

## **Appendix A**

### **Lease Form**

## SHORT-TERM TANK FACILITIES LEASE

This Short-Term Tank Facilities Lease (this “**Lease**”) is dated as of \_\_\_\_\_, 2014 and is between:

**TRANSCANADA KEYSTONE PIPELINE GP LTD.**,  
a corporation existing under the laws of Canada, as general partner on behalf of  
**TRANSCANADA KEYSTONE PIPELINE LIMITED PARTNERSHIP**,  
a limited partnership registered under the laws of Alberta  
(“**Keystone**”);

- and -

\_\_\_\_\_,  
a \_\_\_\_\_ formed under the laws of \_\_\_\_\_  
(“**Lessee**”).

### Recitals:

- A. Keystone owns the Tank Facilities.
- B. Pursuant to National Energy Board of Canada (the “**NEB**”) Certificate OC-56 approved by the Governor in Council on April 22, 2010 and issued on April 27, 2010, the construction and operation of the Tank Facilities forming part of the KXL Pipeline System were approved on the terms and conditions therein.
- C. As of the date hereof, the KXL Commencement Date has not occurred and Keystone does not anticipate that the Tank Facilities will be utilized as part of the KXL Pipeline System for a period of time.
- D. Lessee desires to lease the Tank Facilities from Keystone during the Term.
- E. Keystone and Lessee propose to enter into this Lease in order to set out the terms and conditions under which the Lessee will lease the Tank Facilities.

**NOW THEREFORE** Keystone and Lessee agree as follows:

### ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

#### 1.1. Definitions

“**Adverse Encumbrance**” has the meaning set out in Section 9.3.

“**Affiliate**” means any Person that, directly or indirectly:

- (i) controls a Party;
- (ii) is controlled by a Party; or
- (iii) is controlled by the same Person that controls a Party;

it being understood and agreed that for purposes of this definition the terms “**controls**” and “**controlled by**” shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact, but notwithstanding the foregoing includes, with respect to the control of or by a corporation or partnership, the ownership of shares or equity interests carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above.

“**API MPMS**” means the American Petroleum Institute Manual of Petroleum Measurement Standards.

“**Applicable Law**” means any applicable:

- (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and municipal by-laws of any Governmental Authority; and
- (ii) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, rulings, decrees and awards of any Governmental Authority,

in each case to the extent having jurisdiction over the Tank Facilities, the Pipeline System or the Parties.

“**ASTM**” means the American Society for Testing and Materials.

“**Business Day**” means any day from 8:00am to 5:00pm that the financial institution designated by Keystone for payment pursuant to Section 5.2(a) is open to the general public for business, and specifically excludes Saturdays, Sundays and statutory holidays.

“**Cubic Metre**” ( $m^3$ ) means the volume of Petroleum which occupies one cubic metre when such Petroleum is at a temperature of fifteen degrees Celsius ( $15^\circ C$ ) and at a pressure of 101.325 kiloPascals and equals 264.1721 United States gallons and 6.2898108 barrels, under the same conditions.

“**Day**” means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Mountain Standard Time. The reference date for any Day shall be the calendar date upon which the 24 hour period shall commence.

“**Delivery**” or “**Delivered**” means the delivery by Keystone of a stated quantity and type of Petroleum from the Tank Facilities to the Delivery Point on the Pipeline System, which shall be the quantity and type of Petroleum Tendered by Lessee for transportation on the Pipeline System pursuant to a Nomination.

“**Delivery Point**” has the meaning given in Appendix C.

“**Designated Election Date**” has the meaning given in Section 4.3(a).

“**Effective Date**” means the Keystone Execution Date.

“**Election**” has the meaning given in Section 4.3.

**“Event of Default”** means (i) the failure of the Lessee to make any payment by the Payment Due Date, which is not remedied within five (5) days after receiving Notice of such failure from Keystone, (ii) Lessee making an assignment or any general arrangement for the benefit of creditors, the filing of a petition or otherwise commencing, authorizing, or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or having such petition filed or proceeding commenced against it, any bankruptcy or insolvency (however evidenced), or the inability to pay its debts as they fall due, (iii) the failure of the Lessee to provide, maintain, or both, as applicable, Financial Information, Financial Assurances, or both, in accordance with Article 13, or (iv) the failure by the Lessee to perform any other material obligation under this Lease (other than those specifically covered above) where not remedied within 30 days of Keystone’s Notice to Lessee of such failure (or if it is unreasonable to cure such failure within 30 days, where no substantive action has been commenced to remedy such failure or where such action is not thereafter diligently pursued until remedied) after receiving Notice of such failure.

**“Financial Assurances”** has the meaning given in Section 13.1.

**“Financial Information”** has the meaning given in Section 13.1.

**“Force Majeure”** means any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, storms, civil disturbances, the act, regulation, order, direction or requisition of any Governmental Authority having jurisdiction, breakdown or failures of pipe, plant, machinery or equipment, inability to obtain or the curtailment of electric power, water or fuel, or other event, cause or occurrence whether of the kind enumerated or otherwise which in all cases are not within the reasonable control of the Party claiming suspension, and which by the exercise of due diligence such Person is unable to prevent or overcome.

**“Governmental Authority”** means any:

- (i) government, parliament or legislature, any regulatory or administrative authority, agency, commission or board and any other statute, rule or regulation making entity having jurisdiction over all or part of the Tank Facilities, the Pipeline System or the Parties, including the NEB;
- (ii) Person acting under the authority of any of the foregoing or under a statute, rule or regulation thereof; and
- (iii) judicial, appellate, administrative or arbitral courts, authority, tribunal or commission having jurisdiction over all or part of the Tank Facilities, the Pipeline System or the Parties.

**“Gross Standard Volume”** means the volume of Petroleum measured in Cubic Metres in accordance with the most current standards established by API MPMS.

**“Initial Term”** has the meaning given in Section 3.1.

**“Inventory”** means the Lessee’s Petroleum located in the Tank Facilities.

**“Keystone Execution Date”** has the meaning given in Section 2.3.

“**Keystone Force Majeure Event**” means an event of Force Majeure (as such term is defined in the Rules and Regulations) that Keystone has relied upon pursuant to Article 15 of the Rules and Regulations for relief of its obligations pursuant to a Contract or the Tariff (as such terms are defined in the Rules and Regulations).

“**KXL Commencement Date**” means the 90<sup>th</sup> Day following delivery of written notice by Keystone to shippers on the KXL Pipeline System (with a concurrent Notice to the Lessee that such notice has been delivered) of its schedule of line fill procedures for the KXL Pipeline System.

“**KXL Pipeline System**” means the proposed Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Keystone commencing at or near Hardisty, Alberta and terminating at or near Monchy, Saskatchewan, as such facilities may be modified, expanded or extended from time to time.

“**Lessee Termination Event**” has the meaning given in Section 3.2(a).

“**Month**” means the period beginning at the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

“**Monthly Excess Rate**” means the amount calculated in accordance with Section 5.1.

“**Monthly Storage Rate**” means the amount calculated in accordance with Section 5.1.

“**MSDS**” means a material safety data sheet.

“**Net Standard Volume**” means the Gross Standard Volume minus the sediment and water component.

“**NEB**” has the meaning given in the Recitals.

“**Notice**” has the meaning given in Section 18.9.

“**Open Season**” means the open season bid tender procedures initiated by Keystone in respect of this Lease to provide Storage Capacity to Lessees at the Tank Facilities.

“**Operational Date**” means the date, as determined by Keystone in its sole discretion, in which the Tank Facilities are operational and are ready to accept Petroleum.

“**Party**” means Keystone or Lessee, as applicable, and “**Parties**” means both Keystone and Lessee.

“**Payment Due Date**” means the 25<sup>th</sup> day of each month; provided that if such day is a Saturday, Sunday, or statutory holiday in Alberta, Canada, then the Payment Due Date shall be the immediately succeeding day that is not a Saturday, Sunday, or statutory holiday in Alberta, Canada.

“**Person**” means any natural person, firm, trust, partnership, corporation, limited liability company, joint venture, association, joint stock company, enterprise, unincorporated entity, Governmental Authority or other entity.

“**Petroleum**” means the direct liquid product of oil wells, oil processing plants, oil sands, or a mixture of such products, but does not include natural gas, natural gas liquids, or refined petroleum products. For the purposes of this definition, “oil” includes crude oil, synthetic crude oil or a bitumen blend consisting of bitumen blended with synthetic crude oil, condensate or both, that is recovered in processing and that is in a liquid state at the conditions under which its volume is measured or estimated.

“**Petroleum Specifications**” has the meaning given in Section 7.1.

“**Pipeline System**” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Keystone and subject to the Rules and Regulations, commencing at or near Hardisty, Alberta and terminating at the international boundary at or near Haskett, Manitoba, as such facilities may be modified, expanded or extended from time to time.

“**Prime Rate**” means the variable annual rate of interest charged by the Royal Bank of Canada, Main Branch, Calgary, Alberta, as its reference rate of interest for calculating interest on variable rate commercial loans made in Canadian dollars in Canada to its most creditworthy customers.

“**Receipt**” or “**Received**” means the receipt by Keystone of a stated quantity and type of Petroleum at the Receipt Point.

“**Receipt Point**” has the meaning given in Appendix C.

“**Regulatory Approvals**” means, collectively, such authorizations, approvals, declarations, qualifications, notifications, consents, permits, franchises, certificates, licenses, implementing orders, or exemptions, and any necessary amendments or supplements thereto, of any Governmental Authority, that Keystone, in its sole discretion, determines are necessary for, and on terms satisfactory to, Keystone, to construct, acquire, own and operate the Tank Facilities and to provide the services contemplated under this Lease.

“**Renewal Term**” has the meaning given in Section 3.1.

“**Representatives**” mean the directors, officers, management committee, employees, lawyers, accountants, engineers, consultants, agents, partners, shareholder representatives and advisers of a Party or those of its Affiliates.

“**Rules and Regulations**” means the Keystone Pipeline System Rules and Regulations Applying to the Transportation of Petroleum on the Pipeline System, as approved by the NEB and in effect at the relevant time.

“**Shell Storage Capacity**” has the meaning given in Appendix A.

“**Storage Capacity**” means the short term tank capacity of Petroleum that Lessee shall have access to at the Tank Facilities, as further set forth and initialed by Lessee’s signing authority in Appendix A.

“**Storage Rates**” has the meaning given in Section 5.1.

“**Tank Facilities**” means the tank(s) elected for lease by the Lessee pursuant to Appendix A, and all related receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities, located at Hardisty, Alberta.

“**Term**” has the meaning given in Section 3.1.

“**Terminalling Reduction**” has the meaning given in Section 14.1(a).

“**Working Capacity**” has the meaning given in Appendix A.

“**Year**” means a period of 365 consecutive days; provided however, that any Year which contains the date February 29 shall consist of 366 consecutive days.

## 1.2. Interpretation

In this Lease:

- (i) **Other Forms:** Where a word or phrase is defined in this Lease, its other grammatical forms have a corresponding meaning. Words importing the singular number only include the plural and *vice versa*. Any word importing gender shall include the masculine, feminine and neuter.
- (ii) **Article/Section/Rule References:** References to (i) “Article” or “Section” mean the specified Article or Section of this Lease and (ii) “Appendix” refers to an appendix to this Lease.
- (iii) **Headings:** Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Lease.
- (iv) **Including:** Where the word “including” or “includes” is used, it means “including (or includes) without limitation”.
- (v) **No Strict Construction:** The language used in this Lease is the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party.
- (vi) **References to Agreements or Statutes:** Any reference in this Lease to an agreement shall, unless the context otherwise requires, mean and refer to such agreement as modified, amended, restated, supplemented or replaced from time to time, and a reference to any statute is a reference to it as re-enacted, varied, amended, modified, supplemented or replaced from time to time.
- (vii) **Severability & Renegotiation:** If, in any jurisdiction, any provision of this Lease or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Lease and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (viii) **Consent:** Whenever a provision of this Lease requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

- (ix) **Time:** Time is of the essence in the performance of the Parties' respective obligations.
- (x) **Time Periods:** Unless otherwise specified, time periods within or following which an act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.
- (xi) **Successors and Assigns:** Any reference in this Lease to any Party includes its successors and permitted assigns.
- (xii) **Requirement Satisfied by Electronic Delivery:** For the purposes of this Lease, the requirement of "writing" is satisfied if it meets the requirements of the *Electronic Transactions Act* (Alberta).
- (xiii) **Currency:** All amounts or sums set forth in this Lease expressed in dollars and cents, either in words or in numbers, are deemed to be stated in Canadian dollars.

### 1.3. Appendices

The appendices listed below form part of this Lease:

<u>Appendix</u>	<u>Description</u>
A	Storage Capacity Election
B	Petroleum Specifications
C	Receipt and Delivery Points

## ARTICLE 2 CONDITIONS PRECEDENT & REGULATORY MATTERS

### 2.1. Conditions Precedent

The obligations of Keystone under this Lease are subject to the following conditions precedent for the exclusive benefit of Keystone, which may be waived by it in whole or in part:

- (i) Keystone shall have obtained all Regulatory Approvals on terms acceptable to Keystone;
- (ii) the Tank Facilities have been commissioned to the satisfaction of Keystone (in its sole discretion) and are ready to accept Petroleum; and
- (iii) Keystone's receipt of Financial Assurances, as may be requested by Keystone.



## 2.2. **Regulatory Approvals**

Lessee and Keystone shall each proceed with due diligence and in good faith to seek and maintain their respective approvals and permits from all Governmental Authorities having jurisdiction in Canada as reasonably required to satisfy their respective obligations under this Lease. Lessee and Keystone shall cooperate with each other to obtain such approvals and permits, including providing reasonable support as may be necessary in connection with their respective applications.

## 2.3. **Open Season and Effectiveness of Lease**

The execution and delivery by Lessee of this Lease in connection with the Open Season constitutes an irrevocable binding offer by Lessee that shall not be binding on Keystone unless and until this Lease is executed and delivered by Keystone to Lessee, subject always to the other provisions of this Article 2; provided that if this Lease is not executed and delivered by Keystone to Lessee on or before the date which is 30 Business Days following the completion of the Open Season (the date of such Keystone execution as indicated on the execution page of this Lease is the “**Keystone Execution Date**”), Lessee’s offer shall, at Lessee’s option on Notice to Keystone, expire and be of no further force or effect, and upon the expiry of such offer in accordance with this Section 2.3, Lessee shall not be liable under this Lease for any costs, expenses or other liabilities incurred by Keystone or its Affiliates associated with the Tank Facilities.

# ARTICLE 3 TERM & TERMINATION

## 3.1. **Term**

This Lease shall be effective as of the Effective Date. Keystone shall provide Lessee with at least thirty (30) days prior Notice of the Operational Date. Subject to Article 2, the initial term of this Lease shall commence on the Operational Date and shall continue for a period of thirty-six (36) months (the “**Initial Term**”). Either Party may elect to terminate this Lease upon the expiry of the Initial Term by giving Notice to that effect to the other Party not less than one-hundred and eighty (180) days prior to the expiry of the Initial Term. Unless a Party has given Notice of termination of the Lease effective as of the expiration of the Initial Term, the Lease shall automatically renew for additional twelve (12) month periods (each a “**Renewal Term**”, and collectively with the Initial Term, the “**Term**”) until the earliest to occur of the following:

- (i) provided the Lease is in a Renewal Term, upon a Party providing twelve (12) months’ Notice to the other Party of its intention to terminate the Lease;
- (ii) termination pursuant to Section 3.2 or by the operation of Applicable Law; or
- (iii) the day immediately preceding the KXL Commencement Date.

Keystone shall provide Lessee with a concurrent Notice that notice of the KXL Commencement Date has been delivered to shippers on the KXL Pipeline System.

### 3.2. Termination

This Lease may be terminated:

- (a) by the Lessee (each of subparagraph (i) and (ii) a “**Lessee Termination Event**”), if Keystone:
  - (i) becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Keystone or any of its assets, or if Keystone files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt; or
  - (ii) fails to perform any material agreement, covenant, term or condition contained in this Lease; or
- (b) by Keystone, upon the occurrence of an Event of Default;

Upon the occurrence of a Lessee Termination Event, the Lessee may, at any time during the continuation of the Lessee Termination Event, provide thirty (30) days prior Notice of its intention to terminate this Lease to Keystone. This Lease shall terminate effective as of the thirtieth (30<sup>th</sup>) day following receipt by Keystone of the Notice to terminate unless the Lessee Termination Event has been remedied by Keystone during such thirty (30) day period. Upon the occurrence of an Event of Default, Keystone may terminate this Lease with immediate effect in accordance with paragraph (b) above.

### 3.3. Enforcement

Notwithstanding the expiration or termination of this Lease, each Party shall be entitled to enforce any rights accrued prior to the date of termination or expiration.

## ARTICLE 4 LEASED TANK FACILITIES

### 4.1. Tank Facilities

Subject to the terms and conditions of this Lease, Keystone hereby leases to Lessee, and Lessee hereby leases from Keystone, the Tank Facilities.

### 4.2. Receipt and Delivery of Petroleum

Lessee may request to store Petroleum at, and release Petroleum from, the Tank Facilities pursuant to Elections delivered in accordance with Section 4.3(a). Keystone shall endeavour to Receive for storage and carry out Delivery of a stated quantity and type of Petroleum pursuant to Elections at the Receipt Point or the Delivery Point on the Pipeline System, as applicable.

### 4.3. Elections

- (a) **Elections.** Lessee shall provide Keystone Notice of its Monthly elections on or before 7:00 a.m. Mountain Standard Time on the Day designated by Keystone as the Monthly election date on the schedule of election dates posted on Keystone’s website (the “**Designated Election Date**”) in each Month of the Term. Lessee may submit elections after the Designated Election Date of each such Month, but

acceptance of same shall be at Keystone's sole discretion for the following Month's activity. Following the receipt by Keystone of an election by Lessee (an "**Election**"), Keystone shall determine the capacity available for storage at the Tank Facilities and the capacity available for Delivery of Petroleum to the Delivery Point on the Pipeline System and provide Notice to the Lessee of the capacity allocated to it (if any). Elections shall include:

- (i) the period during which Receipts will be accepted and Deliveries will be made;
  - (ii) pipeline from which Receipts will be accepted and to which Deliveries will be made;
  - (iii) Receiving tankage facility;
  - (iv) grade and Monthly quantity of Petroleum to be Received and Delivered; and
  - (v) Lessee contact and phone number.
- (b) **Allocation of Available Capacity on Pipeline System.** Lessee, in its capacity as Lessee hereunder and not in its capacity as a "Shipper" under the Rules and Regulations, shall not be allocated capacity on the Pipeline System in priority over any other Shipper under the Rules and Regulations as a result of it being a party to this Lease. For greater certainty, any allocation made to a Shipper on the Pipeline System shall be strictly in accordance with the allocation procedures set forth in Article 7 of the Rules and Regulations.
- (c) **Adjustments to Elections.** Keystone shall exercise reasonable good faith in providing or withholding consent to Lessee's request for adjustments to Elections.
- (d) **Type and Specifications.** Petroleum type and specifications must be approved by Keystone prior to Receipt into the Tank Facilities and be in accordance with the Petroleum Specifications. Keystone may reject Lessee's Elections for Petroleum Receipts that would cause the Tank Facilities to be non-compliant with the tariffs or rules and regulations of Receiving or Delivering pipelines, applicable regulatory permits or other Applicable Law, and Elections that are not within the physical or safety limitations of the Tank Facilities or any Receiving or Delivering pipelines.
- (e) **Volume.** All Petroleum volume shall be subject to additional limitations lawfully imposed or required by connecting transporters.

#### 4.4. **Storage Capacity**

Subject to the terms and conditions of this Lease, Keystone shall provide ongoing and continuous access to the Storage Capacity at the Tank Facilities.

## ARTICLE 5 STORAGE RATES

### 5.1. Payment of Rates

The Storage Rates payable for the lease of the Tank Facilities shall commence on the Operational Date. From and after the Operational Date, on each Payment Due Date, Lessee shall pay Keystone for the lease of the Tank Facilities in accordance with this Lease, the Storage Rates, which shall be comprised of:

- (a) a Monthly storage rate of the product of (A) the Shell Storage Capacity in m<sup>3</sup> (in barrels) and (B) \$4.4029 (\$0.70 on a per barrel basis) (the “**Monthly Storage Rate**”);
- (b) a fee of \$0.5032 on each m<sup>3</sup> (\$0.08 on each barrel) Received in excess of the Working Capacity on a Monthly basis (the “**Monthly Excess Rate**”); and

all other charges and adjustments as set forth in this Lease, each in accordance with the terms and conditions of this Lease (collectively, together with the Monthly Storage Rate and Monthly Excess Rate, the “**Storage Rates**”).

### 5.2. Invoicing & Payment

On or before the 15<sup>th</sup> day of each month, Keystone will electronically issue to Lessee an invoice detailing:

- (a) the Storage Rates payable to Keystone for the lease of the Tank Facilities the previous Month; and
- (b) any other charges for which Lessee is liable under this Lease (including any applicable taxes).

Invoice payments shall be made on or before the Payment Due Date to the account of Keystone at the Royal Bank of Canada, Main Branch, Calgary, Alberta, or such other bank or financial institution in Canada as Keystone may designate in writing.

### 5.3. Taxes

Lessee shall pay any goods and services tax imposed on Lessee pursuant to the *Excise Tax Act* (Canada), or any similar federal or provincial legislation or other applicable tax other than income tax, in respect of all charges for services payable by Lessee pursuant to this Lease. In the event (i) (A) any new tax, fee or levy related to the Lessee’s Petroleum is imposed upon Keystone or an Affiliate of Keystone by any Governmental Authority because of Tank Facilities operations or (B) Keystone or an Affiliate of Keystone is required by new governmental regulation to modify its standard handling procedures in order to continue to provide the lease of the Tank Facilities contemplated by this Lease and (ii) in any such case, Keystone’s Affiliate imposes such new tax, fee, levy, or handling cost on Keystone, then and in any such event, Lessee shall be required to pay or reimburse Keystone for its reasonable and proportionate share of such new tax, fee, levy, or handling cost. In the event Lessee fails to pay or reimburse Keystone for such taxes or fees or other charges as provided herein, then Keystone and any Affiliate of Keystone may pay or protest such taxes and the amount thereof shall be charged to Lessee and shall be payable with the

storage or other charges next due after presentation of invoice by Keystone and Keystone's Affiliate.

#### **5.4. Keystone's Lien**

Keystone shall have a lien as bailee in possession, charge and security interest on all Petroleum stored by or on behalf of Lessee in the Tank Facilities, and on all proceeds of such Petroleum, to secure the performance of all obligations of Lessee under this Lease, including the payment of any and all unpaid Storage Rates and other charges that are due to Keystone and unpaid by Lessee. Keystone may withhold such Petroleum from release until all such unperformed obligations or unpaid Storage Rates and charges have been performed or paid in full, as the case may be. In addition to, and not in substitution for, the general lien set forth in this Section 5.4 or otherwise provided by Applicable Law, equity or contract, Lessee hereby pledges, hypothecates, charges, conveys, transfers, sets over and assigns unto Keystone a continuing and first priority security interest in, and a secured charge on, all of Lessee's Petroleum stored in the Tank Facilities from time to time to secure the payment and performance of all obligations of Lessee pursuant to this Lease. The lien and other remedies contained in this Section 5.4 are in addition to any other remedies available to Keystone under Applicable Law, in equity or under this Lease.

#### **5.5. Keystone Remedies**

Should Lessee fail to pay the full amount of any invoice described in this Lease by the Payment Due Date, in addition to any other remedy Keystone may have under this Lease, under Applicable Law or in equity:

- (a) interest on the unpaid portion of the invoice shall accrue daily, commencing on the day immediately following the Payment Due Date, at a rate of interest per annum equal to the Prime Rate plus 2%; and
- (b) Keystone may, upon five (5) Business Days' Notice to Lessee, suspend further storage and release of Petroleum of Lessee until such amount is paid in full, provided however, that any such suspension shall not relieve Lessee from any obligation to pay any further Storage Rates, charges or other amounts payable to Keystone under this Lease. If, at any time during such suspension, Lessee pays the full amount payable to Keystone, Keystone shall, within two (2) Business Days of receipt of payment, recommence storage and release of Lessee's Petroleum. If Lessee fails to pay the full amount payable to Keystone after such suspension, Keystone may, at its sole option at any time, in addition to any other remedy that may be available to it under this Lease, under Applicable Law or in equity, upon three (3) Business Days' Notice to Lessee:
  - (i) seize and sell any of Lessee's Petroleum then in Keystone's possession; and/or
  - (ii) terminate this Lease in accordance with Section 3.2, provided however, if Keystone terminates this Lease, Lessee shall remain liable for and shall, to the extent permitted by Applicable Law, pay to Keystone (as liquidated damages and not as a penalty) within five (5) Business Days of such termination, pursuant to Keystone's invoice the aggregate of:

- (A) the Monthly charges payable under this Lease (including the Storage Rates) for the unexpired Term of this Lease;
- (B) all applicable taxes;
- (C) all amounts owing under this Lease in respect of Petroleum released but for which all Storage Rates and any other charges are not yet paid; and
- (D) all other amounts for which Lessee is obligated to pay Keystone pursuant to this Lease.

#### **5.6. Seizure and Sale by Keystone**

In those circumstances prescribed in Section 5.5(b) or in enforcement of the lien described in Section 5.4, Keystone shall have the right itself or through an agent, to seize and sell at public auction or, if not permitted by Applicable Law, by such other lawful means available to Keystone in its discretion, any Petroleum stored in the Tank Facilities and then in the possession of Keystone or its agent. Such sale may occur on any day not a legal holiday, provided that the sale takes place not less than 48 hours after Notice to Lessee and publication of notice of such sale in a daily newspaper of general circulation published in the area of the proposed sale. Such Notice shall state the time, place of sale and quantity, type, and location of Petroleum to be sold. Lessee covenants and agrees not to dispose of its Petroleum other than subject to the lien, charge and security interest granted to Keystone hereby. At such sale, Keystone shall have the right to bid and, if the highest bidder, to become the purchaser of the Petroleum. From the proceeds of the sale of the Petroleum, Keystone will pay itself the Storage Rates, charges, and other amounts payable to Keystone under this Lease, including reasonable storage expenses pending sale of such Petroleum, and all costs and expenses incident to the sale, and the balance remaining, if any, shall be held for the Lessee or for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. Any such funds may be commingled in any account or accounts maintained by Keystone from time to time. Keystone is authorized by Lessee to retain possession of Petroleum stored by Lessee at the Tank Facilities for the purpose of enforcing its rights under and pursuant to this Lease.

#### **5.7. Disputed Invoices**

If Lessee disputes any amount payable under an invoice, Lessee shall nonetheless pay to Keystone the full amount of such invoice on or before the Payment Due Date. If it is finally determined that Lessee's invoice was incorrect and that an overpayment has been made, Keystone shall reimburse Lessee for such overpayment, together with interest calculated from the date such overpayment was made until the date of reimbursement at the Prime Rate.

### **ARTICLE 6 LINE FILL & WORKING STOCK**

#### **6.1. Line Fill and Working Stock**

- (a) The Lessee is responsible to supply Keystone with its proportionate share of line fill and working stock, by type, required to operate the Tank Facilities as determined by Keystone, acting reasonably.

- (b) Keystone shall provide Lessee with prior Notice of any requirement to supply line fill and working stock for the Tank Facilities, and of any changes to those requirements.
- (c) Lessee shall begin its supply of such proportionate share of Petroleum within 30 Days and shall complete its Delivery within 60 Days of Lessee's receipt of Keystone's Notice, or within such other time as determined by Keystone.
- (d) Lessee shall cooperate in the supply of line fill, working stock and commissioning activities for the Tank Facilities, and the commercial activities related thereto.

## **ARTICLE 7 QUALITY**

### **7.1. Permitted Petroleum**

Only that Petroleum having properties that conform to the specifications of Petroleum described in Appendix B (the "**Petroleum Specifications**") shall be permitted in the Tank Facilities. Keystone shall not be obligated to accept into, transport or retain in the Tank Facilities, any Petroleum that does not meet such Petroleum Specifications. Keystone shall have the right to make any reasonable changes to the Petroleum Specifications from time to time to ensure measurement accuracy and to protect Keystone, the Tank Facilities or Keystone's personnel, provided that Keystone shall give Lessee reasonable Notice of such changes.

### **7.2. Freedom from Objectionable Matter**

Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances in quantities that may be injurious to Keystone, the Tank Facilities, the Pipeline System or downstream facilities, or which may otherwise interfere with the transportation of Petroleum in the Pipeline System.

### **7.3. Failure to Conform to Specifications**

If Keystone determines that Lessee does not comply with the provisions of Sections 7.1 or 7.2, then, upon Notice from Keystone, Lessee shall, at Lessee's sole cost and expense, remove its off-specification Petroleum from the Tank Facilities as and when directed by Keystone, acting reasonably.

### **7.4. Failure to Remove Objectionable Matter**

If Lessee fails to remove its off-specification Petroleum from the Tank Facilities in accordance with the provision of Section 7.3, then, in addition to any other remedy available to Keystone hereunder, under Applicable Law or in equity, Keystone shall have the right to remove and sell such Petroleum in any manner deemed appropriate by Keystone. Keystone shall pay from the proceeds of such sale all costs and expenses incurred by Keystone with respect to the storage, removal and sale of such Petroleum and Keystone shall be entitled to retain a reasonable pre-estimate of any damages, losses, costs, expenses and other charges incurred or anticipated to be incurred by Keystone in respect of the presence of such objectionable matter. The remainder of such proceeds, if any, shall be promptly paid by Keystone to the Lessee or as directed in writing by Lessee. Keystone may take such further action and recourse as it deems appropriate to

compensate, mitigate or reimburse Keystone for any adverse impact to Keystone, the Tank Facilities or the Pipeline System that is attributable to the presence of such objectionable matter. Lessee shall indemnify and save harmless Keystone in accordance with Article 15 for any adverse impact to downstream facilities imposed on Keystone that is attributable to the presence of such objectionable matter.

#### **7.5. Quality Analysis**

Any quality analyses required by the Lessee are for Lessee's account. In the absence of manifest error, any quality determination performed by Keystone hereunder shall be binding on both Parties. Lessee or its designated independent inspector shall have the right to participate with Keystone in any measurement. Any costs for the independent inspector shall be for Lessee's account. Keystone reserves the right to conduct quality analysis at its own expense.

#### **7.6. Changes in Quality**

- (a) Keystone shall not be obligated to make Delivery of Lessee's Petroleum of identical quality or specification. Notwithstanding the foregoing, Keystone shall make reasonable efforts to return to Lessee the same quality of Petroleum Received from Lessee.
- (b) Lessee acknowledges and accepts that any Lessee's Petroleum will be Received into the Tank Facilities only on the condition that such Petroleum shall be subject to such changes in density, specification, quality and characteristics while in the Tank Facilities, including the mixture of such Petroleum with other Petroleum (meeting the Petroleum Specifications) in the Tank Facilities. Keystone shall not be liable for any damages whatsoever resulting from any alteration in density, specification or other quality or characteristic of Lessee's Petroleum.

### **ARTICLE 8 MEASUREMENT**

#### **8.1. Unit of Measurement**

The volumetric measurement base of all Petroleum referred to in this Lease shall be one (1) Cubic Metre.

#### **8.2. Measurements**

Measurements of Petroleum received from and delivered to the Tank Facilities during the Term shall be conducted in accordance with procedures compliant with applicable API MPMS/ASTM standards (most current versions) and pipeline industry practice or such other procedures as may be agreed upon by Keystone and the Lessee and binding on the Parties absent manifest error. The basis of all transactions shall be the Net Standard Volume corrected to 15 degrees Celsius, as determined by Keystone. The measurements and associated derived measurement data, provided by personnel of Keystone or Keystone's representatives, shall be used to provide the information in the statement of account issued by Keystone to Lessee. The official volume of Petroleum Delivered as stated on measurement data/tickets at the Delivery Point shall be based on an automatic tank gauging system with the following manual adjustments:



- (a) the sediment and water component will be as calculated by Keystone based on the Receipt measurement data/tickets; and
- (b) Net Standard Volume will equal the Gross Standard Volume from the automatic tank gauging system minus the sediment and water component as calculated in accordance with Section 8.2(a) above.

### 8.3. Accounting for Petroleum Received

- (a) **Overages and Shortages.** Keystone shall deliver and account to Lessee for 100% of Petroleum stored for its account subject to any actual gains or losses due to evaporation or shrinkage due to normal operations at the Tank Facilities. Adjustments for overages or shortages will be determined on a tank by tank basis. In addition to any direct gains or losses due to evaporation or shrinkage during terminalling or incident to Keystone transportation or other services provided by Keystone, the account of Lessee shall be subject to the application of a financial loss allowance equal to 0.05% of all Receipts from Lessee at the Tank Facilities. The financial loss allowance shall be included for the purposes of balancing shipper positions in accordance with Section 5.4 of the Rules and Regulations Governing the Transportation of Petroleum contained in the tariff of TransCanada Keystone Pipeline, LP, an Affiliate of Keystone, in effect at the relevant time. Overages or shortages will be calculated and prorated to Net Standard Volumes on a Monthly basis.
- (b) **Limitation.** The loss provisions set forth in Section 8.3 are limited to Losses. These provisions do not apply to discrete measurable losses that are not considered Losses, such as, without limitation, losses from casualty or an inadvertent Delivery to an incorrect destination, which types of losses shall be quantified and addressed pursuant to Section 17.3.

For the purposes of this Section 8.3, “Losses” mean any loss of Lessee’s Petroleum that is experienced in the day-to-day operation of the Tank Facilities, including losses due to evaporation, clingage, shrinkage, line-loss, discoloration, imbalances, normal losses during terminalling, or deterioration of Lessee’s Petroleum while in the Tank Facilities but excluding discrete measurable losses that are not considered normal losses, such as, without limitation, losses from casualty or an inadvertent delivery to an incorrect destination.

## ARTICLE 9 TITLE, CUSTODY, TANK UTILIZATION & ADVERSE CLAIMS

### 9.1. Title

- (a) Absent any lien in favour of Keystone created pursuant to this Lease or under Applicable Laws, Keystone does not take any title to Petroleum.
- (b) Lessee represents and warrants to Keystone that:
  - (i) it has the right to store, or cause to be stored, all Petroleum stored by or on behalf of Lessee at the Tank Facilities.

- (ii) Petroleum stored by Lessee at the Tank Facilities is free of any encumbrance that would affect the Lessee's right to store such Petroleum, Keystone's ability to lease the Tank Facilities or Lessee's ability to transport Petroleum on the Pipeline System.
- (c) If requested by Keystone, Lessee shall provide to Keystone details about any Petroleum stored by or on behalf of Lessee that is not wholly owned by Lessee.
- (d) Subject to Article 17, all risk and liability of the Petroleum remains with the Lessee while such Petroleum is in the custody of Keystone.

## 9.2. Custody

Keystone shall have custody of the Petroleum between the Receipt Point and the Delivery Point however measurements shall be taken at the inlet flange and outlet flange of each of the tanks.

## 9.3. Adverse Claims against Petroleum

- (a) Lessee shall not store Petroleum which is in any way subject to litigation, the ownership of which may be in dispute, or which is subject to a security interest, lien or charge of any kind (other than the lien of Keystone pursuant to this Lease) (each an "**Adverse Encumbrance**") unless Lessee provides Notice to Keystone of such Adverse Encumbrance not less than 20 days before such Receipt is made by Keystone and receives approval from Keystone by Notice for Keystone's Receipt of such Petroleum. Keystone is not obligated to accept an Election from Lessee of any Petroleum that is subject to an Adverse Encumbrance.
- (b) Lessee shall provide Notice to Keystone if any of its Inventory becomes subject to an Adverse Encumbrance. In such a case, Lessee shall, upon demand by Keystone, provide a bond or other form of indemnity satisfactory to Keystone that fully protects and indemnifies Keystone against any liability, loss, cost and expense that may arise as a result of such Adverse Encumbrance and secures the payment to Keystone of all Storage Rates and other charges which would become payable under this Lease.

## ARTICLE 10

### EVACUATION PRIOR TO END OF TERM & INVENTORY DISPOSITION

#### 10.1. Evacuation Prior to End of Term

Prior to the expiration of the Term, if Lessee has any Inventory in the Tank Facilities, Keystone will Deliver Lessee's Petroleum as directed by Lessee during the last Month of the Term subject to the standard Storage Rates and other charges that may be applicable under this Lease. Subject to any specific arrangements agreed to by Keystone and the Lessee in respect of the satisfaction of the Lessee's line fill and working stock obligations on the KXL Pipeline System (if any), the Lessee shall schedule the withdrawal of all of its Inventory in the Tank Facilities (including line fill and working stock) by the date specified by Keystone, in its sole discretion, during the last Month of the Term for the purpose of cleaning the tanks and/or other maintenance that Keystone may require.

## 10.2. **Keystone's Rights**

Keystone has all rights and remedies available to a secured party under Applicable Law with respect to the Lessee's Inventory.

## 10.3. **Public or Private Sale**

If upon the expiration of the Term, Lessee has failed to schedule the withdrawal of the Lessee's Inventory from the Tank Facilities, in addition to any other remedies available under Applicable Law or in equity, Keystone is hereby granted the authority, but not the obligation, to liquidate the Lessee's Inventory through one or more public or private sales or other dispositions with such notice, if any, as may be required under Applicable Law, free from any claim or right of any nature whatsoever of the Lessee, including any equity or right of redemption by the Lessee (with Keystone, or its Affiliates, having the right to purchase any or all of the Lessee's Inventory to be sold) and to apply the proceeds from the liquidation of the Lessee's Inventory to any amounts payable by the Lessee to Keystone, including all expenses of the sale and accrued fees (storage and otherwise), costs and charges pursuant to this Lease. The remainder of such proceeds, if any, shall be held by Keystone for the Lessee and any other person or entity lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Keystone from time to time, without any obligation to pay interest thereon.

## 10.4. **Reimbursement**

Lessee shall pay and reimburse Keystone upon demand for all reasonable costs and expenses (including reasonable legal fees and expenses) that Keystone may incur in connection with:

- (a) the custody, use or preservation of, or the sale of, collection from or other realization upon, any of Lessee's Inventory, including the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Lessee's Inventory;
- (b) the exercise or enforcement of any rights or remedies granted under this Lease, or under any of the other agreements with the Lessee or otherwise available to it (whether under Applicable Law, in equity or otherwise); and/or
- (c) the failure by Lessee to perform or observe any of its obligations or duties under Article 10.

This Section 10.4 shall survive termination or expiration of this Lease.

## **ARTICLE 11 TANK CLEANING**

### 11.1. **Costs**

Any tank cleaning and/or tank degassing and/or related disposal costs incurred in connection with the lease of the Tank Facilities shall be at the sole expense of Lessee.

## 11.2. **Wastes or Residuals**

Where title to wastes or residual non-merchandise material remains with Keystone and Keystone has provided Notice to Lessee of such wastes or residuals still at the Tank Facilities, Keystone shall have the right to dispose of the wastes or residuals at the Tank Facilities as directed by Lessee, provided Lessee shall promptly provide all necessary information in a timely and prompt manner. Lessee shall provide Keystone with a list of approved transportation and disposal facilities and any changes to the list are subject to mutual agreement. Lessee agrees to pay or reimburse Keystone for all reasonable transportation, disposal or other related costs associated with this Section 11.2.

## **ARTICLE 12 SAFETY**

### 12.1. **Safety**

Lessee, its employees, agents and contractors will adhere to all safety, health and other rules and procedures that Keystone has adopted with respect to the Tank Facilities.

### 12.2. **Material Safety Data Sheet**

Lessee will provide Keystone with a MSDS for all Lessee's Petroleum stored at the Tank Facilities as required by Applicable Law before the time of Delivery. Keystone will provide such MSDS for all Petroleum to Governmental Authorities, employees, or others handling or exposed to the Petroleum in connection with "Right to Know" laws, worker-exposure regulations and other Applicable Laws.

### 12.3. **Storage, Handling and Disposal of Waste**

Keystone and Lessee will comply with all Applicable Laws regarding the storage and handling of the Petroleum and the disposal of any wastes. Wastes shall include any non-merchantable product.

### 12.4. **Reporting**

Keystone will be permitted by Lessee to report Keystone's handling of all hazardous materials for Lessee, as required by any Applicable Laws, to the appropriate Governmental Authority. Lessee will accurately and properly represent the nature of all such materials to Keystone. Lessee agrees to reimburse Keystone for any charges that Keystone may be required to pay for the handling of such materials.

### 12.5. **Pollution Escape or Discharge**

In the event of any escape or discharge or other environmental pollution from any tanks utilized by Lessee, Keystone has the right to commence emergency response and containment or clean-up operations as deemed appropriate or necessary by Keystone or required by any Governmental Authorities and Keystone shall notify, as soon as reasonably possible, Lessee of such operations.

**ARTICLE 13**  
**FINANCIAL ASSURANCES**

**13.1. Financial Information and Assurances**

Lessee shall provide to Keystone, at any time:

- (a) upon Keystone's request, information ("**Financial Information**") that will allow Keystone to evaluate (or re-evaluate) and establish Lessee's capacity to perform any financial obligations that could arise under this Lease; and
- (b) upon Keystone's reasonable request, financial security for the payment of the Storage Rates and other charges to be paid by Lessee to Keystone under this Lease ("**Financial Assurances**").

If Lessee fails to provide Financial Information or Financial Assurances to Keystone within four (4) Business Days of Lessee's receipt of Keystone's written request for such Financial Information or Financial Assurances, Lessee shall thereupon be deemed to be in default and Keystone may, in addition to any other remedy it may have under this Lease, under Applicable Law or in equity, upon three (3) Business Days' Notice to Lessee, suspend further storage of Petroleum by Lessee until such Financial Information or Financial Assurances are provided by Lessee to Keystone; provided however, that any such suspension shall not relieve Lessee from any obligation to pay any further Storage Rates or other amounts payable (including taxes) to Keystone under this Lease. If, at any time during such suspension, Lessee provides the requested Financial Information or Financial Assurances to Keystone, Keystone shall, within two (2) Business Days of receipt of such Financial Information or Financial Assurances, recommence storage of Lessee's Petroleum.

**13.2. Creditworthiness**

For the purposes of Section 13.1(b), Keystone may make a reasonable request for Financial Assurances on the following grounds:

- (a) Keystone has reasonable grounds for insecurity regarding the performance of any obligation under this Lease;
- (b) the rating given to Lessee's senior unsecured long term debt, excluding any third party enhancement, is lower than any of the following as applicable: (a) "BBB " from Standard & Poor's, a division of The McGraw Hill Companies, Inc.; (b) "Baa3" from Moody's Investors Service, Inc.; or (c) "BBB (low)" from Dominion Bond Rating Service Limited, or any of such rating agencies' respective successors in interest; or
- (c) any Financial Assurances previously provided by Lessee no longer provide adequate support for the performance of Lessee's obligations that could arise under this Lease.

### 13.3. **Financial Assurances**

The Financial Assurances that Keystone may request from Lessee pursuant to this Lease shall be limited to an irrevocable standby letter of credit or other form of financial assurance (which assurance could include a financial guarantee).

### 13.4. **Required Elements**

The following aspects of any Financial Assurances must be acceptable to Keystone, acting reasonably:

- (a) the terms of any letter of credit;
- (b) the adequacy (including terms) of any proposed financial assurance; and
- (c) the creditworthiness of the issuer of any letter of credit or other financial assurance.

## **ARTICLE 14 MAINTENANCE, CURTAILMENT AND FORCE MAJEURE**

### 14.1. **Maintenance and Curtailment**

- (a) Subject to 14.1(b), Keystone may interrupt, curtail or reduce the Storage Capacity at the Tank Facilities provided to Lessee for such periods of time as it may reasonably require for the purpose of effecting or allowing any repairs, maintenance, replacement, upgrading or other work related to the Tank Facilities, Keystone's other facilities, or downstream facilities in circumstances which do not constitute Force Majeure (a "**Terminalling Reduction**").
- (b) If such Terminalling Reduction is planned by Keystone, Keystone shall give Lessee prior Notice of the Terminalling Reduction as soon as reasonably possible. If the Terminalling Reduction is unforeseen, Keystone shall give Lessee Notice as soon as reasonably practicable. Keystone shall use reasonable commercial efforts to minimize the extent and duration of any Terminalling Reduction and its impact on the operation of the Tank Facilities.
- (c) Keystone shall reduce the Monthly Storage Rates that would otherwise have been payable by Lessee to reflect any interruption, curtailment, or reduction of Lessee's Storage Capacity during the period of a Terminalling Reduction.

### 14.2. **Performance Excused**

If either Keystone or Lessee fails to perform, in whole or in part, its obligations under this Lease due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.

### 14.3. **Excluded Items**

The following shall not, under any circumstance, constitute an event of Force Majeure:

- (a) Lessee's inability to purchase Petroleum;

- (b) lack of funds;
- (c) availability of more attractive markets for Petroleum;
- (d) absence of a market for Petroleum; or
- (e) availability of alternative Petroleum transportation systems (either upstream or downstream of the Tank Facilities) or other storage facilities.

#### 14.4. **Remedy of Force Majeure**

A Person that fails to perform any obligation under this Lease where such failure is caused by an event of Force Majeure shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so, provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the Person claiming suspension of its obligations hereunder by reason thereof.

#### 14.5. **Limitations**

Notwithstanding the above provisions, no event of Force Majeure shall:

- (a) relieve any Person from any obligation under this Lease unless such Person gives Notice with reasonable promptness of such event to the other Person; or
- (b) relieve any Person from any obligation under this Lease after the expiration of a reasonable period of time within which, by the use of its due diligence, such Person could have remedied or overcome the consequences of such event of Force Majeure.

#### 14.6. **Payment Relief**

In the event that:

- (a) a Keystone Force Majeure Event has occurred that limits Lessee's ability to Deliver Petroleum from the Tank Facilities to the Pipeline System; and
- (b) the term of such Keystone Force Majeure Event continues beyond 3 consecutive months,

the Monthly Storage Rate shall be adjusted by multiplying the Monthly Storage Rate for the applicable Month by a ratio, the numerator of which shall be the volume of Petroleum Delivered on behalf of Lessee in the corresponding Month and the denominator of which shall be the volume of Petroleum in which Lessee has made an Election for Delivery in the corresponding Month, commencing in the Month immediately following such 3 consecutive month period and continuing during the remaining period of such Keystone Force Majeure Event.

#### 14.7. **Emergency Situation**

In the event of any emergency or to ensure the safety or operational integrity of the Tank Facilities, Keystone may, without prior notice to Lessee, refuse, discontinue or delay the provision of storage at the Tank Facilities; provided however, that the availability of such storage shall be resumed as soon as reasonably practicable.

## **ARTICLE 15 INSURANCE**

### **15.1. Insurance Coverage**

Each Party covenants that it will place and maintain throughout the Term of this Lease:

- (a) Automobile Liability Insurance covering bodily injury and property damage arising from the operation of owned, non-owned, leased, or rented vehicles, with inclusive limits of not less than Two Million Dollars (\$2,000,000) for any one occurrence;
- (b) Commercial General Liability insurance covering bodily injury, death, property damage, employers' liability and sudden and accidental pollution liability in the amount of Twenty Five Million Dollars (\$25,000,000). With respect to any coverage maintained on a "claims made" basis, the retro-active date must precede the Operational Date, and each Party shall continue to renew the "claims made" policy or provide for extended coverage for a period of two (2) years following the Term of this Lease;
- (c) Property insurance in respect of all risks of direct physical loss or damage to each Parties work, equipment, material, Petroleum and other moveable property in an amount not less than the maximum foreseeable loss as determined by a loss control professional; these policies will be on a replacement cost basis.

### **15.2. Policy Terms and Conditions**

All policies shall not be cancellable unless each Party first gives thirty (30) days' Notice to the other. The insurance coverages mentioned herein must be placed with terms, conditions and limits as set forth above and with insurance companies duly licensed for such purpose and rated Best's A- by A.M. Best Insurance Guide and Key Ratings, such ratings to be maintained throughout the required term of the policy and under forms of policies reasonably satisfactory to the other Party. If requested, each Party shall furnish to the other certificates of insurance evidencing all required coverages.

### **15.3. Right to Self-Insure**

Both Parties reserve the right, as permitted by Applicable Law, to provide said insurance coverage through self-insurance in lieu of or in combination with an insurance policy identified above, provided reasonable Notice is delivered to the other Party.

### **15.4. Endorsement**

To the maximum extent permitted by Applicable Law, for all insurance set forth in Section 15.1, Lessee and Lessee's agents shall name Keystone as an additional insured and waive any right of subrogation against Keystone, and shall cause all insurance policies required hereunder to be so endorsed.



**ARTICLE 16  
REPRESENTATIONS AND WARRANTIES**

**16.1. Lessee**

Lessee represents and warrants that: (i) it has in place all required approvals, permits and authorizations for it to lease the Tank Facilities; (ii) it owns, controls or otherwise has the right to store the Petroleum at the Tank Facilities, (iii) the performance by Lessee of its obligations hereunder has been duly authorized by all necessary corporate action and does not require any approval or consent of any other Person or entity; (iv) Petroleum stored in the Tank Facilities will not be subject to any Adverse Encumbrance; and (v) this Lease is in full force and effect, has been duly executed and delivered on its behalf and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

**16.2. Keystone**

Keystone, as general partner on behalf of TransCanada Keystone Pipeline Limited Partnership (the “**Limited Partnership**”), represents and warrants that: (i) it owns the Tank Facilities, (ii) the performance by Keystone of its obligations hereunder has been duly authorized by all necessary corporate action, (iii) this Lease has been duly executed and delivered on its behalf and (iv) the Limited Partnership is a “Canadian partnership” as defined in the *Income Tax Act* (Canada). In the event that the Limited Partnership’s residency status under the *Income Tax Act* (Canada) changes such that it is no longer a “Canadian partnership” thereunder, Keystone shall provide Notice to Lessee within 30 days of such status change.

**ARTICLE 17  
INDEMNIFICATION AND LIABILITY**

**17.1. Indemnification**

- (a) Subject to Section 17.2, Lessee shall be liable for, and shall indemnify Keystone, its Affiliates, and their Representatives from and against all losses, costs (including reasonable legal fees on a solicitor and own client basis), damages and expenses arising from any one or more of:

- (i) the breach of any term of this Lease; and
- (ii) gross negligence or wilful misconduct in the performance or non-performance of any obligation under this Lease;

by the Lessee, its Representatives, or both, including those imposed on Keystone due to any adverse impact to downstream facilities from Lessee’s Petroleum not meeting the Petroleum Specifications.

- (b) Subject to Section 17.2, Keystone shall be liable for, and shall indemnify the Lessee from and against all losses, costs (including reasonable legal fees on a solicitor and own client basis), damages and expenses arising from any one or more of:

- (i) the breach of any term of this Lease; and

- (ii) gross negligence or wilful misconduct in the performance or non-performance of any obligation under this Lease;

by Keystone, its Representatives, or both.

**17.2. Limitation of Liability**

- (a) Neither Keystone nor Lessee shall be liable for any indirect, special, incidental, consequential, loss of revenue, loss of profit, exemplary, or punitive damages arising out of or otherwise connected with this Lease, howsoever characterized.
- (b) No Party is entitled to double recovery for any claims pursuant to this Lease even though such claims may have resulted from the breach of more than one of the terms of this Lease.
- (c) If an indemnifying Party is obligated to indemnify and hold any indemnified person harmless under this Article 17, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

**17.3. Damage and Loss Liability**

- (a) Keystone shall be liable for damage or loss in value to Petroleum only when such damage or loss results from the gross negligence or wilful misconduct of Keystone, its Representatives or both. Notwithstanding the foregoing or anything in this Lease to the contrary, Keystone shall not be liable for physical loss of Petroleum, or any expense arising therefrom, resulting from loss due to any event or occurrence not involving the fault of Keystone meeting the standards set forth above, including Force Majeure events or losses from or due to theft, loss of market, or loss arising from delay. The rates and fees payable under this Lease do not include any insurance on Lessee's Petroleum for physical losses or expenses arising therefrom, that are sustained due to the foregoing occurrences while in custody of Keystone, which insurance shall be the sole responsibility of Lessee.
- (b) It is understood and agreed that Keystone's liability for loss of or damage to Lessee's Petroleum, even if caused by actions not conforming to Lessee's orders, shall be the lesser of the following:
  - (i) the Petroleum's replacement cost at the time of loss based on prevailing market rates for the specific Petroleum lost, as agreed upon by the Parties;
  - (ii) the actual cost paid by Lessee (copies of Lessee's invoices of cost paid must be provided) for the Petroleum; or
  - (iii) at Keystone's election, and in its sole discretion, prompt replacement at the Tank Facilities by Keystone with in-kind Petroleum.

**ARTICLE 18  
GENERAL**

**18.1. Entire Agreement**

This Lease constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes and replaces all previous agreements and understandings, whether written, oral or electronic with respect to the same.

**18.2. Amendments**

No amendment to this Lease will be valid unless executed in writing by both Parties.

**18.3. Waiver**

No waiver or other failure by either Party to enforce any right hereunder will be valid unless in writing and acknowledged by both Parties, nor will such waiver or failure to enforce be construed to be an ongoing waiver unless so expressly stated.

**18.4. Invalidity or Unenforceability**

In the event that any provision hereunder is deemed to be invalid or unenforceable by a court of competent jurisdiction, such provision will be deemed omitted from this Lease, and the remainder interpreted in a manner that, to the greatest extent permitted by Applicable Law, gives effect to the intention of the invalid or unenforceable provision.

**18.5. Assignment by Lessee**

This Lease may be assigned, in whole or in part, by Lessee only:

- (a) (i) with the prior written consent of Keystone, which consent shall not be unreasonably withheld or delayed, and (ii) when the proposed assignee has provided to Keystone such Financial Assurances as Keystone may reasonably request in accordance with this Lease; or
- (b) to its Affiliate, upon 30 days' prior Notice to Keystone, provided that, until and unless the provisions of Section 18.5(a)(ii) are complied with, Lessee and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Lease.

For greater certainty, it shall be reasonable for Keystone to withhold its consent pursuant to Section 18.5(a) based on any reasonable increased credit risk to Keystone associated with the proposed assignment, including factors such as the creditworthiness of the proposed assignee and the availability of comparable Financial Assurances (including in respect of enforceability, and in relation to the domicile of any guarantor) in respect of the proposed assignee, as compared to Lessee.

**18.6. Assignment by Keystone**

Keystone may assign this Lease and/or any rights arising hereunder without restriction to:

- (a) an Affiliate of Keystone; or

- (b) any other Person:
  - (i) upon the merger, amalgamation, consolidation or reorganization of Keystone with such Person; or
  - (ii) in connection with the sale of all or substantially all of the assets of Keystone to such Person.

#### 18.7. **Audit**

- (a) Lessee and its representatives shall have the right to audit Keystone's relevant books and records during regular business hours and in a manner that does not unreasonably interfere with Keystone's business or operations (upon at least 90 days' prior Notice and at Lessee's expense). The audit must be completed within a commercially reasonable time after the initiation thereof.
- (b) In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 18.7 shall be exercised through an independent auditor retained by, and at the expense of, Lessee. Such independent auditor: (i) shall be required to abide by confidentiality restrictions as reasonably requested by Keystone, and (ii) shall not disclose the confidential information to the Lessee, but may only provide its conclusion as to the verification of the information subject to the audit.
- (c) Lessee and Keystone will use reasonable commercial efforts to resolve any discrepancies disclosed by an audit report as soon as reasonably practicable and in any event within 180 days following presentation of the audit report to Keystone.

#### 18.8. **Governing Law**

This Lease shall be construed and applied in accordance with and be subject to the laws in force in the Province of Alberta. Either Party may refer a dispute to final and binding arbitration for resolution before an arbitrator to be selected jointly by the Parties, with such arbitration to be held in Calgary, Alberta, pursuant to the provisions of the *Arbitration Act* (Alberta). The arbitrator appointed shall, to the extent possible, have at least 15 years' experience resolving commercial disputes in the petroleum industry and shall have experience resolving disputes reasonably similar to the dispute which they are called upon to resolve. No Person will institute any action, suit or other proceeding with respect to this Lease other than in the Alberta Court of Queen's Bench in the judicial district of Calgary, or, if that court for any reason lacks subject matter jurisdiction, the appropriate court for the Province of Alberta, or Canada, as applicable. In that regard, each Person subject to this Lease hereby irrevocably attorns to the jurisdiction of such courts in Alberta or Canada in the event of any such action, suit or other proceeding by the other Party.

#### 18.9. **Notice**

Any notice, request or demand ("**Notice**") to or upon the Parties shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally, by courier or facsimile to the address set forth below:

**In the case of Keystone:**

**TransCanada Keystone Pipeline GP Ltd.**

(1) Mailing Address:

450 1<sup>st</sup> Street S.W.  
Calgary, Alberta T2P 5H1

(2) Delivery Address:

450 1<sup>st</sup> Street S.W.  
Calgary, Alberta T2P 5H1  
Attention: Contracts Administrator  
Fax: 403-920-2285

**In the case of Lessee:**

(1) Mailing Address:

(2) Delivery Address:

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the Business Day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) Business Days after mailing. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone Notice.

**18.10. Relationship of the Parties**

Nothing in this Lease causes the Lessee or its Representatives to be the Representatives of Keystone. Nothing in this Lease implies any partnership or joint venture between the Parties or is to be construed as making one Party the agent or fiduciary of the other. The Lessee shall not, without the prior written consent of Keystone (which consent may be arbitrarily withheld), enter into any contractual obligation, agreement or commitment in the name of, or on behalf of, Keystone or bind Keystone in any respect whatsoever.

**18.11. Counterparts**

This Lease may be executed in counterparts, which together will constitute one and the same agreement and any of the Parties may execute this Lease by signing either such counterpart. A facsimile or other electronic copy of this Lease containing the signature of a Party will be deemed to be an originally signed document.

This Lease is signed by the Parties as of the dates provided below.

**TRANSCANADA KEYSTONE  
PIPELINE GP LTD.**, as general partner on  
behalf of **TRANSCANADA KEYSTONE  
PIPELINE LIMITED PARTNERSHIP**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By:

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

By:

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

By:

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

By:

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

**Keystone Execution Date:** \_\_\_\_\_

**Shipper Execution Date:** \_\_\_\_\_

**APPENDIX A  
STORAGE CAPACITY ELECTION**

**Tank 1:**

<b>Shell Storage Capacity in m<sup>3</sup> (in barrels)</b>	<b>Working Capacity in m<sup>3</sup> (in barrels)</b>	<b>Tank Bottoms in m<sup>3</sup> (in barrels)</b>	<b>Elect to Lease</b>	<b>Initial of Lessee</b>
58,427 m <sup>3</sup> (367,490 barrels)	47,550 m <sup>3</sup> (300,000 barrels)	4,377 m <sup>3</sup> (27,530 barrels)	_____ yes	

**Tank 2:**

<b>Shell Storage Capacity in m<sup>3</sup> (in barrels)</b>	<b>Working Capacity in m<sup>3</sup> (in barrels)</b>	<b>Tank Bottoms in m<sup>3</sup> (in barrels)</b>	<b>Elect to Lease</b>	<b>Initial of Lessee</b>
58,427 m <sup>3</sup> (367,490 barrels)	47,550 m <sup>3</sup> (300,000 barrels)	4,377 m <sup>3</sup> (27,530 barrels)	_____ yes	

**Tank 3:**

<b>Shell Storage Capacity in m<sup>3</sup> (in barrels)</b>	<b>Working Capacity in m<sup>3</sup> (in barrels)</b>	<b>Tank Bottoms in m<sup>3</sup> (in barrels)</b>	<b>Elect to Lease</b>	<b>Initial of Lessee</b>
58,427 m <sup>3</sup> (367,490 barrels)	47,550 m <sup>3</sup> (300,000 barrels)	4,377 m <sup>3</sup> (27,530 barrels)	_____ yes	

**APPENDIX B**  
**PETROLEUM SPECIFICATIONS**

Lessee's Petroleum stored in the Tank Facilities must meet the following general specifications:

- (i) The True Vapor Pressure shall not exceed sixty nine (69) kPa absolute (kPa-a) at 37.8 degrees Celsius as measured in accordance with the most recent version of ASTM D6377;
- (ii) Sediment and water shall not exceed one-half of one percent (0.5%) of volume, as determined by the centrifuge method in accordance with ASTM D4007 standards (most current version) or by any other test that is generally accepted in the petroleum industry as may be implemented from time to time;
- (iii) The temperature at the Receipt Point shall not exceed thirty-eight degrees Celsius (38°C);
- (iv) The density at Standard Conditions shall be a minimum density of eight hundred and twenty five (825) kilograms per Cubic Meters ( $\text{kg/m}^3$ ) and not exceed nine hundred and forty ( $940 \text{ kg/m}^3$ );
- (v) The kinematic viscosity shall not exceed three hundred and fifty (350) square millimetres per second ( $\text{mm}^2/\text{s}$ ) determined at Keystone's reference line temperature as posted on Keystone's website; and
- (vi) Shall have no physical or chemical characteristics that may render such Petroleum not readily transportable by Keystone or that may materially affect the quality of other Petroleum transported by Keystone or that may otherwise cause disadvantage or harm to Keystone or the Tank Facilities, or otherwise impair Keystone's ability to lease the Tank Facilities.



## APPENDIX C

### RECEIPT AND DELIVERY POINTS

- (a) The “**Receipt Point**” means the inlet flange of Keystone’s receipt meter located at or near Hardisty, Alberta, or such other point as Keystone or the Rules and Regulations may designate from time to time.
- (b) The “**Delivery Point**” means the inlet flange of Keystone’s Hardisty A tank facilities tank manifold which forms part of the Pipeline System downstream of the Tank Facilities located at or near Hardisty, Alberta, and such other point(s) as Keystone may designate from time to time.