

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this "**Agreement**") effective upon the date when executed by both parties (the "**Effective Date**") is made between Enbridge Pipelines Inc. ("**Enbridge**"), with an office at 200, 425 - 1st Street SW, Calgary, Alberta T2P 3L8, and _____ ("**Company**") with an office at _____ (each a "**Party**" and collectively, the "**Parties**"). The terms "**Recipient**" and "**Discloser**" refer to either Enbridge or Company, as the case may be.

WHEREAS the Parties wish to enter this Agreement to protect the Confidential Information (defined below) that has been disclosed or may be disclosed between the Parties in commercial discussions related to the Enbridge Mainline post CTS (the "**Purpose**").

NOW THEREFORE in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree with each other as follows:

1. Definition of Affiliate

In this Agreement "**Affiliate**" means, with respect to any Person, any other Person which is affiliated with such Person, and for the purposes hereof:

- (a) Two Persons will be considered to be affiliated with one another if one of them controls the other, or if both of them are controlled by a common third Person;
- (b) One Person will be considered to control another Person if it has the power to direct or cause the direction of the management and policies of the other Person, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by virtue of the ownership of shares or other equity interest, the holding of voting rights or contractual rights, or otherwise;

And "**Person**" means an individual, firm, partnership, body corporate or other legal entity, a government or any department or agency thereof, a trustee, any unincorporated organization or the heirs, executors, administrators or other legal representatives of an individual, as the case may be.

2. Definition of Confidential Information

"**Confidential Information**" means all information and material of a technical (including information technology), engineering, scientific, economic, financial (including financial statements, valuation information, cost and expense data) or business nature (including contracts, letters of intent, environmental data, production data, research and strategies), whether or not reduced to writing or other tangible form and whether or not marked as "confidential" or "proprietary" that has been or is hereafter disclosed (whether disclosed verbally, in writing, electronically or otherwise, including any disclosure by virtue of Recipient's or its Representatives' presence at any facility belonging to Discloser) to Recipient or Recipient's Representatives ("**Representatives**" means any employee, officer, director, agent, Affiliate, personnel, contractor or other representative of a Party) by Discloser or its Representatives, including without limitation, trade secrets, copyrights, patents, industrial designs and other intellectual property rights and other information concerning the business affairs of Discloser or its Representatives, compositions, data, designs, drawings, formulae, graphs, inventions, ideas, know-how, models, photographs, processes, product prototypes and specifications; current and anticipated customer requirements; customer information, customer lists, price lists, and supplier lists; past, current and planned research and development; past, current and planned manufacturing, development, marketing or distribution strategies, methods and processes; market studies; business plans; computer software and programs (including object code and source code); computer software and database technologies, systems, structures and architectures; and any other information, however documented, that constitutes a trade secret or that constitutes material non-public information of the Discloser or its Representatives.

3. Use and Protection of Confidential Information

- (a) The Confidential Information disclosed by the Discloser or its Representatives to the Recipient or its Representatives shall be (i) used by the Recipient and its Representatives solely in connection with the Purpose and for no other purpose, (ii) kept confidential by the Recipient and its Representatives and protected from disclosure using the same standard of care as the Recipient uses to protect its own similar confidential and proprietary information, but not less than reasonable care, and (iii) disclosed only to the Recipient's Representatives who have a need-to-know such Confidential Information for the Purpose and who have agreed to maintain the confidential nature of information (including that of third parties) received by them in the course of their employment or engagement by Recipient to the same extent as if such Representatives were a Party to this Agreement.
- (b) The Confidential Information disclosed by the Discloser or its Representatives to the Recipient or its Representatives shall not, at any time prior to written consent from the Discloser or intentional public disclosure by the Discloser, be (i) shared, disclosed, produced, published, permitted access to or revealed, (ii) copied, photographed or photocopied (except for internal use by the Recipient or its Representatives in connection with the Purpose), (iii) altered, modified, disassembled, reverse assembled, reverse engineered, decompiled, reverse compiled, or in any manner reproduced, or (iv) published in any review, notice or other report. The Recipient shall promptly notify the Discloser of any items of Confidential Information prematurely or otherwise impermissibly disclosed. The Recipient shall be liable for any breach of this Agreement by any of its Representatives.
- (c) The Parties, for themselves and their respective Representatives, each agree that the Purpose will not be disclosed, except as consented to in writing by both Parties, or as required by judicial order or lawful requirement of governmental agency or by operation of law, but then only after compliance with the provisions of Article 5(e) hereof.
- (d) The Recipient shall return all Confidential Information received by it or its Representatives from the Discloser or its Representatives and shall destroy or erase any and all copies it may have made thereof, within ten (10) days of (i) a written request by the Discloser, or (ii) termination or expiration of this Agreement, or (iii) termination of the business relationship between the Parties by mutual written consent. Upon request of the Discloser, the Recipient and its Representatives shall provide written confirmation that such Confidential Information and copies thereof have been destroyed or erased. The foregoing obligation to destroy or erase Confidential Information shall not apply to: (i) electronic back-up copies made for archival purposes in the normal course; (ii) copies of Confidential Information required by law to be retained; or (iii) Confidential Information incorporated into board of director or management materials prepared by the Recipient in connection with the Purpose, provided that any such retained Confidential Information shall, at all times, remain subject to the obligations of confidentiality contained herein and shall no longer be accessed or otherwise used without the prior written consent of the Discloser except as required by law.
- (e) Notwithstanding anything to the contrary herein, Company shall be able to discuss the Purpose with parties who are current or future purchasers of Company's products or from whom Company receives products which are capable of being shipped on the Enbridge mainline so long as such purchasers or suppliers have signed a Confidentiality Agreement with Enbridge for the same Purpose or have agreed to maintain the confidential nature of information (including that of third parties) received by them in the course of their business relationship with Company to the same extent as if such purchasers or suppliers were a Party to this Agreement provided that Company shall be liable, pursuant to Section 10, for any disclosures by such purchasers or suppliers as though they are Representatives.

