

Staff Question #1

Reference: Section 7, Page 4: Intended Services

As per section 36 of the Ont. Regulation 389/10 under the *Energy Consumer Protection Act, 2010*, unit sub-metering services are defined as:

“1. Providing and maintaining unit sub-meters in a multi-unit complex, including billing and collecting payment in respect of the electricity consumed in the multi-unit complex and other associated and ancillary activities.”

- a) Please identify specific unit-submetering services (e.g., billing, collection service and meter reading, call center and customer service, support services – installation and maintenance of meters, meter disconnection and reconnection) the applicant intends to provide to its customers in Ontario.
- b) Does ENWIN intend on providing billing and collection on behalf of third parties? If yes, please identify the parties and explain whether ENWIN’s name will appear on the customers’ bills.

Response

- a) ENWIN intends to provide a full, turnkey suite of services to its unit sub-metering customers over an undetermined amount of time including but not limited to billing, data collection/meter reading, call center, customer service, installation and maintenance of meters, meter disconnection and reconnection. While all services will not be provided initially as ENWIN cautiously explores and evaluates the unit sub-metering space, other OEB licensed sub-metering providers will be contracted to perform various services until such time that ENWIN can provide the aforementioned service either within ENWIN or through an affiliate.
- b) ENWIN does not intend to provide billing and collection on behalf of third parties at this time.

Staff Question #2

Reference: Section 10, Page 5: Technical Resources

In this section of the application, ENWIN provided the following information:

“ENWIN Energy Ltd. affiliates have a wide array of metering experience, including registered MSP with the IESO. Any/all contractors that may be used will be experts in their respective fields however specific contractors are not yet known.”

This information is not sufficient to assess technical capabilities of the applicant as they relate to providing specific unit sub-metering services.

- a) Please describe the qualifications and experience of ENWIN’s personnel who will be responsible for each sub-metering service that ENWIN intends to provide.

Response

- a) ENWIN’s Vice President Business Development will be the primary individual responsible for all sub-metering services that ENWIN intends to provide. A copy of Mr. Taylor’s Curriculum Vitae is included as Attachment 1-A.

In addition to ENWIN’s response to Staff Question #1 a) above, through its Master Service Agreement with ENWIN Utilities Ltd. (included as Attachment 1-B), ENWIN intends to slowly increase the scope of unit sub-metering services that it provides internally by maximizing its existing expertise in billing, metering and customer service across its group of companies and sub-contract remaining services to other qualified third parties with a preference for licensed sub-metering organizations, where possible.

Staff Question #3

Reference: Compliance with Unit Sub-Metering Code (Code)

If licensed, ENWIN will have to comply with provisions of the Unit Sub-metering Code (Code) as a condition of its license.

- a) As per section 2.3.1 of the Code, metering data collected by a unit-sub-meter provider shall be subjected to a validating, estimating and editing (“VEE”) process if it is to be used for billing purposes. As per section 2.3.4 of the Code, a unit sub-metering provider shall document and make available its VEE process and criteria, and allow scrutiny of its process by consumers, retailers, the OEB and Measurement Canada.
 - i) Describe what processes and procedures will be put in place by ENWIN to ensure that correct and validated data is used for the billing process.
 - ii) Describe how ENWIN will ensure that errors resulted from potential hardware/software malfunctions are detected and fixed before issuance of the invoices to its customers.
- b) As per section 3.3.3 of the Code, if any consumer makes a complaint to a unit sub-meter provider regarding its services, the unit sub-meter provider shall expeditiously investigate the complaint and take all appropriate and necessary steps to resolve the complaint.
 - i) Describe how ENWIN plans to ensure compliance with its legal and regulatory obligations in Ontario. In your response, describe the staff, policies, processes and procedures to be put in place to ensure compliance.
 - ii) Provide the names and titles of all individuals who will be accountable for compliance, complaint handling and quality assurance, and describe fully their expertise in each applicable area.
- c) As a licensed unit sub-metering provider, ENWIN will be required to provide Ontario Electricity Support Program rate assistance to eligible consumers.
 - i) Please confirm that you are aware of this requirement and describe ENWIN’s technical ability to meet this obligation.

Response

- a) i) Contingent on the issuance of a Unit Sub-Metering License by the Board, ENWIN will undertake to create a public facing Conditions of Service document that will outline its VEE processes & procedures. It is ENWIN's intent to mirror VEE processes & procedures consistent with its affiliate and Section 5.3 of the Distribution System Code.
- ii) Consistent with ENWIN's response to a) i) above and section 5.3.2 of the Distribution System Code, ENWIN's VEE processes & procedures will be consistent with its affiliate and will be capable of detecting errors in metering data introduced as a result of improper operational conditions and/or hardware/software malfunctions, including failures of or errors in metering or communications hardware, and metering data exceeding pre-defined variances or tolerances.
- b) i) Contingent on the issuance of a Unit Sub-Metering License by the Board, ENWIN will undertake to create a public facing Conditions of Service document that will outline its customer service related processes & procedures. It is ENWIN's intent to mirror customer service related processes & procedures consistent with its affiliate and Sections 6 and 7 of the Distribution System Code.
- ii) Please refer to ENWIN's response to Staff Question 2 a) as well as 3 b) i) above.
- c) i) ENWIN confirms that it is aware of the requirement to provide Ontario Electricity Support Program rate assistance to eligible customers.

Staff Question #4

Reference: Compliance with Affiliate Relationship Code (ARC)

As stated in the application, ENWIN is an affiliate of the licensed electricity distributor – ENWIN Utilities Ltd. As a licensed utility, ENWIN Utilities Ltd. is obligated to ensure compliance with provisions of the ARC with respect to its relationship with affiliate that is an energy service provider.

- a) Please provide service agreement between ENWIN Utilities Ltd. and ENWIN. The value of the service agreement should be specified to determine the need of a business case for this application.
- b) Please describe how compliance with all applicable sections of the ARC will be achieved.
- c) Please provide a list of Board of Directors for ENWIN Energy Ltd. and ENWIN Utilities Ltd.

Response

- a) ENWIN's Master Service Agreement is included as Attachment 1-B.
- b) ENWIN has engaged with outside legal counsel with expertise in regulatory affairs in Ontario to obtain advice and guidance relating to its sub-metering business and the Affiliate Relationship Code. As ENWIN's sub-metering business and scope of services grows, ENWIN will continue to engage with outside legal counsel to ensure compliance with the Affiliate Relationship Code for each specific business unit that applies (ie. Metering, billing, customer service, etc) as well as to ensure confidential information is not shared between affiliates contrary to the Affiliate Relationship Code. Any/all financial transactions between the two organizations will be consistent with ENWIN's Master Service Agreement, included as Attachment 1-B and comply with the requirements set out in the Affiliate Relationship Code.
- c) A list of Board of Directors for both ENWIN Energy Ltd. and ENWIN Utilities Ltd. is included as Attachment 1-C.

Attachment 1-A

Kristopher Taylor CV

Kristopher Taylor, *B.Comm, CEM, MBA, Vice President Business Development, ENWIN Utilities Ltd.*

Kristopher has close to twenty years' worth of experience in the electrical distribution and energy sector, specializing in the areas of metering & energy settlement, regulatory policy & electricity rate design, conservation & demand management as well as unregulated business development, Mergers & Acquisitions.

While overseeing a local distribution company's conservation portfolio, Kristopher has been directly responsible for the reduction of more than 50 GWh in cumulative lifecycle savings since 2007 which is the equivalent of eliminating close to 30,000 residential homes from the electricity system. Kristopher has also overseen the settlement of more than \$500M in energy related transactions and has been responsible for all regulatory and rate setting for a local distribution company. He also oversaw the Meter Service Provider business of a licensed provider in southwestern Ontario that managed meters in both the licensed utility and unregulated generation space. Kristopher has been involved in various consulting roles for the integration and connection of more than 100 MW of various generation and large load projects across Ontario.

Kristopher finished his Bachelor of Commerce in 2006 and completed his Master of Business Administration in 2009 from the University of Windsor. He is also a Certified Energy Manager, registered with the Association of Energy Engineers. Kristopher sits on a variety of committees within the community as an energy efficiency & policy expert including municipally appointed energy task forces, as well as sat on the Electrical Distribution Association's Conservation and Demand Management Caucus which works directly with Ontario Power Authority, Ministry of Energy & Infrastructure and the Ontario Energy Board, helping guide policy for electrical and natural gas conservation programs across Ontario. Kristopher is also a board member and current chair of Erie Shores Healthcare (formerly Leamington District Memorial Hospital) since 2012.

Attachment 1-B

ENWIN Master Service Agreement

MASTER SERVICES AGREEMENT

ENWIN UTILITIES LTD.

- and -

ENWIN ENERGY LTD.

October 10, 2017

MASTER SERVICES AGREEMENT

This Master Services Agreement made to take effect as and from the first day of November, 2017 (the “**Effective Date**”)

BETWEEN:

ENWIN UTILITIES LTD.

a corporation incorporated pursuant to the laws of the Province of Ontario
(hereinafter referred to as “**Utilities**”)

- and -

ENWIN ENERGY LTD.

a corporation incorporated pursuant to the laws of the Province of Ontario
(hereinafter referred to as the “**Energy**”)

RECITALS

1. Utilities distributes electricity to customers in the City of Windsor, and is regulated by the Ontario Energy Board (the “**OEB**”) and must comply with the terms of its Distribution Licence.
2. Energy, as a subsidiary of Windsor Canada Utilities Ltd. which in turn is the sole shareholder of Utilities, is an Affiliate of Utilities for purposes of the Affiliate Relationships Code, and therefore any service provided by Energy to Utilities or by Utilities to Energy (and any terms and conditions related thereto) must be provided in accordance with the Affiliate Relationships Code.
3. The Parties wish to enter into this Agreement to establish the general terms and conditions that shall apply to Service Schedules for the performance of certain services, as set out in Service Schedules, by: (a) Utilities for the benefit of Energy; and (b) Energy for the benefit of Utilities.

NOW THEREFORE in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, the Parties hereto confirm the accuracy of the recitals above which are incorporated into this Agreement by reference, and further agree as follows:

ARTICLE 1 **INTERPRETATION**

1.01 DEFINITIONS

Unless the context otherwise specifies or requires, for the purposes of this Agreement all capitalized terms herein shall have the meanings set forth below:

“Actual Completion Date” means, with respect to a Service, the date on which the Service was completed in accordance with Section 3.02(b);

“Affiliate” has the meaning ascribed to such term in the Affiliate Relationships Code;

“Affiliate Relationships Code” means the Affiliate Relationships Code for Electricity Distributors and Transmitters issued by the OEB, as amended from time to time;

“Agreement” means this Master Services Agreement between Utilities and Energy, including all Service Schedules issued in connection therewith. This Master Services Agreement and all Service Schedules are intended to be construed as a single unified and harmonious instrument;

“Applicable Law” means, collectively, all applicable laws, treaties, statutes, codes, codes of conduct, ordinances, decrees, rules, regulations, including, without limitation, policies, codes or guidelines of a Governmental Authority, judicial, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives or rulings and conditions of any licence, permit, certificate, registration, authorization, consent or approval applicable to this Agreement or the subject matter hereof which in each case is binding in nature and enforceable against a Party;

“Business Day” means any day other than a Saturday or Sunday or a statutory or bank holiday in the Province of Ontario or a date observed by either of Energy or Utilities as a holiday;

“Change of Control” means any change in the control of the assets or shares of Utilities or Energy pursuant to which the assets and operations of Utilities or Energy are in the control of a third party to this Agreement, whether such change occurs by way of a sale, transfer, reorganization, recapitalization, consolidation, amalgamation, arrangement, merger, redemption or otherwise;

“Claims” has the meaning ascribed to such term in Section 7.01;

“Confidential Information” has the meaning ascribed to such term in Section 11.01;

“Cost Recovery Methodology” has the meaning ascribed to such term in Section 5.03;

“Disclosing Party” has the meaning ascribed to such term in Section 11.01;

“Dispute” has the meaning ascribed to such term in Section 13.01;

“Effective Date” has the meaning ascribed to such term in the Preamble;

“Energy” has the meaning ascribed to such term in the Preamble;

“Event of Default” has the meaning ascribed to such term in Section 9.01;

“Fees” has the meaning ascribed to such term in Section 5.01;

“Force Majeure Event” has the meaning ascribed to such term in Section 12.01;

“Good Utility Practices” means any of the practices, methods and activities adopted by a significant portion of the North American utility industry as good practices applicable to performance of Services of similar type or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement, in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Applicable Laws. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American utility industry;

“Governmental Authority” means any court or governmental ministry, department, tribunal, commission, board, bureau, agency, or instrumentality of Canada, or of any province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing having or purporting to have jurisdiction over the Services or over any Party to this Agreement, including, for greater certainty, the OEB, the IESO, the Privacy Commissioner of Canada, and the Information and Privacy Commissioner of Ontario, and their successors and any person acting under the authority of a Governmental Authority.

“IESO” means the Independent Electricity System Operator for Ontario;

“Indemnified Party” has the meaning ascribed to such term in Section 7.01;

“Indemnifying Party” has the meaning ascribed to such term in Section 7.01;

“Intellectual Property” means any discovery, invention, formulation, know-how, method, technological development, industrial design, enhancement, modification, improvement, work of authorship, computer software and documentation thereof, data or collection of data, whether patentable or not, or susceptible to copyright or any other form of legal protection, and includes Confidential Information;

“MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act* of Ontario, as amended from time to time;

“Minimum Retention Period” means a mandatory retention period of at least six (6) years, calculated from the end of the last calendar year to which the applicable record relates, as required under the Mandatory Record Retention Period Policy for Regulatory Entities (File No. EB-2015-0247) published by the OEB (as may be amended or restated);

“OEB” has the meaning ascribed to such term in the Recitals and any successor thereto;

“OEB Requirements” has the meaning ascribed to such term in Section 11.02(d);

“Parties” means Utilities and Energy and any reference to a Party includes its successors and permitted assigns; and **“Party”** means either of Utilities or Energy;

“Personal Information” has the meaning ascribed to such term in the MFIPPA;

“Prime Rate” means a rate of interest per annum equal to the late payment interest rate on Utilities’ tariff of rates and charges approved by the OEB and then in effect;

“Prior Agreements” has the meaning ascribed to such term in Section 2.02(a);

“Prior Services” has the meaning ascribed to such term in Section 2.02(b);

“Receiving Party” has the meaning ascribed to such term in Section 11.01;

“Representatives” in reference to a Party, means, as applicable, the Party’s mayor, councillors, directors, officers, commissioners, employees, agents and contractors;

“Service Provider” means the Party performing Service(s) pursuant to a Service Schedule;

“Service Recipient” means the Party receiving Service(s) pursuant to a Service Schedule;

“Service Provider Background IP” means all Intellectual Property (a) owned or licensed by Service Provider as of the Effective Date or (b) acquired or licensed by Service Provider from a third party after the Effective Date, (c) developed or created by the Service Provider (alone or jointly) other than in the course of the Services, and (d) all improvements, variations, modifications or enhancements of the Intellectual Property described in (a), (b) or (c) above developed or created by, or on behalf of, Service Provider after the Effective Date that does not constitute Service Results and IP;

“Service Recipient Background IP” means all Intellectual Property (a) owned or licensed by Service Recipient as of the Effective Date or (b) acquired or licensed by Service Recipient from a third party after the Effective Date, and (c) developed or created by the Service Recipient (alone or jointly) other than in the course of the Services, and (d) all improvements, variations, modifications or enhancements of the Intellectual Property described in (a) and (b) above conceived, discovered, invented, made or first reduced to practice by, or on behalf of, Service Recipient after the Effective Date that does not constitute Service Results and IP;

“Service Results and IP” means any data, formulae, outcomes or other results produced in the course of the Services and any Intellectual Property conceived, discovered, invented, made or first reduced to practice in the course of the Services, either alone or jointly by the parties, that is not Service Provider Background IP or Service Recipient Background IP;

“Service Schedule” means a request for services, substantially in the form attached hereto as Schedule A, executed by the Parties;

“Services” has the meaning ascribed to such term in Section 3.01;

“Settlement Period” has the meaning ascribed to such term in Section 2.02(b);

“Term” has the meaning ascribed thereto in Section 2.01;

“Utilities” has the meaning ascribed to such term in the Preamble; and

“Warranty Period” means, with respect to a Service, the period ending on the first anniversary of the Actual Completion Date, subject to any specific exceptions contained in any Service Schedule.

1.02 CONSTRUCTION OF AGREEMENT

In this Agreement:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated there under, 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;
- (c) **“includes”** or **“including”** shall mean includes (or as applicable, including) without limitation;
- (d) any reference to a specific executive position or an internal division or department of a Party shall include any successor positions, divisions or departments having substantially the same responsibilities or performing substantially the same functions;
- (e) 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; and if the last day of such period is not a Business Day, the period shall end on the next Business Day;
- (f) all dollar amounts are expressed in Canadian dollars;
- (g) the division of this Agreement into separate Articles, Sections, Subsections and Schedule(s), the provision of a table of contents and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (h) words or abbreviations which have well known or trade meanings are used herein in accordance with their recognized meanings;
- (i) the terms and conditions hereof are the result of negotiations between the Parties and the Parties therefore agree that this Agreement shall not be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement; and
- (j) The order of priority of the various documents or portions thereof which comprise this Agreement is as follows, in descending order of priority:
 - (i) the body of this Agreement;

- (ii) each Service Schedule; and
- (iii) any addendums, amendments, attachments or exhibits to the Service Schedule expressly agreed upon in writing by the Parties and referenced in the Service Schedule.

1.03 SCHEDULES OF SERVICES

The Schedules set out below are attached to and form part of this Agreement, as may be amended by the Parties by mutual agreement from time to time:

Schedule

Description

A

Form of Service Schedule

1.04 PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish terms and conditions for all services to be performed by Energy for the benefit of Utilities or by Utilities for the benefit of Energy, other than those services that are provided pursuant to a separate agreement between Energy and Utilities.

ARTICLE 2

TERM

2.01 TERM

The term of this Agreement shall commence on the Effective Date and, unless terminated or abbreviated pursuant to ARTICLE 10, shall remain in effect for a period of five (5) years (the “**Term**”). The Term shall be automatically renewed for successive one (1) year periods unless either Party delivers written notice of its intention to terminate this Agreement no later than 60 days prior to the expiration of the then applicable Term.

2.02 TERMINATION OF PRIOR AGREEMENTS

- (a) In the event that, immediately preceding the Effective Date, either Party was providing Services to the other Party (collectively, “**Prior Services**”) pursuant to formal or informal arrangements effected verbally or in writing (collectively, “**Prior Agreements**”), the Parties agree that such Prior Agreements shall terminate on the Effective Date.
- (b) Any settlement of accounts in relation to a Prior Agreement shall be completed within 90 days of the Effective Date (the “**Settlement Period**”). Upon expiration of the Settlement Period, all accounts in relation to the Prior Agreements shall be deemed to be fully settled and closed. The Parties acknowledge and agree that any failure by either Party to terminate or fulfil its obligations pursuant to a Prior Agreement or any action associated therewith shall not delay, hinder, modify, or

invalidate any provision of this Agreement.

ARTICLE 3

SERVICES

3.01 SERVICES

- (a) Subject to the terms, covenants and conditions contained in this Agreement, each Party shall provide or cause to be provided, the services described in a Services Schedule (collectively, the “**Services**”).
- (b) Either Party may, from time to time during the Term, deliver a written request to the other Party for the Parties to negotiate a Services Schedule substantially in the form attached hereto as Schedule A that is populated with the applicable scope of services, Fee and other such relevant information. Such notice shall include an initial draft of the Services Schedule. Upon receipt of a written request, the Parties agree that they shall negotiate a Services Schedule in good faith and shall use commercially reasonable efforts to agree upon the Cost Recovery Methodology and execute such Services Schedule within 20 Business Days of the date the initial written request is delivered or within such time period as otherwise may be agreed to by the Parties in writing.
- (c) Unless the Parties agree expressly in writing to waive any of the terms and conditions of this Agreement, a Service Schedule shall incorporate the provisions of this Agreement.

3.02 PROVISION OF SERVICES

- (a) Each Party shall be responsible for the provision of the applicable Services provided hereunder pursuant to a Service Schedule and the methods employed in providing the same, and represents and warrants that such Services being provided by the Party shall be provided in a diligent, competent, and professional manner to commercially reasonable standards, including but not limited to ensuring that the Services are performed in accordance with Applicable Law and Good Utility Practices.
- (b) Upon the Service Provider notifying the Service Recipient in writing that Services under a Service Schedule have been completed, the Service Recipient shall confirm in writing that completion has been achieved with respect to the Services within 10 Business Days of the date that the written notice is received by the Service Recipient, unless the Service Recipient (acting reasonably and in good faith) otherwise provides written notice to the Service Provider of its failure to achieve completion (including appropriate details supporting same), in which case the Service Provider shall complete such additional items as are set out in the notice provided by the Service Recipient. Once all such additional items are completed, the Service Provider shall notify the Service Recipient in writing in accordance with this Section 3.02(b). This process shall be repeated on an

iterative basis until completion of the Services is achieved in accordance with the foregoing provisions of this Section 3.02(b). Any Dispute respecting the achievement of completion will be dealt with in accordance with the dispute resolution provisions set out in ARTICLE 13. If the Service Provider notifies the Service Recipient of completion of the Services in accordance with this Section 3.02(b), and the Service Recipient fails to respond in accordance with this Section 3.02(b) within 10 Business Days of the date that the written notice is received by the Service Recipient, the Service Provider shall deliver a written reminder of its request for confirmation of completion to Service Recipient. If the Service Recipient fails to respond to the second notice and any further notices provided thereafter, within two Business Days, completion shall be deemed to have been achieved with respect to the Services.

- (c) During the Warranty Period, if either Party discovers any defect or deficiency relating to the Services, which defect or deficiency renders such Services to be not compliant with the provisions of Section 3.02(a), such Party shall promptly notify the other Party in writing of the nature of such defect or deficiency and the Services affected. Upon such notice, the Service Provider shall, to the extent such defect or deficiency is caused by or affects the Services it performs under this Agreement, propose to the Service Recipient a reasonably detailed schedule and remedial plan describing the remedial work to be performed by the Service Provider (including, for clarity, re-performance of the Services as reasonably necessary to address such defect or deficiency) and, upon the Service Recipient providing its consent (which shall not be unreasonably withheld or delayed), perform the remedial work at its sole cost and expense.

3.03 RELATIONSHIP

Notwithstanding the Affiliate relationship deemed to exist between the Parties pursuant to the Affiliate Relationships Code, in performing Services, each Party shall operate as an independent contractor and not as an agent of the other Party, and shall maintain its own organization as a distinct and separate legal entity from the other Party. Neither Party shall have the authority to legally bind the other Party in performing the Services without the prior written authority from the other Party to do so. Nothing in this Agreement shall be deemed to constitute a partnership or a joint venture or to create any fiduciary relationship between the Parties in relation to the Services.

3.04 MODIFICATIONS TO THE SERVICES

Either Party may from time to time request that the Parties amend a Services Request to modify the agreed upon scope of services. If the Parties are able to mutually agree on such amendment, the Parties shall formalize the amendment in writing.

ARTICLE 4
RESPONSIBILITIES

4.01 RECORDS MAINTENANCE & AUDIT RIGHTS

- (a) Each Party shall maintain all relevant records relating to the performance of the Services for the Minimum Retention Period commencing on the applicable Actual Completion Date, or such longer period of time as may be required under Applicable Law. Each Party shall provide those records to the other Party upon request and without delay, including as and when a Party requires the records for purposes of complying with Applicable Law or for purpose of responding to a request from or in a proceeding under the authority of a Governmental Authority.
- (b) Each Party shall provide the other Party with the information reasonably required to enable the other Party to perform any business case study to assess or justify prospective or provided Services, subject always to the MFIPPA.
- (c) Concurrent with issuing any invoice or other charge for Services provided, the Service Provider shall provide to the Service Recipient a detailed breakdown of the Party's fully-allocated cost of providing the Services.
- (d) Either Party may, from time to time at its own expense, conduct an inspection or audit of the Services, including but not limited to: (i) the quality of the Services provided, (ii) Fees charged for the Services, (iii) the application of the cost allocation methodology supporting the Fees charged and (iv) all documents reasonably requested by a Party in connection with the calculation of the Fees. Each Party agrees to grant reasonable access by the other Party to its records and documents in connection with any such inspection or audit, including providing copies of documents and records reasonably requested by such Party.

4.02 CO-OPERATION

The Parties shall cooperate with each other during and after the Term: (a) to effect a smooth and orderly delivery of Services or the termination of this Agreement; and (b) with respect to audits or other inquiries, filings, reports and payment of taxes arising in connection with this Agreement, which may be required, initiated or requested from or by any duly authorized Governmental Authority. Subject to Applicable Law in respect of privacy and ARTICLE 11, each Party agrees to provide to the other Party documentation lawfully requested from the other Party by a Governmental Authority as may be required to satisfy the lawful request.

4.03 NOTIFICATION OF CHANGES OF CIRCUMSTANCES

The Parties shall promptly notify each other of any facts or changes or prospective changes in circumstances that might reasonably have a material effect on the performance of the Services, and shall use best efforts to consult with one another in this regard to the extent possible. A material change shall include, but not be limited to, any change which might reasonably require the other Party to incur an increase or decrease of more than 10% of the

resources required for performance or the costs being incurred in respect to any Service prior to the change.

4.04 NOTICE OF PROCEEDINGS

The Parties shall promptly give notice to each other of all actual or potential claims, proceedings, notices of regulatory non-compliance from any Governmental Authority, disputes (including labour disputes) or litigation which it reasonably believes could have an adverse effect on the fulfillment of any of the terms hereof by either Party (whether or not any such claim, proceeding, dispute or litigation is covered by insurance) in respect of its own operations of which any of them is aware. Subject to compliance with Applicable Law, including applicable privacy legislation, and ARTICLE 11, each Party shall provide the other Party with all information reasonably requested from time to time concerning the status of such claims, proceedings, notices, disputes, or litigation, and any developments relating thereto.

4.05 PERMITS

Each Party shall, at its sole expense, obtain and maintain during the Term, all permits, certifications, licenses and other types of approvals required by it under Applicable Law to perform the Services and, upon request, shall provide the other Party with proof thereof.

4.06 INSURANCE

- (a) Insurance. Neither Party nor any of its subcontractors shall commence the performance of Services until such Party has obtained, at its own expense, the following minimum insurance coverage which it shall maintain in full force and effect for the duration of the Term:
 - (i) Commercial General Liability insurance with limits of at least \$10,000,000.00 per occurrence involving bodily injury, personal injury, death, or property damage, with the other Party listed as an additional insured and including a cross-liability provision, and coverage for completed operations, non-owned auto, tenant's legal liability, coverage for hazardous operations, and contractual liability;
 - (ii) Professional Liability/Errors and Omissions Insurance that has limits of not less than \$5,000,000 per claim. The policy must be in place continuously from the commencement of the Agreement until two (2) years after the expiration of the Term;
 - (iii) Workers' Compensation Insurance applicable in the Province of Ontario for the Services or any portion of the Services is to be performed. The applicable Party shall ensure that all subcontractors, suppliers, agents, and invitees also qualify and carry such required insurance before providing Services. In the event that a subcontractor is exempt from workers compensation laws or requirements, (1) a letter to this effect must be

written and signed by the workers compensation authority or applicable board for the jurisdiction in which the Services is to be performed, and delivered to the Parties prior to commencement of any Services and (2) the Commercial General Liability insurance required under Section 4.06(a)(i) is to include Employer's Liability coverage.

- (iv) Automobile Liability Insurance in compliance with any and all statutory motor vehicle liability requirements, for all owned, hired and non-owned vehicles in a Party's care, custody & control, with a Combined Single Limit of \$2,000,000 Bodily Injury Liability and Property Damage Liability per occurrence; and
- (v) Umbrella/Excess Liability Insurance may be in place to satisfy the insurance requirements set out in Section 4.06(a), where applicable

Neither Party shall cancel, allow to lapse or materially change in any way the insurance required pursuant to this Section 4.06(a) until 30 days after written notice of same is provided to the other Party. If a Party fails to provide or to maintain the insurance required by this Section 4.06(a), then the other Party shall have the right to provide and maintain such insurance, at the non-compliant Party's sole cost and expense.

- (b) Proof and Standard of Insurance. Proof of all insurance must be satisfactory in form and content to: (i) Energy's Vice President, Finance and CFO; and (ii) Utilities Vice President, Finance and CFO, as applicable, each acting reasonably. All insurance must be placed with carriers holding a minimum financial rating of A- or better with A.M. Best and with insurers licensed to underwrite insurance in Canada. No requirement above shall impose on either Party a duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the other Party, nor shall either Party be responsible for any representations or warranties made by the other Party to any insurance company or underwriter. All insurance shall be primary over and non-contributing with, and not in excess of, any other insurance held or obtained by the other Party.
- (c) Deductibles. Each Party shall be responsible for the deductible amounts owing under its insurance policies.

4.07 ACCESS BY SERVICE RECIPIENT AND HEALTH & SAFETY

Each Party, as the Service Provider, hereby acknowledges and agrees that the Service Recipient shall have reasonable access to the Service Provider's facilities, records and applicable documents, as are strictly required in connection with the Services provided by the Service Provider, provided that that Service Recipient shall be required to deliver prior written notice no less than 48 hours in advance of exercising its rights under this Section 4.07. When on the premises of a Party, the other Party's employees shall comply with all health and safety rules and regulations which are brought to their attention from time to time or about which they ought to be aware acting reasonably.

ARTICLE 5
FEES AND PAYMENTS

5.01 FEES

In consideration of the provision of Services, the Service Recipient shall pay to the Service Provider the fees set out in the applicable Service Schedule, as may be amended by the Parties in writing from time to time and as determined and adjusted from time to time in accordance with Section 5.03 (the “**Fees**”).

5.02 PAYMENT

- (a) Unless a more frequent payment schedule is provided for in the applicable Service Schedule, the Service Provider shall deliver a monthly invoice setting forth the aggregate Fees due by the Service Recipient in respect of each current Service Schedule.
- (b) the Service Recipient shall, within 30 days of the date after receipt of an invoice referred to in Section 5.02(a), notify the Service Provider of any amounts therein which the Service Recipient reasonably considers not properly due to the Service Provider, and the Service Recipient shall not be required to pay such disputed amounts until 30 days after such dispute is resolved.
- (c) Subject to Section 5.02(b), the Service Recipient shall pay the amounts set out in an invoice referred to in Section 5.02(a) in such manner as directed in the invoice within 30 days of the date of such invoice (unless expressly set out otherwise in the invoice, provided that the Service Provider shall not be permitted to require payment by the Service Recipient of an invoiced amount within a time period less than 30 days).

5.03 FULL COST RECOVERY

The Parties acknowledge that the Fees charged by Service Provider to the Service Recipient shall be no more than the fully-allocated cost for the Service Provider to provide the Service, which fully-allocated cost may include a return on invested capital that is (a) no higher than Utilities’ OEB-approved weighted average cost of capital in the case of Services being provided by Energy, and (b) no less than Utilities’ OEB-approved weighted average cost of capital in the case of Services being provided by Utilities, as determined in accordance with each Party’s methodology reasonably determined from time to time and always subject to Applicable Law (the “**Cost Recovery Methodology**”). Each Party shall deliver a document setting out its Cost Recovery Methodology to the other Party on or before execution of each Service Schedule and thereafter upon any change to the Cost Recovery Methodology. Energy further acknowledges that Utilities is a rate regulated entity and that any Services provided by Energy, and the recovery by Utilities of the costs of the Fees charged to Utilities, are subject to regulatory review by the OEB.

5.04 ANNUAL REVIEW & ADJUSTMENT TO FEES

The relationship between the Parties arising from this Agreement shall be subject to review by the Parties at least once annually, which review shall consider:

- (a) implementation of processes contemplated by this Agreement;
- (b) issues relating to performance of Services under this Agreement;
- (c) any changes in the cost in connection with a Party's compliance with Applicable Law affecting the provision of Services;
- (d) any changes to the nature or scope of the Services;
- (e) any decision by the OEB as it relates to Services provided or received pursuant to this Agreement; and
- (f) the Affiliate relationship and the requirements under the Affiliate Relationships Code for Services to be provided by Utilities to their Affiliates or received by Utilities from their Affiliates on the basis of the fully-allocated cost to provide the Services so as to avoid cross-subsidization between the Parties and any other matters relating to compliance with Affiliate Relationships Code requirements.

5.05 TAXES

Fees shall include any and all applicable taxes properly exigible on the supply of Services under this Agreement including any and all applicable taxes under the *Excise Tax Act* (Canada), sales taxes, value-added taxes or any other taxes (excluding income taxes).

5.06 LATE PAYMENT

If either Party fails to pay any amounts payable hereunder when due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the Prime Rate.

ARTICLE 6

REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENT

6.01 REPRESENTATIONS AND WARRANTIES OF UTILITIES

Utilities hereby represents and warrants to Energy as follows and acknowledges that Energy is relying on such representations and warranties in connection herewith:

- (a) Utilities is a corporation, duly incorporated, validly existing and in good standing under the laws of the Province of Ontario and it has the rights, powers and privileges to execute and deliver this Agreement and to perform its obligations hereunder;

- (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action;
- (c) this Agreement has been duly executed and delivered by Utilities and constitutes a legal, valid and binding obligation of Utilities, enforceable against Utilities by Energy in accordance with its terms; and
- (d) Utilities has received, reviewed and approved for the purposes set out in this Agreement, Energy's Cost Recovery Methodology.

6.02 REPRESENTATIONS AND WARRANTIES OF ENERGY

Energy hereby represents and warrants to Utilities as follows and acknowledges that Utilities is relying on such representations and warranties in connection herewith:

- (a) Energy is a corporation, duly incorporated, validly existing and in good standing under the laws of the Province of Ontario and it has the rights, powers and privileges to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action;
- (c) the provision by Energy of Services pursuant to this Agreement complies with the Windsor Canada Utilities Ltd. shareholders directions to Energy;
- (d) Energy has received, reviewed and approved for the purposes set out in this Agreement, Utilities' Cost Recovery Methodology; and
- (e) this Agreement has been duly executed and delivered by Energy and constitutes a legal, valid and binding obligation of Energy, enforceable against Energy by Utilities in accordance with its terms.

ARTICLE 7 INDEMNIFICATION

7.01 INDEMNIFICATION

- (a) Each Party, on behalf of itself, its directors, officers, commissioners, elected officials, employees, volunteers, agents, successors, and assigns ("**Indemnifying Party**") agrees to indemnify and hold harmless the other Party, its directors, officers, commissioners, elected officials, volunteers, employees, agents, successors, and assigns ("**Indemnified Party**"), against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury

(including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (collectively, "**Claims**") arising out of or related to: (i) breaches of the Indemnifying Party's obligations contained in this Agreement, including but not limited to the disclosure of Confidential Information and/or Personal Information pursuant to Section 11.03; (ii) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Indemnifying Party; and (iii) the negligent acts, negligent omissions, or wilful misconduct of the Indemnifying Party in connection with the performance of its obligations under this Agreement.

- (b) The indemnities provided for in Section 7.01(a) shall only apply if the Indemnified Party gives the Indemnifying Party prompt notice of any such Claim as soon as it is aware of a situation that may give rise to a Claim, and all requested and necessary information and assistance. The Indemnifying Party, at its option, may defend or settle such claim provided that the Indemnified Party may participate in such defense if the Indemnifying Party and the Indemnified Party's interest are divergent. The Indemnifying Party may not settle a Claim without consent of the Indemnified Party, such consent not to be unreasonably withheld, conditioned or delayed.
- (c) In the event that a Claim is the result of the contributory negligence of the Parties, the loss, liability and costs (including legal fees) associated with the defence and settlement of the Claim shall be borne by each Party in proportion to its negligence.
- (d) Neither Party shall, or shall permit its subcontractors to, file any lien or encumbrance in connection with the performance of such Party's Services except as solely as a result of the other Party's failure to make an undisputed payment when due in accordance with this Agreement. If any lien or encumbrance is filed in connection with the performance of the Services by the Party performing the Services or its subcontractors in violation of this Section 7.01(c), such Party shall, within five Business Days of the filing of any such lien or encumbrance, discharge or remove in accordance the Applicable Law and shall provide evidence of such discharge or removal to the other Party within five Business Days of the discharge or removal. If a Party fails to take such action within the time period provided by this Section 7.01(c), the other Party shall have the right, at its option, without notice to the failing Party, to maintain holdback from payments to such failing Party and to pay or settle such lien or encumbrance, and such failing Party shall, within two Business Days of receipt of a request by the other Party, reimburse the other Party for all actual reasonable costs and expenses incurred by the other Party in connection therewith. Any undisputed, past due payment required pursuant to this Section 7.01(c) shall accrue interest at the Prime Rate.

ARTICLE 8
LIMITATION OF LIABILITY

8.01 LIMITATION OF LIABILITY

Subject to Section 8.03, each Party's maximum aggregate liability for all Claims of any kind under this Agreement shall not exceed an amount equal to the average of the Fees invoiced by such Party in the three (3) years preceding the date of the Claim. The foregoing limitation of liability shall not apply to a Party's liability: (i) for fraudulent actions; or (ii) for its or its subcontractors willful misconduct or gross negligence, nor apply to any insurance proceeds received or which will be received by the Party pursuant to policies maintained in accordance with the terms of this Agreement or in the case the Party fails to maintain insurances required to be maintained hereunder, an amount equal to any insurance proceeds which would have been received pursuant to such insurance policies had such been maintained as required hereunder. The Parties acknowledge and agree that any of a Party's liability covered by the proceeds of the insurance maintained pursuant to ARTICLE 4 shall not reduce or be applied against the limit of liability set out in this Section 8.01.

8.02 CONSEQUENTIAL DAMAGES

Subject to Section 8.03, in no event shall either Party be liable to the other Party, irrespective of whether alleged to be by way of indemnity, as a result of breach of contract, breach of warranty, tort (including negligence), strict liability, or any other legal theory for damages that constitute consequential, incidental, special, indirect, exemplary or punitive damages of any nature whatsoever, except to the extent such damages are covered by insurance proceeds actually received pursuant to the applicable Party's insurance.

8.03 EXCEPTIONS TO LIMITATION

The exclusions and limitations of liability contained in Sections 8.01 and 8.02 shall not apply to liabilities arising from either party's indemnification obligations under ARTICLE 7 of this Agreement with respect to any damages, awards or other amounts payable to a third party in connection with a third party Claim.

ARTICLE 9
DEFAULT

9.01 DEFAULT

The occurrence of any one or more of the following shall constitute an event of default on the part of a Party (an "**Event of Default**");

- (a) if the Service Recipient fails to pay any Fees set out in an invoice delivered pursuant to ARTICLE 5 and such default shall continue without being cured within 30 days following notice thereof to the Service Recipient by the Service Provider; and

- (b) breach of any material representation or warranty or failure to perform or observe any material covenant or obligation under this Agreement if such failure is not cured within 30 days following notice thereof (giving particulars of the failure in reasonable detail) from the non-defaulting Party or such longer period as may be reasonably necessary to cure such failure, provided that:
 - (i) the defaulting Party proceeds with all due diligence to cure or cause to be cured such failure; and
 - (ii) the failure can be reasonably expected to be cured or caused to be cured within a reasonable time frame acceptable to the non-defaulting Party, acting reasonably.

ARTICLE 10

TERMINATION RIGHTS

10.01 TERMINATION ON DEFAULT

Upon the occurrence of an Event of Default under this Agreement which is not cured within the permitted time period specified in Section 9.01, the non-defaulting Party shall have the right to terminate this Agreement by delivering written notice of termination to the defaulting Party whereupon this Agreement shall terminate as at the effective date of termination specified in the notice.

10.02 TERMINATION ON NOTICE

- (a) Either Party may terminate this Agreement at any time during the Term by delivering written notice to the other Party no less than 180 days in advance of the stated termination date set out in the notice.
- (b) Either Party may terminate a Service Schedule or the provision of any portion of the Services described in a Service Schedule at any time by delivering written notice to the other Party no less than 90 days in advance of the stated termination date set out in the notice, unless a greater minimum notice period is described in the applicable Service Schedule. The Party exercising its right to terminate shall provide as much advance notice to the other Party as reasonably possible in the circumstances of its intent to terminate any specified Services in accordance with this Section 10.02(b).

10.03 TERMINATION FOR CHANGE IN APPLICABLE LAW

In the event that:

- (a) there is a change in Applicable Law which materially affects either Party in relation to any of the Services; or

- (b) a Party is unable to perform any or all of the Services due to a change in policy, guidelines, codes, directives, order, decision or other regulatory action of any Governmental Authority,

then either Party shall have the right to terminate any or all of the applicable Services Requests by giving 90 days' prior written notice of termination to the other Party whereupon the specified Services or this Agreement shall terminate as of the effective date of termination specified in the notice. Notwithstanding the provision in the sentence immediately above, the applicable Party shall provide as much advance notice to the other Party as reasonably possible (and no less than 90 days) in the circumstances of its intent to terminate any specified Services or this Agreement in accordance with this Section 10.03.

10.04 CHANGE OF CONTROL OF UTILITIES OR ENERGY

In the event of a Change of Control in Utilities or Energy, the entity to which control has passed may by delivery of written notice terminate any or all of the Services or this Agreement effective immediately.

10.05 CONSEQUENCES OF TERMINATION

Upon termination of any or all of the Services under this Agreement or upon termination of this Agreement for any reason:

- (a) the relevant provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for any billings, adjustments and payments related to the period prior to termination;
- (b) with respect to termination of a Service, Services or this Agreement in accordance with Section 10.02 only, the Party exercising its termination rights under Section 10.02 shall pay to the other Party a sum equal to: (i) such other Party's actual, reasonable and demonstrable demobilization costs and/or deposits paid to its subcontractors, as demonstrated by documentation reasonably requested by the Party exercising its rights under Section 10.02; *less* (ii) any recordable deposits paid to such other Party's subcontractors.
- (c) the termination shall not affect any rights or obligations which may have accrued prior to such termination or any other rights which the terminating Party may have arising out of the termination or the event giving rise to the termination and shall not affect the continuing obligations of either Parties under this Agreement which are expressed to continue after termination of this Agreement; and
- (d) except as provided in Sections 10.05(a) and 10.05(c), the terminating Party shall have no liability whatsoever to the other Party arising from such termination. For greater certainty, the terminating Party shall have no liability whatsoever to the other Party for any special, incidental, indirect or consequential damages, lost business revenue, loss of profits, failure to realize expected profits or savings, or any damages or losses, whether based on breach of contract or tort (including

negligence) or otherwise, even if the Party causing such loss or damages has been advised of the possibility of same, which the other Party may incur as a result of the termination.

ARTICLE 11 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

11.01 CONFIDENTIAL INFORMATION

Each Party (the “**Receiving Party**”) shall maintain in strict confidence any and all information about the business or operations or customers of the other Party or any of their Affiliates, which it acquires in any form from the other Party (the “**Disclosing Party**”) by virtue of this Agreement (“**Confidential Information**”) and will not disclose to any third party or make use of such Confidential Information (except for the purposes of this Agreement) for itself or any third party without the prior written consent of the Disclosing Party, except as permitted herein and except where required by Applicable Law. Notwithstanding the foregoing, “**Confidential Information**” shall not include information which:

- (a) is in the public domain at the time of its disclosure to the Receiving Party or which thereafter enters the public domain otherwise than by any breach of this Agreement;
- (b) is already known to or in the possession of the Receiving Party at the time of its disclosure by the Disclosing Party as evidenced by the Receiving Party’s records;
- (c) is lawfully acquired at any time by the Receiving Party without restrictions from a third party without breach of confidentiality by such third party; or
- (d) required to be disclosed under Applicable Law, judicial decision or by order, decree, rule, regulation or requirement of any Governmental Authority,

provided no “**Confidential Information**” may be disclosed if it consists of information that is “confidential information” of Utilities for purposes of the Affiliate Relationships Code.

11.02 PERMITTED DISCLOSURE

Notwithstanding Section 11.01,

- (a) the Parties hereby acknowledge and agree that Utilities may be obligated to disclose Confidential Information relating to this Agreement to the OEB and any other Governmental Authority to which Utilities may be required to report in connection with filing a rate application with the OEB, under the Affiliate Relationships Code, the Reporting and Record Keeping Requirements or in accordance with any other Applicable Law;

- (b) the Parties hereby acknowledge that they are both subject to MFIPPA and that as a result either Party may be required to disclose Confidential Information concerning this Agreement or the other Party in accordance with the provisions of MFIPPA;
- (c) in the event that a Receiving Party is required by law to disclose any Confidential Information to a Governmental Authority, or any other person, including, without limitation, any disclosure required pursuant to a request under MFIPPA, such Party may so disclose; provided that it shall, to the extent permitted by Applicable Law, first inform the Disclosing Party of the request or requirement for disclosure to allow an opportunity for the Disclosing Party to apply for an order to prohibit or restrict such disclosure;
- (d) Energy acknowledges and agrees that the use and disclosure of any information relating to the customers of Utilities is governed by requirements of the *Ontario Energy Board Act, 1998*, and regulations, licences, codes and procedures established by the OEB (“**OEB Requirements**”). Energy acknowledges and agrees that if any of Utilities’ Confidential Information relating to its smart sub-metering providers, wholesalers, consumers, retailers or generators is disclosed to Energy or its Representatives hereunder, Energy shall strictly comply, and shall cause its Representatives to strictly comply with the OEB Requirements, the requirements, policies or procedures of Utilities, the Affiliate Relationship Code, MFIPPA and all other Applicable Law; and
- (e) Utilities agrees and acknowledges that if any Personal Information is disclosed by Energy to Utilities or its Representatives, Utilities shall strictly comply and shall cause its Representatives to strictly comply with the requirements of MFIPPA and such other requirements, policies or procedures of Energy related to or arising from such disclosures, and all other Applicable Law.

11.03 LIABILITY FOR BREACH

Except for disclosures made pursuant to Section 11.02, as required by Applicable Law or any Governmental Authority or as required to fulfil the terms of this Agreement, each Party shall be responsible for any breach of this Agreement by the Party, its Representatives and any person to whom it discloses any Confidential Information or Personal Information. The Parties agree that a Disclosing Party would be irreparably injured by a breach of this Agreement by a Receiving Party or by any person to whom it discloses any Confidential Information or Personal Information and that monetary damages would not be a sufficient remedy. Therefore, in such event, the Disclosing Party shall be entitled to equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

11.04 RETURN OF CONFIDENTIAL INFORMATION

Subject to Applicable Law, upon completion or termination of this Agreement, or upon ten (10) days written notice from the Disclosing Party requesting return or destruction of any or all Confidential Information, the Receiving Party shall forthwith return to the Disclosing Party or destroy, without retaining any copies thereof unless otherwise required by Applicable Law, all such Confidential Information.

11.05 INTELLECTUAL PROPERTY

- (a) As between the Service Provider and the Service Recipient, (i) the Service Provider shall own all Service Provider Background IP, and the Service Recipient acknowledges that it does not have and will not acquire any right, title or interest in or to any Service Provider Background IP under this Agreement; and (ii) the Service Recipient shall own all Service Recipient Background IP, and the Service Provider acknowledges that it does not have and will not acquire any right, title or interest in or to any Service Recipient Background IP under this Agreement.
- (b) With respect to a particular Service and as between the Service Provider and the Service Recipient, the Service Recipient shall own the Service Results and IP. The Service Provider agrees to assign, to the Service Recipient any and all right, title and interest in the Service Results and IP, and shall execute such documents and do all other acts and things as may be reasonably deemed necessary by the Service Recipient to effectuate all such right, title and interest. The Service Recipient will not take any action inconsistent with such right, title and interest.
- (c) To the extent that Service Provider Background IP is incorporated into the Service Results and IP, Service Provider grants to Service Recipient a fully paid, non-exclusive, irrevocable, royalty-free worldwide license, with a right of sublicense, to use such Service Provider Background IP to the extent necessary for Service Recipient to enjoy full benefit of its rights to the Service Results and IP.
- (d) During the Term, Service Recipient grants to Service Provider a non-exclusive license to use the Service Recipient Background IP and any Service Results and IP solely for the performance of the Services or to otherwise perform its obligations under this Agreement.

ARTICLE 12
FORCE MAJEURE

12.01 FORCE MAJEURE

Except for the payment of any monies required hereunder, neither Party shall be deemed to be in default of this Agreement where the failure to perform or the delay in performing any obligation is due to a cause beyond its reasonable control, including, but not limited to, an act of God, act of any Governmental Authority, civil commotion, acts of terrorism including threatened acts, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, ice storms,

tornado, severe and imminent weather warnings and conditions, and epidemics (each, a “**Force Majeure Event**”).

12.02 NOTICE OF FORCE MAJEURE

Once a Party becomes subject to an event of Force Majeure, it shall promptly, but in no circumstance later than five (5) Business Days after the commencement of a Force Majeure Event, notify the other Party of its inability to perform, or of any delay in performing, its obligations under this Agreement due to a Force Majeure Event and shall provide an estimate, as soon as practicable, as to when the obligation will be performed. The Party subject to the Force Majeure Event shall also continue to furnish timely reports to the other Party with respect to the Force Majeure Event during the continuation of the said event and the said Party shall exercise all commercially reasonable efforts to mitigate or limit damages to the other Party. The Party subject to the Force Majeure Event shall use its best efforts to continue to perform its obligations under this Agreement and to correct or cure the event or condition excusing performance and when the said Party is able to resume performance of its obligations thereunder, it shall give the other Party written notice to that effect and shall promptly resume performance thereunder. The time for performing the obligation shall be extended for a period equal to the time during which the Party was subject to the Force Majeure Event. The Parties shall explore all commercially reasonable avenues available to avoid or resolve Force Majeure Events in the shortest time possible.

12.03 EXCLUSIONS

- (a) A Party shall not be entitled to invoke force majeure under this ARTICLE 12, nor shall it be relieved of its obligations hereunder in any of the following circumstances:
 - (i) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable Force Majeure Event by its fault or negligence;
 - (ii) if and to the extent the Party seeking to invoke force majeure has failed to use reasonable efforts to prevent or remedy the Force Majeure Event and remove, so far as possible and within a reasonable time period, the Force Majeure Event (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
 - (iii) if and to the extent that the Party seeking to invoke force majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Applicable Laws;
 - (iv) if the Force Majeure Event was caused by economic hardship, a lack of funds or other financial cause of a Party;
 - (v) if the Party invoking force majeure fails to comply with the notice provisions in Section 12.02, unless no undue prejudice is experienced by the Party being notified; or

- (vi) if the failure to perform or comply with any of the covenants or obligations herein imposed upon a Party was caused by the acts or omissions of third Persons for which the Party is responsible, including any Affiliate of a Party, or any direct or indirect vendor, supplier or contractor of a Party, unless such acts or omissions are themselves caused by reason of a Force Majeure Event.
- (b) Notwithstanding Sections 12.01 and 12.02, the settlement of any strike, lockout, restrictive work practice or other labour disturbance constituting a Force Majeure Event shall be within the sole discretion of the Party involved in such strike, lockout, restrictive work practice or other labour disturbance and nothing in Sections 12.01 and 12.02 shall require the said Party to mitigate or alleviate the effects of such strike, lockout, restrictive work practice or other labour disturbance.

ARTICLE 13

DISPUTE RESOLUTION

13.01 DISPUTES

Any controversy, dispute, difference, question or claim arising between the Parties in connection with the interpretation, performance, construction or implementation of this Agreement that cannot be resolved by a director or manager from each Party (collectively, a “**Dispute**”), shall be settled in accordance with this ARTICLE 13.

13.02 NOTICE OF DISPUTE

The aggrieved Party shall send the other Party written notice identifying the Dispute, the amount involved, if any, and the remedy sought, and invoking the procedures of this Article. A senior officer with authority to bind Energy, as selected by Energy in its discretion, and a senior officer with authority to bind Utilities, as selected by Utilities in its discretion, shall confer in an effort to resolve the Dispute. If the Dispute cannot be resolved in accordance with this Section 13.02 within thirty (30) days of the date the Dispute arose, the Dispute shall be resolved by binding arbitration in accordance with Sections 13.03 and 13.04.

13.03 APPOINTMENT OF ARBITRATOR

The Parties shall submit any arbitration under this Article to a single arbitrator agreed upon by both Parties. If the Parties cannot agree upon a single arbitrator within ten (10) days after the Dispute is referred to arbitration, either Party may apply to the Court for appointment of an Arbitrator pursuant to the *Arbitration Act, 1991* (Ontario) as amended from time to time. Any arbitrator selected or appointed to act under this Agreement shall be qualified by education, training and experience to pass on the particular question in Dispute and shall have no connection to either of the Parties other than acting in previous arbitrations.

13.04 ARBITRATION PROVISIONS & DIRECTIONS

The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted in the City of Windsor, Ontario unless the Parties agree otherwise. The decisions of the arbitrator shall be made in writing and shall be final and binding on the Parties as to the questions submitted and the Parties shall have no right of appeal therefrom. All costs and expenses relating to a Dispute which is finally determined or settled by arbitration, including reasonable legal fees, will be borne by the Party determined by the Arbitrator to be liable in respect of such Dispute; provided, however, that if complete liability is not assessed against only one Party, the Parties will share the total costs in proportion to their respective amounts of liability so determined by the Arbitrator. Notwithstanding the provisions to arbitrate any Dispute hereunder, either Party may seek from a court any equitable relief (including, without limitation, injunctive relief) that may be necessary to protect such Party's rights.

ARTICLE 14 **GENERAL**

14.01 CHANGES TRIGGERING NEGOTIATION OF AMENDMENTS

In the event that through amalgamation or otherwise, Energy or Utilities serves a materially larger or materially smaller populace, the Parties agree to negotiate diligently and in good faith any amendments to this Agreement necessary or advisable in connection with such event including the possibility of an early termination.

14.02 ASSIGNMENT

Neither Party shall, without the prior approval of the other Party which shall not be unreasonably withheld, assign or transfer its interest in this Agreement. Except as otherwise provided, this Agreement shall be binding on the Parties and their respective successors and permitted assigns. Any purported assignment in contravention of this section shall be void.

14.03 NOTICES

All notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and addressed as follows:

- (a) if to Utilities:

787 Ouellette Avenue
P.O. Box 1625, Station "A"
Windsor, Ontario N9A 5T7
Attention: Corporate Secretary

Fax: (519) 255-2767

- (b) if to Energy:

787 Ouellette Avenue
P.O. Box 1625, Station "A"
Windsor, Ontario N9A 5T7
Attention: Corporate Secretary

Fax: (519) 255-2767

and may be delivered to the other Party's address by registered express mail or courier with the capacity to verify receipt of delivery. Any Party may change its address for notification purposes by giving the other Party notice of the new address and the date upon which it will become effective in accordance with the terms of this Section 14.03. A notice shall be deemed to have been received as of the date of receipt by the Party to whom the notice is addressed. The Parties also contemplate and approve delivery of notices and documents electronically by fax or by email, and subject to verification of receipt by the other Party, such notices and documents shall be deemed for all purposes to be original documents in writing.

14.04 SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, then the remaining provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such remaining provision or remaining applicability of this Agreement shall be valid and enforceable to the extent permitted by law.

14.05 WAIVER

No delay or omission by a Party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of any other Party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

14.06 ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement among the Parties with respect to the Services, and there are no other representations, understandings or agreements, either oral or written, between the Parties other than as herein set forth.

14.07 AMENDMENTS

No amendment to, or change, waiver or discharge of any provision of this Agreement shall be valid unless in writing and signed by authorized Representatives of each Party.

14.08 GOVERNING LAW

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, excluding their rules governing conflicts of laws. Subject to ARTICLE 13, the Parties hereby agree that the courts of the Province of Ontario shall have exclusive jurisdiction over disputes under this Agreement, and the Parties agree that jurisdiction and venue in such courts is appropriate and irrevocably attach to the jurisdiction of such courts.

14.09 SURVIVAL

Section 4.01, Section 4.02, ARTICLE 5, ARTICLE 7, ARTICLE 8, Section 10.05, ARTICLE 11, ARTICLE 13, and Section 14.08 shall survive termination of this Agreement and shall remain in full force and effect.

14.10 THIRD PARTY BENEFICIARIES

Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

14.11 COVENANT OF FURTHER ASSURANCES

The Parties agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, the Parties shall execute and deliver or cause to be executed and delivered any further legal instruments and perform any acts which are or may become necessary to effectuate the purposes of this Agreement and to complete the transactions contemplated hereunder.

14.12 COVENANT OF FURTHER ASSURANCES

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Execution of this Agreement by facsimile, .pdf or electronic signature and transmitted by fax machine or electronic mail shall be treated in all manner and respects as an original document. Any such fax or e-mail document shall be considered to have the same binding legal effect as an original document.

[Remainder of this page left intentionally blank.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above by their duly authorized signing officers in that regard.

SIGNED, SEALED AND DELIVERED

ENWIN ENERGY LTD.

Name: James Brown
Title: Vice President

Name: John Wladarski
Title: Vice President & Chief Operating Officer

We have authority to bind ENWIN Energy Ltd.

ENWIN UTILITIES LTD.

Name: Helga Reidel
Title: President and CEO

Name: Byron Thompson
Title: Vice President, Finance and CFO

We have authority to bind ENWIN Utilities Ltd.

Approved for
Technical Content

SCHEDULE A
FORM OF SERVICE SCHEDULE

ENWIN UTILITIES LTD.

and

ENWIN ENERGY LTD.

MASTER SERVICES AGREEMENT

SERVICE SCHEDULE NUMBER __ [INSERT NUMBER]

This Service Schedule Number __ **[Insert Number]** dated _____ **[Insert Date]** is issued pursuant to, and subject to all the terms and conditions of the Master Services Agreement dated ■ (the “**Agreement**”) between *ENWIN* Utilities Ltd. and *ENWIN* Energy Ltd. The issuer of this Service Schedule is _____ **[Specify either Utilities or Energy]** (the “**Recipient**”) and the Service provider is _____ **[Specify either Utilities or Energy]** (the “**Provider**”). The Parties agree that, except as otherwise expressly stated in this Service Schedule, this Service Schedule is governed by, and subject to all the terms and conditions of the Agreement.

Capitalized terms that are used but not otherwise defined in this Service Schedule shall have the meaning ascribed thereto in the Agreement.

1. Description of Services

The Provider shall deliver the following Services to the Recipient:

■ **[Insert scope]**

(collectively, the “**Scope of Services**”)

2. Schedule

Commencement Date: _____.

Anticipated Completion Date: _____.

3. Fees

In accordance with the Cost Recovery Methodology agreed to between the Parties and **[Insert Option 1 or Option 2 below]**.

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[OPTION 1 – Fixed Fee model][in consideration for the completion of the Scope of Services, the Recipient shall pay the Provider \$■. The Provider shall invoice the Recipient and the Recipient shall pay the Provider pursuant to the terms of the Agreement.]

[OPTION 2 – Hourly Fee model][in consideration for the completion of the Scope of Services, the Recipient will be compensated according to the rates set forth below:

The Provider estimates the Work will require ■ hours at a cost of \$■ per hour. Compensation for the Work, including reimbursable expenses shall not exceed \$■ without the Recipient's prior written approval.

The Provider shall invoice the Recipient and the Recipient shall pay the Provider pursuant to the terms of the Agreement. For reimbursable expenses, the Provider must furnish the Recipient approved time sheets and receipts for expenses.]

4. Representatives

All correspondence shall be directed to the following:

The Provider's representative for the Scope of Services is _____,
Address: _____. Telephone: _____.
Title: _____. Email: _____. **[Insert details.]**

The Recipient's representative for the Scope of Services is _____,
Address: _____. Telephone: _____.
Title: _____. Email: _____. **[Insert details.]**

5. Annual Review

The Services described in Section 1 above shall be subject to an annual review to be held by the Parties on or about each anniversary of the Commencement Date on the basis of the following performance metrics:

[Insert applicable performance metrics. Typical performance metrics would include: (i) Fee analysis (i.e., did actual costs exceed estimates and how this compares to prior years); (ii) results analysis to assess whether scope of work was fully complied with; and (iii) internal and external surveys to qualitatively assess performance and receive input on means of improving the delivery of Services in the future.]

6. Termination Notice Period

[Insert if applicable. Agreement provides for 90 days prior notice of the termination of any Services.]

7. Waiver of Specific Terms and Conditions of the Agreement

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[Insert any terms and conditions of the Agreement that will not apply to the Services described in Section 1 above.]

8. Other Terms

[Insert any special provisions here (if required). For example, this Service Schedule may require additional insurance requirements, certain permitting requirements, training requirements, reporting requirements, credit support (*e.g.*, letters of credit, bonds or a holdback), changes to the terms of the Warranty, etc.]

[Remainder of this page left intentionally blank.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above by their duly authorized signing officers in that regard.

ENWIN UTILITIES LTD.

ENWIN ENERGY LTD.

By: _____

By: _____

Name:
Title:

Name:
Title:

By: _____

By: _____

Name:
Title:

Name:
Title:

Date: _____

Date: _____

Attachment 1-C

ENWIN Group Board of Directors

ENWIN Energy Ltd.

| | | |
|-------------------|---|---|
| Directors: | Drew Dilkens (Chair) B.Comm., JD, MBA, DBA, CHRL, C. Dir. Mayor, City of Windsor | Jo-Anne Gignac (Vice-Chair) Councillor, City of Windsor Ward 6 |
| | Fred Francis , BA, MA, B.Ed Councillor, City of Windsor Ward 1 | Kevin Laforet , B.Comm., CPA, CA Regional President (Canada) Caesars Entertainment |
| | Jim Morrison , PFP Councillor, City of Windsor Ward 10 | Gerry Udell , BA, LL.B, C.S. Senior Counsel Miller Canfield |

ENWIN Utilities Ltd.

| | | |
|-------------------|--|---|
| Directors: | Drew Dilkens (Chair) B.Comm., JD, MBA, DBA, CHRL, C. Dir. Mayor, City of Windsor | Abe Taqtaq (Vice-Chair) , BA President CD Ventures & Consulting Inc. |
| | Jo-Anne Gignac Councillor, City of Windsor Ward 6 | Andrea Orr LL.M, CGA, CPA, CIRP, LIT Licensed Insolvency Trustee |
| | Leo Muzzatti , LL.B, B.Ed Director of Human Resources and Strategy Management Assisted Living Southwestern Ontario (Windsor) | |
| | Gregory Ioanidis , BMath, MBA Former Vice President ITC Holdings Corp. | |
| | Garnet Fenn MBA, DBA (Candidate), FCPA, FCA, FCMA, FCGA (ON), Member of the AICPA Institute, CGMA, PFP (MI), CIM, FCIS, FCSI, ICD.D, P.Adm., Acc.Dir. Accountant & Financial Consultant | |