

## COLLABORATION AGREEMENT

THIS Collaboration Agreement ("**Agreement**") is made as of February 17, 2017.

BETWEEN:

**ENBRIDGE GAS DISTRIBUTION INC.**, an Ontario corporation ("**Enbridge**");

-and-

**ONTARIO GEOTHERMAL ASSOCIATION**, an Ontario non-share corporation (the "**OGA**");

(collectively, the "**Parties**" and sometimes individually referred to as a "**Party**").

**RECITALS:**

- A.** The Parties wish to cooperate in the development of mutually beneficial business models which will promote geothermal energy systems in the province of Ontario; and
- B.** The Parties wish to set out the terms under which such cooperation will be conducted.

### **1. GEOTHERMAL COLLABORATION AGREEMENT**

- a) Purpose of Agreement: Enbridge and the OGA desire to cooperate on the:
  - i. Understanding of geothermal energy systems, including ground loops and heat and cooling transfer equipment (heat pumps),
  - ii. Application, deployment and use of geothermal energy systems,
  - iii. Development of mutually beneficial business models which will promote geothermal energy systems, and
  - iv. Application of utility regulatory concepts to ownership and use of geothermal energy systems,

collectively referred to as the Geothermal Collaboration Agreement "**GCA**" or "**GCA activities**".

In support of the GCA, Enbridge and the OGA may pilot technologies or market approaches, coordinate on public and governmental communications efforts, and coordinate on other activities as may be agreed. As required, the Parties may enter into additional agreements to document GCA activities, such as a pilot project.

- b) Formation of GCA: The Parties will collaboratively work together as joint and equal participants in the development and execution of the GCA activities.

- c) Additional Participants: The Parties may agree that it would be advantageous to have additional participants ("**Additional Participants**") in the GCA. Additional Participants may only be added to the GCA by the mutual agreement of both the OGA and Enbridge. The role, terms, responsibilities and other conditions upon which such additional participants may join and participate in this GCA will be set out in amendment(s) to this Agreement.
- d) Expenses: The Parties agree that any out-of-pocket costs or in kind contributions associated with the development and execution of Agreement activities will be borne by the Party incurring such costs, unless otherwise agreed as set forth herein.
- e) Governance: Any significant or material decisions regarding the development and execution of the GCA will be made jointly by the Parties. The initial governance structure for the GCA is set out in Exhibit "A". Exhibit "A" may be updated from time to time by agreement of the Parties.

## 2. BUSINESS MODELS

- a) Defined Terms: In this subsection, the following terms have the following meanings:
  - i. "**Fully Regulated Model**" means a business activity under which Enbridge would own and maintain Ground Source Loops attached to a customer's premises and the associated Heat Pump and Related Mechanical Systems and recover all costs associated with the provision and maintenance of the Ground Source Loops and Heat Pump and Related Mechanical Systems including a return on investment and related taxes from the customer under an Ontario Energy Board approved rate.
  - ii. "**Ground Source Loop(s)**" means a ground heat exchanger, typically constructed of polyethylene piping inserted in the ground, pond or lake for the purpose of transferring heat from or to a Heat Pump and Related Mechanical Systems.
  - iii. "**Heat Pump and Related Mechanical Systems**" means a mechanical device or devices that reject heat into the ground, pond or lake during the cooling mode, and take heat out of the ground, pond or lake while in the heating mode. Components of this system typically include a heat pump, a hydronic pump, water heating and heating / cooling distribution subsystems.
  - iv. "**Hybrid Model**" means a business activity under which Enbridge would own and maintain Ground Source Loops attached to a customer's premises and recover all costs associated with the provision and maintenance of the Ground Source Loops including a return on investment and related taxes from the customer under an Ontario Energy Board approved rate.
- b) Enbridge will not initiate an Ontario Energy Board application proposing a Fully Regulated Model during the term of this Agreement. In consideration of the foregoing, the OGA will support and not oppose Enbridge's initiatives to advance a Hybrid Model. Each Party's sole remedy in the event of a suspected or actual breach of the obligations set out in this section shall be to advise of the other Party of the alleged breach and

request that the other Party comply with the obligation.

### 3. TERM AND TERMINATION

- a) Term: This Agreement will be effective as of the date first set out above and expire on December 31, 2018, unless extended by mutual agreement of the Parties.
- b) Termination: Either Party may terminate this Agreement immediately upon written notice to the other Party for any reason or for no reason. The obligations in section 4 (Ownership of Materials) and section 5 (Confidentiality) will survive the termination or expiration of this Agreement.