4. Term and Termination; Period of Confidentiality

This Agreement shall remain in effect for a period of three (3) years from the Effective Date unless terminated earlier by mutual written consent or by the non-breaching Party in the event of a breach of any provisions of this Agreement. However, the period of confidentiality of the Confidential Information shall be three (3) years from the date of first disclosure of the Confidential Information.

5. Exceptions

The obligation of confidentiality shall not apply to any information that:

- (a) is or becomes generally available to the public or is in the public domain without breach of confidentiality obligations of the Recipient or a third party, or
- (b) was known by the Recipient prior to its disclosure by the Discloser as proven by the Recipient's written records; or
- (c) becomes available to the Recipient on a non-confidential basis from a source other than the Discloser provided such source is not bound by a confidentiality agreement with the Discloser; or
- (d) is developed independently, as evidenced by appropriate documentation, by employees of the Recipient who have not had access to the Confidential Information; or
- (e) is disclosed pursuant to judicial order or lawful requirement of governmental agency or by operation of law, but then only to the extent so ordered; in such case, the Recipient shall advise the Discloser at the earliest possible time prior to disclosure in order to give the Discloser sufficient time to respond to such order; or
- (f) is disclosed following receipt of the written consent of Discloser to such disclosure.

6. Ownership; No License or Warranty

All right, title and interest in and to the Confidential Information, and all inventions, innovations, improvements, enhancements, research and developments, discoveries, trade secrets or intellectual property developed from or related to the Confidential Information shall be and will remain the exclusive property of the Discloser or its Representatives, and no interest, license or right (including any intellectual property right) respecting the Confidential Information or such other property is granted under this Agreement, by implication or otherwise. Confidential Information is provided "as is" and without any warranty of any kind, and the Discloser shall not have any liability or responsibility to the Recipient relating to or arising out of, directly or indirectly, the accuracy or completeness of the Confidential Information.

7. Specific Enforcement

The Parties agree that they would not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the Parties agree that any of the Parties shall be entitled to seek injunctive relief to prevent any breach of this Agreement and to seek specific enforcement of the terms and provisions hereof in addition to any other remedy to which the Party may be entitled at law or in equity.

8. Use of Name

Neither Party may use the name of the other Party in any news release or advertising nor any publications directed to the general public without prior written approval of the other Party, except to the extent required by an administrative or governmental body or applicable stock exchange.

9. No Obligation

Unless and until a definitive written agreement between the Parties with respect to the Purpose has been executed and delivered, neither Party shall be under any legal obligation of any kind whatsoever with respect to such a relationship by virtue of this or any other written or oral expression by either of them or their representatives except, in the case of this Agreement, for the matters specifically agreed to herein.

10. Liability and Indemnification

Without limitation, and in addition to any other rights of the Parties arising by reason of any breach of this Agreement, the Recipient shall:

- (a) be liable to the Discloser and its Representatives for any and all losses, costs, damages and expenses whatsoever (including, without limitation, any legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis) which such Parties may suffer, sustain, pay or incur; and
- (b) indemnify and hold harmless the Discloser and its Representatives against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever (including, without limitation, any legal, accounting and other professional costs, expenses, fees and disbursements, with legal fees determined on a solicitor-client basis) which may be brought against or suffered by any of them or which any of them may sustain, pay or incur;

which are established to result or arise, directly or indirectly, from disclosure of all or any part of the Confidential Information by the Recipient or its Representatives contrary to the provisions of this Agreement or any other breach of this Agreement relating to the protection of Confidential Information.

11. Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta, Canada, without regard to the rules of law that may direct the dispute to the laws of another jurisdiction.

12. Assignability

This Agreement shall not be assigned by any Party without the prior written consent of the other Party.

13. Notices

Any notice to be sent to either of the Parties hereto or requests for written consents shall be deemed to have been sufficiently given and received if served personally on an individual Party hereto or if delivered at the address for notices stated in the recitals above, or if mailed, such notice or request shall be conclusively deemed to have been given, made and received three business days following mailing in a prepaid registered envelope to the address for notices stated in the recitals above; PROVIDED THAT the Parties hereto may from time to time by notice in writing to each other change the said address for notice.

Notices to any Representatives shall be deemed to have been validly delivered to Representatives by written notice to the respective Party pursuant to the foregoing.

14. General Provisions

This Agreement states the entire agreement between the Parties as to its subject matter. Any modifications to this Agreement must be made in writing and must be signed by an authorized representative of each Party. If any portion of this Agreement is determined to be invalid or unenforceable, the remainder will continue to be in full force and effect. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This

Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the respective dates entered below.

ENBRIDGE PIPELINES INC.

Per: _____
Name:
Title:
Date:

[Company Name]

Per: _____
Name:
Title:
Date:

Per: _____
Name:
Title:
Date: