Settlement of OBA issue in EB-2011-0354 (2013 Rates Case)
B-1-1, App. C	Supplementary Settlement Agreement (including the updated OBA Agreement) of OBA Issue in EB-2011-00354 (2013 Rates Case)
B-1-1, App. D	2011 Open Bill and Bill Insert Costing Study Update prepared by InQvis

3. Changes to OBA contract

[Complete Settlement]

All parties, except for Energy Probe which takes no position on this item, have agreed upon an updated form of OBA contract between Enbridge and Billers that shall be implemented, effective January 6, 2014. Copies of the updated OBA contract, in blacklined format to show changes from the previous form of OBA contract, and in clean format, are attached as Appendix A. The updated form of OBA contract is presented because it is an important part of the overall settlement reached by the parties. All parties agree that, as was the case with the 2013 OBA contract, it is not necessary for the OEB to approve the actual provisions of the OBA contract.

In addition to the changes to the OBA contract, all parties have also agreed upon two changes that will be implemented within the Open Bill Manual. One is the addition of contract verification

requirements, as detailed below under item 4. The other is a limit on the amount of Run-Off Financial Assurances that Enbridge can require during the Run-Off Period, under section 8.7.2 of the OBA contract. The Open Bill Manual will provide that Run-Off Financial Assurances are limited to a maximum of 5% of the Biller's annual billed amounts during the most recent 12 month period, to a maximum amount of \$5 million.

If Enbridge proposes changes to the OBA contract in future years, the Company will follow the process set out within the OBA contract (currently found as section 1.8.2). Under that process, Enbridge is required to provide Billers with notice of any proposed changes to the OBA contract, and Billers then have the opportunity to require Enbridge to convene a consultation process to discuss the proposed changes. As set out within the OBA contract, no proposed changes to the OBA contract will proceed if objections are registered by 10 or more Billers (such number to increase by 1 for each 10 additional Billers added beyond the current level of 60 Billers), or by Billers representing more than 40% of the Billing Services volume.

All parties agree that, at the same time as Enbridge provides notice to Billers of proposed changes to the OBA contract, Enbridge will also provide the same notice to all parties to this Settlement Agreement. Any party to this Settlement Agreement will be permitted to participate within any consultation process convened under the OBA contract to discuss the proposed changes to the contract. If any party to this Settlement Agreement who represents one or more Billers chooses to participate within the consultation process, then it will be required that Enbridge obtain the agreement of such party to any proposed amendments discussed within the consultative process before Enbridge is entitled to follow the process in section 1.8.2(e) of the OBA contract (which addresses the scenario where proposed changes to the OBA contract are accepted within the consultative process).

If changes are made to the OBA contract, then Enbridge will file updated copies of the OBA contract with the OEB, for information purposes.

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

B-1-1	Open Bill Access Services
B-1-1, App. A	Board's Order in the EB-2009-0043 proceeding (which appends the Settlement Proposal)
B-1-1, App. B	Partial Settlement of OBA issue in EB-2011-0354 (2013 Rates Case)
B-1-1, App. C	Supplementary Settlement Agreement (including the updated OBA Agreement) of OBA Issue in EB-2011-00354 (2013 Rates Case)
B-1-1, App. E	An updated form of OBA Agreement, in blacklined form to show the proposed changes

4. Contract verification process

[Complete Settlement]

All parties agree that, effective January 6, 2014, Enbridge shall implement a process for Billers to verify certain types of contracts before such contracts are eligible to be billed through the OBA program. The contract verification process will be done through verification calls. These calls cannot be made until after the customer has finished the transaction with a salesperson and made a firm agreement to acquire the good/service and cannot be made while any representative of the

seller is at the customer's premises. The requirements for the contract verification process will be set out within the Open Bill Manual that is associated with the OBA contract.

The key components of the contract verification process are the following:

- a) The requirements will apply to Direct Agreements¹ (including Internet Agreements² entered into in the presence of a sales person) and Remote Agreements³ that are initiated by the Biller. The requirements will not apply to transactions that result from the customer contacting the Biller (even if the transaction covers items beyond what the customer initially requested).
- b) All new contracts within the parameters set out above in (a) must be confirmed through a verification call process, before they are eligible to be billed through the OBA program.
- c) The verification call must include all of the items contained within the verification call script (see below), and must be:
 - i) made by a "Qualified Party" (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),
 - ii) made after the contract has been executed, and all information that must be verified has been submitted to the "Qualified Party" for verification,
 - iii) if applicable (not required for Remote Agreements, see item (iv) below), an outbound call to the customer;
 - iv) for Remote Agreements, the verification call can be completed either as a separate outbound call to the customer, or by way of the original salesperson transferring the customer to a Qualified Party for verification (so long as the original salesperson is not part of the verification call),
 - v) made to the customer's phone number, and
 - vi) recorded and retained for six months beyond the end of the related contract term.
- d) The verification call script must include questions to confirm:

¹ As defined in the *Consumer Protection Act, 2002 (CPA)*.

