

## INTERCORPORATE SERVICES AGREEMENT

THIS AGREEMENT made as of the first day of October, 1999

BETWEEN:

**THE CONSUMERS' GAS COMPANY LTD.**, a corporation continued under the laws of the Province of Ontario

(the "Services Provider")

- and -

**GAZIFÈRE INC.**, a corporation incorporated under the laws of the Province of Québec

(the "Services Recipient")

The above-named parties wish to reduce to writing the agreement pursuant to which the Services Provider will provide services to the Services Recipient.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and mutual covenants hereinafter contained, the parties agree that:

### Services

1. Services to be provided to the Services Recipient by the Services Provider shall be identified and defined in one or more schedules (the "Services Schedules") which upon execution by the Services Recipient and the Services Provider shall be incorporated into and form part of this Agreement.
2. The services described in Section 1 above may from time to time relate to specific projects for which the Services Recipient requires assistance.
3. The parties acknowledge that this Agreement shall be subject to any rule applicable to the Services Provider made by the Ontario Energy Board pursuant to the *Ontario Energy Board Act*, S.O. 1998, c. 15, Sched. B., s. 44, including without limitation the Affiliate Relationships Code for Gas Utilities dated July 31, 1999 (the "Code") as amended from time to time. The Services Recipient agrees to do such things as are necessary to assist the Services Provider to comply with the Code.

4. The services shall be performed in a manner which is satisfactory to the Services Recipient. The employees of the Services Provider who are performing the services shall possess such skills and qualifications as are necessary or desirable for the performance of the services in accordance with the applicable professional standards and qualifications governing such employees. If the Services Recipient disputes the quality or level of services provided by the Services Provider hereunder, the parties will endeavour to resolve the dispute forthwith in accordance with Section 16 below.

### **Pricing**

5. The fees for services provided by the Services Provider shall be negotiated by the parties and set forth in the applicable Services Schedule.
6. The Services Recipient will be required to reimburse the Services Provider for reasonable out of pocket expenses incurred by the Services Provider that are directly related to the provision of services under any Services Schedule, including (but not limited to) the following:
  - Travel charges such as mileage, parking, airfare, out-of-town accommodation and meal expenses;
  - Overnight courier charges; and
  - Court or government filing and administration fees.

The Services Provider shall maintain appropriate records to substantiate the provision of services to the Services Recipient and such records shall be made available for review by the Services Recipient upon request.

### **Price Adjustment**

7. (a) The Services Provider shall be entitled to adjust the fees described in any Services Schedule as of January 1 in each year. In the event that the Services Provider and Services Recipient cannot agree upon such an adjustment to the service fees applicable to the Services Schedule within 30 days of the date on which the Service Recipient is advised of the Service Provider's proposal to adjust the service fees, the conflict resolution procedures set forth in Section 16 below may be invoked by either party.

- (b) The Services Recipient shall get the benefit of, and this agreement shall be amended to give the Services Recipient the benefit of more favourable pricing of fees subsequently negotiated in any service agreement between the Services Provider and other Services Provider affiliates. Any such change in fees will be conditional upon all material terms of the proposed relationship between the Services Provider and the Services Provider's affiliate, as the case may be, being comparable in all material respects to the terms in effect between the Services Recipient and the Services Provider, including without limitation, nature of service, term of agreement, business volumes, functionality, procedures employed, service levels and the terms and conditions of the agreement respecting the relationship.

### **Invoice and Payment Procedures**

- 8. The following sets forth the procedure applicable to invoicing and payments related to services delivered hereunder:
  - (a) The Services Provider will prepare and deliver to the Services Recipient, on a monthly basis, a written statement (an "Invoice") for services provided on an ongoing basis. Each Invoice will be consolidated to account for the services provided under each Services Schedule to this Agreement and shall identify the services consumed and the associated pricing.
  - (b) Fees for services provided on an "as requested" basis shall be provided in accordance with terms negotiated by the Services Provider and Services Recipient prior to the commencement of the service.
  - (c) The Services Provider shall provide the Services Recipient with any supporting information for an Invoice reasonably requested within fifteen (15) days from the date of an Invoice. If a Services Recipient disputes the amount of an Invoice, the dispute shall be resolved forthwith in the manner described below in this Section 8.
  - (d) Unless the Services Recipient, within thirty (30) days from the date on which it receives an Invoice from the Services Provider, shall have disputed in writing the amount thereof, then the Invoice will be deemed to have been accepted by it. If the Services Recipient disputes the amount of an Invoice, the persons who executed the Services Schedule for the Services Recipient and the Services Provider (or their successors) will endeavour to resolve the dispute forthwith, and failing such resolution, the dispute will be resolved using the procedures set forth in Section 16 below, whereupon the Invoice; revised to the extent necessary to resolve

the dispute as aforesaid, will be deemed to have been accepted by both parties.

- (e) Except with respect to those portions of an Invoice which are the subject of a bona fide dispute between the parties, Invoices shall be payable within thirty (30) days from the date of the Invoice. Invoices delivered pursuant to this section may include amounts related to the expenditures incurred by the Services Provider to obtain goods or services from third parties for the benefit of the Services Recipient. Any amount to be remitted by the Service Recipient to the Services Provider and not remitted on or before the date on which it is due shall thereafter bear interest at an annual rate equal to the prime rate of interest of the Toronto Dominion Bank (or its successor) (Toronto, Main Branch) on the due date plus one percent (1%) per annum, compounded monthly.
- (f) Except as expressly amended in this Section 8, all other terms and conditions set forth in any Services Schedule attached hereto applicable to invoicing and payment shall remain in full force and effect.
- (g) In the event that the Minister of National Revenue for Canada or any other competent authority at any time proposes to issue or does issue any assessment or assessments that impose or would impose any liability for tax of any nature or kind whatsoever on the Services Provider or the Services Recipient on the basis that the fair market value of the services is different than the amount charged by the Services Provider for the corresponding services (the "Services Charge"), and in the event that the parties hereto agree that the fair market value of the services is different than the Services Charge, then upon such agreement the Services Charge that the Services Recipient is obligated to pay for the said services shall be varied by increasing or decreasing the amount of the Services Charge as the Services Recipient and the Services Provider may agree.
- (h) All amounts payable under the Agreements are expressed, and shall be paid, in Canadian dollars unless otherwise stated in an Agreement.

### **Amendments**

- 9. (a) This Agreement and any related Schedule (including Services Schedules) may be amended from time to time upon the approval in writing of both parties. Version control and archival storage of all amendments shall be the responsibility of the Services Provider.
- (b) All amendments to this Agreement will be effected in accordance with the service adjustment procedures described in Section 14 below.

### Management Reports

10. (a) Various management and operating reports shall be provided by the Services Provider. Such reports and the timing of their delivery shall be described in the respective Services Schedules.
- (b) The Services Provider will provide the Services Recipient with reports summarizing the overall performance of the services described in each Services Schedule at the frequency specified in the respective Services Schedule, or if no frequency is specified therein, no less than once every six (6) months. Parameters for such reports will be specified in the relevant Service Schedules.
- (c) The Services Provider and Services Recipient will meet to discuss each services report on an as-required basis.

### Forecast of Services

11. (a) The Services Recipient shall provide a forecast of the volume of services that it expects to require from the Services Provider in connection with each executed Services Schedule on an annual basis (the "Annual Forecast"). Forecasts shall be provided to the Services Provider at such time in each year as shall correspond with the Service Recipient's annual budgeting processes and shall encompass forecasted service needs for the following year.
- (b) Periodic service reviews will include a review of the performance standards describing the use of services and comparing any variances between actual and forecasted consumption of services.
- (c) The Services Recipient will notify the Services Provider, as promptly as is reasonable in the circumstances, of expected variances from the Annual Forecast provided in accordance with subsection 11(a) above. The Services Provider will use reasonable efforts to accommodate any increases or decreases in forecasted services needs and the parties will act reasonably in amending the relevant Services Schedules to accommodate such increases or decreases. Where the Services Recipient advises the Services Provider of an expected reduction of required services compared to the volume of services reflected in the Annual Forecast or where the Services Provider advises that it expects such a reduction based on the level of services being used, then the parties will meet promptly to discuss the reasons and to establish whether the Annual Forecast (and the corresponding Services Schedule levels) should be revised. Any such

revision in the Annual Forecast shall be addressed in accordance with Section 14 below.