### 4. OWNERSHIP OF MATERIALS

The Parties agree that any documents, data, research, images or other materials jointly developed by the Parties or developed for the Parties pursuant to and in furtherance of this Agreement (the "**GCA Materials**") shall be the joint property of the Parties. Each Party shall have the right to use the GCA Materials solely for its own purposes or activities, whether or not the other Party is involved in such activities.

Despite the foregoing, each Party has the right to advise the other in writing that any documents, data, research, images or other materials that a Party develops or pays for ("**Individually Owned Material**") under this Agreement, shall remain the property of the Party who developed or paid for such Individually Owned Material. For example, a Party paying for or conducting a research study may advise in writing that it will retain full ownership of the research study as Individually Owned Material, and in such instance, the other Party will not have the right to use the research study (being Individually Owned Material) without the prior written consent of the Party that owns such Individually Owned Material.

Unless otherwise specifically agreed by a Party, no license of any intellectual property, information or materials is granted or implied hereunder, and a Party shall not use the other Party's name or trademarks without the express written permission of the other Party.

### 5. CONFIDENTIALITY

- a) Confidentiality Obligations: Each of Enbridge and the OGA agree to be bound by the terms of the Confidentiality Agreement attached as Exhibit "C" (the "**Confidentiality Agreement**") in respect of their interactions under this Agreement and each Party is deemed to have signed the attached Confidentiality Agreement. Each of the Parties shall be responsible for compliance with the terms of the Confidentiality Agreement by their respective affiliated entities, directors, officers, employees, consultants, agents, advisors, and representatives. The terms and conditions and performance of this Agreement are Confidential Information.
- b) Disclosure by the OGA to Members and Others: The OGA shall not disclose any Enbridge Confidential Information to its members, directors or other parties involved with the OGA, unless such party has executed a Confidentiality Agreement with Enbridge in the form attached as Exhibit "C", or such other form as Enbridge and the party may

agree (also referred to as a Confidentiality Agreement). Parties that sign a Confidentiality Agreement with Enbridge shall be listed in Exhibit "B" as Collaboration Participants. Exhibit "B" may be updated from time to time by agreement of the Parties.

**6. RELATIONSHIP**

Nothing herein shall be deemed to constitute either Party as an agent or representative of the other Party, or both Parties as joint venturers or partners for any purpose. Neither Party shall act in a manner that expresses or implies a relationship other than that of independent businesses or legal entities. Neither Party will have the authority or right to represent or obligate the other Party in any way.

This Agreement will not be construed as an obligation on the part of either Party to refrain from discussing or participating in the same or similar opportunities as those contemplated or engaged in under this Agreement. Either Party may meet with third persons to discuss similar opportunities to those contemplated in this Agreement. Further, except as otherwise agreed in writing, each Party's future plans remain tentative and do not represent firm decisions or commitments by either Party.

**7. PUBLIC ANNOUNCEMENTS**

Neither Party shall make any public announcements concerning this Agreement or the other Party without the prior written consent of the other Party.

**8. ASSIGNMENT**

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party without the prior written consent of the other Party.

**9. GOVERNING LAW**

This Agreement shall be governed by, and construed and enforced in accordance with the laws in force in the Province of Ontario.

**10. NOTICES**

Any notice, document or other communication required or permitted to be given hereunder (each, a "notice") shall be sufficiently given if set out in writing and personally delivered or sent by facsimile or electronic mail. Any notice shall be deemed to have been received by the Party to whom it is directed, (i) if delivered, when delivered, or (ii) if sent by facsimile or electronic mail, on the date of transmission; provided in each case that it is delivered or transmitted on a business day prior to 5:00p.m. local time in the place of delivery or receipt. If a notice is delivered or transmitted after 5:00p.m. local time or such day is not a business day, then such notice shall be deemed to have been given and received on the next business day. Each notice shall be addressed to the Parties as follows:

in the case of Enbridge: 500 Consumers Road  
North York, Ontario, M2J 1P8  
Attn: Steve McGill, Senior Strategist  
Email: steve.mcgill@enbridge.com  
with a copy to: Law Department  
Fax: (416) 495-5994

in the case of the OGA: 2350 Matheson Blvd. East, Suite 101  
Mississauga, Ontario, L4W 5G9  
Attn: Martin Luymes  
Email: mluymes@hrai.ca

A Party may, from time to time, change its address for service hereunder by notice to the other Party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the date first above written.