² Ibid.

³ Ibid.

- i) If applicable (not applicable to Remote Agreements) that the sales agent has left the customer's premises, and that no other representative of the supplier/service provider is at the premises,
 - ii) the customer's identity (using a reliable identifier),
 - iii) (if applicable) the customer's acknowledgement that they are changing the supplier/service provider for the product / service being acquired, and
 - iv) the customer's understanding of contract terms and conditions (including confirmation of the product/service, length of the agreement and agreed-to price).
- e) Verification call script must also advise customer of:
- i) the name of the vendor with whom the customer has contracted,
 - ii) the fact that the vendor is not affiliated with or representing a government agency, the incumbent service provider, or Enbridge,
 - iii) if applicable (not applicable to Remote Agreements), their right to a 10 day cooling off period and contract cancellation right under the CPA,
 - iv) if applicable (not applicable to Remote Agreements), what they must do to cancel the new contract if they wish to, and
 - v) if applicable (not applicable to Remote Agreements), that any equipment related to the contract will not be installed until after the expiry of the 10 day cooling off period unless the customer explicitly requests that installation of such equipment take place prior to the expiry of the 10 day cooling off period.

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

B-1-1	Open Bill Access Services
B-1-1, App. A	Board's Order in the EB-2009-0043 proceeding (which appends the Settlement Proposal)
B-1-1, App. B	Partial Settlement of OBA issue in EB-2011-0354 (2013 Rates Case)
B-1-1, App. C	Supplementary Settlement Agreement (including the updated OBA Agreement) of OBA Issue in EB-2011-00354 (2013 Rates Case)
B-1-1, App. E	An updated form of OBA Agreement, in blacklined form to show the proposed changes

Filed: September 12, 2013
EB-2013-0099
Exhibit N1
Tab 1
Schedule 1
Appendix A

Appendix A: Clean and Blacklined copies of updated
OBA contract

Draft: September 11, 2013 (re 2014 OBA)

ENBRIDGE GAS DISTRIBUTION INC.

- and -

[OPEN BILL PARTICIPANT]

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

ver. 4.0

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 [6th] day of January, 2014

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 expire³]]] [[[expiring⁴]]] on Cycle Day 21 for the month of December 2013, (the "**Original Agreement**"), and wish to amend and restate the

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 2013

terms thereof as contemplated and provided herein, effective as of the date of this Agreement.^{5]]}

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, in addition to any terms defined elsewhere in this Agreement, the following terms shall have the respective meaning attributed to them below:

"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);

⁵ 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, 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;

"Final Billing Date" has the meaning given to such term in the "Definitions" section of Appendix "G";

"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;⁶]]

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

"**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"

"**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);

"**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);

"**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

1.8.1 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'.

1.8.2 This Agreement may be amended from time to time (but, in any event, not more often than once in each calendar year) by the Company, after following, and subject to, the process set out below:

- (a) The Company shall forward to the Biller a notice of its desire to amend this Agreement (an "**Amendment Notice**"), together with the particulars of the amendments proposed (including a black-line of this Agreement, or the relevant sections of this Agreement to be amended, incorporating the proposed amendments), the proposed effective date of the amendments (which shall not, in any event, be sooner than ninety (90) days following delivery of the Amendment Notice) and any explanation of the amendments that the Company considers appropriate.
- (b) If the Biller considers that the proposed amendments involve a material change to this Agreement with which the Biller does not agree, then the Biller shall, within twenty (20) days of delivery of the Amendment Notice, provide a notice

to the Company of the Biller's desire to consult with the Company regarding such amendments (a "**Consultation Notice**").

- (c) If the Company does not receive a Consultation Notice from the Biller or a similar consultation notice from any other third-party that is under contract with the Company for the provision of services similar to the Billing Services (the "**Other Billers**"), then the Company shall provide to the Biller a final revised version of this Agreement, or appropriate amending documentation, incorporating all of the amendments which the Company has proposed. The Biller shall sign and return to the Company such amending documentation by no later than thirty (30) days following the delivery of such amending documentation.
- (d) If the Company receives a Consultation Notice from the Biller or a similar consultation notice from any of the Other Billers, then the Company shall initiate a consultative process by organizing a meeting or series of meetings to which the Biller, and all Other Billers, will be invited to review and discuss the proposed amendments (the "**Consultative Process**"). Such meeting, or series of meetings, shall be held at the Company's offices and shall be commenced within ten (10) days of receipt of the Consultation Notice (or the first similar notice received by the Company from any such Other Billers).
- (e) If the Consultative Process is required to be initiated, the Company and the Biller, together with all Other Billers who participate in such Consultative Process, shall review and discuss the proposed amendments for a period of not less than fifteen (15) days and not more than thirty (30) days (or such longer period to which the Company, in its sole discretion, may agree) (the "**Consultative Period**"), and shall try to settle and agree on the proposed amendments. If agreement is reached on the proposed amendments during the Consultative Period, then the Company shall provide to the Biller a final revised version of this Agreement, or appropriate amending documentation. The Biller shall sign and return to the Company such amending documentation by no later than thirty (30) days following the delivery of such amending documentation.
- (f) If no agreement is reached on the proposed amendments during the Consultative Period, then the Company may, in its sole discretion, forward a revised Amendment Notice in accordance with subsection (a) above. If the Biller still considers that the proposed amendments involve a material change to this Agreement which the Biller is not prepared to accept, then the Biller shall, within thirty (30) days of delivery of the revised Amendment Notice, provide a notice to the Company of the Biller's objection to such amendments (the "**Objection Notice**"). Such revised Amendment Notice forwarded to the Biller by the Company shall include a clear statement that failure of the Biller to provide an Objection Notice shall be deemed to be an approval of the proposed amendments to this Agreement set out in the revised Amendment Notice.
- (g) Ten (10) days following delivery of the revised Amendment Notice contemplated in subsection (f) above, the Company shall send a reminder

notice to the Biller, requesting the Biller to consider the proposed amendments to this Agreement set out in the revised Amendment Notice, and which reminder notice shall include another statement that failure of the Biller to provide an Objection Notice shall be deemed to be an approval of the proposed amendments to this Agreement set out in the revised Amendment Notice

- (h) Following the expiry of the thirty (30) day period noted in subsection (f) above, the Company shall notify the Biller (and all Other Billers) whether or not the Company has received any objection notices from Other Billers, and whether the number of such objection notices received (including the Objection Notice, if applicable) are from billers which in the aggregate represent (i) nine (9) or fewer of the Aggregate Number of Billers (as adjusted pursuant to subsection (k) below), and (ii) forty per cent (40%) or less of the Aggregate Number of Accounts (the "**Approval Threshold**").
- (i) If the Company receives no such objection notices, or if the objection notices received are from billers which do not exceed the Approval Threshold (i.e. 9 (as adjusted) or fewer and 40% or less), then the changes to this Agreement as set out in the revised Amendment Notice shall be deemed to have been approved by the Biller (and all Other Billers), and the Biller shall sign and return to the Company the amending documentation which accompanied the revised Amendment Notice by no later than fifteen (15) days following the delivery of such notice by the Company.
- (j) If the Company receives objection notices and the objection notices received are from billers which do exceed the Approval Threshold (i.e. more than 9 (as adjusted) or more than 40%), then the changes shall not be effective and this Agreement shall continue in full force and effect unamended by the proposed amendments.
- (k) For these purposes: "**Aggregate Number of Billers**" means the aggregate number of the Other Billers plus the Biller; and "**Aggregate Number of Accounts**" means the aggregate number of customer accounts being serviced for all billers by the Company's 'Open Bill Program', calculated as an aggregate of such customer accounts on a biller by biller basis; in each case, at the time the relevant Numbers are being calculated. For certainty, the Aggregate Number of Billers as at September 5, 2013 was 60. In addition, for every increase of ten (10) Other Billers that occurs in the Aggregate Number of Other Billers above 60, the number of Other Billers comprising the Aggregate Number of Billers set out in subsections (h), (i) and (j) above shall be increased by one (1). By way of example only, if the Aggregate Number of Billers increases to 85, the referenced number shall be 11 instead of 9.
- (l) Notwithstanding any of the foregoing, in no event shall the Company initiate or use the foregoing amendment process to effect an amendment to any of Sections 1.8.1, this 1.8.2 or 8.4 of this Agreement.

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) use commercially reasonable efforts to avoid being in default, and to not knowingly remain in default, under any Customer Services Agreement;
 - (f) provide to the Company the Financial Assurances, if any, in accordance with Article IX hereof;
 - (g) act in compliance with all Applicable Laws;
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- (h) 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) 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) 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) 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) 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) 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;
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- (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 zero; 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 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(m), 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.
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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.
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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.
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- 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
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- (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, 2014 and shall terminate on the earlier of (a) Cycle Day 21, for the month of 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 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 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) if the Biller has not complied with its obligations under this Agreement, or has not acted in a good faith manner in the performance of its obligations under this Agreement or the provision of the Customer Services (all as determined by the Company in its sole discretion), then, 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.
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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(f) [Financial Assurances];
 - (c) if (A) the Biller fails to perform or observe its obligations set out in any of Sections 2.6(j) [Biller contact information], 2.6(m) [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(d) [Verification Calls], 2.6(g) [compliance with Applicable Laws], 2.6(h) [compliance with privacy obligations], 4.10 [Company's Request for Documentation] or 7.6 [Disputes between Customer and Biller];
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- (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;
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- (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),
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(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 (including costs related to investigation, settlement and refund of Customer Billing Disputes) 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
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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**"),
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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 (or such other criteria as may be set out in this Agreement or the Open Bill Manual), and shall be consistent with the Company's then current 'Financial Assurances Policy for Open Bill Services', and which Policy shall be a part of the Open Bill Manual. Such Financial Assurances may consist of an irrevocable letter of credit in a form and from an issuer acceptable to the Company and/or such other security as the Company may specify. Such Financial Assurances may relate to the Biller's obligations hereunder or to the Biller's requests of the Company for an extension of the Term or for other revisions to the terms hereof.

9.3 Realization Upon Financial Assurances

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

9.4 Insurance

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

9.4.2 Company Insurance – The Company shall, at its own expense, maintain and keep in full force and effect during the Term commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least two million dollars (\$2,000,000). Subject to the terms of the following sentence, the Biller shall be added as an additional insured in the Company's insurance policy,

which should be extended to cover contractual liability, products/completed operations liability, owner's/contractor's protective liability and must also contain a cross-liability clause. The Company shall from time to time at the request of the Biller (but no more often than twice per year), furnish to the Biller a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter described as the "**Company Insurance Policies**") maintained by the Company in order to satisfy the requirements of this Section 9.4.2. The Company shall not cancel, terminate or materially alter the terms of any of the Company Insurance Policies without giving prior notice in writing to, and obtaining the consent of, the Biller. The Company shall cause or arrange for each of the insurers under the Company Insurance Policies to oblige itself contractually in writing to the Biller to provide thirty (30) days prior notice in writing before cancelling or terminating the Company Insurance Policies under which it is an insurer.

ARTICLE X – CONFIDENTIALITY

10.1 Purpose, Title and Use

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

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

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

- (a) to use the Confidential Information only for the Purpose and shall not disclose the Confidential Information to any third party other than the employees, officers, directors, contractors or consultants (subject to the obligations of this Section 10.1.3(a)) of the Receiving Party (collectively referred to as the "**Representatives**") who have a need to know the Confidential Information in order to accomplish the Purpose or with the prior written consent of the Owning Party;
- (b) to advise each Representative, before he or she receives access to the Confidential Information, of the obligations of the Receiving Party under this Agreement;
- (c) with respect to contractors or consultants, to obtain in advance of any disclosure of Confidential Information the prior written agreement of the Owning Party, as well as the written agreement from such contractor or consultant to comply with the terms and conditions set forth in this Agreement; and provided that this provision shall not apply in respect of a Party's legal advisors or auditors;

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

10.2 No Disclosure to Other Persons

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

10.2.2 Except as provided in Section 10.2.1, in the event a Receiving Party becomes legally compelled, after having exhausted all reasonable commercial efforts as provided in Section 10.2.1 (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process by court order of a court of competent jurisdiction, or in order to comply with applicable requirements of any stock exchange, government department or agency or other regulatory authority, or by requirements of

any Applicable Laws) to disclose any Confidential Information, the Receiving Party will (i) promptly notify the Owning Party of the obligation to make such disclosure and (ii) assert the confidentiality of such Confidential Information, in order to permit the Owning Party to seek an appropriate protective order or other protective remedy. The Receiving Party shall not oppose any action by the Owning Party to obtain an appropriate protective order or other remedy. In the event that either such protective order or other remedy is not obtained by Owning Party or Owning Party waives compliance with the provisions of this Agreement, the Receiving Party will disclose only that portion of the Confidential Information which the Receiving Party is legally obliged (based on advice of legal counsel) to disclose to the appropriate authorities.

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

10.3 Remedies

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

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

10.4 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]]

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: _____

By: _____

Name: _____

Title: _____

[OPEN BILL PARTICIPANT]

By: _____

Name: _____

Title: _____

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

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>Biller will initiate and Company will receive and process requests for the establishment of a customer account (as either shared or standalone) through the use of transaction interface files communicated by Biller to Company, for customer accounts within Company's franchise territory.</p> <p>If, in any twelve (12) month period, the effort to set up Customer accounts (for Customers receiving a standalone Service Bill that does not include Distribution Charges) exceeds one hundred (100) hours, then Biller will be charged by Company for such incremental effort at a rate that is the lesser of: (i) the actual cost to set up such accounts based on an hourly rate of \$60.00 (sixty dollars) per hour; and (ii) a flat charge of \$20.00 (twenty dollars) per Customer account set up.</p> <p>Company will process updates to the customer record (i.e. names, phone numbers, etc.).</p> <p>Company will support rate ready transactions, financing and rental contracts in Company's CIS system in a rate ready format.</p> <p>Company will support all bill ready transactions in Company's CIS system received from Biller.</p>
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, and otherwise handle such dispute in accordance with Section 7.6.</p> <p>Biller shall be entitled to have aggregated statements (i.e. information</p>

Service Function Provided	Description of Service
	relating to multiple account to be presented on one or more Service Bill(s)) rendered and issued each month.
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	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.
Finance	Company will purchase the Distribution Entitlements from Biller on the applicable Payment Date.
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 **** cents (\$0.**)**⁸ for each Service Bill delivered pursuant to the Agreement which includes Distribution Charges, and **** dollars and ** cents (\$*.**)**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;

"**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 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 (2.5%) 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 [[\$2,500¹⁰]] [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 remains any unapplied Pre-Payment Amount, then fifty per cent (50%) of such amount may be retained by the Company; and

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

"**Scheduled Settlement**" is $^{**}.^{**}\%$, as such percentage may be adjusted at 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 (written notification of which will be provided by January 31 of the calendar year in which it is applicable); provided that such change is applicable to all third parties under contract with the Company for the provision of services similar to the Billing Services; and provided that in no event shall the Scheduled Settlement be less than 100% minus the sum of: (A) the Company's actual bad debt, expressed as a percentage of the Company's total accounts receivable in the prior calendar year; plus (B) 0.03%.

APPENDIX "C"**SERVICE LEVELS**

<i>1 - Bill Delivery for Service Bills</i>	
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

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, Section 8.7.2(c), this Appendix "D" and Appendix I – 'Financial Assurances' of the Open Bill Manual.
- (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 (which shall be no less than fifteen (15) Business Days) 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(c), in connection with the expiration or termination of this Agreement for any reason, the Company may, in its sole discretion, provide the Biller 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

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)

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 provided that the Company shall only be entitled to require the Biller to post and maintain Run-Off Financial Assurances of 5% of the Biller's annual billed amounts during the most recent 12 month period, to a maximum amount of \$5 million), 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 (which shall be no less than fifteen (15) Business Days) to provide the Financial Assurances set out in such notice.

(d) If the new, additional or increased Financial Assurances contemplated in this Appendix are:

- (i) not agreed upon, or
- (ii) 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].
 - 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.
-

Draft: ~~November 8, 2012~~September 11, 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 "**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 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, in addition to any terms defined elsewhere in this Agreement, the following terms shall have the respective meaning attributed to them below:

"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;

["Final Billing Date" has the meaning given to such term in the "Definitions" section of Appendix "G";](#)

"**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

Billers 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;](#)

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 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 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

1.8.1

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'.

1.8.2

This Agreement may be amended from time to time (but, in any event, not more often than once in each calendar year) by the Company, after following, and subject to, the process set out below:

- (a) The Company shall forward to the Biller a notice of its desire to amend this Agreement (an "**Amendment Notice**"), together with the particulars of the amendments proposed (including a black-line of this Agreement, or the relevant sections of this Agreement to be amended, incorporating the proposed amendments), the proposed effective date of the amendments (which shall not, in any event, be sooner than ninety (90) days following delivery of the Amendment Notice) and any explanation of the amendments that the Company considers appropriate.
- (b) If the Biller considers that the proposed amendments involve a material change to this Agreement with which the Biller does not agree, then the Biller shall, within twenty (20) days of delivery of the Amendment Notice, provide a notice to the Company of the Biller's desire to consult with the Company regarding such amendments (a "**Consultation Notice**").
- (c) If the Company does not receive a Consultation Notice from the Biller or a similar consultation notice from any other third-party that is under contract with the Company for the provision of services similar to the Billing Services (the "**Other Billers**"), then the Company shall provide to the Biller a final revised version of this Agreement, or appropriate amending documentation, incorporating all of the amendments which the Company has proposed. The Biller shall sign and return to the Company such amending documentation by no later than thirty (30) days following the delivery of such amending documentation.
- (d) If the Company receives a Consultation Notice from the Biller or a similar consultation notice from any of the Other Billers, then the Company shall initiate a consultative process by organizing a meeting or series of meetings to which the Biller, and all Other Billers, will be invited to review and discuss the proposed amendments (the "**Consultative Process**"). Such meeting, or series of meetings, shall be held at the Company's offices and shall be commenced within ten (10) days of receipt of the Consultation Notice (or the first similar notice received by the Company from any such Other Billers).
- (e) If the Consultative Process is required to be initiated, the Company and the Biller, together with all Other Billers who participate in such Consultative Process, shall review and discuss the proposed amendments for a period of not less than fifteen (15) days and not more than thirty (30) days (or such longer period to which the Company, in its sole discretion, may agree) (the "**Consultative Period**"), and shall try to settle and agree on the proposed amendments. If agreement is reached on the proposed amendments during the Consultative Period, then the Company shall provide to the Biller a final

revised version of this Agreement, or appropriate amending documentation. The Biller shall sign and return to the Company such amending documentation by no later than thirty (30) days following the delivery of such amending documentation.

- (f) If no agreement is reached on the proposed amendments during the Consultative Period, then the Company may, in its sole discretion, forward a revised Amendment Notice in accordance with subsection (a) above. If the Biller still considers that the proposed amendments involve a material change to this Agreement which the Biller is not prepared to accept, then the Biller shall, within thirty (30) days of delivery of the revised Amendment Notice, provide a notice to the Company of the Biller's objection to such amendments (the "**Objection Notice**"). Such revised Amendment Notice forwarded to the Biller by the Company shall include a clear statement that failure of the Biller to provide an Objection Notice shall be deemed to be an approval of the proposed amendments to this Agreement set out in the revised Amendment Notice.
- (g) Ten (10) days following delivery of the revised Amendment Notice contemplated in subsection (f) above, the Company shall send a reminder notice to the Biller, requesting the Biller to consider the proposed amendments to this Agreement set out in the revised Amendment Notice, and which reminder notice shall include another statement that failure of the Biller to provide an Objection Notice shall be deemed to be an approval of the proposed amendments to this Agreement set out in the revised Amendment Notice
- (h) Following the expiry of the thirty (30) day period noted in subsection (f) above, the Company shall notify the Biller (and all Other Billers) whether or not the Company has received any objection notices from Other Billers, and whether the number of such objection notices received (including the Objection Notice, if applicable) are from billers which in the aggregate represent (i) nine (9) or fewer of the Aggregate Number of Billers (as adjusted pursuant to subsection (k) below), and (ii) forty per cent (40%) or less of the Aggregate Number of Accounts (the "**Approval Threshold**").
- (i) If the Company receives no such objection notices, or if the objection notices received are from billers which do not exceed the Approval Threshold (i.e. 9 (as adjusted) or fewer and 40% or less), then the changes to this Agreement as set out in the revised Amendment Notice shall be deemed to have been approved by the Biller (and all Other Billers), and the Biller shall sign and return to the Company the amending documentation which accompanied the revised Amendment Notice by no later than fifteen (15) days following the delivery of such notice by the Company.
- (j) If the Company receives objection notices and the objection notices received are from billers which do exceed the Approval Threshold (i.e. more than 9 (as adjusted) or more than 40%), then the changes shall not be effective and this

Agreement shall continue in full force and effect unamended by the proposed amendments.

- (k) For these purposes: "Aggregate Number of Billers" means the aggregate number of the Other Billers plus the Biller; and "Aggregate Number of Accounts" means the aggregate number of customer accounts being serviced for all billers by the Company's 'Open Bill Program', calculated as an aggregate of such customer accounts on a biller by biller basis; in each case, at the time the relevant Numbers are being calculated. For certainty, the Aggregate Number of Billers as at September 5, 2013 was 60. In addition, for every increase of ten (10) Other Billers that occurs in the Aggregate Number of Other Billers above 60, the number of Other Billers comprising the Aggregate Number of Billers set out in subsections (h), (i) and (j) above shall be increased by one (1). By way of example only, if the Aggregate Number of Billers increases to 85, the referenced number shall be 11 instead of 9.
- (l) Notwithstanding any of the foregoing, in no event shall the Company initiate or use the foregoing amendment process to effect an amendment to any of Sections 1.8.1, this 1.8.2 or 8.4 of this Agreement.

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~~ 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~~the~~; 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 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.

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

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) if the Biller has not complied with its obligations under this Agreement, or has not acted in a good faith manner in the performance of its obligations under this Agreement or the provision of the Customer Services (all as determined by the Company in its sole discretion), then, 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^(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^(fd) [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 (including costs related to investigation, settlement and refund of Customer Billing Disputes) 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 (or such other criteria as may be set out in this Agreement or the Open Bill Manual), and shall be consistent with the Company's then current 'Financial Assurances Policy for Open Bill Services', and which Policy shall be a part of the Open Bill Manual. Such Financial Assurances may consist of an irrevocable letter of credit in a form and from an issuer acceptable to the Company and/or such other security as the Company may specify. Such Financial Assurances may relate to the Biller's obligations hereunder or to the Biller's requests of the Company for an extension of the Term or for other revisions to the terms hereof.

9.3 Realization Upon Financial Assurances

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

9.4 Insurance

9.4.1 Biller Insurance – The Biller shall, at its own expense, maintain and keep in full force and effect during the Term commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least two million dollars (\$2,000,000). Subject to the terms of the following sentence, the Company shall be added as an additional insured in the Biller's insurance policy, which should be extended to cover contractual liability, products/completed operations liability, owner's/contractor's protective liability and must also contain a cross-liability clause. The Biller shall, forthwith after entering into this Agreement, and from time to time thereafter at the request of the Company (but no more often than twice per year), furnish to the Company a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter described as the "**Biller Insurance Policies**") maintained by the Biller in order to satisfy the requirements of this Section 9.4.1. The Biller shall arrange the Biller Insurance Policies with insurers acceptable to the Company, acting reasonably. The Biller shall not cancel, terminate or materially alter the terms of any of the Biller

Insurance Policies without giving prior notice in writing to, and obtaining the consent of, the Company. The Biller shall cause or arrange for each of the insurers under the Biller Insurance Policies to oblige itself contractually in writing to the Company to provide thirty (30) days prior notice in writing before cancelling or terminating the Biller Insurance Policies under which it is an insurer.

- 9.4.2 **Company Insurance** – The Company shall, at its own expense, maintain and keep in full force and effect during the Term commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least two million dollars (\$2,000,000). Subject to the terms of the following sentence, the Biller shall be added as an additional insured in the Company's insurance policy, which should be extended to cover contractual liability, products/completed operations liability, owner's/contractor's protective liability and must also contain a cross-liability clause. The Company shall from time to time at the request of the Biller (but no more often than twice per year), furnish to the Biller a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter described as the "**Company Insurance Policies**") maintained by the Company in order to satisfy the requirements of this Section 9.4.2. The Company shall not cancel, terminate or materially alter the terms of any of the Company Insurance Policies without giving prior notice in writing to, and obtaining the consent of, the Biller. The Company shall cause or arrange for each of the insurers under the Company Insurance Policies to oblige itself contractually in writing to the Biller to provide thirty (30) days prior notice in writing before cancelling or terminating the Company Insurance Policies under which it is an insurer.

ARTICLE X – CONFIDENTIALITY

10.1 Purpose, Title and Use

- 10.1.1 **Purpose** - Each Party may disclose to the other Confidential Information for the sole purpose of the Biller being provided with the Billing Services by the Company (collectively the "**Purpose**").
- 10.1.2 **Title** - Each Party agrees that all right, title and interest in the Confidential Information disclosed by the Owning Party, including all discoveries, concepts and ideas derived from the Confidential Information, are the exclusive property of the Owning Party.
- 10.1.3 **Use** - The disclosure of Confidential Information by the Owning Party is in strictest confidence and thus the Receiving Party agrees:
- (a) to use the Confidential Information only for the Purpose and shall not disclose the Confidential Information to any third party other than the employees, officers, directors, contractors or consultants (subject to the obligations of this Section 10.1.3(a)) of the Receiving Party (collectively referred to as the "**Representatives**") who have a need to know the Confidential Information in order to accomplish the Purpose or with the prior written consent of the Owning Party;

- (b) to advise each Representative, before he or she receives access to the Confidential Information, of the obligations of the Receiving Party under this Agreement;
- (c) with respect to contractors or consultants, to obtain in advance of any disclosure of Confidential Information the prior written agreement of the Owning Party, as well as the written agreement from such contractor or consultant to comply with the terms and conditions set forth in this Agreement; and provided that this provision shall not apply in respect of a Party's legal advisors or auditors;
- (d) to be responsible for the breach of any provision of this Agreement by any Representatives;
- (e) to use at least the same degree of care to maintain the Confidential Information as confidential as the Receiving Party uses in maintaining its own confidential information, but always at least a reasonable degree of care;
- (f) subject to the Parties' potential obligations under Section 10.2, within fifteen (15) days following the request of the Owning Party, to return to the Owning Party all materials to the extent containing any portion of the Confidential Information or confirm to the Owning Party, in writing, the destruction of such materials, except where such Confidential Information is stored electronically or otherwise in a manner which would render the return or destruction of such Confidential Information not reasonably possible, provided it shall remain subject to the confidentiality obligations hereof; and
- (g) that the Confidential Information provided by the Owning Party shall not be copied, reproduced or summarized in any form, or stored in a retrieval system or database, by the Receiving Party or its Representatives without the prior written consent of the Owning Party, except for such copies, reproductions, summaries and storage as are strictly required for the Purpose and for evaluating the matters under discussion, it being agreed, however, that such copies, reproductions, summaries and storage shall be accorded the same confidential treatment as the originals thereof.

10.2 No Disclosure to Other Persons

- 10.2.1 The Parties acknowledge and agree that each of the Parties shall have the right to retain necessary Confidential Information which it may determine acting reasonably (the "**Retained Confidential Information**") is required for use by such Party in connection with any submission made to or proceeding made before the OEB whether through written or oral hearing or technical conference (collectively referred herein as the "**Regulatory Proceedings**"). Each of the Parties further agree that it shall not disclose all or any portion of the Retained Confidential Information in connection with Regulatory Proceedings, whether in order to respond to interrogatories or cross-examination of the

Parties' witnesses or otherwise, without first seeking the consent of the Owning Party. If such consent is not provided, the Receiving Party shall seek confidential treatment for the Retained Confidential Information pursuant to the OEB's Practice Direction on Confidential Filings. The Receiving Party shall use all reasonable commercial efforts to promptly notify the Owning Party, prior to disclosing any Confidential Information, including the Retained Confidential Information, pursuant to this Section 10.2.1.

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

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

10.3 Remedies

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

deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

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

10.4 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
Account Set Up & Management	<p>Biller will initiate and Company will receive and process requests for the establishment of a customer account (as either shared or standalone) through the use of transaction interface files communicated by Biller to Company, for customer accounts within Company's franchise territory.</p> <p>If, in any twelve (12) month period, the effort to set up Customer accounts (for Customers receiving a standalone Service Bill that does not include Distribution Charges) exceeds one hundred (100) hours, then Biller will be charged by Company for such incremental effort at a rate that is the lesser of: (i) the actual cost to set up such accounts based on an hourly rate of \$60.00 (sixty dollars) per hour; and (ii) a flat charge of \$20.00 (twenty dollars) per Customer account set up.</p> <p>Company will process updates to the customer record (i.e. names, phone numbers, etc.).</p> <p>Company will support rate ready transactions, financing and rental contracts in Company's CIS system in a rate ready format.</p> <p>Company will support all bill ready transactions in Company's CIS system received from Biller.</p>
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>

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-[[~~¹⁰~~]]~~ ~~[[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; of which will be provided by January 31 of the calendar year in which it is applicable); 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.

3 – Billing Exceptions Processing	
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 hereto^{12]}

☐ 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(c), this *Appendix "D"* and Appendix I – 'Financial Assurances' of the Open Bill Manual.
- (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 (which shall be no less than fifteen (15) Business Days) 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.~~

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)

(c) As contemplated in Section 8.7.2(c), in connection with the expiration or termination of this Agreement for any reason, the Company may, in its sole discretion, provide the Biller 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 provided that the Company shall only be entitled to require the Biller to post and maintain Run-Off Financial Assurances of 5% of the Biller's annual billed amounts during the most recent 12 month period, to a maximum amount of \$5 million), 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 (which shall be no less than fifteen (15) Business Days) 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.
-