

SERVICES AGREEMENT

THIS AGREEMENT made as of the Effective Date as defined herein between:

ENBRIDGE COMMERCIAL SERVICES INC.,
a corporation incorporated under the laws of
Canada

("ECSI" as defined herein)

- and -

THE CONSUMERS' GAS COMPANY LTD., a corporation
incorporated under the laws of the Province of Ontario

("CLIENT" as defined herein)

WHEREAS:

- A. Enbridge desires to engage ECSI in respect of Services using ECSI's CIS and Host System ("CIS" as defined herein);
- B. The parties have agreed that CLIENT will retain ECSI to provide long term operation, support and maintenance of the Services;
- C. The purpose of this Agreement is to establish the basic principles and procedures common to all aspects of the Services.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set out in this Agreement, the parties agree as follows:

Article 1 Definitions

1.1 Acceptance

"Acceptance" means the definition ascribed to that term in Article 10 of this Agreement.

Aird & Berlit Doc # 710746.6 September 27, 1999 (2:56PM)

1.2 Activity Forecast

"Activity Forecast" has the meaning set out in Article 8.

1.3 Actual Fee

"Actual Fee" has the meaning set out in Section 9.5.

1.4 Agreement

This "Agreement" means this Services Agreement and all the Attachments attached to this Services Agreement.

1.5 Annual Volume

"Annual Volume" for each Service Activity has the meaning set out in Attachment 3 and is calculated in a manner consistent with the calculation performed in Attachment 3.

1.6 Attachments

"Attachment" means an attachment affixed to this Agreement as follows:

1.6.1 Attachment 1: Services Definition

1.6.2 Attachment 2: Service Level Targets

1.6.3 Attachment 3: Activity Forecast

1.6.4 Attachment 4: Fee Schedule

1.7 Average Volume

"Average Volume" for each Service Activity has the meaning set out in Attachment 3 and is calculated in a manner consistent with the calculation performed in Attachment 3.

1.8 CIS

"CIS" means ECSI's Customer Information System, and such other software mutually agreed to by the parties, that is licensed, leased or owned by ECSI and operated by ECSI and/or ECSI's approved agents, subcontractors and suppliers.

- 3 -

1.9 Contract Year

"Contract Year" means each one (1) year period beginning October 1 and ending on September 30 of the next calendar year.

1.10 CLIENT

"CLIENT" means The Consumers' Gas Company Ltd.

1.11 CLIENT Facilities

"CLIENT Facilities" means facilities controlled by CLIENT, its affiliates, agents, contractors or dealers where the CIS will be accessed through workstations, communication networks, and other data input and output equipment.

1.12 CLIENT Hardware

"CLIENT Hardware" means workstations, data input and output hardware, and any other computing and network equipment on the CLIENT side of the Demarcation Point which will be controlled or operated primarily by CLIENT, its affiliates, agents, contractors, or dealers, but excluding any ECSI-provided hardware and equipment.

1.13 CLIENT Software

"CLIENT Software" means all software on the CLIENT side of the Demarcation Point which will be controlled or operated primarily by CLIENT, its affiliates, agents, contractors, or dealers, respecting CLIENT's workstation, LAN and network software, but excluding any ECSI-provided software and data files.

1.14 CLIENT System

"CLIENT System" means all of the CLIENT Facilities, CLIENT Hardware, CLIENT Software.

1.15 Customizations

"Customizations" means, collectively, modifications, enhancements, and new releases provided under this Agreement.

1.16 Data

"Data" means all information in hard copy or in electronic form that is used in the performance of Services under this Agreement or is resident on or processed by the CIS, and includes software.

1.17 Demarcation Point

"Demarcation Point" means the designated point from which CLIENT shall be responsible for the CLIENT System, currently the routers leased or owned and operated by ECSI on the premises of ECSI and/or ECSI's Approved Agents, Subcontractors and Suppliers.

1.18 Discloser

"Discloser" means the party providing its Data to the Recipient.

1.19 Documentation

"Documentation" means the ECSI-provided hard copy and/or on-line user documentation and technical documentation for the CIS.

1.20 Documented Defect

"Documented Defect" means a material deviation between the CIS and the Documentation, or Service Description, for which Documented Defect ECSI has enough information (such information which ECSI will be obligated to discern for itself during the Term, and such information which CLIENT shall be obligated to provide to ECSI) to replicate the deviation on its own computer configuration under ECSI's control.

1.21 ECSI

"ECSI" means Enbridge Commercial Services Inc.

1.22 Effective Date

"Effective Date" means the date on which CLIENT and ECSI execute this Agreement, which is the date upon which this Agreement shall have effect.

1.23 Estimated Fee

"Estimated Fee" has the meaning set out in Section 9.3.

- 5 -

1.24 Fee

"Fee" means the remuneration that CLIENT is to pay to ECSI for Services.

1.25 General Release

"General Release" means an ECSI-released version of the CIS designated as "General Release" by ECSI in part to differentiate it from other versions or its supplier's which General Release ECSI operates in the provision of Services.

1.26 Hardware

"Hardware" means any and all computers, disk drives, tape drives, workstations, printers, routers communication network and other computer hardware and related equipment.

1.27 Host System

"Host System" means that Hardware, main processing modules of the CIS, data base and/or other related software licensed, leased or owned and operated by ECSI on the premises of ECSI and/or ECSI's Approved Agents, Subcontractors and Suppliers.

1.28 Intellectual Property Rights

"Intellectual Property Rights" means patents, patent rights, copyrights, copyright registrations, trade secrets, trademarks, service marks, trademark and service mark registrations, and goodwill pertaining to trademarks and service marks.

1.29 Maintenance

"Maintenance" means ECSI's reasonable efforts to provide a correction of or an avoidance procedure for Documented Defects.

1.30 Material Change

"Material Change" means an Activity Forecast which anticipates an Estimated Fee for the forward Contract Year that is more than ten percent (10%) different from the estimated Actual Fee in the current Contract Year, calculated at the time of the delivery of the Activity Forecast.

- 6 -

1.31 ECSI

"ECSI" means ● Inc., a company incorporated under the laws of the Province of Ontario.

1.32 Product

"Product" means hardware, software, firmware, deliverable or other product.

1.33 Recipient

"Recipient" means the party receiving Data of the Discloser.

1.34 Service Activity

"Service Activity" means each of the following activities specified in the activity definition which form a part of Attachment 3: *Profile* (customer, account, premise and meter), Meter Reading, Delivery Billing Charge, Commodity Charge, Bills Produced, Finance Contract Transaction, Rental Transaction and Miscellaneous Transaction

1.35 Service Activity Fee

"Service Activity Fee" means, for each Service Activity, the Service Activity Fee set out in Attachment 3 for such Service Activity, adjusted in accordance with this Agreement.

1.36 Service Definition

"Service Definition" describes the Services to be provided by ECSI attached to this Agreement at Attachment 1.

1.37 Service Level

"Service Level" means the key service measurement criteria and targets described in the Service Level Targets attached as Attachment 2 to this Agreement

1.38 Services

"Services" means the services described in the Service Definition attached as Attachment 1 to this Agreement.

1.39 Software

"Software" means computer programs, regardless of format or medium, their documentation and specifications.

1.40 Start Date

"Start Date" means October 1, 1999. This date triggers the billing of Services to the CLIENT.

1.41 Supplemental Services

"Supplemental Services" means those additional and separately billable services which are beyond the Services set forth in the Service Definition and which ECSI may otherwise provide under separate agreement with CLIENT.

1.42 Term

"Term" has the meaning set out in Section 9.1, as well as any renewal or extension thereof.

1.43 Testing Period

"Testing Period" means the normal eight (8) week period or the period negotiated between the parties following the delivery of CLIENT's test system(s) for the purposes of CLIENT Acceptance.

1.44 Transfer Date

"Transfer Date" means date of acquisition of beneficial ownership of CIS by ECSI.

1.45 Year 2000 Ready

"Year 2000 Ready" means the Services are capable of correctly processing, providing and receiving date data within and between the twentieth and twenty-first centuries provided that the CLIENT System used with the CIS properly exchanges accurate date data with it.

Article 2 OEB Approval

2.1 Requirement of OEB Approval

ECSI acknowledges and agrees that prior to the Start Date, the CLIENT must obtain approval from the Ontario Energy Board ("OEB") for the cost consequences of this Agreement for rate-making purposes. CLIENT agrees to work expeditiously and use its reasonable best efforts to satisfy this requirement.

2.2 Costs

The parties acknowledge that, in order to act expeditiously to gain the CLIENT the advantages of the Services, it is not practical to wait until the OEB approval is obtained before commencing work on the implementation of the Services for CLIENT, and that both parties have and will incur substantial expenses in preparing for the implementation and acceptance of the Services. In order to compensate ECSI, CLIENT hereby agrees that, if this Agreement is not approved by the OEB, the Agreement shall be terminated, and, to the extent such payments are approved by the OEB for rate-making purposes, CLIENT shall pay to ECSI:

- 2.2.1 its reasonable expenses of preparing to deliver the Services to CLIENT to the date of termination; and
- 2.2.2 any non-mitigable costs ECSI incurs as a direct result of the termination, including costs of re-deploying the assets and personnel ECSI used in providing the Services.

CLIENT shall use its best efforts to obtain such approval from the OEB.

Article 3 Scope of Services

3.1 Scope

The CIS and Services will reside on and be performed from the Host System to the Demarcation Point. CLIENT access to Services as defined in the Service Definition will be through CLIENT System at CLIENT sites. Access to Services is solely through and from the Demarcation Point.

3.2 Service Definition

Services to be provided by ECSI under this Agreement are described in the Service Definition attached as Attachment 1 to this Agreement. Such Service Definition forms a part of this Agreement.

3.3 Refinement of Service Definition

The Service Definition regarding functionality for the Services is set out in Attachment 1 to this Agreement. It is an essential component of the Services and CLIENT's responsibilities that the parties will work together to elaborate, define and refine the Service Definition on an ongoing basis in accordance with generally accepted industry standards. However, the process does not include expansion of the scope of the Services or any increase of any criteria or service levels beyond or above the intention that has been generally expressed in the Service Definition and this Agreement. Any such expansion or increase can be effected only through Supplemental Services.

3.4 Further Attachments

From time to time during the Term, the parties may wish to add further Attachments to this Agreement, for the purpose of defining specific terms and conditions related to Services other than those described in the Attachments currently attached to this Agreement. Upon agreement between the parties as to the content of such appendices and execution thereof, they shall be deemed to form part of this Agreement.

Article 4 ECSI's Responsibilities

4.1 ECSI's Responsibilities Generally

In the performance of Services as set out in Attachment 3 for the benefit of the CLIENT, ECSI agrees to:

- 4.1.1 perform the Services as defined within the Service Definition for the benefit of CLIENT and CLIENT's customers, on schedule or in a timely manner;
- 4.1.2 perform those elements of the responsibilities allocated to ECSI in accordance with the terms of Service Definition set out in Attachment 1;
- 4.1.3 liaise with CLIENT through CLIENT's coordinator or the coordinator's designate as indicated in this Agreement on matters related to the Services;
- 4.1.4 provide access to the CIS and Host System by persons authorized by CLIENT, such access being governed ECSI's security procedures and limited to the CIS user limits determined by the number of user IDs and the number of concurrent user sign-ons CLIENT has contracted for as set out in Attachment 4;

- 10 -

- 4.1.5 restrict ECSI's employees and agents from interfering with CLIENT's business operations;
- 4.1.6 comply with ECSI's security procedures to maintain the security of CLIENT's Data;
- 4.1.7 notify CLIENT, within twenty (20) business days with written agreement prior to charging CLIENT, if expenses beyond the defined charges within this Agreement may be incurred;
- 4.1.8 invoice CLIENT according to the terms hereof for the Services performed;
- 4.1.9 notify CLIENT, as appropriate, of any changes to ECSI's procedures in the provision of Services and, where such changes will impact CLIENT operations, to obtain CLIENT agreement to such changes in accordance with the change procedures set out in this Agreement; and
- 4.1.10 proceed according to CLIENT's instructions for the disposition of Client's Hardware, Software, Data and supplies upon the termination of this Agreement.

4.2 Technical Currency

ECSI will regularly provide updates of the CIS and Services as necessary to maintain technical currency with software on which CIS depends in any way for its correct operation.

4.3 Interface Data Files

ECSI will provide data files according to scheduled frequency and time as negotiated between ECSI and CLIENT as set out in Schedule 2.

4.4 System Performance

The parties will cooperate to maintain and improve performance as CLIENT's Service Activity changes.

4.5 Network

The network connection between ECSI's Host System and the Demarcation Point shall have redundancy capability.

- 11 -

4.6 Data Backup and Recovery

ECSI shall provide daily backup of the CIS databases and provide forward data recovery capability from the previous backup.

4.7 Disaster Recovery

ECSI will maintain a Disaster Recovery Plan ("DRP"). ECSI will provide an alternate CIS production environment populated with the most current CIS databases within forty-eight (48) hours and establish network connectivity to a designated site within seven-two (72) hours after ECSI officially declares the loss of the normal production facility because of a disaster.

ECSI will conduct a Disaster Recovery Test annually according to the documented Disaster Recovery Plan and procedures. CLIENT, at ECSI's sole request, may observe this test and participate in any acceptance testing. The test will include a complete recovery of the CIS databases and required network connectivity between the DRP site and a location designated by ECSI and CLIENT.

4.8 Operational Reports

ECSI is responsible for:

- 4.8.1 reporting to CLIENT on actual or suspected breaches of security, or data integrity problems within twenty-four (24) hours of identifying such violations;
- 4.8.2 providing to CLIENT monthly operational reports within ten (10) business days after calendar month-end:
 - (i) on security access and user profile information;
 - (ii) on availability of CIS and any network components for which ECSI is responsible; and
 - (iii) on response time and workload of CIS and any network components for which ECSI is responsible. This may include hourly information for each day, peak 15 minute period each day, daily average, and a monthly summary.

- 12 -

4.9 CLIENT Test Databases

ECSI will provide ongoing access by CLIENT into one (1) CIS test database after CLIENT is fully in the production environment. During implementation, ECSI will, using its reasonable best efforts, provide access by CLIENT into a negotiated number of CIS test databases to support conversion and interface testing and implementation. If it is necessary for ECSI to acquire additional Hardware and support resources to meet CLIENT's requirements, CLIENT acknowledges and agrees to pay ECSI for the additional expenses which are not included in the ongoing Fees set out in this Agreement. The parties shall act reasonably to determine the price and the timing of such additional requirements.

4.10 CLIENT Training Databases

ECSI will provide ongoing access by CLIENT into one (1) CIS training database after CLIENT is fully in the production environment. During implementation, ECSI will, using its reasonable efforts, provide access by CLIENT into a negotiated number of CIS training databases to support training. If it is necessary for ECSI to acquire additional Hardware and support resources to meet CLIENT's requirements, CLIENT acknowledges and agrees to pay ECSI for the additional expenses which are not included in the ongoing Fees set out in this Agreement. The parties shall act reasonably to determine the price and the timing of such additional requirements.

4.11 Maintenance Support

ECSI will provide maintenance as well as procedural workarounds for the CIS and Host System required to deliver and support the Services. ECSI will identify and document the process, prioritization mechanism and escalation procedures to provide maintenance support for the Services.

4.12 Change Management Process

ECSI will identify to CLIENT the change management process which will be used by both ECSI and CLIENT for planning and implementing enhancements or new releases of Services which may impact the business of CLIENT. Subject to Section 4.13, all such changes to Services shall be communicated to CLIENT, and the parties will work together, acting reasonably, to minimize the impact of any such changes. CLIENT acknowledges that CLIENT is one client of many of the Services, and that some changes will be made by ECSI in consultation with more than one client, and that no single client can stop changes from being made to the Services.

- 13 -

4.13 Consequences of Opting Out of the Change Management Process

If the parties fail to agree on a change to the Services pursuant to the change management process set out in Section 4.12, at CLIENT's option, ECSI will create a system to provide Services without charge to CLIENT and the parties will renegotiate the Fees for this service. If the parties cannot agree on new Fees, either party may refer the matter to arbitration and the basis on which the new Fees shall be determined shall be that CLIENT shall pay the Fees as set out in this Agreement and bear the incremental cost of operating the separate system for CLIENT.

4.14 Computer and Network Hardware

ECSI will provide the computer hardware and related network hardware necessary to establish connectivity between ECSI's Host System and CLIENT System to the Demarcation Point Where the CLIENT System, network hardware, network software and/or communication protocols are not supported by ECSI, this will be identified for resolution at CLIENT's expense.

4.15 Mandate Changes to the Services

Modifications to the Services will be necessary to satisfy decisions mandated by CLIENT's regulatory board/commission or for safety reasons. The modifications to the Services will be the responsibility of ECSI in the time frame and for an agreed upon fee to be negotiated with CLIENT. Updates to the data within the existing ECSI CIS database to implement regulatory or safety requirements will be the responsibility of CLIENT as long as other client's data is not impacted. Any other modifications to the Services to enhance existing functions or provide additional functions or change the database structure requested by CLIENT and implemented by ECSI will be in addition to the ongoing fees and will be contracted separately. ECSI makes no guarantee to customize the CIS, its databases and/or Services when such customization impacts other clients, on-going maintainability and the future updates of the Services. The parties shall act reasonably to determine the price and the timing of such modifications. If the parties fail to agree on a reasonable time frame and price for the preparation of the modifications, either party may refer the matter to arbitration in accordance with the terms of this Agreement

4.16 Audit 5900 Requirements

If requested in writing by CLIENT, ECSI shall provide its supplier's report on the controls and procedures with respect to the supplier's version of the CIS. If requested in writing by CLIENT, and at CLIENT's expense, ECSI shall provide a report on the controls and procedures with respect to the CIS in the form of an Audit 5900 Report.