**ENBRIDGE GAS DISTRIBUTION INC.**

**ONTARIO GEOTHERMAL ASSOCIATION**



Per: Mahm Girdhar  
Name: **Mahm Girdhar**  
Title: **Vice President, Market Development  
Public & Government Affairs**

Per: Jim Bolger  
Name: **Jim Bolger**  
Title: **President**

Per: Scott Podd  
Name: **Scott Podd**  
Title: **Director Business  
Development**

Per: Stan Reisman  
Name: **Stanley Reisman**  
Title: **Vice President**

**EXHIBIT "A"**  
**GOVERNANCE**

**EXECUTIVE OVERSIGHT AND STRATEGY COMMITTEE**

1. Composition: The Executive Oversight and Strategy Committee (the "**Executive Committee**") shall consist of four (4) voting members and non-voting advisors.
2. Voting Members: The voting members will consist of two co-chairs (one each from the OGA and Enbridge) and two other voting members (one each from the OGA and Enbridge), one of whom will also act as Secretary. The initial members and roles of the Executive Committee shall be:
  - i. Jim Bolger, OGA, Co-Chair;
  - ii. Steve McGill, Enbridge, Co-Chair;
  - iii. Stan Reitsma, OGA; and
  - iv. Owen Schneider, Enbridge.
3. Non-Voting Advisors: Any non-voting advisors appointed to the Executive Committee must be by mutual agreement by the Parties, and shall not exceed three advisors per Party.
4. Responsibilities: The Executive Committee shall have the following responsibilities:
  - i. Setting the strategic direction of the GCA and approval of all activities.
  - ii. Approval of any key messaging and advocacy efforts and timing.
  - iii. Approval of the addition of any Additional Participants including the role, terms, and other conditions.
  - iv. Approval of which Party takes on project management role(s), including taking the lead on project management and daily tactical execution on various GCA elements.
  - v. Approval of any expenditures in support of the GCA.
  - vi. Removal of internal barriers and ensuring organizational alignment to the GCA.
5. Frequency of Meetings and Update Calls: Meetings will be conducted as follows:
  - i. Monthly face-to-face meetings (location to alternate between the OGA and Enbridge offices in Toronto).
  - ii. Bi-weekly half hour update calls that can be conducted by telephone.
  - iii. Otherwise, on an as needed basis on issues.

**EXHIBIT "B"**

**COLLABORATION PARTICIPANTS**

Jim Bolger

Stan Reitsma

Martin Luymes

**EXHIBIT "C"**

**FORM OF CONFIDENTIALITY AGREEMENT**

Mutual

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** made as of \_\_\_\_\_.

**B E T W E E N:**

**ENBRIDGE GAS DISTRIBUTION INC.**

- and -

\_\_\_\_\_

**WHEREAS** the parties wish to exchange information and enter into discussions on a confidential basis for the purpose collaborating on geothermal initiatives under the framework set out in the Collaboration Agreement between Enbridge Gas Distribution Inc. and the Ontario Geothermal Association dated ("OGA") as of February 17, 2017 (the "Purpose")

**AND WHEREAS** \_\_\_\_\_ is a [member, director (state relationship to the OGA)] of the OGA;

**AND WHEREAS** in relation to the Purpose, it may become necessary for the parties to provide each other with information and/or documentation that each party herein considers confidential in nature;

**NOW THEREFORE** in consideration of each party being provided with such Confidential Information (as hereinafter defined) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. "Confidential Information" shall mean all information relating to the current or proposed business, operations and assets of each party hereto, their present and future parent companies, affiliates and subsidiaries or the Purpose (whether communicated orally, in writing or in electronic media), which either party hereto respectively treats as confidential or proprietary, including, but not limited to, contracts, letters of intent, financial statements, valuation information, cost and expense data, environmental data, production data, customer information, technology (including information technology), business plans, research, strategies and any other information that is not generally ascertainable from public or published information.

"Confidential Information" shall not include information which:

- (a) was already known to or owned by the recipient prior to the date of disclosure by the disclosing party hereto;
- (b) at the time of disclosure or thereafter becomes public knowledge through no fault or omission of the recipient; or
- (c) is lawfully obtained by the recipient on a non-confidential basis from a third party who, to the knowledge of the recipient, is not under any obligation of confidence to the disclosing party hereto.



Any party claiming that any of the foregoing exceptions apply shall have the onus of establishing such applicability.

2. Each party agrees that it, and its affiliated entities, will keep confidential and will require their respective directors, officers, employees, consultants, agents, advisors, affiliated entities and representatives receiving Confidential Information to keep confidential, all Confidential Information disclosed by the disclosing party hereto. Each party hereto further agrees that it will neither use nor disclose to others, nor permit the use or disclosure by their respective directors, officers, employees, consultants, agents, advisors, affiliated entities and representatives, of any such Confidential Information except as may be required for the purposes expressly set forth in this Agreement. Without limiting the foregoing, neither party shall be permitted to disclose the existence of this Agreement or the fact that the parties are engaging in the confidential discussions described above without the express written consent of the other party.
3. Each party hereto agrees to disseminate the other party's Confidential Information only to its affiliated entities, and its and their respective directors, officers, employees, consultants, agents, advisors or representatives, if any, directly concerned with the Purpose who have a reasonable need-to-know and to ensure that such persons are made aware of this Agreement and agree to be bound by it or are bound by a duty of confidentiality by virtue of their relationship to the applicable party. The foregoing shall not release either party of any obligations hereunder, including, but not limited to, its responsibility for unauthorized use or disclosure and each party hereto shall defend, indemnify and hold harmless the other party from and against all suits, actions, damages, claims and costs arising out of any breach of this Agreement by any of its respective directors, officers, employees, consultants, agents, advisors, affiliated entities and representatives.
4. Either party may disclose the other party's Confidential Information to the extent required by a court of competent jurisdiction or other governmental or regulatory authority or otherwise as required by applicable law, provided that the party that has received the request or order must first give the other party prompt notice (except where the governmental or regulatory authority has expressly ordered that no notice be given) and must make reasonable efforts to obtain a protective order.
5. Neither party represents or warrants that any Confidential Information disclosed by it to the other party is accurate or complete, or that such Confidential Information constitutes any representation, warranty, assurance or guarantee to the other party with respect to the infringement of rights, including, without limitation, intellectual property and privacy rights, of third persons. Neither party shall be liable for any errors or omissions in its Confidential Information.
6. All Confidential Information shall remain the exclusive property of the disclosing party. No license under any trade-mark, trade secret, patent or copyright is either granted or implied by the disclosure or use of any Confidential Information disclosed hereunder.
7. Immediately upon the written request of either party, the receiving party shall return to the disclosing party all Confidential Information provided to it by the disclosing party, including all originals and all summaries and partial and complete copies thereof. If the disclosing party or receiving party requests the destruction, and not the return, of such Confidential Information, the receiving party shall provide the disclosing party with written certification of a duly authorized officer of the receiving party attesting to the destruction of the Confidential Information, including all originals and all summaries and partial and complete copies thereof. Notwithstanding the foregoing, the receiving party will not be required to return, destroy, delete or redact Confidential Information that has been saved to a back-up file in accordance with the receiving party's commercially reasonable information security policies (including but not limited to applicable back-up and records retention policies), so long as the back-up file is secured by the receiving party in a commercially reasonable manner against unauthorized use or access by a third party or by the receiving party's representatives, and further provided that such back-up files will be deemed to constitute Confidential Information and remain subject to the terms of this Agreement.

8. Notwithstanding the return or destruction of all or any part of the Confidential Information, the terms of this Agreement shall nevertheless remain in full force and effect until seven (7) years from the date hereof.
9. Each party hereunder agrees that the other party would be irreparably injured by a breach of this Agreement by such party, its affiliated entities, or their respective directors, officers, employees, consultants, agents, advisors, affiliated entities and representatives and that the party not in breach shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.
10. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby irrevocably attorn to the jurisdiction of the Courts of the Province of Ontario.
11. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings with regard to the subject matter hereof and shall be binding upon the parties hereto and their respective successors, assigns and affiliates and may be modified only in writing signed by the parties hereto.
12. No waiver of any of the provisions or a breach of this Agreement shall constitute a waiver of any other provision or other breach of this Agreement unless expressly provided otherwise. No waiver shall be binding unless executed in writing.
13. Neither party may assign its rights and obligations hereunder without first obtaining the express consent in writing to such assignment from the other party.
14. If any provision of this Agreement is found to be illegal or unenforceable, the remainder of this Agreement shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties hereto as expressed herein.
15. Neither the holding of discussions by the parties nor the disclosure of Confidential Information will be construed as an obligation on the part of either party to refrain from engaging at any time in the same business or any business similar or dissimilar to the business in which the other is now engaged. Further, except as otherwise agreed in writing, Confidential Information received concerning the other party's future plans is tentative and does not represent firm decisions or commitments by either party. Either party may meet with third persons and may receive information similar to the Confidential Information which the party receives under this Agreement.
16. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be deemed to be an original, and all such counterparts will together constitute one and the same instrument. Delivery of signed counterparts of this Agreement by facsimile or other electronic means shall constitute valid and effective delivery.

[The following page is the signature page.]

**IN WITNESS WHEREOF** the parties have executed this Agreement by the signatures of their duly authorized representatives set out below.

Dated as of the date first set out above.

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

**ENBRIDGE GAS DISTRIBUTION INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name \_\_\_\_\_

Title:

Title: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

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

Title:

Title: \_\_\_\_\_

*(Please print name and title of Signing Officer)*

Witness: \_\_\_\_\_

Name:

*(Witness required if an Individual)*