

### **3.0 SERVICES, TOLLS AND TARIFF**

This section provides an overview of the service agreements, which underpin the Project, as well as the justification for the applied-for tolls and Tariff revisions. It includes information on:

- the open season process;
- committed service supporting the Project;
- uncommitted capacity and tolls;
- financial risk assumed by Keystone;
- toll impact of the Project on the transportation tolls for the approved Keystone System; and
- amendments to the Tariff in order to incorporate the new service.

#### **3.1 Open Season Process**

Since the Keystone System was initiated, Keystone has been in discussions with interested parties with respect to the development of a terminal in the Hardisty area. The approval of the Canadian portion of the Keystone XL Pipeline further highlighted the potential need for such facilities. Commercial discussions with prospective shippers intensified throughout 2010 and 2011 respecting issues such as project scope, facility design, timing, tolls and terms of service.

As a result of these discussions, an open season process was conducted to determine whether there was sufficient commitment from shippers to underpin the Project. The open season took place between March 1 and March 22, 2012. Keystone representatives provided general project information to interested parties throughout the open season and made available detailed information with respect to commercial terms, tolls and other matters to those interested parties, pursuant to confidentiality agreements.

Contract terms of 10 or 20 years were offered during the open season, with a minimum commitment volume of 5,000 bpd. Keystone also offered term and volume differentiated fixed tolls, structured to recognize the additional financial commitment provided by longer term contracts and greater contract volumes.

#### **3.2 Committed Capacity and Batch Accumulation Tolls**

As a result of the open season, Keystone received executed TSAs from several customers, which in aggregate Keystone determined provided a sufficient commercial foundation for the Project. Specifically, Keystone has received binding contracts in excess of 79,453 m<sup>3</sup>/d (500,000 bbl/d), with a mix of 10 and 20 year contract terms. The fixed toll structure, and associated terms and conditions of service, were established

through consultation and negotiation with potential shippers in the period leading up to the open season, resulting in a highly competitive proposal relative to other systems.

The resulting negotiated, fixed tolls (Batch Accumulation Toll) are designed to recover invested capital and, subject to a capital risk sharing component as outlined in Part C of Appendix 'B' of the TSAs, will not change over the term of the TSA. The toll is also levelized in an effort to provide toll predictability and stability over the term of the contracts. Committed shippers are obligated to pay the Batch Accumulation Toll with respect to their individual contract volumes for the term of the TSA, whether or not they utilize the committed capacity.

The operations, maintenance and administrative expenses (OM&A) for the Project will be blended into the total Keystone System OM&A and recovered through the variable toll component of transportation services. This approach reflects the integrated nature of the Keystone System and is intended to provide Keystone with a flow through recovery of actual operating costs for actual volume shipped.

Illustrative Batch Accumulation Tolls are presented in Table 3-1.

**Table 3-1: Illustrative Batch Accumulation Tolls (Canadian Dollars)**

Term of Contract	Shipper's Aggregate Contract Volume	Batch Accumulation Toll per m <sup>3</sup> (bbl)
10 Year	All Volumes	\$1.132 (\$0.180)
20 Year	less than 19,078 m <sup>3</sup> /d (120,000 bbl/d)	\$0.943 (\$0.150)
20 Year	19,078 m <sup>3</sup> /d (120,000 bbl/d) or more	\$0.824 (\$0.131)

A copy of the *pro forma* TSA is provided in Appendix 3-1. The terms and conditions of the executed TSAs are identical to the *pro forma* TSA except for the contracting entity and the term and volume contracted by each shipper.

### 3.3 Uncommitted Capacity and Tolls

In recognition of Keystone's status as a common carrier, Keystone will reserve 7,950 m<sup>3</sup>/d (50,000 bbl/d) of uncommitted terminal capacity which will be available on a monthly basis to accommodate uncommitted volumes. Assuming a residency time of volume in tankage of approximately 4 days (i.e. a tank turn rate of 7 to 8 turns per tank per month), this reserved uncommitted capacity represents approximately 8% of the terminal capacity. Subject to operating conditions, further uncommitted terminal capacity can be accessed by increasing tank turn rates.

Keystone proposes to charge a maximum uncommitted toll that is 135% of the committed ten-year toll. The maximum uncommitted toll will be adjusted to maintain a 35% premium over the ten-year Batch Accumulation Toll. Illustrative Project uncommitted tolls are shown in Table 3-2.

**Table 3-2: Illustrative Uncommitted Tolls (Canadian Dollars)**

<b>Illustrative Uncommitted Tolls per m<sup>3</sup> (bbl)</b>	<b>10-Yr Batch Accumulation Toll per m<sup>3</sup> (bbl)</b>
\$1.528 (\$0.243)	\$1.132 (\$0.180)

The uncommitted toll methodology and, in particular, the premium applied to the committed tolls recognizes the different economic commitments between the shippers that have made long term contractual commitments to the Project and those that have not. The committed shippers have made significant long term financial commitments to the project and have provided demonstrable market support for it. The circumstances and conditions of committed shippers are therefore not substantially similar to those of uncommitted shippers. Keystone submits the differential uncommitted toll is just, reasonable and non-discriminatory in this circumstance.

As Keystone is at risk for underutilization, it has a strong economic incentive to set the uncommitted toll at a level that encourages shipments. For Keystone to manage the risk of underutilization, the uncommitted toll must be competitive in the market. In order to remain competitive, Keystone may be required to offer uncommitted capacity at a toll less than the maximum uncommitted toll. In the event that Keystone determines that a discount to the uncommitted toll is warranted, Keystone will file with the Board to reduce the level of the toll and provide supporting documentation including an explanation of the discounting mechanism.

### **3.4 Financial Risk**

The Keystone Hardisty Tank Terminal is a commercially at-risk project with a portion of that risk being offset through the existence of negotiated long-term contracts. The majority of capacity is committed to long-term firm contracts at the negotiated rates. However, Keystone will be assuming many risks that a traditional cost-of-service terminal facility would not. Specifically, Keystone is exposed to the risks of underutilization, capital cost escalation, contract non-renewal and market risk with respect to the level of its uncommitted toll.

### **3.5 Toll Impact**

As noted in Section 3.2, the Batch Accumulation Tolls are designed to recover the capital costs of the Project. Project shippers will pay a Monthly Revenue Commitment, which is the product of the applicable Batch Accumulation Toll multiplied by Monthly Volume.

As a result, Term Shippers that are party to Transportation Service Agreements on the Keystone System will face no change in the fixed toll component of the committed toll for such transportation services

### **3.6 Tariff**

As a result of the commercial negotiations and the resulting TSA that formed the basis for the Project open season, the Tariff filed in this Application differs from the Keystone System Tariff currently in effect, to reflect revisions incorporating the proposed terminalling services. A black lined copy of the revised Tariff is provided in Appendix 3-2 in order to facilitate comparisons. In advance of the Commencement Date of the TSA, Keystone intends to file the form of Tariff included in this Application, which will govern the terms and conditions of service for the terminal. Keystone will utilize the Project facilities to provide services on the Keystone System under the terms and conditions established in the Tariff.

**APPENDIX 3-1**

**PRO FORMA TERMINALLING SERVICE AGREEMENT**

**KEYSTONE HARDISTY  
TERMINALLING SERVICES AGREEMENT**

THIS CONTRACT made as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

**PARTIES:**

●, a corporation incorporated under the laws of ●  
("Shipper")

**AND**

**TRANSCANADA KEYSTONE PIPELINE GP LTD.**, as general partner on behalf of  
**TRANSCANADA KEYSTONE PIPELINE LIMITED PARTNERSHIP**,  
a limited partnership registered under the laws of Alberta  
("Carrier");

**WHEREAS:**

- A. Carrier is proposing to construct, own and operate the Keystone Hardisty Terminal as part of the Pipeline System;
- B. The Keystone Hardisty Terminal is being constructed to receive volumes of Petroleum for transportation along the KXL Expansion Facilities.
- C. Shipper has requested, and subject to the satisfaction or waiver of the conditions precedent set forth in Article 3, Carrier has agreed, to provide Firm Batch Accumulation Services for the Contract Volume of Petroleum Tendered by Shipper or Shipper's agent pursuant to the terms and conditions of this Contract, and subject to the Tariff;
- D. Shipper wishes to make a firm commitment to Carrier regarding the use of the Keystone Hardisty Terminal as set forth in this Contract, including all Appendices, and upon its execution of this Contract to become a Term Shipper; and
- E. In recognition of the support provided by Shipper for the Keystone Hardisty Terminal, Carrier is prepared to offer tolls and terms of service to Shipper subject to and in accordance with the provisions of this Contract and the Tariff.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth below, Carrier and Shipper agree as follows:

**ARTICLE 1  
INTERPRETATION**

- 1.1 Except as specifically provided in this Contract, the capitalized terms and phrases used but not defined in this Contract shall have the meaning ascribed to such terms and phrases in the Rules and Regulations. In addition, whenever used in this Contract, the following words and terms have the meanings set out below.

"Advance Notice" has the meaning given in Section 5.1.

“**Baseline Price**” has the meaning given in Section 9.4.

“**Batch Accumulation Service**” means “Batch Accumulation Service” as that term is defined in the Rules and Regulations.

“**Batch Accumulation Toll**” means the “Batch Accumulation Toll” described in Part B of Appendix ‘B’.

“**business day**” has the meaning given in Section 11.1.

“**Carrier**” has the meaning given in the recitals.

“**Carrier Termination Notice**” has the meaning given in Section 4.1.

“**Commencement Date**” has the meaning given in Section 5.3.

“**Committed Volume**” means the sum of the Monthly Volumes of all Term Shippers.

“**Contract Financial Assurances**” has the meaning given in Article 7.

“**Excess Volume**” has the meaning given in Section 9.3.

“**Final Project Costs**” means the “Final Project Costs” described in Part C of Appendix ‘B’.

“**Firm Batch Accumulation Service**” means Batch Accumulation Service utilizing all or any portion of the Keystone Hardisty Terminal using capacity that is reserved for and committed to Term Shippers for the priority terminalling of the Committed Volume.

“**Keystone Hardisty Terminal**” means “Keystone Hardisty Terminal” as that term is defined in the Rules and Regulations.

“**KXL Commencement Date**” means the commercial in-service date of the KXL Expansion Facilities.

“**KXL Expansion Facilities**” means that portion of the Pipeline System consisting of the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at or near Hardisty, Alberta and terminating at the international boundary at or near Monchy, Saskatchewan, having a nominal transportation capacity of approximately 700,000 barrels per day of Petroleum.

“**Line Fill**” means the volume of Petroleum determined by Carrier required to be delivered by Shipper to provide for the commissioning and start-up of the Keystone Hardisty Terminal.

“**Notice**” has the meaning given in Section 11.1.

“**Rates**” has the meaning given in Section 12.2.

“**Regulatory Approvals**” has the meaning given in Section 2.1.

“**Rules and Regulations**” means the Rules and Regulations Applying to the Transportation and Terminalling of Petroleum contained in the Tariff in effect at that time.

“**Shipper**” has the meaning given in the recitals.

“**Shipper Information**” means all of the information and evidence to be provided by Shipper to Carrier pursuant to Section 2.3.

“**Shipper Termination Notice**” has the meaning given in Section 4.4.

“**Sunset Date**” has the meaning given in Section 4.5.

“**Tariff**” means the Rules and Regulations and any other rate tariffs filed at the NEB, all as may be amended from time to time.

“**Term**” has the meaning given in Section 10.1.

“**Termination Date**” means the relevant termination date in Article 4.

Additional terms used in Appendix ‘B’ are defined in Appendix ‘B’.

1.2 Attached to and forming an integral part of this Contract are the following appendices:

- (a) Appendix ‘A’, comprising the Contract Term and Contract Volume;
- (b) Appendix ‘B’, comprising the schedule of tolls and tolling principles for Petroleum Terminalling Services at Hardisty, Alberta;
- (c) Appendix ‘C’, comprising a draft of the proposed changes to the Rules and Regulations; and
- (d) Appendix ‘D’, comprising a summary description of the initial design scope proposed by Carrier for the Keystone Hardisty Terminal.

1.3 In this Contract:

- (a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions hereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms;
- (b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”;
- (c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation;
- (d) All amounts or sums set forth in this agreement expressed in dollars or cents, either in words, symbols or numbers, are deemed to be stated in Canadian dollars;
- (e) Time is of the essence in the performance of the Parties’ respective obligations; and
- (f) If, in any jurisdiction, any provision of this Contract 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 Contract and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

## **ARTICLE 2 REGULATORY APPROVALS**

- 2.1 Subject to the terms and conditions of this Contract, for the purposes outlined in this Section 2.1, as may be determined to be desirable or necessary by Carrier in its sole discretion, Carrier shall proceed with due diligence and in good faith to seek to obtain from all governmental, administrative and regulatory (including aboriginal and tribal, if applicable) authorities having jurisdiction in Canada such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that Carrier, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to construct, acquire, own and operate the Keystone Hardisty Terminal as part of the Pipeline System and to provide Firm Batch Accumulation Service for Shipper in the manner contemplated by this Contract, except for those that are, in the reasonable opinion of Carrier, not material or not customarily required by prudent pipeline operators prior to the commencement of on-site construction or pre-construction activities (collectively, the **“Regulatory Approvals”**).
- 2.2 Shipper acknowledges and agrees that Carrier has exclusive control over the Regulatory Approvals filing and prosecution process. Carrier shall not be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by Carrier in its sole discretion, to be unsatisfactory to Carrier.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier’s reasonable request, include providing any information reasonably requested by Carrier for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information. Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier’s applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix ‘A’) is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and applicable law, Carrier shall not disclose to third parties (other than to Carrier’s Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Shipper agrees not to:

- (a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone US's applications for Regulatory Approvals before any of: (i) the NEB, (ii) the FERC, (iii) any state certifying authorities in the United States, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing, provided that subject to the foregoing requirements of this Section 2.4, Shipper may otherwise participate in such applications; or
- (b) make any statements, whether directly or indirectly, that indicate a lack of support for the Keystone Hardisty Terminal, the Pipeline System, or the Keystone US Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.

**ARTICLE 3  
CONDITIONS PRECEDENT**

3.1 Subject to Section 2.1 and Article 4, Carrier's obligations under this Contract are subject to the satisfaction or waiver of the following conditions precedent:

- (a) Carrier and its Affiliates shall: (i) have obtained all Regulatory Approvals required to meet a Commencement Date for the Keystone Hardisty Terminal not later than December 31, 2015, on terms acceptable to Carrier in its sole discretion; or (ii) be able to demonstrate that Carrier and its Affiliates reasonably expect to obtain all Regulatory Approvals required to meet a Commencement Date for the Keystone Hardisty Terminal not later than December 31, 2015, on terms acceptable to Carrier in its sole discretion.
- (b) Carrier shall have announced its decision to construct the KXL Expansion Facilities.
- (c) Carrier's satisfaction, in its sole discretion, that Shipper has obtained all required regulatory and governmental approvals for Shipper to receive service from Carrier as contemplated under this Contract.

Carrier shall have no liability or obligation whatsoever to Shipper in the event that it withdraws from or rejects any Regulatory Approval.

3.2 The conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.

3.3 The execution and delivery by Shipper of this Contract in connection with open season procedures initiated by Carrier for the Keystone Hardisty Terminal (as such procedures may be replaced or amended from time to time) constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Contract is executed and delivered by Carrier to Shipper, subject always to the other provisions of this Article 3, provided that if this Contract is not executed and delivered by Carrier to Shipper on or before the date which is 45 days following the completion of the open season procedures initiated by Carrier for the Keystone Hardisty

Terminal, Shipper's offer shall, at Shipper's option, expire and be of no further force and effect, and upon the expiry of such offer in accordance with this Section 3.3, Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Keystone Hardisty Terminal.

#### **ARTICLE 4 TERMINATION**

- 4.1 If:
- (a) the condition precedent set forth in Section 3.1(a) is not satisfied or waived by Carrier on or before March 31, 2013 and the condition precedent set forth in Section 3.1(b) is not satisfied or waived by Carrier on or before June 30, 2013;
  - (b) the condition precedent set forth in Section 3.1(c) is not satisfied or waived by Carrier on or before the Commencement Date;
  - (c) at any time during the period prior to the Commencement Date, Shipper fails to observe and perform any material agreement, term or condition contained in this Contract other than the provision of Contract Financial Assurances as described in Article 7 and Section 4.2; or
  - (d) on or before the Commencement Date, Shipper becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Shipper or any of its assets, or if Shipper files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt,

Carrier may terminate this Contract on thirty (30) Days prior written notice to Shipper specifying full particulars thereof, including particulars of any default (a "**Carrier Termination Notice**"); provided however, in respect of Section 4.1(c), if Shipper performs such material agreement, term or condition described in the Carrier Termination Notice within such thirty (30) day period, this Contract shall not terminate but shall continue in force and effect.

- 4.2 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Article 7 within 10 Banking Days of Carrier's written demand thereof, Carrier may, subject to Shipper's obligations under Section 4.3, immediately terminate this Contract by providing further written notice to Shipper.
- 4.3 If the right to terminate this Contract is exercised by Carrier pursuant to Section 4.1(c) or (d) or Section 4.2, Shipper shall, to the extent permitted by applicable law and subject to Carrier's obligation to mitigate, pay to Carrier the net present value of the aggregate of: (1) the Monthly Revenue Commitment payable under this Contract for the unexpired term of this Contract, (2) all applicable taxes, (3) all amounts owing under the Contract in respect of Petroleum in respect of which Firm Batch Accumulation Service has been provided but for which all tolls and any other charges are not yet paid, and (4) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. Upon termination of this Contract by Carrier pursuant to Section 4.1(a) or (b), Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Keystone Hardisty Terminal.

- 4.4 If:
- (a) the condition precedent set forth in Section 3.1(a) is not satisfied or waived by Carrier on or before March 31, 2013 and the condition precedent set forth in Section 3.1(b) is not satisfied or waived by Carrier on or before June 30, 2013;
  - (b) at any time during the period prior to the Commencement Date, Carrier fails to observe and perform any material agreement, term or condition contained in this Contract; or
  - (c) on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt,

Shipper may terminate this Contract on thirty (30) Days prior written notice to Carrier specifying full particulars thereof, including particulars of any default (a “**Shipper Termination Notice**”), provided however:

- (i) in respect of Section 4.4(a), in the event there is a dispute regarding Carrier’s ability to demonstrate its reasonable expectations under Sections 2.1, and 3.1(a)(ii), such dispute shall be immediately referred to final and binding arbitration for resolution before a panel of three neutral arbitrators, one arbitrator to be selected by Carrier, one arbitrator to be selected by Shipper, and the final arbitrator to be selected jointly by the first two arbitrators, with such arbitration to be held in Calgary, Alberta, pursuant to the provisions of the *International Commercial Arbitration Act* (Alberta). The arbitrators appointed shall to the extent possible have approximately 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. If the arbitration panel finds that Carrier cannot reasonably expect to receive all Regulatory Approvals required to meet a Commencement Date for the Keystone Hardisty Terminal not later than December 31, 2015, then Shipper may terminate this Contract pursuant to Section 4.4(a). If the arbitration panel finds that Carrier does reasonably expect to receive all Regulatory Approvals required to meet a Commencement Date for the Keystone Hardisty Terminal not later than December 31, 2015, then this Contract shall not terminate but shall continue in full force and effect; and
- (ii) in respect of Section 4.4(b), if Carrier performs such material agreement, term or condition described in the Shipper Termination Notice within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.

Upon termination of this Contract by Shipper pursuant to Section 4.4(a), (b) or (c) Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Keystone Hardisty Terminal.

- 4.5 If both the Commencement Date and the KXL Commencement Date have not occurred on or before December 31, 2015 (the “**Sunset Date**”) as a result of an event other than Force Majeure, either Carrier or Shipper may terminate this Contract on thirty (30) Days prior written notice to the other Party (by delivery of a Carrier Termination Notice or a Shipper Termination Notice, as

the case may be) and upon such termination Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Keystone Hardisty Terminal, provided however, if both the Commencement Date and the KXL Commencement Date occur within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect and, further provided, in the event that either the Commencement Date or the KXL Commencement Date does not occur on or before the Sunset Date as a result of an event of Force Majeure (which for this purpose excludes breakdowns or failures of machinery or equipment during construction of the Keystone Hardisty Terminal), the Sunset Date shall be extended by the same period of time as the relevant events of Force Majeure which resulted in the Commencement Date or the KXL Commencement Date not occurring on or before December 31, 2015. For certainty and for the purposes of this Section 4.5, an event of Force Majeure shall not include any delay of any governmental, administrative or regulatory authority having jurisdiction in the United States to grant such authorizations or exemptions, or both, or any amendments or supplements thereto, that are necessary for Carrier, in its sole discretion, to construct, acquire, own and operate the KXL Expansion Facilities as part of the Pipeline System.

## **ARTICLE 5 COMMENCEMENT OF SERVICE**

- 5.1 (a) Carrier shall provide Shipper with prior written notice (the “**Advance Notice**”) of:
- (i) Carrier’s schedule of Line Fill procedures requiring Shipper to deliver, over a period beginning approximately sixty (60) Days and ending approximately one hundred twenty (120) Days, following Shipper’s receipt of the Advance Notice, its proportionate share of Line Fill necessary for the Keystone Hardisty Terminal; and
  - (ii) Carrier’s intention to commence Working Stock acquisition activities.
- Volumes and Type of Line Fill and Working Stock shall in consultation with Shipper be as determined by Carrier, acting reasonably, which may include designation of requirements for certain market commodities within each Type of Petroleum. Shipper is responsible to supply Carrier with its proportionate share of line fill and working stock, by type (and commodity), required to operate the Keystone Hardisty Terminal, as determined by Carrier, acting reasonably.
- (b) Carrier shall use reasonable efforts to provide Shipper with periodic updates as to Carrier’s expected commencement of Line Fill procedures.
- 5.2 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier’s Working Stock acquisition, Line Fill and commissioning activities in respect of the Keystone Hardisty Terminal.
- 5.3 Carrier shall provide Shipper with at least thirty (30) Days prior written notice of the date on which Firm Batch Accumulation Service under this Contract in respect of the Term is to commence (the “**Commencement Date**”), which Commencement Date shall occur no sooner than the KXL Commencement Date and upon the completion of the connection of the Keystone Hardisty Terminal to either the Enbridge Pipeline Mainline at its Hardisty manifold 150 or the Cold Lake South Pipeline and upon completion of two (2) of the Keystone Hardisty Terminal tanks. At least ten (10) Days prior to the Commencement Date, Shipper shall provide Carrier

with Shipper's Monthly Nomination for the Month in which Firm Batch Accumulation Service commences, on a Notice of Shipment as prescribed in the Rules and Regulations.

- 5.4 Unless otherwise precluded by regulatory requirements, Carrier shall return to Shipper substantially all of Shipper's Working Stock which shall be of substantially the same type and quality as that which was delivered to Carrier commencing not later than sixty (60) Days following the expiration or termination of this Contract, subject to operational constraints.

## **ARTICLE 6 TERMINALLING SERVICE**

- 6.1 Subject to Section 9.2, from and after the Commencement Date and during the Term:
- (a) Shipper shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Rules and Regulations, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
  - (b) Carrier shall provide Firm Batch Accumulation Service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Contract and the Tariff.
- 6.2 Carrier will only provide terminalling service for Petroleum, as described in this Contract and the Tariff.

## **ARTICLE 7 CONTRACT FINANCIAL ASSURANCE**

- 7.1 Shipper shall, if and when reasonably requested by Carrier at any time prior to the Commencement Date (with the reasonableness of such request considered in a manner consistent with section 20.2 of the Rules and Regulations), provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier, acting reasonably (the "**Contract Financial Assurances**"), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure all obligations or potential obligations of Shipper under this Contract.

## **ARTICLE 8 MAKE-UP RIGHTS**

- 8.1 Subject to Section 9.2, in the event that, during the Term, (a) Shipper Tenders for Firm Batch Accumulation Service in any Month a volume less than its Monthly Volume, or (b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier, Shipper shall, to the extent that, in Carrier's discretion, operating conditions permit and capacity is available, be entitled to a make-up volume for Batch Accumulation Service of the difference between its Monthly Volume and volumes actually Tendered for Batch Accumulation Service in that Month in any of the next following 36 Months, provided that Shipper has first Tendered its Monthly Volume in such Months before making use of any make-up volumes. Provided further that if such Force Majeure event continues beyond 3 consecutive Months, Shipper shall not be entitled to accrue any make-up rights beyond such 3 Month period.

- 8.2 Allocation priority for the Shipper's Make-Up Volumes shall be in the manner described in section 7.8 of the Rules and Regulations.
- 8.3 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month written notice of any planned reduction of volume to be Tendered for Firm Batch Accumulation Services for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.
- 8.4 Any make-up rights of Shipper arising out the operation of this Article 8 shall cease and shall be forfeited by Shipper at the earlier of: (i) the expiration of the time period outlined in Section 8.1, and (ii) 36 Months following the last Day of the Term.

## **ARTICLE 9 TOLLS**

- 9.1 On each Payment Due Date, Shipper shall pay for Terminalling Services in accordance with this Contract, including Appendix 'B' and the Tariff.
- 9.2 In the event of interruption, curtailment or reduction of Firm Batch Accumulation Service pursuant to an outage by Carrier (i) as described in section 13.1 of the Rules and Regulations, or (ii) for any other reason not attributable to Shipper but except for Carrier Force Majeure in accordance with Article 15 of the Rules and Regulations, Shipper shall not, for the period of such interruption, curtailment or reduction only, be required to pay the Batch Accumulation Toll hereunder regarding such portion of interrupted, curtailed or reduced Firm Batch Accumulation Service. No make-up rights pursuant to Article 8 shall accrue during the periods of such events of interruption, curtailment or reduction of Firm Batch Accumulation Service.
- 9.3 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any make-up volumes pursuant to Article 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Toll times the Excess Volume.
- 9.4 If Shipper has a Contract Volume of at least 7,950 m<sup>3</sup>/Day (50,000bbl/Day) then provided that neither Shipper nor any Affiliate that is a party to a Contract with Carrier or Keystone US is then in default of any material obligation under this Contract or any other such Contract, Carrier agrees that, if Carrier provides Batch Accumulation Services utilizing the Keystone Hardisty Terminal for any Person at an Uncommitted Toll lower than the Batch Accumulation Toll applicable to Shipper as outlined in Appendix 'B', as adjusted for capital variance and Final Project Costs (the "**Baseline Price**"), then for so long as such Batch Accumulation Services are provided at such Uncommitted Toll, Carrier shall reduce the Batch Accumulation Toll by an amount per Cubic Meter equal to the difference between such Uncommitted Toll and the Baseline Price.

## **ARTICLE 10 TERM OF CONTRACT**

- 10.1 This Contract shall be effective as of the date it is signed by Shipper and Carrier, and unless terminated earlier in accordance with its terms, the initial term of this Contract shall commence on the Commencement Date and shall continue until the anniversary of said Commencement

Date in accordance with the contract term specified by Shipper in Appendix 'A', subject to adjustment pursuant to Section 10.2 (such period being the "Term").

10.2 So long as Shipper is not otherwise in default of this Contract or the Rules and Regulations, Shipper shall have the single option, exercisable by written notice to Carrier and received by Carrier not later than 24 Months prior to the expiry of the Term, to extend the initial Term of this Contract:

- (a) where the initial Term is less than 20 Years, for a single additional 5 Year period; or
- (b) where the initial Term is 20 Years, for a single additional (i) 5 Year period or (ii) 10 Year period, as exercised by Shipper in its option notice,

with such extension on the same terms and conditions of this Contract, provided that the Batch Accumulation Toll for such extended Term shall be calculated in the manner described in paragraph B.3 of Appendix 'B'. Carrier shall provide Shipper with the Batch Accumulation Toll, subject to regulatory approval, for such extended Term no later than 27 Months prior to the expiry of the initial Term.

### ARTICLE 11 NOTICES

11.1 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 Carrier:** **TransCanada Keystone Pipeline Limited Partnership**

450 – 1st Street SW  
Calgary, Alberta T2P 5H1  
Attention: Corporate Secretary  
Fax: 403.920.2467

**In the case of Shipper:** ●  
●  
●  
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 except for any such transmission sent after 2:00 pm local time at the location at which the delivery is made, then such Notice shall be deemed received as of 8:00 am on the next business day. 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. For the purposes of this Section 11.1, a



“**business day**” is any day from 8:00 a.m. to 5:00 p.m., excepting Saturdays, Sundays and statutory holidays at the place of receipt. 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.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

- 12.1 Where this Contract provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party’s business or operations (upon reasonable and timely notice and at the auditing Party’s expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Rules and Regulations and the rates as calculated under this Contract will be set out in the Tariff (the “**Rates**”) as initially filed, and as each may be amended and approved from time to time by Carrier or the NEB, are all by reference made a part of and incorporated into this Contract and operations hereunder shall, in addition to the terms and conditions set out in this Contract, be subject to the provisions thereof. The Parties further expressly recognize that it is reasonable for Shipper to support the actual construction of the Keystone Hardisty Terminal and to want to obtain capacity at the Keystone Hardisty Terminal and to also have legitimate issues concerning the Rates, Rules and Regulations and terms of service that need to be addressed by the NEB or other governmental, regulatory, administrative or judicial bodies. Accordingly, except as expressly provided in Section 2.4, nothing in this Contract or in the Tariff shall be deemed to restrict, waive or otherwise limit Shipper’s right to initiate or participate in any governmental, regulatory, administrative or judicial proceedings (including appeals) that may affect Rates or the terms and conditions of service under this Contract or the Tariff. Carrier shall notify Shipper at any time that Carrier amends the Rules and Regulations, the Tariff or the Rates, and shall provide Shipper with notice of such revisions. The modifications to the Rules and Regulations filed prior to the Commencement Date shall substantially reflect the changes to the Rules and Regulations marked in Appendix ‘C’ and shall be consistent with this Contract, subject to changes that may be required by the NEB. During the Term of this Contract Carrier shall not initiate any changes to the Rules and Regulations, the Tariff or the Rates that adversely impact Shipper’s rights under this Contract, excluding Appendix ‘C’.
- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Contract, excluding Appendix ‘C’, then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Contract to comply with such ruling and in accordance with the initial expectations of the Parties under this Contract.

- 12.4 This Contract, and any claims against Carrier arising directly or indirectly out of or in connection with this Contract, may be assigned, in whole or in part, by Shipper only:
- (a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld or delayed, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may reasonably demand in accordance with this Contract, or (B) such Financial Assurances as Carrier may reasonably demand in accordance with the Rules and Regulations, as applicable; or
  - (b) to its Affiliate, upon 30 Days' prior written notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Contract.
- 12.5 Carrier may assign this Contract and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) any other Person in connection with the sale of all or substantially all of the assets of Carrier to such Person.
- 12.6 This Contract shall be construed and applied and be subject to the laws of the Province of Alberta, Canada and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction including the NEB. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Contract. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**
- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Contract or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Contract shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Contract may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.
- 12.10 Carrier will maintain the confidentiality of information provided and identified by Shipper as confidential or commercially sensitive. Notwithstanding the foregoing, nothing shall restrict disclosure by Carrier of: (a) the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis; or (b) any information requested or required by applicable law or regulatory authority to be disclosed.

12.11 The Parties shall execute their obligations under this Contract in good faith.

**IN WITNESS OF WHICH** the Parties have executed and delivered this Contract as of the date first above written.

**TRANSCANADA KEYSTONE PIPELINE  
GP LTD.** in its capacity as general partner for  
and on behalf of **TRANSCANADA  
KEYSTONE PIPELINE LIMITED  
PARTNERSHIP** •

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

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

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

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

**APPENDIX 'A'**

**CONTRACT TERM AND CONTRACT VOLUME**

**Shipper to Complete:**

Contract Volume to be a minimum of 795 m<sup>3</sup>/Day (5,000 bbl/Day), in increments of 795 m<sup>3</sup>/Day (5,000 bbl/Day).

<b>Contract Term</b>	<b>Contract Volume</b>
For those KXL Term Shippers, or their Affiliates, that are party to transportation service and throughput agreements having a contract delivery point of Port Arthur.  ____ <b>Years</b> (10 or 20 Years)	____ m <sup>3</sup> /Day  (____ bbl/Day)
For those KXL Term Shippers, or their Affiliates, that are party to transportation service and throughput agreements having a contract delivery point of Cushing.  ____ <b>Years</b> (10 or 20 Years)	____ m <sup>3</sup> /Day  (____ bbl/Day)

**APPENDIX 'B'**

***SCHEDULE OF TOLLS AND TOLLING PRINCIPLES  
FOR PETROLEUM TERMINALLING SERVICES***

**A. TERMINALLING FEE**

1. **Term of the Contract:** Every Month during the Term of the Contract, Shipper shall pay to Carrier on the Payment Due Date, consistent with Article 9 of the Contract, the tolls and other charges set forth in this Appendix 'B' and incorporated into the Tariff.
2. **Operating, Maintenance and Administration Costs:** The Parties acknowledge that the Batch Accumulation Toll does not include a toll in respect of the operating, maintenance and administration costs and expenses of the Keystone Hardisty Terminal, and that the Carrier intends to allocate such costs and expenses in respect of the Keystone Hardisty Terminal into the operating, maintenance and administration costs and expenses of the Pipeline System as a whole.

**B. MONTHLY REVENUE COMMITMENT**

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term of the Contract, Shipper shall pay a “**Monthly Revenue Commitment**” in respect of its Monthly Volume. Shipper’s Monthly Revenue Commitment charges for any Month shall be the product obtained by multiplying the applicable Batch Accumulation Toll calculated below, times the Monthly Volume. For greater certainty, the same Batch Accumulation Toll shall apply for the entire Term.

<i>Term of Contract</i>	<i>Contract Volume</i>	<i>Batch Accumulation Toll in \$Cdn Per m<sup>3</sup> (bbl )</i>
10 Year	Any	\$1.132 (\$0.180)
20 Year	less than 19078 m <sup>3</sup> /Day (120,000 bbl/Day)	\$0.943 (\$0.150)
20 Year	19078 m <sup>3</sup> /Day (120,000 bbl/Day) or more	\$0.824 (\$0.131)

2. **Capital Variance:** The Batch Accumulation Toll during the Term will be adjusted to reflect capital variance, in the manner described in Part C below; provided, however, Shipper shall not be responsible under this Contract for any capital costs associated with any future expansions of the Pipeline System or the Keystone Hardisty Terminal.
3. **Batch Accumulation Toll Applicable to Extension Term:** In the event that Shipper exercises its option to extend the Term of the Contract in the manner described in either Section 10.2(a) or Section 10.2(b) of the Contract, the Batch Accumulation Toll applicable and payable for such extension Term shall be established by Carrier at the time of renewal, provided however, the Batch Accumulation Toll for the Term extension under Section 10.2(a) shall be greater than or equal to the Batch Accumulation Toll shown in paragraph B.1 above for the 20 Year Term Contract having a Contract Volume less than 19078 m<sup>3</sup>/Day (120,000 bbl/Day), as adjusted to reflect capital variance in the manner described in Part C below.
4. **Suspension due to Force Majeure:** In the event that Carrier declares a Force Majeure event pursuant to Article 15 of the Rules and Regulations and the term of the Force Majeure event continues beyond three (3) consecutive months, no Batch Accumulation Toll in respect of the Contract Volume will be payable by Shipper during the remaining period of the Force Majeure event.

C. **CAPITAL VARIANCE**

1. **Definitions:** In this Part C, the following terms have the following meanings:

“**AFUDC**” means Carrier’s allowance for funds used during construction.

“**Capital Variance**” means the sum of the following items:

- (a) three quarters (3/4) of the difference between the Final Project Costs and the Estimated Project Costs; and
- (b) interest carrying charges on (a) above, calculated at the Prime Rate, from the Commencement Date to the date of the Capital Variance Notice.

“**Estimated Project Costs**” means the sum of \$242.5 million, representing Carrier’s estimate, as of the time of the Contract, of the development, construction and acquisition costs, including estimated AFUDC, of the Keystone Hardisty Terminal, having a scope as described in Appendix ‘D’.

“**Final Project Costs**” means the sum of the actual AFUDC, development, construction and acquisition costs of the Keystone Hardisty Terminal, having a scope as described in Appendix ‘D’, expressed in Canadian dollars.

2. **Final Project Costs and Batch Accumulation Toll:**

- (a) Not later than 2 Years following the Commencement Date, Carrier shall make a determination of the Final Project Costs. Upon such determination, if there is a difference between the Estimated Project Costs and the Final Project Costs, Carrier will deliver a notice (the “**Capital Variance Notice**”) to Shipper. The Capital Variance Notice will set out the Final Project Costs, the resulting Capital Variance and the required adjustment to the Batch Accumulation Toll. For such purposes, the Batch Accumulation Toll shall be adjusted by a percentage decrease or increase, as the case may be, equal to the percentage difference between (i) the Estimated Project Costs, and (ii) the Estimated Project Costs plus the Capital Variance.
- (b) The Batch Accumulation Toll, adjusted to reflect the Capital Variance, will take effect for terminalling services provided by Carrier in the first Month following the issuance of the Capital Variance Notice by Carrier. Accordingly, the first invoice issued by Carrier for terminalling service provided in the first Month after the issuance of the Capital Variance Notice will charge the Batch Accumulation Toll adjusted to reflect the Capital Variance as set out in such Capital Variance Notice.

3. **Audit Right:** Shipper shall have the right to conduct 1 audit of the calculations underlying the Capital Variance Notice within 12 Months of the date of the Capital Variance Notice, in accordance with the audit procedure in Section 12.1 of the Contract. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers.

**APPENDIX 'C'**

***DRAFT RULES AND REGULATIONS***

See attached.

## APPENDIX 'D'

### ***KEYSTONE HARDISTY TERMINAL DESCRIPTION***

The proposed Keystone Hardisty Terminal is a 2 mmbbls above ground crude oil terminal with an initial scope of 535,000 bbls/Day of capacity with tankage and pipeline facilities for crude oil batch accumulation for interconnection to the KXL Expansion Facilities. The initial scope is based on a \$242.5 million capital cost and is as follows;

- 2 x 400,000 bbl crude oil tanks
- 2 x 350,000 bbl crude oil tanks
- 2 x 250,000 bbl crude oil tanks
- Receipt Connections:
  - Interconnection to IPF Cold Lake South pipeline via a NPS 24 line
  - Interconnection to EPI for heavy crude and light crude via a NPS 36 or 42 line
- Delivery Connection:
  - Interconnection to KXL Expansion Facilities

Other equipment including but not restricted to booster pumps, valves and sump pumps.



**APPENDIX 3-2**

**PETROLEUM TARIFF  
CONTAINING RULES AND REGULATIONS APPLYING TO  
THE TRANSPORTION AND TERMINALLING OF  
PETROLEUM**

# Keystone Pipeline System

Petroleum Tariff

Containing Rules and Regulations  
Applying to the Transportation and  
Terminalling of  
Petroleum

From Hardisty, Alberta

To the International Boundary at or near Haskett, Manitoba  
and at or near Monchy, Saskatchewan

The rules and regulations herein apply only under tariffs making specific reference by  
NEB Tariff number to this tariff, such reference will include amendments and supplements  
hereto or successive issues hereof.

**Issued:** ~~December 30, 2010~~

**Effective:** ~~February 1, 2011~~

**Issued by:** ●  
TransCanada Keystone Pipeline GP Ltd.,  
as general partner on behalf of  
TransCanada Keystone Pipeline Limited  
Partnership  
450 – 1st Street SW  
Calgary, Alberta T2P 5H1  
Canada

**Compiled by:** ●  
TransCanada Keystone Pipeline GP Ltd.,  
as general partner on behalf of  
TransCanada Keystone Pipeline Limited  
Partnership  
450 – 1<sup>st</sup> Street SW  
Calgary, Alberta T2P 5H1  
Canada  
(403) ●  
(403) ● (fax)  
●

website: [www.transcanada.com/keystone](http://www.transcanada.com/keystone)

**ARTICLE 1  
DEFINITIONS**

1.1 **Definitions.** Except where the context expressly states another meaning, the following terms, when used in these Rules and Regulations, or in any Contract or Petroleum toll schedule into which these Rules and Regulations are incorporated, shall have the following meanings:

“**Adverse Encumbrance**” has the meaning set out in Section 16.1.

“**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.

“**Allocated Volume**” means that monthly volume of Pipeline System capacity allocated to a Shipper pursuant to Article 7.

“**API**” means American Petroleum Institute.

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

“**Available Capacity**” ~~means~~ as the context requires: (i) for purposes of transportation services on the Pipeline System, the meaning set out in Section 7.2; or (ii) for purposes of Terminalling Services, the capacity available at the Keystone Terminal Facilities as determined by Carrier following the receipt by Carrier of Monthly Nominations for Terminalling Services at each respective terminalling facility in that Month.

“**Banking Day**” means any day that the financial institution designated by Carrier for payment pursuant to Section 9.1 conducts business.

“**Carrier**” means TransCanada Keystone Pipeline GP Ltd., as general partner on behalf of TransCanada Keystone Pipeline Limited Partnership, and its successors and assigns.

“**Commencement Date**” means (i) in the case of ~~transportation~~ service under a Contract with a Term Shipper, the “**Commencement Date**” as defined in the Contract between Carrier and each Term Shipper, and (ii) in the case of ~~transportation~~ service for all other Shippers, the date upon which Petroleum is first Tendered to Carrier at a Receipt Point and authorized by Carrier for ~~transportation~~ the relevant service hereunder.

**Keystone Pipeline System****NEB Tariff No. 4**

“**Contract**” means, as the context requires, either (i) a Petroleum Transportation Service Agreement between Carrier and a Shipper for the transportation and delivery of Petroleum on the Pipeline System (not including any Keystone Terminal Facilities), or (ii) a Terminalling Services Agreement between Carrier and a Shipper for any portion of the Pipeline System ~~Terminalling Services at the Keystone Terminal Facilities.~~

“**Contract Volume**” means the daily volume of Petroleum specified by Term Shipper in Appendix ‘A’ of a Contract, which, as the context requires, either (i) Term Shipper commits to ship on the Pipeline System, or (ii) Term Shipper commits to utilize the Keystone Terminal Facilities, in each case under the terms of such Contract.

“**Cubic Meter**” (m<sup>3</sup>) means the volume of Petroleum which occupies one cubic metre when such Petroleum is at a temperature of fifteen degrees Celsius (15C) 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.

“**Default Notice**” has the meaning set out in Section 12.1.

“**Default Period**” has the meaning set out in Section 12.1.

“**Defaulting Party**” has the meaning set out in Section 12.1.

“**Deliver**” and any derivative thereof, means the delivery of Petroleum by Carrier to Shipper at a Delivery Point pursuant to the Tariff.

“**Delivery Point**” means the point at which the facilities of Carrier interconnect with the facilities of Keystone US at the international boundary (a) at or near Haskett, Manitoba, or (b) at or near Monchy, Saskatchewan.

“**Financial Assurances**” has the meaning set out in Section 20.1.

“**Financial Information**” has the meaning set out in Section 20.1.

“**FERC**” means the Federal Energy Regulatory Commission or any regulatory or governmental authority having similar jurisdiction in substitution thereof.

“**Force Majeure**” has the meaning set out in Section 15.2.

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

“**Heavy Crude**” means Petroleum having a density from and including 876 kilograms per Cubic Meter (kg/m<sup>3</sup>) up to and including 940 kg/m<sup>3</sup>, and a viscosity from and including 20 square millimetres per second (mm<sup>2</sup>/s) up to and including 350 mm<sup>2</sup>/s.

**Keystone Pipeline System**

**NEB Tariff No. 4**

**“Keystone Hardisty Terminal”** means the Petroleum tank terminal owned and operated by the Carrier as part of the Pipeline System which is located in SW/4 of Section 32-42-9 W4M in the Hardisty region of Alberta, as such facility may be modified or expanded from time to time.

**“Keystone Terminal Facilities”** means the Keystone Hardisty Terminal and such other Petroleum tank terminal facilities as are added as part of the Pipeline System from time to time.

**“Keystone US”** means TransCanada Keystone Pipeline, LP and its successors and assigns.

**“Keystone US Pipeline System”** means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Keystone US which connect to the Pipeline System at the international boundary at or near Haskett, Manitoba and at or near Monchy, Saskatchewan and terminating at or near Patoka, Illinois, at or near Port Arthur, Texas, and at or near Cushing, Oklahoma, Houston, Texas as such facilities may be modified, expanded or extended from time to time.

**“kiloPascal”** (kPa) is equivalent to 0.1450377 pounds per square inch (psi).

**“Light Crude”** means Petroleum having a density up to but not including 876 kilograms per Cubic Meter ( $\text{kg/m}^3$ ), and a viscosity up to but not including 20 square millimetres per second ( $\text{mm}^2/\text{s}$ ).

**“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 Nomination”** has the meaning set out in Section 7.1.

**“Monthly Revenue Commitment”** means the product of the Monthly Volume times either (i) the fixed toll as described in Appendix “B” of a Contract, and (ii) in the case of a Contract for the Keystone Terminal Facilities, the Batch Accumulation Toll as described in Appendix ‘B’ of a Contract.

**“Monthly Term Shipper Allocation”** has the meaning set out in Section 7.2(i).

**“Monthly Volume”** means the product of the Contract Volume times the number of Days in the applicable Month.

**“NEB”** means the National Energy Board of Canada or any regulatory or governmental authority hereafter having a similar jurisdiction in substitution thereof.

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

**“Nomination”** and any derivative thereof, means the volume of Petroleum specified by Shipper in the Notice of Shipment as described in Section 7.1.

**“Non-Term Shipper”** means a Shipper that is not a Term Shipper.

**“Notice of Shipment”** means the form prescribed by Carrier from time to time to be used by Shipper to notify Carrier of proposed Tenders for the following Month, as such form may be

## Keystone Pipeline System

NEB Tariff No. 4

amended by Carrier from time to time. A Notice of Shipment may include, without limitation, Shipper's name, contact person and contact information, Month of shipment, volume and Type of Petroleum to be Tendered in such Month, and the designated Receipt Point(s) and Delivery Point(s).

"Party" means Carrier or a Shipper, as applicable, and "Parties" means both Carrier and a Shipper.

"Payment Due Date" means the date that is ten (10) Days after the date that Carrier issues an invoice pursuant to Section 9.1. If such Day is not a Banking Day, then the Payment Due Date shall be the first Banking Day immediately after the 10th Day after Carrier issues such invoice.

"Person" means any natural person, firm, trust, partnership, corporation, limited liability company, joint venture, association, joint stock company, enterprise, unincorporated entity, government, governmental agency 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 or natural gas liquids. For the purposes of this definition, "oil" includes crude oil, synthetic crude oil, condensate 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.

"Pipeline System" means the Petroleum receipt, terminalling, tankage, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Carrier commencing at or near Hardisty, Alberta and terminating at the international boundary at or near Haskett, Manitoba and at or near Monchy, Saskatchewan which are connected to the Keystone US Pipeline System, 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 Point(s)" means the inlet flange of ~~Carrier's~~ receipt meter on the Pipeline System (including the KHT Receipt Points described in Section 21.1(vi)) at Hardisty, Alberta or elsewhere in Canada as the Tariff may designate from time to time, where facilities have been provided by Carrier to permit a Shipper to Tender Petroleum.

"Remaining Available Capacity" has the meaning set out in Section 7.2(i).

"Shipper" means ~~any~~, as the context requires, a Person who uses the transportation service of the Pipeline System pursuant to the Tariff, and includes any Person who uses the Terminalling Services of Keystone Terminal Facilities as part of the Pipeline System pursuant to the Tariff.

"Special Damages" means, collectively, any indirect, consequential (including loss of revenue or loss of profit), incidental, punitive or exemplary damages.

"Tariff" means these Rules and Regulations, and any Petroleum toll schedule filed at the NEB by Carrier, all as may be amended from time to time.

## Keystone Pipeline System

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“**Tender**” and any derivative thereof, means the delivery by a Shipper to Carrier at a Receipt Point of a stated quantity and Type of Petroleum for transportation from a Receipt Point to a Delivery Point pursuant to a Nomination.

“**Term Shipper**” means a Shipper that is a party to a Contract.

“**Terminalling Services**” has the meaning set out in Section 21.1(viii).

“**Type**” in relation to Petroleum, means Light Crude or Heavy Crude, as applicable.

“**Uncommitted Toll**” means the tolls and charges charged to a Shipper pursuant to the Tariff.

“**Working Stock**” means the volume of Petroleum required to be held by Carrier within the Pipeline System for operational and scheduling purposes as determined by and specified from time to time by Carrier.

“**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 **Construction.** In construing these Rules and Regulations; (a) unless otherwise specified, references to Articles and Sections refer to Articles and Sections of these Rules and Regulations, (b) no consideration shall be given to the captions of any Articles or Sections, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction, and (c) the singular shall be deemed to include the plural and vice versa.

## ARTICLE 2 COMMODITY AND STANDARD

- 2.1 The Tariff applies to the transportation of Petroleum by Carrier and the provision of terminalling services of Petroleum by Carrier, and Carrier shall have no obligation to ~~transport~~ provide services in respect of any commodity other than Petroleum.
- 2.2 Carrier shall act as a reasonable and prudent operator in the discharge of Carrier’s duties hereunder.

## ARTICLE 3 ORIGIN AND DESTINATION

- 3.1 **Acceptance and Delivery.** Petroleum will be accepted ~~for transportation by Carrier~~ only when Tendered at a Receipt Point and Nominated for Delivery to the Shipper at a Delivery Point pursuant to the Tariff.
- 3.2 **Delivery Facilities.** Petroleum will be accepted ~~for transportation by Carrier~~ only when the Shipper has provided or made arrangements for the necessary facilities and transportation service satisfactory to Carrier at the specified Delivery Point for handling the Petroleum at the rate of flow at which Carrier is then operating the Pipeline System at such Delivery Point.

**ARTICLE 4  
QUALITY**

- 4.1 **Permitted Petroleum.** Only that Petroleum having properties that conform to the specifications of Petroleum described in Sections 4.2, 4.3 and 4.4 will be permitted in the Pipeline System. Shipper will not Tender to Carrier, and Carrier will have no obligation to accept, terminal, transport or Deliver Petroleum which does not meet said specifications.
- 4.2 **Specifications of Petroleum.** For the purposes of Section 4.1, the specifications of the Petroleum shall be as follows: (i) Reid Vapor Pressure shall not exceed one hundred and three kiloPascals (103kPa); (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 the Receipt Point shall not exceed nine hundred and forty kilograms per Cubic Meter (940 kg/m<sup>3</sup>); (v) the kinematic viscosity shall not exceed three hundred and fifty (350) square millimetres per second (mm<sup>2</sup>/s) determined at the Carrier's reference line temperature as posted on Carrier's website; and (vi) shall have no physical or chemical characteristics that may render such Petroleum not readily transportable or for terminalling by Carrier or that may materially affect the quality of other Petroleum transported or terminalled by Carrier or that may otherwise cause disadvantage or harm to Carrier or the Pipeline System, or otherwise impair Carrier's ability to provide service on the Pipeline System.
- 4.3 **Modifications to Specifications.** Notwithstanding Sections 4.1 and 4.2, or any other provision in these Rules and Regulations to the contrary, Carrier shall have the right to make any reasonable changes to the specifications under Section 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System or Carrier's personnel, provided that Carrier shall give Shipper reasonable notice of such changes prior to filing.
- 4.4 **Freedom from Objectionable Matter.** Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances in quantities that may be injurious to Carrier, the Pipeline System or downstream facilities, or which may otherwise interfere with the terminalling or transportation of Petroleum in the Pipeline System.
- 4.5 **Failure to Conform to Specifications.** If Carrier determines that a Shipper does not comply with the provisions of Section 4.2, 4.3 or 4.4 of these Rules and Regulations, then, upon notice from Carrier, such Shipper shall, at Shipper's sole cost and expense, remove its off-specification Petroleum from the Pipeline System as and when directed by Carrier, acting reasonably.
- 4.6 **Failure to Remove Objectionable Matter.** If a Shipper fails to remove its off-specification Petroleum from the Pipeline System in accordance with the provision of Section 4.5, then, in addition to any other remedy available to Carrier under the Tariff, at law or in equity, Carrier shall have the right to remove and sell such Petroleum in any manner deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum and Carrier 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 Carrier in respect of the presence of such objectionable matter. The remainder of such proceeds, if any, shall be promptly paid by Carrier to the Shipper or as directed in writing by Shipper. Carrier may take such further action and recourse as it deems appropriate to compensate, mitigate or reimburse Carrier for any adverse



impact to Carrier or the Pipeline System that is attributable to the presence of such objectionable matter. Shipper shall indemnify and save harmless Carrier in accordance with Section 11.2 of these Rules and Regulations for any adverse impact to downstream facilities imposed on Carrier that is attributable to the presence of such objectionable matter.

## ARTICLE 5 MEASUREMENTS

- 5.1 The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Meter.
- 5.2 All Petroleum received by Carrier ~~for transportation~~ pursuant to the Tariff shall be gauged or metered and tested by a representative of Carrier prior to its acceptance at Hardisty. The Shipper may have a representative present at the gauging, metering and testing. If tank calibration tables are used for such purpose, quantities will be computed from the most recent regularly compiled tank calibration tables showing one hundred percent (100%) of the full capacity of the tanks. Such tank calibration tables shall be maintained in accordance with API 653. Carrier shall prove all meters situated at Hardisty at least once each month and Shipper may have a representative present to witness such proving. In addition, Shipper shall have the right to request that a meter(s) be proven if it has reasonable grounds to believe that such meter is not functioning properly. Should any meter be determined by Carrier to be functioning improperly, Carrier shall promptly notify each Shipper affected thereby. Whenever there is substantial evidence of meter malfunctions in a custody transfer measurement, the parties involved in the custody transfer shall negotiate an appropriate adjustment on the basis of the most reliable and accurate information available. Such adjustments may only be claimed for a period of up to one hundred twenty (120) Days after the date that the affected Party discovers and advises the other Party of the meter malfunction.
- 5.3 All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:
- (i) Gross Standard Volume and Net Standard Volume received and Delivered;
  - (ii) kinematic viscosity and associated temperature;
  - (iii) weighted average density;
  - (iv) weighted average pressure; and
  - (v) basic sediment and water.

All measurement procedures are to be conducted in accordance with applicable API/ASTM standards (most current version) and pipeline industry practice or such other tests as may be agreed upon by Carrier and Shippers.

- 5.4 Carrier shall deliver and account to each Shipper for one hundred percent (100%) of Petroleum Tendered for its account subject to any actual Pipeline System gains or losses due to evaporation or shrinkage due to normal pipeline operations on the Pipeline System. Adjustments for overages or shortages, (including losses for shrinkage and evaporation incident to Carrier transportation or

other services provided), will then be based on the proportion that such Shipper's total Deliveries from the Carrier bears to the total Deliveries of all Shippers from the Carrier. Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis and settled in accordance with procedures posted on Carrier's website.

- 5.5 Subject to applicable laws and government regulations applicable to Shipper's premises, Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's premises where Petroleum is stored and have access to any and all tankage situated therein for the purpose of making any examination, inspection, measurement or test provided for under the Tariff; provided, however, Shipper shall not be liable to Carrier for any loss, injury, or damage to or suffered by Carrier or Carrier's representative during such entry or access unless and to the extent caused by Shipper's negligence.
- 5.6 Petroleum shall be classified by Type by Carrier on the basis of measured density and viscosity at the time of Tender. Where the density of the Petroleum falls within the density range of one Petroleum Type and the viscosity of the Petroleum falls within the viscosity range of another Type, then the Petroleum shall be deemed to be of the Type with the higher transportation toll.

## ARTICLE 6 SEGREGATION AND CHANGES IN QUALITY

- 6.1 **Delivery of Types of Petroleum.** Carrier shall endeavour to Deliver substantially the same Type and quality of Petroleum as that received by Carrier from Shipper. Notwithstanding the foregoing, Carrier shall not be obligated to make Delivery of Petroleum of identical quality or specification Tendered by Shipper.
- 6.2 **Alterations of Specifications.** Shipper acknowledges and accepts that any Petroleum Tendered ~~for transportation~~ will be received by Carrier only on the condition that such Petroleum shall be subject to such changes in density, specification, quality and characteristics while in transit as may result from the transportation thereof ~~in~~ or other services utilizing the Pipeline System, including, without limitation, the mixture of said Petroleum with other Petroleum (meeting the specifications set forth in Section 4.2) in the Pipeline System. Carrier shall not be liable for any Special Damages resulting from any alteration in density, specification or other quality or characteristic of Petroleum transported or terminalled by Carrier, or provision of services otherwise provided by Carrier and shall not be liable for any direct damages resulting from any such alteration, except where such direct damages are directly caused by the negligence or wilful misconduct of Carrier.
- 6.3 **Segregated Movement.** If the Petroleum Nominated by a Shipper is of a Type or quality not then being transported or terminalled through the Pipeline System but meets the specifications set out in Article 4, Carrier may, in its reasonable discretion and as operating conditions permit, at the request of Shipper, attempt to make Delivery of substantially the same Type and quality of Petroleum at the Delivery Point. Notwithstanding the foregoing, Carrier's efforts under this Section 6.3 shall not constitute a waiver, release or amendment of the provisions set forth in Sections 6.1 and 6.2, which provisions shall nonetheless apply to the transportation and Delivery of Petroleum by Carrier under this Section 6.3. To the extent the transportation of such Petroleum or provision of other services provided by Carrier causes the Pipeline System or Carrier to incur extraordinary costs not normally incurred for other Types or quality of Petroleum typically transported or terminalled through the Pipeline System, or for which other services

would typically be provided by Carrier on the Pipeline System, such Shipper shall be liable for, and shall indemnify Carrier for, all such costs.

## ARTICLE 7 NOMINATIONS, TENDERS AND APPORTIONMENT

- 7.1 **Monthly Nominations.** Each Month, in respect of transportation ~~service~~ and other services on the Pipeline System for the following Month, Shippers shall submit their respective Nominations (each a “**Monthly Nomination**”) to Carrier on a Notice of Shipment delivered no later than 7:00 a.m., Mountain Standard Time, on Carrier’s designated Monthly Nomination date in accordance with Carrier’s procedures for submission and acceptance of Nominations as posted on Carrier’s website. Except as expressly provided in a Contract, if a Shipper fails to Nominate any volume, the Shipper’s Monthly Nomination will be deemed to be zero. If Shipper’s Tenders have been curtailed pursuant to Article 13 of these Rules and Regulations, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment. Except as otherwise provided in a Contract, Shipper shall not be responsible for any payments on that curtailed portion of Monthly Nomination. In support of a Shipper’s Monthly Nomination, upon notice from Carrier, Shipper shall provide written third party verification of the availability of its supply of Petroleum and of its ability to remove or have removed such Petroleum at the Delivery Point(s). Carrier shall not be obligated to accept Shipper’s Monthly Nomination where such verification is, in the reasonable discretion of Carrier, unacceptable to Carrier.
- 7.2 **Allocation of Available Capacity.** Following the receipt by Carrier of Monthly Nominations, Carrier shall determine the capacity available to each Delivery Point on the Pipeline System for transportation service in that Month (“**Available Capacity**”). In the event Monthly Nominations exceed Available Capacity, then, having regard to the operating conditions of the Pipeline System, as determined by Carrier, the Available Capacity shall be allocated by Carrier as follows:
- (i) *Term Shippers’ Priority Allocation:* Each Term Shipper shall first be allocated all of its Monthly Nominations to the Delivery Point up to a maximum level of its Monthly Volume. If there is not sufficient Available Capacity to accommodate the Monthly Nomination of each Term Shipper, then each Term Shipper shall receive its *pro rata* share of Available Capacity based on the lesser of its Monthly Volume or submitted or deemed Monthly Nominations to the Delivery Point up to a maximum level of its Monthly Volume. The sum of all such allocations to all Term Shippers is the “**Monthly Term Shipper Allocation.**” “**Remaining Available Capacity**” means the positive difference, if any, between Available Capacity and the Monthly Term Shipper Allocation.
  - (ii) *Allocation of Remaining Available Capacity:* Remaining Available Capacity shall be allocated among Term Shippers and Non-Term Shippers on a pro rata basis calculated for each Shipper as follows: Remaining Available Capacity multiplied by a fraction, the numerator of which is, (a) in the case of a Term Shipper, the portion (if any) of that Term Shipper’s Monthly Nomination which exceeds its Monthly Volume, and, (b) in the case of a Non-Term Shipper, its Monthly Nomination, and the denominator of which is the sum of; (A) the total by which all Term Shipper Monthly Nominations exceed their Monthly Volumes and (B) the total Monthly Nominations by Non-Term Shippers.
- 7.3 **Batch Size.** ~~A~~ Subject to Section 21.3 for Tenders into the Keystone Terminal Facilities, a Shipper’s Tender will be accepted only when the total quantity covered thereby will be Tendered

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to Carrier at a Receipt Point for transportation within said Month at a daily rate, or in quantities and at times to be specified or accepted by Carrier. Except as hereunder provided, Carrier will not accept a batch size of less than sixteen thousand Cubic Meters (16,000 m<sup>3</sup>) (100,000 bbls) or a batch size of greater than thirty-two thousand cubic meters (32,000 m<sup>3</sup>) (200,000 bbls). Carrier may, in its sole discretion, acting reasonably, (i) agree to accept Tenders of Petroleum in batch sizes less than 16,000 m<sup>3</sup> (100,000 bbls) or in batch sizes greater than 32,000 m<sup>3</sup> (200,000 bbls) and (ii) outline procedures or criteria under which it may accept Tenders of Petroleum in such batch sizes.

- 7.4 **Tenders.** A Shipper desiring to Tender Petroleum ~~for transportation~~ shall make such Tender in accordance with Carrier's established Tender process which process shall be posted on Carrier's website. Upon Carrier's request, if Shipper is unable to provide Carrier with reasonable evidence of Shipper's ability to remove from a Delivery Point the volume of Petroleum to be Tendered, Carrier may reduce the amount of Petroleum received from Shipper at a Receipt Point to the amount determined by Carrier which Shipper has verified it will be able to remove at the Delivery Point.
- 7.5 **Late Nominations.** If capacity is available and operating conditions permit, as determined by Carrier in its sole discretion, Carrier may accept Nominations or revised Nominations after Carrier's designated Monthly Nomination date. Carrier's procedures for acceptance of Nominations after the designated Monthly Nomination date shall be posted on Carrier's website.
- 7.6 **Working Stock.** Shipper shall supply its proportionate share of Working Stock as determined from time to time by Carrier or, for Term Shippers as specified in the Contract and as posted on Carrier's website.
- 7.7 **Term Shipper Nominations.** Except as provided in Section 7.1, in the event that a Term Shipper fails to Nominate or Tender a volume of Petroleum equal to the Monthly Volume, it shall nonetheless pay to Carrier the Monthly Revenue Commitment and all other tolls and charges set forth in the Contract.
- 7.8 **Term Shipper Make Up Rights.** Term Shippers who fail to meet their Monthly Volume requirements in a Month will be subject to uniform provisions with respect to their ability to make up those volumes in subsequent Months, in the manner described in the Contract. Any make-up volumes to be Tendered by Term Shippers pursuant to the Contract shall be Nominated and ranked equally with all volumes Nominated for the purpose of allocating Remaining Available Capacity on the Pipeline System pursuant to Section 7.2.
- 7.9 **Non-Term Shippers.** Each Non-Term Shipper shall in each Month Tender to Carrier a volume of Petroleum equal to its Allocated Volume. Each Month, such Non-Term Shipper shall pay to Carrier an amount equal to the product of (i) the Uncommitted Toll, times (ii) the greater of Non-Term Shipper's Tendered Petroleum or ninety-five percent (95%) of Non-Term Shipper's Allocated Volume. The transportation of Petroleum or provision of other Petroleum services by Carrier for Non-Term Shippers shall be in accordance with and subject to the terms and conditions of the Tariff.
- 7.10 **Uniform Tenders.** Each Shipper shall endeavour to Tender Petroleum to Carrier in each Month in accordance with Carrier's rateable batch schedule to make up its Allocated Volume and having such Petroleum specifications as will reasonably be compatible with Pipeline System operations. Carrier may curtail receipts of Petroleum from a Shipper if such Shipper attempts to Tender in

excess of volumes equal to its Allocated Volume in accordance with Carrier's rateable batch schedule.

- 7.11 **Flow Rates and Volumes.** Carrier will normally take full stream receipts at Receipt Points and will make full stream Deliveries of Petroleum at Delivery Point(s) at flow rates and volumes compatible with the Pipeline System operations.

## ARTICLE 8 APPLICATION OF TOLLS

- 8.1 **Effective Tolls.** Petroleum accepted ~~for transportation by Carrier~~ shall be subject to the tolls and interest if applicable, in effect for the Month such Petroleum is Nominated for Tender to the Carrier at the Receipt Point(s), irrespective of the date of Nomination, the date of Tender or date of Delivery at the Delivery Point(s).

## ARTICLE 9 PAYMENT OF TARIFF TOLLS AND OTHER CHARGES AND LIEN FOR UNPAID CHARGES

- 9.1 Shipper shall pay to Carrier the applicable Monthly Revenue Commitment and all other tolls and charges payable in accordance with the Tariff on or before the Payment Due Date. Each Month Carrier will electronically issue to Shipper on a pre-established, industry standard, consistent date an invoice detailing (i) the tolls payable to Carrier pursuant to the Tariff for service provided during the previous Month, and (ii) any other charges for which Shipper is liable under a Contract or the Tariff (including, without limitation, any applicable taxes). Invoice payments shall be made on or before the Payment Due Date to the account of Carrier at the Royal Bank of Canada, Main Branch, Calgary, Alberta, or such other bank or financial institution as Carrier may designate in writing.
- 9.2 Carrier shall have a lien, charge and security interest on all Petroleum in its possession Tendered by or on behalf of Shipper, and on all proceeds of such Petroleum, to secure the performance of all obligations of Shipper under the Tariff, including without limitation, the payment of any and all unpaid tolls and other charges that are due Carrier and unpaid by Shipper. Carrier may withhold such Petroleum from Delivery until all such unperformed obligations or unpaid tolls and charges have been performed or paid in full, as the case may be. The lien and other remedies contained in this Section 9.2 are in addition to any other remedies available to Carrier at law, in equity, or under a Contract or the Tariff.
- 9.3 Should Shipper fail to pay the full amount of any invoice described in this Article 9 on or before the Payment Due Date, in addition to any other remedy Carrier may have under a Contract, the Tariff, at law or in equity:
- (i) 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; and
  - (ii) Carrier may, upon five (5) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such amount is paid in full, provided however, that any such suspension shall not relieve Shipper from any obligation

to pay any further tolls, charges or other amounts payable to Carrier under the Tariff. If, at any time during such suspension, Shipper pays the full amount payable to Carrier, Carrier shall, within two (2) Banking Days of receipt of payment, recommence receipt and Delivery of Shipper's Petroleum. If Shipper fails to pay the full amount payable to Carrier after such suspension, Carrier may, at its option at any time, in addition to any other remedy that may be available to it under a Contract, the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, (a) seize and sell any of Shipper's Petroleum then in Carrier's possession pursuant to Section 9.4, and (b) for a Term Shipper, terminate the Contract with such Term Shipper, provided however, if Carrier terminates the Contract, Term Shipper shall remain liable for and shall, to the extent permitted by applicable law and subject to Carrier's obligation to mitigate, pay to Carrier within five (5) Banking Days of such termination, pursuant to Carrier's invoice, the net present value of the aggregate of: (A) the monthly charges payable under the Contract or the Tariff (including, without limitation, the Monthly Revenue Commitment) for the unexpired term(s) of such Contract, (B) all applicable taxes, (C) all amounts owing under the Contract in respect of Petroleum Delivered but for which all tolls and any other charges are not yet paid, and (D) all other amounts for which Term Shipper is obligated to pay Carrier pursuant to the Tariff.

- 9.4 Pursuant to Sections 9.3, 10.2 and 12.2, Carrier 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 Carrier in its discretion, any Petroleum delivered to the Carrier by the Shipper and then in the possession of Carrier or its agent, ~~or otherwise traceable and lienable by Carrier~~. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than forty-eight (48) hours after 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. Shipper covenants and agrees not to dispose of its Petroleum other than subject to the lien, charge and security interest granted to Carrier hereby. At such sale, Carrier 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, Carrier will pay itself the tolls, charges, damages and other amounts payable to Carrier under the Tariff, including, without limitation, 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 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 Carrier from time to time. Carrier is authorized by Shipper to retain possession of Petroleum Tendered by Shipper or to take Delivery of Petroleum at a Delivery Point for the purpose of enforcing its rights under and pursuant to the Tariff.
- 9.5 If Shipper disputes any amount payable under an invoice, Shipper shall nonetheless pay to Carrier the full amount of such invoice on or before the Payment Due Date, except in the case of manifest error, in which case Shipper shall notify Carrier of such manifest error before the Payment Due Date and Carrier shall issue a corrected invoice. If it is finally determined that Shipper's invoice was incorrect and that an overpayment has been made, Carrier shall reimburse Shipper for such overpayment, together with interest calculated from the date such overpayment was made until the date of reimbursement at the Prime Rate.

**ARTICLE 10  
DELIVERY AND ACCEPTANCE**

- 10.1 Carrier will transport Petroleum with reasonable diligence and dispatch and Shipper shall with reasonable diligence and dispatch accept and remove its Petroleum from the facilities of Carrier upon Delivery of the Petroleum at a Delivery Point.
- 10.2 If Shipper fails to remove its Petroleum from the Pipeline System with reasonable diligence and dispatch upon Carrier's Delivery, then Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (i) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (ii) all tolls and other charges due and payable to Carrier under the Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the Shipper and any other Person lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Carrier from time to time, without any obligation to pay interest thereon.

**ARTICLE 11  
LIABILITY OF SHIPPER**

- 11.1 If Shipper fails to remove its Petroleum from Carrier's facilities upon Delivery and a disruption of Carrier's operations or the operation of downstream facilities results, Shipper shall be solely responsible and liable if and to the extent that any and all expenses, costs, damages and losses whatsoever are incurred or suffered by Carrier in connection with such disruption unless the non-removal of such Petroleum is due to Carrier's negligence or wilful misconduct.
- 11.2 Shipper shall indemnify Carrier for any and all damages, losses, expenses and costs incurred or suffered by Carrier and any other Person as a result of such Shipper's failure to comply with any material provision of the Tariff, unless Shipper's failure to comply is due to Carrier's negligence or wilful misconduct.
- 11.3 Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies and other assessments made or imposed by any governmental or regulatory authority having jurisdiction with respect to the Petroleum to be transported or terminalled by Carrier or for which Carrier otherwise provides services, for such Shipper's account and shall indemnify and save harmless Carrier from any such taxes, duties, charges, levies and assessments so made or imposed.

**ARTICLE 12  
DEFAULT, SUSPENSION AND TERMINATION**

- 12.1 Subject to Article 15, if Carrier or Shipper (a "**Defaulting Party**") shall fail to perform any of the material covenants or obligations imposed upon it under a Contract or the Tariff, other than Shipper's failure to pay an invoice on or before the Payment Due Date (which circumstance is addressed in Article 9), then in addition, to any other remedies the non-Defaulting Party may have under a Contract, the Tariff, at law or in equity, the non-Defaulting Party may terminate the Contract in the following manner: The non-Defaulting Party shall deliver a written notice (a "**Default Notice**") to the Defaulting Party, stating the relevant default, and declaring it to be the intention of the non-Defaulting Party giving the Default Notice to terminate such Contract. The Defaulting Party shall have (i) in the case of a default of a monetary nature (which includes,

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without limitation, a default pursuant to Article 20), ten (10) Days after receipt of the Default Notice, or (ii) in the case of a default of a non-monetary nature, thirty (30) Days after receipt of the Default Notice (in either case, the “**Default Period**”) in which to remedy or remove the cause or causes of the default stated in the Default Notice. If such default is remedied within the Default Period, or if the Defaulting Party fully indemnifies by payment to the non-Defaulting Party or otherwise secures the non-Defaulting Party (in form and substance satisfactory to the non-Defaulting Party) for any and all consequences of such default, then the Default Notice shall be withdrawn and the Contract shall continue in full force and effect provided that such indemnity or security remains in place.

12.2 If the Defaulting Party does not remedy the default or does not indemnify by payment to the non-Defaulting Party or otherwise secure the non-Defaulting Party for any and all consequences of such default within the Default Period referred to in Section 12.1, then the non-Defaulting Party may terminate the Contract. Any termination of the Contract pursuant to the provisions of this Section 12.2 shall be without prejudice to the right of Carrier to collect any amounts then due to it for ~~transportation services~~ services provided up to and including the date of the termination and shall be without prejudice to the right of Shipper to receive any Petroleum which has not been received but for which the tolls and charges for ~~transportation services~~ services have been paid prior to the date of termination, and without waiver of any other remedy to which the non-Defaulting Party may be entitled for breaches of the Contract. If Carrier terminates a Contract pursuant to this Section 12.2:

- (i) Term Shipper shall remain liable for and shall, to the extent permitted by applicable law and subject to Carrier’s obligation to mitigate, pay to Carrier within five (5) Banking Days of such termination, pursuant to Carrier’s invoice, the net present value of the aggregate of: (a) the Monthly Revenue Commitment payable under the Contract or the Tariff for the unexpired term(s) of such Contract, (b) all applicable taxes, (c) all amounts owing under the Contract in respect of Petroleum Delivered but for which tolls are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to these Rules and Regulations; and
- (ii) Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (a) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (b) all tolls and other charges due and payable to Carrier under the Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the Defaulting Party and any other Person lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Carrier from time to time, without any obligation to pay interest thereon.

12.3 If a Shipper is the Defaulting Party, Carrier may, in addition to any other remedy it may have under a Contract, the Tariff (including, without limitation, under Section 20.1), at law or in equity, upon three (3) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Shipper remedies the default or otherwise indemnifies by payment to Carrier or otherwise secures Carrier for any and all consequences of such default, provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further tolls, charges or other amounts payable to Carrier under a Contract or Tariff. If, at any time during such suspension, Shipper remedies the default or otherwise indemnifies or secures Carrier for any and all consequences of such default as contemplated in this Section 12.3, Carrier shall, within two (2) Banking Days of Shipper delivering written notice



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to Carrier confirming that the default has been remedied, or Carrier receiving such indemnity or other form of security satisfactory to Carrier, recommence receipt and Delivery of Shipper's Petroleum.

- 12.4 Carrier may, in its sole discretion and without limiting any other remedy that may be available to it under the Tariff, at law or in equity, reject a Nomination from and deny service to any Non-Term Shipper if such Non-Term Shipper has failed to pay within five (5) Banking Days of the Payment Due Date, any invoice issued by Carrier to such Non-Term Shipper pursuant to the Tariff.
- 12.5 No waiver by Carrier or Shipper of any one or more defaults by the other Party in the performance of any provisions of the Tariff shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

**ARTICLE 13  
INTERRUPTION AND CURTAILMENT**

- 13.1 Carrier may interrupt, curtail or reduce ~~transportation services~~services to Shippers 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 Pipeline System, Carrier's other facilities or downstream facilities in circumstances which do not constitute Force Majeure. If such interruption is due to a planned outage, Carrier shall give Shippers prior notice of such interruption and curtailment as soon as reasonably possible. If such interruption is unforeseen, Carrier shall give Shippers notice of such interruption and curtailment as soon as reasonably possible. Carrier shall use reasonable commercial efforts to minimize the extent and duration of any interruption and the impact of such interruption on the operation of the Pipeline System.
- 13.2 During periods of interruption pursuant to Section 13.1, Carrier shall curtail ~~transportation services~~services and allocate Available Capacity in accordance with Article 7.

**ARTICLE 14  
LIABILITY OF CARRIER**

- 14.1 Notwithstanding anything in the Tariff to the contrary, Carrier shall not be liable to Shipper for any losses, damages, claims, costs, expenses or delay incurred or suffered by Shipper unless caused by Carrier's breach, negligence or willful misconduct and in any event Carrier shall have no liability whatsoever to Shipper for Special Damages.
- 14.2 If damage to or loss of Petroleum occurs while Carrier is in possession of such Petroleum, then Carrier may apportion the cost of such damage or loss on a pro rata basis among all Shippers provided such damage or loss is not caused by the breach, negligence or wilful misconduct of Carrier. Each Shipper's share of such cost shall be determined by Carrier based on the proportion of the volume of the Shipper's Petroleum in the possession of Carrier on the date of such loss to the total volume of all Shippers' Petroleum in the possession of Carrier on the date of such loss.
- 14.3 All Shippers shall be responsible for their proportionate share of physical losses of Petroleum resulting from normal Pipeline System operations, including line losses and shrinkage.

**ARTICLE 15  
FORCE MAJEURE**

- 15.1 If either Carrier or Shipper fails to perform, in whole or in part, its obligations under a Contract or the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.
- 15.2 The term “**Force Majeure**”, as used herein and for all purposes relating hereto, shall mean 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 or other legal 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.
- 15.3 The following shall not, under any circumstance, constitute an event of Force Majeure:
- (i) Shipper’s inability to purchase Petroleum;
  - (ii) lack of funds;
  - (iii) availability of more attractive markets for Petroleum;
  - (iv) absence of a market for Petroleum; or
  - (v) availability of alternative Petroleum transportation or terminalling systems.
- 15.4 A Person that fails to perform any obligation under a Contract or the Tariff 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.
- 15.5 Notwithstanding the above provisions, no event of Force Majeure shall:
- (i) relieve any Person from any obligation under a Contract or the Tariff unless such Person gives notice with reasonable promptness of such event to the other Person; or
  - (ii) relieve any Person from any obligation under a Contract or the Tariff 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.
- 15.6 Except as otherwise expressly provided in a Contract and notwithstanding anything in this Article 15 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under a Contract or the Tariff to make payments pursuant to Article 9 or to provide Financial Assurances pursuant to Article 20 to Carrier under the Tariff during the continuance of such Force Majeure event.

15.7 In respect of Term Shippers who have executed a Keystone Canada Pipeline System Expansion Contract, where the event of Force Majeure is declared by Carrier as a result of such event occurring on the Pipeline System, then the term then in effect for such Contract will be extended by the aggregate amount of time the Carrier has declared each such Force Majeure event, for the period required to transport, at the Contract Volume, a volume equivalent to the aggregate volumes forming part of the Monthly Volumes as were excused by such relevant events of Force Majeure.

#### ARTICLE 16 ADVERSE CLAIMS AGAINST PETROLEUM

16.1 Shipper shall not Tender 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 Carrier pursuant to the Tariff) (each an “**Adverse Encumbrance**”) unless Shipper provides written notification to Carrier of such Adverse Encumbrance not less than twenty (20) Days before such Tender is made to Carrier. Shipper shall provide written notice to Carrier if at any time while its Petroleum is in the possession of Carrier, such Petroleum becomes subject to an Adverse Encumbrance. Carrier shall not be obligated to accept receipt from Shipper of any Petroleum that is subject to an Adverse Encumbrance. Upon demand by Carrier, Shipper shall provide a bond or other form of indemnity satisfactory to Carrier that fully protects and indemnifies Carrier against any liability, loss, cost or expense that may arise as a result of such Adverse Encumbrance and secures the payment to Carrier of all tolls and other charges which would become payable under the Tariff if Carrier were to transport or provide other services in respect of such Petroleum.

#### ARTICLE 17 CLAIMS, SUITS AND TIME FOR FILING

17.1 As a condition precedent to the payment by Carrier of any claims for loss, damage or delay asserted by Shipper in connection with the transportation or provision of other services in respect of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within one hundred eighty (180) Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within one hundred eighty (180) Days after a reasonable time for Delivery has elapsed. Any suits arising out of such claims must be instituted against Carrier within two (2) Years from the date when notice in writing is given by Carrier to Shipper that Carrier has disallowed the claim or any part or parts thereof as specified in the notice. Claims advanced beyond such two (2) Year period shall be null and void as between Shipper and Carrier. In Tendering Petroleum ~~to be transported~~ under the Tariff, Shipper agrees to be bound by the provisions of this Section 17.1 and waive any rights which it might otherwise have at common law, in equity or otherwise, to make a claim after the expiration of said period of one hundred eighty (180) Days or to bring an action after the expiration of the said period of two (2) Years. Nothing contained in this Section 17.1 shall be construed as constituting a waiver or release of any rights or defences which Carrier may have at law, in equity or pursuant to the Tariff, in respect of any claim or demand asserted by Shipper.

17.2 Except as expressly provided in this Tariff, neither Party nor its respective Affiliates shall have any liability or responsibility to the other Party or the other Party’s Affiliates for any Special Damages incurred by such Person that arise out of or otherwise relate to this Tariff or the subject matter of this Tariff or any Contract, regardless of whether such claim arises under or results from

contract, tort or strict liability; provided that, subject to Sections 6.2 and 14.1, such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed in favour of Persons that are not a Party or an Affiliate of a Party.

### ARTICLE 18 REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS

- 18.1 Shipper represents and warrants that: (i) it has in place for all Tendered Petroleum all required approvals, permits and authorizations for the terminalling, removal, transportation and Delivery of Petroleum hereunder; (ii) that it owns, controls or otherwise has the right to Tender and deliver or have Tendered and delivered for its account, the Petroleum that is Tendered to Carrier for the purpose of transportation and other services pursuant to the Tariff, (iii) that the performance by Shipper of its obligations under the Tariff (and Contract, if a Term Shipper) 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 Tendered to Carrier will not be subject to any Adverse Encumbrance; (v) that, in respect of Term Shippers, the Contract is in full force and effect, has been duly executed and delivered on behalf of Term Shipper and constitutes the legal, valid and binding obligation of Term Shipper, enforceable against Term Shipper in accordance with its terms and (vi) that, in respect of Non-Term Shippers, the obligations of Shipper in this Tariff constitute legal, valid and binding obligations of such Non-Term Shipper upon acceptance by Carrier of a Monthly Nomination, enforceable against Non-Term Shipper in accordance with the terms hereof.

### ARTICLE 19 GOVERNING LAW

- 19.1 The Contract and Tariff shall be construed and applied in accordance with and be subject to the laws of the Province of Alberta, and the laws of Canada applicable therein, but shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein including, without limitation, the NEB. Other than matters falling within the jurisdiction of the NEB, no Person will institute any action, suit or other proceeding with respect to the Contract or Tariff 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 the Contract and Tariff 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. **ALL PERSONS SUBJECT TO THE CONTRACT OR THE TARIFF SPECIFICALLY AND KNOWINGLY WAIVE ANY TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.**

### ARTICLE 20 FINANCIAL INFORMATION AND ASSURANCES

- 20.1 Except as provided in a contract, Shipper shall provide to Carrier, at any time:
- (i) upon Carrier's request, information ("**Financial Information**") that will allow the Carrier to evaluate (or re-evaluate) and establish Shipper's capacity to perform any

financial obligations that could arise from the transportation of Shipper's Petroleum or provision of other services in respect of Shipper's Petroleum on the Pipeline System; and

- (ii) upon Carrier's reasonable request, financial security for the payment of the tolls and other charges to be paid by Shipper to Carrier in respect of transportation or other service ("**Financial Assurances**").

If Shipper fails to provide Financial Information or Financial Assurances to Carrier within four (4) Banking Days of Shipper's receipt of Carrier's written request for such Financial Information or Financial Assurances, Shipper shall thereupon be deemed to be in default and Carrier may, in addition to any other remedy it may have under a Contract, the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Financial Information or Financial Assurances are provided by Shipper to Carrier; provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further rates, tolls, charges or other amounts payable (including taxes) to Carrier under the Tariff. If, at any time during such suspension, Shipper provides the requested Financial Information or Financial Assurances to Carrier, Carrier shall, within two (2) Banking Days of receipt of such Financial Information or Financial Assurances, recommence receipt and Delivery of Shipper's Petroleum.

20.2 For the purposes of Section 20.1(ii), Carrier may make a reasonable request for Financial Assurances on the following grounds:

- (i) Carrier has reasonable grounds for insecurity regarding the performance of any obligation under the Contract or the Tariff;
- (ii) the rating given to Shipper'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
- (iii) any Financial Assurances previously provided by Shipper no longer provide adequate support for the performance of Shipper's obligations that could arise under the Tariff.

20.3 The Financial Assurances that Carrier may request from Shipper pursuant to the Tariff shall be limited to the following:

- (i) for Term Shippers, an irrevocable standby letter of credit or other form of financial assurance (which assurance could include without limitation, a financial guarantee), in an amount no greater than twelve (12) Months of tolls and other charges based on the Monthly Volume, plus all applicable taxes; and:
- (ii) for Non-Term Shippers, at the sole discretion of Carrier, either prepayment of the tolls and other charges and taxes applicable to Shipper's Allocated Volume or an irrevocable standby letter of credit or such other financial assurance in an amount no greater than sixty (60) Days of tolls and other charges based on Shipper's Allocated Volume, plus all applicable taxes, which Financial Assurances shall remain in effect for not less than ninety (90) Days beyond the termination of the service or of the period for which volumes are Tendered, as the case may be.

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- 20.4 The following aspects of any Financial Assurances must be acceptable to Carrier, acting reasonably:
- (i) the terms of any letter of credit;
  - (ii) the adequacy (including terms) of any proposed financial assurance; and
  - (iii) the creditworthiness of the issuer of any letter of credit or other financial assurance.

**ARTICLE 21****~~TERMS AND CONDITIONS OF ACCESS TO CONTRACTED TRANSPORTATION CAPACITY~~****TERMINALLING SERVICES**

- 21.1 The following terms when used in this Article 21, shall have the following meanings:
- (i) **“Batch Accumulation Service”** means the accumulation of Petroleum utilizing the Keystone Terminal Facilities to meet batch volume requirements for transportation service on the Pipeline System, as determined by Carrier.
  - (ii) **“Cold Lake Receipt Point”** means the inlet flange of a receipt meter at the location of a meter station interconnection between the Keystone Hardisty Terminal and pipeline which moves petroleum from the Cold Lake area of Alberta to Hardisty, Alberta, which inlet flange is upstream of the Keystone Hardisty Terminal.
  - (iii) **“Commodity”** and any derivatives thereof, means, in relation to Petroleum, certain characteristics, whether physical, chemical, or otherwise which distinguishes one form of Petroleum from other Petroleum. The distinguishing characteristics of Commodities of Petroleum shall be as determined by Carrier in its sole discretion.
  - (iv) **“Enbridge Receipt Point”** means the inlet flange of a receipt meter connecting to Enbridge manifold 150 located in SW/4 of Section 32-42-9W4M, which inlet flange is upstream of the Keystone Hardisty Terminal.
  - (v) **“Inventory”** means Shipper’s Petroleum in the Keystone Terminal Facilities.
  - (vi) **“KHT Receipt Points”** means, collectively, (i) the Cold Lake Receipt Point, and (ii) the Enbridge Receipt Point, and “KHT Receipt Point” means either one of them, as applicable.
  - (vii) **“Terminalling Services”** means, collectively, (i) Batch Accumulation Service and (ii) all operations related thereto.
- 21.2 **Batch Accumulation Service.** Any Petroleum Tendered by Shipper at a KHT Receipt Point shall undergo Batch Accumulation Service provided by Carrier.
- 21.3 **Minimum Batch Sizes.** In order to provide Batch Accumulation Service for the Pipeline System, Carrier agrees to accept Tenders into the Keystone Terminal Facilities of batch sizes which are

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less than the batch sizes set forth in Section 7.3. Carrier reserves the right to determine minimum batch sizes for acceptance into the Keystone Terminal Facilities, which minimum batch sizes are specified from time to time by Carrier.

21.4 **Tank Utilization.** Carrier may allocate Petroleum Tendered by Shipper into the Keystone Terminal Facilities among tanks of varying sizes in such manner as Carrier reasonably determines.

21.5 **Tank Service Designation**

(i) In providing Batch Accumulation Service, Carrier may, having regard to the operating conditions of the Keystone Terminal Facilities, as determined by Carrier, receive Petroleum in the Keystone Terminal Facilities in accordance with the tank service designations for approved Commodities specified by Carrier from time to time as posted on Carrier's website.

(ii) The acceptance of any Petroleum in the Keystone Terminal Facilities shall be on the condition that such Petroleum shall be subject to such changes in quality, quantity and value in accordance with the tank service designations for approved Commodities specified by Carrier from time to time as posted on Carrier's website.

(iii) Carrier shall be under no obligation to make delivery of the identical Petroleum received from Shipper, but shall, having regard to the operating conditions of the Keystone Terminal Facilities as determined by Carrier, carry out delivery in accordance with the tank service designations for approved Commodities specified by Carrier from time to time as posted on Carrier's website.

21.6 **No Storage or Other Services.** Shipper acknowledges that the Keystone Terminal Facilities do not have facilities for rendering of storage services, and that Shipper is responsible for securing transportation on the Pipeline System so that Carrier may carry out delivery of the Inventory from the Keystone Terminal Facilities in accordance with the Nomination provided to Carrier and in accordance with Section 21.5(iii). Carrier reserves the right to reject Nominations and Tenders into the Keystone Terminal Facilities if it is not satisfied that the Shipper is able to take Delivery of the Petroleum at the relevant Delivery Point in accordance with Shipper's Nomination. In the event that Petroleum is accepted into the Keystone Terminal Facilities and the Shipper is subsequently unable to demonstrate to the satisfaction of Carrier that it can take Delivery of such Petroleum at the relevant Delivery Point, Carrier shall be entitled to exercise such remedies as are available to it at law, in equity or pursuant to these Rules and Regulations to remove such Petroleum from the Keystone Terminal Facilities in the same manner as if the outlet flange of the Keystone Terminal Facilities constituted a Delivery Point for the Pipeline System.

**ARTICLE 22**  
**TERMS AND CONDITIONS OF ACCESS**  
**TO CONTRACTED CAPACITY**

22.1 The following terms when used in this Article 22, shall have the following meanings:

(i) **“Acceptance Deadline”** means the date by which Carrier shall deliver fully executed Governing Documents to Proposed Shipper following close of an Open Season.

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- (ii) **“Available Uncommitted Capacity”** means capacity available on the Pipeline System for the relevant Petroleum transportation service, which capacity specifically excludes Reserved Spot Capacity.
- (iii) **“CA Deadline”** means the time and date by which a Person must deliver an executed Confidentiality Agreement to Carrier.
- (iv) **“Confidentiality Agreement”** means the Carrier’s form of confidentiality agreement which must be executed by a Person in order to receive confidential documents relating to the Open Season.
- (v) **“Financial Assurances Deadline”** means the date by which applicable Proposed Shipper shall deliver Financial Assurances to Carrier.
- (vi) **“Governing Documents”** means the Carrier’s form of Contract and any other type of agreement or document to be executed by a Person interested in obtaining Open Season Capacity.
- (vii) **“Notice of Open Season”** has the meaning set out in Section ~~21~~22.2.
- (viii) **“Open Season”** means a bid tender process which the Carrier intends to commence whereby bids for Open Season Capacity may be submitted to the Carrier.
- (ix) **“Open Season Capacity”** means the volume of Available Uncommitted Capacity available for bid during an Open Season.
- (x) **“Open Season Documents”** has the meaning set out in Section ~~21~~22.3 of these procedures.
- (xi) **“Proposed Shippers”** means Persons who execute and deliver to Carrier prior to the CA Deadline a Confidentiality Agreement.
- (xii) **“Reserved Spot Capacity”** means the volume of Available Capacity reserved for Non-Term Shippers on the Pipeline System in accordance with any directions of the NEB which may be in effect as of the date the Carrier posts on Carrier’s website the Notice of Open Season.

~~21.222.2~~ Carrier may, in its sole discretion, hold an Open Season to provide Persons with non-discriminatory access to Open Season Capacity. If Carrier wishes to hold an Open Season, Carrier shall post a notice (**“Notice of Open Season”**) on the Carrier’s website. The Notice of Open Season shall include the following information:

- (i) the Open Season commencement and closing dates, the Financial Assurances Deadline and the Acceptance Deadline;
- (ii) the volume of Open Season Capacity; and
- (iii) the availability on the Carrier’s website to the Open Season Documents, the Confidentiality Agreement and the CA Deadline.



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21.322.3 Persons who execute and deliver to Carrier a Confidentiality Agreement prior to the CA Deadline shall be provided access to documentation (“**Open Season Documents**”) by Carrier in respect of the Open Season Capacity during the Open Season. Open Season Documents include but are not limited to:

- (i) information describing the proposed commercial terms relating to the particular Open Season; and
- (ii) forms of Governing Documents.

21.422.4 Proposed Shippers shall be required to comply with the following bid submission criteria:

- (i) complete the Governing Documents in accordance with instructions contained in the Open Season Documents;
- (ii) execute two copies of the Governing Documents and deliver same to the Carrier in accordance with instructions contained in the Open Season Documents prior to the Open Season closing date; and
- (iii) prior to the Financial Assurances Deadline and subject to Section 21.22.4(iv), be considered creditworthy by Carrier or provide financial assurances satisfactory to Carrier, in an amount indicated in Section 20.3; or
- (iv) prior to the Financial Assurances Deadline, be considered creditworthy by Carrier or provide financial assurances satisfactory to Carrier in an amount up to the full Contract term of tolls and other charges plus all applicable taxes based on the Proposed Shipper’s Monthly Volume associated with the Open Season Capacity in the event capital expenditures are to be incurred by Carrier to expand the Pipeline System and Open Season Capacity results therefrom.

21.522.5 If aggregate volumes committed to by Proposed Shippers in the Governing Documents exceed the Open Season Capacity:

- (i) Open Season Capacity shall be allocated on a pro-rata basis, rounded in 1,000 barrel per day increments, based on the capacity requested in each bid or as otherwise specified in the Open Season Documents, among those Proposed Shippers that satisfy Carrier’s creditworthiness requirements and deliver executed Governing Documents on or prior to the Open Season closing date; and
- (ii) by submitting executed Governing Documents in accordance with the Open Season, a Proposed Shipper authorizes Carrier to amend the Proposed Shipper’s contract volume initially specified by such Proposed Shipper in its submitted Governing Documents to reflect the reduced allocation of capacity and such amendment shall be binding on the Proposed Shipper.

21.622.6 Bids received by Carrier in accordance with Carrier’s Open Season shall be irrevocable until the Acceptance Deadline.

21.722.7 Subject to the receipt by Carrier of the Governing Documents in accordance with Section 21.22.4 and Proposed Shipper meeting the applicable creditworthiness requirements set forth

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therein, if following the Open Season closing date, and in the sole discretion of Carrier, a decision is made to proceed in awarding Open Season Capacity pursuant to the Open Season, on or before the Acceptance Deadline and subject to Section ~~21~~22.5, Carrier will execute and deliver a fully executed Governing Document to those Proposed Shippers who are to be awarded all or a portion of the Open Season Capacity.

~~21.8~~22.8 Carrier reserves the right to cancel, at any time, any Open Season in its sole discretion. If Carrier cancels an Open Season described in a Notice of Open Season, then Carrier will notify Proposed Shippers by way of an additional cancellation notice posted to Carrier's website and neither a Proposed Shipper nor Carrier will have any further obligations to each other in regards to the Open Season or any of the Open Season Documents.

**ARTICLE ~~22~~23**  
**IN-LINE TRANSFERS**

~~22~~23.1 No in-line transfers of any Petroleum Tendered by Shipper shall be permitted on the Pipeline System.