MUTUAL CONFIDENTIALITY AGREEMENT

**THIS CONFIDENTIALITY AGREEMENT** (“**Agreement**”) is made and entered into as of **Click or tap here to select date** (“**Effective Date**”) by and between **Enbridge Inc**. (“**Company**”), and **Click or tap here to enter the full legal name of the Counterparty. Note that the Counterparty must be a business entity to use this ACT.** (“**Counterparty**”), (each a “**Party**” and collectively, “**Parties**”).

**WHEREAS**:

1. Company, Counterparty, and their respective Affiliates (as defined below), may disclose certain oral or written information that is specific to the business or projects of Company, Counterparty, or their respective Affiliates, and that is non-public, confidential or proprietary in nature to the other Party, the disclosure being for the purpose of discussions related to Company’s USGC Market Access Initiatives (“**Purpose**”).
2. Each Party desires to maintain the confidentiality of such information and to prevent its unauthorised use and disclosure, and wishes to set forth the terms and conditions that apply to the confidential treatment of such information;

**NOW THEREFORE**, in consideration of the disclosure of the Confidential Information (as defined below) pursuant to the terms of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.
	1. “**Affiliate**” means with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date with respect to which the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person by virtue of (i) the ownership or direction of voting securities of the other Person, (ii) a written agreement or trust instrument, (iii) being the general partner or controlling the general partner of the other Person, or (iv) being the trustee of the other Person.
	2. “**Confidential Information**” means, in respect of a Disclosing Party, (a) any and all trade secrets, confidential, private, proprietary or secret information of the Disclosing Party or any Affiliate of the Disclosing Party, and (b) any information relating to the Disclosing Party, an Affiliate of the Disclosing Party, or any Person with which the Disclosing Party or an Affiliate of the Disclosing Party does business; regardless of form and whether or not recorded. For greater certainty, the term "Confidential Information" includes, without limitation, the following information: (i) business, economic, financial, operational, marketing or technical information of the Disclosing Party or any Affiliate of the Disclosing Party; (ii) information relating to actual or prospective services, products, activities, know-how, research and development, or commercial relationships of the Disclosing Party or any Affiliate of the Disclosing Party; (iii) inventions, improvements, concepts, designs, developments, reports, studies, memoranda, correspondence, manuals, records, plans, computer programs, algorithms, specifications, flow charts, listings, source codes and object codes owned by or licensed to the Disclosing Party, to an Affiliate of the Disclosing Party, or to which the Disclosing Party or an Affiliate of the Disclosing Party may have access; (iv) the terms of this Agreement and the entering into of this Agreement; and (v) such information as the Disclosing Party or any Affiliate of the Disclosing Party may from time to time designate as being “confidential”.
	3. “**Disclosing Party**” means a Party or any of its Affiliates who makes Confidential Information available to the Receiving Party.
	4. “**Person**” means any natural person, sole proprietorship, corporation, partnership (general or limited, including master limited), limited liability company, trust, joint venture, joint stock company, unincorporated association, unincorporated syndicate, unincorporated organization, or other entity or association, and, where the context requires, any of the foregoing in its capacity as trustee, executor, administrator or other legal representative.
	5. “**Receiving Party**” means the Party who receives the Confidential Information from the Disclosing Party.
	6. “**Representative**” means any employee, contractor, personnel, officer, director, agent, consultant and advisor of a Party or its Affiliates.
2. Exclusions. The obligations of the Receiving Party pursuant to this Agreement shall not extend to Confidential Information of the Disclosing Party (other than information about an identifiable individual) that:
	1. is in the public domain at the date of disclosure to the Receiving Party or which thereafter enters the public domain other than by any act or failure to act on the part of the Receiving Party or its Representatives;
	2. is already known to the Receiving Party at the time of disclosure, without a duty of confidence for the safekeeping of such Confidential Information, directly or indirectly, to the Disclosing Party or any Affiliate of the Disclosing Party;
	3. is lawfully acquired by the Receiving Party from a third party that has no obligation of confidentiality with respect to the Confidential Information of the Disclosing Party.

A Party claiming any of the foregoing exclusions shall have the onus of establishing such applicability.

1. Restricted Use; Non-disclosure. The Receiving Party shall use the Confidential Information of the Disclosing Party only for the Purpose. The Receiving Party shall keep the Confidential Information of the Disclosing Party strictly confidential, preserving the confidentiality of such Confidential Information with the same degree of care it uses to preserve the confidentiality of its own proprietary or confidential information, but in no event less than a reasonable degree of care, and shall not disclose, communicate, provide, divulge or make available in any other way the Confidential Information except as expressly provided for in this Agreement.
2. Exceptions to Non-disclosure. The prohibitions on disclosure set forth in Section 3 are subject to the following exceptions:
	1. the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party’s Representatives on a need-to-know basis, but only for the Purpose and not for any other purpose whatsoever. As a condition of such disclosure the Receiving Party shall (i) require that every Representative thus receiving the Confidential Information of the Disclosing Party comply with the provisions of this Agreement as though such Representative were the Receiving Party, and (ii) shall take all reasonable measures to restrain such Representatives from use or disclosure of the Confidential Information of the Disclosing Party in breach of this Agreement; and
	2. if the Receiving Party or any of its Representatives, having obtained the advice of its legal counsel, reasonably believes it is legally compelled, whether by oral questions, interrogatories, requests for information, subpoena of documents, civil investigative demand or similar process or otherwise pursuant to applicable law, rule, or regulation, to disclose any or all of the Confidential Information of the Disclosing Party, the Receiving Party shall notify the Disclosing Party as soon as reasonably possible of the relevant circumstances (to the extent legally permitted), whereupon (i) the Disclosing Party may, in its discretion and at its sole cost and expense, seek an appropriate protective order, or waive, in whole or in part, the Receiving Party’s or Representative’s obligation to comply with the restrictions on non-disclosure set forth in this Agreement, and, (ii) notwithstanding the absence of either a protective order or a waiver hereunder, the Receiving Party or its Representative may disclose without liability hereunder (but with at least five days’ prior notice to the Disclosing Party) only that portion of the Confidential Information of the Disclosing Party that, in the opinion of its legal counsel, is legally required to be disclosed, provided, however, that the Receiving Party or its Representative, as applicable, take all practicable measures (through an appropriate protective order or otherwise) to assure that, to the extent possible, confidential treatment be accorded the Confidential Information thus disclosed.
3. Liability and Indemnity; Remedies. The Receiving Party shall be liable for, and shall fully indemnify and defend the Disclosing Party and its Affiliates, and its and their Representatives, for, all losses, damages, costs, expenses and claims, including reasonable legal fees and expenses, arising directly out of the use or disclosure of the Confidential Information other than as authorised under this Agreement by the Disclosing Party or any Affiliates of the Disclosing Party. Further, the Receiving Party acknowledges that unauthorised use or disclosure of the Confidential Information of the Disclosing Party may cause irreparable harm and significant injury to the Disclosing Party or its Affiliates, for which harm and injury monetary damages may not be a sufficient remedy, and agrees that the Disclosing Party may in its discretion, and in addition to any other rights and remedies it may have at law or in equity, seek specific performance or injunctive relief in order to enforce its rights under this Agreement.
4. Disclaimer of Representations and Warranties. The Disclosing Party makes no express or implied representation, warranty or covenant as to the accuracy or completeness of the Confidential Information. Neither the Disclosing Party nor its Representatives shall have any liability whatsoever to the Receiving Party or its Representatives for any use or disclosure of the Confidential Information by the Receiving Party or its Representatives, nor for any errors therein or omissions therefrom.
5. Term and Termination. This Agreement shall have effect for a period of two (2) years beginning on the Effective Date and ending on Click or tap here to select date (“Term”).
6. Survival. All obligations of the Parties under this Agreement shall survive any discontinuation by the Parties of the advancement of the Purpose or any termination or expiration of this Agreement for a period of two years.
7. Return or Destruction of Confidential Information. Upon the request of the Disclosing Party the Receiving Party shall use commercially reasonable efforts to return or destroy all Confidential Information then in the possession of the Receiving Party or its Representatives or both, including all notes, memoranda, reports, correspondence, documents or other records of any nature or kind whatsoever that include, reflect, or discuss all or a portion of the Confidential Information, including all copies, reproductions or extracts thereof, whether furnished by the Disclosing Party or prepared by or for the Receiving Party or its Representatives. Upon request of the Disclosing Party, the Receiving Party shall provide a certificate from an officer of the Receiving Party detailing its efforts to return and/or destroy such Confidential Information. The foregoing obligation to destroy 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 executive management materials prepared by the Receiving Party in connection with the Purpose, provided that, notwithstanding anything to the contrary in this Agreement, any such retained Confidential Information shall, at all times, remain subject to the obligations of confidentiality contained herein.
8. No Binding Commitment. The execution of this Agreement does not in any way constitute a binding commitment on the part of either Party to enter into or complete negotiations of any kind, including in connection with the Purpose.
9. Ownership. All originals and copies of the Confidential Information, however and whenever produced, shall be and remain the sole property of the Disclosing Party or the relevant Affiliate of the Disclosing Party. Counterparty shall keep a record of the location of all originals and copies of the Confidential Information disclosed to it by Company hereunder.
10. No Rights. Nothing in this Agreement shall be construed as granting to the Receiving Party or its Representatives any licence or right to or under any patent, patent application, copyright, trademark or other intellectual property of the Disclosing Party or its Affiliates, in any country, relating to any Confidential Information that the Disclosing Party or its Affiliates may now or hereafter own or hold, whether as owner or licensee.
11. No Exclusivity or Partnership. This Agreement does not, nor shall it be construed to, obligate the Parties in any way to deal exclusively one with the other with respect to the Confidential Information or the Purpose. This Agreement does not create, nor shall it be construed to create any partnership, distributorship, agency, employer-employee, joint venture, or similar relationship or entity between the Parties. This Agreement does not grant either Party any authority to act as agent, representative, trustee, or fiduciary of the other Party, or to legally obligate the other Party in any manner whatsoever.
12. General.
	1. Governing Law; Forum. This Agreement shall be governed by and construed in accordance with the laws of the province in which Company’s head office is located, without reference to its conflict of laws rules or principles. Each Party irrevocably submits to the exclusive jurisdiction of the courts of the province in which Company’s head office is located for the interpretation and enforcement of this Agreement, and unconditionally waives any defense of an inconvenient forum to the maintenance of any action or proceeding in any such court, any objection to venue with respect to any such action or proceeding and any right of jurisdiction on account of the place of residence or domicile of either Party. A final judgment on any such dispute, as to which all appeals, if any, have been exhausted, shall be conclusive and may be enforced in other jurisdictions in any manner provided by law.
	2. No Waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or exercise of any other right, power or privilege hereunder.
	3. Entire Agreement; Amendments. This Agreement comprises the full and complete agreement of the Parties with respect to the use and disclosure of the Confidential Information, and supersedes all prior communications, understandings and agreements, whether written or oral, or express or implied, between them in such regard. No change or modification of this Agreement is valid unless in writing and signed by both Parties.
	4. Severability. If any provision of this Agreement is wholly or partially unenforceable for any reason, such unenforceability shall not affect the enforceability of the balance of this Agreement.
	5. Assignment. Counterparty shall not assign this Agreement or any or all of its rights or obligations hereunder to any Person at any time without the prior consent of Company in its discretion. Company may assign this Agreement or any or all of Company’s rights and obligations hereunder to any Person, including a subsidiary or other Affiliate of Company, without the consent of Counterparty or other restriction.
	6. Enurement. This Agreement shall be binding upon, enure to the benefit of, and be enforceable by, the Parties and their respective heirs, beneficiaries, executors, administrators, successors and permitted assigns, as applicable.
	7. Legal Fees and Expenses. In the event a dispute arises under this Agreement and a lawsuit is filed, the prevailing party in the lawsuit shall be entitled to recover from the non-prevailing party all reasonable costs of bringing or defending the claim, including all legal fees and expenses.
	8. Notices. All notices, consents and requests hereunder must be in writing and served by personal service, by mail, or by e-mail to the address of the receiving Party set forth beneath its signature below (or such different address as may be designated by such Party in a notice to the other Party, from time to time). Notices, consents and requests served by personal service shall be deemed served when delivered. Notices, consents and requests served by mail must be sent by registered mail, return receipt requested, and shall be deemed served 10 business days after mailing. Notices, consents and requests served by e-mail shall be deemed served on the date of sending, provided no incomplete or bounce-back error transmission is received by the sending Party.
	9. Headings. Section headings used in this Agreement are for convenience of reference only, are not part of this Agreement, and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.
	10. Agreement in English. The parties have required that this Agreement and all documents and notices resulting from it be drawn up in English. Les parties aux présents ont exigé que la présente convention ainsi que tous les documents et avis qui s'y rattachent ou qui en découleront soit rédigés en la langue anglaise.
	11. Counterparts and Execution. This Agreement may be executed in any number of counterparts, and all counterparts joined together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic transmission, in which case the Parties may rely on the electronically executed and delivered signature pages as though the signatures thereon were originally-inked signatures. This Agreement may be executed using electronic signatures.

*[signatures follow on next page]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement by their authorised signatories as of the Effective Date.

|  |  |
| --- | --- |
| **Enbridge Inc.** | **Click or tap here to enter the full legal name of Counterparty** |
| By:  | By:  |
| Name: Chad Dechaine | Name: **Click or tap here to enter Name** |
| Title: Director, Business Development | Title: **Click or tap here to enter Title** |
| Address for notice: 200, 425 – 1st Street SW, Calgary, AB T2P 3L8 Attn: Legal Department | Address for notice:**Enter address here** |
|  |  |
| Attn: Chad Dechaine | Attn: **Click or tap here to enter Title for Counterparty** |
| e-mail: chad.dechaine@enbridge.com | e-mail: **Click or tap here to enter email address for Counterparty** |
| cc:  | Enbridge Legal Department |  |
|  | legalnotices@enbridge.com |  |