

Historical Consumption Request Agreement

THIS AGREEMENT is effective the 1st day of July, 2008.

BETWEEN:

Town of Ponoka, a municipal corporation under the laws of Alberta

(hereinafter referred to as the Municipality”)

- and –

(Retailer name)

, a body corporate with an office in the Province of Alberta

(hereinafter referred to as the “Retailer”)

WHEREAS the Retailer is a party to a Retail Access Services Agreement with the Municipality and is bound by the obligations and liabilities under the Retail Access Services Agreement and the Municipality’s Distribution Tariff Terms and Conditions;

AND WHEREAS the Retailer requests that the Municipality disclose to the Retailer historical electricity consumption information for a site;

AND WHEREAS the Retailer acknowledges that the Municipality is relying upon information provided by the Retailer in disclosing the requested historical consumption information to the Retailer;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants hereinafter contained the parties agree as follows:

1. DEFINITIONS

In this Agreement, the following words and phrases mean:

- (a) “Agreement” means this instrument and all schedules and appendices hereto which are added by agreement of the parties, as well as any amendment from time to time.

2. TERM AND TERMINATION

This Agreement shall commence on the date first written above and will continue until:

- (a) the termination of the Retail Access Services Agreement to which the Retailer is a party;
- (b) the mutual written agreement by the Retailer and the Municipality to terminate this agreement,; or
- (c) a governing body, having appropriate jurisdiction, orders the termination of this Agreement.

3. SERVICES TO BE PROVIDED

Under the terms of this Agreement, the Municipality shall provide historic load consumption data regarding end-use consumers at the request of the Retailer.

4. THE MUNICIPALITY'S WARRANTY

The Retailer acknowledges that the Municipality makes no representation or warranty to the Retailer regarding the accuracy of any historical consumption information provided to the Retailer by the Municipality.

5. RETAILER'S WARRANTY

Each time that the Retailer requests the Municipality to disclose to the Retailer historical electricity consumption information for a site, the Retailer represents and warrants to the Municipality as follows:

- (a) The Retailer has obtained from each of the customers to which the requested historical consumption information relates, all consents that are required under all applicable laws, for the Municipality to disclose to the Retailer, and for the Retailer to receive from the Municipality such historical consumption information.
- (b) Where a Retailer is required to obtain consent, such consent must be in verifiable form. The consent may be written (in hard copy or in an electronic form), or oral, so long as there is a methodology in place to record such consent in verifiable form the fact that consent was given. The retailer will retain records of all consent in a form that verifies proof of consent in accordance with applicable laws, and will produce those records on request by the Municipality or the Market Surveillance Administrator, as defined in the *Electric Utilities Act* (Alberta), as amended, or any authorized government agency.

- (c) The Retailer will maintain the confidentiality of, and will not use or disclose, the requested historical consumption information, except in accordance with all applicable laws.

6. INDEMNIFICATION

The Retailer shall indemnify and save harmless the Municipality, its directors, officers, agents, employees, representatives, and subcontractors including but not limited to Simmarix Inc. (collectively, the “Distribution Company Parties”) from and against all suits, actions, legal or administrative proceedings, claims, demands, proceedings, losses, damages, liabilities, costs and expenses (including all legal costs on a solicitor and his own client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) suffered or incurred by the Distribution Company Parties, or any of them, or which may be brought against or suffered by the Distribution Company Parties, or any of them, or which the Distribution Company Parties, or any of them, may sustain, pay or incur as a result of or arising directly or indirectly out of or in connection with any breach by the Retailer of, or any inaccuracy of, any of these representations or warranties of the Retailer, except to the extent that such breach or inaccuracy was a result of or arose directly or indirectly out of or in connection with any negligence or willful misconduct of the Distribution Company Parties.

7. ASSIGNMENT

The Retailer shall not, without the written consent of the Municipality, which consent the Municipality may in its discretion withhold, assign the benefit of or delegate its obligations under this Agreement in whole or in part. The parties agree that this Agreement may be assigned to an affiliate of the Municipality.

8. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the Retailer and the Municipality. The parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No additional charges, amendments or modifications of any of the terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both parties.

9. NOTICE

Any notices or other documents required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice and shall be deemed to have been received on the date given when hand delivered, or 5 days after mailing when mailed or on the date of transmission if faxed. Notices shall be effective if given as provided herein and to the following persons or at such other addresses as the parties may from time to time advise each other in writing:

To The Municipality:

Betty Quinlan
Director of Corporate Services
Town of Ponoka
5102 – 48 Avenue
Ponoka AB
T4J 1P7

To: (Retailer)

10. FORCE MAJEURE

In the event either party is delayed or unable to perform any part of its obligations under this Agreement due to labor disputes, strikes, walkouts, unusual delay by common carriers, unavoidable catastrophe, or circumstances of any kind beyond the control of such party including without restricting the generality of the foregoing, acts of God, fire, war, governmental regulations, or otherwise, such party shall be excused from the performance of such obligation to the extent that performance is prevented, hindered or delayed by such causes. Upon the occurrence of these events, the affected party shall notify the other party of same and use its reasonable efforts to remedy or correct the delay or failure to perform as soon as possible. In no circumstances shall the party delayed, hindered or prevented from performing any part of its obligations be liable to the other party for any damages, howsoever sustained by the other party or for any failure to perform any act, or nonperformance of any obligations due to these circumstances.

11. SEVERABILITY

Any term, condition or provision of this Agreement, which is or shall be deemed to be void, prohibited or unenforceable, shall be severable and be ineffective to the extent of such voidance, prohibition or unenforceability without in any way invalidating the remaining terms, conditions or provisions; and any such voidance, prohibition or unenforceability shall not invalidate or render unenforceable, any other term, condition or provision.

12. WAIVER

The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement or to exercise any rights under same shall not constitute a waiver or relinquishment of any such terms, conditions or rights. The mere passage of time or the giving of notices or the execution of revisions,

modifications or extensions to this Agreement shall not affect other terms, conditions or rights in and under this Agreement unless expressly stated.

13. HEADINGS

The insertion of headings in this Agreement is for convenience only and shall not affect the interpretation.

14. INUREMENT

This Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

15. INTERPRETATION

- (a) Words importing the singular number shall include the plural and vice versa.
- (b) Words importing the neuter gender shall include the masculine and feminine genders, and words importing person shall include firms and corporations and vice versa.

16. TIME OF THE ESSENCE

Time shall be of the essence in this Agreement.

17. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws in force in the Province of Alberta and the Retailer and the Municipality irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta. Furthermore, conflict of laws principles or rules that would impose the laws of any jurisdiction other than the laws of Alberta on the construction of this Agreement shall be excluded. The Retailer agrees that a judgment, after exhaustion of all available appeals, in any action or proceeding under this Agreement is conclusive and binding upon the Retailer and may be enforced in any other jurisdiction by a suit upon that judgment, a certified copy of which is conclusive evidence of the judgment.

IN WITNESS WHEREOF this Agreement has been signed by the duly authorized officers of the parties hereto effective on the day and year first above written.

Per: _____

Betty Quinlan
Town of Ponoka
Director of Corporate Services

Per: _____

Name:
Title: