

**ENBRIDGE PIPELINES INC.**

**TEMPORARY WORKSPACE OPTION AGREEMENT**

**PROVINCE OF ONTARIO**

**THIS TEMPORARY WORKSPACE OPTION AGREEMENT** (the “**Agreement**”) is made as of the ● day of ●, 201● (hereinafter referred to as the “**Effective Date**”) by and between **ENBRIDGE PIPELINES INC.**, a corporation incorporated under the laws of Canada, and having its head office in the City of Edmonton, in the Province of Alberta (hereinafter, referred to as “**Enbridge**”) and \_\_\_\_\_ (hereinafter, referred to as “**Owner**”), who are sometimes individually referred to herein as a “**Party**” and collectively, as “**Parties**”.

**WHEREAS**, Owner is the registered and beneficial owner of the lands and premises legally described in **Schedule A** attached hereto (the “**Property**”);

**AND WHEREAS**, Enbridge and Owner have agreed to enter into this Agreement for the purpose of granting to Enbridge for itself, its employees, agents, contractors, subcontractors, successors and assigns, an option to acquire a license from the Owner in the form of a temporary working space agreement (the “**TWS Agreement**”), in the form attached as Schedule C, across, over, through or on a part of the Property for temporary working space and for purposes of “**Temporary Working Rights**” and/or “**Extra Temporary Working Rights**”, as such terms are defined in the TWS Agreement to construct a pipeline and other facilities appurtenant, affixed or incidental thereto (collectively, the “**Pipeline**”), for the transportation, storage and handling of oil, other liquid and gaseous hydrocarbons and products thereof, together with a release agreement (the “**Release of Damages Agreement**”), in the form attached as Schedule D, with respect to certain damages relating to the Pipeline, as provided for herein;

**NOW, THEREFORE, THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

**1. Option**

1.1 Subject to the terms and conditions set out herein, Owner hereby grants Enbridge the exclusive option (“**Option**”) to acquire the license contemplated by the TWS Agreement in respect of the use of a portion of the Property (the “**Optioned Property**”) the approximate location of which is set out in the sketch attached as **Schedule B** to this Agreement, which license shall be across, over, and through the Optioned Property, substantially in the location as shown on the property sketch attached hereto. The Option shall be exercised by Enbridge by providing written notice to Owner (the “**Exercise Notice**”) at any time prior to the expiry of the Option Term (as herewith below).

1.2 If, at the time Enbridge exercises the Option, the owner of the Property is the Owner as first named above, then such Owner does hereby concurrently upon entering into this Agreement sign and deliver to Enbridge the TWS Agreement and Release of Damages Agreement (together, the “**Agreements**”), which Agreements are not intended to have legal force and effect until such time as Enbridge exercises its Option. Upon exercising the Option, Enbridge is further irrevocably authorized and directed by the Owner to finalize the Agreements, by completing any missing

information such as the date of the document (to be the same date as the Exercise Notice), and, thereafter, Enbridge shall execute the Agreements and provide a copy of the completed, fully executed Agreements to Owner, both of which will then be in full force and effect. Without limiting the foregoing irrevocable authorization and direction hereby given by such Owner to Enbridge, as a further assurance Owner irrevocably constitutes and appoints Enbridge the true and lawful attorney of such Owner to execute the Agreements, and to execute and deliver all other instruments, approvals and documents as provided for in the Agreements.

1.3 If, at the time Enbridge exercises the Option, the owner of the Property is not the Owner as first named above, then Owner first named above agrees to have obtained the covenant of the subsequent Owner in favour of Enbridge, prior to any transfer of title to the Property by such first named owner, which covenant is to have the effect that such subsequent Owner of the Property shall duly execute and deliver to Enbridge on such date as is specified by Enbridge to the Owner, the Agreements substantially in the forms attached hereto as **Schedule C** and **Schedule D**, respectively, upon the terms and conditions provided therein.

1.4 The Option shall be exercisable by Enbridge at any time from the Effective Date up to and including the date which is the third anniversary of the Effective Date (the “**Option Term**”). Notwithstanding anything to the contrary herein, however, if Enbridge shall give written notice to the Owner prior to the expiry of the Option Term that Enbridge has submitted, or is in the process of submitting, an application to the National Energy Board (or equivalent government or public authority) in respect of the Pipeline and such application references this Option and/or the Optioned Property, then Enbridge may, in its sole discretion, elect to extend the Option Term for an additional period of one year (“**Extended Option Term**”) on the same terms, conditions and privileges as set forth hereunder, at the payment then being paid as herein provided, by providing written notice to Owner of such extension, which shall accompany payment pursuant to **Schedule E**, no less than sixty (60) days prior to the expiration of the Option Term. The Option Term and the Extended Option Term may sometimes be collectively referred to herein as the “**Term**”.

1.5 Enbridge shall pay Owner the amounts (referred to collectively and individually as the “**compensation**”) set forth in **Schedule E** as consideration for the Owner entering into this Agreement, as consideration for extending the Option Term, if applicable, and as compensation for entering into the Agreements, in accordance with and at the times set forth in **Schedule E**.

1.6 The Owner acknowledges receipt of a notice given pursuant to Section 87(1) of the *National Energy Board Act* (Canada) and given prior to the entering into of this Agreement, setting out or accompanied by:

- (a) a description of the Optioned Property of the Owner required by Enbridge for the TWS Agreement;
- (b) details of the compensation offered by Enbridge for the Optioned Property required;
- (c) a detailed statement made by Enbridge of the value of such Optioned Property required in respect of which compensation was offered;
- (d) a description of the procedure for approval of the detailed route of the Pipeline; and

(e) a description of the procedure available for negotiation and arbitration under Part V of the *National Energy Board Act* (Canada) in the event that the Owner and Enbridge are unable to agree on any matter respecting the compensation payable.

## **2. Covenants, Representations & Warranties.**

2.1 Owner represents and warrants that, as of the Effective Date, if Owner is an individual, at least eighteen (18) years of age.

2.2 Owner acknowledges that Owner has had the full opportunity to obtain independent legal representation or advice in connection with this Agreement.

2.3 Owner hereby agrees and covenants:

(a) that subsequent to the execution and delivery of this Agreement and without any additional consideration made or cost to Owner, Owner will execute and deliver or cause to be executed and delivered any further legal instruments, including, without limitation, any required consents or acknowledgements and perform any acts which are or may become necessary to effectuate the purposes of this Agreement and to complete the transactions contemplated hereunder; and

(b) that any information which Owner has access to or which comes into Owner's possession relating to Enbridge's activities (including the terms of this Agreement) (collectively, the "**Confidential Information**") shall be held in the strictest confidence by Owner, and Owner shall not disclose any Confidential Information to any third party except as may be required by law, or on the same confidential basis as provided herein and then only to Owner's prospective purchasers or legal and financial advisors who have a *bona fide* and actual need to know same ("**Authorized Agents**"); (ii) Owner or the Authorized Agents will not use any such Confidential Information, other than as may be required or permitted to perform any of its obligations under this Agreement; and (iii) Owner or its Authorized Agents will not exploit (whether for commercial or other purposes) or otherwise use any such Confidential Information. Owner acknowledges that a breach of any of the provisions contained herein would cause Enbridge to suffer loss which could not be adequately compensated for by damages and Enbridge may, in addition to any other remedy or relief, enforce the performance of the provisions of this Section by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage. Upon the expiration or earlier termination of this Agreement, all Confidential Information will continue to be kept confidential by Owner.

2.4 Enbridge hereby covenants that should it elect to exercise the Option, it shall, at its sole cost and expense and prior to accessing the Optioned Property for any purpose related to the assessment, surveying or construction of the Pipeline contemplated to be erected by Enbridge herein, provide and maintain in full force and effect with financially responsible insurance carriers, insurance with commercially reasonable coverages, which shall continue in effect during the existence of the license contemplated by the Agreements:

(a) automobile liability insurance covering owned, non-owned, hired, leased and rented automobiles and automotive equipment providing coverage for injury, death, or property damage;

(b) commercial general liability insurance covering bodily injury, death, personal injury and damage to property; and

(c) workers compensation as required by the Ontario *Workplace Safety and Insurance Act* (Ontario) or similar legislation covering all persons employed by Enbridge or subcontractors for work performed under this Agreement.

## 2.5 Title Search

(a) If, after the Effective Date, Enbridge conducts a title search and such search reveals that Owner is not the legal and beneficial owner of the Optioned Property or does not have the legal right and authority to grant to Enbridge, its employees, servants, agents, consultants, contractors and sub-contractors, the rights under the Agreements or has granted an easement, right-of-way, lease, financial encumbrance or other property right(s) related to the Optioned Property (“**Prior Encumbrance**”) to any other person that would interfere with the rights granted to Enbridge hereunder or under the Agreements, then Enbridge may, in its sole discretion, terminate this Agreement effective immediately. If Enbridge elects not to terminate this Agreement, Owner agrees to cooperate with Enbridge to obtain from the holder of such Prior Encumbrance any non-disturbance agreement, postponement, mutual co-existence agreement or related agreements, that Enbridge may reasonably require.

(b) If the title search reveals a Prior Encumbrance, Enbridge, in its sole and absolute discretion, may decide to consult with the holder of such Prior Encumbrance and Owner shall cooperate with Enbridge to resolve any issues that may arise out of the exercise of the Option vis-à-vis the Prior Encumbrance with the goal of determining whether the Prior Encumbrance and the rights of Enbridge under the Agreements can co-exist over the Optioned Property.

(c) Notwithstanding Section 2.5(b), Enbridge may choose to terminate this Agreement at any time pursuant to Section 2.5(a).

2.6 Owner hereby represents and warrants that it is the legal and beneficial owner[s] in fee simple of the Property and has the legal right and authority to grant to Enbridge, its servants, employees, agents, consultants, contractors and sub-contractors the rights under this Agreement and under the Agreements on the terms and conditions set out herein and has not and will not grant an option, easement, lease, license or any other property rights related to the Optioned Property to any other person that would interfere with the rights granted to Enbridge hereunder and under the Agreements, save and except for any easements, rights-of-way, restrictions, or any other property rights granted by the Owner prior to the Effective Date.

2.7 Owner covenants and agrees to execute all applications, consents, permissions, agreements, postponements, partial discharges and any other documents which Enbridge may require in connection with obtaining any and all approvals (collectively, “**Approvals**”) and in connection with entering into by Enbridge of any agreements with such governmental and public authorities as may be necessary to give due force and effect to and in furtherance of Enbridge’s applications, and the Owner shall produce all other documents and information which may be required in connection with such applications. All applications for Approvals shall be made by Enbridge, at its sole cost and expense and any costs associated with such Approvals shall be borne by Enbridge. Enbridge

agrees that the obligation of the Owner pursuant to this paragraph shall be restricted to execution of documents and production of documents and information and shall not impose upon the Owner any financial obligation whatsoever.

## 2.8 Mutual Indemnities

(a) Enbridge shall indemnify and hold harmless the Owner against all actions, suits, claims, demands and expenses made or suffered by any person or persons, in respect of loss, injury, damage or obligation to compensate, arising out of or in connection with or as a result of:

- (i) the negligence or wilful misconduct of Enbridge; or
- (ii) any breach by Enbridge of the terms and conditions of this Agreement;

provided that Enbridge shall not be liable under this Section to the extent to which such loss, damage or injury is caused or contributed to by the negligence or default of Owner, its servants or agents. For greater certainty, Enbridge shall not be liable to Owner for the actions of Owner, its agents, employees, invitees or representatives who enter upon the Optioned Property.

(b) Owner shall indemnify and hold harmless Enbridge against all actions, suits, claims, demands and expenses made or suffered by any person or persons, in respect of loss, injury, damage or obligation to compensate, arising out of or in connection with, or as a result of the negligence or wilful misconduct of Owner, as well as, in respect of any loss, injury or damage arising out of or in connection with, any breach by Owner of the terms and conditions of this Agreement; provided that Owner shall not be liable under this Section to the extent to which such loss, damage or injury is caused or contributed to, by the negligence or default of Enbridge, its servants or agents. For greater certainty, Owner shall not be liable to Enbridge for the actions of: (i) Enbridge, its agents, employees, or representatives who enter upon the Optioned Property, or (ii) any trespasser or unauthorized person who enters upon the Optioned Property.

(c) Notwithstanding the foregoing, the Parties hereto shall only be liable for reasonably anticipated and foreseeable damages.

2.9 Enbridge will compensate the Owner for all damages suffered as a result of Enbridge's operations.

2.10 In performing and observing the covenants and conditions contained in this Agreement and under the Agreements, Enbridge shall peaceably hold and enjoy the rights thereby granted without hindrance, molestation or interruption on the part of the Owner or of any person, firm or corporation claiming by, through, under or in trust for the Owner.

2.11 This Agreement shall not affect or prejudice Enbridge's statutory rights to acquire an easement on any portion of the Property under the provisions of the *National Energy Board Act* (Canada), or any other laws, which rights may be exercised at Enbridge's discretion in the event of the Owner being unable or unwilling for any reason to perform this Agreement or to give to Enbridge a clear and unencumbered license as contemplated under the Agreements.

2.12 Nothing contained herein or in the Agreements, shall vest in Enbridge any title to mines or minerals in or under the Optioned Property.

2.13 This Agreement and the provisions of the Agreements shall extend to, be binding upon, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Owner and Enbridge, respectively.

### 3. Termination

3.1 Except as otherwise stipulated herein, this Agreement shall terminate at the earlier of:

(a) failure by Enbridge to pay the requisite payments provided for hereunder, after written demand by the Owner, unless otherwise agreed to by the Parties;

(b) receipt by the Owner of notice from Enbridge of Enbridge's desire to terminate the Agreement at any time during the Term;

(c) termination by Enbridge pursuant to Section 2.5; or

(d) the expiry of the Option Term as set out in Section 1.4.

3.2 The representations, warranties, covenants and agreements contained in Section 2 hereof shall survive the termination of this Agreement and remain in full force and effect.

3.3 In the event that this Agreement is terminated on the date stipulated in Section 3.1(b) (the "**Early Termination Date**"), Enbridge shall be released from having to pay any further Option Payment under this Agreement.

### 4. Notices

4.1 Any notice or other writing required or permitted to be given under this Agreement or for the purposes of this Agreement (referred to in this Section as a "**Notice**") to the other Party shall be sufficiently given if delivered personally, or if sent by prepaid registered mail, or if transmitted by fax:

In the case of Notice to Enbridge, to:

- P.O Box 398  
10201 Jasper Avenue  
Edmonton AB T5J 2J9  
Attention: ●  
Facsimile: ●

With a copy to:

- Attention: ●

Facsimile: ●

In the case of the Owner, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile:

or at such other address as the Party to whom such writing is to be given shall have last notified to the Party giving the same in the manner provided in this Section. Any notice personally delivered to the Party to whom it is addressed as provided in this Section shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to the address and in the manner provided for in this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing in Ontario. Any notice transmitted by fax shall be deemed to have been given and received on the first Business Day after its transmission.

4.2 For the purposes of this Section, the term “**Business Day**” means every day except Saturdays, Sundays and statutory holidays in the Provinces of Ontario and Alberta.

## 5. General Provisions

5.1 This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

5.2 All matters in dispute between the Parties pursuant to this Agreement shall be resolved by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity.

### 5.3 Assignment

(a) Subject to Subsection 5.3(c) below, this Agreement may be assignable by Owner to a successor in title.

(b) Subject to Subsection 5.3(c) below, Enbridge shall be able to assign this Agreement or any portion of its interest in the Optioned Property and all of the rights and benefits derived under and from this Agreement and the Agreements to one or more persons or entities without the prior consent of Owner to any persons, including to its lender(s), as security for Enbridge's obligations to such lender(s). Owner shall execute and deliver any consent and acknowledgement reasonably requested by such lender.

(c) No assignment by Owner shall be effective unless and until the assignee executes an assumption agreement (“**Assumption Agreement**”) with respect to this Agreement agreeing to be bound by the terms hereof to the same extent as if it had been an original party hereto. For greater certainty, Owner covenants and agrees that if the Owner transfers or conveys the Property or any

portion that comprises the Optioned Property, the Owner will obtain from any such transferee or purchaser an Assumption Agreement in favour of Enbridge.

5.4 This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, executors, administrators and other legal representatives and, to the extent permitted hereunder, their respective successors and permitted assigns.

5.5 If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision (or part thereof) and everything else in this Agreement shall continue in full force and effect.

5.6 No change or modification of this Agreement shall be valid unless it is in writing and signed by each Party hereto.

5.7 This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. The Parties hereto acknowledge that there is no representation, warranty, and agreement or understanding between them, whether express or implied, which has induced any of the Parties hereto to enter into this Agreement except as expressly stated herein.

5.8 No failure on the part of any Party to exercise, and no delay by any Party in exercising, any right under this Agreement shall operate as a waiver of such right, unless the Party gives written notice to the other Party of its intention to waive such right.

5.9 This Agreement shall commence on the Effective Date.

5.10 Time shall be of the essence of this Agreement.

5.11 The section headings herein have been inserted for ease of reference only and shall not affect the construction or the interpretation of this Agreement.

5.12 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

5.13 Delivery of executed counterparts of this Agreement by facsimile transmission or other form of electronic communication shall constitute valid and effective delivery.

5.14 Any monies to be paid pursuant to this Agreement shall be in Canadian funds.

*[Remainder of page intentionally left blank, signature page follows]*



**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement on the date first above written.

**Owner:**

Witness:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Witness:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

**ENBRIDGE PIPELINES INC.:**

Per: \_\_\_\_\_

Name:

Office:

I have the authority to bind the corporation

**SCHEDULE A**

**TO TEMPORARY WORKSPACE OPTION AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTY**

•

**BEING THE WHOLE OF PIN NO**

**SCHEDULE B**

**TO TEMPORARY WORKSPACE OPTION AGREEMENT**

**DEPICTION OF OPTIONED PROPERTY**

[see attached sketch]

**SCHEDULE C**  
**TO TEMPORARY WORKSPACE OPTION AGREEMENT**  
**FORM OF TWS AGREEMENT**

**SCHEDULE D**  
**FORM OF RELEASE OF DAMAGES AGREEMENT**

**SCHEDULE E**  
**TO TEMPORARY WORKSPACE OPTION AGREEMENT**  
**Compensation**

Payment terms available upon request by a person who has an interest in the subject lands.

In consideration for granting the Option to Enbridge upon entering into this Agreement, Enbridge shall pay to the Owner the sum of \$1,000 (the “**Consideration Payment**”) and the sum of \$6,500 as an initial signing bonus (the “**Initial Signing Bonus**”), such sums to be paid within 60 days following the Effective Date.

If Enbridge elects to extend the Option Term in accordance with Section 1.4 of this Agreement, then, upon making such election, Enbridge shall pay to the Owner the sum of \$1,000 (the “**Extension Payment**”) as consideration for the Extended Option Term.

Upon the Exercise Notice having been duly given by Enbridge to the Owner, the Owner shall receive as compensation for entering into the Agreements one lump sum payment of \$\_\_\_\_\_.

Payment of such lump sum compensation shall be made on or before the date that construction activities on the Optioned Property in respect of the Pipeline is commenced.

Notwithstanding anything contained in this Agreement, it is expressly acknowledged and agreed between the Owner and Enbridge that the consideration payable for the rights granted hereunder and under the Agreements do not include any amounts payable in respect of the federal Harmonized Sales Tax (“**HST**”), as applicable. Enbridge hereby represents that it is duly registered for the purposes of the HST legislation. Enbridge’s HST registration number is 10250 5641 RT. As this Agreement is for the acquisition of the rights granted hereunder and under the Agreements, Enbridge, as required by the *Excise Tax Act*, shall self-assess and remit all HST, as applicable and payable by it in connection with the payments made for the grant of such rights directly to the Canada Revenue Agency.

If Enbridge determines, in its sole and absolute discretion, prior to the date that the lump sum compensation payment is to be made that it does not require the rights contemplated under the Agreements, then it may give notice of such determination to the Owner and this Agreement shall then terminate and be at an end. For further certainty, if this Agreement so terminates then Enbridge shall not be liable to make any payment to the Owner.

EXECUTED by the Owner as of the date of this Agreement first set out above.

**Owner:**

Witness:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_