- 14 -

4.17 Year 2000 Ready

As part of the Services, ECSI will provide its supplier's representation and acknowledgement that the CIS is Year 2000 Ready. In the event that the CIS is not Year 2000 Ready, this shall be deemed to be a breach of the Agreement by ECSI and CLIENT shall be permitted to terminate this Agreement as set out in Section 17.4. In addition to the procedure set out in Section 17.4, the CLIENT shall also be permitted to avail itself to all other legal remedies, notwithstanding the fact that the dispute resolution procedure, as set out in Article 16 of this Agreement, has not been completed.

4.18 Service Outages and Maintenance Time

It is recognized by ECSI and CLIENT that in order to ensure the reliable provision of the Services, it will be necessary for ECSI to have reasonable maintenance time on a regular basis to effect normal maintenance to the CIS and Host System and that from time to time it may be necessary to have reasonable scheduled service outages to effect major changes or upgrades to the CIS and Host System. ECSI shall schedule such events with the approval of CLIENT, which approval will not be unreasonably withheld. Such outages shall not be considered in the calculation of Service Levels.

Article 5 Client Obligations

5.1 CLIENT's Responsibilities Generally

CLIENT agrees, as appropriate to the Services, to:

- 5.1.1 commit sufficient resources for purposes of implementation of CIS, including but not limited to implementing CLIENT Hardware, CLIENT Software and communication networks, development and refinement of the Service Definition, interfaces, data conversion, implementation, integration, testing, training and business process change.
- 5.1.2 perform those elements of the responsibilities allocated to CLIENT in accordance with the terms of Service Definition set out in Attachment 1;
- 5.1.3 provide all necessary Data, schedules, special forms or other required material to ECSI on schedule or in a timely fashion to enable ECSI to provide the Services;
- 5.1.4 liaise with ECSI through a coordinator CLIENT will identify, or the coordinator's designate on matters related to the Services ECSI provides;

- 15 -

- 5.1.5 comply with ECSI's security procedures when on ECSI's premises and when using the CIS and Services;
- 5.1.6 establish and maintain a Data backup procedure for the recovery and/or reconstruction of lost Data; ECSI will perform the Data backup procedures as per CLIENT's instructions;
- 5.1.7 control, and be responsible for the security and use of, User ID's and passwords assigned to CLIENT as related to the Services;
- 5.1.8 restrict CLIENT's employees and agents from interfering with software and equipment which is licensed, leased or owned by ECSI and operated by ECSI and/or ECSI's Approved Agents, Subcontractors and Suppliers, or in the possession or control of ECSI or ECSI's Approved Agents, Subcontractors and Suppliers;
- 5.1.9 restrict and control CLIENT's employees and agents from accessing, interfering and using other clients' Data;
- 5.1.10 ensure the accuracy, legibility and completeness of all Data supplied to ECSI and be responsible for the results obtained from CLIENT's use of the Services, provided that ECSI perform as instructed;
- 5.1.11 permit ECSI's employees and agents as may be authorized by ECSI, access to the CLIENT System, and information, data, data communication services, and communication lines at such times and for such purposes as reasonably necessary or appropriate to permit ECSI to perform its obligations under this Agreement; and
- 5.1.12 provide information in addition to that specified in this Agreement as ECSI may occasionally require to perform the Services.

5.2 CLIENT Security Obligations

CLIENT is responsible for providing security policy, rules and user profiles. CLIENT's security administration contact(s) will be required to liaise with ECSI's on security matters. CLIENT will acquire any security equipment (e.g. secure ID cards, security software) necessary to enable this service to function in a manner consistent with CLIENT's business objectives.

- 16 -

Article 6 Relationship of the Parties

6.1 Dealings in Good Faith

In exercising their rights and obligations, in exercising their discretion under this Agreement, and in any other dealings between the parties related to the Services, CLIENT and ECSI will at all times act and negotiate reasonably, promptly and in good faith with each other and always be governed by:

6.1.1 this Agreement and any written amendments thereto; and

6.1.2 The parties' intention and desire to foster a sound mutually beneficial long term business relationship

6.2 Approved Agents, Subcontractors and Suppliers

ECSI may subcontract out the performance of some of the Services and the acquisition of the Hardware and Software to ECSI Approved Agents, Subcontractors and Suppliers. CLIENT will not object to Services being provided or Hardware and Software being supplied in that manner if the following conditions are met:

6.2.1 each ECSI Approved Agent, Subcontractor and Supplier will have a good reputation and established expertise and products;

6.2.2 ECSI shall advise such Agents, Subcontractors and Suppliers of ECSI's obligations under this Agreement, including without limitation ECSI's obligations of confidentiality in connection with CLIENT's Data, and shall take all steps reasonably necessary to ensure that such Agents, Subcontractors and Suppliers shall abide by the same as if such Agents, Subcontractors and Suppliers were ECSI hereunder.

All ECSI's Agents, Subcontractors and Suppliers who meet the foregoing conditions will be "Approved Agents, Subcontractors and Suppliers" for all purposes of this Agreement.

Article 7 Personnel

7.1 Assignment of Personnel

ECSI and CLIENT will each provide capable personnel to serve in the ECSI and CLIENT positions respectively for the planning, implementation, and performance of the Services. Each party will use reasonable efforts to maintain in place, throughout the Term, the team of

personnel (such "team" which, for purposed of this Section 7.1, shall not be deemed to include personnel assigned to such work effort on an interim or short-term basis and of which fact a party has advised the other party whenever reasonably practicable) charged with executing such party's responsibilities hereunder. Each party acknowledges and understands that the other party's ability to so maintain its team of personnel in place as provided for in this Section 7.1 will be affected by events including, but not limited to, the continued employment of such personnel by such party, and changes in the timeframe established for completion of the tasks for planning, implementing and performing the Services.

Article 8 Activity Forecast

8.1 Activity Forecast

Attachment 3 sets out CLIENT's initial Activity Forecast. The Activity Forecast is a forecast of business volume for each Contract Year for each of the Service Activities set out in Attachment 3. The Activity Forecast for each Contract Year is calculated by:

- 8.1.1 with respect to each Service Activity, determining the estimated Annual Volume of that Service Activity based on the estimated year-end number of customer activities for such Contract Year;
- 8.1.2 with respect to each such Service Activity, calculating the Average Volume of that Service Activity based on the average between the Annual Volume for the Contract Year in question and the Annual Volume for the preceding Contract Year;
- 8.1.3 the process described in Sections 8.1.1 and 8.1.2 is repeated for each Service Activity and for each Contract Year, and, in any event, no less than two (2) years, so that a series of estimated business volume numbers are generated, one for each Contract Year.

The resulting business volume numbers for each Contract Year, once agreed to in accordance with Section 8.2, shall be the Activity Forecast for the years set out in this Agreement.

8.2 Provision of Activity Forecast

After the initial Activity Forecast, CLIENT shall provide the Activity Forecast as described in this Article 8. Each such Activity Forecast shall be reasonable and bona fide forecast of CLIENT's expected requirements of business volume for the Service Activities covered by this Agreement. Such forecast shall be supplied by CLIENT in the elements as specified in Attachment 3. CLIENT shall provide ECSI annually for each Contract Year, at least one

- 18 -

calendar quarter in advance, an update of the Activity Forecast as set out in Section 8.1 for the remainder of the Term and in any event for at least two Contract Years. ECSI shall have fifteen (15) business days from receipt of such forecast to review and accept same, acting reasonably.

If ECSI accepts the proposed updated Activity Forecast, the proposed forecast shall be deemed to be accurate and accepted by both ECSI and CLIENT and such forecast shall be the Activity Forecast for ECSI in calculating the Estimated Fee for the subsequent Contract Years.

8.3 Capacity and Service Levels

Subject to the ramp-up provisions of this Agreement, ECSI shall provide Services initially to meet the Service Levels at the initial Activity Forecast agreed upon by CLIENT and ECSI prior to the Effective Date and attached hereto. When CLIENT has delivered to ECSI and ECSI has accepted an Activity Forecast with business volume in excess of those specified in a previous Activity Forecast, then, within one hundred and eighty (180) days from the date of acceptance of the new Activity Forecast, ECSI shall use reasonable efforts to supply sufficient capacity to meet such business volume. ECSI shall not be responsible for nor shall CLIENT be entitled to any remedies for failure to meet Service Levels to the extent that such failure was caused by the delay in making available capacity permitted by this Section 8.3.

Article 9 Term and Fees

9.1 Term

Subject to the other terms of this Agreement, the "Term" of this Agreement is for the period beginning on the Effective Date and continuing until five (5) Contract Years from the Transfer Date. This Agreement will be automatically extended for consecutive Contract Years beyond the expiration of the Term on a year-to-year basis at ECSI's then current prices for Services unless CLIENT notifies ECSI in writing of its intent not to extend this Agreement at least one (1) year prior to the expiration of the initial Term, or, for any Contract Year subsequent to the expiration of the initial Term, at least six (6) months prior to the expiration of the then current Contract Year.

9.2 Fees for Services

CLIENT shall pay Fees for the Services as set out in this Agreement. ~~All Service Activity Fees have been expressed in 1999 dollars. Service Activity Fees will be increased January 1, 1999 and annually thereafter~~ on January 1st in each year to reflect increases in the all-items Consumer Price Index for Canada published by Statistics Canada.

9.3 Calculation of Estimated Fee

The Estimated Fee for each Contract Year shall be calculated in the following manner:

- 9.3.1 in the first Contract Year, the Set Up Fee per Profile (if any) multiplied by the estimated number of Profiles; or
- 9.3.2 in the second and subsequent Contract Year, the Set Up Fee per Profile (if any) multiplied by the estimated increase in the number of Profiles over the preceding Contract Year; plus
- 9.3.3 in each Contract Year, the sum for all Service Activities of: (i) the Service Activity Fee for each Service Activity; multiplied by (ii) the Average Volume set out in the Activity Forecast for such Contract Year for such Service Activity.

9.4 Payment and Invoicing

ECSI shall invoice CLIENT at commencement of the Services in accordance with the Start Date. The Fees will be payable at the following times and in the following manner:

- 9.4.1 in each month of each Contract Year, ECSI will invoice CLIENT for:
 - (i) 1/12th of the annual Estimated Fee if the Contract Year is a full calendar year; or
 - (ii) the average monthly Estimated Fee if the Contract Year is less than twelve (12) months,

for such Contract Year based on the Activity Forecast for same, together with any reimbursable expenses (on an as-incurred basis):

- 9.4.2 unless otherwise agreed in writing between the parties, all Fees for the Services must be paid in full within thirty (30) days of the invoice date to CLIENT from ECSI during the Term, and ECSI will invoice CLIENT accordingly;
- 9.4.3 failure by CLIENT to pay invoiced amounts in full within sixty (60) days after the due date may result in cessation of the Services by ECSI unless it is agreed that both parties are actively pursuing the cause of non-payment and ECSI agrees in writing to accept the delay. A cessation of Service under this Section 9.4.3 will not be considered a breach by ECSI of the terms of this Agreement;

- 9.4.4 notwithstanding the foregoing, if CLIENT disputes a charge and fails to pay due to the dispute, and the dispute is ultimately resolved in CLIENT's favour and the charge is not payable, then any late payment charge or interest that would have been payable in accordance with this Agreement will be waived.

9.5 Calculation of Actual Fee

The Actual Fee for the completed Contract Year shall be calculated in the following manner:

- 9.5.1 in the first Contract Year, the Set Up Fee per Profile (if any) multiplied by the actual number of Profiles; or
- 9.5.2 in the second and subsequent Contract Year, the Set Up Fee per Profile (if any) multiplied by the increase in actual number of Profiles over the preceding Contract Year; plus
- 9.5.3 or the completed Contract Year, the sum for all Service Activities of: (i) the Service Activity Fee for each Service Activity; multiplied by (ii) the actual business volume for such Contract Year for such Service Activity.

9.6 Annual Fee Adjustment

The annual Fee adjustment, if any, for the completed Contract Year shall be calculated in the following manner:

if, at the end of the completed Contract Year, the Actual Fee calculated in Section 9.5 is greater than the Estimated Fee invoiced for such Contract Year by more than two percent (2%) of the total Estimated Fee invoiced for such Contract Year, then CLIENT shall forthwith pay the difference between the

- 9.6.1 actual Fee and the total Estimated Fee invoiced less two percent (2%) of the Total Estimated Fee invoiced for such Contract Year to ECSI; or
- 9.6.2 if, at the end of the completed Contract Year, the Actual Fee calculated in Section 9.5 is less than the Estimated Fee invoiced for such Contract Year, then ECSI shall forthwith credit CLIENT the difference against future invoices, provided that in no event will such credit reduce the total Fees payable by CLIENT by more than two percent (2%) of the total Estimated Fee invoiced for such Contract Year.

ECSI shall complete the annual Fee adjustment and invoice CLIENT any additional charge or credit within sixty (60) business days after completion of the Contract Year.

9.7 Option to Re-Open

Notwithstanding Section 9.1, three (3) months before the expiry of the third (3rd) Contract Year, on notice in writing to the other party, either party may reopen this Agreement in accordance with the terms of this Section 9.7. Between the date of such notice and the expiry of the third (3rd) Contract Year.

- 9.7.1 the parties may agree to continue the Agreement for the remaining two (2) Contract Years of the initial Term on the same terms and conditions, including Fees, as set out in this Agreement; or
- 9.7.2 in the event of a Material Change between the third (3rd) Contract Year and the subsequent Contract Years, the parties may renegotiate the Fees and the Term of this Agreement. If the parties fail to agree on new Fees and Term, either party may refer the matter to the dispute procedure in accordance with Article 16 of this Agreement for determination of the Fees for the Services, which once so determined, shall be the Fees for the remainder of the initial Term, and the parties will otherwise be governed by the terms set out herein for the remainder of the initial Term. In calculating the new Fees for the remaining Contract Years, the parties shall use the total of the then-current Activity Forecast for the Services of all ECSI's CIS clients; or
- 9.7.3 failing agreement or a determination in accordance with Sections 9.7.1 or 9.7.2, on written notice from CLIENT, the Agreement may be terminated by the CLIENT in accordance with Article 17.

9.8 Pricing

If, during the Term of this Agreement, CLIENT can demonstrate to ECSI that the total of all Estimated Fees for the forward Contract Year are above the fair market value of the Services associated with such Fees, then, on notice from CLIENT, the parties may renegotiate the Fees. If the parties fail to agree on new Fees, either party may refer the matter to the dispute procedure in accordance with Article 16 of this Agreement for determination of the Fees for the Services, which, once so determined, shall be the Fees for the remainder of the Term and the parties will otherwise be governed by the terms set out herein for the remainder of the Term. For the purposes of this Section 9.8, the "fair market value" of the Services shall be demonstrated by CLIENT obtaining in writing an offer for services comparable in all material respects to the Services on comparable terms from an independent third party service provider who makes such

services generally available to potential customers, provided that all material aspects of the proposed relationship between such service provider and CLIENT are comparable to the terms in effect between CLIENT and ECSI, including without limitation, the business volumes, functionality service levels, and the terms and conditions of the agreement respecting the relationship.

CLIENT shall get the benefit of, and this agreement shall be amended to give CLIENT the benefit of more favourable pricing of Fees subsequently negotiated in any CIS Business Services Agreement between the ECSI and any other ECSI affiliate provided that all material terms of the proposed relationship between ECSI and the ECSI affiliate are comparable in all material respects to the terms in effect between CLIENT and the CIS Limited Partnership, including without limitation, business volumes, functionality service levels and the terms and conditions of the Agreement respecting the relationship.

9.9 Late Payment Charge

Without waiving any other right, late payments past the invoice due date shall be subject to a late payment charge of prime rate plus three percent (3%) per annum on all outstanding balances.

9.10 Taxes

Taxes, other than taxes based on ECSI's net income or capital stock, imposed by any taxing authority and based upon any Services or other goods and services furnished under this Agreement will be the responsibility of CLIENT and will be payable in addition to all other amounts and charges. CLIENT may provide ECSI, in lieu of paying any such tax required to be paid by CLIENT, with a certificate of exemption in form and substance reasonably satisfactory to ECSI; and CLIENT may, if permitted by law, contest any such tax required to be paid by it under this Agreement, provided that CLIENT has made prior arrangements reasonably satisfactory to ECSI so that ECSI will suffer no damage or injury as a result of such contest. ECSI shall provide CLIENT with ECSI's GST registration number on all invoices.

Article 10 CLIENT Acceptance Test

10.1 General Definition

As the term is used for all Services, "Acceptance" means completion of the following process: from the date of receipt of a new Service (including the first provision of services under this Agreement), CLIENT will have the Testing Period to verify that such Service conforms in all material respects with the description of such Service contained in this Agreement. If during the Testing Period, CLIENT reasonably determines that such Services does not so conform, CLIENT will have three (3) business days from the expiration of the Testing Period to advise

ECSI in a detailed writing as to the nature and extent of such non-conformance. ECSI will thereupon act, with reasonable diligence, to correct such non-conformance by not later than twenty (20) calendar days after ECSI's receipt of such notice, and, upon re-delivery of such Service to CLIENT, a new Testing Period will be deemed to begin.

10.2 When Acceptance Is Deemed to Occur

Acceptance of the Services will be deemed to have occurred if and when CLIENT does not so advise ECSI of the existence of such a material non-conformance within the three (3) business day period following the expiration of the Testing Period, or if and when CLIENT starts using the Services to access the production CIS and Host System for performing customer transactions and activities.

Article 11 Ownership of Intellectual Property

11.1 Use of Software

In the performance of Services, either CLIENT or ECSI may provide access to Software to the other solely for the purposes of delivering or receiving Services. CLIENT and ECSI both agree to the following with respect to the handling of the other's Software:

- 11.1.1 not to modify the Software, except as permitted under the terms of the Agreement;
- 11.1.2 copy the Software only as required for use on a processor under the control of either CLIENT or ECSI;
- 11.1.3 use the Software only as required for the applicable Services;
- 11.1.4 confine the use of the Software to the employees or agents of either CLIENT or ECSI who require it for the Services;
- 11.1.5 maintain and disallow the removal of any proprietary or copyright notices;
- 11.1.6 return the Software to the other party upon the termination of the Agreement and warrant in writing that all copies have been returned and that no further use will be made of them; and
- 11.1.7 comply with all restrictions and limitations under the use of Software.

- 24 -

11.2 Customization Ownership Rights

As between the parties, all Customizations undertaken to the CIS or the Host System are and remain the property of ECSI.

11.3 Data

Notwithstanding anything else in this Agreement and except as determined by any law, rule or regulation of any governmental authority with jurisdiction over either of the parties to this Agreement, including, without limitation, the *Affiliate Relationships Code for Gas Distributors* or similar rule or other decision regarding the disclosure or use of the customer data of CLIENT, CLIENT shall be the owner of CLIENT's data including customer lists, individual customer data and all particulars thereof residing in the CIS databases.

Article 12 Confidentiality

12.1 Obligation of Confidentiality

ECSI and CLIENT and their respective employees, agents, subcontractors and suppliers will exercise such measures as are reasonably necessary to keep the Data of the other party in strict confidence including, but not limited to, the following:

- 12.1.1 neither party will copy or reproduce in any manner, in whole or in part, any of the Data of the other without the prior written consent of the other (which may include a standing written order by either party to the other);
- 12.1.2 each party will take all reasonable action, by instruction, agreement, or otherwise, with respect to its employees, agents, subcontractors and suppliers to comply fully with that party's obligations hereunder with respect to the use, copying, protection, and security of Data of the other party; and
- 12.1.3 each party acknowledges that in the event of its breach by that party of any of the provisions of this Section, the other party will not have an adequate remedy in monetary damages and accordingly will be entitled, in addition to any other available legal or equitable remedy, to a temporary restraining order without notice and to injunctive relief in respect of such breach.

12.2 Exclusions from Confidential Treatment

Each party will use their best efforts to maintain the Data of the other in confidence at all times, but notwithstanding anything contained in this Agreement, if any of the Data of one party is:

- 12.2.1 at the time of disclosure of same, publicly available,
- 12.2.2 at the time of disclosure of same, already in the possession of the other party, its employees, agents, subcontractors or its suppliers,
- 12.2.3 independently developed by the other party outside the scope of this Agreement,
- 12.2.4 rightfully obtained by the other party from one or more third parties, or
- 12.2.5 disclosed by compulsion of law,

then the other party will bear no responsibility whatsoever for disclosure, or use, inadvertent or otherwise, of that Data.

Neither CLIENT or ECSI will be required to keep confidential, and may use or license without restriction, any ideas, concepts, know-how or techniques related to information processing which are developed in the performance of Services.

Article 13 Security Management

13.1 Access

Each party will provide the other party and the other party's authorized employees, agents, subcontractors and suppliers, with such access to each other's hardware, software and network as is required in the performance and use of the Services hereunder. ECSI shall administer access to all Hardware, Software, Host System and other computer resources operated by ECSI in support of the Services through ECSI's security procedures. CLIENT shall notify ECSI of what entities and personnel are to be authorized access to the CIS, Host System and other computer resources utilized in support of the Services and the level of security access required by each. Notwithstanding anything to the contrary contained in this Agreement or the security procedures and without limitation, CLIENT will control and be responsible for the use of User ID's and passwords related to the Services. The parties shall cooperate in administering the ECSI's security procedures regarding such access.

13.2 Adherence to Procedures

Each party will be responsible for security in respect of its own premises. CLIENT will adhere to the standard security procedures established by ECSI in respect of ECSI's premises. ECSI will adhere to security procedures established by CLIENT in respect of CLIENT's premises.

13.3 Level of Security

ECSI's security procedures shall provide a level of security which is at least in reasonable accordance with the security standards practised by leading national and international suppliers of services similar to or the same as the Services. ECSI may, without liability to CLIENT, make changes to ECSI's security procedures which ECSI determines to be necessary or desirable; provided that such changes do not result in a reduction in ECSI's capacity to perform any of the Services, in any interruption or deterioration in any of the Services or security standards or in additional cost to CLIENT. ECSI will provide CLIENT with ninety (90) days prior written notice of any changes which ECSI consider to be significant.

Article 14 Limited Warranties, Disclaimer and Remedies

14.1 Limited Software Warranty by ECSI and Remedy for Breach

ECSI warrants to CLIENT that, throughout the Term: (i) the Services shall conform to the Service Definition; and (ii) the CIS, as used by ECSI and accessed by CLIENT on the Host System, will operate without Documented Defects. For each Documented Defect, ECSI as soon as reasonably practicable and at its own expense, will work with its suppliers to provide CLIENT with, at ECSI's option, either: (a) an avoidance procedure for (such avoidance procedures which shall not individually or collectively have a material adverse impact on CLIENT's ability to have the advantage of access to the Services as permitted under this Agreement); or (b) a correction of the Documented Defect; or (c) maintenance for each Documented Defect in a reasonably prompt manner. These remedies are exclusive and are in lieu of all other remedies, and ECSI's sole obligations for breach of this limited warranty are contained in this Section 14.1.

14.2 Disclaimer of Warranty

The limited warranties in Section 14.1 are made to CLIENT exclusively and are in lieu of all other warranties. ECSI makes no other warranties whatsoever, express or implied, with regard to the Services or the CIS, in whole or in part. ECSI explicitly disclaims all warranties of merchantability and of fitness for a particular purpose. ECSI expressly does not warrant that the Services or the CIS, in whole or in part, will be error free, will operate without interruption or will be compatible with any hardware or software other than the Host Hardware. Further, ECSI

expressly does not warrant that the Services or the CIS will be usable by CLIENT if the Services or the CIS have been modified by anyone other than ECSI or ECSI's suppliers. CLIENT waives any claim that the limited warranties set forth in Section 14.1 or the remedy for breach of such limited warranty fails because the Agreement has been fundamentally breached.

14.3 Abrogation of Section 14.1 Limited Warranty

The limited warranties in Section 14.1 will be null and void if: (i) anyone (including CLIENT) other than ECSI or its supplier modifies the Services; or (ii) CLIENT does not implement changes that ECSI provides to correct or improve the Services. If, despite any modification of the Services, ECSI can replicate the reported problem in the General Release of the CIS as if the problem were a Documented Defect, then ECSI will nonetheless provide CLIENT with an avoidance procedure for or a correction of that reported problem for use of the Services as though the reported problem were a Documented Defect.

14.4 Limitation of Liability

Subject to Section 14.5, except in connection with a party's obligations of confidentiality and non-disclosure in connection with any Data of the other, in no event shall either party be liable for any special, incidental, or consequential damages, including without limitation loss of profits and loss of revenues, even if informed of the possibility thereof in advance. These limitations apply to all causes of action in the aggregate, including without limitation breach of contract, breach of warranty, strict liability, misrepresentation, tort (including negligence), product liability, and other causes of action based on similar legal theories or otherwise. ECSI and CLIENT further acknowledge and agree that they are entering into this Agreement on the understanding that the Fees for the Services have been set to reflect the fact that CLIENT's remedies, and ECSI's liability, shall be limited as expressly set forth in this Agreement, and if not so limited, the Fees for the Services would have been substantially higher. The parties have agreed that the limitations specified in Sections 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7 and 15.1 will survive and apply even if any limited remedy specified in this Agreement is found to have been fundamentally breached.

14.5 Monetary Cap

Circumstances may arise where CLIENT is entitled to recover damages from ECSI. In each such instance, ECSI are liable for no more than:

- 14.5.1 \$2,000,000.00 for damages for physical harm to persons or tangible personal property and real property caused by ECSI's negligence; and

- 28 -

14.5.2 any direct damages up to the charges paid to ECSI hereunder for the 2-month period before the claim. In no event will ECSI's cumulative liability for damages for all claims relating to a Service during any Contract Year exceed the charges paid by CLIENT for that Service during that year.

14.6 Basis of Bargain

CLIENT acknowledges that ECSI has set its Fees for the Services and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between the parties.

14.7 Failure of Essential Purpose

The parties have agreed that the limitations specified in Article 14 or Article 15 will survive and apply even if any limitation specified in this Agreement is found to have failed because the Agreement was fundamentally breached.

Article 15 Indemnification for Infringement

15.1 Indemnity by ECSI

Notwithstanding the limitation set out in Section 14.5, ECSI will defend at ECSI's expense, indemnify and hold CLIENT harmless from and against any loss, cost and expense that CLIENT incurs because of a claim that use of the Services infringes any United States or Canadian copyright or patent of others. ECSI's obligations under this indemnification are expressly conditioned on the following:

15.1.1 CLIENT must promptly notify ECSI of any such claim;

15.1.2 CLIENT must in writing grant ECSI sole control of the defence of any such claim and of all negotiations for its settlement or compromise (if CLIENT chooses to represent its own interests in any such action, CLIENT may do so at its own expenses, but such representation must not prejudice ECSI's right to control the defense of the claim and negotiate settlement or compromise);

15.1.3 CLIENT must cooperate with ECSI to facilitate the settlement or defense of the claim; and

15.1.4 the claim must not arise from CLIENT - generated or third party generated modifications (with the express exception of any third party Hardware and

416 863 1515 TO 413063528#495599 P.38/59

- 29 -

Software specified by ECSI in writing as necessary for use with the CIS), or from the use or combination of products provided by ECSI with items provided by CLIENT or others.

15.2 Additional Options for ECSI on Infringement

In addition to ECSI's obligations under Section 15.1, if any of the Services are, or in ECSI's opinion is likely to become, the subject of a copyright and/or patent infringement claim, then ECSI, at its sole option and expense, may either:

- 15.2.1 obtain for CLIENT the right to continue using the Services under the terms of this Agreement;
- 15.2.2 replace the Services with products that are substantially equivalent in function, or modify the Services so that they become non-infringing and substantially equivalent in function; or
- 15.2.3 refund to CLIENT the portion of the out-of-pocket implementation costs incurred by CLIENT respecting the Services, less a proportion of such costs based on straight line depreciation assuming a useful life of the System of five (5) years.

Section 15.1 and 15.2 are ECSI's exclusive obligations and CLIENT's sole remedy with respect to infringement of intellectual property rights.

Article 16 Disputes

16.1 Internal Resolution Procedure

In the event that the parties have any disagreement, dispute, breach or claim of breach, non-performance, or repudiation arising from, related to or in connection with this Agreement or any of the terms or conditions hereof, or any transaction under this Agreement including but not limited to either party's failure or alleged failure to comply with any of the provisions of this Agreement (hereinafter collectively the "Dispute"), the parties will first conduct a three-stage procedure as follows, it being agreed that for purposes of this Section 16.1, any reference to a particular representative of a party will also be deemed to include such particular representative's duly authorized successor or designee and such other persons as each party reasonably deems appropriate:

- 16.1.1 A party will provide notice to the other party of a Dispute, a copy of which also will be sent to a senior officer of CLIENT, (the "CLIENT Coordinator") and a senior officer of ECSI (the "ECSI Coordinator"). Within ten (10) business days

- 30 -

of the giving of such notice of a Dispute, the CLIENT Coordinator and the ECSI Coordinator will conduct a meeting either to: (i) resolve the matter and set forth such resolution in writing; or (ii) define the Dispute in writing including a description of the position of each party and the activities which would be affected by the proposed resolution submitted by CLIENT Coordinator and by the proposed resolution submitted by the ECSI Coordinator. A copy of the writing described in this Section 16.1.1(i) and (ii) will be provided to the persons who are to receive notices pursuant to this Agreement in accordance with Section 18.2.

- 16.1.2 If the CLIENT Coordinator and the ECSI Coordinator are unable to reach an agreement pursuant to Section 16.1.1, then within ten (10) business days after such meeting, the ECSI officer responsible for this Agreement (the "ECSI Officer") and a senior officer of CLIENT (other than the CLIENT Coordinator) will meet in North York, Ontario, to attempt to reach a resolution of the matter in light of the description of the Dispute submitted by the parties and further discussion among and between the parties and their respective representatives. If they are unable to resolve the Dispute, they will further define the Dispute in writing based upon discussions held at their meeting, if appropriate. A copy of the writing described in this Section 16.1.2 will be provided to the persons who are to receive notices pursuant to this Agreement in accordance with Section 18.2.
- 16.1.3 If the ECSI Officer and the aforesaid officer of CLIENT are unable to reach an agreement pursuant to Section 16.1.2, then within fifteen (15) business days after such meeting, ECSI's most Senior Executive and the President of CLIENT will meet in North York, Ontario, to attempt to reach a resolution of the matter in light of the description of the Dispute submitted by the parties and further discussion among and between the parties and their respective representatives.
- 16.1.4 If the parties are unable to resolve the dispute after following the procedures set forth in Sections 16.1.1 through 16.1.3, the parties are entitled to pursue all their remedies at law and in equity. Notwithstanding the provisions of this Article 16, either party may seek equitable relief at any time without the necessity of first complying with the provisions of this Section 16.1. Further, while the parties are following the procedures set forth in Sections 16.1.1 through 16.1.3, each party will nonetheless continue to perform its obligations under this Agreement, without prejudice to either party.

16.2 Arbitration

Except for applications for injunction required to protect proprietary information and interests of a confidential nature or applications for specific performance, any disputes arising out of or in connection with this Agreement or in respect of any defined legal relationship associated therewith or derived therefrom, including any failure of the parties to reach agreement hereunder will be referred to and finally resolved or determined by arbitration under the rules of the *Arbitrations Act, 1991* (Ontario) in Toronto, Ontario.

At the request of ECSI, CLIENT shall consent to the participation as a party in the arbitration of any Approved Agent, Subcontractor or Supplier of ECSI.

Article 17 Termination

17.1 Resolution and Correction Process

No termination will be effective unless the parties have followed the step-by-step correction and resolution procedure set out in Article 16 of this Agreement, which shall occur during the sixty (60) day cure period.

17.2 Termination for Cause

Subject to the other terms of this Article 17, CLIENT may terminate this Agreement at any time for breach of an obligation by ECSI if ECSI has failed to cure such breach within sixty (60) days after receiving written notice thereof from CLIENT.

17.3 Service Level Termination

If CLIENT, acting reasonably, determine the ECSI has failed to meet a Service Level for one (1) or more of the Service Levels for two (2) or more consecutive months commencing six (6) months after the Start Date, CLIENT may give written notice of that failure to ECSI and require that ECSI prepare a draft action plan to remedy the failure. ECSI will prepare and deliver the draft action plan to CLIENT within two (2) weeks of receipt of the said notice from CLIENT and ECSI and CLIENT will meet promptly and work diligently to settle and approve the action plan within a further two (2) weeks time. ECSI will have two (2) months from the date the action plan is approved to meet the baseline Service Level (s) in question. If the parties are unable to agree upon the action plan and ECSI fails to meet the baseline Service Level(s) in question within two (2) months from the date of the delivery of the action plan to CLIENT, CLIENT may terminate this Agreement upon not less than sixty (60) days written notice.

- 32 -

17.4 Termination for Material Service Impact

If CLIENT, acting reasonably, determine that ECSI is materially damaging CLIENT's ability to conduct business by ECSI's failure to provide Services, then CLIENT may immediately implement the procedure indicated in Article 16 without having to comply with the notice periods set out in Sections 17.2 and 17.3.

17.5 Termination for Bankruptcy/Insolvency

If either party:

17.5.1 makes an assignment for the benefit of its creditors;

17.5.2 becomes insolvent or bankrupt;

17.5.3 initiates or becomes subject to any action or proceeding under any bankruptcy or insolvency legislation or in connection with its liquidation, dissolution, winding-up or reorganization;

17.5.4 becomes subject to any action or proceeding for the appoint of a receiver, trustee or similar officer in respect of a significant part of its property or assets; or

17.5.5 ceases or threatens to cease to carry on business;

the other party may, with notice, immediately terminate this Agreement.

17.6 Termination for Failure to Pay by CLIENT

ECSI may terminate this Agreement upon sixty (60) days prior written notice in the event of any failure by CLIENT to make payment when due, except when CLIENT has disputed such invoice and has referred the dispute to mediation or arbitration in accordance within the terms of this Agreement. If CLIENT pays all amounts which are past due within the 60-day notice period, the notice of termination will be void and this Agreement will continue to be in effect unless CLIENT has previously been given notice under this Section in which case ECSI may terminate even if CLIENT pays the past due amounts.

17.7 Consequences of Termination

On the termination or expiration of this Agreement:

- 17.7.1 CLIENT will forthwith deliver to ECSI all of the property, equipment or other assets owned, leased, rented, licensed or operated ECSI and used by ECSI to perform the terminated or expired Service that is in CLIENT's possession or control;
- 17.7.2 CLIENT will deliver to ECSI all of ECSI's data and written procedures, and all copies thereof pertaining to the terminated or expired Service, that is then in CLIENT's possession or control;
- 17.7.3 all accrued obligations or liabilities to pay for Services provided up to the date of termination will remain in effect;
- 17.7.4 ECSI will forthwith deliver to CLIENT any of the property, equipment or other assets pertaining to the terminated or expired Service owned by CLIENT that is then in ECSI's possession or control;
- 17.7.5 ECSI will deliver to CLIENT all of CLIENT's data and written procedures, and all copies thereof pertaining to the terminated or expired Service, that is then in ECSI's possession or control;
- 17.7.6 if this Agreement is terminated due to the insolvency or bankruptcy of ECSI, or default by ECSI, then ECSI shall use its best efforts to assign this Agreement to Enbridge Inc. or Enbridge Inc.'s agent for the performance of Services, as if Enbridge Inc. or Enbridge Inc.'s agent were ECSI hereunder, and, upon such assignment, the parties shall treat this Agreement as if no bankruptcy or insolvency or default had occurred. Upon execution of this Agreement, ECSI shall deliver in a timely fashion an undertaking of Enbridge Inc. to provide such Services directly or indirectly to CLIENT; and
- 17.7.7 ECSI will, at the request of CLIENT, provide the termination assistance specified in Section 17.8, and CLIENT shall continue to pay for those Services at the rates set out in this Agreement.

17.8 Termination Assistance

Upon termination of this Agreement, the parties will cooperate and work in close consultation to establish substitute or replacement services to ensure the orderly transfer of the operations, with minimum disruption, to CLIENT or to an alternate supplier selected by CLIENT.

These termination assistance services will be provided up to the effective date of the termination and, except in the case of expiry of the Agreement or termination due to failure by CLIENT to pay, for up to an additional twelve (12) months after termination. Termination assistance services shall include providing CLIENT and CLIENT's affiliates and other agents, contractors and consultants as necessary with reasonable access, in accordance with ECSI's security procedures, to the CIS, Host System and Services. Upon written request by CLIENT, ECSI will also provide all or a portion of the Services to CLIENT provided CLIENT continue to pay ECSI on the basis set out herein.

If termination assistance services provided by ECSI while ECSI continue to provide and be paid for the Services require the utilization of additional resources that ECSI would not otherwise use in providing the Services, or if the termination assistance services require ECSI to incur expenses in addition to the expenses that ECSI would otherwise incur in providing the Services, then CLIENT shall pay ECSI for such usage of additional resources at its then current rates for such resources and will reimburse ECSI for such additional expenses; provided that CLIENT shall not be required to pay for termination assistance services, in the event that the termination has resulted due to default by ECSI. For any termination assistance services provided after the effective date of the termination when CLIENT has ceased to pay charges for the Services, CLIENT shall pay ECSI for all resources used by ECSI in providing termination assistance services at ECSI's then current rates for such resources and will reimburse ECSI for any out-of-pocket expenses incurred in providing termination assistance services.

17.9 Termination Expenses in Certain Circumstances

Upon any termination or abrogation of this Agreement:

17.9.1 under Section 9.7.3, CLIENT agrees to pay ECSI an Early Termination Fee in accordance to the Fee Schedule set out in Attachment 4; and

17.9.2 under Section 17.5.1 or 17.5.2 (if CLIENT is the defaulting party), CLIENT agrees to pay ECSI:

- (i) three (3) months of Estimated Fee for each Contract Year or partial Contract Year remaining in the Term of this Agreement calculated based on the Activity Forecast attached as Attachment 3 and the Fee Schedule

set out in Attachment 4; and

- (ii) any non-mitigable costs ECSI incurs as a direct result of the termination, including ECSI's expenses of re-deploying the assets and personnel ECSI used in providing the Services.

17.10 Notwithstanding Clause

Notwithstanding any other provision of this agreement, CLIENT shall not be entitled to terminate this Agreement for any reason prior to expiration of the third full Contract Year. In the event of any circumstance, dispute or other event which would give rise to any right or procedure relating to termination in favour of the CLIENT prior to such date, such event shall be referred by the parties to the dispute resolution procedures and, if applicable, arbitration pursuant to Article 16 hereof and shall be resolved, if applicable, by way of an adjustment to the fees payable hereunder.

Article 18 General Terms

18.1 Assignment

Except as expressly set out in this Agreement, neither party may assign any of its rights or obligations under this Agreement. The assignee shall be bound by the terms hereof as if the assignee were the assignor. Either party may assign this Agreement and its rights and obligations hereunder as part of, or in conjunction with, the transfer of all or part of the party's business to an affiliate, provided that the assignor shall remain obligated for all its liabilities and obligations under this Agreement and those of the assignee affiliate.

18.2 Notices

All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when delivered personally; sent by registered or certified mail, return receipt requested; transmitted by facsimile and confirmed by first class mail; or sent by overnight courier

If to ECSI:

ECSI

Attention: ●

Fax: ●

- 36 -

With a copy to: ●

If to CLIENT:

The Consumers' Gas Company Ltd.

Attention: ●

Fax: ●

With a copy to: ●

or to such other persons or addresses which CLIENT or ECSI may from time to time designate in writing to the other.

18.3 No Authority

Neither party will have any authority, and neither party will represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party, except as provided in this Agreement. Each party is an independent contractor, and this Agreement will not be construed as creating a partnership, joint venture or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.

18.4 Compliance with Law

In connection with its respective rights and obligations under this Agreement, each party agrees to comply with all applicable laws, rules and regulations of Canada.

18.5 Choice of Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and Canada, as applicable to agreements executed and wholly performed therein, but without regard to the choice of law provisions thereof.

18.6 Severability

If any part of this Agreement is found to be invalid, all other provisions will remain in full force and effect and the provisions found invalid will be enforced to the maximum extent enforceable by law.

18.7 Further Assurances

Each party will execute, acknowledge and deliver all documents, provide all information, and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

18.8 Use of Name

ECSI may include CLIENT's name in any ordinary customer list prepared ECSI which accurately reflects the relationship between the parties. ECSI will not otherwise use CLIENT's name or trademark or logo in any other way without the prior written consent of CLIENT, which consent CLIENT may withhold within its reasonable discretion.

18.9 Force Majeure

Neither party will be liable for any delay or failure to perform its obligations under this Agreement to the extent that such delay or failure it caused by a force or event beyond the control of such party, including without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other Acts of God, but any such delay will be promptly communicated to the other party and the period of delayed or failed performance shall not exceed the period necessitated by such force majeure.

18.10 Amendment

Any changes to the terms and conditions of this Agreement will be specified in an Amendment to the Agreement signed by both parties.

18.11 Alterations

The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy under this Agreement, whether by agreement of the parties or by custom, course or dealing or trade practice, will not be effective unless in writing and signed by the party against whom enforcement of such waiver, amendment or modification is sought.

18.12 No Third-Party Beneficiaries

Nothing contained in this Agreement will be construed to give any person other than ECSI and CLIENT any legal or equitable right, remedy or claim under or with respect to this Agreement.

18.13 Copies of Agreement

This Agreement may be executed in any number of copies, each of which will be deemed an original and all of which together will constitute one and the same instrument.

18.14 Incorporation by Reference

The Exhibits, appendices and attachments attached hereto are an integral part of and are hereby incorporated by this reference into this Agreement and made a party hereof.

18.15 Number and Gender

All terms and words used in this Agreement regardless of the number and gender in which they are used, will be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words have been fully and properly written in the number and gender.

18.16 Headings

The headings of sections and paragraphs, if any, to the extent used herein are for convenience and reference only, in no way define, limit or describe the scope or intent of any provision hereof, and therefore will not be used in construing or interpreting the provisions hereof.

18.17 CLIENT Delay

Any delay, obstruction, or hindrance by CLIENT which materially affects ECSI's ability to perform its obligations under this Agreement will excuse an equivalent delay in ECSI's performance of its obligations under this Agreement.

18.18 ECSI Delay

Any delay, obstruction, or hindrance by ECSI which materially affects CLIENT's ability to perform its obligations under this Agreement will excuse an equivalent delay in CLIENT's performance of its obligations under this Agreement

18.19 Consents and Approvals

Whenever the consent or approval of a party under this Agreement is required, the consent or approval, if required to be obtained from ECSI, must be given by an officer or a senior executive of ECSI, and if required from CLIENT, must be given by an officer or authorized representative of CLIENT.

18.20 Waiver

Except as otherwise expressly provided for in this Agreement, waiver of strict performance of any provision of this Agreement will not be deemed a waiver nor will it prejudice the waiving party's right to require strict performance of the same provision or any other provision in the future unless such waiver has rendered future performance commercially impossible.

18.21 Survival

Upon termination of this Agreement, all accrued obligations or liabilities and the provisions which by their nature are intended to endure beyond such termination will remain in effect including, without limitation, Article 1, Section 11.2, Article 11, Article 12, Article 14, Article 15, and Sections 17.7 and 17.8.

18.22 Limitation in Time

No action, regardless of form, arising out of this Agreement may be brought by either party against the other more than one year after the cause of action arises.

18.23 Successors and Assigns

This Agreement will be binding upon and endure to the benefit of both parties and their respective successors and permitted assigns.

18.24 Publicity and Disclosures

No press releases or any public disclosure, either written or oral, of the transactions contemplated by this Agreement shall be made without the prior knowledge and written consent of CLIENT and ECSI. ECSI and CLIENT acknowledge, however, that ECSI and CLIENT may be legally obligated to make certain public announcements or filings from time to time regarding their respective businesses, including one or more announcements or filings regarding the transactions contemplated by this Agreement. Accordingly, CLIENT and ECSI agree that, notwithstanding any other provision of this Section 18.24, CLIENT and ECSI shall be free to

make such public announcements and filings to the extent required by law regarding the transactions contemplated by this Agreement at such time as CLIENT or ECSI reasonably believes such announcements are required in order to comply with applicable laws, provided that each provides the other with a copy of such announcement or filing prior to its release.

18.25 Entire Agreement

This Agreement and the Exhibits, appendices and attachments attached hereto contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by CLIENT in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. This Agreement may be separately executed by the parties in multiple counterparts, which separate together shall constitute a single, duly executed version of this Agreement. A photocopied and/or facsimile copy of this Agreement bearing the signature of each party, in a single document or as counterparts thereof as provided for herein above, shall be deemed an original execution version of this Agreement

Accepted by:

ECSI

THE CONSUMERS' GAS COMPANY LTD.

Per:

Per:

Authorized Signatory

Authorized Signatory

Name (type or print)

Name (type or print)

Title

Title

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Attachment 1: Service Definition

General

The Services provided by ECSI consist of operating the CIS and Host System using a computerized customer information system that is made up of integrated business functions (see CIS Service Definition below). Access to the Services is attained through client computer programs and connect to CLIENT's authorized employees and agents as determined by the CLIENT.

CIS Service Definition

ECSI will provide CLIENT with access to the Services which together with other systems will assist the CLIENT in managing the following customer business process related activities:

1. **Manage Site Information** - The activities involved in gathering and maintaining information about premises and their relationship to other premises and to sites:
2. **Manage Customer Information** - The activities involved in establishing and maintaining customer specific information, relationships to other customers, relationships to accounts, and relationships to premises.
3. **Manage Products & Services Information** - The activities involved in managing a catalogue of products and services.
4. **Manage Contracts & Agreements** - The activities involved in recording information in support of sales and service leads/orders, administering the agreement with the customer and administering the closure of a final contract for purposes of managing delivery and installation of products and services.
5. **Manage Marketing of Products & Services** - The activities involved in identifying target customers for particular products and services as well as administering and tracking promotions or programs.
6. **Manage Customer Contact** - The activities involved in interacting with the customer, determining the nature of the request, logging the communication and establishing follow-up work tasks if required.
7. **Manage Read Measurement** - The activities involved in establishing the meter reading schedules, routes, sequences, and assignments for manual, hand held, and automated measurement equipment for purposes of obtaining measurement information.

Operational Services and Responsibilities

The following table outlines the operational services and responsibilities of each party with respect to the ongoing use of the Services.

Service Description	ECSI Responsibility	CLIENT Responsibility
1. Operate the CIS and Host System for use by the CLIENT at the defined Service Level Targets (Attachment 2)	Yes	
2. Schedule CIS batch processes, interface files and report jobs	Yes	Yes
3. Execute CIS batch processes, interface files and report jobs	Yes	
4. Balance of daily billing run and batch processes	Yes	Yes
5. Print and distribute CIS reports	Yes	Yes
6. Print and mail invoices to customers		Yes
7. Maintain CIS Rules & Validation tables in the CIS production databases	Yes	Yes
8. Provide technical support for the CIS and Host System	Yes	
9. Monitor the CIS and Hosts System performance	Yes	
10. Manage communication networks use for CIS	Yes (from ECSI Host System to Demarcation Point)	Yes (from Demarcation Point to CLIENT System)
11. Provide Database backup and recovery	Yes	
12. Provide Disaster Recovery Plan, facility and test	Yes	Yes
13. Provide Help Desk support for CIS and Services (assumes 1 call per user per month)	Yes	Yes

Attachment 2: Service Level Targets

General

The parties acknowledge that key service measurements, service level targets, and the procedure for monitoring, reporting, evaluating, correcting and improving those service levels, are continuous improvement processes to achieve quality services under this Agreement. The parties will cooperate and negotiate in good faith to define and refine key service measurements and reasonable service level targets over the term of this Agreement and any extension thereof.

While the parties agree in principle that the key service measurements and service level targets listed in the following table are preliminary in nature, ECSI will collaborate with its agents, subcontractors and suppliers to review and establish practices to achieve these targets with reasonable best efforts. ECSI and CLIENT, however, agree to further define, refine and agree upon these service level targets within six (6) months after the Start Date or such other time as the parties may agree.

Key Service Criteria and Service Level Targets (Preliminary Targets - August, 1999)

Key Service Criteria	Frequency	Hours	Target
ECSI System Availability: <ul style="list-style-type: none"> ● Application, Database and Network (up to the Demarcation Point) 	Mon. - Sat.	01:00 - 06:00 EST	90%
	Mon. - Sat.	07:00 - 01:00 EST	98%
	Sunday	00:00 - 06:00 EST	0%
	Sunday	06:00 - 24:00 EST	90%
Interface Files Availability - to CLIENT <ul style="list-style-type: none"> ● Service Orders for Planning & Dispatch ● Bill Print File ● Meter Read - Download ● PAPP Bank Interface - Download ● Others - Download 	Daily	By 03:00 EST	98%
	Billing Days	By 03:00 EST	98%
	Billing Days	By 03:00 EST	98%
	Billing Days	By 03:00 EST	95%
Interface Files Availability - from CLIENT <ul style="list-style-type: none"> ● Service Orders for Planning & Dispatch ● Meter Read - Upload ● Cash Payments - Upload ● Others - Upload 	Daily	By 18:00 EST	98%
	Billing Days	By 18:00 EST	98%
	Billing Days	By 18:00 EST	98%
	Billing Days	By 18:00 EST	95%
Handling of User Access Requests: <ul style="list-style-type: none"> ● New User Setup ● Add/Change/Remove 	Business Days	24 hours Response	98%
	Others	Next Business Day	98%
Disaster Recovery <ul style="list-style-type: none"> ● Restore ECSI CIS System and Database at DRP site ● Restore Communication connection from DRP site to one designed site 	From Time of Declaration	Within 48 Hours	95%
	From Time of Declaration	Within 72 Hours	95%

Attachment 3: Activity Forecast

The schedule attached set out this Activity Forecast for the CLIENT for the purpose of calculating the annual Fees under the Term of this Agreement Both CLIENT and ECSI acknowledge that these forecasts are estimated on a best effort only.

The following definitions on Activity apply:

Profile: covers active, inactive and potential Customer, Premise, Account and Meter Equipment records maintained on the CIS databases. Service Activity Fee for Profile (all four) applies as one (1) service within the Services offered by ECSI. In addition, a one-time Set-Up Fee, if applicable, applies to each Profile record established on the databases after Contract Year 1 for any additional new Profile records set-up in subsequent Contract Years.

Meter Read: covers each meter read input into the CIS databases and for preparation and scheduling of meter reads. This includes special meter read for final bill, turn-on, lock-off, meter exchange and others. Meter read can be monthly, bi-monthly or other scheduled period. The annual Service Activity Fee for each Meter Read, covering both meter read input and output, applies as one (1) service within the Services offered by ECSI.

Delivery Charge: covers the delivery component of an account's bill excluding the commodity component. Delivery sometimes is shown on the customer bill as Delivery Charge, Customer Charge, Load Balancing Charge, Fixed Charge and/or Transportation Charge. The annual Service Activity Fee for each Delivery Charge record, covering any combination of charges, applies as one (1) service within the Services offered by ECSI.

Commodity Charge: covers the commodity portion of an account's bill excluding the delivery component. This includes ABC-T billing or other Energy Service Provider billing of the commodity charges. The annual Service Activity Fee for each Commodity Charge applies as one (1) service within the Services offered by ECSI.

Bills Produced: the aggregation of all meter reading and billing information for an account and formatting such information into the CLIENT's invoice format, for bills to be produced by the CLIENT. The annual Service Activity Fee applies as one (1) service within the Services offered by ECSI.

Finance Contract Transaction: covers the record maintenance and billing of finance contract item and charge. The annual Service Activity Fee for each Miscellaneous Transaction item applies as one (1) service within the Services offered by ECSI.

Rental Transaction: covers the record maintenance and billing of a rental item and charge. The annual Service Activity Fee for each Miscellaneous Transaction item applies as one (1) service within the Services offered by ECSI.

Miscellaneous Transaction: covers the record maintenance and billing of Miscellaneous item and charge. The annual Service Activity Fee for each Miscellaneous Transaction item applies as one (1) service within the Services offered by ECSI.

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