

**ENBRIDGE MANAGEMENT SERVICES INC.**

**-and-**

**ENBRIDGE COMMERCIAL TRUST**

---

**AGREEMENT TO AMEND**

**THE**

**MANAGEMENT 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 Management Agreement dated June 27, 2003 made between ENBRIDGE MANGEMENT SERVICES INC. and ENBRIDGE COMMERCIAL TRUST (the “Management Agreement”).

### **R E C I T A L S**

WHEREAS Section 13.02 of the Management Agreement provides, in part, that the Management Agreement may be amended by the Parties by instrument in writing executed by the duly authorized representatives of the Parties, provided that if required by the ECT Trust Indenture, the ECT Independent Trustees have consented to the relevant amendment;

AND WHEREAS the ECT 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 ECT;

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

AND WHEREAS the ECT Independent Trustees have, by resolution passed at a meeting of the ECT Trustees held on February 23, 2006, consented to and approved the amendment of the Management Agreement as provided for herein;

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 both parties) the Parties agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 One Agreement**

This Amending Agreement and the Management 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 Management 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 Management Agreement shall, for all purposes hereof, have the meanings given to such terms in the Management 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 MANAGEMENT AGREEMENT

### 2.1 Amendments to Section 1.01

Subsections 1.01(p), and 1.01(vv) of the Management Agreement are hereby amended by deleting them in their entirety and replacing each such subsection with the following new subsections 1.01(p), and 1.01(vv):

“(p) **“Business”** means the business of ECT consisting primarily of the business of or activities pertaining directly or indirectly to, and the direct or indirect ownership, management, operation and lease of assets and property in connection with the business of or activities pertaining to, energy infrastructure (and all activities relating thereto), together 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 all activities relating thereto), as well as engaging in all activities ancillary or incidental to the foregoing;”

and,

“(vv) **“Fund Working Assets”** means the Canadian Pipeline Interests (as defined in the Prospectus) and all energy infrastructure assets, investments and projects relating or ancillary thereto, as well as any other energy infrastructure asset, investment or project directly or indirectly acquired or constructed by ECT after the Effective Date and **“Fund Working Asset”** means any one of them;”

### 2.2 Amendments to Section 6.03

Section 6.03 of the Management 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 Management 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, ECT, the Manager, 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 MANAGEMENT SERVICES INC.

(signed) "Leigh S. Cruess"

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Leigh S. Cruess,

Vice President, Business Development &  
Chief Financial Officer

ENBRIDGE COMMERCIAL TRUST

(signed) "Stephen J. Wuori"

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Stephen J. Wuori,

Authorized Trustee

(This is the execution page of the agreement dated as of May 1, 2006 to amend the Management Agreement dated June 27, 2003 between Enbridge Management Services Inc. and Enbridge Commercial Trust)

**MANAGEMENT AGREEMENT**

**Between**

**ENBRIDGE MANAGEMENT SERVICES INC.**

**-and-**

**ENBRIDGE COMMERCIAL TRUST**

**Dated June 27, 2003**

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## MANAGEMENT AGREEMENT

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

B E T W E E N:

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

-and-

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

**WHEREAS** as of the date hereof, the activities of ECT are restricted primarily to the conduct of the Business;

**AND WHEREAS** ECT and the Manager have agreed to enter into this Agreement pursuant to which the Manager will, subject to the terms and conditions herein set forth, manage and operate the Business.

**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 6.06;
- (b)    “**Administrative Services**” has the meaning ascribed thereto in the Administration Agreement;
- (c)    “**Administration Agreement**” means the administrative services agreement made as of the 27<sup>th</sup> day of June, 2003, among the Manager, CIBC Mellon Trust

Company, the Fund and ECT, as the same may be amended, restated or modified from time to time;

- (d) **“affiliate”** has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (e) **“Agreement”** means this management agreement made as of the 27<sup>th</sup> day of June, 2003, as amended, restated or modified from time to time;
- (f) **“Annual Management Plan”** means the management plan for each Fiscal Year which is prepared and submitted to the ECT Trustees in accordance with Section 2.07 hereof and which shall include an annual forecast of Distributable Cash Flow on a monthly basis, an annual forecast of capital expenditures, and an annual operating forecast;
- (g) **“annuitant”** has the meaning ascribed thereto in Section 1.06;
- (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 ECT and its affiliates in connection with the conduct of the Business;
- (i) **“associate”** has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (j) **“Average Ordinary Units”** means the average number of Ordinary Units outstanding during a Fiscal Year which is the quotient obtained when the sum obtained by adding the number of Ordinary Units outstanding on each Distribution Record Date during such Fiscal Year is divided by the number of Distribution Record Dates occurring during such Fiscal Year;
- (k) **“Average Preferred Units”** means the average number of Preferred Units outstanding during a Fiscal Year which is the quotient obtained when the sum obtained by adding the number of Preferred Units outstanding on each Distribution Record Date during such Fiscal Year is divided by the number of Distribution Record Dates occurring during such Fiscal Year;
- (l) **“Average Subordinated Units”** means the average number of Subordinated Units outstanding during a Fiscal Year which is the quotient obtained when the sum obtained by adding the number of Subordinated Units outstanding on each Distribution Record Date during such Fiscal Year is divided by the number of Distribution Record Dates occurring during such Fiscal Year;
- (m) **“Base Distributions per Trust Unit”** means \$0.4125 for the 2003 Fiscal Year and, in respect of each Fiscal Year subsequent to 2003, means \$0.825 or such other amount as may be agreed to, from time to time, between the Manager

and the ECT Independent Trustees in accordance with subsection 3.04(b) hereof;

- (n) “**Base Fee**” has the meaning ascribed thereto in Section 3.01;
- (o) “**Books and Records**” has the meaning ascribed thereto in subsection 10.08(a)(i);
- (p) “**Business**” means the business of ECT consisting primarily of the business of or pertaining to, and the direct or indirect ownership, management, operation and lease of assets and property in connection with the business of or pertaining to, pipeline transportation infrastructure and the transportation of energy (and all activities relating thereto), together 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 relating thereto), as well as engaging in all activities ancillary or incidental to any of the foregoing;
- (q) “**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;
- (r) “**Change of Control**” means any change in the holding, direct or indirect, of securities of the Manager 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 Manager 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;
- (s) “**Claims**” has the meaning ascribed thereto in Section 8.01;
- (t) “**Closing**” and “**Date of Closing**” have the meanings respectively ascribed thereto in the Fund Trust Indenture;
- (u) “**Confidential Information**” has the meaning ascribed thereto in Section 6.07;
- (v) “**Control**” for the purposes hereof, a Person or group of Persons shall Control the Manager if (i) voting securities of the Manager 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 Manager;

- (w) “**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 Manager and the ECT Independent Trustees;
- (x) “**Dispute**” has the meaning ascribed thereto in Section 12.01;
- (y) “**Distributable Cash Flow**” has the meaning ascribed thereto in the Fund Trust Indenture;
- (z) “**Distribution Record Date**” has the meaning ascribed thereto in the Fund Trust Indenture;
- (aa) “**Documents**” means, collectively, the ECT Contracts, the ECT Consents, all other contracts to which ECT is a party and any other agreements, certificates or instruments delivered pursuant to such documents;
- (bb) “**ECT Claims**” has the meaning ascribed thereto in Section 8.02;
- (cc) “**ECT Consents**” means all permits, by-laws, licences, waivers, exemptions, consents, certificates, authorizations, approvals, rights, rights of way and entitlements and the like which are required from any Governing Authority or any other Person (including under all applicable Environmental Laws and Regulations) in respect of, or which are in any way material to, the ownership, development, construction, maintenance, operation, use or enjoyment of all or any of the Fund Working Assets;
- (dd) “**ECT Contracts**” means all agreements relating to the Fund Working Assets to which ECT or an affiliate of ECT is a party;
- (ee) “**ECT Distributable Cash Flow**” means “Distributable Cash Flow”, as defined in the ECT Trust Indenture;
- (ff) “**ECT Event of Termination**” means any of the events described in Section 10.01;
- (gg) “**ECT Independent Trustee**” means an “Independent Trustee”, as defined in the ECT Trust Indenture;
- (hh) “**ECT Trustees**” means, at any time, those individuals who are, in accordance with the ECT Trust Indenture, the trustees of ECT at that time;
- (ii) “**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;

- (jj) **“ECT Units”** means and includes both Common Units and Preferred Units of ECT (as each such term is defined in the ECT Trust Indenture), and **“ECT Unit”** means a Common Unit or Preferred Unit of ECT, as the case may be and the context so requires;
- (kk) **“Effective Date”** means the 27<sup>th</sup> day of June, 2003;
- (ll) **“Enbridge Parties”** has the meaning ascribed thereto in subsection 6.03(a)(iii);
- (mm) **“Environmental Laws and Regulations”** means all environmental, health and safety laws, regulations, by-laws, resolutions and ordinances applicable to ECT, affiliates of ECT, or any of their respective assets or properties, including, without limitation, (i) all regulations, resolutions, ordinances, decrees, guidelines, standards, policies and other similar documents and instruments of all Governing Authorities, and (ii) all laws, by-laws, regulations, resolutions, ordinances, guidelines, standards, policies and decrees relating to natural and human environmental matters (including air, land, surface water, ground water and real and personal property), public or occupational health and safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of a Hazardous Substance;
- (nn) **“Exchangeable Security”** has the meaning ascribed thereto in the Fund Trust Indenture;
- (oo) **“Expenses”** has the meaning ascribed thereto in Section 3.03;
- (pp) **“Experts”** has the meaning ascribed thereto in Section 6.04(b);
- (qq) **“Fees”** mean, collectively, the Base Fee and the Incentive Fee;
- (rr) **“Fiscal Year”** means the initial period from the Effective Date up 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;
- (ss) **“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;

- (tt) **"Fund"** means Enbridge Income Fund, an unincorporated trust constituted by the Fund Trust Indenture;
- (uu) **"Fund 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 CIBC Mellon Trust Company, as 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;
- (vv) **"Fund Working Assets"** means the Canadian Pipeline Interests (as defined in the Prospectus) and all pipeline transportation infrastructure assets, investments and projects relating or ancillary thereto, as well as any other pipeline transportation infrastructure asset, investment or project directly or indirectly acquired or constructed by ECT after the Effective Date, and **"Fund Working Asset"** means any one of them;
- (ww) **"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;
- (xx) **"GST"** has the meaning ascribed thereto in Section 3.07;
- (yy) **"Hazardous Substance"** means any substance, product, waste, pollutant, material, chemical, contaminant, dangerous good, constituent or other material which is or becomes listed, regulated, or addressed under any Environmental Laws and Regulations, including asbestos, lead, petroleum and polychlorinated biphenyls;
- (zz) **"Incentive Fee"** has the meaning ascribed thereto in Section 3.04;
- (aaa) **"Initial Term"** has the meaning ascribed thereto in Section 9.01;

- (bbb) **“Manager Event of Termination”** means any of the events described in Section 10.03;
- (ccc) **“Management Services”** means all of those services and duties to be provided by the Manager pursuant to this Agreement and any other agreement under which the Manager provides, to any affiliate or associate of the Fund, services in the nature of management or administrative services;
- (ddd) **“O&M Contractors”** means the Persons, and may include the Manager or its affiliates, who are contracted from time to time to provide operational, management and/or maintenance services in respect of one or more of the Fund Working Assets;
- (eee) **“Ordinary Resolution”** has the meaning ascribed thereto in the Fund Trust Indenture;
- (fff) **“Ordinary Units”** has the meaning ascribed thereto in the Fund Trust Indenture;
- (ggg) **“Parties”** means the Manager and ECT, and **“Party”** means any one of them;
- (hhh) **“Permitted Activities”** has the meaning ascribed thereto in subsection 6.03(a)(iii);
- (iii) **“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;
- (jjj) **“Preferred Units”** has the meaning ascribed thereto in the ECT Trust Indenture;
- (kkk) **“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;
- (lll) **“Renewal Term”** has the meaning ascribed thereto in Section 9.02;
- (mmm) **“Service Providers”** has the meaning ascribed thereto in Section 6.05;
- (nnn) **“Subordinated Unit Distributions”** means the lesser of (i) the aggregate amount of Distributable Cash Flow distributed to holders of Subordinated

Units during a Fiscal Year, and (ii) the product obtained when Base Distributions per Trust Unit is multiplied by the Average Subordinated Units;

- (ooo) “**Subordinated Units**” has the meaning ascribed thereto in the Fund Trust Indenture;
- (ppp) “**Term**” means the Initial Term plus the Renewal Terms;
- (qqq) “**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;
- (rrr) “**Unitholders**” means the holders, from time to time, of one or more Trust Units; and
- (sss) “**Voting Exchangeable Securities**” has the meaning ascribed thereto in the Fund 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 ECT 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 the Documents.

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.

Except as otherwise specifically indicated herein, where a provision of this Agreement requires consent or approval to be obtained from the ECT Trustees, such consent or approval must be granted by the affirmative decision or vote of a majority of the ECT Trustees.

#### **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**

The Parties hereto acknowledge that the ECT Trustees are entering into this Agreement solely in their capacity as trustees on behalf of ECT, and that 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 Unitholder is a trustee or carrier (an “**annuitant**”) and that any recourse against ECT, the ECT Trustees, the Manager, any holder of ECT Units, or any 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 - THE MANAGER'S SERVICES AND POWERS**

### **2.01 Appointment as Sole and Exclusive Manager**

ECT hereby appoints the Manager, and the Manager hereby accepts the appointment, to undertake solely and exclusively on behalf of ECT, subject to and in accordance with the terms, conditions and limitations herein contained, all aspects of the management and general administration of ECT as more particularly set forth in Section 2.02.

### **2.02 Management Services**

Subject to and in accordance with the terms, conditions and limitations herein contained (including Section 2.06), the Manager shall, on a sole and exclusive basis during the Term, provide and perform, or procure from its affiliates, associates or third parties, all management services as may be required or advisable, from time to time, in order to manage, operate, control and administer the Business and make all decisions regarding the affairs of ECT. Without limiting the generality of the foregoing, the Manager shall be responsible for providing the following services:

- (a) arranging for, negotiating and entering into agreements with O&M Contractors, as and when needed and to the extent required, in order to secure such operational, management and maintenance services as may be necessary or advisable in connection with one or more of the Fund Working Assets, provided that the right and ability of ECT (and the Manager on its behalf) to engage O&M Contractors in respect of a Fund Working Asset is permitted pursuant to contractual or other rights granted in favour of ECT which are attributable to or associated with ECT's direct or indirect ownership interest in such Fund Working Asset;
- (b) overseeing and managing the business and affairs of ECT and its affiliates, including the interests of each in the Fund Working Assets, and reporting to the ECT Trustees with respect thereto at such times as may be requested from time to time by the ECT Trustees;
- (c) preparing, each year, an Annual Management Plan;
- (d) providing all administrative services for and on behalf of ECT, including accounting and bookkeeping services;
- (e) providing over-sight and direction in respect of the direct or indirect investments of ECT in Alliance Pipeline Limited Partnership, Alliance Pipeline Ltd., and Enbridge Pipelines (Saskatchewan) Inc., including by way of participation and representation by employees, directors, officers, contractors or agents of the Manager on the boards of directors of each of Alliance Pipeline Ltd. and Enbridge Pipelines (Saskatchewan) Inc.;

- (f) assisting ECT with computing and determining distributions to unitholders of ECT;
- (g) overseeing all activities in connection with distributions to unitholders of ECT, as and when properly payable by ECT;
- (h) developing, implementing and monitoring a strategic plan for ECT;
- (i) developing acquisition strategies and investigating potential acquisitions and analyzing the feasibility of potential acquisitions;
- (j) carrying out acquisitions or dispositions and related financings required for such transactions;
- (k) assisting in connection with any financing of ECT or its affiliates, including determining the timing and terms of any issuance of securities, and undertaking all matters in connection with the issue, sale or pledge of debt obligations or guarantees of ECT or its affiliates, whether secured or unsecured, including establishing credit facilities or other borrowing arrangements, as required; and undertaking all matters in connection with initial capital reorganization transactions pertaining to Enbridge Saskatchewan Holdings Inc. and Enbridge Income Partners Holdings Inc., and their respective affiliates, as applicable;
- (l) preparation, planning and co-ordination of ECT management meetings, meetings of the ECT Trustees, and meetings of the partners of Enbridge Income Partners LP, as required;
- (m) approving, on behalf of ECT, all matters contemplated in the Prospectus to be completed on the part of ECT, and executing and delivering on behalf of ECT, as applicable and if required, the agreements relating to the acquisition (whether direct or indirect) of, or other investments in, the Fund Working Assets as well as all other agreements, contracts, documents and instruments requiring execution by ECT, in such form and containing such terms and conditions as the Manager may approve, and executing and delivering on behalf of ECT such other documents and taking such other actions as the Manager may consider necessary or desirable for the purpose of completing the transactions contemplated by the Prospectus;
- (n) making investments on behalf of ECT or, as appropriate, supervising the making of investments, in each case in accordance with the ECT Trust Indenture;
- (o) opening, operating and closing bank accounts and other similar credit, deposit and banking arrangements and negotiating and signing banking and financing contracts and agreements;

- (p) arranging for borrowing money (including regarding the issuance of letters of credit) upon the credit of ECT and its assets;
- (q) arranging such audit, legal, insurance and other third party professional or non-professional services as are required;
- (r) obtaining risk management services including risk assessment, loss prevention services, health and safety advisory services, property risk management, evaluation of insurance coverages, negotiation with insurance brokers, carriers and underwriters and processing and administration of insurance claims;
- (s) providing procurement and logistical services, including in respect of the acquisition of equipment, supplies and services;
- (t) administering the commercial agreements of the Business;
- (u) assisting in the negotiation of contracts with customers of, and suppliers to, the Business and other material contracts with third parties necessary for the proper operation of the Business and the assets related thereto, including with respect to the matters enumerated in this Section 2.02;
- (v) assisting with human resources and staffing services including assistance in negotiating collective agreements with respect to unionized employees, advisory and administration services relating to employee hiring, employee relations, compensation programs, employee benefit programs and personnel and industrial relations matters;
- (w) assisting in the preparation and filing of all required tax returns and reports to Governing Authorities;
- (x) managing the defense and prosecution of litigation and other legal services furnished by counsel and providing advice and recommendations with respect thereto;
- (y) providing technical and evaluation services in respect to equipment, processes and techniques related to the operations of the Business; and
- (z) generally providing such other management services as may be required by ECT.

For further certainty, the Parties acknowledge that nothing in this Agreement, including pursuant to this Section 2.02, is intended to obligate the Manager to provide or cause to be provided, or to create an expectation that the Manager will provide, or cause to be provided, management services (in whole or in part) the same or substantially similar to those provided to ECT hereunder directly to or on behalf of any Person through which ECT holds an interest in a Fund Working Asset, except as the Manager may, in its discretion, determine

necessary in order to properly manage the Business as provided for hereunder and as is otherwise permitted pursuant to contractual or other rights granted in favour of ECT which are attributable to or associated with ECT's ownership interest or rights in such Person.

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

Notwithstanding the date hereof, the Manager shall be deemed to have had, from and after December 20, 2002, the power and duties delegated to it hereunder. The ECT Trustees, on behalf of ECT, hereby ratify any actions taken by the Manager on behalf of the ECT Trustees or ECT prior to the Effective Date.

### **2.03            Covenants of the Manager**

The Manager covenants and agrees that in the performance of its services under this Agreement it shall:

- (a) perform all such services in accordance with any applicable terms, conditions and limitations pertaining to the performance of such services, as set forth in the ECT Trust Indenture;
- (b) perform all such services at all times in compliance with Applicable Laws;
- (c) observe and perform or cause to be observed and performed on behalf of ECT, in every material respect, the provisions of the Documents to which ECT is a party;
- (d) undertake all commercially reasonable efforts to assist ECT and the owners and operators of the Fund Working Assets, as applicable and to the extent so permitted, in complying with all Applicable Laws (including Environmental Laws and Regulations) that may be in force or issued from time to time relating to the Fund Working Assets, and upon receiving notice or obtaining knowledge of an infraction or threat of an infraction of such Applicable Laws or of any third party claim relating to the Fund Working Assets, whether or not disclosed in any inspection, investigation or assessment of the Fund Working Assets, notify ECT promptly of such infraction or threat of infraction and assist ECT in taking all necessary steps to remedy or prevent such infraction (to the extent ECT directly or through its affiliates has the right to take any such remedial or preventative action) and to respond to any Governing Authority, as and if required; and
- (e) not commingle its own funds, or funds it holds for any Person other than ECT, with any funds held by it on behalf of ECT.

#### **2.04 Compliance by O&M Contractors and Others**

- (a) Where the Manager is engaged as an O&M Contractor, the Manager shall not and, in the event that any of the O&M Contractors are affiliates of the Manager, shall cause such O&M Contractors not to, take or fail to take any action which would cause the Manager to be in breach of its obligations and duties under this Agreement.
- (b) Where an O&M Contractor has been engaged and is not affiliated with the Manager, the Manager shall exercise commercially reasonable efforts, to the extent reasonably practicable, to cause such non-affiliated O&M Contractor to take such action as is necessary to permit the Manager to remain in compliance with its obligations, duties and covenants under this Agreement and to cause such non-affiliated O&M contractor to refrain from taking any action which would result in the Manager being in breach of its obligations, duties and covenants under this Agreement.

#### **2.05 Power and Authority of the Manager**

In accordance with Section 13.1 of the ECT Trust Indenture, and subject to and in accordance with the terms, conditions and limitations herein contained (including Section 2.06), the Manager is hereby delegated by the ECT Trustees and, to the extent applicable or required, granted by ECT, full and absolute right, power and authority during the Term to provide, for and on behalf of ECT, all services required to be provided by it hereunder to ECT and to take and do, for and on behalf of ECT, in connection with the provision of all such services (as aforesaid), all such actions and all such things which the Manager 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 Manager considers appropriate in connection with the Business, in the name of and on behalf of ECT. No Person shall be required to determine the authority of the Manager to give any undertaking or enter into any commitment on behalf of ECT.

#### **2.06 Restrictions on the Manager's Powers and Authorities**

- (a) In the exercise of its powers and authority and in the performance of its obligations, covenants and responsibilities hereunder, the Manager shall not, at any time following the Date of Closing, without first obtaining the written approval of a majority of the ECT Independent Trustees, undertake the following actions:
  - (i) dispose of any material assets or equipment which are used in operating or maintaining the Business, other than in the ordinary course of business or as provided for in the Annual Management Plan;

- (ii) enter into any transaction, for and on behalf of ECT or any affiliate of ECT, with the Manager or an affiliate of the Manager, other than as provided in Section 7.03; or
  - (iii) provide, for and on behalf of ECT, any contractual consent, or waiver of contractual terms and conditions, in favour of or for the benefit of the Manager or an affiliate of the Manager pursuant to any contract or agreement between the Manager, or affiliate thereof, and ECT.
- (b) The Manager shall not, at any time following the Date of Closing, have the authority to enter into or commit to any transaction which requires the approval of the ECT Independent Trustees or holders of ECT Units, in accordance with the terms of the ECT Trust Indenture, without first obtaining such approval.
  - (c) The Manager shall not materially deviate from the current Annual Management Plan without first complying with the terms of subsection 2.07(c) unless, in the circumstances, the Manager believes, in good faith, that material deviation from the Annual Management Plan is required to safeguard life or property or to prevent or minimize economic loss to the Business and time does not reasonably permit the Manager to obtain the prior written approval of the ECT Trustees to such material deviation.

## **2.07 Annual Management Plan**

The Manager shall prepare, for each Fiscal Year of ECT subsequent to 2003, an Annual Management Plan which it shall submit to the ECT Trustees for approval not less than 60 days prior to the first day of such Fiscal Year, and it is agreed that such approval shall not be unreasonably withheld. It is further agreed that the following provisions shall govern the preparation and approval of the Annual Management Plan and amendments thereto:

- (a) The ECT Trustees shall notify the Manager in writing not less than 30 days prior to the first day of the Fiscal Year of ECT to which the Annual Management Plan relates, whether it has approved the Annual Management Plan for such Fiscal Year;
- (b) In the event that the ECT Trustees shall fail or refuse to approve an Annual Management Plan as submitted or as modified by the Manager then, until an Annual Management Plan for such Fiscal Year is approved, the Manager shall, to the extent practicable in the circumstances, continue to follow the Annual Management Plan for the immediately prior Fiscal Year, and shall continue to be entitled to all Fees and reimbursement of Expenses as provided for in this Agreement;
- (c) Except as provided in subsection 2.06(c), where the Manager desires to undertake any activities or conduct, or is faced with circumstances, which

would result in or give rise to a material deviation from the Annual Management Plan then in effect, the Manager shall submit a revised Annual Management Plan to the ECT Trustees for their consideration which contains details concerning such planned activities, conduct or circumstances and the associated costs and expenses. To be effective, such revised Annual Management Plan must be approved by a majority of the ECT Trustees, and the ECT Trustees shall, in writing and within 20 days after submission of such revised Annual Management Plan, advise the Manager as to whether the revised Annual Management Plan has been approved or disapproved. If the ECT Trustees expressly disapprove of, or otherwise fail to approve, the revised Annual Management Plan, the Manager shall continue to follow the then current Annual Management Plan.

- (d) For further certainty, an Annual Management Plan for a particular Fiscal Year, which has been approved in accordance with the terms of this Agreement, shall remain in effect and shall continue to be followed as approved (subject to adjustment or revision in accordance with the terms of this Section 2.07) until such time as it is superseded by the Annual Management Plan for the immediately next following Fiscal Year which shall become effective once adopted and approved in accordance with the terms of this Section 2.07.

## **2.08 Initial Management Plan**

With respect to the Annual Management Plan for the 2003 Fiscal Year, the Parties acknowledge and agree that such plan will be based upon the first six months of the financial forecast, as contained in the Prospectus, and that the approval of such plan, by the ECT Trustees, is hereby conclusively evidenced by the execution and entering into of this Agreement by ECT.

## **2.09 Monthly and Quarterly Reports**

- (a) On or before the fifteenth (15th) day of each month, the Manager shall provide to each of the Fund (or its representatives) and ECT all such financial information as is reasonably necessary in order to permit the Fund and ECT to determine the amount of its respective monthly distributions to be declared payable, for the then current calendar month, to the Unitholders and holders of ECT Units, respectively.
- (b) Within thirty (30) days following the end of each calendar quarter in each Fiscal Year, the Manager shall provide to each of the Fund (or its representatives) and ECT a quarterly operating report (the “**Quarterly Operating Report**”) containing sufficient information to permit the Fund to satisfy its financial reporting requirements pursuant to Applicable Laws.

## 2.10 Execution of Documents

In carrying out the services to be provided by the Manager hereunder, the Manager may execute, for and on behalf of ECT, any instrument or document which the Manager considers appropriate, in its sole discretion. Any such instrument or document shall be executed in accordance with, or substantially in accordance with, the following:

ENBRIDGE COMMERCIAL TRUST  
By its manager, ENBRIDGE MANAGEMENT SERVICES INC.

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

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

The parties hereto acknowledge that [the Manager] is entering into this agreement solely in its capacity as agent on behalf of [ECT] and the obligations of [ECT] hereunder shall not be personally binding upon any of the [ECT Trustees], [the Manager], any of the unitholders of [ECT] (“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 [ECT], the [ECT Trustees], [the Manager], any Unitholder or 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 without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Property as defined in the Trust Indenture of [ECT] made as of December 20, 2002 and amended and restated as of June 30, 2003, as the same may be further amended, restated or modified.

The rights conferred by any such provision shall be enforced by the Manager for its benefit and the benefit of ECT, and shall be held in trust and enforced by the Manager for the benefit the ECT Trustees, holders of ECT Units and any annuitant. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the ECT Trustees, the Manager or any holder of ECT Units or any annuitant.

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

#### **3.01 Base Fee**

Subject to adjustment in accordance with Section 3.02, ECT shall pay to the Manager, for the services rendered hereunder, 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 ECT 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, ECT hereby agrees to meet with the Manager to negotiate, in good faith, an appropriate adjustment to the Base Fee to compensate the Manager 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 ECT Trust Indenture.

#### **3.03 Expense Reimbursement**

The Manager or its affiliates (where an affiliate is performing some of the services to be provided hereunder) shall be paid by or on behalf of ECT, as set forth in Section 3.05 below, an amount equal to all out-of-pocket and third party fees, costs, and expenses

reasonably incurred by the Manager or its affiliates in carrying out the Manager's obligations and duties hereunder in connection with the provision and performance of the services to be provided hereunder (hereinafter "**Expenses**"). The reimbursement of Expenses to the Manager or its affiliates is not intended to provide the Manager or its affiliates with any financial gain or loss.

### **3.04            Incentive Fee**

- (a) ECT shall pay to the Manager, in respect of each Fiscal Year, an incentive fee (the "**Incentive Fee**") calculated as follows:

$$\text{Incentive Fee} = 25\% \times (\text{Incentive Eligible Amount} / 75\%)$$

Where:

Incentive Eligible Amount = Total Distributions – [Base Distributions per Trust Unit x (Average Ordinary Units + Average Preferred Units)] – Subordinated Unit Distributions; and

Total Distributions = the aggregate amount of Distributable Cash Flow distributed to Unitholders during a Fiscal Year plus the aggregate amount of ECT Distributable Cash Flow distributed to holders of Preferred Units in the same Fiscal Year.

The Incentive Fee will only be calculated and payable for a Fiscal Year where the Incentive Eligible Amount is a positive number.

- (b) Appropriate adjustments to the value of the Base Distributions per Trust Unit, so as to properly reflect changes in the number of Trust Units outstanding as a result of any issuance of Trust Units in payment of distributions, or any subdivision, consolidation, reclassification, conversion, recapitalization, amalgamation, merger, reorganization or other similar event affecting the capital of the Fund, shall be made as agreed to by the Manager and the ECT Independent Trustees, acting reasonably.
- (c) Should this Agreement terminate or expire during any Fiscal Year, the Incentive Fee payable for such Fiscal Year shall be determined after first adjusting the Base Distributions per Trust Unit so as to be equal to the product obtained when the Base Distributions per Trust Unit is multiplied by the quotient obtained when the number of Distribution Records Dates which have occurred in the Fiscal Year prior to the termination or expiration of this Agreement, is divided by the total number of Distribution Record Dates in such Fiscal Year.

### **3.05 Invoicing and Payment of Base Fee and Expenses**

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

### **3.06 Invoicing and Payment of Incentive Fee**

- (a) As soon as possible after the end of each Fiscal Year the Manager shall determine the Incentive Fee payable in respect of the immediately preceding Fiscal Year and shall invoice ECT therefore. Payment of such Incentive Fee shall be paid by ECT within 15 days of invoicing.
- (b) Notwithstanding subsection 3.06(a), at any time during a Fiscal Year that the Manager believes, acting reasonably, that an Incentive Fee will be earned by the Manager, the Parties may agree as to the timing and magnitude of one or more payments to be made to the Manager on account of the Incentive Fee which is in advance of the payment contemplated in subsection 3.06(a).

### **3.07 Payment of GST**

Unless otherwise provided in this Agreement, all amounts expressed herein to be payable to the Manager 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 Manager shall be paid by ECT, in addition to all amounts otherwise payable to the Manager hereunder, all amounts of GST collectible by the Manager with respect to all amounts otherwise payable to the Manager hereunder, and such GST shall be included by the Manager in each invoice rendered by it.

### **3.08 Failure to Pay When Due**

Any amount payable by ECT to the Manager hereunder and which is not remitted to the Manager 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 Manager'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 Manager 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 Manager's services under this Agreement. All such books and records shall be maintained, or made available for examination, at the Manager's head office in the Province of Alberta or wherever else maintained.

### **4.02 Examination of Records**

Upon reasonable prior notice by ECT to the Manager, the Manager shall make available to the ECT Trustees and ECT'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 Manager shall make available to the ECT Trustees or ECT's authorized representatives such financial and operating data and other information in respect of the performance of the Manager's services under this Agreement as may be in existence and as the ECT Trustees or ECT's authorized representatives shall from time to time reasonably request, including for the purposes of conducting any audit in respect of expenses of ECT or other matters necessary or advisable to be audited in order for the ECT Trustees to conduct an audit of the financial affairs of ECT.

Any examination of records at the Manager'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 or of the Manager's business in the ordinary course.

## **ARTICLE 5 - OBLIGATIONS AND COVENANTS OF ECT**

### **5.01 Obligations and Covenants of ECT**

ECT shall:

- (a) grant access, or cause access to be granted, to the Manager to all documentation and information necessary in order for the Manager to 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 Manager, and promptly notify the Manager of any material facts or information of which ECT is aware, which is in relation to

and which may affect the performance of the obligations, covenants or responsibilities of the Manager pursuant to this Agreement or the ECT Trust Indenture, including any known pending or threatened suits, actions, claims, proceedings or orders by or against ECT, any of its affiliates, or the Business, before any court or administrative tribunal.

## **ARTICLE 6 - ACTIVITIES OF MANAGER**

### **6.01 Standard of Care**

The Manager shall exercise the powers and discharge the duties conferred upon it hereunder honestly, in good faith and in the best interests of ECT and in connection therewith shall exercise that degree of care, diligence and skill that a reasonably prudent manager of a business, within Canada, substantially similar to the Business and having responsibilities of a similar nature to those hereunder, would exercise in comparable circumstances.

### **6.02 No Additional Duty**

The Manager shall only be responsible for the duties and obligations expressly provided for in this Agreement and no other obligation or duty (fiduciary or otherwise) 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, by the Manager, of the services or the other duties and obligations to be provided by the Manager hereunder.

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

- (a) The Parties acknowledge and agree that:
- (i) the Manager and its personnel shall devote as much time as is reasonably necessary for the proper discharge of its duties and obligations hereunder;
  - (ii) the Manager 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 Manager (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, ECT 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 services provided hereunder, (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 activities related thereto), and (D) engaging in all activities ancillary or incidental to any of the foregoing; and ECT 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 ECT 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 ECT 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 ECT or its affiliates or associates in respect to any matter or transaction (a “**Conflict Matter**”), the Manager shall give written notice to ECT briefly setting forth particulars of such conflict and thereafter, subject to compliance with subsection 8.9(c) of the ECT Trust Indenture, the ECT Trustees shall be responsible to take all such actions and make all such decisions relating to such Conflict Matter; provided that the ECT Trustees may, in their discretion, delegate responsibility to the Manager for carrying out some or all of the requisite actions or matters necessary to execute the decisions made by the ECT Trustees in connection with a Conflict Matter. If the ECT Trustees expressly or impliedly delegate such responsibility to the Manager, then such activities and matters for which the Manager is delegated responsibility shall be considered and deemed to be part of the duties and obligations being provided by the Manager to ECT pursuant to this Agreement, the performance of which shall be subject to the terms, conditions and limitations set forth herein, provided that for the purposes of construing the standard of care in Section 6.01 of this Agreement, and compliance therewith by the Manager, due regard shall be given to the fact that the Manager is having to carry out its duties in circumstances in which its interests are, to at least some extent, in conflict with those of ECT; and
- (v) unless otherwise expressly agreed between any of the Enbridge Parties or the Manager, on the one hand, and ECT or any of its affiliates or associates, on the other hand, neither the Enbridge Parties nor the

Manager shall be obligated to offer any business opportunities to ECT 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 engage in, would constitute, or would be reasonably likely to give rise to, a material adverse change in the financial affairs of ECT unless such activities have been declined by ECT 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 Manager); 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 ECT.

#### **6.04 Reliance**

In carrying out its duties hereunder, the Manager 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 Manager is affiliated or associated) who are considered by the Manager to be knowledgeable of such facts, provided that the Manager 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 Manager (herein “**Experts**”), provided that the Manager 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 Manager may, from time to time, employ such Experts as may be necessary for the proper discharge of its services and other duties to be provided hereunder.

The Manager 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 Liability of Manager**

Notwithstanding anything contained herein, the Manager, 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 ECT (or any affiliate thereof), the ECT Trustees or any holders of ECT Units, for:

- (a) any loss or damage resulting from, incidental to or relating to the performance or non-performance of services hereunder 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 the Service Provider to be within the scope of authority conferred thereon by this Agreement or the ECT Trust Indenture, unless such loss or damage resulted from the fraud, wilful default or gross negligence of a Service Provider in performing the services provided for hereunder, in which case the benefit of this subsection 6.05(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 services hereunder 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 ECT or the ECT Trustees, 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 ECT or the ECT Trustees;
- (c) any loss or damage resulting from, incidental to, or relating to the acts or omissions of any Person (other than an affiliate of the Manager) to which the Manager has delegated performance of any of its obligations and duties hereunder (irrespective of whether such delegation or act or omission occurred prior to the Effective Date), provided that in making such delegation, the Manager has satisfied its standard of care set out in Section 6.01;
- (d) 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 Manager is affiliated) who are considered by the Manager to be knowledgeable of such facts, provided that the Manager 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 Manager has satisfied its standard of care set out in Section 6.01 in selecting such Expert; and
- (e) any damage, injury or loss of an indirect or consequential nature, including loss of profits, suffered by ECT (or its respective employees, agents, servants, or those for whom it is in law responsible), the ECT Trustees, or any holder of ECT Units, or any of their respective affiliates, which is in any way connected with the Business or the performance or non-performance of this Agreement

and the services to be provided hereunder or under the ECT 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 6.05 shall not only be enforceable by the Manager but shall also be enforceable directly by each of the other Service Providers and, in this respect, it is agreed that the Manager 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 6.05 (and the Manager shall hold and enforce same, to the extent necessary, for the benefit of such Service Providers).

#### **6.06            Additional Information**

The Parties acknowledge and agree that conducting the activities and providing the 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 may augment the value of, business interests and related assets in which the Manager or its affiliates or associates have an interest and that the Service Providers shall not be liable to account to the ECT Trustees, ECT or any holder of ECT Units with respect to such activities or results; provided, however, that the Manager shall not, in making any use of Additional Information, do so in any manner that the Manager knew, or ought reasonably to have known, would cause or result in a breach of any confidentiality provision of agreements to which ECT (or the ECT Trustees) is a party to or is bound by.

#### **6.07            Confidentiality**

The Manager hereby agrees that, unless the written consent of ECT is obtained, the Manager will not at any time use, disclose or make available, to any Person, any information (herein "**Confidential Information**") concerning the Business acquired in connection with the performance of the services by the Manager hereunder, provided that notwithstanding the foregoing:

- (a) the Manager may make use of, reveal or disclose Confidential Information:
  - (i) as may be expressly permitted by, or necessary or advisable for the performance of, this Agreement;
  - (ii) where it is already in the public domain when disclosed to the Manager or becomes, after having been disclosed to the Manager, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by the Manager 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 Manager;
  - (iv) where it was made available to the Manager on a non-confidential basis from a third party source, or where such information can be demonstrated by the Manager to have come into its possession independently of anything done by the Manager under or pursuant to this Agreement;
  - (v) to affiliates and associates of the Manager, and to the officers, directors, employees, agents, delegates hereunder or other representatives (including consultants, financial institutions and other advisors) of the Manager 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 6.07; 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 6.07 shall prevent the Manager from using Additional Information (as defined in Section 6.06) in respect of any other business interests or assets of the Manager or its affiliates or associates, provided that in connection with such use the Manager does not disclose such Additional Information to any other Person except in the circumstances set forth in subsection 6.07(a); and
  - (ii) the obligations under this Section 6.07, with respect to any particular item of Additional Information, shall expire and be at an end on the second anniversary of the Manager's receipt of the particular item of Additional Information in question.

## **ARTICLE 7 - SUCCESSION AND DELEGATION**

### **7.01**

#### **Assignment**

- (a) ECT shall not sell or assign its interest in this Agreement to a third party without the prior written consent of the Manager, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, ECT shall be entitled, without the consent of the Manager, to assign its rights under this Agreement

as required pursuant to any documentation relating to any indebtedness incurred by ECT or any guarantee granted by ECT.

- (b) The Manager 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 Manager may, without the consent of a majority of the ECT Independent Trustees, assign or sell its interest in this Agreement to an affiliate.
- (c) Notwithstanding the foregoing, in the event of any assignment or sale by the Manager of its interest hereunder (except in the case of an assignment or sale to an affiliate of the Manager, unless otherwise agreed to by ECT), the Parties agree that the Manager shall be released from its duties and obligations hereunder from and after the date of such assignment or sale. Upon any assignment by ECT or the Manager in accordance with this Section 7.01, ECT, the Manager and the applicable assignee shall execute and deliver such documents as are necessary to give effect to such assignment on the terms herein and as otherwise agreed between such parties.

## **7.02 Change of Control**

There shall be no Change of Control of the Manager 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.

## **7.03 Delegation of the Manager's Obligations**

Subject to and in accordance with the terms and conditions herein contained, the Manager may delegate (by subcontract or otherwise) the performance of any of its duties and obligations under this Agreement to any Person, including affiliates of the Manager, without the prior written consent of the ECT Trustees, provided that such delegation shall not relieve the Manager of the responsibility for ensuring the performance of its duties and obligations under this Agreement.

# **ARTICLE 8 - INDEMNIFICATION**

## **8.01 Indemnification of the Manager**

The Manager, its affiliates, associates and any Person who is serving or shall have served as a director, officer, employee or agent of the Manager or its affiliates and associates,

and any respective heirs, legal representatives and successors of any of the foregoing (collectively the “**Manager Indemnitees**”), shall be indemnified and saved harmless by ECT 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 ECT Trustees, 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 Manager Indemnitees and which in any way arise from or relate in any manner to the ECT Trust Indenture, this Agreement or the performance or non-performance of services hereunder (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 Manager Indemnitees.

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

### **8.02 Indemnification of ECT and ECT Trustees**

Subject to limitations on liability of the Manager contained in this Agreement, ECT and the ECT Trustees shall be indemnified and saved harmless by the Manager 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 Manager, acting reasonably), and legal fees on a solicitor-client basis, including reasonable disbursements) of whatsoever kind or nature (collectively “**ECT Claims**”) incurred by, borne by or asserted against any of such indemnified parties which arise from the fraud, wilful default or gross negligence of the Manager in the performance of its obligations hereunder, unless such ECT Claims arise from the fraud, wilful default or gross negligence on the part of any such indemnified parties, or are attributable to actions undertaken on the instructions of ECT or the ECT Trustees.

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

### **8.03 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 8 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 8 (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 defense 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 defense 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 8 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.

#### **8.04 Net Amount**

In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, 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.

#### **8.05 Third Party Beneficiaries**

Each of the Parties hereby acknowledges and agrees that the rights of indemnification provided for in this Article 8 shall not only be enforceable by the Parties hereto but shall be enforceable directly by each of the Manager Indemnitees and the ECT Trustees, and in this respect:

- (a) ECT hereby appoints the Manager to act as agent and trustee for the Manager Indemnitees as regards the covenants of indemnification by ECT given in favour of the Manager Indemnitees pursuant to Section 8.01, and the Manager accepts such appointment; and

- (b) the Manager hereby appoints ECT to act as agent and trustee for the ECT Trustees as regards the covenants of indemnification by the Manager given in favour of the ECT Trustees pursuant to Section 8.02, and ECT accepts such appointment.

#### **8.06 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 9 - TERM**

#### **9.01 Term**

This Agreement shall become effective as of the Effective Date and, subject to Section 9.02, 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 10.

#### **9.02 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 Manager provides ECT 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.

#### **9.03 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 ECT in respect of amounts accrued to and in favour of the Manager hereunder, and (b) all indemnification obligations under Article 8 pertaining to any Claims or ECT 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 10 - TERMINATION

### **10.01 Events of Termination by the Manager**

ECT 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 ECT for the purposes of this Agreement (an “**ECT Event of Termination**”):

- (a) in the event that ECT breaches or fails to observe or perform any of ECT’s material obligations, covenants or responsibilities under this Agreement, and:
  - (i) prior to receipt of the Ordinary Resolution contemplated by paragraph 10.01(a)(ii) below or within sixty (60) days after notice from the Manager specifying the nature of such breach or failure, whichever last occurs, (the “**Cure Period**”), ECT 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, ECT 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 10.01(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 ECT 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 ECT; or (iv) be voluntarily liquidated or wound up; or (v) otherwise take any action that acknowledges its insolvency;
- (c) in the event that ECT 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 ECT, 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; or
- (d) in the event that the Administration Agreement is properly terminated in accordance with its terms.

## **10.02 Remedies of the Manager**

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

## **10.03 Events of Termination by ECT**

Subject to Section 10.05, the Manager 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 Manager for the purposes of this Agreement (a “**Manager Event of Termination**”):

- (a) in the event that the Manager breaches or fails to observe or perform any of the Manager’s material obligations, covenants or responsibilities under this Agreement, and:
  - (i) prior to receipt of the Ordinary Resolution contemplated by paragraph 10.03(a)(ii) below or within sixty (60) days after notice from ECT specifying the nature of such breach or failure, whichever last occurs (the “**Cure Period**”), the Manager 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 Manager 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 10.03(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 Manager and its affiliates shall be excluded for purposes of determining authorization by Ordinary Resolution;
- (b) in the event that the Manager 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 Manager; or (iv) be

voluntarily liquidated or wound up; or (v) otherwise take any action that acknowledges its insolvency;

- (c) in the event that the Manager 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 Manager, 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;
- (d) in the event that there occurs a substantial deterioration in the Business, taken as a whole, which renders the performance of ECT and the Business thereof to be materially below the performance of similar income trusts in Canada; provided, however, that (i) such substantial deterioration is caused by the Manager and is not caused by an event of Force Majeure or other events outside the reasonable control of the Manager, and (ii) a written explanation is delivered to the Manager setting forth the reasons why the ECT Independent Trustees are of the view that the Manager is the cause of such substantial deterioration and the Manager fails to remedy the issues brought forth by the ECT Independent Trustees by the later of (A) the end of the third month following receipt of such notice from the ECT Independent Trustees and (B) receipt of approval for termination of this Agreement in reliance on this subsection 10.03(d) where such approval is:
  - (i) authorized by a resolution in writing signed by Unitholders (which, for greater certainty, includes holders of Voting Exchangeable Securities) holding, in aggregate, at least 66 $\frac{2}{3}$ % of all of the issued and outstanding Trust Units (and for this purpose, all Trust Units underlying Voting Exchangeable Securities shall be considered as issued and outstanding); or
  - (ii) obtained at a meeting of Unitholders (which, for greater certainty, shall include voting thereat by holders of Voting Exchangeable Securities) called to consider a resolution to approve termination of this Agreement in reliance on this subsection 10.03(d) and when such meeting is held the meeting is attended in person or by proxy by Unitholders (which, for greater certainty, includes holders of Voting Exchangeable Securities) representing at least 50% of all of the issued and outstanding Trust Units (and for this purpose, all Trust Units underlying Voting Exchangeable Securities shall be considered as issued and outstanding) and the resolution is passed at the meeting by the affirmative vote of Unitholders (which, for greater certainty, includes holders of Voting Exchangeable Securities) representing at least 66 $\frac{2}{3}$ % of the Trust Units represented at such meeting;

excluding, in each case, Trust Units and Voting Exchangeable Securities (and the votes represented thereby) held by the Manager and its affiliates; or

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

#### **10.04 Remedies of ECT**

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

#### **10.05 Breach Caused by Third Party**

Notwithstanding anything contained in this Agreement, where the Manager is in compliance with its obligations pursuant to subsection 2.04(b) but the Manager has breached or failed to observe or perform any of the Manager's material obligations, covenants or responsibilities under this Agreement, and such breach or failure arises from, relates or is attributable to, any act or omission on the part of an O&M Contractor or an owner of any Fund Working Asset in respect of which ECT has a direct or indirect ownership interest, and in circumstances where the Manager is not affiliated with such contractor or owner, then such breach or failure by the Manager shall be deemed not to constitute a Manager Event of Termination hereunder and ECT shall not be entitled to terminate this Agreement or take any other action or pursue any other rights, remedies or legal process as against the Manager which ECT may at law or otherwise be entitled as a result of such breach but for this Section 10.05.

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

Should a Party dispute in good faith that an ECT Event of Termination or a Manager Event of Termination, as the case may be, has occurred under this Article 10, such dispute shall be submitted to arbitration by the disputing Party (in accordance with the provisions of Article 12 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).

#### **10.07 Acknowledgement of ECT**

ECT acknowledges and agrees that (a) a termination of this Agreement by it without proper right or cause pursuant to this Agreement will cause irreparable harm to the Manager for which the Manager will not have an adequate remedy at law, either by way of damages or otherwise, and that (b) in the event of a wrongful termination, and in addition to any other remedy to which the Manager may be entitled at law or in equity, the Manager shall be

entitled to injunctive relief to restrain such breach and to an order specifically enforcing this Agreement and the terms and provisions hereof.

**10.08            Post Termination Arrangements**

In the event of a termination of this Agreement:

- (a) The Manager shall deliver the following to ECT:
  - (i) all books, records, accounts, documents and manuals which the Manager has developed and maintained in connection with the performance of its obligations and duties associated with the provision of services pursuant to this Agreement (collectively, the “**Books and Records**”); and
  - (ii) all money and other financial instruments which the Manager is then holding for and on behalf of ECT.
- (b) The Manager shall be paid for all fees accrued hereunder (including in respect of the Base Fee and the Incentive Fee) and reimbursed for all Expenses 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 expenses hereunder (including in respect to the Base Fee, the Incentive Fee and the Expenses) and to provide, if applicable, for the completion of any other matter contemplated by this Agreement.
- (c) Notwithstanding subsection 10.08(a)(i) above, the Manager, prior to delivery the Books and Records to ECT, 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 Manager or its affiliates. For a period of seven (7) years from the date of delivery of the Books and Records, ECT shall retain all Books and Records so transferred to it by the Manager. So long as any such Books and Records are retained by ECT pursuant to this Agreement, without undue interference to the business operations of ECT, the Manager 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 Manager or its affiliates.

## **ARTICLE 11 - FORCE MAJEURE**

### **11.01 Consequences of Force Majeure**

During the occurrence of an event of Force Majeure, the obligations of the Party affected by such event of Force Majeure, to the extent that such obligations cannot be reasonably performed 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, for the period of such occurrence, except that:

- (a) the occurrence of an event of Force Majeure affecting ECT but not affecting the performance of the Manager's obligations hereunder, shall not relieve ECT of its obligation to make those payments to the Manager which ECT is obligated hereunder to make; and
- (b) upon the occurrence of an event of Force Majeure affecting the Manager, and during the continuance thereof (i) ECT shall continue to be obligated to make payment of all fees earned or accrued to the Manager (including the Base Fee and Incentive Fee) 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 Manager shall continue to be entitled to receive payment of all 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 Manager 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 11.01(b)), to which the Manager is entitled by the terms hereof.

### **11.02 Notice**

The Party seeking to invoke the benefit of Section 11.01 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 12 - RESOLUTION OF DISPUTES AND ARBITRATION**

### **12.01 Dispute**

Where so provided in Section 10.06 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 12 to the extent permitted by law.

## 12.02 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 12.02 and pursuant to the provisions of the *Arbitration Act* (Alberta). If the provisions of this Section 12.02 are inconsistent with the provisions of the *Arbitration Act* (Alberta) and to the extent of such inconsistency, the provisions of this Section 12.02 shall prevail.
- (b) Either 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 Party, setting forth the nature of the Dispute, the amount involved and the name of the arbitrator such initiating Party proposes to be appointed.
- (c) Within thirty (30) days after deemed receipt (in accordance with Section 13.04) 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 Justice of the Court of Queen’s Bench of Alberta, upon motion by either 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 Section 12.02(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.

## 12.03 Continued Performance

Notwithstanding Article 10, during the conduct of Dispute resolution procedures pursuant to this Article 12, the Parties shall continue to perform their respective obligations under this Agreement and neither Party shall exercise any other remedies to resolve such Dispute.

## **ARTICLE 13 - GENERAL MATTERS**

### **13.01 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 Manager shall perform its duties and obligations under this Agreement as an independent contractor (with its duties and obligations as expressly provided herein) for and on behalf of ECT, and it is acknowledged and agreed that only where the Manager undertakes execution of contracts or other instruments for and on behalf of ECT may the Manager then be acting as an agent of ECT. In no circumstances shall the Manager 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 Manager of such duties and obligations.

### **13.02 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. If required pursuant to the terms of the ECT Trust Indenture, any amendment to this Agreement after the closing of the offering contemplated by the Prospectus shall require the consent of the ECT Independent Trustees.

### **13.03 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 Law, 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.

### **13.04 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 Manager or ECT, 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 ECT, by providing a copy to each of the ECT Independent Trustees at their respective addresses for notice as provided pursuant to the terms of the ECT Trust Indenture;
- (b) To the Manager:

Enbridge Management Services Inc.  
 Suite 3000  
 425 - 1st Street S.W.  
 Calgary, Alberta T2P 3L8

Attention: Corporate Secretary  
 Fax No.: (403) 231-5929

### **13.05 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.

### **13.06 Enurement**

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

### **13.07 Entire Agreement**

This Agreement, together with the ECT Trust Indenture constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between 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 between the Parties, other than as expressly set forth in this Agreement and the ECT Trust Indenture.

### **13.08 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.

**13.09**            **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 the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

**13.10**            **Time of the Essence**

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

**13.11**            **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.

**13.12**            **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.

**[Rest 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 MANAGEMENT SERVICES  
INC.**

Per: (signed) Brad Boyle  
Name: Brad Boyle  
Title: Treasurer

**ENBRIDGE COMMERCIAL TRUST**

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