### **Transition Period**

12. (a) Each Services Schedule attached to and forming part of this Agreement will be subject to a transition period which shall last for the period of time indicated within the Services Schedule from the date of execution of the applicable Schedule. The transition period will enable the Services Recipient to assess the service levels provided by the Services Provider under the Services Schedule, and ensure that the Services Provider is reasonably capable of satisfying the requirements of such Services Schedule.
- (b) The service levels and performance measures described in this Agreement and any Services Schedule attached hereto are subject to review during the transition period.
- (c) Service reviews will occur as mutually agreed to by the Services Provider and Services Recipient during the transition period. In the event that the parties agree that the service level or fee for the Services should be adjusted prior to the expiry of the transition period, the applicable service levels or fees shall be adjusted in accordance with the services adjustment process described in Section 14 below.
- (d) No transition period shall apply to amendments to existing services schedules.

### **Term, Termination and Renewal**

13. (a) This Agreement shall be effective October 1, 1999 and for each service shall continue until the expiry date set forth in the applicable Services Schedule.
- (b) The Services Provider must advise the Services Recipient signatory on the Services Schedule (or his or her successor) in writing of the expiry date of any Services Schedule not less than sixty (60) and not more than ninety (90) days prior to such expiry date.
- (c) The Services Recipient shall notify the Services Provider in writing of its intention to renew or not to renew a service thirty (30) days prior to the end of the term of any Services Schedule. In the absence of such notice, the Services Schedule will automatically be renewed for an additional twelve (12) month period under the existing terms and conditions set forth

in such Services Schedule, subject to any service fees adjustments made pursuant to section 7.

- (d) The Services Recipient shall have the right to terminate this agreement immediately in the event that either the Services Provider or the Services Recipient ceases to be a direct or indirect wholly owned subsidiary of Enbridge Inc.
- (e) The provisions of sections 16, 17 and 18 shall survive the termination of this agreement.

### **Service Adjustments**

- 14. (a) During the term of this Agreement, the parties may identify the need to modify elements of individual Services Schedules, add new services or discontinue existing services. Either the Services Provider or Services Recipient may initiate a request for change. All requested changes must be identified in writing with an appropriate notice period within which the party receiving such notice may respond, such period not to be less than thirty (30) days unless otherwise agreed to by both parties.
- (b) Either party may propose changes to an existing Services Schedule at any time during the term of such Schedule. No amendment shall be effective unless both parties agree to the requested modifications and the effective date for implementation. The procedures set forth in subsection 15(c) below shall be followed if agreement regarding a change to the Services Schedule or fees cannot be reached by the parties within a reasonable time.
- (c) If either party expresses a desire to discontinue a service described in an executed Services Schedule, the parties shall endeavour in good faith to determine an appropriate wind-down period and a reasonable allocation of the costs of decommissioning said service, if any.

### **Annual Performance Review**

- 15. (a) The parties shall co-operate in the completion of a formal annual performance review. All services will be reviewed with reference to the performance standards set out in the Services Schedules. The annual performance reviews must be completed within sixty (60) days of each anniversary date of this Agreement.

**Dispute Resolution**

16. (a) In the event that an issue related to the performance of a service described in a Services Schedule, the fees payable under a Services Schedule, or the interpretation of the Agreement cannot be resolved by the Services Provider and Services Recipient, the Services Provider or Services Recipient may refer the matter (the "Dispute") for resolution using the procedures described in this Section 16.
- (b) The Services Recipient's designated representative and the Services Provider's designated representative must meet within seven (7) business days after either the Services Provider or Services Recipient notifies the other in writing of a non-resolved issue. The purpose of the meeting will be to develop an action plan that can be presented to the Services Provider and Services Recipient within seventeen (17) business days after the delivery of the notice described in the preceding sentence. A copy of the action plan for resolution shall be sent to the President of the Services Provider and the President of Services Recipient. If the action plan fails to bring a resolution to the conflict within twenty-one (21) business days after the delivery of the original notice described above, the issue shall be escalated further.
- (c) On the twenty-second (22<sup>nd</sup>) business day after the delivery of the original notice described above, the issue shall be escalated to the Presidents of the Services Provider and Services Recipient if no resolution has been reached by such time.
- (d) If the problem cannot be resolved by the Presidents of the Services Provider and Services Recipient within seven (7) business days after the time it was referred to them, then it shall be escalated further as described below.
- (e) In the event none of the processes described above result in a resolution of the issue in dispute, it is the joint responsibility of the Presidents of each party to escalate the issue and its corresponding documentation to senior management of Enbridge Inc. for final deliberation and resolution, subject to the arbitration provisions below.
- (f) Any costs associated with the resolution by Enbridge Inc. will be shared equally by the Services Provider and Services Recipient.
- (g) In the event that the processes described in (e) above do not result in a resolution of the dispute acceptable to all parties to the Dispute within 90 days after the date on which the Dispute first became known to the parties, the Dispute may be submitted by either party to arbitration pursuant to Exhibit A. The place of the arbitration will be Toronto, Ontario or such

other location as the parties to the Dispute may agree. Subject to this Section 16(g) and Exhibit A, the Dispute will not be made the subject matter of any action in any court by any party. After completion of the arbitration, an action may be initiated by the parties only for the purpose of enforcing the decision of the arbitrator and recovery of the costs incidental to the action. The decision of the arbitrator will be conclusively deemed to determine the interpretation of this Agreement and the rights and liabilities of the parties in respect of the matter arbitrated.

- (h) Pending the resolution of any dispute, all invoices for services provided will be held by the Services Provider. If the resolution is in the favour of the Services Provider, then the Services Provider may apply any late charges associated with the payment of services that were postponed due to the invocation of the dispute resolution process.

### **Indemnification**

17. Each of the parties hereto (the "Indemnifier") shall indemnify and hold the other party (the "Indemnified Party") harmless from and against any loss, damage, claim, liability, debt, obligation or expense (including reasonable legal fees and disbursements) incurred or suffered by the Indemnified Party and relating in any way to this Agreement or the provision of the services, including any loss, damage, claim, liability, debt, obligation or expense resulting from or arising from or in connection with a negligent act or negligent omission of the Indemnifier.

### **Confidentiality**

18. (a) Each of the parties hereto agrees to keep all information provided by the other party (the "disclosing party") to it (the "receiving party") confidential, and a receiving party shall not, without the prior consent of an authorized senior officer of the disclosing party, disclose any part of such information which is not available in the public domain from public or published information or sources except:
- (i) to those of its employees who require access to the information in connection with performance of services by a receiving party under an Agreement;
  - (ii) as in the receiving party's judgement may be appropriate to be disclosed in connection with the provision by the receiving party of services hereunder;
  - (iii) as the receiving party may be required to disclose in connection with the preparation by the receiving party or any of its direct or

indirect holding companies, affiliates or subsidiaries of reporting documents including, but not limited to, annual financial statements, annual reports and any filings or disclosure required by statute, regulation or order of a regulatory authority; and

- (iv) to such legal and accounting advisors, valuers and other experts as in the receiving party's judgement may be appropriate or necessary in order to permit the receiving party to rely on the services of such persons in carrying out the receiving party's duties under this Agreement.
- (b) The covenants and agreements of the parties shall not apply to any information:
- (i) which is lawfully in the receiving party's possession or the possession of its professional advisors or its personnel, as the case may be, at the time of disclosure and which was not acquired directly or indirectly from the disclosing party;
  - (ii) which is at the time of disclosure in, or after disclosure falls into, the public domain through no fault of the receiving party or its personnel;
  - (iii) which, subsequent to disclosure by the disclosing party, is received by the receiving party from a third party who, insofar as is known to the receiving party, is lawfully in possession of such information and not in breach of any contractual, legal or fiduciary obligation to the disclosing party and who has not required the receiving party to refrain from disclosing such information to others; or
  - (iv) disclosure of which the receiving party reasonably deems necessary to comply with any legal or regulatory obligation which the receiving party believes in good faith it has.
- (c) The Services Recipient shall be entitled periodically to conduct reviews of the procedures implemented by the Services Provider in relation to the confidentiality obligations described in this Section 18. The conduct of any such review shall be guided by the recommendations expressed in Section 5900 of the Canadian Institute of Chartered Accountants' Handbook.
- (d) Upon the termination of the provision of services pursuant to any Services Schedules each party shall immediately return to the other party all confidential information and all copies thereof in its possession or control (other than such confidential information which continues to to be used or relevant to the provision of services pursuant to any other Services Schedule), or destroy such information and copies and certify to the other party that such destruction has been carried out.

### Force Majeure

19. If either party is rendered unable by force majeure to carry out its obligations under the Agreement, other than a party's obligation to make payments to the other party, that party shall give the other party prompt written notice of the event giving rise to force majeure with reasonably full particulars concerning it. Thereupon, the obligations of the party giving the notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than the continuance of, the force majeure. The affected party shall use all reasonable diligence to remove or remedy the force majeure situation as quickly as practicable.

### General

20. The Services Recipient shall be responsible for and shall pay all applicable federal, provincial, municipal taxes arising from the provision of services hereunder, including provincial sales tax if applicable.
21. A party shall, from time to time, and at all times, do such further acts and execute and deliver all such further deeds and documents as shall be reasonably requested by the other party in order to fully perform and carry out the terms of this Agreement.
22. Time is of the essence of this Agreement.
23. Any notice, request, demand, direction or other communication required or permitted to be given or made under this Agreement to a party shall be in writing and may be given by hand delivery to the party to whom it is addressed or sent by facsimile to such party at its address noted below or at such other address of which notice may have been given by such party in accordance with the provisions of this Section.

<b>Services Provider:</b>	The Consumers' Gas Company Ltd.
<b>Address:</b>	500 Consumers Road, North York, ON M2J 1P8 Attention: Director, Contract Support Services
<b>Facsimile:</b>	(416) 495-6451
<b>Services Recipient:</b>	Gazifère Inc.
<b>Address:</b>	71 Rue Jean Proulx Hull, Quebec

J8Z 1W2

**Facsimile:**

Any such telefax shall be deemed to have been received at the opening of business at the premises of such addressee on the first business day following the transmission of such telefax.

24. This Agreement may be executed in counterparts, no one of which needs to be executed by both of the parties. Each counterpart, including a facsimile transmission of this Agreement, shall be deemed to be an original and shall have the same force and effect as an original. All counterparts together shall constitute one and the same instrument.
25. This Agreement will enure to the benefit of and be binding upon the parties thereto and their respective successors. This Agreement may not be assigned by either of the parties thereto without the prior written consent of the other. For the purposes of this agreement "assignment" shall mean and include any transaction, event or circumstance which results in either the Services Provider or the Services Recipient ceasing to be a direct or indirect wholly owned subsidiary of Enbridge Inc.
26. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder", and similar expressions refer to this Agreement and not to any particular Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
27. Words importing the singular number shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa, and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.
28. In the event that one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby. Each of the provisions of this Agreement is hereby declared to be separate and distinct.

- 29. This Agreement may not be modified or amended except by an instrument in writing signed by both of the parties to an Agreement or by their respective successors.
- 30. This Agreement constitute the whole and entire agreement between the parties respecting the subject matter of the Agreement and supersede any prior agreement, undertaking, declarations, commitments, representations, verbal or oral, in respect thereof. Without limiting the generality of the foregoing, the Intercorporate Services Agreement between the parties dated October 1, 1998 is hereby terminated and no longer of any force or effect. The parties hereby waive their rights to receive notice of such termination.
- 31. In the event that any provision contained in this Agreement conflicts with a provision contained in a schedule hereto, the former shall prevail to the extent of any such inconsistency.

**THE CONSUMERS' GAS COMPANY LTD.**

APPROVED AS TO FORM	
LEGAL	R.G.R. 07/14/95

Per: *R. Riedl* Rudolf G. Riedl  
President

Per: *J. Williamson* JOHN S. WILLIAMSON  
Associate General Counsel &  
Corporate Secretary

**GAZIFÈRE INC.**

Per: *M. Schulz*

Per: *J. Schulz*

**EXHIBIT A**  
**ARBITRATION PROCEDURES**

1. The place of the arbitration will be Toronto, Ontario.
2. The parties will agree on the appointment of an arbitrator.
3. If the parties are unable to agree upon an arbitrator, any of the parties may apply to the Ontario Court (General Division) for the appointment of an arbitrator.
4. The agreed or appointed arbitrator (in either case, the "Arbitrator") will, in its absolute discretion, establish reasonable rules to govern all aspects of the arbitration and to ensure that the arbitration is conducted expeditiously.
5. The parties, if in agreement, may request that the Arbitrator decide between final and complete proposals submitted by each of the parties.
6. The decision or award of the Arbitrator with respect to the dispute must be rendered in writing, and must contain a brief recital of the facts and principles upon which the decision was made and the reasons therefor.
7. The decision or award of the Arbitrator made pursuant to this Exhibit A is final and binding upon each of the parties and there is no appeal therefrom. Thereafter, any action may only be for the purpose of enforcing the decision or award and the recovery of costs incidental to the action.
8. The decision or award of the Arbitrator will be conclusively deemed to determine the interpretation of this Agreement and the rights and liabilities as between the parties in respect of the matter in dispute.
9. Except as may be otherwise agreed by the parties, or as may be ordered by the Arbitrator, the Arbitrator will be entitled to its or their usual charges for services rendered to be paid equally by the parties.
10. Subject to this paragraph 10, no dispute that is or may be the subject of a submission to arbitration in accordance with this Exhibit A will give rise to a cause of action between or will be made the subject matter of an action in any court of law or equity by either of the parties unless and until the dispute has been submitted to arbitration and finally determined in the accordance with this Exhibit A and any action commenced thereafter with respect to the dispute may only be for judgment in accordance with the decision of the Arbitrator and the costs incidental to the action.

In any action of this sort, the decision of the Arbitrator will be conclusively deemed to determine the rights and abilities between the parties in respect of the dispute.

11. Notwithstanding the foregoing, if the actions or inactions of a party are, in the view of the other party, acting reasonably, producing or likely to produce irreparable harm that cannot be adequately compensated for by damages or that will result in damages that are difficult to estimate, the aggrieved party may apply to a court for injunctive or mandatory injunctive relief to remedy the situation pending the conduct of arbitration. The court before which the proceeding is brought may, if it determines the arbitration would not, in the circumstances, be beneficial to a continuing relationship between the parties, grant the aggrieved party the right to proceed with an action notwithstanding the otherwise general application of arbitration as the chosen mode of dispute resolution.
12. The parties desire that any dispute that is to be determined in accordance with the dispute resolution provisions should be conducted in strict confidence and that there will be no disclosure to any person of the fact of the dispute or any aspect of the dispute except as necessary for the resolution of the dispute. Any hearing will be attended only by those persons whose presence, in the opinion of the Arbitrator, is reasonably necessary for the determination of the dispute. All matters relating to, all evidence presented to, all submissions made in the course of, and all documents produced in accordance with the dispute resolution procedure or an order of the arbitrator or created in the course of or for the purposes of the arbitration, including any award or interim award by the arbitrator, will be kept confidential and will not be disclosed to any person without the prior written consent of all parties to the arbitration except as required to enforce the award or as required by law or as permitted by an order of the arbitrator made pursuant to a motion or application on notice to all parties to the arbitration.