

**ENBRIDGE MANAGEMENT SERVICES INC.**

**-and-**

**ENBRIDGE INCOME FUND**

**-and-**

**CIBC MELLON TRUST COMPANY**

**-and-**

**ENBRIDGE COMMERCIAL TRUST**

---

**AGREEMENT TO AMEND**

**THE**

**ADMINISTRATIVE SERVICES AGREEMENT**

**Made as of June 27, 2003**

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**EFFECTIVE MAY 1, 2006**

## **AMENDING AGREEMENT**

**THIS AMENDING AGREEMENT** is made effective as of the 1<sup>st</sup> day of May, 2006 and amends the Administrative Services Agreement dated June 27, 2003 made among ENBRIDGE MANAGEMENT SERVICES INC., ENBRIDGE INCOME FUND, CIBC MELLON TRUST COMPANY and ENBRIDGE COMMERCIAL TRUST (the "Services Agreement").

### **RECITALS**

WHEREAS Section 12.02 of the Services Agreement provides that the Services Agreement may be amended by the Parties by instrument in writing executed by the duly authorized representatives of the Parties;

AND WHEREAS the Trust Indenture has, effective as of May 1, 2006, been amended and restated to, among other things, broaden the scope of permitted business activities that may be carried on by Fund;

AND WHEREAS the Parties desire to amend the Services Agreement as provided for herein, to take into account and give full effect to the recent amendments to the Trust Indenture;

NOW, THEREFORE, IN CONSIDERATION of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by all Parties) the Parties agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 One Agreement**

This Amending Agreement and the Services Agreement shall be read, interpreted, construed and have effect as, and shall constitute, one agreement with the same effect as if the amendments made by this Amending Agreement had been contained in the Services Agreement.

#### **1.2 References**

"This Amending Agreement", "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Amending Agreement (including the recitals) and not to any particular Article, Section or other portion hereof and include any and every instrument supplemental or ancillary hereto or in implementation hereof.

#### **1.3 Definitions**

Unless otherwise defined herein, all terms used in this Amending Agreement, including the recitals hereto, which are defined in the Services Agreement shall, for all purposes hereof, have the

meanings given to such terms in the Services Agreement unless the context otherwise specifies or requires.

#### **1.4 Interpretation Not Affected By Headings**

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement.

### **ARTICLE 2 AMENDMENTS TO THE SERVICES AGREEMENT**

#### **2.1 Amendments to Section 6.03**

Section 6.03 of the Services Agreement is hereby amended by deleting subparagraphs 6.03(a)(iii)(B) and (C) in their entirety and replacing them with the following new subparagraphs 6.03(a)(iii)(B) and (C):

“(B) engaging in the business of or activities pertaining directly or indirectly to, and/or the direct and indirect ownership, management, operation and lease of assets and property in connection with, energy infrastructure (and all activities related thereto), (C) acquiring or otherwise dealing with investments and other direct or indirect rights in Persons involved in the business of or activities pertaining directly or indirectly to energy infrastructure (and activities related thereto),”

### **ARTICLE 3 GENERAL**

#### **3.1 Confirmation**

As amended hereby, the Services Agreement is reaffirmed, approved and confirmed in every aspect, and shall remain in full force and effect.

#### **3.2 Waiver, Amendment**

Except as expressly provided in this Amending Agreement, no amendment or waiver of this Amending Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Amending Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Amending Agreement constitute a continuing waiver unless otherwise expressly provided.

**3.3 Counterparts and Formal Date**

This Amending Agreement may be executed in counterpart, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be dated and effective as of the day and year first set forth above. Any counterparts delivered by facsimile shall be deemed for all purposes to be original counterparts of this Amending Agreement.

**3.4 Governing Law**

This Amending Agreement shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect within the Province of Alberta.

**3.5 Enurement**

The provisions of this Amending Agreement shall enure to the benefit of, and be binding upon, all of the Parties and each of their respective successors and assigns.

**[Remainder of Page Left Intentionally Blank]**

IN WITNESS WHEREOF each of the Parties have executed this Amending Agreement by their proper officers duly authorized in that behalf with effect as of the day and year first written above.

**ENBRIDGE COMMERCIAL TRUST****ENBRIDGE MANAGEMENT SERVICES INC.**

Per: (signed) "Stephen J. Wuori"  
 Stephen J. Wuori,  
 Authorized Trustee

Per: (signed) "Leigh S. Cruess"  
 Leigh S. Cruess  
 Vice President, Business Development &  
 Chief Financial Officer

**ENBRIDGE INCOME FUND, by its trustee,  
CIBC Mellon Trust Company****CIBC MELLON TRUST COMPANY**

Per: (signed) "Frances van der Basch"  
 Name: Frances van der Basch  
 Title: Director, Relationship Management

Per: (signed) "Frances van der Basch"  
 Name: Frances van der Basch  
 Title: Director, Relationship Management

Per: (signed) "Norma Blasetti"  
 Name: Norma Blasetti  
 Title: Associate Director,  
 Relationship Management

Per: (signed) "Charndee Minhas"  
 Name: Charndee Minhas  
 Title: Authorized Signatory

(This is the execution page of the agreement dated as of May 1, 2006 to amend the Administrative Services Agreement dated June 27, 2003 among Enbridge Management Services Inc., Enbridge Income Fund, CIBC Mellon Trust Company and Enbridge Commercial Trust)

**ADMINISTRATIVE SERVICES AGREEMENT**

**Among**

**ENBRIDGE MANAGEMENT SERVICES INC.**

**-and-**

**ENBRIDGE INCOME FUND**

**-and-**

**CIBC MELLON TRUST COMPANY**

**-and-**

**ENBRIDGE COMMERCIAL TRUST**

**Dated June 27, 2003**

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## ADMINISTRATIVE SERVICES AGREEMENT

THIS AGREEMENT is made as of the 27<sup>th</sup> day of June, 2003

**AMONG:**

**ENBRIDGE MANAGEMENT SERVICES INC.**, a corporation incorporated under the laws of Canada (the “Administrator”)

- and -

**ENBRIDGE INCOME FUND**, an unincorporated trust established pursuant to the laws of Alberta (the “Fund”), by its trustee, **CIBC Mellon Trust Company**

- and -

**CIBC MELLON TRUST COMPANY**, a trust company incorporated under the laws of Canada (the “Trustee”)

- and -

**ENBRIDGE COMMERCIAL TRUST**, an unincorporated trust established pursuant to the laws of Alberta (“ECT”), by its initial trustee, **J. Richard Bird**

**WHEREAS** the Fund proposes to issue Trust Units to the public and to own units and notes of ECT and to own and hold certain other investments;

**AND WHEREAS** the Fund wishes to retain the Administrator to provide certain administrative and operational services in connection with the Fund and the Trust Units;

**NOW THEREFORE** in consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties), the Parties agree as follows:

### ARTICLE 1 - INTERPRETATION

**1.01**            **Definitions**

As used herein, the following terms shall have the meanings set forth below:

- (a)    “**Additional Information**” has the meaning ascribed thereto in Section 6.07;
- (b)    “**Adjustment Month**” has the meaning ascribed thereto in Section 3.02;
- (c)    “**Administrator Event of Termination**” means any of the events described in Section 9.03;

- (d) “**Administrative Services**” has the meaning ascribed thereto in Section 2.06;
- (e) “**Administrator Indemnitees**” has the meaning ascribed thereto in Section 7.01;
- (f) “**affiliate**” has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (g) “**Agreement**” means this administrative services agreement dated as of June 27, 2003, as amended, restated or modified from time to time;
- (h) “**Applicable Laws**” means all laws, rules, regulations, codes, policies, statutes, ordinances and orders, in effect from time to time, of all Governing Authorities having jurisdiction with respect to the Fund and its affiliates;
- (i) “**associate**” has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (j) “**Base Fee**” has the meaning ascribed thereto in Section 3.01;
- (k) “**Books and Records**” has the meaning ascribed thereto in subsection 9.08(a)(i);
- (l) “**Business Day**” means any day, other than a Saturday, Sunday or a day on which the principal chartered banks located at Calgary, Alberta are not open for business;
- (m) “**Change of Control**” means any change in the holding, direct or indirect, of securities of the Administrator whereby as a result of such change a Person not affiliated or associated with Enbridge Inc., or a group of Persons (none of which are affiliated or associated with Enbridge Inc.) acting in concert, are in a position to exercise Control of the Administrator whether such change in the holding of such securities occurs by way of take-over bid, reorganization, recapitalization, consolidation, amalgamation, arrangement, merger, transfer, sale or otherwise;
- (n) “**Claims**” has the meaning ascribed thereto in Section 7.01;
- (o) “**Closing**” has the meaning ascribed thereto in the Trust Indenture;
- (p) “**Conflict Matter**” has the meaning ascribed thereto in Section 6.03(a)(iv);
- (q) “**Confidential Information**” has the meaning ascribed thereto in Section 6.08;
- (r) “**Control**” for the purposes hereof, a Person or group of Persons shall be deemed to Control the Administrator if (i) voting securities of the Administrator carrying more than fifty percent (50%) of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such Person or Persons; and (ii) the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of the Administrator;

- (s) “**CPI**” means the Consumer Price Index for Canada (all items; not seasonally adjusted) as published from time to time by Statistics Canada or any successor agency; or if such index ceases to be published, such similar substitute index as is mutually agreed to between the Administrator and the ECT Independent Trustees;
- (t) “**Delegated Duties**” has the meaning ascribed thereto in Section 2.02, and is deemed also to include those duties and obligations delegated to the Administrator pursuant to the terms of the Trust Indenture;
- (u) “**Distributable Cash Flow**” has the meaning ascribed thereto in the Trust Indenture;
- (v) “**ECT**” means Enbridge Commercial Trust, a trust constituted by the ECT Trust Indenture;
- (w) “**ECT Annuitant**” has the meaning ascribed thereto in subsection 1.06(b);
- (x) “**ECT Independent Trustee**” means an “Independent Trustee”, as defined in the ECT Trust Indenture;
- (y) “**ECT Trustees**” means, at any time, those individuals who are, in accordance with the terms of the ECT Trust Indenture, the trustees of ECT at that time;
- (z) “**ECT Trust Indenture**” means the trust indenture dated December 20, 2002 (to be amended and restated as of June 30, 2003) and entered into among J. Richard Bird, as initial trustee, 201202 Income Fund, as settlor and initial unitholder, and Enbridge Management Services Inc., as manager, as the same may be further amended, supplemented or restated from time to time;
- (aa) “**ECT Units**” means and includes both Common Units and Preferred Units (as each such term is defined in the ECT Trust Indenture), and “**ECT Unit**” means a Common Unit or Preferred Unit, as the case may be and the context so requires;
- (bb) “**Effective Date**” means the 27<sup>th</sup> day of June, 2003;
- (cc) “**Enbridge Parties**” has the meaning ascribed thereto in Section 6.03(a)(iii);
- (dd) “**Exchangeable Securities**” has the meaning ascribed thereto in the Trust Indenture;
- (ee) “**Experts**” has the meaning ascribed thereto in Section 6.04(b);
- (ff) “**Fiscal Year**” means the initial period from the Effective Date to and including December 31, 2003, and thereafter means each period of twelve (12) calendar months beginning January 1 and ending December 31 of each year;
- (gg) “**Force Majeure**” means for the purposes hereof, an event, condition or circumstance (and the effect thereof) which is not within the reasonable control of the Party claiming Force Majeure and which, notwithstanding the exercise of commercially reasonable efforts, the Party claiming the Force Majeure is unable to

prevent its occurrence or mitigate its effects, and which thus causes a delay or disruption in the performance of any obligation (other than the obligation to pay money due) imposed on such Party hereunder. Subject to the foregoing, Force Majeure shall include, without limitation, strikes, lock-outs, work stoppages, work slow-downs, industrial disturbance, storm, fire, flood, landslide, snowslide, earthquake, explosion, lightning, tempest, acts of war (whether declared or undeclared), threat of war, actions of terrorists, blockade, riot, insurrection, civil commotion, public demonstrations, revolution, sabotage or vandalism, acts of God, laws, rules, regulations, policies, orders, directives or restraints issued or imposed by any Governing Authority, and inability to obtain, maintain or renew or delay in obtaining, maintaining or renewing necessary permits or approvals from any Governing Authority; provided, however, that a Party's own lack of funds or other financial problems shall not constitute "Force Majeure" in respect of such Party;

- (hh) **"Fund"** means Enbridge Income Fund, an unincorporated trust constituted by the Trust Indenture;
- (ii) **"Fund Annuitant"** has the meaning ascribed thereto in Section 1.06(a);
- (jj) **"Fund Claims"** has the meaning ascribed thereto in Section 7.02;
- (kk) **"Fund Delegation Agreement"** means the fund delegation agreement among ECT, the Fund and the Trustee, to be dated as of the 30<sup>th</sup> day of June, 2003 and pursuant to which ECT will be delegated responsibility to provide certain services to the Fund, for and on behalf of the Trustee, as amended, restated or modified from time to time;
- (ll) **"Fund Event of Termination"** means any of the events described in Section 9.01;
- (mm) **"Fund Expenses"** has the meaning ascribed thereto in Section 3.03 hereof;
- (nn) **"Fund Indemnities"** has the meaning ascribed thereto in Section 7.02;
- (oo) **"Fund Property"** has the meaning ascribed thereto in the Trust Indenture;
- (pp) **"Governing Authority"** means any stock exchange or any court or governmental department, regulatory agency or body, commission, board, bureau, agency, or instrumentality of Canada, or of any state, province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing;
- (qq) **"GST"** has the meaning ascribed thereto in Section 3.05;
- (rr) **"Income Tax Act"** means the *Income Tax Act* (Canada), R.S.C. 1985, Chapter 1 (5th Supplement) and the regulations thereunder as amended from time to time;
- (ss) **"Indenture Conferred Duties"** means all rights, powers and duties conferred upon and granted to the Administrator pursuant to the terms of the Trust Indenture;

- (tt) “**Initial Term**” has the meaning ascribed thereto in Section 8.01;
- (uu) “**Management Agreement**” means the agreement between the Administrator and ECT made as of the 27<sup>th</sup> day of June, 2003 and pursuant to which the Administrator has been appointed to provide management services to ECT in respect of its operations, as amended, restated or modified from time to time;
- (vv) “**Management Services**” means all of those services and duties to be provided by the Administrator pursuant to the Management Agreement and any other agreement under which the Administrator provides, to any affiliate or associate of the Fund, services in the nature of management or administrative services;
- (ww) “**Ordinary Resolution**” has the meaning ascribed thereto in the Trust Indenture;
- (xx) “**Ordinary Units**” has the meaning ascribed thereto in the Trust Indenture;
- (yy) “**Parties**” means the Administrator, the Trustee, the Fund and ECT, and “**Party**” means any one of them;
- (zz) “**Permitted Activities**” has the meaning ascribed thereto in subsection 6.03(a)(iii);
- (aaa) “**Person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations (including governments, agencies and political subdivisions thereof), whether or not legal entities;
- (bbb) “**Prospectus**” means the final prospectus of the Fund dated June 23, 2003, relating to an initial public offering of Ordinary Units filed with various securities commissions or similar authorities in Canada to qualify the issue and distribution of the Ordinary Units, and includes any amendment to such final prospectus;
- (ccc) “**Public Offering**” means the initial public offering of Ordinary Units described in the Prospectus;
- (ddd) “**Renewal Term**” has the meaning ascribed thereto in Section 8.02;
- (eee) “**Service Providers**” has the meaning ascribed thereto in Section 6.06;
- (fff) “**Subordinated Units**” has the meaning ascribed thereto in the Trust Indenture;
- (ggg) “**Term**” means the Initial Term plus the Renewal Terms;
- (hhh) “**Transaction**” has the meaning ascribed thereto in the Fund Delegation Agreement;
- (iii) “**Transfer Agent**” has the meaning ascribed thereto in the Trust Indenture;
- (jjj) “**Trustee**” means CIBC Mellon Trust Company;

- (kkk) **“Trust Indenture”** means the trust indenture made as of May 22, 2003 (to be amended and restated as of June 30, 2003) and entered into among the Trustee, Enbridge Management Services Inc., as settlor and administrator, and IPL Holdings Inc., as initial unitholder, as the same may be amended, restated or modified from time to time;
- (lll) **“Trust Units”** means and includes both the Ordinary Units and the Subordinated Units of the Fund, and **“Trust Unit”** means an Ordinary Unit or Subordinated Unit of the Fund, as the case may be and the context so requires;
- (mmm) **“Unitholders”** means the holders, from time to time, of one or more Trust Units; and
- (nnn) **“Voting Exchangeable Securities”** has the meaning ascribed thereto in the Trust Indenture.

Capitalized terms used in this Agreement, but not defined in this Section 1.01 or elsewhere in this Agreement, have the same meanings ascribed thereto in the Trust Indenture.

## **1.02            Headings for Reference Only**

The division of this Agreement into Articles, Sections, subsections, paragraphs and subparagraphs, the provision of a Table of Contents, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

## **1.03            Interpretation**

Words importing the singular number only shall include the plural and vice versa. Words importing gender shall include all genders. Where the word “including” or “includes” is used in this Agreement it means “including without limitation” or “includes without limitation”, respectively. Any reference to any document shall include a reference to any schedule, amendment or supplement thereto or any agreement in replacement thereof, all as permitted under such document.

A reference herein to any statute includes every regulation (and other similar ancillary instrument having the force of law) made pursuant thereto, all amendments to the statute or to any such regulation (or other similar ancillary instrument) in force from time to time, and any statute or regulation (or other similar ancillary instrument) which supplements or supersedes such statute or regulation (or other similar ancillary instrument); and a reference to any section or provision of a statute includes all amendments to such section or provision, as made from time to time, and all sections or provisions which supplement or supersede such section or provision referred to herein.

## **1.04            Accounting Principles**

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to

time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement or any document, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the Parties, be made in accordance with generally accepted accounting principles applied on a consistent basis.

## **1.05 Funds**

All dollar amounts referred to in this Agreement are in lawful money of Canada.

## **1.06 General Limitation of Liability and Indemnification**

- (a) The Parties hereto acknowledge that the Trustee is entering into this Agreement solely in its capacity as trustee, on behalf of the Fund, and the obligations of the Fund hereunder shall not be personally binding upon the Trustee, any of the Unitholders, or any annuitant, subscriber or beneficiary under a plan of which a Unitholder is a trustee or carrier (“**Fund Annuitant**”) and that any recourse against the Fund, the Trustee or any Unitholder or Fund Annuitant in any manner in respect of any indebtedness, obligation or liability of the Fund arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any, including claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Fund Property.
- (b) The Parties hereto acknowledge that the ECT Trustees are entering into this Agreement solely in their capacity as trustees, on behalf of ECT, and the obligations of ECT hereunder shall not be personally binding upon any of the ECT Trustees, any of the holders of ECT Units or any annuitant, subscriber or beneficiary under a plan of which a holder of ECT Units is a trustee or carrier (“**ECT Annuitant**”), and that any recourse against ECT, the ECT Trustees, any holder of ECT Units or any ECT Annuitant in any manner in respect of any indebtedness, obligation or liability of ECT arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, if any, including claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Property (as defined in the ECT Trust Indenture).

## **ARTICLE 2 - ADMINISTRATOR’S SERVICES AND POWERS**

### **2.01 Delegation to Administrator**

The Trustee hereby delegates solely and exclusively to the Administrator, and the Administrator hereby agrees to be responsible for, the general administration of the affairs of the Fund as more particularly set forth in Section 2.02 below.

## 2.02 Delegated Duties

Subject to and in accordance with the terms, conditions and limitations herein contained (including those set forth in Section 2.09 hereof), the Administrator shall, on a sole and exclusive basis during the Term, provide and perform, or procure from its affiliates, associates or third parties, all general administrative and operational services, other than those set forth in Section 2.05, as may be required or advisable, from time to time, in order to administer the operations of the Fund (the “**Delegated Duties**”), including, the following services:

- (a) prepare all returns, filings and documents and make all determinations necessary for the discharge of the Trustee's obligations under Article 15 of the Trust Indenture;
- (b) prepare, or cause to be prepared, the annual audited and interim unaudited financial statements of the Fund, as well as relevant tax information, which are to be provided to Unitholders;
- (c) submit all income tax returns and filings to the Trustee in sufficient time prior to the dates upon which they must be filed so that the Trustee has a reasonable opportunity to execute them and return them to the Administrator, and arrange for their filing within the time required by applicable tax law;
- (d) open, operate and close accounts and make other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (e) compute, determine, declare and direct distributions to Unitholders which are properly payable by the Fund and, in connection therewith, withhold (or direct the Trustee to withhold) all amounts required by applicable tax law, and make all such remittances and filings (or direct the Trustee to make all such remittances and filings) in connection with such withholdings;
- (f) ensure compliance by the Fund with all Applicable Laws, including without limitation, securities legislation and related regulation;
- (g) provide investor relations services to the Fund;
- (h) call and hold all annual and/or special meetings of Unitholders pursuant to Article 10 of the Trust Indenture and prepare, approve and arrange for the distribution of all materials (including notices of meetings and information circulars) in respect thereof;
- (i) prepare and cause to be provided to Unitholders on a timely basis all information to which Unitholders are entitled under the Trust Indenture and under Applicable Laws, including quarterly and annual reports, notices, financial reports and tax information relating to the Fund;
- (j) attend to all administrative and other matters arising in connection with any redemptions of Trust Units;

- (k) ensure that the Fund elects in the prescribed manner and within the prescribed time under subsection 132(6.1) of the Income Tax Act to be a “mutual fund trust” within the meaning of that act since inception (assuming the requirements for such election are met), monitor the Fund’s status as such a mutual fund trust, and provide the Trustee with written notice when the Fund ceases or is at risk of ceasing to be such a mutual fund trust;
- (l) monitor the status of the Ordinary Units as to their eligibility for investment through a “registered retirement savings plan” a “registered retirement income fund” a “registered education savings plan” or a “deferred profit sharing plan” (all as defined in the Income Tax Act), and provide the Trustee with written notice when the Ordinary Units cease, or are at risk of ceasing, to be so eligible;
- (m) monitor the investments of the Fund in an effort to keep the aggregate cost amount of the “foreign property” of the Fund (within the meaning of the Income Tax Act) within the limits prescribed in the Income Tax Act, so as not to expose Unitholders to Part XI tax under such act;
- (n) undertake and perform all acts, duties and responsibilities in connection with acquiring or disposing of assets and property, for and on behalf of the Fund, of whatsoever nature or kind;
- (o) undertake and perform all acts, duties and responsibilities as considered necessary or desirable for the purpose of completing the Public Offering, including:
  - (i) approve, execute and deliver, on behalf of the Fund, the Prospectus and any amendments to the Prospectus in such form as the Administrator considers necessary or desirable;
  - (ii) approve, execute and deliver, on behalf of the Fund, the underwriting agreement, all agreements relating to the acquisitions of, or other investments in, the assets and other properties that will comprise the Fund Property immediately following Closing (including the Canadian Pipeline Interests, as defined and described in the Prospectus), and all instruments, contracts and other documents requiring execution by the Fund in connection with the Public Offering, in such form and containing such terms and conditions as the Administrator may approve; and
  - (iii) approve, execute and deliver such other contracts, documents, instruments and agreements, and make all applications and filings with any applicable Governing Authorities, and take such other actions as the Administrator considers necessary or desirable;
- (p) undertake and perform all acts, duties and responsibilities as considered necessary or desirable for the purpose of completing any sale of securities of the Fund, from time to time, subsequent to the Public Offering, including preparing and approving any prospectus or comparable documents of the Fund to qualify the sale of any such securities;

- (q) establish, implement and amend (when and as required, once established) any distribution reinvestment plans, Trust Unit purchase plans, and incentive option and other compensation plans as may be determined by the Administrator to be desirable for the Fund to establish, and attend to all matters in connection with the operation of such plans;
- (r) attend to all matters in connection with the administration of the operation of any Unitholder rights plan;
- (s) determine the amount of Distributable Cash Flow, Income of the Fund and Net Realized Capital Gains (as each such term is defined in the Trust Indenture) pursuant to Article 5 of the Trust Indenture;
- (t) promptly notify the Fund of any event that might reasonably be expected to have a material adverse effect on the affairs of the Fund;
- (u) exercise the discretion which the Trustee is otherwise permitted to exercise under the Trust Indenture pursuant to those Sections of the Trust Indenture enumerated in Section 13.2 thereof;
- (v) approve, execute and deliver, on behalf of the Fund, such agreements, including exchange agreements and exchangeable security support agreements, as may be necessary or desirable to properly provide for the terms of Exchangeable Securities, including coattail provisions for the Trust Units in the event of a non-exempt take-over bid for the Exchangeable Securities and the conversion, exercise, redemption or exchange of such Exchangeable Securities for Trust Units (including the conditional and automatic conversion, exercise, redemption or exchange of such Exchangeable Securities in the event of a take-over bid for the Trust Units);and
- (w) generally provide all other services as may be necessary, or as requested by the Trustee, for the administration of the Fund and which are not otherwise expressly delegated to the Administrator under the terms of the Trust Indenture or the foregoing subsections 2.02(a) – (v), excluding, however, any of those matters which are referred to in Section 2.05.

For further certainty, the Delegated Duties shall be deemed to include, for all purposes of this Agreement, those duties and obligations delegated to the Administrator pursuant to the terms of the Trust Indenture and those duties and obligations delegated to the Administrator (if any) as referred to in subsection 2.05(b) hereof.

Upon the request of the Administrator, the Fund shall notify such parties as requested by the Administrator of the appointment of the Administrator under this Agreement and shall execute all directions and other instruments as may be necessary to evidence, document or otherwise give effect to the Administrator's authority under this Agreement.

Notwithstanding the date hereof, the Administrator shall be deemed to have had, from and after May 22, 2003, the power, authorities and duties delegated to it hereunder. The Trustee, on behalf of the Fund, hereby ratifies any actions taken by the Administrator on behalf of the Trustee or

the Fund prior to the Effective Date to the extent that such actions are not inconsistent with the terms set forth in this Agreement.

### **2.03 Administrator's Acknowledgement**

The Administrator acknowledges that it is a party to the Trust Indenture and is familiar with and understands the duties of the respective parties thereto, including those duties of the Trustee which are being delegated to the Administrator under this Agreement and the Trust Indenture, and the Administrator agrees to perform the Delegated Duties in accordance with any applicable terms, conditions and limitations, as contained in the Trust Indenture, in respect to the performance of such services, including, without limitation, exercising all of the voting rights attached to the ECT Units held by the Fund in accordance with the terms of the Trust Indenture.

### **2.04 Non-Resident Unit Holders**

- (a) The Administrator shall use reasonable efforts to monitor the residence status of beneficial owners of Ordinary Units. If, at any time, the Administrator is of the opinion that the Trustee should require declarations as to the resident status of beneficial owners of Ordinary Units under Section 3.7 of the Trust Indenture, it shall so advise the Trustee and the Transfer Agent and with their co-operation the Administrator shall ensure that such declarations are obtained, as required. If, in the reasonable opinion of the Administrator, the beneficial owners of 49% or more of the Ordinary Units then outstanding are or may be non-residents of Canada within the meaning of the Income Tax Act or such a situation is imminent, it shall so advise the Trustee and provide the Trustee with an announcement thereof in a form suitable for use by the Trustee pursuant to Section 3.7 of the Trust Indenture. If the Administrator reasonably believes that 49% or more of the Ordinary Units are beneficially owned by non-residents of Canada, it shall prepare and furnish to the Trustee notices for sending to such non-resident holders of Ordinary Units requiring them to sell their Ordinary Units or a specified portion thereof within a specified period of time of not less than 60 days, in accordance with Section 3.7 of the Trust Indenture. The Trustee shall provide the Administrator with such information, including information as to the order of acquisition or registration of Ordinary Units by the beneficial owners thereof, as the Administrator may reasonably request, from time to time, and as the Trustee may have in its possession in order to assist the Administrator in fulfilling its obligations under this Section.
- (b) If the Administrator consents to non-residents of Canada (within the meaning of the Income Tax Act) becoming beneficial owners of Subordinated Units, then the Administrator shall use reasonable efforts to monitor, in a manner substantially in accordance with its obligations in respect to monitoring the non-residence status of beneficial holders of Ordinary Units (as set forth in subsection 2.04(a) above), the residence status of the beneficial owners of the Subordinated Units, and the Trustee shall cooperate in all reasonable respects with respect to such monitoring.
- (c) In addition to the foregoing, it shall be the responsibility of the Administrator to determine, in its absolute discretion, whether to require a declaration from any person

who is, or is desiring to become, a beneficial owner of Trust Units which states, among other things, that such person is not a U.S. Qualified Plan (as defined in the Trust Indenture). If, at any time, the Administrator is of the opinion that the Trustee should require such declarations, it shall so advise the Trustee and the Transfer Agent and with their co-operation the Administrator shall ensure that such declarations are obtained, as required.

- (d) The Administrator may arrange for the Transfer Agent to maintain a record of (a) all documentation received by or on behalf of the Fund pertaining to the resident status of beneficial owners of Trust Units (including a copy of all declarations received), and (b) all documentation received (including declarations) from persons pertaining to, among other things, whether or not such persons are a U.S. Qualified Plan (as defined in the Trust Indenture).

## **2.05 Services for which Administrator is not Responsible**

- (a) Notwithstanding any provision herein contained, the delegation to the Administrator of the right and obligation to perform or procure all general administrative and operational services as may be required or advisable, from time to time, in order to administer the operations of the Fund (as more particularly set forth in Section 2.02) shall not, except as set forth below in subsection 2.05(b), be construed to include or be deemed to include:
- (i) the delegation, by the Trustee, of its rights, powers, authorities and duties to act on behalf of the Fund and be responsible for:
    - (A) the issue, certification, exchange or cancellation of Trust Units;
    - (B) the maintenance of registers of Unitholders;
    - (C) making the distribution of payments or property to Unitholders and statements in respect thereof;
    - (D) any mailings to Unitholders of materials which are to be so mailed; and
    - (E) any matters ancillary or incidental to any of those set forth in subsections 2.05(a)(i)(A)-(D) above; and
  - (ii) the delegation, by the Trustee, of any of the following rights, powers, authorities and duties, each of which will be delegated by the Trustee to ECT pursuant to the Fund Delegation Agreement:
    - (A) determining the timing and terms of future offerings (other than the Public Offering) of Trust Units, if any;
    - (B) undertaking (other than in connection with the Public Offering) all matters in connection with the issue, sale or pledge of debt

obligations or guarantees of the Fund, whether secured or unsecured, including establishing credit facilities or other borrowing arrangements, as required;

- (C) undertaking and performing (other than in connection with the Public Offering), by and through the audit committee of ECT, all acts and making all decisions and doing all other things, for and on behalf of the Fund, as is required by Applicable Law of an audit committee of the Fund;
- (D) undertaking, in the event that following Closing the interests of any of the Enbridge Parties come into material conflict with those of the Fund or its affiliates or associates with respect to any material matter or transaction, responsibility to make all decisions and take, or cause to be taken, all such actions for and on behalf of the Fund relating to such matter or transaction in respect of which the material conflict of interest has arisen;
- (E) determining the timing and terms of any offer by the Fund for, and repurchase by the Fund of, previously issued Trust Units;
- (F) determining whether to make any amendments to the Trust Indenture, as in the opinion of ECT Trustees may be necessary or appropriate, in order to provide Unitholders with the benefit of any legislation limiting their liability (including, if appropriate, amendments to effect a change in the *situs* of the Fund or the laws governing the Fund); and
- (G) undertaking all matters in connection with any Transaction, including the following:
  - (I) establishing, implementing and amending (when and as required, once established) any Unitholder rights plan as ECT may determine to be desirable for the Fund to establish;
  - (II) issuing news releases and ensuring compliance by the Fund with its continuous disclosure obligations under all applicable securities legislation;
  - (III) providing or arranging for the provision of investor relations services to the Fund;
  - (IV) approving, preparing or causing to be prepared, and sending or causing to be sent to Unitholders, any circular or other disclosure documents (and all amendments thereto) required under applicable securities legislation in response to any offer for the Trust Units;

- (V) calling, holding, and preparing or causing to be prepared, all materials (including notices of meetings and information circulars) in respect of all special meetings of Unitholders required in connection with any Transaction; and
  - (VI) making all determinations, entering all agreements, preparing all documents and taking all other actions with respect to any Transaction which ECT may determine to be necessary, expedient, desirable or advisable for the best interests of the Fund and its Unitholders, and so as to comply with all Applicable Laws.
- (b) It is acknowledged that pursuant to the terms of the Fund Delegation Agreement ECT has been given the right, in its discretion, to delegate responsibility to the Administrator for carrying out some or all of the requisite actions or matters necessary to execute the decisions made by ECT in connection with those matters delegated to ECT by the Trustee, as set forth in subsection 2.05(a)(ii) above. Where ECT expressly or impliedly delegates such responsibility to the Administrator, then such activities and matters for which the Administrator is delegated responsibility shall be considered and deemed to be part of the duties and obligations being provided by the Administrator to the Fund pursuant to this Agreement, the performance of which shall be subject to the terms, conditions and limitations set forth herein, provided, however, that in the event that the Administrator is delegated responsibility to undertake actions or matters in connection with a Conflict Matter, then for the purposes of construing the standard of care in Section 6.01 of this Agreement and compliance therewith by the Administrator, due regard shall be given to the fact that the Administrator is having to carry out its duties in circumstances in which its interests are, to at least some extent, in conflict with those of the Fund.

## **2.06 The Administrative Services**

The Parties acknowledge that by the terms of the Trust Indenture (a) the Administrator has been granted the obligation to perform and provide, for and on behalf of the Fund, the Indenture Conferred Duties, and (b) the exercise and performance of the Indenture Conferred Duties have been made subject to the terms, conditions and limitations applicable in respect to the exercise and performance, by the Administrator, of the duties delegated to it hereunder; accordingly, the Parties agree that both the Delegated Duties and the Indenture Conferred Duties (collectively hereinafter referred to as the “**Administrative Services**”) shall each be exercised and performed in accordance with and subject to the terms, conditions and limitations set forth herein.

## **2.07 Covenants of the Administrator and Others**

- (a) The Administrator covenants and agrees that in the performance of the Administrative Services it shall:
  - (i) perform all such services at all times in compliance with Applicable Laws;

- (ii) observe and perform or cause to be observed and performed on behalf of the Fund, in every material respect, the provisions of all agreements from time to time entered into by the Fund in connection with the activities of the Fund;
  - (iii) not commingle its own funds, or funds it holds for any Person other than the Fund, with any funds held by it on behalf of the Fund; and
  - (iv) provide to the Trustee, on an annual basis, within forty-five (45) days following December 31 of each year while this Agreement is in effect, an annual certificate substantially in the form of that attached hereto as Schedule A.
- (b) The Administrator further covenants and agrees that it shall implement a trading and disclosure policy, for and on behalf of the Fund, which shall require that the Fund and all insiders thereof (as determined in accordance with applicable securities legislation, and including ECT, the Administrator, Enbridge Income Partners GP Inc. and Enbridge Inc., and the directors, trustees and senior officers thereof), who are required to file reports of their trades in securities of the Fund, file such reports within the time periods prescribed under applicable securities legislation.

## **2.08 Power and Authority of Administrator**

In accordance with Section 13.1 of the Trust Indenture, and subject to and in accordance with the terms, conditions and limitations herein contained (including Section 2.09), the Administrator is hereby delegated by the Trustee and, to the extent applicable or required, granted by the Fund, full and absolute right, power and authority during the Term to provide, for and on behalf of the Fund, all of the Administrative Services and to take and do, for and on behalf of the Fund, in connection with the provision of all such Administrative Services, all such actions and all such things which the Administrator deems appropriate, in its sole discretion, in connection with the provision of such services, including the right, power and authority to execute and deliver all contracts, leases, licenses, and other documents, instruments and agreements, and to make all applications and filings with any Governing Authorities, and to take such other actions as the Administrator considers appropriate in connection with the business of the Fund, in the name of and on behalf of the Fund. No Person shall be required to determine the authority of the Administrator to give any undertaking or enter into any commitment on behalf of the Fund.

## **2.09 Restrictions on the Administrator's Powers and Authorities**

In the exercise of its powers and authority and in the performance of the Administrative Services and the other obligations, covenants and responsibilities hereunder, the Administrator shall not:

- (a) charge or receive fees and expense reimbursement for the performance of the Administrative Services other than the fees and expense reimbursement as contemplated pursuant to Article 3 hereof, unless the prior written approval of a majority of the ECT Independent Trustees is obtained; and

- (b) have the authority to enter into or commit to any transaction which, in accordance with the terms of the Trust Indenture, requires the approval of the Unitholders, without first obtaining such approval.

**2.10 Execution of Documents**

In carrying out the Administrative Services, the Administrator may execute, for and on behalf of the Fund, any instrument or document which the Administrator considers appropriate, in its sole discretion. Any such instrument or document shall be executed in accordance with, or substantially in accordance with, the following:

- (a) ENBRIDGE INCOME FUND  
By its Administrator, ENBRIDGE MANAGEMENT SERVICES INC.

Per: \_\_\_\_\_  
Authorized Signatory

and

- (b) in the case of any document required to be executed on behalf of the Fund in connection with a prospectus as follows:

ENBRIDGE INCOME FUND

By: Enbridge Management Services Inc., Administrator of the Fund

and provide for such signatures as may be required by Applicable Laws.

All commercially reasonable efforts shall be made to ensure that every contract entered into on behalf of the Fund by the Administrator shall (except as the Administrator may otherwise expressly agree in writing with respect to the liability of the Administrator) include a provision substantially to the following effect:

The parties hereto acknowledge that [the Administrator] is entering into this agreement solely in its capacity as agent on behalf of [the Fund] and the obligations of [the Fund] hereunder shall not be personally binding upon the [Trustee], [the Administrator], any of the unitholders of [the Fund] (“Unitholder”) or any annuitant, subscriber or beneficiary under a plan of which a Unitholder is a trustee or carrier (an “annuitant”) and that any recourse against [the Fund], the [Trustee], [the Administrator], any Unitholder or annuitant in any manner in respect of any indebtedness, obligation or liability of [the

Fund] arising hereunder or arising in connection herewith or from the matters to which this agreement relates, if any, including without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Fund Property as defined in the Trust Indenture of [the Fund] dated as of May 22, 2003, as the same may be amended, restated or modified.

The rights conferred by any such provision shall be enforced by the Administrator for its benefit and the benefit of the Fund and shall be held in trust and enforced by the Administrator for the benefit of the Trustee, the holders of Trust Units and Fund Annuitants. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the Trustee, the Administrator, any holder of Trust Units or any Fund Annuitant.

### **ARTICLE 3 - FEES AND PAYMENT OF EXPENSES**

#### **3.01           Base Fee**

Subject to adjustment in accordance with Section 3.02, the Fund shall pay to the Administrator, for rendering the Administrative Services, an amount equal to \$50,000 per annum (the “**Base Fee**”), which fee shall be payable in equal quarterly instalments, in arrears, provided that, for any Fiscal Year which is not a complete calendar year (including the 2003 Fiscal Year, and any Fiscal Year shortened due to the expiration or other termination of this Agreement), the Base Fee shall be pro-rated so as to equal the product obtained when the Base Fee for the applicable Fiscal Year is multiplied by the quotient obtained when the number of days during which this Agreement is in effect in the applicable Fiscal Year, is divided by 365.

#### **3.02           Adjustment of the Base Fee**

- (a) The Base Fee shall be adjusted annually in January of each year (the “**Adjustment Month**”) with such adjusted Base Fee to be effective as of and from January 1 of each such year, with the first such adjustment to be made in January of 2004. The new Base Fee for each year, commencing with the 2004 year, shall be calculated as follows:

$$\text{adjusted Base Fee} = \$50,000 \times \frac{\text{CPI(N)}}{\text{CPI(O)}}$$

Where:

CPI(N) is the CPI for the Adjustment Month for the year in question; and

CPI(O) is 122.0, the current CPI reported as of the Effective Date.

- (b) At any time, and from time to time, when the Fund is in the process of completing an acquisition of or investment in, whether direct or indirect, further assets or other interests or properties of whatever nature or kind, the Fund hereby agrees to meet with the Administrator to negotiate, in good faith, an appropriate adjustment to the

Base Fee to compensate the Administrator for additional time, effort and expense in administering a changed asset base subsequent to the completion of the aforesaid acquisition or investment. In the event that a new Base Fee is agreed to, the Parties shall make all other necessary ancillary amendments to this Agreement, including amendments to Sections 3.01 and 3.02(a) as required, provided that any such amendments must be approved as required herein or in the Trust Indenture.

### **3.03 Expense Reimbursement**

The Administrator or its affiliates (where an affiliate is performing some of the services to be provided hereunder) shall be paid by or on behalf of the Fund, as set forth in Section 3.04 below, an amount equal to all out-of-pocket and third party fees, costs, and expenses reasonably incurred by the Administrator or its affiliates in carrying out the Administrator's obligations and duties hereunder in connection with the provision and performance of the Administrative Services and the Administrator's other duties and obligations to be provided hereunder (hereinafter "**Fund Expenses**"). The reimbursement of Fund Expenses to the Administrator or its affiliates is not intended to provide the Administrator or its affiliates with any financial gain or loss.

### **3.04 Invoicing and Payment**

The Base Fee and Fund Expenses are payable on a quarterly basis and the Administrator, in the month immediately following the end of each fiscal quarter, shall be responsible to calculate the Base Fee and Fund Expenses as are payable for the immediately preceding fiscal quarter.

The Administrator shall be responsible to invoice the Fund, on a quarterly basis as soon as is practicable following the end of a fiscal quarter, for the Base Fee and Fund Expenses for the immediately preceding fiscal quarter and each invoice shall set out the exact amount of the Base Fee and Fund Expenses payable for such immediately preceding fiscal quarter together with the related GST (as defined below). Each invoice shall provide reasonably sufficient detail pertaining to the composition of the aggregate Fund Expenses set forth therein. The Administrator shall provide such additional detail pertaining to the Fund Expenses as is requested by the Fund, acting reasonably, and within the possession of the Administrator. Invoices shall be paid by or on behalf of the Fund within 15 days of invoicing.

### **3.05 Payment of GST**

Unless otherwise provided in this Agreement, all amounts expressed herein to be payable to the Administrator pursuant to this Agreement are exclusive of any goods and services tax required to be paid thereon pursuant to the *Excise Tax Act* (Canada) or otherwise (collectively, the "**GST**") and it is agreed that the Administrator shall be paid by the Fund, in addition to all amounts otherwise payable to the Administrator hereunder, all amounts of GST collectible by the Administrator with respect to all amounts otherwise payable to the Administrator hereunder and such GST shall be included by the Administrator in each invoice rendered by it.

### **3.06 Failure to Pay When Due**

Any amount payable by the Fund to the Administrator hereunder and which is not remitted to the Administrator when so due shall remain due (whether on demand or otherwise) and interest will

accrue on such overdue amounts (both before and after judgement), at a rate per annum equal to the prime rate or reference rate on commercial loans in Canada, as posted and charged by the Administrator's principal banker, plus 1% per annum from the date payment is due until the date payment is made.

## **ARTICLE 4 - RECORDS**

### **4.01 Books and Records**

The Administrator shall maintain proper books, records and documents in which complete, true and correct entries in conformity, in all material respects, with generally accepted accounting principles (if applicable) and all applicable requirements of Applicable Laws will be made in respect of the performance of the Administrator's services under this Agreement. All such books and records shall be maintained, or made available for examination, at the Administrator's head office in the Province of Alberta or wherever else maintained.

### **4.02 Examination of Records**

Upon reasonable prior notice by the Fund to the Administrator, the Administrator shall make available to the Trustee and the Trustee's authorized representatives, for examination during normal business hours on a Business Day, all books, records and documents required to be maintained under Section 4.01, wherever maintained. In addition, the Administrator shall make available to the Trustee or the Trustee's authorized representatives such financial and operating data and other information in respect of the performance of the Administrator's services under this Agreement as may be in existence and as the Trustee or the Trustee's authorized representatives shall from time to time reasonably request, including for the purposes of conducting any audit in respect of expenses of the Fund or other matters necessary or advisable to be audited in order for the Trustee to conduct an audit of the financial affairs of the Fund.

Any examination of records at the Administrator's head office or at any other location shall be conducted in a manner which will not unduly interfere with the conduct of the business of the Administrator.

## **ARTICLE 5 - OBLIGATIONS AND COVENANTS OF THE FUND**

### **5.01 Obligations and Covenants of the Fund**

The Fund shall:

- (a) grant access, or cause access to be granted, to the Administrator, to all documentation and information necessary in order for the Administrator to provide the Administrative Services and perform its obligations, covenants and responsibilities pursuant to the terms hereof; and
- (b) provide, or cause to be provided, all documentation and information as may be reasonably requested by the Administrator, and promptly notify the Administrator of

any material facts or information of which the Fund is aware, which is in relation to and which may affect the performance of the obligations, covenants or responsibilities of the Administrator pursuant to this Agreement or the Trust Indenture, including any known pending or threatened suits, actions, claims, proceedings or orders by or against the Fund, ECT or any of their affiliates before any court or administrative tribunal.

## **ARTICLE 6 - ACTIVITIES OF ADMINISTRATOR**

### **6.01           Standard of Care**

The Administrator shall exercise the powers and discharge the duties conferred upon it hereunder honestly, in good faith and in the best interests of the Fund and in connection therewith shall exercise that degree of care, diligence and skill that a reasonably prudent administrator of an income fund in Canada, having responsibilities of a similar nature to those hereunder, would exercise in comparable circumstances.

### **6.02           No Additional Duty**

The Administrator shall only be responsible for the Administrative Services and the other duties and obligations expressly provided for in this Agreement and no other obligation or duty (fiduciary or otherwise) in respect to the Administrator shall be implied. No other standard of care, other than as set forth in Section 6.01 above, shall apply or be implied in relation to the performance of the Administrative Services or the other duties and obligations hereunder.

### **6.03           Other Activities and Conflict of Interest**

- (a) The Parties acknowledge and agree that:
  - (i) the Administrator and its personnel shall devote as much time as is reasonably necessary for the proper discharge of the Administrative Services;
  - (ii) the Administrator shall not be engaged in activities other than providing the Administrative Services and the Management Services;
  - (iii) subject to subsection 6.03(b) below, Enbridge Inc. and its affiliates and associates, other than the Administrator (collectively, the “**Enbridge Parties**”), may be engaged in, or hereafter become engaged in, any business or activities whatsoever (the “**Permitted Activities**”), and such Permitted Activities may be in competition or conflict with the business carried on by, and/or the interests of, the Fund or its affiliates and associates and, for further certainty, may include (A) the provision of services, to any Persons whomsoever, which are the same as or similar to the Administrative Services, (B) engaging in the business of or pertaining to, and/or the direct and indirect ownership, management, operation and lease of assets and property in connection with, pipeline transportation infrastructure and the transportation of energy (and all activities related thereto), (C) acquiring and otherwise

dealing with investments and other direct or indirect rights in Persons involved in the business of or pertaining to pipeline transportation infrastructure and the transportation of energy (and all activities related thereto), and (D) engaging in all activities ancillary or incidental to any of the foregoing; and the Fund hereby expressly consents to the conduct of any and all such Permitted Activities by the Enbridge Parties and agrees that, subject as hereinafter provided in this Section 6.03, nothing herein shall prevent any of the Enbridge Parties, or any of their respective officers, directors, or employees from having business interests or from engaging in any business activities whatsoever even though such business interests or activities may be similar to or competitive with the interests or activities of the Fund or its affiliates or associates, or from rendering services to any other Person even though such Person may have investment or business interests similar to, or competitive with, those of the Fund or its affiliates or associates;

- (iv) in the event that, following Closing, the interests of the Enbridge Parties come into material conflict with those of the Fund or its affiliates or associates with respect to any matter or transaction (a “**Conflict Matter**”), the Administrator shall give written notice to the Fund briefly setting forth particulars of such conflict and thereafter, subject to compliance with subsection 8.7(c) of the Trust Indenture, ECT, pursuant to the Fund Delegation Agreement, shall be responsible to take all such actions and make all such decisions relating to such Conflict Matter; and
  - (v) unless otherwise expressly agreed between any of the Enbridge Parties or the Administrator, on the one hand, and the Fund or any of its affiliates or associates, on the other hand, neither the Enbridge Parties nor the Administrator shall be obligated to offer any business opportunities to the Fund or its affiliates or associates.
- (b) Notwithstanding the provisions of subsection 6.03(a)(iii) above, the Enbridge Parties may not hereafter become engaged in any Permitted Activities if such activities, when objectively viewed (and acting reasonably) as at the time at which such activities are proposed to be engaged in, would constitute, or would be reasonably likely to give rise to, a material adverse change in the financial affairs of the Fund unless such activities have been declined by the Fund and have been, or are reasonably likely to be, undertaken by third parties (which, for further certainty, does not include a Person affiliated with the Administrator); provided, however, that neither this subsection 6.03(b) nor any other provision herein contained shall prohibit or restrain, or be construed as prohibiting or restraining, any of the Enbridge Parties from continuing to carry-on, be engaged in, and develop any business or activity whatsoever where same is being carried on, engaged in, or developed as at June 23, 2003, irrespective of whether or not such business or activity may be viewed as materially adverse to the business or financial affairs of the Fund.

#### 6.04 Reliance

In carrying out the Administrative Services and its other duties hereunder, the Administrator and its delegates shall be entitled to rely on:

- (a) statements of fact of other Persons (any of which may be Persons with whom the Administrator is affiliated or associated) who are considered by the Administrator to be knowledgeable of such facts, provided that the Administrator has satisfied its standard of care set out in Section 6.01 in making the assessment as to whether such Persons are knowledgeable of such facts; and
- (b) statements from, the opinion or advice of, or information from any solicitor, auditor, valuator, engineer, surveyor, appraiser or other expert selected by the Administrator (herein “**Experts**”), provided that the Administrator has satisfied its standard of care set out in Section 6.01 in selecting such Expert to provide such statements, opinion, advice or information.

The Administrator may, from time to time, employ such Experts as may be necessary for the proper discharge of the Administrative Services and the other duties of the Administrator hereunder.

The Administrator may rely, and shall be protected in acting, upon any instrument or other documents believed by it, acting reasonably, to be genuine and in force.

#### 6.05 Delegation and Sub-Delegation

Subject to and in accordance with the terms and conditions herein contained (including Section 6.01), the Administrator may delegate (by subcontract or otherwise) the performance of the Administrative Services to any Person, including affiliates of the Administrator, without the prior written consent of the Trustee, provided that such delegation shall not relieve the Administrator of the responsibility for performance of the Administrative Services.

#### 6.06 Liability of Administrator and Others

Notwithstanding anything contained herein, the Administrator, its affiliates and associates and each of their respective directors, officers and employees (collectively, the “**Service Providers**”), shall not, either directly or indirectly, be liable, answerable or accountable to the Fund, the Trustee (or any affiliates of either) or any Unitholders, for:

- (a) any loss or damage resulting from, incidental to or relating to the performance or non-performance of the Administrative Services by any of the Service Providers (irrespective of whether such services have been provided before the Effective Date), including any exercise or refusal to exercise a discretion, any mistake or error of judgement, or any act or omission believed by a Service Provider to be within the scope of authority conferred thereon by this Agreement or the Trust Indenture, unless such loss or damage resulted from the fraud, wilful default or gross negligence of a Service Provider in performing the Administrative Services, in which case the benefit of this subsection 6.06(a) shall not apply to that Service Provider;

- (b) any loss or damage resulting from, incidental to or relating to the performance or non-performance of the Administrative Services by any of the Service Providers (irrespective of whether such services have been provided before the Effective Date), where such loss or damage is attributable to acting in accordance with the instructions of the Trustee, provided that the Service Providers will bear, on a several basis, their proportionate share of liability in the event of joint or contributory liability with the Trustee;
- (c) any loss or damage resulting from, incidental to, or relating to any act or omission by any of the Service Providers (irrespective of whether such act or omission occurred prior to the Effective Date), provided that such act or omission is based upon the Service Provider's reliance on (i) statements of fact of other Persons (excluding Persons with whom the Administrator is affiliated) who are considered by the Administrator to be knowledgeable of such facts, provided that the Administrator has satisfied its standard of care set out in Section 6.01 in making the assessment as to whether such Persons are knowledgeable of such facts; or (ii) the opinion or advice of or information obtained from any Expert, provided the Administrator has satisfied its standard of care set out in Section 6.01 in selecting such Expert; and
- (d) any damage, injury or loss of an indirect or consequential nature, including loss of profits, suffered by the Fund, the Trustee (or their respective employees, agents, servants, or those for whom each is in law responsible), or any Unitholder, or any of their respective affiliates, which is in any way connected with the business carried on by the Fund or the performance or non-performance of the Administrative Services or any other aspect of this Agreement or the Trust Indenture (irrespective of whether such services have been provided before the Effective Date), howsoever and whensoever caused, and whether arising in contract, tort or otherwise.

Each of the Parties hereby acknowledges and agrees that the limits of liability provided for in this Section 6.06 shall not only be enforceable by the Administrator but shall also be enforceable directly by each of the other Service Providers and, in this respect, it is agreed that the Administrator is acting as agent and trustee for each of the other Service Providers as regards the limitations of liability conferred upon such Service Providers by this Section 6.06 (and the Administrator shall hold and enforce same, to the extent necessary, for the benefit of such Service Providers).

#### **6.07 Additional Information**

The Parties acknowledge and agree that conducting the activities and providing the Administrative Services contemplated herein may have the incidental effect of providing the Service Providers with additional information (“**Additional Information**”) which may be utilized with respect to, or which may augment the value of, business interests and related assets in which the Administrator or its affiliates or associates have an interest and that the Service Providers shall not be liable to account to the Trustee, the Fund or any Unitholder with respect to such activities or results; provided, however, that the Administrator shall not, in making any use of Additional Information, do so in any manner that the Administrator knew, or ought reasonably to have known, would cause or result in a breach of any confidentiality provision of agreements to which the Trustee or the Fund is a party or is bound.

## 6.08 Confidentiality

The Administrator hereby agrees that, unless the written consent of the Fund is obtained, the Administrator will not at any time use, disclose or make available, to any Person, any information (herein "**Confidential Information**") concerning the business carried on by the Fund which is acquired in connection with the performance of the Administrative Services by the Administrator, provided that notwithstanding the foregoing:

- (a) the Administrator may make use of, reveal or disclose Confidential Information:
  - (i) as may be expressly permitted by this Agreement, or necessary or advisable for the performance of the Administrative Services;
  - (ii) where it is already in the public domain when disclosed to the Administrator or becomes, after having been disclosed to the Administrator, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by the Administrator in breach of this Agreement;
  - (iii) as required in order to comply with Applicable Laws, the orders or directions of any Governing Authority, the requirements of any stock exchange or clearing house, or the requirements of any other regulatory authority having jurisdiction, including compliance with the disclosure obligations of the Administrator;
  - (iv) where it was made available to the Administrator on a non-confidential basis from a third party source, or where such information can be demonstrated by the Administrator to have come into its possession independently of anything done by the Administrator under or pursuant to this Agreement;
  - (v) to affiliates and associates of the Administrator, and to the officers, directors, employees, agents, delegates hereunder or other representatives (including consultants, financial institutions and other advisors) of the Administrator and its affiliates and associates, provided such Persons have agreed to maintain such Confidential Information in confidence on terms substantially similar to those in this Section 6.08; and
  - (vi) as necessary in connection with any dispute resolution or any litigation commenced in respect of this Agreement.
- (b) the Parties agree that:
  - (i) nothing in this Section 6.08 shall prevent the Administrator from using Additional Information (as defined in Section 6.07) in respect of any other business interests or assets of the Administrator or its affiliates or associates, provided that in connection with such use the Administrator does not disclose such Additional Information to any other Person except in the circumstances set forth in subsection 6.08(a); and

- (ii) the obligations under this Section 6.08, with respect to any particular item of Additional Information, shall expire and be at an end on the second anniversary of the Administrator's receipt of the particular item of Additional Information in question.

## **ARTICLE 7 - INDEMNIFICATION**

### **7.01 Indemnification of the Administrator**

The Administrator, its affiliates and associates, and any Person who is serving or shall have served as a director, officer, employee or agent of the Administrator or its affiliates or associates, and any respective heirs, legal representatives and successors of any of the foregoing (collectively, the "**Administrator Indemnitees**"), shall be indemnified and saved harmless by the Fund from and against all losses, claims, damages, liabilities, obligations, costs and expenses (including judgements, fines, penalties, amounts paid in settlement (with the approval of the Trustee, acting reasonably), and legal fees on a solicitor-client basis, including reasonable disbursements) of whatsoever kind or nature (collectively "**Claims**") incurred by, borne by or asserted against any of the Administrator Indemnitees and which in any way arise from or relate in any manner to this Agreement, the Trust Indenture, or the performance or non-performance of the Administrative Services (irrespective of whether such services have been provided before the Effective Date), unless such Claims arise from the fraud, wilful default or gross negligence of any of the Administrator Indemnitees.

The foregoing right of indemnification shall not be exclusive of any other rights to which the Administrator Indemnitees may be entitled as a matter of law or equity or which may be lawfully granted to such Person.

### **7.02 Indemnification of the Fund and the Trustee**

Subject to limitations on liability of the Administrator contained in this Agreement, the Fund, the Trustee and any Person who is serving or shall have served as a director, officer or employee of the Trustee, and any respective heirs, legal representatives and successors of any of the foregoing (the "**Fund Indemnitees**"), shall be indemnified and saved harmless by the Administrator from and against all losses, claims, damages, liabilities, obligations, costs and expenses (including judgements, fines, penalties, amounts paid in settlement (with the approval of the Administrator, acting reasonably) and legal fees on a solicitor-client basis, including reasonable disbursements) of whatsoever kind or nature (collectively "**Fund Claims**") incurred by, borne by or asserted against any of the Fund Indemnitees and which arise from the fraud, wilful default or gross negligence of the Administrator in the performance of the Administrative Services, unless such Fund Claims arise from the fraud, wilful default or gross negligence on the part of a Fund Indemnitee, or are attributable to actions undertaken on the instructions of the Fund or the Trustee.

The foregoing right of indemnification shall not be exclusive of any other rights to which the Fund Indemnitees may be entitled as a matter of law or equity or which may be lawfully granted to such Person.

### 7.03 Method of Asserting Claims

- (a) If a Party entitled to indemnification pursuant to the terms hereof (the “**Indemnified Party**”) intends to seek indemnification under this Article 7 from the other Party (the “**Indemnifying Party**”), the Indemnified Party shall give the Indemnifying Party notice of such claim for indemnification promptly following the receipt or determination by the Indemnified Party of actual knowledge or information as to the factual and legal basis of any claim which is subject to indemnification and, where such claim results from the commencement of any claim or action by a third party, promptly following receipt of written notice of such third party claim or action. The failure of or delay by an Indemnified Party to so notify the Indemnifying Party (as set forth above) shall not relieve the Indemnifying Party of its indemnification obligations hereunder to the Indemnified Party, however the liability which the Indemnifying Party has to the Indemnified Party pursuant to the terms of this Article 7 (and for which the Indemnifying Party will be obligated to indemnify the Indemnified Party in respect of) shall be reduced to the extent that any such delay in or failure to give notice as herein required prejudices the defence of any such action, suit, proceeding, investigation or claim, or otherwise results in any increase in the liability which the Indemnifying Party has under its indemnity provided for herein.
- (b) The Indemnifying Party, at its sole cost and expense, shall have the right to assume the defence of any claim, action, suit, proceeding or investigation brought against the Indemnified Party with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided that the Indemnifying Party will not, without the Indemnified Party’s prior written consent (such consent not to be unreasonably withheld), settle, compromise, consent to the entry of any judgement in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder (whether or not the Indemnified Party is a party thereto) unless such settlement, compromise, consent or termination includes a release of the Indemnified Party from all liabilities arising out of such action, suit, proceeding, investigation or claim. The Indemnified Party will give to the Indemnifying Party and its counsel reasonable access to all business records and other documents relevant to such defence or settlement, and shall permit them to consult with the employees and counsel (if any) of the Indemnified Party.
- (c) Notwithstanding the foregoing:
- (i) if the defendants in any such action, suit, proceeding or investigation include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party is advised by counsel that there are legal defences available to the Indemnified Party that are additional to those available to the Indemnifying Party and that in such circumstances representation by the same counsel would be inappropriate; or
  - (ii) if the Indemnified Party shall have reasonably concluded that the Indemnifying Party is not taking or has not taken, all necessary steps to diligently defend such claim, action, suit, proceeding or investigation, the

Indemnified Party has provided written notice of same to the Indemnifying Party, and the Indemnifying Party has not rectified the situation within a reasonable time;

then the Indemnified Party shall have the right to retain separate counsel, the reasonable costs of which shall be at the Indemnifying Party's expense, to represent the Indemnified Party and to otherwise participate in the defence of such claim, action, suit, proceeding or investigation on behalf of such Indemnified Party. For further certainty, only one legal firm may be engaged at the expense of the Indemnifying Party.

- (d) Notwithstanding anything herein contained, an Indemnified Party shall have the right, at its sole cost and expense, to retain counsel to separately represent it in connection with the negotiation, settlement or defence of any claim, action, suit, proceeding or investigation brought by a third party provided, for further certainty, that such counsel shall not, unless agreed by the Indemnifying Party, assume control of the negotiation, settlement or defence.
- (e) Except to the extent expressly provided herein, no Indemnified Party shall settle any claim or action with respect to which it has sought or intends to seek indemnification pursuant to this Article 7 without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- (f) If the Indemnifying Party does not assume the defence of any claim, action, suit, proceeding or investigation brought against the Indemnified Party, then the Indemnified Party shall have the right to do so on its own behalf and all such expense in so doing shall be added to the amount of the claim for indemnification hereunder by such Indemnified Party as against the Indemnifying Party.

#### **7.04 Net Amount**

In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 7, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's out-of-pocket losses (whether paid or payable), net of any such out-of-pocket losses recovered by the Indemnified Party from any other Person; provided that the foregoing shall not be construed so as to obligate an Indemnified Party to pursue or seek recovery of any of its out-of-pocket losses from any other Person whomsoever, including insurers.

#### **7.05 Third Party Beneficiaries**

Each of the Parties hereby acknowledges and agrees that the rights of indemnification provided for in this Article 7 shall not only be enforceable by the Parties hereto but shall be enforceable directly by each of the Administrator Indemnitees and each of the Fund Indemnitees, and in this respect:

- (a) the Fund appoints the Administrator to act as agent and trustee for the Administrator Indemnitees as regards the covenants of indemnification by the Fund given in favour

of the Administrator Indemnites pursuant to Section 7.01, and the Administrator accepts such appointment; and

- (b) the Administrator appoints the Fund to act as agent and trustee for the Fund Indemnites as regards the covenants by the Administrator given in favour of the Fund Indemnites pursuant to Section 7.02, and the Fund accepts such appointment.

#### **7.06 Subrogation Rights**

If an Indemnified Party has a right against a Person (other than as against one of the other parties to be indemnified by the Indemnifying Party) with respect to any damages or other amounts paid by the Indemnifying Party, then the Indemnifying Party shall, to the extent of such payment and to the extent permitted by Applicable Law, be subrogated to the rights of such Indemnified Party as against such Person. Notwithstanding the foregoing, no Indemnifying Party shall be subrogated to any insurance rights of any Indemnified Party.

### **ARTICLE 8 - TERM**

#### **8.01 Term**

This Agreement shall become effective as of the Effective Date and, subject to Section 8.02, shall continue in full force and effect until June 30, 2023 (the “**Initial Term**”) and may only be terminated in the circumstances described in Article 9.

#### **8.02 Renewal**

This Agreement shall be automatically renewed upon expiry of the Initial Term for additional successive terms of five (5) years each (each a “**Renewal Term**”), unless at least one hundred and eighty (180) days prior to the expiry of the Initial Term or any Renewal Term, as the case may be, the Administrator provides the Fund with written notice indicating that the Agreement shall not be renewed at the expiry of such Initial Term or applicable Renewal Term, as the case may be.

#### **8.03 Survival**

Notwithstanding any expiration or termination of this Agreement, any obligation or liability of the Parties which arises pursuant to the terms hereof and which occurred or is attributable to the period prior to the expiration or termination of this Agreement shall survive such expiration or termination, including, for further certainty, (a) all payment obligations of the Fund in respect of amounts accrued to and in favour of the Administrator hereunder, and (b) all indemnification obligations under Article 7 pertaining to any Claims or Fund Claims (as the case may be) provided that the subject matter of such claims relate to or arise out of events, conditions or circumstances which occurred or are attributable to the period prior to the expiration or termination (as the case may be) of this Agreement.

**ARTICLE 9 - TERMINATION**

**9.01 Events of Termination by the Administrator**

The Fund shall be in default under this Agreement upon the occurrence of any of the following events, each of which shall be deemed to be an event of termination with respect to the Fund for the purposes of this Agreement (a “**Fund Event of Termination**”):

- (a) in the event that the Fund breaches or fails to observe or perform any of the Fund’s material obligations, covenants or responsibilities under this Agreement, and:
  - (i) prior to receipt of the Ordinary Resolution contemplated by paragraph 9.01(a)(ii) below or within sixty (60) days after notice from the Administrator specifying the nature of such breach or failure, whichever last occurs, (the “**Cure Period**”), the Fund fails to cure such breach or failure if such breach or failure is reasonably remediable within such Cure Period, or if such breach or failure is not reasonably remediable within such Cure Period, the Fund fails to commence to take, within the Cure Period, steps to remedy such default and to thereafter proceed diligently and as expeditiously as reasonably possible to cure or remedy such breach or failure; and
  - (ii) provided that prior to proceeding with a termination of this Agreement in reliance on this subsection 9.01(a), such termination has been authorized by an Ordinary Resolution of the Unitholders (which, for greater certainty, includes holders of Voting Exchangeable Securities);
- (b) in the event that the Fund shall (i) institute proceedings to be adjudicated a voluntary bankrupt or consent to the filing of a bankruptcy proceeding against it; or (ii) file a petition or answer or consent, or take other proceedings, seeking reorganization, re-adjustment, arrangement, composition or similar relief under any Canadian federal or provincial law available for the protection of bankrupt or insolvent debtors; or (iii) consent to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy of the Fund; or (iv) be voluntarily liquidated or wound up; or (v) otherwise take any action that acknowledges its insolvency;
- (c) in the event that the Fund is subject to (i) proceedings for the appointment of a receiver, receiver/manager or trustee in respect of its assets, or (ii) proceedings for the dissolution, liquidation or winding-up of the Fund, and such proceedings are not being contested in good faith by appropriate proceedings or, if so contested remain outstanding, undismissed and unstayed for more than thirty (30) days from the institution of such proceeding; and
- (d) in the event that the Management Agreement is properly terminated in accordance with its terms.

## 9.02 Remedies of the Administrator

Upon the occurrence of a Fund Event of Termination, and without recourse to legal process and without limiting any other rights or remedies which the Administrator may have at law or otherwise, the Administrator may immediately terminate this Agreement by prior written notice of such termination delivered to the Fund.

## 9.03 Events of Termination by the Fund

The Administrator shall be in default under this Agreement upon the occurrence of any of the following events, each of which shall be deemed to be an event of termination with respect to the Administrator for the purposes of this Agreement (an “**Administrator Event of Termination**”):

- (a) in the event that the Administrator breaches or fails to observe or perform any of the Administrator’s material obligations, covenants or responsibilities under this Agreement, and:
  - (i) prior to receipt of the Ordinary Resolution contemplated by paragraph 9.03(a)(ii) below or within sixty (60) days after notice from the Fund specifying the nature of such breach or failure, whichever last occurs, (the “**Cure Period**”), the Administrator fails to cure such breach or failure if such breach or failure is reasonably remediable within such Cure Period, or if such breach or failure is not reasonably remediable within such Cure Period, the Administrator fails to commence to take, within the Cure Period, steps to remedy such default and to thereafter proceed diligently and as expeditiously as reasonably possible to cure or remedy such breach or failure; and
  - (ii) prior to proceeding with a termination of this Agreement in reliance on this subsection 9.03(a), such termination has been authorized by an Ordinary Resolution of the Unitholders (which, for greater certainty, includes holders of Voting Exchangeable Securities), provided, however, that Trust Units and Voting Exchangeable Securities (and the votes represented thereby) held by the Administrator and its affiliates shall be excluded for purposes of determining authorization by Ordinary Resolution;
- (b) in the event that the Administrator shall (i) institute proceedings to be adjudicated a voluntary bankrupt or consent to the filing of a bankruptcy proceeding against it; or (ii) file a petition or answer or consent, or take other proceedings, seeking reorganization, re-adjustment, arrangement, composition or similar relief under any Canadian federal or provincial law available for the protection of bankrupt or insolvent debtors; or (iii) consent to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy of the Administrator; or (iv) be voluntarily liquidated or wound up; or (v) otherwise take any action that acknowledges its insolvency;
- (c) in the event that the Administrator is subject to (i) proceedings for the appointment of a receiver, receiver/manager or trustee in respect of its assets, or (ii) proceedings for the dissolution, liquidation or winding-up of the Administrator, and such proceedings are not being contested in good faith by appropriate proceedings or, if so contested

remain outstanding, undismissed and unstayed for more than thirty (30) days from the institution of such proceeding; and

- (d) in the event that the Management Agreement is properly terminated in accordance with its terms.

#### **9.04 Remedies of the Fund**

Upon the occurrence of an Administrator Event of Termination, and without recourse to legal process and without limiting any other rights or remedies which the Fund may have at law or otherwise, the Fund may immediately terminate this Agreement by prior written notice of such termination delivered to the Administrator.

#### **9.05 Trustee Ceasing to be Party Hereto**

The Trustee shall be removed as and cease to be a Party hereto in accordance with the terms and conditions of Section 7.4 of the Trust Indenture.

#### **9.06 ECT as Administrator**

From and after the date upon which this Agreement is terminated, and continuing until such time as a successor administrator for the Fund is retained, ECT covenants that, without any further action required whatsoever on the part of the Fund or the Trustee, ECT shall (a) be deemed to be a party to the Trust Indenture in the same manner and to the same extent as the Administrator, immediately prior to such termination date, had been so bound for the purposes of obligating ECT to provide the Indenture Conferred Duties, and (b) be deemed to be bound in contract, with the Fund and the Trustee, by terms and conditions on the part of the Fund and the Trustee which are the same as those set forth herein pertaining to them, and on the part of ECT by those terms and conditions set forth herein as are applicable to the Administrator.

#### **9.07 Dispute as to the Occurrence of an Event of Termination**

Should a Party dispute in good faith that a Fund Event of Termination or an Administrator Event of Termination, as the case may be, has occurred under this Article 9, such dispute shall be submitted to arbitration by the disputing Party (in accordance with the provisions of Article 11 hereof) no later than ten (10) Business Days following the occurrence of such alleged event of termination (provided, for greater certainty, that the aforesaid ten (10) Business Day period shall not commence to run until after any applicable cure period in respect of such alleged event of termination has elapsed).

#### **9.08 Post Termination Arrangements**

In the event of a termination of this Agreement:

- (a) The Administrator shall deliver, to such successor administrator of the Fund as has then been appointed or failing such appointment, to ECT, as the interim administrator pursuant to Section 9.06 pending appointment of a successor administrator, the following:

- (i) all books, records, accounts, documents and manuals which the Administrator has developed and maintained in connection with the performance of its obligations and duties associated with the provision of Administrative Services (the “**Books and Records**”); and
  - (ii) all money and other financial instruments which the Administrator is then holding for and on behalf of the Fund.
- (b) The Administrator shall be paid for all fees and reimbursed for all Fund Expenses accrued or incurred hereunder, as accrued or incurred (as applicable) on or prior to the date of termination, and the Parties shall take all steps as may be reasonably required to complete any final accounting between them in respect to any fees and Fund Expenses payable or reimbursable hereunder and to provide, if applicable, for the completion of any other matter contemplated by this Agreement.
- (c) Notwithstanding subsection 9.08(a)(i) above, the Administrator, prior to delivery the Books and Records to the successor administrator to the Fund or ECT (as the case may be), shall be entitled to retain copies of any of the Books and Records as are reasonably necessary for preparing tax returns, conducting on-going or contemplated negotiations with tax authorities, fulfilling any then present or contemplated obligations to any applicable Governing Authority and investigating, defending, litigating or prosecuting any on-going, pending, threatened or potential claims by or against the Administrator or its affiliates. For a period of seven (7) years from the date of delivery of the Books and Records, the Fund shall ensure that the successor administrator to the Fund or ECT (as the case may be) shall retain all Books and Records so transferred to it by the Administrator. So long as any such Books and Records are so retained pursuant to this Agreement, without undue interference to the business operations of the Fund, the Administrator shall have the right to inspect and to make copies of such Books and Records at any time upon reasonable request during normal business hours and upon reasonable notice for the purpose of preparing tax returns, conducting negotiations with tax authorities, fulfilling any obligation to any applicable Governing Authority and investigating, defending, litigating or prosecuting any on-going, pending, threatened or potential claims by or against the Administrator or its affiliates.

## **ARTICLE 10 - FORCE MAJEURE**

### **10.01 Consequences of Force Majeure**

During the occurrence of an event of Force Majeure, the provision and performance of the Administrative Services by the Party affected by such event of Force Majeure, to the extent that such services cannot be reasonably provided as a result of such event of Force Majeure, shall be suspended, and such Party shall not be considered to be in breach or default hereunder or under the Trust Indenture (as the case may be), for the period of such occurrence, except that:

- (a) the occurrence of an event of Force Majeure affecting the Fund but not affecting the provision and performance of the Administrative Services by the Administrator, shall

not relieve the Fund of its obligations to make those payments which the Fund is obligated hereunder to make; and

- (b) upon the occurrence of an event of Force Majeure affecting the Administrator, and during the continuance thereof (i) the Fund shall continue to be obligated to make payment of all fees earned or accrued to the Administrator hereunder for the fiscal quarter in respect of which the event of Force Majeure occurred as well as for the two months immediately following the month in which the event of Force Majeure occurred, and (ii) the Administrator shall continue to be entitled to receive payment of all Fund Expenses, whether incurred before or after the event of Force Majeure;

The suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure. Immediately upon resumption of the performance of the services hereunder, the Administrator shall once again receive full payment of all fees, commencing from the date of resumption (in the event such payment was suspended pursuant to this Section 10.01(b)), to which the Administrator is entitled by the terms hereof.

#### **10.02            Notice**

The Party seeking to invoke the benefit of Section 10.01 shall (a) give the other Party prompt written notice of the particulars of the event of Force Majeure and, if reasonably ascertainable, its expected duration, and (b) use its commercially reasonable efforts to remedy its inability to perform.

### **ARTICLE 11 - RESOLUTION OF DISPUTES AND ARBITRATION**

#### **11.01            Dispute**

Where so provided in Section 9.07 hereof, and in any other instance where agreed to in writing by the Parties, a dispute or disagreement of any kind or nature between the Parties arising out of or in connection with this Agreement (a “**Dispute**”) will be resolved in accordance with this Article 11 to the extent permitted by law.

#### **11.02            Arbitration**

- (a) Any Dispute required to be submitted to arbitration hereunder or which the Parties agree in writing to submit to arbitration hereunder, shall be presided over by one arbitrator pursuant to the procedure set forth in this Section 11.02 and pursuant to the provisions of the *Arbitration Act* (Alberta). If the provisions of this Section 11.02 are inconsistent with the provisions of the *Arbitration Act* (Alberta) and to the extent of such inconsistency, the provisions of this Section 11.02 shall prevail.
- (b) Any Party may commence a proceeding for arbitration of a Dispute by making a demand for arbitration of a Dispute by sending a notice (the “**Arbitration Notice**”) in writing to the other Parties setting forth the nature of the Dispute, the amount involved and the name of the arbitrator the initiating Party proposes to be appointed.

- (c) Within thirty (30) days after deemed receipt (in accordance with Section 12.06) of the Arbitration Notice by the Party to whom it is sent, the Parties shall agree on the designation of an arbitrator; should the Parties fail to do so, an arbitrator shall be appointed by a judge of the Court of Queen's Bench for the Province of Alberta, upon motion by any Party (the "**Arbitrator**"). The Parties agree to exercise their commercially reasonable efforts to select, or have selected, an arbitrator who has, objectively viewed, a reasonable level of expertise and experience related to the relevant matters in dispute so as to be competent to resolve the matter appropriately.
- (d) Arbitration hearings shall be held in Calgary, Alberta and shall commence no later than fifteen (15) days after the appointment of the Arbitrator in accordance with subsection 11.02(c). The decision of the Arbitrator shall be final, without appeal, and binding upon the Parties.
- (e) Each Party shall bear the costs and expenses of lawyers, consultants, advisors, witnesses and employees retained by it in any arbitration. The expenses of the Arbitrator shall be paid equally by the Parties unless the Arbitrator provides otherwise in its award.

### **11.03 Continued Performance**

Notwithstanding Article 9, during the conduct of Dispute resolution procedures pursuant to this Article 11, the Parties shall continue to perform their respective obligations under this Agreement and none of the Parties shall exercise any other remedies to resolve such Dispute.

## **ARTICLE 12 - GENERAL MATTERS**

### **12.01 No Partnership, Joint Venture or Trust**

The Parties are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them. The Parties agree that the Administrator shall perform the Administrative Services as an independent contractor (with its duties and obligations as expressly provided herein and in the Trust Indenture) for and on behalf of the Fund, and it is acknowledged and agreed that only where the Administrator undertakes execution of contracts or other instruments for and on behalf of the Fund may the Administrator then be acting as an agent of the Fund. In no circumstances shall the Administrator be, or be deemed to be, a fiduciary or trustee for any Person, whether or not a Party, in connection with the discharge by the Administrator of such Administrative Services.

### **12.02 Amendments**

This Agreement shall not be amended or varied in its terms by oral agreement or by representations or otherwise except by instrument in writing executed by the duly authorized representatives of the Parties hereto or their respective successors or assigns.

**12.03            Assignment**

The Fund shall not sell or assign its interest in this Agreement to a third party without the prior written consent of the Administrator, which consent shall not be unreasonably withheld. The Administrator shall not sell or assign its interest in this Agreement to a third party without the prior written consent of a majority of the ECT Independent Trustees, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Administrator may, without the consent of the ECT Independent Trustees, assign or sell its interest in this Agreement to an affiliate.

Upon any such assignment by the Fund or the Administrator in accordance with the terms hereof, the Fund, the Administrator and the assignee shall execute and deliver such documents as are acceptable to the signatories thereof. Notwithstanding the foregoing, in the event of any assignment or sale by the Administrator of its interest hereunder (except in the case of an assignment or sale to an affiliate of the Administrator, unless otherwise agreed to by the ECT Independent Trustees), the Parties agree that the Administrator shall be released from its duties and obligations hereunder from and after the date of such assignment or sale.

**12.04            Change of Control**

There shall be no Change of Control of the Administrator without the prior written consent of a majority of the ECT Independent Trustees, which consent shall not be unreasonably withheld provided that, notwithstanding the foregoing, no change in the holding, direct or indirect, of securities of Enbridge Inc., whether such change occurs by way of take-over bid, reorganization, recapitalization, consolidation, amalgamation, arrangement, merger, transfer, sale or otherwise, shall in any way require consent of the ECT Independent Trustees hereunder.

**12.05            Severability**

The provisions of this Agreement are severable. In the event of the unenforceability or invalidity of any one or more of the terms, covenants, conditions or provisions of this Agreement under Applicable Laws, such unenforceability or invalidity shall not render any of the other terms, covenants, conditions or provisions hereof unenforceable or invalid; and the Parties agree that this Agreement shall be construed as if such unenforceable or invalid term, covenant or condition was never contained herein.

**12.06            Notices**

All notices required or permitted pursuant to the terms of this Agreement shall be in writing and shall be given by personal delivery or facsimile transmittal during normal business hours on any Business Day to the address for the Administrator, the Trustee, or the Fund, as applicable, as set forth below. Any such notice or other communication given hereunder shall, if personally delivered or sent by facsimile transmittal (with confirmation received), be conclusively deemed to have been given or made and received on the day of delivery or facsimile transmittal (as the case may be) if such delivery or facsimile transmittal occurs during normal business hours of the recipient on a Business Day and if not so delivered or transmitted during normal business hours on a Business Day, then on the next Business Day following the day of delivery or transmittal. The Parties hereto may give from time to time written notice of change of address in the manner aforesaid.

Notices shall be provided:

(a) To the Administrator:

Enbridge Management Services Inc.  
3000, 425 – 1<sup>st</sup> Street, S.W.  
Calgary, Alberta  
T2P 3L8

Attention: Corporate Secretary  
Facsimile: (403) 231-5929

(b) To the Fund:

Enbridge Income Fund  
c/o CIBC Mellon Trust Company  
600, 333-7th Avenue S.W.  
Calgary, Alberta  
T2P 2Z1

Attention: Manager  
Facsimile: (403) 264-2100

(c) To the Trustee:

CIBC Mellon Trust Company  
600, 333-7th Avenue S.W.  
Calgary, Alberta  
T2P 2Z1

Attention: Manager  
Facsimile: (403) 264-2100

(d) To ECT:

Enbridge Commercial Trust  
 c/o Enbridge Management Services Inc.  
 3000, 425 – 1<sup>st</sup> Street, S.W.  
 Calgary, Alberta  
 T2P 3L8

Attention: Corporate Secretary  
 Facsimile: (403) 231-5929

#### **12.07 Governing Law and Attornment**

The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Any legal actions or proceedings with respect to this Agreement shall be brought in the courts of the Province of Alberta. Each Party hereby attorns to and accepts the jurisdiction of such courts.

#### **12.08 Waivers**

No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, such waiver shall be limited to the specific breach waived.

#### **12.09 Further Assurances**

Each of the Parties shall from time to time execute and deliver all such further documents and instruments and do all acts and things as any other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

#### **12.10 Time of Essence**

Time shall be of the essence in respect of this Agreement.

#### **12.11 Entire Agreement**

This Agreement, together with the Trust Indenture, constitutes the entire agreement among the Parties with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements among the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory with respect to the subject matter hereof among the Parties, other than as expressly set forth in this Agreement and the Trust Indenture.

**12.12        Enurement**

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

**12.13        Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12.14        Facsimile Execution**

Execution and delivery of this Agreement may be effected by any Party by facsimile transmission of the execution page hereof to the other Parties. A Party delivering this Agreement by facsimile transmission shall thereafter forthwith deliver to each of the other Parties an original execution page hereof with its original execution located thereon; provided, however, that any failure by a Party to so deliver such original signature page shall not affect the validity or enforceability hereof by or against that Party.

**[Remainder of Page Left Intentionally Blank]**

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement by their proper officers duly authorized in that behalf as of the day and year first above written.

**ENBRIDGE COMMERCIAL TRUST**

**ENBRIDGE MANAGEMENT SERVICES  
INC.**

Per: (signed) J. Richard Bird  
J. Richard Bird, authorized Trustee

Per: (signed) Brad Boyle  
Brad Boyle  
Treasurer

**ENBRIDGE INCOME FUND, by its trustee, CIBC MELLON TRUST COMPANY  
CIBC Mellon Trust Company**

Per: (signed) Jacquie Fisher  
Name: Jacquie Fisher  
Title: Manager, Client Relations

Per: (signed) Jacquie Fisher  
Name: Jacquie Fisher  
Title: Manager, Client Relations

Per: (signed) Roger Booth  
Name: Roger Booth  
Title: Relationship Manager

Per: (signed) Roger Booth  
Name: Roger Booth  
Title: Relationship Manager

**SCHEDULE A**

To the Administrative Services Agreement among CIBC Mellon Trust Company, Enbridge Income Fund, Enbridge Management Services Inc., and Enbridge Commercial Trust, made as of June 27, 2003, as the same may be amended.

**CERTIFICATE OF COMPLIANCE**

To: CIBC MELLON TRUST COMPANY, trustee of Enbridge Income Fund (the “Trustee”)

Pursuant to subsection 2.07(a)(iv) of the Administrative Services Agreement (the “Administration Agreement”) dated June 27, 2003 between the Trustee, Enbridge Income Fund, Enbridge Commercial Trust and Enbridge Management Services Inc. (the “Administrator”), the Administrator hereby certifies and confirms, with respect to the twelve month period ending December 31, 20\_\_ (the “Completed Year”), that to the best of its knowledge and belief:

- (a) the financial statements for the Fund, as required by law and the Trust Indenture to be prepared on or prior to the date hereof in respect of the Completed Year, have been prepared and are complete, accurate and approved;
- (b) all regulatory filings required to be made by the Fund on or prior to the date hereof in respect of the Completed Year, including the annual and semi-annual reports, and all filings required under the *Income Tax Act* (Canada) (the “ITA”) have been accurately completed and filed;
- (c) all declarations and designations required to be made as of the date hereof under the ITA to ensure appropriate flow-through of income and capital have been made;
- (d) all clearance certificates required under the ITA from the Canada Customs and Revenue Agency, if any, have been obtained prior to making any distributions of property;
- (e) the Fund, on a continuous basis [from and after the Closing] or [during the Completed Year], maintained its status as a mutual fund trust under the ITA, including the dispersal of unitholder ownership requirements under the ITA. For and in respect of the Completed Year, the Fund has complied with the non-resident unitholder limitations set out in the ITA;
- (f) the distribution of units completed by the Fund during the Completed Year, are in compliance with all material regulatory requirements;
- (g) the investments of the Fund are in compliance, in all material respects, with the investment restrictions, practices and policies as set forth in the Trust Indenture, and with any other

regulatory restriction or policy applicable to investments by the Fund, including any foreign content limitations;

- (h) all confirmations, quarterly statements and tax receipts which have been prepared in respect of the Completed Year have been delivered to Unitholders, as required;
- (i) as of the date hereof the Administrator validly exists under the laws of its jurisdiction of incorporation, is not insolvent, and is not under investigation by any regulatory authority;
- (j) all documentation required, on or prior to the date hereof, to be forwarded to the Trustee by the Administrator, pursuant to the terms of the Trust Indenture, has been forwarded (including the annual and semi-annual financial statements of the Fund, internal and external audit reports, statements of holdings of the Fund, and internal control documents); and
- (k) there is no litigation pending against the Administrator or the Fund which has not been disclosed to the Trustee.

The Administrator hereby covenants that it shall promptly inform the Trustee should the Fund or the Administrator fail to comply with any of the restrictions and conditions hereto.

This Certificate is delivered to the Trustee by the undersigned in my capacity as an officer of the Administrator and not in my personal capacity, and no personal liability shall attach hereto.

Capitalized terms used herein but not defined shall have the meanings ascribed thereto in the Trust Indenture.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**ENBRIDGE MANAGEMENT SERVICES INC.,**  
as Administrator for the Enbridge Income Fund

Per: \_\_\_\_\_  
Name:  
Title: