



## **HERITAGE GAS LIMITED INTER-AFFILIATE CODE OF CONDUCT**

### **1 PURPOSE AND OBJECTIVES OF THE CODE**

#### **1.1 Purpose and Objectives of the Code**

##### **Purpose of the Code**

The purpose of the Inter-Affiliate Code of Conduct is to set out the standards and conditions for the interaction between Heritage Gas Limited (“Heritage Gas”) and its affiliated companies. The principal objectives of the Code are to enhance a competitive market while, at a minimum, keeping ratepayers unharmed by the actions of Heritage Gas with respect to dealing with its affiliates. The standards established in the Code are intended to:

- (a) minimize the potential for Heritage Gas to cross-subsidize competitive or non-regulated activities;
- (b) protect the confidentiality of consumer information collected by Heritage Gas in the course of provision of Regulated Service; and
- (c) ensure there is no preferential access to Regulated Service.

##### **Objectives of Code**

While the overall purpose of the Code is to establish standards and parameters which prohibit inappropriate Affiliate conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- (a) creating a clearly defined set of rules designed to enhance inter-affiliate transparency, fairness and senior management accountability with respect to inter-affiliate interactions impacting regulated businesses;
- (b) providing an environment in which inter-affiliate economies and efficiencies can be realized by Heritage Gas;
- (c) developing support and respect for the Code by the employees, officers and directors of Heritage Gas, which will in turn promote ratepayer confidence in the application of the Code; and
- (d) the creation of regulatory processes and cost efficiencies through the consistent application of a clear set of standards and reporting requirements to Heritage Gas’ inter-affiliate transactions, enhanced by a practical, resolution driven, dispute process.

#### **1.2 Application**

This Code is not meant to replace or modify in any manner, any statutory or regulatory requirements relating to Heritage Gas.

## 2 GENERAL PROVISIONS

### 2.1 Definitions

In this Code the following words and phrases shall have the following meanings:

- (a) **"Affiliate"** means with respect to Heritage Gas:
  - i. an "affiliate" as defined in the CBCA;
  - ii. a unit or division within Heritage Gas or any Body Corporate referred to in clause (a) i above;
  - iii. a partnership, joint venture, or person in which Heritage Gas or any Body Corporate referred to in clause (a) i above has a controlling interest or that is otherwise subject to the control of Heritage Gas or such Body Corporate;
  - iv. any partnership, joint venture, or person deemed by the Nova Scotia Utility and Review Board ("Board") to be an affiliate of Heritage Gas for the purposes of this Code; and
  - v. an agent or other person acting on behalf of any Body Corporate, operating division, partnership, joint venture or person referred to in clauses (a) i to iv above.
- (b) **"Affiliated Party Transaction Summary"** means a summary of each type of business transaction or service performed by an Affiliate for Heritage Gas or by Heritage Gas for an Affiliate, which will contain:
  - i. A detailed listing of all assets, services and products provided to and from Heritage and each of its affiliated companies.
  - ii. Each item on the listing will indicate the price received or paid and, as appropriate, the relevant fully allocated costs or market values.
  - iii. Where fair market value is used, an explanation will be provided as to how the value was determined, including the comparative source for the value.
  - iv. Where cost allocations are involved, a description of the cost allocators and methods used to make the allocations will be included.
  - v. A summary of corporate services and the methodology for ensuring fair allocations of these costs.
- (c) **"Body Corporate"** means a "body corporate" as defined in the CBCA.
- (d) **"CBCA"** means the Canada Business Corporations Act, R.S.C., 1985, c. C-44.
- (e) **"Code"** means this Heritage Gas Inter-Affiliate Code of Conduct.
- (f) **"Compliance Officer"** shall have the meaning ascribed thereto in section 7.3 hereof.
- (g) **"Compliance Report"** shall have the meaning ascribed thereto in section 7.5 hereof.
- (h) **"Confidential Information"** means any information relating to a specific customer or potential customer of Heritage Gas, which information Heritage Gas has obtained or compiled in the process of providing current or prospective Regulated Service and which is not otherwise available to the public.
- (i) **"Cost Recovery Basis"** with respect to:
  - i. the use by one Affiliate of another Affiliate's personnel, means the fully burdened costs of such personnel for the time period they are used by the Affiliate, including salary, benefits, vacation, materials, disbursements and all applicable overheads;
  - ii. the use by one Affiliate of another Affiliate's equipment, means an allocated share of capital and operating costs appropriate for the time period utilized by the Affiliate;
  - iii. the use by Heritage Gas of an Affiliate's services, means the complete costs of providing the service, determined in a manner acceptable to Heritage Gas, acting prudently;

- iv. the use by an Affiliate of Heritage Gas' services, means the complete costs of providing the service, determined in a manner acceptable to Heritage Gas, acting prudently; and
  - v. the transfer of equipment, plant inventory, spare parts or similar assets between Affiliates, means the lower of market or net book value of the transferred assets.
- (j) **"Fair Market Value"** means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.
- (k) **"For Profit Affiliate Service"** means any service, provided on a for-profit basis:
- i. by Heritage Gas to an Affiliate, other than a Regulated Service; or
  - ii. by an Affiliate to Heritage Gas.
- (l) **"Information Services"** means any computer systems, computer services, databases, electronic storage services or electronic communication media utilized by Heritage Gas relating to its customers or operations.
- (m) **"Major Transaction"** means a transaction or series of related transactions within a calendar year between Heritage Gas and an Affiliate relating to the sale or purchase of an asset(s) or to the provision of a service or a similar group of services, other than Regulated Service, which has an aggregate value within that calendar year of \$500,000 or more.
- (n) **"Occasional Services"** shall have the meaning ascribed thereto in section 3.3.8 hereof.
- (o) **"Regulated Service"** means a service, the terms and conditions of which are regulated by the Board, and includes services for which an individual rate, joint rate, toll, fare, charge or schedule of them (rates, tolls, fares or charges), have been approved by the Board.
- (p) **"Services Agreement"** means an agreement, in writing and signed by the parties, entered into between Heritage Gas and one or more Affiliates for the provision of Shared Services or For Profit Affiliate Services and shall provide for the following matters as appropriate in the circumstances:
- i. the type, quantity and quality of service;
  - ii. pricing, allocation or cost recovery provisions;
  - iii. confidentiality arrangements;
  - iv. dispute resolution provisions; and
  - v. a representation by Heritage Gas and each Affiliate party to the agreement that the agreement complies with the Code.
- (q) **"Shared Service"** means any service, other than a Regulated Service or a For Profit Affiliate Service, provided on a Cost Recovery Basis by Heritage Gas to an Affiliate or by an Affiliate to Heritage Gas.
- (r) **"Shared Core Corporate Services"** means corporate operational services and financial market services.
- i. operational services relate to services performed by one Affiliate for another in relation to the daily operation of its business and include, but are not limited to:
    - i. Executive and strategy;
    - ii. Financial reporting and control;
    - iii. Tax;
    - iv. Treasury;
    - v. Regulatory;
    - vi. Insurance;
    - vii. Financial analysis and planning;
    - viii. Internal audit; and
    - ix. Board of Directors.
  - ii. financial market services relate to the maintenance of access to debt and public equity markets and include, but are not limited to:



- i. Investor relations;
- ii. Bank relations;
- iii. Public debt market relations;
- iv. Bond rater relations;
- v. Continuous disclosure reporting requirements;
- vi. Bank reporting requirements; and
- vii. Legal requirements.

## **2.2 To Whom this Code Applies**

Heritage Gas is obligated to comply with this Code and all Affiliates of Heritage Gas are obligated to comply with the Code to the extent they interact with Heritage Gas.

## **2.3 Coming into Force**

This Code comes into force when approved by the Board.

## **2.4 Amendments to this Code**

This Code may be reviewed and amended from time to time by the Board on its own initiative, or pursuant to a request by any party to whom this Code applies or by any interested party.

## **2.5 Exemptions**

Heritage Gas is to make all applications to the Board for an exemption with respect to compliance with any provision of this Code on behalf of its affiliates. Any such application will specify if the requested exemption is in respect of a particular transaction, series of transactions, for a specified period of time, or is for a general exemption from a particular provision.

## **2.6 Authority of the Board**

Although this Code requires approval by the Board, such approval does not detract from, reduce or modify in any way, the powers of the Board to deny, vary, approve with conditions, or overturn, the terms of any transaction or arrangement between Heritage Gas and one or more Affiliates that may be done in compliance with this Code. Compliance with the Code does not eliminate the requirement for specific Board approvals or filings where required by statute or by Board decisions, orders or directions.

# **3 GOVERNANCE AND SEPARATION OF BUSINESS**

## **3.1 Governance**

### **3.1.1 Separate Operations**

The business and affairs of Heritage Gas shall be managed and conducted separately from the business and affairs of its Affiliates, except as required to fulfill corporate governance, policy, and strategic direction responsibilities of a corporate group of businesses as a whole.



### **3.1.2 Common Directors, Officers and Management**

Heritage Gas may have common directors, officers and management with its Affiliates.

### **3.1.3 Guiding Principle**

Notwithstanding section 3.1.2 hereof, an individual shall not act both as a director, officer or member of a management team of Heritage Gas and as a director, officer or member of a management team of any other Affiliate (thereby acting in a dual capacity) unless the individual is able to carry out his/her responsibilities in a manner that preserves the form, and the spirit and intent, of this Code. In particular, an individual:

- (a) shall not agree to act in a dual capacity if it could reasonably be considered to be detrimental to the interests of customers of Heritage Gas; and
- (b) if acting in a dual capacity, shall abstain from engaging in any activity that could reasonably be considered to be detrimental to the interests of customers of Heritage Gas.

## **3.2 Degree of Separation**

### **3.2.1 Accounting Separation**

Heritage Gas shall ensure accounting separation from all Affiliates and shall maintain separate financial records and books of accounts.

### **3.2.2 Separation of Information Services**

Where Heritage Gas shares Information Services with an Affiliate, all Confidential Information must be protected from unauthorized access by the Affiliate.

### **3.2.3 Financial Transactions with Affiliates**

Heritage Gas shall ensure that any loan, investment, or other financial support provided to, or received from, an Affiliate is provided on terms no more favorable than what that Affiliate would be able to obtain as a stand-alone entity from the capital markets.

## **3.3 Resource Sharing**

### **3.3.1 Sharing of Employees**

Heritage Gas may share employees on a Cost Recovery Basis with an Affiliate.

### **3.3.2 Transferring of Employees**

Heritage Gas may transfer employees to or from an Affiliate.

### **3.3.3 Sharing of Assets**



The plant, assets and equipment of Heritage Gas shall be separated in ownership and separated physically from the plant, assets and equipment of other Affiliates. Affiliates may share ownership and may physically share office space, equipment, rights-of-way and other assets on a Cost Recovery Basis.

### **3.3.4 Shared Services Permitted**

Where Heritage Gas determines it is prudent in operating its business to do so, it may obtain Shared Services from, or provide Shared Services to, an Affiliate. Heritage Gas shall periodically review the prudence of continuing Shared Services arrangements with a view to making any necessary adjustments to ensure that each Affiliate bears its proportionate share of costs.

### **3.3.5 Shared Core Corporate Services Permitted**

Where Heritage Gas determines it is prudent in operating its business to do so, it may obtain Shared Core Corporate Services from an Affiliate. Heritage Gas shall periodically review the prudence of continuing Shared Core Corporate Services arrangements with a view to making any necessary adjustments to ensure that each Affiliate bears its appropriate share of costs.

### **3.3.6 Pricing for Shared Core Corporate Services**

When Heritage Gas acquires Shared Core Corporate Services from an Affiliate the cost of providing the services will be charged to Heritage Gas by the Affiliate on a Cost Recovery Basis.

### **3.3.7 Services Agreement**

Heritage Gas shall enter into a Services Agreement with respect to any Shared Services and Shared Core Corporate Services it provides to, or acquires from, an Affiliate and file Services Agreements with the Board, in accordance with section 7.5(c) hereof.

### **3.3.8 Occasional Services Permitted**

Where Heritage Gas has otherwise acted prudently, it may receive, or provide, one-off, infrequent or occasional services ("Occasional Services") to, or from, an Affiliate on a Cost Recovery Basis. In the event that Heritage Gas is utilizing, or providing, services to an affiliate on a recurring basis and at a deemed fully loaded value of \$50,000 or more per year, Heritage Gas shall enter into a Services Agreement. Recurring basis is defined as more than once per year, in consecutive years, and is expected to continue to be provided, or required in future years.

### **3.3.9 Emergency Services Permitted**

In the event of an emergency, Heritage Gas may share services and resources with an Affiliate without a Services Agreement on a Cost Recovery Basis.

## **4 FOR PROFIT AFFILIATE SERVICES**

### **4.1 For Profit Affiliate Services**



Where Heritage Gas determines it is prudent in operating its business to do so, it may obtain For Profit Affiliate Services from an Affiliate or provide For Profit Affiliate Services to an Affiliate. If Heritage Gas intends to outsource to an Affiliate a service it presently provides for itself, Heritage Gas shall, in addition to any other analysis it may require to demonstrate the prudence of a For Profit Affiliate Services arrangement, undertake a net present value analysis appropriate to the life cycle or operating cycle of the services involved.

Heritage Gas shall periodically review the prudence of continuing For Profit Affiliate Services arrangements.

#### **4.2 Pricing For Profit Affiliate Services**

When Heritage Gas acquires For Profit Affiliate Services, it shall pay no more than the Fair Market Value of such services. The onus is on Heritage Gas to demonstrate that the For Profit Affiliate Services have been acquired at a price that is no more than the Fair Market Value of such services.

When Heritage Gas provides For Profit Affiliate Services, it shall not charge less than the Fair Market Value of such services. The onus is on Heritage Gas to demonstrate that the For Profit Affiliate Services have been charged at a price that is not less than the Fair Market Value of such services.

#### **4.3 Services Agreement**

Heritage Gas shall enter into a Services Agreement with respect to any For Profit Affiliate Services it acquires or provides.

#### **4.4 Asset Transfers**

Assets transferred, mortgaged, leased or otherwise disposed of by Heritage Gas to an Affiliate or by an Affiliate to Heritage Gas shall be at Fair Market Value.

#### **4.5 Determination of Fair Market Value**

In demonstrating that Fair Market Value was paid or received pursuant to a For Profit Affiliate Service arrangement or a transaction contemplated by sections 4.1, 4.2 and 4.4 hereof, Heritage Gas, subject to any prior or contrary direction by the Board, may utilize any method to determine Fair Market Value that it believes appropriate in the circumstances. These methods may include, without limitation: competitive tendering, competitive quotes, bench-marking studies, catalogue pricing, replacement cost comparisons or recent market transactions. Heritage Gas shall bear the onus of demonstrating that the methodology or methodologies utilized in determining the Fair Market Value of the subject goods or services was appropriate in the circumstances.

### **5 EQUAL TREATMENT WITH RESPECT TO REGULATED SERVICE**

#### **5.1 Impartial Application of Tariff**

Heritage Gas shall apply and enforce all tariff provisions relating to Regulated Service impartially, in the same timeframe, and without preference in relation to its Affiliates and all other customers or prospective customers.



## **5.2 Equal Access**

Heritage Gas shall not favor any Affiliate with respect to access to information concerning Regulated Service or with respect to the obtaining of, or the scheduling of, Regulated Service. Requests by an Affiliate or an Affiliate's customers for access to Regulated Service shall be processed and provided in the same manner as would be processed or provided for other customers or prospective customers of Heritage Gas.

## **5.3 No Undue Influence**

Heritage Gas shall not condition or otherwise tie the receipt of Regulated Service to a requirement that a customer must also deal with an Affiliate. Heritage Gas shall ensure that its employees do not, explicitly or by implication, suggest that an advantage will accrue to a customer in dealing with Heritage Gas if the customer also deals with an Affiliate.

## **5.4 Affiliate Activities**

Heritage Gas shall take reasonable steps to ensure that an Affiliate does not imply in its marketing material or otherwise, favored treatment or preferential access to Regulated Service.

## **5.5 Name and Logo**

Heritage Gas shall take reasonable steps to ensure that an Affiliate does not use its name, logo or other distinguishing characteristics in a manner which would mislead consumers as to the distinction or a lack of distinction between Heritage Gas and the Affiliate.

## **5.6 Access to Shared and Occasional Services**

Heritage Gas is not required to provide non-Affiliated parties with equal access to Shared Services or Occasional Services.

# **6 CONFIDENTIALITY OF INFORMATION**

## **6.1 No Release of Confidential Information**

Heritage Gas shall not release to an Affiliate Confidential Information relating to a customer or prospective customer, without receiving the prior written consent of the customer or prospective customer, unless such Confidential Information may be disclosed to an Affiliate in connection with a disclosure required:

- (a) for the purpose of a court proceeding or a proceeding before a quasi-judicial body to which the customer is a party;
- (b) for the purpose of complying with a subpoena, warrant, or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;
- (c) to a municipal or provincial police service for the purpose of investigating an offence involving the customer, if the disclosure is not contrary to the express request of the customer;



- (d) by law or by an order of a government or agency having jurisdiction over Heritage Gas; or,
- (e) for the purpose of providing Shared Services or For Profit Affiliate Services to the Affiliate or for the purpose of receiving Shared Services or For Profit Affiliate Services from the Affiliate; provided appropriate measures are first put in place by the Affiliate to protect the Confidential Information and the Confidential Information is used by the Affiliate only for the purpose intended by Heritage Gas.

## **6.2 Aggregated Confidential Information**

Heritage Gas may disclose Confidential Information when aggregated with the Confidential Information of other customers in such a manner that an individual customer's Confidential Information cannot be identified, provided that Heritage Gas shall not disclose such aggregated customer information to an Affiliate prior to making such information publicly available.

## **7 COMPLIANCE MEASURES**

### **7.1 Responsibility for Compliance**

Heritage Gas shall be responsible for ensuring compliance with this Code.

### **7.2 Communication of Code**

Heritage Gas shall:

- (a) communicate the contents of the Code, and any modifications to it from time to time, to each of its directors, officers, employees, consultants, contractors, agents and Affiliates; and,
- (b) make the Code available on its website.

### **7.3 Compliance Officer**

Heritage Gas shall appoint a compliance officer (the "Compliance Officer"). Heritage Gas shall ensure that the Compliance Officer is an officer of Heritage Gas and has adequate resources to fulfill his or her responsibilities.

### **7.4 Responsibilities of the Compliance Officer**

The responsibilities of the Compliance Officer shall include:

- (a) providing advice and information to Heritage Gas for the purpose of ensuring compliance with this Code;
- (b) monitoring and documenting compliance with the Code by Heritage Gas, its directors, officers, employees, consultants, contractors and agents;
- (c) monitoring and documenting compliance with the Code by Affiliates of Heritage Gas with respect to the interactions of the Affiliates with Heritage Gas;
- (d) preparing an annual compliance report ("Compliance Report") containing the information required in section 7.5 hereof. The Compliance Officer shall file the Compliance Report with the Board within 180 days of the fiscal year-end of Heritage Gas with respect to the immediately preceding fiscal year;



- (e) receiving and investigating internal and external disputes, complaints and inquiries with respect to the application of, and alleged non-compliance, with the Code in accordance with Section 8 hereof;
- (f) recommending to Heritage Gas measures required to address events of non-compliance with the Code; and
- (g) maintaining adequate records with respect to all aspects of the Compliance Officer's responsibility.

### **7.5 The Compliance Report**

The Compliance Report shall include the following information prepared in respect to the period of time covered by the Compliance Report:

- (a) a corporate organization chart for Heritage Gas and its Affiliates indicating relationships and ownership percentages;
- (b) a list of all Affiliates with whom Heritage Gas transacted business, including business addresses, a list of the Affiliates' officers and directors, and a description of the Affiliates' business activities;
- (c) filing all Services Agreements in effect at any time during such period;
- (d) an overall assessment of compliance with the Code by Heritage Gas, including compliance by the directors, officers, employees, consultants, contractors and agents of Heritage Gas and by Affiliates of Heritage Gas with respect to the interactions of the Affiliates with Heritage Gas;
- (e) subject to the confidentiality provisions of section 8.1 hereof, a summary of disputes, complaints and inquiry activity during the year;
- (f) a list and detailed description of all Major Transactions between Heritage Gas and its Affiliates;
- (g) an Affiliated Party Transaction Summary;
- (h) a summary description together with an estimated aggregate value for each Occasional Service provided by Heritage Gas to an Affiliate and by Affiliates to Heritage Gas;
- (i) a summary list of any exemptions granted to this Code or exceptions utilized, including the exception for emergency services;
- (j) a list of all employee transfers, temporary assignments and secondments between Heritage Gas and its Affiliates, detailing specifics as to purpose, dates and duration of such employee movements; and
- (k) an analysis for all transactions indicating whether fair market value or competitive tendering or quotes was used and describing the rationale for using or not using competitive tendering or quotes.

### **7.6 Documents to be Provided to the Board upon Request**

If required by the Board, Heritage Gas shall provide the Board with a copy of any document referred to in a Compliance Report or other supporting records and material including relevant affiliate records in possession or control of the affiliate as requested by the Board.

### **7.7 Compliance Records and Audit**

The records required to be maintained by the Compliance Officer pursuant to section 7.4 hereof shall be retained for a period of at least six years. Compliance records shall be maintained in a manner sufficient to support a third party audit of the state of compliance with the Code by Heritage Gas, its directors,



officers, employees, consultants, contractors and agents, and by Affiliates of Heritage Gas with respect to the interactions of the Affiliates with Heritage Gas. Subject to the confidentiality provisions of section 8.1 hereof, all such records shall be made available for inspection or audit as may be required by the Board from time to time.

## **8 DISPUTES, COMPLAINTS AND INQUIRIES**

### **8.1 Filing with the Compliance Officer**

Disputes, complaints or inquiries from within Heritage Gas or from external parties respecting the application of, or alleged non-compliance with, the Code shall be submitted in writing to the Compliance Officer and may be made confidentially. The identity of the party making the submission to the Compliance Officer shall be kept confidential by the Compliance Officer unless the party otherwise agrees.

### **8.2 Processing of Complaints**

#### **8.2.1 Compliance Officer Acknowledgment**

The Compliance Officer shall acknowledge all disputes, complaints or inquiries in writing within five working days of receipt.

#### **8.2.2 Disposition**

The Compliance Officer shall respond to the dispute, complaint or inquiry within 21 working days of its receipt. The response shall include a description of the dispute, complaint or inquiry and the initial response of Heritage Gas to the issues identified in the submission. Heritage Gas's final disposition of the dispute, complaint or inquiry shall be completed as expeditiously as possible in the circumstances, and in any event within 60 days of receipt of the dispute, complaint or inquiry, except where the party making the submission otherwise agrees.

### **8.3 Referral to the Board**

In the event:

- (a) Heritage Gas fails to abide by the process identified in section 8.2 hereof,
- (b) Heritage Gas or a party is unsatisfied with the resolution of a dispute, complaint or inquiry following the conclusion of the section 8.2 process, or
- (c) of an urgent and significant matter, where there is a reasonable expectation that a party's position may be prejudiced by allowing the process contemplated by section 8.2 to operate,

Heritage Gas (subject to the confidentiality provisions of section 8.1 hereof) or a party with a dispute, complaint or inquiry may refer the matter to the Board for consideration. A referral to the Board must be in writing and shall describe the dispute, complaint, or inquiry and must include the response, if any, of Heritage Gas to the submission.