

NOVEMBER 29, 2019

**PRO-FORMA TRANSPORTATION SERVICES AGREEMENT
CANADIAN MAINLINE**

BETWEEN

ENBRIDGE PIPELINES INC.

- AND -

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TRANSPORTATION SERVICES AGREEMENT
(~~REQUIREMENTS~~TAKE OR PAY CONTRACT – ~~PRODUCER~~CRUDE PETROLEUM)

CANADIAN MAINLINE

This **TRANSPORTATION SERVICES AGREEMENT** is made as of _____ (the “**Effective Date**”)

BETWEEN

ENBRIDGE PIPELINES INC., a Federal corporation, having an office in
the City of Calgary, in the Province of Alberta (“**Carrier**”)

- and -

_____, an _____, having an office in the
City of _____, in the _____ (“**Shipper**”)

Carrier and Shipper may be collectively referred to in this Agreement as the “**Parties**” or individually referred to as a “**Party**”.

WHEREAS Carrier owns and operates the Canadian Mainline.

AND WHEREAS Enbridge Energy Limited Partnership owns and operates the Lakehead System.

AND WHEREAS together the Canadian Mainline and the Lakehead System comprise the “**Enbridge Mainline**”.

AND WHEREAS Shipper has requested that Carrier provide the Services, as hereinafter defined, and Carrier has agreed to provide such Services on the Canadian Mainline and arrange for the provision of Services on the Lakehead System, where applicable, subject to and upon the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth in this Agreement, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions

Except as specifically provided in this Agreement, the capitalized terms and phrases used but not defined in this Agreement and the attached Schedules shall have the meaning ascribed to such terms and phrases in the Enbridge Tariff. In addition, whenever used in this Agreement and the attached Schedules, the following words and terms have the meanings set out below:

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“Abandonment Costs” means costs or charges relating to the abandonment or decommissioning of all or a portion of the Enbridge Mainline or reserves required to be maintained in accordance with Applicable Laws to cover the costs or charges associated with the abandonment and decommissioning at the end of the life of all or any applicable portion of the Enbridge Mainline, including, without limitation, resulting from or related to a decision, order, policy or direction by a Governmental Authority requiring Carrier to create, fund, maintain credit assurance or include in its tolls (including the Tolls) any funding for abandonment or decommissioning trust or other similar collection mechanisms, and, for certainty, includes charges relating to LMCI and the Line 3 Replacement Minnesota Decommissioning Surcharge;

“Accepted Nomination” means Shipper’s accepted nomination reflected in the transportation schedule published by Carrier prior to the commencement of a shipping Month;

“Actual Committed Volume Deliveries” means, for a Month in respect of each Requested Service Haul, the volume of Shipper’s Product which is equal to the sum of such Shipper’s Committed Volumes actually delivered to Shipper from the Enbridge Mainline in such Month in respect of such Requested Service Haul and allocated to this Agreement pursuant to Section 4.7 and, for clarity, includes (a) any portion of Shipper’s Monthly Volume Commitment during such Month that has been allocated as a Committed Volume to a specific Requested Service Haul pursuant to Schedule “A” but is nominated and delivered under a different Service Haul and is permitted in accordance with Section 4.3; (b) all Shipper’s Product tendered by another shipper but purchased by Shipper and approved by Carrier prior to delivery to Shipper at a Regular Delivery Point in Shipper’s applicable Requested Service Haul during such Month; and (c) all Shipper’s Product delivered to an Affiliated Shipper of Record in accordance with Section 8.8(b), in each case as allocated to this Agreement pursuant to Section 4.7;

“Actual Uncommitted Volume Deliveries” means, in respect of each Service Haul or for volumes tendered at a Receipt Point (Other), the volume of Shipper’s Product which is equal to the sum of such Shipper’s Uncommitted Volumes actually delivered to Shipper in such Month from the Enbridge Mainline in respect of such Service Haul or that were tendered at a Receipt Point (Other);

“Affected Delivery Points” has the meaning given to it in Section 14.4(a);

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which the determination of affiliation is being made. For purposes of this definition, the term **“control”** (including the correlative meanings of the terms **“controlled by”** and **“under common control with”**), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person by virtue of: (a) the ownership or direction of voting securities of the other Person, (b) a written agreement or trust instrument, (c) being the general partner or controlling the general partner of the other Person, or (d) being the trustee of the other Person;

“Affiliated Shipper of Record” has the meaning given to it in Section 8.8(b);

“Agreement” means this Transportation Services Agreement executed by Carrier and Shipper together with the recitals and schedules hereto, and includes all written instruments hereafter supplementing, amending or restating this Transportation Services Agreement;

“Allocated Nomination” means, for a Month, a Shipper’s original nomination, as it may be reduced by the Carrier to reflect any applicable apportionment on the Canadian Mainline;

“Annual Inflation Adjustment” has the meaning given to it in Section 7.3;

“Anticipated Commencement Date Notice” has the meaning given to it in Section 6.2(a);

“Applicable Laws” means, in relation to any Person, property, operation or circumstance, all laws and statutes, including regulations, rules, by-laws, ordinances and other statutory instruments enacted thereunder; all judgments, decrees, rulings and orders of courts, tribunals, commissions and other similar bodies of competent jurisdiction; all orders, rules, directives, policies and guidelines having force of law issued by any Governmental Authority; and all terms and conditions of any applicable permits; that are in effect as of the relevant time and are applicable to such Person, property operation or circumstance;

“Assignee” means a Third Party assignee of this Agreement;

“Available Capacity” means, for a Month, the capacity of the Canadian Mainline available to transport Crude Petroleum in such Month as determined by the Carrier in its sole discretion;

“Available CV Option Volume” has the meaning given to it in Section 5.3(c);

“Barrel” means 0.1589872891 cubic metres at Standard Conditions;

“Business Day” means any day that is not a Saturday, Sunday or a statutory holiday in Calgary, Alberta;

“Canadian Agreements” means those agreements set forth in Schedule “C”;

“Canadian Energy Regulator Act (Canada)” means the *Canadian Energy Regulator Act* (Canada) S.C. 2019, c.28, s. 10, as amended, and any applicable successor legislation;

“Canadian Mainline” means the pipeline system owned and operated by Carrier regulated under the *Canadian Energy Regulator Act* (Canada) (and previous to such legislation coming into force, the *National Energy Board Act* (Canada)) and generally referred to as the “Canadian Mainline”, and which transports Petroleum from applicable Regular Receiving Points to applicable Regular Delivery Points as further described in the Enbridge Tariff;

“Carrier” has the meaning given to it in the recitals to this Agreement;

“Carrier Default” has the meaning given to it in Section 12.1;

“Carry Forward Reduction Amount” has the meaning given to it in Section 7.3(b);

“Carrier Termination Option” has the meaning given to it in Section 6.2(~~fe~~);

“CER” means the Canada Energy Regulator and includes its successors;

“Commencement Date” means the commencement date for the provision of Services and the payment of Committed Tolls which date shall be the later of: (a) July 1, 2021; (b) the first day of

the Month following the first full Month in which all of the conditions precedent set forth in Section 3.1 were satisfied; or (c) the first day of the Month following the first full Month that the Line 3 Replacement has been brought into service, as further determined in accordance with Section 6.2(d);

“**Commencement Date Notice**” has the meaning given to it in Section 6.2(e);

“**Commercial Arrangements**” means the supply, storage, transportation, terminalling and other arrangements required for Shipper to deliver or cause to be delivered a volume of Shipper’s Product to the Canadian Mainline at the Regular Receiving Point applicable to a nomination by Shipper and the transportation, terminalling, storage and other arrangements required for Shipper to receive or cause to be received at the Regular Delivery Point applicable to a delivery of a volume to Shipper;

“**Committed Shipper**” means, as the case may be, a Committed Shipper (Receiving Refiner), a Committed Shipper (Delivering Refiner), a Committed Shipper (Delivering NGL Shipper), a Committed Shipper (Producer), a Committed Shipper (Receiving NGL Shipper) and a Committed Shipper (Take or Pay) and “**Committed Shippers**” means all such Persons, and, where the context so requires, includes Shipper;

“**Committed Shipper (Delivering NGL Shipper)**” means a Committed Shipper that has entered into a Transportation Services Agreement (RC – Delivering NGL Shipper) pursuant to which such Committed Shipper has designated to such agreement in accordance with the terms thereof one or more Natural Gas Liquids Facilities (Delivering) for which it or its Affiliate: (a) has an ownership interest in; or (b) has a long term purchase agreement with one or more of the owner(s) of each such designated Natural Gas Liquids Facility (Delivering) to purchase owner(s)’ share of Natural Gas Liquids produced therefrom with the intent to deliver such volumes to the Canadian Mainline or to act as agent on behalf of the owner(s) of such Natural Gas Liquids Facilities (Delivering) to offtake and sell owner(s)’ share of production of Natural Gas Liquids therefrom on behalf of such owner(s), but, for certainty, does not include a Person who purchases Natural Gas Liquids from such Natural Gas Liquids Facilities (Delivering) on a short term basis through spot trading;

“**Committed Shipper (Delivering Refiner)**” means a Committed Shipper that has entered into a Transportation Services Agreement (RC – Delivering Refiner) pursuant to which such Committed Shipper has designated to such agreement in accordance with the terms thereof one or more Delivering Refineries for which it or its Affiliate: (a) has an ownership interest in; or (b) has a long term purchase agreement with one or more of the owner(s) of each such designated Delivering Refinery to purchase owner(s)’ share of Refined Petroleum Products produced therefrom with the intent to deliver such volumes to the Canadian Mainline or to act as agent on behalf of the owner(s) of such Delivering Refineries to offtake and sell owner(s)’ share of production of Refined Petroleum Products therefrom on behalf of such owner(s), but, for certainty, does not include a Person who purchases Refined Petroleum Products from such Delivering Refineries on a short term basis through spot trading;

“**Committed Shipper (Producer)**” means a Committed Shipper that has entered into a Transportation Services Agreement (RC – Producer) pursuant to which such Committed Shipper has designated to such agreement in accordance with the terms thereof certain Crude Petroleum Producer Interests for which it or its Affiliate: (a) has an ownership interest in; or (b) has a long term purchase agreement with one or more of the owner(s) of the Crude Petroleum production

from such Crude Petroleum Producer Interests to purchase such owner(s)' share of Crude Petroleum produced therefrom with the intent to deliver such volumes to the Canadian Mainline or to act as such owner(s)' agent on behalf of such owner(s) in respect of their share of the production of Crude Petroleum therefrom, but, for certainty, does not include a Person who purchases Crude Petroleum produced from such Crude Petroleum Producer Interests on a short term basis through spot trading;

"Committed Shipper (Receiving NGL Shipper)" means a Committed Shipper that has entered into a Transportation Services Agreement (RC – Receiving NGL Shipper) pursuant to which such Committed Shipper has designated to such agreement in accordance with the terms thereof one or more Natural Gas Liquids Facilities (Receiving) for which it or its Affiliate: (a) has an ownership interest in; or (b) has a long term feedstock supply agreement with one or more of the owner(s) of each such designated Natural Gas Liquids Facility (Receiving) to supply such owner(s)' share of Natural Gas Liquids feedstock originating from Western Canada to such designated Natural Gas Liquids Facility (Receiving) through deliveries from the Enbridge Mainline or to act as such owner(s)' agent in respect of securing its ownership share of feedstock supply of Natural Gas Liquids, but, for certainty, does not include a Person who supplies such Natural Gas Liquids Facilities (Receiving) on a short term basis through spot trading;

"Committed Shipper (Receiving Refiner)" means a Committed Shipper that has entered into a Transportation Services Agreement (RC – Receiving Refiner) pursuant to which such Committed Shipper has designated to such agreement in accordance with the terms thereof one or more Receiving Refineries for which it or its Affiliate: (a) has an ownership interest in; or (b) has a long term feedstock supply agreement with one or more of the owner(s) of each such designated Receiving Refinery to supply such owner(s)' share of Crude Petroleum feedstock originating from Western Canada to such designated Receiving Refinery through deliveries from the Enbridge Mainline or to act as such owner(s)' agent in respect of securing its ownership share of feedstock supply of Crude Petroleum, but, for certainty, does not include a Person who supplies such Receiving Refinery on a short term basis through spot trading;

"Committed Shipper (Take or Pay)" means a Committed Shipper that has entered into a Transportation Services Agreement (Take or Pay) for Services pertaining to one of the following Petroleum types: (a) Crude Petroleum, (b) Natural Gas Liquids or (c) Refined Petroleum Products;

"Committed Toll" means the tolls payable in relation to Services provided to a Committed Shipper in respect of its Committed Volume and which are more particularly set out in Schedule "B", as may be adjusted in accordance with the terms hereof;

"Committed Volume" means, for a Committed Shipper (including, if applicable, Shipper) the aggregate volume of the type of Petroleum set forth in Paragraph [87](#) and Paragraph [98](#) (provided that the volumes set forth in paragraph [98](#) shall only be considered for this purpose as of the date which such volumes have come into effect), as applicable, of Schedule "A" of such Committed Shipper's Transportation Services Agreement, and where the context requires in reference to a Requested Service Haul, **"Committed Volumes"** refers to the aggregate volume of the type of Petroleum set forth in the applicable subsection of Paragraph [87](#) and Paragraph [98](#) (provided that the volumes set forth in paragraph [98](#) shall only be considered for this purpose as of the date which such volumes have come into effect), as applicable, of Schedule "A" of such Committed Shipper's Transportation Services Agreement applicable to such Requested Service Haul;

“Confidential Information” means, subject to the exceptions set forth in Section 10.1(b), all information of a Party or its Affiliates of a proprietary, intellectual or similar nature, including technical, financial, operational, marketing, transportation, processing, information and data, including, but not limited to surveys, engineering data, proprietary software programs, economic evaluations and Third Party studies, whether factual or interpretative which is disclosed as a result of or in connection with this Agreement including the provisions of this Agreement regardless of whether such information is disclosed directly or indirectly, or acquired and exchanged between the Parties and their Affiliates, in written, oral, visual or electronic form;

“Consequential Losses” means any and all consequential, incidental, punitive, exemplary or indirect damages, indirect costs or deferred profits or revenues, loss of business opportunity, loss of profits, loss of revenue, loss of production, losses based on loss of use, loss by reason of shutdown or non-operations or other business interruption losses, downtime costs, loss of goodwill, and includes economic loss and income tax liabilities incurred by such Party or any of its Affiliates;

~~**“Contract Designated Interests”** means Designated Interests in a Designated Area or, if applicable, Ramp Up Designated Interests in a Ramp Up Designated Area and the Crude Petroleum production from the applicable Designated Facilities related to such Designated Interests or, if applicable, the Ramp Up Designated Facilities related to such Ramp Up Designated Interests which became (or becomes) designated hereunder, if applicable, through: (a) a long term purchase agreement with one or more owner(s) of such Designated Interests to purchase such owner(s)’ share of Crude Petroleum produced therefrom with the intent to deliver such volumes to the Enbridge Mainline; or (b) an agency arrangement whereby Shipper is acting as the agent on behalf of the owner(s) of such Designated Interests and/or such owner(s)’ share of production of Crude Petroleum therefrom. For purpose of this definition and where the context arises, Contract Designated Interests shall not include Designated Interests (or such portion thereof) which are owned by an Affiliate of Shipper provided Shipper is able to cause such Affiliate to comply with the terms of this Agreement as it pertains to such Designated Interests and further provided Shipper will be liable to Carrier for any failure by such Affiliate to comply with the terms of this Agreement as if it were the owner of such Designated Interests;~~

~~**“Contract Designated Interests Material Event”** has the meaning given to it in Section 5.7;~~

~~**“Contracting Owner”** has the meaning given to it in Section 5.7;~~

~~**“Contracting Owner Acknowledgment”** has the meaning given to it in Section 5.7;~~

“Converted Portion” has the meaning given to it in Section 16.4(a);

“Conversion Request” has the meaning given to it in Section 16.4(a);

“Credits” has the meaning given to it in Section 7.8(d);

“Crude Petroleum” has the meaning given to it in the Enbridge Tariff;

“Crude Petroleum Producer Interests” means oil and gas property interests which grant the right to produce Crude Petroleum therefrom in certain designated areas and the Crude Petroleum production from the wells and production facilities drilled and constructed in connection

therewith; ~~“Custody Transfer Ticket” or “Ticket” means an official written record that documents the Monthly measured volume allocated to each owner of production of Crude Petroleum from Crude Petroleum Producer Interests delivered to a designated sales point (which could include a pipeline, truck terminal or wherever physical custody of the product has been transferred to another party) and the associated take in kind working interest ownership of each producer;~~

“**CV Committed Shippers**” has the meaning given to it in Section 5.3(a);

“**CV Increase Election Notice**” has the meaning given to it in Section 5.3(d);

“**CV Increase Notice**” has the meaning given to it in Section 5.3;

“**CV Increase Option**” has the meaning given to it in Section 5.3;

“**CV Increase Option Notice**” has the meaning given to it in Section 5.3(a);

“**CV Option Expiry Date**” has the meaning given to it in Section 5.3;

“**Default**” has the meaning given to it in Section 12.3;

“**Default Notice**” has the meaning given to it in Section 12.3;

“**Deficiency Charge**” means, for a Month, in respect of each Requested Service Haul, ninety percent (90%) of the volume weighted average of the Committed Tolls applicable to the Monthly Volume Commitment paid by Shipper in the immediately preceding twelve (12) Month period in respect of such Requested Service Haul; *provided* that the Deficiency Charge applicable to the first twelve (12) Months following the Commencement Date will, to the extent a Shortfall Volume occurs during such period, be:

- (a) for Service (Ex Edmonton Long Haul), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Edmonton to Chicago (Lockport, Mokena, Griffith, Flanagan);
- (b) for Service (Ex Hardisty Long Haul), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Hardisty to Chicago (Lockport, Mokena, Griffith, Flanagan);
- (c) for Service (Ex Edmonton Medium Haul), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Edmonton to Clearbrook;
- (d) for Service (Ex Hardisty Medium Haul), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Hardisty to Clearbrook;
- (e) for Service (Ex Edmonton Short Haul), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Edmonton to Regina;

- (f) for Service (Ex Hardisty Short Haul), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Hardisty to Regina; and
- (g) for Service (Edmonton to Hardisty), ninety percent (90%) of the Committed Toll for the Month in which the Shortfall Volume occurs for the transportation of heavy Crude Petroleum from Edmonton to Hardisty;

For the purposes of this definition, the Committed Tolls used to determine Shipper's applicable Deficiency Charge will be calculated to include all surcharges applicable to the Committed Tolls (other than surcharges pertaining to Abandonment Costs), any toll adjustment pursuant to Section 7.4 and all discounts to the Committed Tolls applicable to Shipper set forth in Section 7.9. If Shipper is satisfying its obligations to pay the applicable Committed Tolls hereunder as it pertains to a Requested Service Haul by paying the full amount of the tolls payable by it under an Other Service Arrangement, the Committed Toll for the purpose of this definition will be the Committed Toll that would otherwise be payable from the Regular Receiving Point to the Regular Delivery Point that interconnects with the pipeline system to which such Other Service Arrangement relates. If, in a Month, Shipper has failed to take delivery in a Requested Service Haul of any volume for a continuous period over the preceding twelve (12) Months such that the volume weighted average of the Committed Tolls applicable to the Monthly Volume Commitment paid by Shipper would be zero, then the Deficiency Charge applicable to any Shortfall Volumes in such Month and so long as Shipper is not delivering a volume in such Requested Service Haul, will be determined on the same basis as above that applies to the first twelve (12) Months following the Commencement Date.

~~"Deficiency Credit" has the meaning given to it in Section 7.8(a);~~

~~"Deficiency Credit Account" means an account established by Carrier in respect of each Service Haul Segment for which Carrier provides Services to a Committed Shipper pursuant to a Transportation Services Agreement to account for Deficiency Payments paid by such Committed Shipper in respect of Shortfall Volumes that occur in a Month within a Requested Service Haul to which such Service Haul Segment applies;~~

~~"Deficiency Credit Period" has the meaning given to it in Section 7.8(b);~~

"Deficiency Payment" means for a Month, in respect of each Requested Service Haul, the product of the Shortfall Volume pertaining to such Requested Service Haul (excluding any Shortfall Volumes in such Requested Service Haul that have been offset by an Excused Event Volume), if any, and the Deficiency Charge pertaining to such Requested Service Haul, *provided*, that, in the first two Months of the Service Term any Shortfall Volumes shall not be counted for the purpose of calculating the Deficiency Payment in such first two Months;

"Delivering Refinery" means a refinery in Western Canada from which Refined Petroleum Products are delivered to the Canadian Mainline at Receipt Points (Edmonton) or Receipt Points (Hardisty);

"Delivery Points (Border Downstream)" means a Regular Delivery Point that is located downstream of where the Canadian Mainline and the Lakehead System interconnect at the

Canada/United States border near Gretna, Manitoba, as further described in the Lakehead Tariff and, if applicable, the Enbridge Joint Tariff;

“Delivery Points (Border Upstream)” means a Regular Delivery Point that is located downstream of Hardisty and at or upstream of where the Canadian Mainline and the Lakehead System interconnect at the Canada/United States border near Gretna, Manitoba, as further described in the Enbridge Tariff;

“Delivery Points (Clearbrook/Superior)” means a Regular Delivery Point that is located at or near Clearbrook, Minnesota or at or near Superior, Wisconsin, as further described in the Lakehead Tariff and, if applicable, the Enbridge Joint Tariff;

“Delivery Points (Hardisty)” means a Regular Delivery Point that is located at Hardisty, Alberta, as further described in the Enbridge Tariff;

“Design Capacity” means, at a point in time, the highest sustainable hydraulic flow rate of the Canadian Mainline at such time, as determined by Carrier, without interruption or reduction of service for maintenance or other reason;

~~**“Designated Area”** means the geographic area outlined in red on the map attached as Exhibit A to Schedule “A” which delineates all Interests of Shipper (or its Affiliates) within such geographic area as being designated to the applicable Requested Service Hauls referenced to such Designated Area in Paragraph 6 of Schedule “A”. For certainty, a Designated Area can be designated to apply to one or more Requested Service Hauls, but a Requested Service Haul cannot have more than one Designated Area designated to such Requested Service Haul;~~

~~**“Designated Area MVC”** means, in respect of a Designated Area, the aggregate Monthly Volume Commitment to the applicable Requested Service Hauls that were specifically allocated to such Designated Area as set forth in Schedule “A”, as such volume may be amended or modified, from time to time, in accordance with the terms of this Agreement;~~

~~**“Designated Facilities”** means, in respect of Designated Interests within a Designated Area (including Contract Designated Interests), Shipper’s (or its Affiliates’) wells, production and processing facilities, that exist as of the Effective Date or are developed, drilled, constructed and completed in the future, that pertain specifically to the production and processing of Crude Petroleum that is produced from any of such Designated Interests within such Designated Area;~~

~~**“Designated Interests”** means, in respect of a Designated Area, all of the Interests of Shipper (or its Affiliates) or the Contract Designated Interests which are located within, upon or under such Designated Area that have been designated by Shipper to one or more Requested Service Hauls in relation to all or a portion of the Monthly Volume Commitment for each such Requested Service Hauls, including those Interests set forth and further described in Paragraph 6 of Schedule “A”, and includes (a) Interests in the Designated Area that Shipper holds an interest in as of the Effective Date; (b) any Interests acquired by Shipper within the Designated Area following the Effective Date; and (c) Interests in the Designated Area that became (or become) designated subject to the terms of this Agreement as Contract Designated Interests;~~

“Disclosing Party” has the meaning given to it in Section 10.1(a);

“**EELP**” means Enbridge Energy, Limited Partnership, and includes its successors and assigns;

“**Effective Date**” means the date first written above;

“**Eligible ~~Deficiency~~Make-Up Credit Volumes**” means, for a Month within a Requested Service Haul, volumes of Shipper’s Product that are:

- (a) Uncommitted Volumes (including Uncommitted Volumes that are charged the Committed Tolls pursuant to Section 8.2) delivered to Shipper in such Month to a Service Haul Segment related to such Requested Service Haul;
- (b) where, in a Month, a Shipper’s Monthly Volume Commitment for such Requested Service Haul was reduced as a result of an Excused Event (Carrier), volumes delivered to Shipper in such Month in such Requested Service Haul that are in excess of the reduced Monthly Volume Commitment for such Requested Service Haul but less than Shipper’s Monthly Volume Commitment for such Requested Service Haul had it not been reduced; or
- (c) both (a) and (b);

“**Enbridge Mainline**” has the meaning given to it in the third recital;

“**Enbridge Tariff**” means the tolls and tariffs, including the rules and regulations, practices and procedures governing the provision of Services on the Canadian Mainline as filed by Carrier with the CER and, in effect in accordance with Part 3 of the *Canadian Energy Regulator Act* (Canada), as may be amended, modified or restated from time to time by the Carrier (subject to Section 14.1) and as subsequently filed with the CER;

“**Enbridge Joint Tariff**” means the international joint tariff for tolls applicable to the international movement of Petroleum from Regular Receiving Points on the Canadian Mainline to Regular Delivery Points on the Lakehead System filed with both the CER and the FERC, and includes the rules and regulations, practices and procedures governing the provision of services on the Canadian Mainline and the rules and regulations, practices and procedures governing the provision of services on the Lakehead System, as each may be amended, modified or restated from time to time;

“**Excused Event**” means, as the case may be, an Excused Event (Carrier) or an Excused Event (Shipper);

“**Excused Event Volume**” means, as the case may be, an Excused Event (Carrier) Volume in accordance with Section 5.5 or an Excused Event (Shipper) Volume in accordance with Section 5.6;

“**Excused Event (Carrier)**” has the meaning given to it in Section 5.5(c);

“**Excused Event (Carrier) Volume**” means, in a Month, such portion of Shipper’s Monthly Volume Commitment for a Requested Service Haul that has been excused by an Excused Event (Carrier) in accordance with Section 5.5;

“**Excused Event (Shipper)**” has the meaning given to it in Section 5.6;

[“Excused Event \(Shipper\) Aggregate Claim Period”](#) has the meaning given to it in [Section 5.6\(a\)](#);

[“Excused Event \(Shipper\) Entitlement Period”](#) has the meaning given to it in [Section 5.6](#);

[“Excused Event \(Shipper\) Maximum Volume”](#) has the meaning given to it in [Section 5.6\(b\)](#);

“Excused Event (Shipper) Notice” has the meaning given to it in [Section 5.6\(a\)](#);

“Excused Event (Shipper) Volume” means, in a Month ~~for the Designated Interests in a Designated Area, where Shipper’s share of the aggregate production of Crude Petroleum in the Relevant Production Month from the Designated Facilities pertaining to such Designated Interests did not equal or exceed its Designated Area MVC, the volume difference between the Designated Area MVC and the volume of Crude Petroleum that was produced from such Designated Facilities in such Month (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) necessary to meet the minimum pipeline specifications of the Canadian Mainline as defined by the Enbridge Tariff);~~, [such portion of Shipper’s Monthly Volume Commitment for a Requested Service Haul that has been excused by an Excused Event \(Shipper\) in accordance with Section 5.6](#);

“Expansion” means any increase to the Design Capacity of the Enbridge Mainline after the Commencement Date or the addition of a receipt or delivery point on the Enbridge Mainline that requires Carrier and/or EELP to incur additional expenditures;

“E2H High Volume Committed Shipper” means a Committed Shipper that meets the qualifications as an “E2H High Volume Committed Shipper” as set forth in Schedule “H” attached hereto;

“E2H High Volume Committed Tolls” has the meaning given to it in [Section 7.9\(a\)\(ii\)](#);

“E2H High Volume Shipper Threshold” means 50,000 Barrels per day;

“E2H Segment” means Service (Edmonton to Hardisty);

“Failure to Tender” has the meaning given to it in [Section 7.10](#);

“Failure to Tender Charge (Committed)” means, for a Month, the charge payable by Shipper on the Failure to Tender Volumes within each Service Haul that are deemed allocated to the Committed Volume portion of Shipper’s Allocated Nominations in accordance with [Section 7.10\(b\)](#), which charge shall be the Deficiency Charge applicable to Shipper for such Service Haul in such Month;

“Failure to Tender Charge (Uncommitted)” means the charge payable by Shipper on the Failure to Tender Volumes that relate to the Uncommitted Nomination portion of Shipper’s Allocated Nominations, which charge shall be ninety percent (90%) of the Uncommitted Toll which would have applied if the applicable Failure to Tender Volumes had been tendered. For the purposes of this definition, the Uncommitted Tolls used to determine Shipper’s applicable Failure to Tender Charge (Uncommitted) will be calculated to include all surcharges applicable to the Committed

Tolls (other than surcharges pertaining to Abandonment Costs) and any toll adjustment pursuant to Section 7.4);

"Failure to Tender Payment" means, for a Month, for each Service Haul, the sum of the following:

- (a) the product of the Failure to Tender Volume that are deemed allocated to the Uncommitted Volume portion of Shipper's Allocated Nominations in accordance with Section 7.10(a) for such Month, and the Failure to Tender Charge (Uncommitted) applicable for such Month;
- (b) the product of the Failure to Tender Volume within such Service Haul that are deemed allocated to the Committed Volume portion of Shipper's Allocated Nominations in accordance with Section 7.10(b) for such Month, and the Failure to Tender Charge (Committed) applicable to such Service Haul for such Month;

"Failure to Tender Volume" has the meaning given to it in Section 7.10;

"Feedstock Impairment" has the meaning given to it in Section 14.4(a);

"FERC" means the Federal Energy Regulatory Commission and includes its successor;

"Financial Assurance" means any Guarantee, Letter of Credit, amendment or supplement thereto provided for in Schedule "D" or such other form of credit support that is acceptable to Carrier, in its sole discretion;

"Financial Assurances Provision Period" has the meaning given to it in Schedule "D";

"Financial Information" has the meaning given to it in Schedule "D";

"Financing Parties" means any and all lenders, indenture trustees or agents who are financing Carrier, its Affiliates, the Canadian Mainline or trustees for any such lenders, trustees or holders of bonds, debentures, notes or other evidences of indebtedness;

"Flex Service Term" means, where selected by Shipper in Paragraph 4 of Schedule "A", a Service Term in respect of an applicable Requested Service Haul which may be terminated by Shipper on thirty-six (36) Months Notice to Carrier in accordance with Section 6.2(gf);

"Force Majeure" has the meaning given to it in Section 13.1;

"GDPP" means the annual average Canada Gross Domestic Product at Market Prices Index, published by Statistics Canada (or its successor) on or about February 28th, for the prior Year, provided, however, (a) if Statistics Canada ceases to publish such index, the GDPP shall mean a comparable index selected by Carrier, acting reasonably, that reflects the general increase in inflation within Canada, and (b) if the applicable governmental agency or other entity that publishes or issues such index changes the base year for such index or the manner in which such index is calculated, then determination of adjustments pursuant to this Agreement that are based on comparative values of such index shall be made using values for such index that are

calculated using the same base year and the same methodology for each index value used in such comparison;

"GDPP Index" in any given Year is calculated as the ratio of the annual change in GDPP over the GDPP for the prior Year and is expressed as a percentage. For clarity, the GDPP Index applicable for Tolls effective July 1, 2022 would be $(\text{GDPP for 2021} - \text{GDPP for 2020}) / \text{GDPP for 2020}$;

"GDPP Multiplier" means, in any given Year, the sum of 65% of the GDPP Index (converted to a decimal), plus one (1);

"Governmental Authority" means, in relation to any Person, property, operation or circumstance, any government, governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal or judicial or arbitral body having jurisdiction over such Person, property, operation or circumstance, as the context so requires;

"Guarantee" means, if required, a financial and performance guarantee in form and substance acceptable to Carrier, in its sole discretion, in respect of all of Shipper's obligations hereunder;

"Guarantor" means, with respect to Shipper, the Person, if any, that has provided a Guarantee to the Carrier with respect to Shipper's obligations hereunder;

"High Volume Committed Shipper" means a Committed Shipper that meets the qualifications as a "High Volume Committed Shipper" as set forth in Schedule "H" attached hereto;

"High Volume Committed Toll" has the meaning given to it in Section 7.9(a)(i);

"High Volume Shipper Threshold" means 300,000 Barrels per day;

"Insolvency Event" means, in the case of a Person, that it: (a) files a voluntary application in or for liquidation, receivership or bankruptcy; (b) is finally and validly declared and adjudged to be liquidated, bankrupt or insolvent; (c) is subject to a resolution passed by its directors for the purposes of placing it in voluntary administration; (d) is subject to an order by any court of competent jurisdiction for its winding up; (e) is the subject of an appointment of a receiver or receiver and manager or like officer of all or substantially all of its assets; (f) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied or enforced on it or against all or substantially all of its assets; and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Business Days thereafter; (g) is the subject of an appointment of an administrator, official manager or like officer in circumstances where such Person, is or is likely to become insolvent; or (h) enters into a scheme or plan of arrangement with its creditors or any of them or declares a moratorium on the payment of its creditors, but does not include any voluntary proceeding for the purpose of amalgamation, restructuring or reorganization not taken at the request of or to meet the requirements of the creditors of such Person, or, in the case of a Party, a Guarantor of such Party or other providers of Financial Assurances in accordance with this Agreement or the Enbridge Tariff;

~~“Interest” means a right, title, or interest in lands which provides for the right to produce Crude Petroleum therefrom whether arising from fee ownership, working interest ownership, mineral ownership, leasehold ownership, or arising from any pooling, unitization or communitization of any of the foregoing rights;~~

“**Lakehead System**” means the pipeline system owned and operated by EELP and regulated by FERC and generally referred to as the “Lakehead System”, and which receives and transports Crude Petroleum and Natural Gas Liquids from applicable Lakehead Regular Receiving Points to Lakehead Regular Delivery Points as further described in the Lakehead Tariff;

“**Lakehead Tariff**” means the tolls and tariffs, including the rules and regulations, practices and procedures governing the provision of services on the Lakehead System on file with the FERC, as amended, modified or restated from time to time;

“**Lender Consent Agreement**” has the meaning given to it in Section 16.3;

“**Letter of Credit**” means an irrevocable standby letter of credit issued by one or more Canadian chartered banks or U.S. financial institutions having a senior, unsecured long-term debt rating of at least “A” by S&P or “A2” by Moody’s, *provided* that, such Letter of Credit shall not be issued by an Affiliate of Shipper. For greater certainty, where such institution is rated by both agencies, the lowest credit rating shall apply;

“**Letter of Credit Amount**” means in relation to a Letter of Credit delivered by Shipper as Financial Assurances for Services hereunder in respect of Shipper’s Committed Volumes, an amount which is equal to the next ensuing ~~twetwelve~~ (212) Months (or, in the case of a Letter of Credit to be delivered prior to the Commencement Date, the first ~~twetwelve~~ (212) Months following the Commencement Date) of all of the financial and other obligations that could reasonably become payable to Carrier under the terms of this Agreement, the Enbridge Tariff, the Lakehead Tariff and/or the Enbridge Joint Tariff, as applicable, during such ~~twetwelve~~ (212) Months, which include Committed Tolls and such other costs and charges (including equalization obligations and the value of the allowance oil and negative Shipper balance positions) payable by Shipper pursuant to this Agreement, the Enbridge Tariff, the Lakehead Tariff and/or the Enbridge Joint Tariff, as applicable, estimated to be payable by Shipper in respect of its Monthly Volume Commitment (without regard to any anticipated apportionment or Excused Events), as determined by Carrier based on a review of Shipper’s historical deliveries to Regular Delivery Points in Requested Service Hauls and taking into account any forward increase in Monthly Volume Commitment, or, if Shipper does not have such historical deliveries, then as determined by Carrier, in its sole discretion;

“**Line 3 Replacement**” means the Line 3 Replacement Program as discussed in the February 24, 2014, Line 3 Replacement issue resolution sheets – Final IRS 2013-02-A and Final IRS 2013-02-B;

“**Line 3 Replacement Minnesota Decommissioning Surcharge**” means any surcharge to recover the costs related to a decommissioning trust to be established for the Line 3 Replacement, as mandated by the Minnesota Public Utilities Commission;

“Line 3 Replacement Surcharge” means the Line 3 Replacement surcharge as determined by the Line 3 Replacement issue resolution sheets (Final IRS 2013-02-A and Final IRS 2013-02-B) which will be charged when the Line 3 Replacement has been brought into service;

“Line 5 Surcharge” means any Line 5 surcharge related to a project to replace those certain Line 5 pipelines crossing the Straits of Mackinac;

“LMCI” means the NEB Land Matters Consultation Initiative (RH-2-2008) and the decisions, directions and orders issued in that proceeding as well as any subsequent decisions, directions and orders of the NEB or CER pertaining to the NEB Land Matters Consultation Initiative (RH-2-2008);

“Long Haul Segment” means, collectively, Service (Ex Edmonton Long Haul) and Service (Ex Hardisty Long Haul);

~~**“Long Term Agreement”** has the meaning given to it in Section 5.7;~~

“Losses” means any and all damages, claims, losses, expenses, liabilities, injuries, fines, penalties, settlements, awards, judgments, or other costs whatsoever (including costs as between a solicitor and his client);

~~**“Make-Up Credit”** has the meaning given to it in Section 7.8(a);~~

~~**“Make-Up Credit Account”** means an account established by Carrier in respect of each Service Haul Segment for which Carrier provides Services to a Committed Shipper (Take or Pay) pursuant to a Transportation Services Agreement (Take or Pay) to account for Deficiency Payments paid by such Committed Shipper in respect of Shortfall Volumes that occur in a Month within a Requested Service Haul to which such Service Haul Segment applies;~~

~~**“Make-Up Credit Period”** has the meaning given to it in Section 7.8(b);~~

“Market Access Open Season” has the meaning given to it in Section 16.5;

“Market Access Service Offering” has the meaning given to it in Section 16.5;

“Medium Haul Segment” means, collectively, Service (Ex Edmonton Medium Haul) and Service (Ex Hardisty Medium Haul);

“Minimum Toll Differential” has the meaning given to it in Section 3.4(a);

“Month” means the period commencing at 0700 MST on the first day of the calendar month that the Services are provided by the Carrier and ending at 0700 MST of the first day of the following calendar month, and each successive month thereafter;

“Monthly Volume Commitment” means, for a Month, the product of: (a) the Committed Volume of Shipper and (b) the number of days in such Month, and where the context requires in reference to a Requested Service Haul, **“Monthly Volume Commitment”** for a Month refers to, the product of: (x) the Committed Volume of Shipper applicable to such Requested Service Haul and (y) the number of days in such Month;

“Moody’s” means Moody’s Investor Services, Inc., and its successors;

“National Energy Board Act (Canada)” means the *National Energy Board Act (Canada)* R.S. 1985 c.N-7, as amended, and any applicable successor legislation;

“Natural Gas Liquids” or “NGLs” has the meaning given to it in the Enbridge Tariff;

“Natural Gas Liquids Facility (Delivering)” means a facility for the production of Natural Gas Liquids that delivers Natural Gas Liquids that are transported on the Canadian Mainline;

“Natural Gas Liquids Facility (Receiving)” means a facility for the production of Natural Gas Liquids that receives Natural Gas Liquids that are transported on the Canadian Mainline;

“NEB” means the National Energy Board of Canada and includes its successors;

“New Uncommitted Toll Discount” has the meaning given to it in Section 3.4(c);

“Notice” has the meaning given to it in Section 17.7;

“Open Season” means the open season process and the procedures contemplated thereby held by Carrier following receipt of all required approvals from the CER and which was commenced on [●] and for which this Transportation Services Agreement was effected;

“Other Service Arrangement” has the meaning given to it in Section 7.5;

“Outside Date” means December 31, 2023;

“Party” or “Parties” has the meaning given to it in the recitals;

“Person” means any natural person, sole proprietorship, corporation, partnership (general or limited, including master limited), limited liability company, trust, joint venture, joint stock company, unincorporated association, unincorporated syndicate, unincorporated organization or other entity or association and, where the context requires, any of the foregoing in its capacity as trustee, executor, administrator or other legal representative;

“Petroleum” has the meaning given to it in the Enbridge Tariff;

“Precedent Agreement” means an agreement executed between a Committed Shipper and the Carrier which states, among other things, the terms and conditions upon which the Committed Shipper will execute a Transportation Services Agreement;

“Prime Rate” means the rate of interest per annum publicly announced by Royal Bank of Canada (or its successor) from time to time as its reference rate of interest then in effect for determining interest rates on Canadian dollar commercial loans made by such bank in Canada;

“Priority Access” means, for such portion of the Available Capacity that is Reserved Committed Capacity, the contractual right of each of the Committed Shippers pursuant to its Transportation Services Agreement (including this Agreement) to be allocated its respective nominations in a Month for transportation of Crude Petroleum on the Canadian Mainline up to its Monthly Volume

Commitment in priority to the nominations for transportation of any Crude Petroleum on the Canadian Mainline that are Uncommitted Volumes, subject to the terms and conditions of Transportation Services Agreements (including this Agreement), provided that, for certainty, the priority rights provided pursuant to this Agreement do not in any way grant any priority rights in relation to terminalling and tankage services on the Canadian Mainline or any services on the Lakehead System;

"Ramp Up" has the meaning given to it in Section 6.3(a);

"Ramp Up Committed Volume" has the meaning given to it in Section 6.3(b);

~~**"Ramp Up Designated Area"** means the geographic area outlined in red on the map attached as Exhibit A to Schedule "A" which delineates all Interests of Shipper (or its Affiliates) within such geographic area as being designated to the applicable Requested Service Hauls referenced to such Designated Area in Paragraph 6 of Schedule "A" in relation to the Ramp Up Committed Volume for each such Requested Service Hauls, provided that if a Designated Area has already been designated to a Service Haul, then when the Ramp Up Designated Area for such same Service Haul comes into effect, the Parties shall amend the geographic area to include both the original Designated Area and the Ramp Up Designated Area as collectively one area;~~

~~**"Ramp Up Designated Facilities"** means, in respect of Ramp Up Designated Interests within a Ramp Up Designated Area, Shipper's (or its Affiliates') wells, production and processing facilities, that exist as of the Effective Date or are developed, drilled, constructed and completed in the future, that pertain specifically to the production and processing of Crude Petroleum that is produced from any of such Ramp Up Designated Interests within such Ramp Up Designated Area;~~

~~**"Ramp Up Designated Interests"** means, in respect of a Ramp Up Designated Area, all of the Interests of Shipper (or its Affiliates) or the Contract Designated Interests which are located within, upon or under such Ramp Up Designated Area, including Contract Designated Interests, that have been designated by Shipper to one or more Requested Service Hauls in relation to the applicable Ramp Up Committed Volume applicable to each such Requested Services Hauls related to such Ramp Up Designated Area, including those Interests set forth and further described in Paragraph 6 of Schedule "A" related to such Ramp Up Designated Area, and includes (a) Interests in the Ramp Up Designated Area that Shipper holds an interest in as of the Effective Date; (b) any Interests acquired by Shipper in the Ramp Up Designated Area following the Effective Date; and (c) Interests in the Designated Area that became (or become) designated subject to the terms of this Agreement as Contract Designated Interests;~~

"Receiving Refinery" means a refinery that receives Crude Petroleum that has been transported on the Canadian Mainline;

"Receipt Points (Edmonton)" means a Regular Receiving Point that is located at Edmonton, Alberta or downstream of Edmonton, Alberta but upstream of Hardisty, Alberta, as further described in the Enbridge Tariff, and, if applicable, the Enbridge Joint Tariff;

"Receipt Points (Hardisty)" means a Regular Receiving Point that is located at Hardisty, Alberta or downstream of Hardisty, Alberta but upstream of where the Canadian Mainline and the

Lakehead System interconnect at the Canada/United States border near Gretna, Manitoba, as further described in the Enbridge Tariff, and, if applicable, the Enbridge Joint Tariff;

"Receipt Points (Other)" means any Regular Receiving Point on the Canadian Mainline that is downstream of the point at which the Canadian Mainline and the Lakehead System interconnect at the United States/Canada border between the State of Michigan and the Province of Ontario, as further described in the Enbridge Tariff;

"Recipient" has the meaning given to it in Section 10.1(a);

"Refined Petroleum Products" has the meaning given to it in the Enbridge Tariff;

"Regular Delivery Point" has the meaning given to it in the Enbridge Tariff, the Lakehead Tariff, and/or the Enbridge Joint Tariff, as applicable;

"Regular Receiving Point" has the meaning given to it in the Enbridge Tariff, the Lakehead Tariff, and/or the Enbridge Joint Tariff, as applicable;

"Regulatory Approvals" means, collectively, such authorizations, approvals, declarations, qualifications, notifications, consents, permits, franchises, certificates, licenses, implementing orders, or exemptions, and any necessary amendments or supplements thereto, of any Governmental Authority, that Carrier, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to provide the Services as of the Commencement Date to Shipper as contemplated in this Agreement and the Enbridge Tariff;
~~**"Relevant Production Month"** means the Month relevant to the Month in which deliveries of an Excused Event (Shipper) Volume would have been made (giving regard to relevant transit times to the Regular Delivery Points in the Requested Service Haul applicable to such Designated Area) to a maximum of three (3) Months following the Month in which such Designated Area accrued an Excused Event (Shipper) Volume;~~

"Renewal Period" means, for an applicable Requested Service Haul, an extension of the Service Term in respect thereof which is equal to fifty percent (50%) of the period of time set forth in Schedule "A" for the initial Service Term, *provided* that, if such calculation would result in a half Month, the Renewal Period shall be rounded up to the nearest whole Month;

"Renewal Period Election Notice" has the meaning given to it in Section 6.2(ed)(ii);

"Renewal Period Toll Notice" has the meaning given to it in Section 6.2(ed)(i);

"Representatives" means, in respect of a Party, such Party's Affiliates and such Party's and its Affiliates', as the case may be, employees, officers, directors, contractors, agents and professional advisors;

"Requested Service Haul" has the meaning given to it in Section 4.1;

~~**"Required Conversion Period"** has the meaning given in Section 16.4(b);~~

"Reserved Committed Capacity" means, in a Month, the Available Capacity less the Reserved Uncommitted Capacity;

“Reserved Uncommitted Capacity” means, in a Month, ten percent (10%) of Available Capacity;

“S&P” means S&P Global Ratings, a division of S&P Global Inc., and its successors;

“Sanctioned Person” means any Person with whom dealings are restricted or prohibited (including the provision of Services and other matters hereunder) under the Sanctions Laws of Canada, the United States, the United Kingdom, the European Union, or the United Nations, including any such restriction or prohibition by reason of (a) identification on any list of sanctioned Persons maintained by (i) Global Affairs Canada; (ii) the United States Department of Treasury, Office of Foreign Assets Control, the United States Department of Commerce, Bureau of Industry and Security, or the United States Department of State; (iii) HM Treasury of the United Kingdom; or (iv) the European Union; (b) being located, organized, or resident in, or directly or indirectly controlled by the government of any country targeted by Sanctions Laws, and (c) any direct or indirect relationship of ownership, control, or agency with, or any direct or indirect commercial dealings with, a Person described in (a) or (b);

“Sanctions Laws” means all Applicable Laws concerning economic sanctions, including embargoes, export restrictions, the ability to make or receive international payments, the freezing or blocking of assets of targeted Persons, the ability to engage in transactions with specified persons or countries, or the ability to take an ownership interest in assets of specified Persons or located in a specified country, including any Applicable Laws threatening to impose economic sanctions on any person for engaging in proscribed behavior. For the absence of doubt but without limiting the generality of the foregoing, “Sanctions Laws” includes: (a) Special Economic Measures Act and any regulations or orders adopted thereunder; (b) any change to any of the foregoing (including changes resulting from amendment, repeal, withdrawal, termination or expiration); and (c) any interpretation or application, by the courts, executive or legislative authorities, or administrative or regulatory bodies, of any of the foregoing;

“Services” means, subject to the terms of this Agreement, in respect of Shipper’s Product, the provision of receipt terminalling at applicable Regular Receiving Points, transportation on the Enbridge Mainline and delivery terminalling at applicable Regular Delivery Points, provided that, for certainty, the “Services” will not include receipt or delivery tankage;

“Service (Edmonton to Hardisty)” means the provision of Services from Receipt Points (Edmonton) to Delivery Points (Hardisty);

“Service (Ex Edmonton Short Haul)” means the provision of Services from Receipt Points (Edmonton) to Delivery Points (Border Upstream);

“Service (Ex Hardisty Short Haul)” means the provision of Services from Receipt Points (Hardisty) to Delivery Points (Border Upstream);

“Service (Ex Edmonton Medium Haul)” means the provision of Services from Receipt Points (Edmonton) to Delivery Points (Clearbrook/Superior);

“Service (Ex Hardisty Medium Haul)” means the provision of Services from Receipt Points (Hardisty) to Delivery Points (Clearbrook/Superior);

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“Service (Ex Edmonton Long Haul)” means the provision of Services from Receipt Points (Edmonton) to Delivery Points (Border Downstream);

“Service (Ex Hardisty Long Haul)” means the provision of Services from Receipt Points (Hardisty) to Delivery Points (Border Downstream);

“Service Haul” means, as the context requires, Service (Edmonton to Hardisty), Service (Ex Edmonton Short Haul), Service (Ex Hardisty Short Haul), Service (Ex Edmonton Medium Haul), Service (Ex Hardisty Medium Haul), Service (Ex Edmonton Long Haul) and Service (Ex Hardisty Long Haul), and **“Service Hauls”** refers to all of them;

“Service Haul Segment” means, as the context requires: (a) the E2H Segment; (b) the Short Haul Segment; (c) the Medium Haul Segment; or (d) the Long Haul Segment, and **“Service Haul Segments”** refers to all of them;

“Service Term” means, in respect of an applicable Requested Service Haul, the period of time set forth in Paragraph 87 or Paragraph 98 (provided that the volumes set forth in paragraph 98 shall only be considered for this purpose as of the date which such volumes have come into effect), as applicable, of Schedule “A” attached hereto which shall commence on the Commencement Date and continue thereafter for such period unless otherwise terminated as provided herein, plus any extension thereof pursuant to Section 6.2(ed);

“Service Termination Date” has the meaning given to it in Section 6.2(fe);

“Shipper” has the meaning given to it in the recitals to this Agreement;

“Shipper Default” has the meaning given to it in Section 12.2;

“Shipper Permits” means any and all authorizations, permits and approvals in accordance with Applicable Law that are required for the removal and export and/or import of a volume of Shipper’s Product equal to the nominated volume to or from Canada, the United States of America or any Provincial or State boundaries over which the Enbridge Mainline crosses, as applicable;

~~**“Shipper Planned Maintenance”** means, in the case of the Designated Facilities pertaining to the Designated Interests in a Designated Area, an ordinary course, scheduled maintenance, shutdown or turnaround required to maintain such Designated Facilities in good working order;~~

“Shipper Splits” means the monthly produced split documents resulting from the monthly process of reporting Shipper allocated volume delivered to a Regular Receiving Point from any feeder facilities;

~~**“Shipper Unplanned Outage”** means, in the case of the Designated Facilities pertaining to the Designated Interests in a Designated Area, an unplanned or unexpected temporary physical outage of such Designated Facilities which could not have been reasonably foreseen or prevented with the use of reasonable due diligence on behalf of the operator of such Designated Facility;~~

“Shipper’s Product” means the Petroleum type applicable to the Services to be received by Shipper hereunder as set forth in Paragraph 3 of Schedule “A”;

“Short Haul Segment” means, collectively, Service (Ex Edmonton Short Haul) and Service (Ex Hardisty Short Haul);

“Shortfall Volumes” means, for a Month, in respect of each Requested Service Haul, the volume of Shipper’s Product which is equal to the positive difference, if any, between the Monthly Volume Commitment committed by Shipper to such Requested Service Haul and the Actual Committed Volume Deliveries applicable to such Requested Service Haul in such Month;

~~**“Sold Interest”** has the meaning given to it in Section 16.1(c);~~

“Standard Conditions” means a temperature of fifteen degrees Celsius (15°C) and a vapor pressure of one (1) atmosphere (101.325 kPa);

“Taxes” means all taxes of any nature whatsoever, including fees, excise taxes, sales and use taxes, goods and services taxes or governmental charges and any additions or charges hereinafter imposed by any applicable Governmental Authority or therein relating to this Agreement and any penalties, interest or charges related thereto but will not include income taxes, large corporations tax or capital taxes;

“Term” means the period of time which shall commence on the Effective Date and continue thereafter until such time as this Agreement expires or is otherwise terminated as provided herein;

“Third Party” means any Person that is not a Party;

“Tolls” means, as the context requires, the applicable Committed Tolls and/or the applicable Uncommitted Tolls, if any, applicable to Services received by Shipper in a given Month;

“Transportation Services Agreement” means, in respect of a Committed Shipper (including Shipper), the agreement entered into pursuant to the Open Season between such Committed Shipper and Carrier governing the provision of Services on a Priority Access basis (such priority access being provided on terms similar to the terms hereunder) by Carrier to such Committed Shipper;

“Transportation Services Agreement (RC – Delivering NGL Shipper)” means a Transportation Services Agreement in the form offered by Carrier in the Open Season for Committed Shippers that designate one or more Natural Gas Liquids Facilities (Delivering) to such agreement for the provision of Services on a Priority Access basis by Carrier to such Committed Shipper (Delivering NGL Shipper) in accordance with the terms thereof;

“Transportation Services Agreement (RC – Delivering Refiner)” means a Transportation Services Agreement in the form offered by Carrier in the Open Season for Committed Shippers that designate one or more Delivering Refineries to such agreement for the provision of Services on a Priority Access basis by Carrier to such Committed Shipper (Delivering Refiner) in accordance with the terms thereof;

“Transportation Services Agreement (RC – Producer)” means a Transportation Services Agreement in the form offered by Carrier in the Open Season for Committed Shippers that designated Crude Petroleum Producer Interests and the Crude Petroleum production in

connection therewith to such agreement for the provision of Services on a Priority Access basis by Carrier to such Committed Shipper (Producer) in accordance with the terms thereof;

“Transportation Services Agreement (RC – Receiving NGL Shipper)” means a Transportation Services Agreement in the form offered by Carrier in the Open Season for Committed Shippers that designate one or more Natural Gas Liquids Facilities (Receiving) to such agreement for the provision of Services on a Priority Access basis by Carrier to such Committed Shipper (Receiving NGL Shipper) in accordance with the terms thereof;

“Transportation Services Agreement (RC – Receiving Refiner)” means a Transportation Services Agreement in the form offered by Carrier in the Open Season for Committed Shippers that designate one or more Receiving Refineries to such agreement for the provision of Services on a Priority Access basis by Carrier to such Committed Shipper (Receiving Refiner) in accordance with the terms thereof;

“Transportation Services Agreement (Take or Pay)” means a Transportation Services Agreement in the form offered by Carrier in the Open Season entered into between a Committed Shipper (Take or Pay) and Carrier for the provision of Services on a Priority Access basis by Carrier to such Committed Shipper (Take or Pay) in accordance with the terms thereof and pertaining to one of the following Petroleum types: (a) Crude Petroleum, (b) Natural Gas Liquids or (c) Refined Petroleum Products;

“TVCD” means the discount applicable to Committed Tolls which is more specifically set forth in Section 7.9(d);

“TVDD” has the meaning given to it in Section 7.9(e);

“TVDD Rolling Average” means the daily rolling average of aggregate physical deliveries of Petroleum originating at a Receipt Point (Edmonton) or a Receipt Point (Hardisty) to Delivery Points (Border Downstream) to be applied to the determination of whether the TVDD contemplated in Section 7.9(e) will apply, based on the arithmetic average of the three (3) Months preceding the Month in which the determination is being made of aggregate physical Monthly deliveries of Petroleum originating at a Receipt Point (Edmonton) or a Receipt Point (Hardisty) to Delivery Points (Border Downstream) converted to a daily average volume;

“TVDD Threshold” has the meaning given to it in Section 7.9(e);

“Uncommitted Capacity” means, in a Month, the greater of: (a) the Reserved Uncommitted Capacity; and (b) the positive difference, if any, between the Available Capacity for such Month; and the aggregate of the Monthly Volume Commitments for Crude Petroleum nominated by all Committed Shippers for that Month;

“Uncommitted Service” has the meaning given to it in Section 4.5;

“Uncommitted Toll” means a toll included in the Enbridge Tariff, Lakehead Tariff or Enbridge Joint Tariff, as applicable, for the transportation of Uncommitted Volumes, as may be adjusted in accordance with the terms herein and the Enbridge Tariff, Lakehead Tariff or Enbridge Joint Tariff, as applicable;

“Uncommitted Volume” means, for a Month:

- (a) in the case of a shipper that is not a Committed Shipper or has not otherwise contracted for committed service on the Canadian Mainline pursuant to any subsequent service offering, a volume of Petroleum that is transported on the Enbridge Mainline and delivered to such shipper in such Month;
- (b) in the case of a Committed Shipper, a volume of Petroleum that is transported and delivered to such Committed Shipper:
 - (i) within a Requested Service Haul and that is in excess of such Committed Shipper's Monthly Volume Commitment, if any, for such Month in respect of such Requested Service Haul;
 - (ii) subject to Section 4.3, within a Service Haul for which such Committed Shipper has no Monthly Volume Commitment; or
 - (iii) that had been tendered onto the Canadian Mainline at a Receipt Point (Other);

“Uncommitted Volume Offset Availability” means, for a Month, in respect of a Requested Service Haul, the aggregate of Uncommitted Volumes delivered in such Requested Service Haul in the preceding three (3) Months for which Shipper was charged an Uncommitted Toll (which was not offset by a draw on Deficiency/Make-Up Credits), provided that the Uncommitted Volume Offset Availability will be reduced to the extent Carrier allocated any portion of such Uncommitted Volume Offset Availability to any Shortfall Volumes (which were not offset by an Excused Event Volume) in any preceding Month, and further provided that, in the first two (2) Months of the Service Term there shall be no Uncommitted Volume Offset Availability that can be applied to Shortfall Volumes in such first two (2) Months of the Service Term;

“Unused Committed Volume Capacity Availability” means, for a Month, in respect of a Requested Service Haul, the positive difference, if any, between the aggregate Monthly Volume Commitment of such Requested Service Haul over the preceding three (3) Months (reduced by any reduction to Shipper's Monthly Volume Commitment in such Months as a result of any Excused Events (Shipper) in accordance with Section 5.6) and the aggregate Actual Committed Volume Deliveries of Shipper during such preceding three (3) Months, which Unused Committed Volume Capacity Availability will be reduced to the extent Carrier allocated any portion of such Unused Committed Volume Capacity Availability to any Uncommitted Volumes in any preceding Month, provided that, in the first two (2) Months of the Service Term there shall be no Unused Committed Volume Offset Availability that can be applied to Uncommitted Volumes in such first two (2) Months of the Service Term;

“WCSB Crude Petroleum” has the meaning given to it in Section 14.4(a);

“Year” means, as the context requires:

- (a) a calendar year, which for accounting purposes starts at 07:00 MST on January 1st and ends at 07:00 MST on January 1st of the following year;

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- (b) the period beginning on the Commencement Date and ending at 23:59 MST on the December 31 that next follows the Commencement Date; or
- (c) the period beginning on January 1 of the calendar year in which the Term ends and ending on the last day of the Term.

1.2 Interpretation

- (a) Unless otherwise expressly specified herein, (i) defined terms in the singular will also include the plural and vice versa, (ii) the words “hereof”, “herein”, “hereunder” and other similar words refer to this Agreement as a whole, (iii) Section, Article and Schedule references in this Agreement are to Sections or Articles of or Schedules to this Agreement, (iv) a grammatical variation of a defined term has a corresponding meaning and (v) words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders.
- (b) Unless the context otherwise requires, “including” means including without limitation the generality of any description preceding or succeeding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.
- (c) The use of “Article”, “Section” and “Schedule”, whether or not followed by a number or letter or combination thereof, refers to the specified article, section or schedule of or to this Agreement. The table of contents, headings and subheadings in this Agreement are used for convenience and ease of reference only, and shall not be used to construe or interpret the provisions of this Agreement.
- (d) Reference to any law means such law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any laws means that provision of such law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.
- (e) Unless otherwise expressly stated, wherever the phrase “within” or “at least” is used with reference to a specific number of days or Business Days herein, the day of receipt of the relevant notice or the day of the relevant event shall be excluded in determining the applicable time period. However, if the time for doing any act expires on a day which is not a Business Day then the time for doing that act shall be extended to the next normal Business Day.
- (f) The phrases “the aggregate of”, “the total of”, “the sum of”, or a similar phrase means “the aggregate (or total or sum), without duplication, of”.
- (g) All references to currency are to the lawful money of the United States of America, unless otherwise indicated.
- (h) References to time of day or date means the local time or date in Calgary, Alberta.

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- (i) If any word, phrase or expression is not defined in this Agreement, any Schedule or the Enbridge Tariff, such word, phrase or expression will, unless the context otherwise requires, have the meaning attributed to it in the usage or custom of the hydrocarbon pipeline transportation business in North America.
- (j) The following Schedules are attached to and incorporated into this Agreement. Unless otherwise expressly stated to the contrary in a Schedule, where there is a conflict between the terms contained in the body of this Agreement and any Schedule the language of the terms contained in the body of this Agreement will prevail:

Schedule "A"	Priority Access Volume and Terms
Schedule "B"	Committed Tolls
Schedule "C"	Canadian Agreements
Schedule "D"	Financial Assurances
Schedule "E"	Ramp Up Committed Volumes and Grace Period Examples
Schedule "F"	Illustrative Annual GDPP Toll Escalation
Schedule "G"	Service Exceptions
Schedule "H"	High Volume Committed Shipper Qualifications
Schedule "I"	Minimum Toll Differential
Schedule "J"	Sample Failure to Tender Charge Calculation
Schedule "K"	Sample Applications of Unused Committed Volume Capacity Availability and Uncommitted Volume Offset Availability
Schedule "L"	Most Favoured Nation Toll Adjustment Examples
Schedule "M"	Illustrative Enbridge Mainline Reference Capacity
Schedule "N"	Excused Event (Shipper) Examples
Schedule "O"	TVDD Examples
Schedule "P"	Illustrative Examples of Feedstock Impairment
Schedule "Q"	Expert Determination

1.3 Applicability of Canadian Agreements

- (a) For so long as there remains one or more Committed Shippers on the Canadian Mainline (that is not an Affiliate of Carrier), the Enbridge Tariff, this Agreement and the other Transportation Services Agreements will supersede the Canadian Agreements for the purposes of determining the Tolls payable for Services, provided however that any calculations that would otherwise have been made pursuant to the Canadian Agreements will be deemed to have been made during the Service Term.
- (b) If this Agreement and all other transportation services agreements for service on the Canadian Mainline have terminated such that there are no longer any committed shippers on the Canadian Mainline, any of the Canadian Agreements that have not expired or

terminated will come back into effect as of the date of termination or expiry of the last of any such transportation services agreements. Any toll and other adjustments that are permitted in the Canadian Agreements shall continue thereafter for their respective remaining terms. For clarity, the terms under any of the Canadian Agreements shall be deemed to have applied during the Service Term.

ARTICLE 2 REGULATORY APPROVALS

2.1 Regulatory Approvals

Subject to Article 3, Carrier shall proceed with due diligence and in good faith to seek to obtain the Regulatory Approvals.

2.2 Control over Process

Shipper acknowledges and agrees that Carrier has exclusive control over the Regulatory Approvals filing and prosecution process, including tolls and tariffs filings with the CER and FERC. Carrier shall not be obligated to appeal any decision of a Governmental Authority:

- (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.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Carrier Conditions Precedent

Carrier's obligations under this Agreement, other than in respect of its obligations in Section 2.1, are subject to the satisfaction of the following conditions precedent:

- (a) Carrier and its Affiliates shall have obtained the Regulatory Approvals, on terms acceptable to Carrier, in its sole discretion; and
- (b) the satisfaction, as determined by Carrier, in its sole discretion, of all conditions contained in the Regulatory Approvals to be able to provide the Services to Committed Shippers as contemplated by the terms of the Transportation Services Agreements and the Enbridge Tariff.

3.2 No Liability

Carrier shall have no liability or obligation whatsoever to Shipper in the event Carrier declines to file for, withdraws from, or rejects any Regulatory Approval.

3.3 Benefit of Conditions Precedent

The conditions precedent set out in Section 3.1 are for the sole benefit of Carrier.

3.4 Uncommitted Toll Considerations

- (a) **Uncommitted to Committed Toll Differential** – In the event that, as a condition of the Regulatory Approvals obtained by Carrier, Carrier is required by a Governmental Authority to reduce the Uncommitted Tolls for one or more Petroleum types in respect of any given Service Hauls to an amount which results in the differential between the Uncommitted Tolls and the equivalent Committed Tolls for one or more Petroleum types within such affected Service Hauls being less than the spread for the same deliveries as set forth in Schedule “I” (the “**Minimum Toll Differential**”), then Carrier shall elect, by Notice to Shipper, any of the following, in its sole discretion:
- (i) to reduce the Committed Tolls for the affected Petroleum types within such affected Service Hauls to maintain a differential between the Committed Tolls and Uncommitted Tolls that is equal to the Minimum Toll Differential for such affected Petroleum types and, Carrier shall amend Schedule “B” hereto to reflect such changes to the applicable Committed Tolls;
 - (ii) to apply Section 3.4(a)(i) and to also modify or eliminate, in Carrier’s reasonable discretion, the TVDD and the terms of Section 7.9(e) applicable to Committed Tolls for all Petroleum types across all Service Hauls to account for the anticipated revenue impact to Carrier as a result of the Regulatory Approvals, in which case Section 7.9(e) shall be deemed amended to account for the modifications to or elimination of such Section as determined by Carrier, in its reasonable discretion;
 - (iii) to not reduce the Committed Tolls for the affected Petroleum types within such affected Service Hauls and amend the spread in Schedule “I” hereto to be equal to the differential between the Uncommitted Tolls as set pursuant to the Regulatory Approvals and the Committed Tolls with the revised spread in Schedule “I” resulting from such amendments being the new Minimum Toll Differential;
 - (iv) to apply Section 3.4(a)(iii) and to also modify or eliminate, in Carrier’s reasonable discretion, the TVDD and the terms of Section 7.9(e) applicable to Committed Tolls for all Petroleum types across all Service Hauls to account for the anticipated revenue impact to Carrier as a result of the Regulatory Approvals, in which case Section 7.9(e) shall be deemed amended to account for the modifications to or elimination of such Section as determined by Carrier, in its reasonable discretion.
- (b) **GDPP Multiplier Reduction** - As part of its application for the Regulatory Approvals, Carrier shall apply for the GDPP Multiplier as an annual inflation adjustment to the Uncommitted Tolls on the same basis as set forth in Section 7.3. In the event that, as a condition of the Regulatory Approvals obtained by Carrier, Carrier is required by a Governmental Authority to reduce the GDPP Multiplier applied to Uncommitted Tolls below 65% of the GDPP Index, then Carrier shall elect, by Notice to Shipper, in its sole discretion:

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- (i) to apply the same reduction to the GDPP Multiplier as was approved pursuant to the Regulatory Approvals for the Uncommitted Tolls to Committed Tolls, and the Parties agree that, in such case, the GDPP Multiplier applicable to Committed Tolls is so amended to reflect the same GDPP Multiplier as was approved pursuant to the Regulatory Approvals for the Uncommitted Tolls;
 - (ii) to apply Section 3.4(b)(i) and to also modify or eliminate, in Carrier's reasonable discretion, the TVDD and the terms of Section 7.9(e) applicable to Committed Tolls for all Petroleum types across all Service Hauls to account for the anticipated revenue impact to Carrier as a result of the Regulatory Approvals, in which case Section 7.9(e) shall be deemed amended to account for the modifications to or elimination of such Section as determined by Carrier, in its reasonable discretion;
 - (iii) to not apply the same reduction, or apply only a portion of such reduction, as determined by Carrier, in its reasonable discretion, to the GDPP Multiplier applicable to Committed Tolls as was approved pursuant to the Regulatory Approvals for the Uncommitted Tolls; or
 - (iv) to apply Section 3.4(b)(iii) and to also modify or eliminate, in Carrier's reasonable discretion, the TVDD and the terms of Section 7.9(e) applicable to Committed Tolls for all Petroleum types across all Service Hauls to account for the anticipated revenue impact to Carrier as a result of the Regulatory Approvals, in which case Section 7.9(e) shall be deemed amended to account for the modifications to or elimination of such Section as determined by Carrier, in its reasonable discretion.
- (c) **Uncommitted Toll Discount** – In the event that, as a condition of the Regulatory Approvals obtained by Carrier, Carrier is required by a Governmental Authority to apply any new or additional discounts to any of the Uncommitted Tolls, including any discount that may be the same or similar to any of the toll discounts applicable to Committed Tolls hereunder, for one or more Petroleum types in respect of one or more Service Hauls (a "**New Uncommitted Toll Discount**"), then Carrier shall elect, by Notice to Shipper, any of the following, in its sole discretion:
- (i) make no modifications hereunder, and update the Enbridge Tariff to account for such New Uncommitted Toll Discount; or
 - (ii) update the Enbridge Tariff to account for such New Uncommitted Toll Discount and also modify or eliminate, in Carrier's reasonable discretion, the TVDD and the terms of Section 7.9(e) applicable to Committed Tolls for all Petroleum types across all Service Hauls to account for the anticipated revenue impact to Carrier as a result of the Regulatory Approvals, in which case Section 7.9(e) shall be deemed amended to account for the modifications to or elimination of such Section as determined by Carrier, in its reasonable discretion.
- (d) **Uncommitted Volume Reservation** - In the event that, as a condition of the Regulatory Approvals obtained by Carrier, Carrier is required by a Governmental Authority to increase the Reserved Uncommitted Capacity above ten percent (10%) of Available

Capacity, then: (i) the definition of “Reserved Uncommitted Capacity” will be deemed amended to reflect such increase and the Monthly Volume Commitments for Crude Petroleum of all Committed Shippers (including Shipper) shall be reduced *pro rata* based on the reduction of Available Capacity for Committed Volumes for Crude Petroleum resulting from the increase to Reserved Uncommitted Capacity; and (ii) in addition, Carrier may elect to modify or eliminate, in Carrier’s reasonable discretion, the TVDD and the terms of Section 7.9(e) applicable to all Committed Tolls for all Petroleum types across all Service Hauls to account for the anticipated revenue impact to Carrier as a result of the Regulatory Approvals, in which case Section 7.9(e) shall be deemed amended to account for the modifications to or elimination of such Section as determined by Carrier, in its reasonable discretion.

3.5 Outside Date

- (a) If Carrier has determined, acting reasonably, that a condition precedent set forth in Sections 3.1(a) or 3.1(b) cannot reasonably be expected to be satisfied on or before the Outside Date, Carrier may terminate this Agreement on thirty (30) days’ prior Notice to Shipper.
- (b) If a condition precedent set forth in Sections 3.1(a) or 3.1(b) has failed and it is for certain that the condition precedent cannot be satisfied on or before the Outside Date or it is for certain that the in-service date of the Line 3 Replacement will not occur on or before the Outside Date, then either Carrier or Shipper may terminate this Agreement on thirty (30) days’ Notice to the other Party.
- (c) If the Commencement Date has not occurred on or before the Outside Date, then following the Outside Date either Carrier or Shipper may terminate this Agreement on thirty (30) days’ Notice to the other Party, *provided* however, that if the Commencement Date has already occurred prior to the date a Party exercises its termination right or the Commencement Date occurs within such thirty (30) day period following receipt of a termination Notice, this Agreement shall not terminate but shall continue in full force and effect.
- (d) Termination of this Agreement pursuant to this Section 3.5 shall be without liability of either Party to the other Party.

ARTICLE 4 SERVICES

4.1 Requested Service Hauls

Subject to the terms of this Agreement, Shipper has requested Carrier to provide Services on a Priority Access basis in respect of its Monthly Volume Commitment as committed to each applicable Service Haul as set forth in Paragraph 87 and Paragraph 98 (provided that the volumes set forth in paragraph 98 shall only be considered for this purpose as of the date which such volumes have come into effect), as applicable, of Schedule “A” (each, a “**Requested Service Haul**”).

4.2 Provision of Services

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- (a) From and after the Commencement Date until the end of the Service Term for each Requested Service Haul (unless otherwise terminated in accordance with the provisions hereof), Carrier shall provide the Services hereunder to Shipper on a Priority Access basis while volumes are transported on the Canadian Mainline, in accordance with and subject to the provisions of this Agreement, the Enbridge Tariff and, if applicable, the Enbridge Joint Tariff. While volumes are transported on the Lakehead System in respect of Shipper's Monthly Volume Commitment for such Requested Service Hauls, Carrier shall cause such Services to be provided by EELP in accordance with and subject to the provisions of the Lakehead Tariff and, if applicable, the Enbridge Joint Tariff.
- (b) Shipper acknowledges and agrees that for any Committed Volumes applicable to a Requested Service Haul for which a Flex Service Term applies, then:
 - (i) the Committed Tolls payable by Shipper in respect of all such Committed Volumes shall be those set forth in Schedule "B" applicable to Flex Service Terms, *provided* that such Committed Tolls that are subject to a Flex Service Term will be subject to the same future increases or surcharges as would be applied to the Uncommitted Tolls, including as a result of the Line 5 Surcharge and surcharges, if any, due to an Expansion;
 - (ii) Section 7.6 shall not apply to all such Committed Volumes; and
 - (iii) all such Committed Volumes which are subject to a Flex Service Term shall not be eligible to receive the discounted Committed Tolls as set forth in Section 7.9.

4.3 Specific Rights and Restrictions to Nominate Committed Volumes Between Service Hauls

Other than as provided in this Section 4.3, Shipper shall not be entitled to nominate or ship any portion of its Monthly Volume Commitment that has been committed to a specific Requested Service Haul pursuant to Schedule "A" as a Committed Volume under a different Service Haul. If Shipper has elected pursuant to Schedule "A" to commit a portion of its Monthly Volume Commitment to a Service Haul that is:

- (a) for Service (Ex Edmonton Long Haul), then Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Long Haul) to Receipt Points (Hardisty) for Service (Ex Hardisty Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) for such volumes nominated to Receipt Points (Hardisty) and such nomination shall retain its Priority Access on the Canadian Mainline and the delivery will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Long Haul).
- (b) for Service (Ex Hardisty Long Haul), then:
 - (i) Shipper may nominate up to twenty-five percent (25%) of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Long Haul) from Receipt Points (Edmonton) to Delivery Points (Border Downstream) for Service (Ex Edmonton Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) as if such

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nomination was to Receipt Points (Edmonton) for such volumes that Shipper nominated to Receipt Points (Edmonton) and such nomination shall retain its Priority Access on the Canadian Mainline and the delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Long Haul);

- (ii) Subject to Section 4.3(b)(i), Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Long Haul) from Receipt Points (Edmonton) to Delivery Points (Border Downstream) for Service (Ex Edmonton Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service for such volume will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Long Haul).

- (c) for Service (Ex Edmonton Medium Haul), then:
 - (i) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Medium Haul) from Receipt Points (Edmonton) to Delivery Points (Border Downstream) for Service (Ex Edmonton Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Medium Haul);

 - (ii) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Medium Haul) to Receipt Points (Hardisty) for Service (Ex Hardisty Medium Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Medium Haul) for such volumes nominated to Receipt Points (Hardisty) and such nomination shall retain its Priority Access on the Canadian Mainline and the delivery will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Medium Haul);

 - (iii) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Medium Haul) from Receipt Points (Hardisty) to Delivery Points (Border Downstream) for Service (Ex Hardisty Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery

will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Medium Haul).

- (d) for Service (Ex Hardisty Medium Haul), then:
- (i) Shipper may nominate up to twenty-five percent (25%) of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Medium Haul) from Receipt Points (Edmonton) to Delivery Points (Clearbrook/Superior) for Service (Ex Edmonton Medium Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Medium Haul) for such volumes nominated to Receipt Points (Edmonton) and such nomination shall retain its Priority Access on the Canadian Mainline and the delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Medium Haul);
 - (ii) Subject to Section 4.3(d)(i), Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Medium Haul) from Receipt Points (Edmonton) to Delivery Points (Clearbrook/Superior) for Service (Ex Edmonton Medium Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Medium Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligations respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Medium Haul);
 - (iii) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Medium Haul) from Receipt Points (Hardisty) to Delivery Points (Border Downstream) for Service (Ex Hardisty Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Hardisty Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Medium Haul);
 - (iv) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Medium Haul) from Receipt Points (Edmonton) to Delivery Points (Border Downstream) for Service (Ex Edmonton Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery

will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Medium Haul).

- (e) for Service (Ex Edmonton Short Haul), then:
- (i) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Short Haul) to Receipt Points (Hardisty) for Service (Ex Hardisty Short Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Short Haul) as if such nomination was to Receipt Point (Edmonton) for such volumes that Shipper nominated to Receipt Points (Hardisty) and such nomination shall retain its Priority Access on the Canadian Mainline and the delivery will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Short Haul);
 - (ii) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Short Haul) from Receipt Points (Edmonton) to Delivery Points (Border Downstream) for Service (Ex Edmonton Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Short Haul);
 - (iii) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Edmonton Short Haul) from Receipt Points (Hardisty) to Delivery Points (Border Downstream) for Service (Ex Hardisty Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Edmonton Short Haul).
- (f) for Service (Ex Hardisty Short Haul), then:
- (i) Shipper may nominate up to twenty-five percent (25%) of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Short Haul) from Receipt Points (Edmonton) to Delivery Points (Border Upstream) for Service (Ex Edmonton Short Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Short Haul) for such volumes nominated to Receipt Points (Edmonton) and such nomination shall retain its Priority Access on the Canadian Mainline and the delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Short Haul);

- (ii) Subject to Section 4.3(f)(i), Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Short Haul) from Receipt Points (Edmonton) to Delivery Points (Border Upstream) for Service (Ex Edmonton Short Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Short Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Short Haul);
- (iii) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Short Haul) from Receipt Points (Hardisty) to Delivery Points (Border Downstream) for Service (Ex Hardisty Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Hardisty Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Short Haul);
- (iv) Shipper may nominate any portion of its Monthly Volume Commitment that has been committed to Service (Ex Hardisty Short Haul) from Receipt Points (Edmonton) to Delivery Points (Border Downstream) for Service (Ex Edmonton Long Haul) provided that Shipper shall be required to pay the Committed Toll applicable to Service (Ex Edmonton Long Haul) and the service will otherwise be deemed to be Uncommitted Service for all purposes. In such case, notwithstanding the provisions of Section 5.5, there will be no relief from the Shipper's obligation respecting Deficiency Payments resulting from apportionment of such nominations. Notwithstanding the foregoing, such delivery will count towards the Monthly Volume Commitment committed to Service (Ex Hardisty Short Haul).

An illustrative example of the foregoing is set forth in Schedule "G". For certainty, nothing in this Section 4.3 is intended to restrict Shipper from nominating and receiving Service for a specific Service Haul for such portion of its Monthly Volume Commitment that has been committed to such Service Haul. For greater certainty, Carrier's non-acceptance of a nomination pursuant to this Section 4.3 for nominations by Shipper outside of a Requested Service Haul will not be considered an Excused Event (Carrier) for which Shipper can claim relief of its obligation hereunder respecting its Monthly Volume Commitment.

4.4 Specific Application of Tolls Respecting Delivery of Committed Volumes at Certain Delivery Points

Shipper acknowledges that in the case of any deliveries of Committed Volumes at Delivery Points (Border Downstream) that are located in the states of Wisconsin or Minnesota, to the extent the

final destination of such volumes following delivery to such Regular Delivery Point is to a facility outside the states of Wisconsin or Minnesota, then, unless otherwise agreed to by Carrier, in its sole discretion, Shipper shall, in addition to the Committed Toll payable in respect of such delivery to such Regular Delivery Point, be obligated to pay Carrier, an amount applicable to such deliveries, calculated as the difference between the Committed Toll for the transportation of heavy Crude Petroleum from the originating Regular Receiving Point to Chicago (Lockport, Mokena, Griffith, and Flanagan) and the Committed Toll actually payable by Shipper for the transportation of Shipper's Product from the originating Regular Receiving Point to the Regular Delivery Point in the state of Wisconsin or Minnesota, as applicable, where such Petroleum was delivered from the Enbridge Mainline. For deliveries to Delivery Points (Border Downstream) that are located in the states of Wisconsin or Minnesota, Shipper shall reasonably cooperate with Carrier to allow it to confirm the final destination of such deliveries. Failure on the part of Shipper to comply with Carrier's reasonable request for evidence of final destination of such deliveries will result in Carrier automatically deeming such volumes to have been finally delivered to a facility outside the state of Wisconsin or Minnesota.

4.5 Uncommitted Service

Subject to the terms of the Enbridge Tariff, the Lakehead Tariff, and/or the Enbridge Joint Tariff, as applicable, Shipper shall be entitled to receive Services for volumes of Petroleum in a Month that are Uncommitted Volumes and for all purposes, such Services in respect of such Uncommitted Volumes shall be considered "**Uncommitted Service**". Uncommitted Service shall be governed by the Enbridge Tariff, the Lakehead Tariff, and/or the Enbridge Joint Tariff, as applicable, and, except as may be expressly provided herein, this Agreement is not intended to apply to the provision of Uncommitted Service in respect of Shipper's Uncommitted Volumes, if any, from time to time.

4.6 Shipper Nominations

The provision of Services hereunder shall be subject to Carrier's posted nomination procedures, as may be modified or amended by Carrier, in its sole discretion, from time to time upon reasonable Notice to Shipper. Where Carrier, in a Month, has received a nomination for a Requested Service Haul from Shipper, Shipper will be required to submit such nomination first as Committed Volumes under all of Shipper's applicable Transportation Services Agreements, and next as Uncommitted Volumes. A request by Shipper to modify its Accepted Nomination will be considered on an equal basis with all other such requests (including requests to modify Accepted Nominations of Committed Volumes and Accepted Nominations of Uncommitted Volumes), and will be granted only insofar as the requested modification would not adversely impact Carrier's ability to provide Services for any other accepted nomination of any other shipper.

4.7 Shipper Deliveries

Where Carrier, in a Month, has delivered Crude Petroleum to Shipper in relation to a Requested Service Haul, Carrier will apply such delivery in the following priority:

- (a) first, to meet Shipper's ~~Monthly Volume Commitment~~ monthly volume commitments (if any) applicable to such Requested Service Haul pursuant to ~~this Agreement and the monthly volume commitments (if any) for such same Requested Service Haul in~~ any other Transportation Services Agreement for Crude Petroleum (other than a Transportation

Services Agreement (Take or Pay)) to which Shipper is a Party, on a *pro rata* basis based on such Shipper's monthly volume commitments in the applicable Requested Service Haul under all such Transportation Services Agreements for Crude Petroleum (other than any Transportation Services Agreement (Take or Pay));

- (b) second, to fulfill the [Monthly Volume Commitment applicable to such Requested Service Haul pursuant to this Agreement and the](#) monthly volume commitments (if any) applicable to such Requested Service Haul pursuant to any [other](#) Transportation Services Agreement (Take or Pay) for Crude Petroleum to which Shipper is a Party, on a *pro rata* basis based on such Shipper's monthly volume commitments in the applicable Requested Service Haul under all such Transportation Services Agreements (Take or Pay) for Crude Petroleum; and
- (c) lastly, to Uncommitted Service for Crude Petroleum.

ARTICLE 5 SHIPPER OBLIGATIONS

5.1 Monthly Volume Commitment

From and after the Commencement Date and for each Month during the Service Term for each Requested Service Haul, subject to Sections 5.5 and 5.6, Shipper shall receive delivery at the applicable Regular Delivery Points for an amount of Shipper's Product that originated from a Regular Receiving Point upstream of where the Canadian Mainline and the Lakehead System interconnect at the Canada/United States border near Gretna, Manitoba equal to the Monthly Volume Commitment (as committed to each such Requested Service Haul as set forth in Paragraph [87](#) and Paragraph [98](#) (provided that the volumes set forth in paragraph [98](#) shall only be considered for this purpose as of the date which such volumes have come into effect), as applicable, of Schedule "A").

5.2 Deficiency Payments

Subject to Sections 4.3, 5.5, 5.6, 8.2, 8.3(a), 13.5 and 14.4(b), from and after the Commencement Date and for each Month during the Service Term Shipper shall be required to pay to Carrier its applicable Deficiency Payment for all Shortfall Volumes occurring in any Requested Service Haul during each such Month.

5.3 Committed Volume (CV) Increase Option

Within a reasonable period following the conclusion of the Open Season, Carrier will notify all Committed Shippers of the uncontracted Reserved Committed Capacity available, if any, for each Petroleum type (Crude Petroleum, Refined Petroleum Products and Natural Gas Liquids). For each Petroleum type where there is uncontracted Reserved Committed Capacity available for such Petroleum type following the Open Season (which, for certainty, such capacity does not include any increase to the Reserved Committed Capacity due to expansions or the use of drag reducing agents), each Committed Shipper that has executed a Transportation Services Agreement for such Petroleum type shall have the right, exercisable by Notice to Carrier (a "**CV Increase Notice**") at any time between the Commencement Date and the second (2nd) anniversary of the Commencement Date (the "**CV Option Expiry Date**") to request an increase to

its Committed Volume for such Petroleum type in respect of an applicable Requested Service Haul (the "**CV Increase Option**"). Where a Committed Shipper for a Petroleum type has delivered a CV Increase Notice, the request to exercise the CV Increase Option shall be subject to the following:

- (a) Upon receipt of a CV Increase Notice for a particular Petroleum type and Service Haul, Carrier shall promptly notify (the "**CV Increase Option Notice**") all Committed Shippers that have Transportation Services Agreements across all Service Hauls for the same Petroleum type as set forth in the CV Increase Notice (the "**CV Committed Shippers**").
- (b) Subject to Section 5.3(c) of each CV Committed Shippers' Transportation Services Agreement, all CV Committed Shippers shall be entitled to participate in such CV Increase Option to increase their respective Committed Volume in any Service Haul Segments (subject to each such CV Committed Shipper already having a Monthly Volume Commitment for such Petroleum type in a Service Haul that is within such Service Haul Segment), provided that, the limits on the Reserved Committed Capacity that was made available for each Service Haul pursuant to the allocation procedures in the Open Season (prior to any reallocations of such capacity as was provided in such allocation procedures) shall continue to apply to the CV Increase Option such that the uncontracted capacity that the CV Committed Shippers in any particular Service Haul may contract for, in aggregate, (when summed with the existing aggregate monthly volume commitments of all Committed Shippers in such Service Haul (including any Ramp Up Committed Volumes in such Service Haul)) cannot exceed the maximum allocable capacity limit for such Service Haul pursuant to the allocation procedures in the Open Season, subject to any further operational constraints within a particular Service Haul affecting capacity at such time as determined by Carrier, acting reasonably.
- (c) The additional Committed Volume that an individual Committed Shipper may request in a specific Service Haul, in aggregate for the initial and any subsequent exercise of the CV Increase Option pursuant to this Section 5.3, shall not exceed twenty-five percent (25%) of the aggregate existing Committed Volume of such Petroleum type that such Committed Shipper has for the entire Service Haul Segment, to which such Service Haul applies at the time it receives the CV Increase Option Notice pursuant to this Agreement and, if applicable, any other Transportation Services Agreements that Shipper is a party to for such same Petroleum type and Service Haul Segment (but, in all cases, excluding any Committed Volumes that are subject to a Flex Service Term) (the "**Available CV Option Volume**"), provided such Available CV Option Volume that Shipper may request shall be:
 - (i) reduced by any volumes that were previously allocated to Shipper in any Service Haul that is part of the Service Haul Segment through the exercise by Shipper of any previous CV Increase Option; or
 - (ii) where any portion of Shipper's current Committed Volumes in such Service Haul Segment were obtained subsequent to the Open Season through an assignment of Committed Volumes and any previous holder(s) of such Committed Volumes exercised a CV Increase Option, then reduced, on a pro rata basis (determined based on the Committed Volumes in such Service Haul Segment received in the assignment to the aggregate of the holders' Committed Volume in such Service Haul Segment at the time of the assignment in such Service Haul Segment), by any volumes that were previously allocated to such previous holder in any Service Haul that is part of the Service Haul Segment through the exercise by such previous holder of any previous CV Increase Option.

- (d) Upon receipt of the CV Increase Option Notice, each CV Committed Shipper receiving such Notice (including the CV Committed Shipper that initially sent the CV Increase Notice) shall have the right exercisable by Notice to Carrier no later than ninety (90) days following receipt of the CV Increase Option Notice to request an increase to their Committed Volume in one or more Service Hauls (that is part of a Service Haul Segment that Shipper has an existing Requested Service Haul) by a volume not to exceed the Available CV Option Volume for such Requested Service Haul, subject to the limits set forth in subsection 5.3(c) (any such request being hereafter referred to as the “**CV Increase Election Notice**”).
- (e) Following the expiry of the ninety (90) day notice period in subsection 5.3(d), Carrier shall allocate the uncontracted Reserved Committed Capacity available for the Petroleum type subject to the CV Increase Notice to each Committed Shipper that provided a CV Increase Election Notice prior to the expiry of such ninety (90) day period, which increase shall be the lesser of: (i) the Committed Volume requested pursuant to Shipper's CV Increase Election Notice, subject to the volume request limits set forth in subsection 5.3(c); and (ii) such Committed Shipper's *pro rata* share of the Reserved Committed Capacity available for commitment in the applicable Service Haul determined pursuant to Section 5.3(b), which *pro rata* share shall be based on the requesting CV Committed Shippers' current existing Committed Volumes (under all existing Transportation Service Agreements of such Shipper at the time of the CV Increase Election Notice) in the Service Haul Segment to which the applicable Service Haul applies to the aggregate Committed Volumes of all requesting CV Committed Shippers in the Service Haul Segment.
- (f) For the purpose of Carrier's determination of the Reserved Committed Capacity available for a particular Petroleum type pursuant to this Section 5.3, all Committed Volumes and any Ramp Up Committed Volumes of all Committed Shippers across all Service Hauls shall be counted in such determination.
- (g) Carrier shall not be obligated to comply with the steps above if there is no Reserved Committed Capacity in a Service Haul for a particular Petroleum type, as determined pursuant to Section 5.3(b).
- (h) The CV Increase Option for each Petroleum type shall continue to be exercisable by Committed Shippers with Transportation Service Agreements for such Petroleum type, from time to time, in accordance with the procedures set forth in this Section 5.3 until the earlier of: (a) the CV Option Expiry Date; or (b) the time at which all Reserved Committed Capacity in the applicable Service Hauls has been fully contracted.

5.4 Commercial Arrangements and Permits

From and after the Commencement Date and at all times during the Service Term, Shipper shall ensure that, to the extent Shipper nominates any volumes for Services in accordance with the terms of this Agreement, it will have in place, at the time of such nomination, and thereafter maintain all Commercial Arrangements and all Shipper Permits required to deliver and receive the nominated volume. The failure to obtain and to maintain the necessary Commercial Arrangements or Shipper Permits will not affect Shipper's obligations to make payments hereunder and, for clarity, such failure shall in no way be construed as being an Excused Event for which Shipper could otherwise seek payment relief hereunder.

5.5 Excused Events (Carrier)

- (a) If, in a Month, there is apportionment on the Enbridge Mainline affecting Shipper's nominations in a Requested Service Haul, and as a direct result of such apportionment Carrier is unable to deliver to Shipper all or a portion of its Monthly Volume Commitment in such Requested Service Haul for such Month, then Shipper shall be excused from its obligation to accept delivery of its Monthly Volume Commitment in accordance with Section 5.1 for such Requested Service Haul but only in respect of such portion of its Monthly Volume Commitment directly affected by such apportionment, provided that, for certainty, this subsection (a) will not apply to apportionment at the receipt terminalling and tankage facilities on the Canadian Mainline which is dealt with in (b) below.
- (b) If, in a Month, a volume of Shipper's Product (by commodity type of Crude Petroleum) that is nominated by Shipper in such Month to be injected in the Canadian Mainline at a Regular Receiving Point is apportioned due to apportionment at any of the terminalling facilities at such Regular Receiving Point and Carrier is unable to provide receipt tankage facilities to accommodate all of the aggregate nominations by all shippers for such commodity type of Crude Petroleum in such Month at such Regular Receiving Point, then Shipper shall be excused from its obligation to accept delivery of a portion of its Monthly Volume Commitment in accordance with Section 5.1 for such Requested Service Haul applicable to the Month in which such apportioned volume would have been delivered in respect of a volume equal to the difference between:
- (i) Shipper's nomination for such commodity type of Crude Petroleum by Shipper in such Month; and
 - (ii) Shipper's Accepted Nomination for such commodity type of Crude Petroleum by Shipper in such Month,

provided that no relief shall be provided for any portion of Shipper's nomination that is above the average of the preceding twelve (12) Months of actual injections of such commodity type of Crude Petroleum by Shipper at such Regular Receiving Point. Where Shipper nominated the applicable commodity type of Crude Petroleum from such Regular Receiving Point to Regular Delivery Points in multiple Requested Service Hauls, then Carrier will prorate such relief pro rata across the Requested Service Hauls based on the nominations to each Requested Service Haul in such Month. For certainty, no relief shall be provided in relation to volumes nominated strictly for terminal transfers.

- (c) Notwithstanding Sections 5.5(a) or 5.5(b), the relief described in Sections 5.5(a) or 5.5(b) (each, an "**Excused Event (Carrier)**") shall not apply: (i) where the apportionment is specifically related to terminalling or tankage apportionment on the Enbridge Mainline except as provided in Section 5.5(b) above; (ii) to any portion of Shipper's Monthly Volume Commitment which was not nominated by Shipper to Carrier in a Month, or (iii) to any reduction made to a Shipper's nomination as a result of a failure on the part of Shipper to verify its nominations or have its nominations verified in accordance with either Carrier's nomination procedures on the Canadian Mainline or EELP's nomination procedures on the Lakehead System.

- (d) For certainty, where Carrier has claimed an event of Force Majeure on the Enbridge Mainline which is causing apportionment of Available Capacity then such apportionment shall be considered an Excused Event (Carrier) and Shipper shall be entitled to relief in accordance with Section 5.5.

5.6 Excused Events (Shipper)

~~Where, in a Month, (x) Shipper has accrued Shortfall Volumes in~~ ln respect of ~~one or more~~ each Requested Service Hauls; and ~~(y) Shipper has accrued an Excused Event (Shipper) Volume in one or more of its Designated Areas for the Relevant Production Month applicable to such Month, then Shipper shall~~ Haul, Shipper has the right during each sixty (60) consecutive Month period starting from the Commencement Date (each, an "Excused Event (Shipper) Entitlement Period"), for each Requested Service Haul during a Service Term (including any Renewal Periods thereafter) to elect by Notice to Carrier (an "Excused Event (Shipper) Notice") to request to be excused from its obligation to make ~~a Deficiency Payment on such portion of the Shortfall Volumes accrued in such Month by offsetting such portion of the Shortfall Volumes in such Month, against an equal amount of Excused Event (Shipper) Volumes accrued from the Designated Interests in the Designated Areas in the Relevant Production Month applicable to such Month~~ Deficiency Payments in respect of Shortfall Volumes (an "Excused Event (Shipper)"), subject to the following:

- (a) ~~in order to claim an Excused Event (Shipper) in such Month where Excused Event (Shipper) Volumes have accrued in one or more of the Designated Areas for the Relevant Production Month applicable to such Month, Shipper shall deliver a Notice to Carrier notifying Carrier that Shipper has accrued Excused Event (Shipper) Volumes (an "Excused Event (Shipper) Notice"), which notice shall be:~~ Shipper may only elect an Excused Event (Shipper) for a Requested Service Haul not more than twice (2) during each Excused Event (Shipper) Entitlement Period and the maximum period for which any such individual election may be applied shall not exceed three (3) Months (the "Excused Event (Shipper) Aggregate Claim Period"). For certainty, relief will be granted in full Month increments and Shipper may not request an Excused Event (Shipper) to apply for only a part of a Month;
- ~~(i) — delivered to Carrier no later than the date that is eight (8) Business Days following the end of such Month;~~
 - ~~(ii) — accompanied by an accounting of Shipper's allocated share of all Crude Petroleum produced from the Designated Interests in each Designated Area that accrued an Excused Event (Shipper) Volume in the Relevant Production Month applicable to such Month (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline) and an affidavit from an officer of Shipper with knowledge of the subject matter thereof confirming that such accounting provided is a true and accurate accounting pertaining to Shipper's allocated share of all Crude Petroleum produced from the Designated Interests in each such Designated Area in the Relevant Production Month applicable to such Month;~~

- (b) ~~upon verification by Carrier of the information provided in the Excused Event (Shipper) Notice, Carrier will offset the aggregate Excused Event (Shipper) Volume from the Designated Interests in all such Designated Areas in the Relevant Production Month applicable to such Month against an equal volume of Shortfall Volumes accrued in each Requested Service Haul in such Month (on a proportional basis based on the proportion of Shortfall Volumes across each Service Haul in such Month), which will excuse Shipper from its obligation to make a Deficiency Payment in relation to such offset Shortfall Volumes and which relief will be credited in the current Month's invoice (if any), provided that if the applicable Excused Event (Shipper) Notice is not received with all required supporting information prior to the date that is eight (8) Business Days following the end of the Month applicable to the Relevant Production Month in which the Excused Event (Shipper) Volume accrued then Shipper will not be entitled to any relief for such Excused Event Volumes in such Month; however, if the information is received following the date that is eight (8) Business Days following the end of the Month in which the Excused Event (Shipper) Volume accrued but prior to the date that is twenty (20) Business Days following the end of such Month, then Carrier will allow Shipper to apply the Excused Event (Shipper) Volumes from the Relevant Production Month applicable to such Month to offset the next ensuing Month's Shortfall Volumes, if any. Subject to Section 5.6(d), Carrier agrees to use commercially reasonable efforts to complete its verification of the information provided in the Excused Event (Shipper) Notice and to confirm Shipper's entitlement to the Excused Event (Shipper) promptly to ensure that the offset of Excused Event (Shipper) Volumes can be applied in the applicable Month set forth in the preceding sentence; The aggregate relief that Shipper will be entitled to during the two (2) Excused Event (Shipper) Aggregate Claim Periods shall not, in aggregate across both such Excused Event (Shipper) Aggregate Claim Periods, exceed the product of fifty percent (50%) of the Monthly Volume Commitment of Shipper for such Requested Service Haul multiplied by three (3) Months (the "Excused Event (Shipper) Maximum Volume");~~
- (c) ~~For certainty, a Designated Area will not accrue any Excused Event (Shipper) Volumes in a Month where Shipper's allocated share of production of Crude Petroleum from the Designated Interests in such Designated Area in such Month (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline) was equal to or greater than the Designated Area MVC of such Designated Area; During the Excused Event (Shipper) Aggregate Claim Period, Shipper shall be excused from its obligation to make a Deficiency Payment on Shortfall Volumes that accrue during such Excused Event (Shipper) Aggregate Claim Period in the applicable Requested Service Haul (requested in the Excused Event (Shipper) Notice), provided such relief shall not, in aggregate, during the Excused Event (Shipper) Aggregate Claim Period exceed the Excused Event (Shipper) Maximum Volume;~~
- (d) ~~For the period that is twelve (12) months following the end of the year in which an Excused Event (Shipper) Notice is received by Carrier, Carrier shall be entitled, in its sole discretion, but upon sixty (60) days Notice to Shipper, to engage an independent confidential Third Party auditor to act on Carrier's behalf to audit those Shipper's books and records necessary to verify the actual volumes of Crude Petroleum produced from the Designated Interests for each Designated Area that was the subject of such Excused Event (Shipper) during the Relevant Production Month applicable to the Month to which such Excused Event (Shipper) applied (including, without limitation, Custody Transfer~~

~~Tickets). All costs of such audit shall be borne by Carrier, provided that if the results of such audit demonstrate that the production of Crude Petroleum from the Designated Interests in the applicable Designated Areas was greater than the Excused Event (Shipper) Volume in the Excused Event (Shipper) Notice, then all costs of such audit shall be borne by Shipper. If it is found that as a result of the audit conducted in accordance with this Section 5.6(d), all or a portion of the Excused Event (Shipper) Volumes were not validly claimed then for any such invalid Excused Event (Shipper) Volumes Carrier will invoice Shipper for the Deficiency Payments that would have otherwise been charged for such volumes based on the Deficiency Charge that would have applied at such time plus interest at the Prime Rate plus two (2) percentage points from the end of the applicable Month to which such Deficiency Payment would have been due and owing to the date of payment. Where Shortfall Volumes from more than one Service Haul were offset in the Month applicable to the invalid Excused Event (Shipper) Volumes, then the highest Deficiency Charge will be applied to all such invalid Excused Event (Shipper) Volumes; and Shipper shall provide Carrier with an Excused Event (Shipper) Notice as soon as reasonably practicable following the determination by Shipper that it intends to claim an Excused Event (Shipper) but in any event prior to the beginning of the Month in which Shipper is requesting for an Excused Event (Shipper) to take effect which Notice shall include the Shortfall Volume for which Shipper intends to seek relief;~~

- (e) For each Requested Service Haul, as soon as:
- (i) Shipper has declared an Excused Event (Shipper) for such Requested Service Haul twice (2) within an applicable Excused Event (Shipper) Entitlement Period;
or
 - (ii) Shipper has been excused from its obligation to make a Deficiency Payment on Shortfall Volumes in an amount equal to the Excused Event (Shipper) Maximum Volume.
- then Shipper shall not be entitled to request another Excused Event (Shipper) for such Requested Service Haul until the commencement of the next Excused Event (Shipper) Entitlement Period. Shipper shall not be entitled to carry forward any unused portion of its excused obligation to make a Deficiency Payment in respect of an Excused Event (Shipper) Entitlement Period pursuant to this Section 5.6 to another Excused Event (Shipper) Entitlement Period and may not apply any of such excused obligation to make a Deficiency Payment for a Requested Service Haul to any other Requested Service Haul;
- (f) If this Agreement is for more than one Requested Service Haul, Shipper shall be entitled to declare an Excused Event (Shipper) for each Requested Service Haul independent of any other Requested Service Haul; and
- (g) For the purpose of determining when Shipper shall be obligated to pay Uncommitted Tolls on volumes delivered to Shipper in excess of Shipper's Monthly Volume Commitment, Shipper's original Monthly Volume Commitment (not reduced by an any Excused Event (Shipper)) will continue to be used to determine when Uncommitted Tolls would be payable on Shipper's volumes delivered.

~~(e) — Examples of how Carrier will determine and apply Excused Events (Shipper) Volumes to Shortfall Volumes are set forth in Schedule “N”.~~

5.7 Contract Designated ~~Interests~~ Facilities

~~Where all or a portion of the Designated Interests in a Designated Area hereunder are Contract Designated Interests then in order for Shipper to be able to claim any Excused Event Volumes in respect of such Designated Area, Shipper shall have and shall have caused the owner(s) of the Contract Designated Interests that have contracted with Shipper (each, a “Contracting Owner”) for long term purchase or agency (the “Long Term Agreement”) to have executed an acknowledgement agreement with Carrier in form acceptable to Carrier, in its reasonable discretion (the “Contracting Owner Acknowledgment”), providing for such consents, acknowledgments and agreements from the Contracting Owner and Shipper as are reasonably required for Carrier to verify any Excused Events (Shipper) in accordance with Section 5.6 and to verify that the Long Term Agreement supports the Designated Area MVC for the Designated Interests within such Designated Area, including:~~

- ~~(a) — confirmation from the Contracting Owner and Shipper of the basic terms of the Long Term Agreement, including as to the term and volume commitment;~~
- ~~(b) — confirmation from the Contracting Owner and Shipper of such information as required by the allocation procedures pursuant to the Open Season required to verify volume eligibility for a Transportation Services Agreement (RC — Producer) for such Designated Area;~~
- ~~(c) — a covenant that the Contracting Owner will or will cause the operator of such Contract Designated Interests to reasonably cooperate with Shipper to supply Carrier with all information required by Carrier under Section 6.2(b);~~
- ~~(d) — an acknowledgment by the Contracting Owner of the terms of this Agreement and the rights and obligations of Shipper and Carrier hereunder in respect of Excused Events (Shipper), including the designation of such Contracting Owner’s Interests as Contract Designated Interests pursuant to the terms of this Agreement;~~
- ~~(e) — a covenant that the Contracting Owner will or will cause the operator of such Contract Designated Interests to reasonably cooperate with Shipper to supply Carrier with all information required by Carrier under Section 5.6 to verify a request to claim an Excused Event (Shipper) in respect of such Contract Designated Interests and consent to the disclosure of such information to Carrier;~~
- ~~(f) — a covenant from the Contracting Owner to provide an affidavit from an officer of the Contracting Owner with knowledge of the subject matter thereof confirming the matters set forth in Section 5.6(a)(ii);~~
- ~~(g) — a covenant from Shipper and the Contracting Owner to provide Carrier with: (A) any default notices or notices of termination from either party under the Long Term Agreement (or confirmation when the term of such agreement has ended); (B) information pertaining to any material amendments or circumstances relevant to the Long Term Agreement which will impact the rights and obligations of Shipper or Carrier under this Agreement in relation to the Contract Designated Interests, including any assignment~~

~~of the Long Term Agreement by either Contracting Owner or Shipper or the sale of any portion of Owner's ownership share in the Contract Designated Interests;~~

- ~~(h) — a covenant from the Contracting Owner to cooperate with Shipper to supply the information pertaining to Shipper Planned Maintenance or a Shipper Unplanned Outage in respect of the Contract Designated Interests in accordance with Section 5.8; and~~
- ~~(i) — an acknowledgment and consent to Carrier's Third Party confidential audit verification rights set forth in Section 5.6(d) and a covenant to allow Carrier with access to the Contracting Owner's relevant books and records (including, without limitation, Custody Transfer Tickets) to verify the Contracting Owner's share of production of Crude Petroleum from the Contract Designated Interests.~~

~~Subject to Section 16.4(b), where Contract Designated Interests have been designated to a Designated Area, Shipper shall not be entitled to claim an Excused Event (Shipper) in respect of such Designated Area where (u) Shipper failed to procure a Contracting Owner Acknowledgment from the Contracting Owner in respect of the Contract Designated Interests applicable to such Designated Area; (v) the Contracting Owner Acknowledgment has been terminated or is of no further force and effect; (w) the Contracting Owner or Shipper is in breach of the terms of the Contracting Owner Acknowledgment; (x) Shipper is in default of the terms of the Long Term Agreement and the Contracting Owner is exercising remedies that adversely affect Shipper's ability to purchase or offtake under the Long Term Agreement Crude Petroleum produced from the Contract Designated Interests applicable to such Designated Area; (y) where the Long Term Agreement has terminated, is otherwise in suspension, or that the Contracting Owner is subject to an Insolvency Event, such that Shipper is not entitled to arrange for the purchase or offtake of the Contracting Owner's share of Crude Petroleum produced from the Contract Designated Interests applicable to such Designated Area; or (z) the Long Term Agreement has been amended or modified, such that Designated Interests applicable to the Long Term Agreement (together with Shipper's other Designated Interests in such Designated Area) no longer support the Designated Area MVC for such Designated Area (each of the foregoing events in subsection (u) through (z) being hereafter referred to as a "Contract Designated Interests Material Event"). Shipper shall notify Carrier promptly upon the occurrence of a Contract Designated Interests Material Event including reasonable details of the circumstances pertaining to the Contract Designated Interests Material Event, and shall submit a quarterly officer's certificate to Carrier certifying Shipper's and the Contracting Party's compliance under terms of all Contracting Owner Acknowledgments and all applicable Long Term Agreements, as well, as, certifying that there has not occurred and, at the time the certificate is being delivered, there is not subsisting any Contract Designated Interests Material Event which has not been remedied in all material respects. A Contracting Owner Acknowledgment Agreement shall not be required for Contract Designated Interests, where the Designated Area MVC for the Designated Area applicable to such Contract Designated Interests pertains to the ownership share of production of such Contract Designated Interests of an owner which is an Affiliate of Shipper and Shipper is able to cause such Affiliate to comply with the terms of this Agreement as it pertains to such Contract Designated Interests.~~

~~[\[Intentionally Deleted\]](#)~~

5.8 Notifications of Shipper Planned Maintenance and Shipper Unplanned Outage

~~To assist Carrier in ensuring efficient operation of the Enbridge Mainline and the provision of services to shippers on the Enbridge Mainline, Shipper agrees to cooperate with Carrier in providing the following information, from time to time, in relation to its Designated Interests (and corresponding Designated Facilities) in each of the Designated Areas hereunder:~~

- ~~(a) Shipper shall, as soon as reasonably practicable following the occurrence of a Shipper Unplanned Outage, provide Carrier with Notice of such Shipper Unplanned Outage, which Notice shall include reasonable details in regard to the nature of such Shipper Unplanned Outage, including the anticipated production level of Crude Petroleum from the Designated Facilities in such Month, the anticipated extent and duration of the Shipper Unplanned Outage and the impact on Shipper's ability to meet its Monthly Volume Commitment in the Requested Service Haul to which such Designated Facilities apply; and~~
- ~~(b) Shipper shall use commercially reasonable efforts to provide Carrier with a minimum of sixty (60) days' prior written Notice of a Shipper Planned Maintenance, or in the event that a Shipper Planned Maintenance was planned by Shipper on less than sixty (60) days' prior Notice, then as promptly as reasonably practicable of Shipper having scheduled such Shipper Planned Maintenance, which Notice shall include the impact on anticipated production of Crude Petroleum from the applicable Designated Facilities in such Month, the anticipated extent and duration of the Shipper Planned Maintenance and the impact on Shipper's ability to meet its Monthly Volume Commitment in the Requested Service Haul to which such Designated Facilities apply.~~

~~[\[Intentionally Deleted\]](#)~~

5.9 New Commodity Type

If in the future Carrier offers to change the specifications of Crude Petroleum on the Canadian Mainline to allow for a different commodity type or blend of Crude Petroleum than is currently contemplated in the Enbridge Tariff, then Shipper shall be entitled to nominate and receive Services for its Committed Volumes for such new commodity type or blend of Crude Petroleum in accordance with the amended Enbridge Tariff that incorporates such new commodity type or blend, provided that if the commodity type or blend has quality attributes that would reduce the Available Capacity, then if Shipper wishes to nominate for Services in respect of such new commodity type or blend of Crude Petroleum, Carrier reserves the right to adjust Shipper's Monthly Volume Commitment to account for the impact such new commodity type has on Available Capacity. Carrier will post a conversion table to account for the impact to Shipper's Monthly Volume Commitment if it elects to nominate for Services in respect of such new commodity type or blend of Crude Petroleum.

5.10 Financial Assurances

From and after the Effective Date, Shipper shall at all times during the Term comply with the terms and conditions respecting the provision of Financial Assurances set forth in Schedule "D". Shipper's compliance with the terms and conditions set forth in Schedule "D" shall satisfy any requirement for Shipper to provide Financial Assurances pursuant to the Enbridge Tariff, the Lakehead Tariff, and/or the Enbridge Joint Tariff, as applicable, as it pertains to Shipper's Committed Volumes hereunder, but for certainty, shall be in addition to and not in substitution for

Shipper's obligations, if any, to provide Financial Assurances as it pertains to Shipper's Uncommitted Volumes, if any, which may be required pursuant to the Enbridge Tariff, the Lakehead Tariff, and/or the Enbridge Joint Tariff, as applicable.

ARTICLE 6 TERM

6.1 Term

Upon execution by the Parties, this Agreement will take effect and become binding on the Parties as of the Effective Date and, unless it is terminated in accordance with its terms, will continue in full force and effect until the end of the Term.

6.2 Commencement Date and Service Term

The provision of the Services for the Monthly Volume Commitment for each Requested Service Haul and the obligation of Shipper to make payments in respect thereof will commence on the Commencement Date and continue thereafter for the remainder of the Service Term for such Requested Service Haul (or, in the case of Shipper's payment obligations, until all outstanding amounts payable hereunder have been received by Carrier), subject to the following:

(a) Carrier shall provide at least one hundred and twenty (120) days Notice to Shipper (the "**Anticipated Commencement Date Notice**") of Carrier's good faith estimate of the reasonably anticipated Commencement Date.

~~(b) No later than ninety (90) days prior to the anticipated Commencement Date set forth in the Anticipated Commencement Date Notice, Shipper shall provide to Carrier all such evidence as is reasonably required and/or requested by Carrier in order to confirm that the Designated Interests and applicable Designated Facilities in each Designated Area of Shipper for each Requested Service Haul will, as of the Commencement Date, be sufficient to support Shipper's Monthly Volume Commitment for each such Requested Service Haul for which such Designated Interests have been designated, which evidence shall be similar to the information that Shippers were required to submit at the time of the Open Season pursuant to the allocation procedures set forth therein (updated to reflect current data and statistics as of the date the information is to be submitted) including supporting officer's certificates and affidavits from Shipper. If Carrier determines, acting reasonably, that the Designated Interests and applicable Designated Facilities in each Designated Area of Shipper are no longer capable of supporting all of Shipper's Monthly Volume Commitment for the Requested Service Haul for which such facilities have been designated, then Shipper will be required to enter into a Transportation Services Agreement (Take or Pay) for Crude Petroleum for the portion of Shipper's Monthly Volume Commitment which is not supported by Shipper's the Designated Interests and applicable Designated Facilities in each Designated Area applicable to such Requested Service Haul. Until Shipper executes and delivers the Transportation Services Agreement (Take or Pay), this Agreement will be deemed to be converted to such Transportation Services Agreement (Take or Pay) for the portion of Shipper's Monthly Volume Commitment which is not supported by Shipper's Designated Interests and applicable Designated Facilities in each Designated Area applicable to such Requested Service Haul. The term of such Transportation Services Agreement (Take or Pay) shall be equal~~

~~to the Service Term applicable to such affected Designated Area and Requested Service Haul pairing and Shipper shall be subject to the provision of any additional Financial Assurances that will be required to be given by it under such Transportation Services Agreement (Take or Pay).~~

(b) ~~(e)~~ Carrier shall provide at least thirty (30) days Notice to Shipper (the "**Commencement Date Notice**") of the Commencement Date. If the Commencement Date does not occur on July 1, 2021, Shipper shall have the option to elect to have the Service Terms reduced for each of its respective Requested Service Hauls to align with an expiry date for such Service Terms that otherwise matches what the expiry date would have been had the Commencement Date not been delayed. The option to elect to reduce the Service Terms shall be exercisable for a period of ninety (90) days following receipt by Shipper of the Commencement Date Notice. Failure to provide an election notice shall be deemed to be an election by Shipper not to reduce the Service Terms. If Shipper makes an election to reduce its Service Terms in accordance with this Section 6.2(~~eb~~) then the Parties shall amend Schedule "A" hereto to reflect the reduction in such Service Terms.

(c) ~~(d)~~ Following delivery of the Commencement Date Notice, the commencement date specified in such Commencement Date Notice shall be deemed to be the "**Commencement Date**" for the purposes of this Agreement.

(d) ~~(e)~~ Shipper shall have the right to renew each Service Term applicable to a Requested Service Haul for one or more Renewal Periods subject to the following:

- (i) not later than thirty six (36) Months and no sooner than forty-eight (48) Months prior to the expiry of each Service Term (or any extended Service Term, if such Service Term was previously extended for a Renewal Period) applicable to a Requested Service Haul, Carrier will provide Shipper with Notice of the new committed tolls which shall replace the Committed Tolls that will apply during the Renewal Period, which are subject to the terms of this Agreement, the approval of the CER, and any additional requirements in respect of the provision of Financial Assurances in respect of such Requested Service Haul for its applicable Renewal Period (each a "**Renewal Period Toll Notice**").
- (ii) provided that Shipper is not in material default of any of its obligations under this Agreement, and subject to Section 6.2(~~fe~~), Shipper shall have the option, exercisable by Notice (each a "**Renewal Period Election Notice**") to Carrier not later than one-hundred and eighty (180) days following the date that Shipper received the Renewal Period Toll Notice, to extend such Service Term (including at the end of any previous Renewal Period) for all or a portion of its Monthly Volume Commitment (provided it is for a volume of Crude Petroleum that is equal to or greater than 4,400 Barrels per day or exactly 2,200 Barrels per day) applicable to such Requested Service Haul for an additional Renewal Period, all according to the terms of this Agreement.
- (iii) Failure by Shipper to deliver its Renewal Period Election Notice to Carrier prior to the date that is one-hundred and eighty (180) days following the date that Shipper received its Renewal Period Toll Notice shall be deemed to be an election by

Shipper not to exercise its option to extend the applicable Service Term for a Renewal Period pursuant to this Section 6.2(ed).

- (iv) Upon commencement of the Renewal Period, Schedule "B" to this Agreement will be updated to include the new Committed Tolls approved by the CER and which will be applicable to this Agreement during the Renewal Period.

(e) ~~(f)~~ Notwithstanding Section 6.2(ed), Carrier shall have the option (the "**Carrier Termination Option**") to terminate all Transportation Services Agreements (including this Agreement) entered into pursuant to the Open Season effective as of July 1, 2051 (the "**Service Termination Date**"). Carrier must make its election to exercise the Carrier Termination Option by delivering Notice to Shipper on or before the date that is at least thirty-six (36) Months prior to July 1, 2051. If the Carrier Termination Option is exercised by Carrier, all Service Terms that would otherwise extend past the Service Termination Date shall terminate on the Service Termination Date regardless of the term remaining on such Service Term.

(f) ~~(g)~~ If Shipper has elected in Paragraph 4 of Schedule "A" for a Flex Service Term to apply in respect of any of its Committed Volumes in a Requested Service Haul, then Shipper shall have the right on not less than thirty-six (36) Months Notice to turnback all or a portion of its Monthly Volume Commitment in any Requested Service Haul subject to a Flex Service Term. In the event that such turnback represents all of such Shipper's Monthly Volume Commitment for all Service Hauls then this Agreement shall be terminated, which turnback or termination, as applicable, will become effective as of the end of the Month specified in Shipper's turnback Notice, but in no event may the date of such turnback or termination, as applicable, be earlier than a date which is thirty-six (36) Months from the date of Carrier's receipt of the applicable Shipper turnback Notice.

6.3 Ramp Up

- (a) If Shipper has made a request for Service and been awarded pursuant to the Open Season additional Committed Volumes as set forth in Paragraph 98 of Schedule "A" (a "**Ramp Up**") for one or more Service Hauls ~~applicable to Ramp Up Designated Interests in one or more Ramp Up Designated Areas, as applicable~~, such Ramp Up will come into effect at the time requested by a Shipper after the Commencement Date and continue for the applicable Service Term for such Ramp Up as set forth in Paragraph 98 of Schedule "A", provided that the Ramp Up must come into effect on the first day of a Month. The commencement of Shipper's commitment for a given Ramp Up Committed Volume must not be later than December 31, 2025.
- (b) If Shipper has contracted for additional Committed Volumes as a result of a Ramp Up ("**Ramp Up Committed Volumes**"), Shipper shall have a three (3) Month grace period from the requested effective date for its Ramp Up during which it will not have to make Deficiency Payments in respect of Ramp Up Committed Volumes that are not delivered to a Regular Delivery Point within the Requested Service Haul applicable to such Ramp Up Committed Volumes ~~as a direct result of the Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in the affected Ramp Up Designated Area being delayed in achieving production equal to or greater than the Ramp Up Committed Volume for such Ramp Up Designated Area~~, provided that:

- (i) ~~if, at the end of the three (3) Month period (which may be extended in Carrier's sole discretion) the Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in such affected Ramp Up Designated Area have been completed consistent with the applicable Ramp Up Committed Volume and Shipper's allocated share of production from such Ramp Up Designated Facilities have, in any Month of such three (3) Month period (which may be extended in Carrier's sole discretion) produced a volume of Crude Petroleum (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline) which is equal to the product of the Ramp Up Committed Volume multiplied by the number of days in such Month (and which is incremental to any other Committed Volumes applicable to such Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in such affected Ramp Up Designated Area, to the extent the applicable Ramp Up Designated Interests are part of an existing Designated Area with an existing Designated Area MVC), subject to any Excused Events (Carrier) which have affected the ability of Shipper to produce from its Ramp Up Designated Interests due to Shipper's inability to deliver all or a portion of the Ramp Up Committed Volume to the Canadian Mainline, then the Ramp Up Committed Volume will remain subject to this Agreement.~~
- (ii) ~~if, at the end of the three (3) Month period (which may be extended in Carrier's sole discretion) the Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in such affected Ramp Up Designated Area have not been completed consistent with the applicable Ramp Up Committed Volume and/or Shipper's allocated share of production from such Ramp Up Designated Facilities have not, in any Month of such three (3) Month period (which may be extended in Carrier's sole discretion) produced a volume of Crude Petroleum (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline) which is equal to the product of the Ramp Up Committed Volume multiplied by the number of days in such Month (and which is incremental to any other Committed Volumes applicable to such Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in such affected Ramp Up Designated Area, to the extent the applicable Ramp Up Designated Interests are part of an existing Designated Area with an existing Designated Area MVC), other than as may have been caused by any Excused Events (Carrier) which have affected the ability of Shipper to produce from its Ramp Up Designated Interests due to Shipper's inability to deliver all or a portion of the Ramp Up Committed Volume to the Canadian Mainline, then that portion of the Ramp Up Committed Volume for which Shipper was able to produce from Ramp Up Designated Interests in such affected Ramp Up Designated Area in such three (3) Month period shall remain subject to this Agreement and Shipper shall be required to enter into a Transportation Services Agreement (Take or Pay) for such remaining portion of the Ramp Up Committed Volume for which it was unable to produce from Ramp Up Designated Interests in such affected Ramp Up Designated Area and such Ramp Up Committed Volume will no longer be subject to the terms of this Agreement (or if Shipper fails to execute a Transportation Services Agreement (Take or Pay) then, this Agreement, as it relates to the~~

~~applicable Ramp Up Committed Volume, will be deemed to be converted to a Transportation Services Agreement (Take or Pay) and deemed modified in such respect, as appropriate to be consistent with the terms of a Transportation Services Agreement (Take or Pay)). The term of the Transportation Services Agreement (Take or Pay) for the applicable portion of Shipper's Ramp Up Committed Volume shall be equal to the remainder of the Service Term applicable to such Ramp Up Committed Volume, and be subject to the provision of any Financial Assurances that will be required to be given by the Shipper under a Transportation Services Agreement (Take or Pay). In respect of the Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in a Ramp Up Designated Area, Shipper must promptly upon attaining production from the Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in a Ramp Up Designated Area provide to Carrier such information, reasonably satisfactory to Carrier, confirming the completion and ramp up of such Ramp Up Designated Facilities, which may, at the request of Carrier, include requiring Shipper to submit to Carrier an affidavit from an officer of Shipper with knowledge of the subject matter thereof certifying the foregoing information, in a form which is satisfactory to Carrier, acting reasonably. Carrier shall not be obligated to provide Services in respect of any Ramp Up Committed Volumes applicable to the applicable Ramp Up Designated Interests in a Ramp Up Designated Area if Shipper has failed to provide the foregoing information confirming the completion and ramp up of the applicable Ramp Up Designated Facilities. For clarity, and notwithstanding anything contained in this Section 6.3 to the contrary, Shipper shall in all circumstances remain subject to its obligations pursuant to this Agreement in respect of its such three (3) Month grace period each Ramp Up Committed Volume applicable to a given Requested Service Haul shall form part of Shipper's Monthly Volume Commitment in respect of such Requested Service Haul. An illustrative example of the provisions of this Section 6.3 is set forth in Schedule "E". For certainty, to the extent the Commencement Date is delayed to a date that is after the requested effective date for an applicable Ramp Up, then the effective date of such Ramp Up will occur concurrent with the Commencement Date and the three (3) Month grace period referred to above shall commence from and after such Commencement Date.~~

- ~~(c) In the case of Section 6.3(b)(ii), if during the term of the Transportation Services Agreement (Take or Pay), Shipper has completed the Ramp Up Designated Facilities where the Ramp Up Committed Volumes applicable to such Ramp Up Designated Area were converted pursuant to Section 6.3(b)(ii) and for any twelve (12) consecutive Months thereafter, subject to any Excused Events (Carrier) affecting Shipper's ability to produce from such Ramp Up Designated Area, Shipper's allocated share of production of Crude Petroleum from the Ramp Up Designated Facilities applicable to the applicable Ramp Up Designated Interests in a Ramp Up Designated Area (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline) resulted in an average Monthly volume equal to or greater than the Ramp Up Committed Volume applicable to such Ramp Up Designated Area multiplied by 365/12 (or 366/12 in a leap year), the Transportation Services Agreement (Take or Pay) will terminate and the remaining portion of Ramp Up Committed Volumes which are subject to such Transportation Services Agreement (Take or Pay) will be re-included in and be subject to this~~

~~Agreement, or if Shipper failed to execute such Transportation Services Agreement (Take or Pay) and to the extent this Agreement was deemed in accordance with Section 6.3(b)(ii) to be converted to a Transportation Services Agreement (Take or Pay) in respect of such Ramp Up Committed Volumes then this Agreement shall cease to be so deemed.~~

- (c) ~~(d)~~ Subject to Section 6.3(b)(ii), Ramp Up Committed Volumes which have come into effect pursuant to Section 6.3(a) shall, for all purposes of this Agreement, be considered to be "Committed Volumes" of Shipper.

6.4 Carrier Reduction in Committed Volume

- ~~(a) Notwithstanding anything to the contrary in this Agreement, if at any time during the Term:~~
- ~~(i) the Monthly average of Shipper's claimed Excused Event (Shipper) Volumes for an applicable Designated Area over the immediately preceding twelve (12) Month period is greater than twenty five percent (25%) of Shipper's Designated Area MVC for such Designated Area, then Carrier shall be entitled by Notice to Shipper to permanently reduce Shipper's Monthly Volumes Commitments across all Requested Service Hauls by such Monthly average of Excused Event (Shipper) Volumes over such twelve (12) Month period, pro rata based on the Excused Event (Shipper) Volumes that were allocated from such Designated Area to each Requested Service Haul during such twelve (12) Month Period; or~~
 - ~~(ii) Shipper's allocated share of the Monthly production of Crude Petroleum from the Designated Interests in a Designated Area have been curtailed by a volume that is greater than twenty five percent (25%) of Shipper's Designated Area MVC for such Designated Area (subject to such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline) and for which Shipper is claiming an Excused Event (Shipper) for Excused Event (Shipper) Volumes from the Designated Interests in such Designated Area in excess of such twenty five percent (25%) threshold in accordance with Section 5.6, and such curtailment is reasonably expected to last for a period of greater than twelve (12) Months, and such curtailment was not due to a Feedstock Impairment, then Carrier shall be entitled by Notice to Shipper to elect to temporarily reduce Shipper's aggregate Monthly Volume Commitment applicable to the Service Haul Segment that such Designated Area was designated to by a Monthly volume equal to the Monthly volume that is anticipated to be curtailed from the affected Designated Interests in such Designated Area (with such volume adjustments as may be required to account for any blending with other hydrocarbons (i.e. diluent) to meet the minimum pipeline specifications of the Canadian Mainline), as determined by Carrier acting reasonably and in consultation with Shipper, for so long as such curtailment of the affected Designated Interests in the applicable Designated Area remains above twenty five percent (25%) of Shipper's Designated Area MVC applicable to such Designated Area, provided that Carrier may elect to permanently reduce Shipper's Monthly Volume Commitment in accordance with subsection 6.4(a)(i) when the circumstances in such subsection become applicable.~~

~~Subject to Section 6.4(b), an election by Carrier pursuant to this Section 6.4 shall take effect as of and from: (x) in the case of Section 6.4(a)(i), as of the later of: (i) the first day of the Month that is ninety (90) days following Shipper's receipt of such Notice; or (ii) the first day of the Month following the Month in which the twelve (12) month calculation in Section 6.4(a)(i) occurs; and (y) in the case of Section 6.4(a)(ii), as of the first day of the Month that is ninety (90) days following Shipper's receipt of such Notice.~~

~~(b) Prior to the date that an election by Carrier pursuant to Section 6.4(a) is to take effect, Shipper may elect to avoid such reduction to its applicable Monthly Volume Commitment by electing to convert the applicable portion of the Monthly Volume Commitment that is subject to reduction in accordance with Section 6.4(a) to a Transportation Services Agreement (Take or Pay) for Crude Petroleum provided Shipper is able to provide any additional Financial Assurances that will be required to be given by Shipper under such Transportation Services Agreement (Take or Pay). If Shipper makes an election to convert the applicable portion of the Monthly Volume Commitment that is subject to reduction pursuant to this Section 6.4 to a Transportation Services Agreement (Take or Pay) for Crude Petroleum and provided that Shipper provides Carrier with the additional Financial Assurances required prior to the date that the Carrier's election is to take effect, then the Parties shall amend Schedule "A" to this Agreement to remove the applicable portion of Shipper's Monthly Volume Commitment and the Parties will enter into a Transportation Services Agreement (Take or Pay) for Crude Petroleum for such volume. If Shipper is unable to provide any additional Financial Assurances as required by the terms of the Transportation Services Agreement (Take or Pay) prior to the date that the Carrier's election is to take effect, then Shipper's election to convert to a Transportation Services Agreement (Take or Pay) pursuant to this Section 6.4 will be null and void, and Carrier's election to reduce Shipper's Monthly Volume Commitment shall take effect as provided pursuant to this Section 6.4. Where the election by Carrier is being made under Section 6.4(a)(ii) and Shipper elects to convert to a Transportation Services Agreement (Take or Pay) for the applicable portion of the Monthly Volume Commitment that is subject to reduction in accordance with Section 6.4(a)(ii), then Shipper will be entitled to convert such portion of the Monthly Volume Commitment back to this Agreement upon demonstrating to Carrier, in its reasonable discretion, that Shipper's allocated share of production of Crude Petroleum from the Designated Facilities applicable to the Designated Interests in the Designated Area is at or above seventy five percent (75%) of Shipper's Designated Area MVC, and such production and processing is reasonably anticipated to be maintained for at least the subsequent twelve (12) Months.~~

[Intentionally Deleted]

6.5 Shipper Reduction in Committed Volume

Notwithstanding anything to the contrary in this Agreement, if at any time during the Term, Shipper's nominations in respect of a Requested Service Haul have been subject to apportionment on the Canadian Mainline for a continuous period of not less than:

- (a) twelve (12) Months where the primary cause of such apportionment is due to one or more events that do not constitute Force Majeure; or

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- (b) twenty-four (24) Months where the primary cause of such apportionment is due to an event of Force Majeure;

and provided that Shipper was not subject to a Failure to Tender during such period, then Shipper may elect by Notice to Carrier (which Notice must be delivered no later than ninety (90) days following resolution of the apportionment) to permanently reduce for the remainder of the Service Term Shipper's Monthly Volume Commitment in respect of such Requested Service Haul to a volume which is not less than the arithmetic average of Shipper's Monthly Volume Commitment which was not subject to apportionment during the twelve (12) Months immediately prior to such election, with effect as of and from the first day of the Month that is at least ninety (90) days following Carrier's receipt of such Notice.

ARTICLE 7 TOLLS

7.1 Committed Tolls

- (a) Subject to, and in accordance with the terms of this Agreement, Shipper will, for each Month during the Service Term of each Requested Service Haul, pay to Carrier the applicable Committed Tolls in respect of its Committed Volumes pertaining to each Requested Service Haul as determined in accordance with this Transportation Services Agreement and such other charges payable for such Month calculated in accordance with Article 8. Committed Tolls for Service (Edmonton to Hardisty) and Committed Tolls for the Short Haul Segment will be reflected in the Enbridge Tariff. Committed Tolls for the Medium Haul Segment and Committed Tolls for the Long Haul Segment will be reflected either in the Enbridge Tariff and the Lakehead Tariff (the Committed Toll being the sum of the applicable Canadian Mainline and Lakehead System tolls), or, in the Enbridge Joint Tariff, as determined by the Carrier in its sole discretion.
- (b) Subject to Sections 4.2(b) and 4.4, the Committed Tolls payable hereunder include receipt and delivery terminalling, the Line 3 Replacement Surcharge and Line 5 Surcharge, but, for certainty, do not include charges for: (i) receipt or delivery tankage, (ii) services pertaining to any other pipeline system or facility owned or operated by Carrier or any of its Affiliates that does not form part of the Enbridge Mainline; (iii) Abandonment Costs (including charges related to the LMCI and the Line 3 Replacement Minnesota Decommissioning Surcharge); or (iv) any toll adjustments specifically referenced herein.
- (c) Except as otherwise provided in this Agreement, the Committed Tolls are not subject to future increases or surcharges.
- (d) Subject to any terms of this Agreement to the contrary and Applicable Laws, from and after the Effective Date, Carrier shall not amend Schedule "B" hereto such that the Committed Tolls payable pursuant to this Agreement would discriminate as between applicable Regular Delivery Points on any basis other than in relation to distance and commodity adjustments.
- (e) If, following the date hereof, a new Regular Receiving Point is added to the Enbridge Tariff or a new Regular Delivery Point is added to the Enbridge Tariff or the Lakehead Tariff, Carrier may, in its sole discretion, amend Schedule "B" to include Committed Tolls

for Service from such new Regular Receiving Points in Canada and/or Committed Tolls for Service to such new Regular Delivery Points, as applicable. Any such amended Schedule "B" shall be binding on Shipper.

7.2 Uncommitted Tolls

Except as expressly contemplated in this Agreement, this Agreement is not intended to apply to Services in respect of any Uncommitted Volumes pertaining to Crude Petroleum of Shipper and the provision of Services in respect of Uncommitted Volumes pertaining to Crude Petroleum and the Uncommitted Tolls payable will be governed by the Enbridge Tariff, the Lakehead Tariff and/or the Enbridge Joint Tariff.

7.3 Toll Adjustment for Inflation

Commencing effective as of July 1, 2022, the Committed Tolls shall be adjusted annually by an amount equal to the product of the Committed Tolls then existing for such Year (without giving effect to any adjustment pursuant to Section 7.4) multiplied by the GDPP Multiplier (the "**Annual Inflation Adjustment**"); *provided* that in a Year where the effect of such adjustment would be to decrease the Committed Tolls payable, the following shall apply:

- (a) the GDPP Multiplier for such Year shall be deemed to be one (1.000); and
- (b) the calculated percentage by which the Committed Tolls would have been reduced in such Year shall be carried forward (the "**Carry Forward Reduction Amount**") and applied to reduce the Annual Inflation Adjustment in subsequent Years until such Carry Forward Reduction Amount has been fully allocated; *provided* that, in no event will the Carry Forward Reduction Amount be applied in any Year such that it would result in a decrease to the Tolls payable.

For the purposes of this Section 7.3 and the Annual Inflation Adjustment, there shall be no Annual Inflation Adjustment applied to any toll adjustment applied pursuant to Section 7.4 or any TVDD applicable to the Committed Tolls. An illustrative example of the foregoing is set forth in Schedule "F".

7.4 Toll Adjustment for Change of Applicable Laws and Regulatory Matters

Notwithstanding anything to the contrary herein, the Committed Tolls will be adjusted if, from and after December 20, 2019, any Governmental Authority promulgates, issues or changes any Applicable Laws applicable to Carrier, EELP or the Enbridge Mainline that requires Carrier and/or EELP to take actions that result in Carrier or EELP (A) incurring additional capital expenditures, (B) incurring an increase in operating expenditures or (C) being required to recover or incur additional charges, levies or taxes, including any relating to the imposition of any new or amended charges, levies or other Taxes chargeable by a Governmental Authority to Carrier or EELP, in respect of the Enbridge Mainline.

7.5 Payment of Tolls Pursuant to Other Service Arrangements

If:

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- (a) Shipper is party to a transportation service agreement with Carrier or an Affiliate of Carrier that owns and operates a pipeline system that receives Petroleum from the Enbridge Mainline; or
- (b) Shipper transfers Petroleum delivered to it from the Canadian Mainline or the Lakehead System to a Person that is party to a transportation service agreement with Carrier or an Affiliate of Carrier that owns and operates a pipeline system that receives Petroleum from the Enbridge Mainline,

and such transportation services agreement provides for a toll that is intended to include payment for transportation service on the Enbridge Mainline within one or more Requested Service Hauls (an "**Other Service Arrangement**"), Shipper will satisfy its obligations hereunder to receive delivery of all or a portion of its Monthly Volume Commitment within the applicable Requested Service Haul in a Month for such volume of Shipper's Product delivered pursuant to such Other Service Arrangement that is delivered anywhere within the Service Haul Segment applicable to such Requested Service Haul and the toll paid by Shipper or the Person referred to in Section 7.5(b), as applicable, in respect of the Other Service Arrangement for such volume of Shipper's Product delivered will satisfy Shipper's requirement to pay the Committed Toll pursuant to this Transportation Service Agreement. The terms of such Other Service Arrangement do not and will not affect Shipper's obligation to make any Deficiency Payment under the terms of this Agreement, if required by the terms hereof.

7.6 Most Favoured Nation Toll Adjustment

- (a) If Carrier, following the Effective Date, conducts a successful open season to contract for a new service offering that provides for a toll for Crude Petroleum committed shippers in such service offering, that is less than (subject to all necessary distance and commodity adjustments) the Committed Tolls payable hereunder (which comparison shall incorporate in such determination all applicable Committed Toll discounts contemplated hereunder) then:
 - (i) if the minimum initial service term under the new service offering is a contract term that is equal to or shorter than Shipper's initial Service Term (excluding any renewal terms in such determination) for one or more of Shipper's Requested Service Hauls, then Shipper shall be entitled to receive a reduction of its Committed Tolls hereunder for such Requested Service Hauls (subject to all necessary distance and commodity type adjustments) to a Committed Toll that is equivalent to the committed tolls in such new service offering for so long as such reduced committed tolls for Crude Petroleum remain in effect or for the remainder of its initial Service Term (whichever is earlier). For certainty, Committed Tolls during any Renewal Period that occurs after a toll reduction in accordance with this subsection 7.6(a)(i) had taken effect will be determined in accordance with Section 6.2(ed) of this Agreement and the Committed Tolls for such subsequent Renewal Period will not be subject to any toll reductions pursuant to this subsection 7.6(a)(i) that came into effect prior to such Renewal Period;
 - (ii) if the minimum initial service term under the new service offering is a contract term that is greater than Shipper's initial Service Term (excluding any renewal terms in such determination) for one or more of Shipper's Requested Service

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Hauls, then Shipper shall not be entitled to receive a reduction of its Committed Tolls hereunder for such Requested Service Hauls unless Shipper elects to permanently convert its entire Monthly Volume Commitment for the applicable Requested Service Hauls that it wishes to receive the lower committed toll to the new service offering, provided that such election shall be conditional on:

- A. ~~(A)~~ the open season for the new service offering being successful;
- B. ~~(B)~~ Shipper electing a new service term (commencing from the date such new service term is to take effect) under such new service offering that is at least as long as the minimum initial service term under the new service offering;
- C. ~~(C)~~ Shipper ~~being able to satisfy Carrier, in its reasonable discretion, that Shipper's existing Designated Interests in an applicable Designated Area that may need to be designated under such new service is reasonably anticipated to support the Monthly Volume Commitment; and~~ electing a take or pay service option under such new service offering, or if there is a requirement to designate facilities, then Shipper meeting the requirements to designate facilities under such new service offering; and
- D. ~~(D)~~ such other qualifications as provided in the open season rules for such new service offering.

If the new service offering sets contract volume thresholds for the entitlement of certain toll discounts, then, to the extent Shipper would meet the requirements in subsection (i) or has agreed to convert to a new transportation services agreement in the form provided in the open season for the new service offering, Shipper shall also qualify for the threshold contract volume toll discounts in such new service offering to the extent its aggregate Monthly Volume Commitment in the applicable Service Hauls (with the exception of the E2H Segment or any Service Haul with a Flex Service Term) is greater than the contract volume thresholds for such discount in the new service offering, provided that, if Shipper does not qualify for the applicable contract volume threshold discount(s) but requests for service additional volume in the open season for such new service offering such that Shipper's aggregate Monthly Volume Commitment (across all Service Hauls) and the new volumes contracted under the new service offering exceed the contract volume thresholds for the applicable discount(s) in such new service offering then Shipper will be entitled to such discount(s). Upon making an election to convert to such new service offering, Shipper will execute and deliver the new form of transportation services agreement under such new service offering which will supersede and replace this Transportation Services Agreement from and after the commencement date under the new service offering.

- (b) If Carrier, at any time during an applicable Service Term, offers a committed toll for Crude Petroleum to one or more Committed Shippers for a renewal period under an applicable Transportation Services Agreement which is less than (subject to all necessary distance and commodity type adjustments) the Committed Tolls payable hereunder (which

comparison shall incorporate in such determination all applicable Committed Toll discounts and surcharges contemplated hereunder), then, for so long as such reduced committed tolls for Crude Petroleum remain in effect or for the remainder of its Service Term (without regard to any Renewal Period which has not yet taken effect) (whichever is earlier), Shipper shall be entitled to receive a reduction of its Committed Tolls hereunder (subject to all necessary distance and commodity type adjustments) to a Committed Toll that is equivalent to the committed tolls applicable to such renewal term for so long as such toll remains in effect under such renewal term. For certainty, Committed Tolls during any Renewal Period that occurs after a toll reduction in accordance with this subsection 7.6(b) had taken effect will be determined in accordance with Section 6.2(ed) of this Agreement and the Committed Tolls for such subsequent Renewal Period will not be subject to any toll reductions pursuant to this subsection 7.6(b) that came into effect prior to such Renewal Period.

- (c) If Carrier, at any time during an applicable Service Term, elects to reduce the Uncommitted Tolls for Crude Petroleum to an amount which results in the differential between the Uncommitted Tolls and the equivalent Committed Tolls for Crude Petroleum being less than the Minimum Toll Differential (as may have been amended, if applicable, pursuant to Section 3.4(a)), then, for so long as such reduced Uncommitted Toll for Crude Petroleum remains in effect, Carrier shall reduce the Committed Tolls for Crude Petroleum to maintain a differential that is equal to the Minimum Toll Differential for Crude Petroleum, provided that, this Section 7.6(c) shall not apply where Carrier has been mandated by a Governmental Authority to reduce the Uncommitted Tolls for Crude Petroleum, and the Parties shall disregard any comparison of the impact of an Uncommitted Toll reduction to the Minimum Toll Differential where:
- (i) Carrier has been mandated by an order of a Governmental Authority to apply the TVDD set forth in Section 7.9(e) to Uncommitted Tolls;
 - (ii) Carrier has been mandated by an order of a Governmental Authority to reduce the Uncommitted Toll or to apply a toll discount to the Uncommitted Tolls following receipt of the Regulatory Approvals;
 - (iii) the GDPP Multiplier applicable to the Uncommitted Toll for Crude Petroleum was mandated to be reduced by an order of a Governmental Authority including pursuant to the Regulatory Approvals and Carrier elected not to match such reduction to the GDPP Multiplier applicable to Committed Tolls, any impacts to the narrowing of the differential between Uncommitted Tolls and Committed Tolls for Crude Petroleum over time resulting from the mismatch of the GDPP Multipliers;

provided that, for certainty:

- (iv) the Minimum Toll Differential for Crude Petroleum will be deemed to widen during the period of time the Line 5 Surcharge is in effect by an amount equal to the increase to the Uncommitted Tolls attributable to the Line 5 Surcharge;
- (v) the Minimum Toll Differential for Crude Petroleum required to be maintained by Carrier shall not be impacted by any future surcharges applied to the

Uncommitted Tolls for Crude Petroleum as result of an Expansion to the Enbridge Mainline when comparing the differential between the Uncommitted Tolls and the Committed Tolls as compared to the Minimum Toll Differential, such that, if there is such surcharge, then the impact to the differential will not be impacted by such surcharge; and

- (vi) for the purposes of this Section 7.6(c), to the extent the Uncommitted Tolls include surcharges for Abandonment Costs, then such surcharges will be removed from such Uncommitted Tolls for comparison purposes on the effect of the Minimum Toll Differential.

An illustrative example of the foregoing is set forth in Schedule "L".

- (d) Notwithstanding anything herein to the contrary, if at any time Carrier elects to reduce Uncommitted Tolls for Service (Edmonton to Hardisty), then Carrier shall have no obligation hereunder to match such reduction to any Tolls in any other Service Hauls or to the Committed Tolls for Service (Edmonton to Hardisty), except, only in the circumstance where such reduction would result in the differential between the Uncommitted Tolls for Service (Edmonton to Hardisty) and the Committed Tolls for Service (Edmonton to Hardisty) being less than the Minimum Toll Differential (as may have been amended, if applicable, pursuant to Section 3.4(a)), in which case, Carrier shall be obligated only to reduce the Committed Toll for Service (Edmonton to Hardisty) to maintain a differential that is equal to the Minimum Toll Differential for Service (Edmonton and Hardisty) for the period such toll reduction remains in effect.

7.7 Expansions

There shall be no adjustment to the Committed Tolls payable hereunder as a result of any Expansion undertaken on the Enbridge Mainline following the Effective Date, except for an Expansion which is comprised of the construction of a new pipeline between Superior, Wisconsin and Flanagan, Illinois that expands the capacity of the Enbridge Mainline downstream of the Superior terminal owned and operated by EELP near Superior, Wisconsin to greater than 3,400,000 Barrels per day, and which would result in a negative surcharge of U.S.\$0.10 per Barrel on the Hardisty to Chicago (Lockport, Mokena, Griffith, Flanagan) Heavy Committed Toll (with all other Committed Tolls distance and commodity adjusted to such negative surcharge).

7.8 ~~Deficiency Credit~~ Make-Up Credits Mechanism

The following provisions shall apply to ~~Deficiency~~ Make-Up Credits:

- (a) If, in any Month, Shipper has, within a Requested Service Haul, accrued a Shortfall Volume for which Shipper has paid a Deficiency Payment, Shipper shall have credited to its ~~Deficiency~~ Make-Up Credit Account for the applicable Service Haul Segment related to such Requested Service Haul an amount which is equal, on a dollar for dollar basis, to the Deficiency Payment paid in respect of such Shortfall Volume, which credit (a "~~Deficiency~~ Make-Up Credit") shall be available to be applied to offset against the Tolls that would otherwise be payable in respect of subsequent deliveries of volumes of Shipper's Product (including both Committed Volumes and Uncommitted Volumes) delivered anywhere within the applicable Service Haul Segment related to such

Requested Service Haul. DeficiencyMake-Up Credits credited to Shipper's DeficiencyMake-Up Credit Account as a result of a Deficiency Payment paid for Shortfall Volumes in a Requested Service Haul may only be applied to volumes of Shipper's Product within the same Service Haul Segment to which such Requested Service Haul relates.

- (b) The DeficiencyMake-Up Credits credited to Shipper in accordance with Section 7.8(a) may only be applied to offset against Tolls which are payable in respect of Eligible DeficiencyMake-Up Credit Volumes delivered to Shipper in the ~~threetwelve~~ (312) Months immediately following the Month in which the applicable DeficiencyMake-Up Credits were credited (the "DeficiencyMake-Up Credit Period"). Following the expiry of each DeficiencyMake-Up Credit Period, all unused DeficiencyMake-Up Credits applicable to such DeficiencyMake-Up Credit Period will expire and be removed from the account of Shipper and be of no further force or effect.
- (c) DeficiencyMake-Up Credits will only be applied to Tolls which are payable in respect of Eligible DeficiencyMake-Up Credit Volumes in a Month where Shipper has first satisfied its Monthly Volume Commitment for such Month, subject to Section 8.2. For certainty, DeficiencyMake-Up Credits will not be applied in a Month where Shipper has claimed an Excused Event (Shipper) that results in Shipper receiving relief from its obligation to pay Deficiency Payments on Shortfall Volumes for such Month.
- (d) DeficiencyMake-Up Credits in the DeficiencyMake-Up Credit Account for a Service Haul Segment will only be applied by Carrier to offset against Tolls payable by Shipper in respect of Eligible DeficiencyMake-Up Credit Volumes in such Service Haul Segment. In the event that DeficiencyMake-Up Credits are used to offset Committed Tolls payable by Shipper, such DeficiencyMake-Up Credits will be applied on a first in first out basis. In the event that DeficiencyMake-Up Credits are used to offset Uncommitted Tolls payable by Shipper, Carrier will consider all DeficiencyMake-Up Credits of Shipper and any Make-UpDeficiency Credits (as such term is defined in any other Transportation Services Agreements other than the Transportation Services Agreement (Take or Pay)) of Shipper (collectively "**Credits**") and apply such Credits based on when they will expire, with such Credits expiring first being applied first.
- (e) Any DeficiencyMake-Up Credits that remain credited to the account of Shipper at the expiry of the Term of this Agreement will survive termination until the end of the DeficiencyMake-Up Credit Period applicable to such DeficiencyMake-Up Credit. In such circumstances Shipper may apply unexpired DeficiencyMake-Up Credits in the DeficiencyMake-Up Credit Account for a Service Haul Segment to offset against Uncommitted Tolls payable by Shipper in respect of Uncommitted Volumes in such Service Haul Segment until the earlier of such remaining DeficiencyMake-Up Credits having been used or the expiry of the DeficiencyMake-Up Credit Period for such DeficiencyMake-Up Credits.
- (f) For certainty, DeficiencyMake-Up Credits that have been earned in accordance with this Agreement and credited to Shipper's DeficiencyMake-Up Credit Account may only be applied to offset against Tolls for Eligible DeficiencyMake-Up Credit Volumes that are Committed Volumes which were committed pursuant to this Agreement or Uncommitted Volumes and may not be credited to offset against Tolls for Committed Volumes under

any other Transportation Services Agreement to which Shipper is a party, or transferred to any other Person.

7.9 Committed Toll Discounts

Carrier and Shipper acknowledge and agree that the Committed Tolls are as more particularly set out in Schedule "B", as may be adjusted in accordance with the terms of this Agreement, and that Shipper will be eligible to receive one or more discounts in respect of the Committed Tolls payable in respect of all or a portion of its Committed Volumes, subject to the requirements more particularly set forth below (note that all discounts have been determined based on the Hardisty to Chicago (Lockport, Mokena, Griffith, Flanagan) Heavy Committed Toll and that all other Committed Tolls will be distance and commodity adjusted to such discounted Hardisty to Chicago (Lockport, Mokena, Griffith, Flanagan) Heavy Committed Toll, as applicable):

- (a) **Volume Discounts** – Subject to Section 7.9(c) and the requirements set forth in Schedule "H" attached hereto:
 - (i) a High Volume Committed Shipper shall be entitled to the discounted Committed Tolls as more particularly set forth in Schedule "B" (the "**High Volume Committed Tolls**") applied to its Committed Volumes for Service in its Requested Service Hauls (other than Service (Edmonton to Hardisty)).
 - (ii) an E2H High Volume Committed Shipper shall be entitled to the discounted Committed Tolls as more particularly set forth in Schedule "B" (the "**E2H High Volume Committed Tolls**") applied to its Committed Volumes for Service (Edmonton to Hardisty).
- (b) **Length of Term Discounts** – Subject to Section 7.9(c), Committed Shippers which, pursuant to the Open Season, have, in respect of an applicable Requested Service Haul, requested for Service an initial Service Term (with the exception of any Flex Service Term) of:
 - (i) not less than one-hundred and fifty six (156) Months and not greater than two-hundred and three (203) Months shall be entitled to a discounted Committed Toll as more particularly set forth in Schedule "B" for all of its Committed Volumes applicable to such Requested Service Haul.
 - (ii) equal to or greater than two-hundred and four (204) Months shall be entitled to a discounted Committed Toll as more particularly set forth in Schedule "B" for all of its Committed Volumes applicable to such Requested Service Haul.
- (c) **Cumulative Volume/Term Contracted Discount** – A Committed Shipper will be entitled to the Cumulative Volume/Term Contracted Discount as more particularly set forth in Schedule "B" for all of its Committed Volumes, where Carrier has determined Shipper meets the required qualifications specifically set forth in Schedule "B".
- (d) **Total Volume Contracted Discount** – If, as of the Commencement Date, Carrier has aggregate contractual commitments pursuant to executed Transportation Services Agreements for Priority Access on the Canadian Mainline in respect of Petroleum for all

Long Haul Segments and Medium Haul Segments (excluding any contractual commitments for which a Flex Service Term applies but including any contractual commitments for Ramp Up Committed Volumes that have a commencement date on or before December 31, 2021), which in aggregate is equal to or greater than 2,500,000 Barrels per day then all Committed Shippers will be entitled to a discount on the Committed Tolls (other than Committed Tolls pertaining to contractual commitments for which a Flex Service Term applies) determined in accordance with Schedule "B".

(e) **Total Volume Delivered Discount** – For each Month in which the TVDD Rolling Average is equal to or greater than the greater of:

- (i) 2,750,000 Barrels per day; or
- (ii) 50,000 Barrels per day above the total volumes contracted for service on the Enbridge Mainline (which, for certainty, are not Uncommitted Volumes), including any Committed Volumes, during such Month pursuant to Service Hauls whose Regular Delivery Points are Delivery Points (Border Downstream);

(the "TVDD Threshold"),

Carrier will apply a total volume delivered discount (the "TVDD") to all Committed Tolls applicable to the third Month following the Month for which the TVDD Threshold was exceeded, calculated as U.S.\$0.05 per Barrel discount for each incremental 50,000 Barrels the TVDD Rolling Average exceeds the TVDD Threshold, which discount will be applied to a movement of a Barrel of heavy Crude Petroleum from Receipt Points (Hardisty) to a Regular Delivery Point at or near Chicago, Illinois (namely, Lockport, Mokena, Griffith, Flanagan), with all other Committed Tolls for all Petroleum types across all Service Hauls being credited with a TVDD for such Month on a distance and commodity adjusted basis to such discount being applied above. The TVDD applicable to any given Month shall be capped at a discount of U.S. \$0.30 per Barrel for a movement of heavy Crude Petroleum from Hardisty, Alberta to any of the delivery points in the Chicago, Illinois area (Lockport, Mokena, Griffith, Flanagan) with all other Committed Tolls discounts for all Petroleum types across all Service Hauls for the TVDD being proportionally capped on a distance and commodity adjusted basis to such applied discount. For certainty, Committed Volumes which are subject to a Flex Service Term (i) shall be included in the calculations of the TVDD Rolling Average for the purpose of determining whether the TVDD Threshold has been exceeded; but (ii) shall not be eligible to receive the TVDD. Examples of how the Carrier will determine TVDD for a Month are set forth in Schedule "O". For greater certainty, no TVDD shall be applied to Committed Tolls where, in a Month, the requirements of this Section 7.9(e) with respect to the TVDD Rolling Average have not been satisfied.

Notwithstanding anything to the contrary herein, the TVDD shall not be subject to any adjustment in accordance with Section 7.3.

(f) **Shipper Affiliate Volumes** – For the purposes of determining Shipper's eligibility for discounts set forth in Sections 7.9(a) and 7.9(c), "Committed Volume" of Shipper for the

purpose of such Sections will be deemed to include the aggregate volume of the type of Petroleum set forth in Paragraph 87 and Paragraph 98 (provided that the volumes set forth in paragraph 98 shall only be considered for this purpose as of the date which such volumes have come into effect), as applicable, of Schedule "A" of any Transportation Services Agreement of any Affiliate of a Committed Shipper.

Notwithstanding the foregoing, the Committed Toll discounts set forth in Schedule "B" shall not be applicable to any Committed Tolls payable in respect of any Committed Volumes for which a Flex Service Term applies.

7.10 Failure to Tender Charge

If Shipper does not deliver to the Canadian Mainline in a Month sufficient Shipper's Product to satisfy at least ninety-seven percent (97%) of its Allocated Nomination for that Month (a "**Failure to Tender**"), as determined by Carrier pursuant to the applicable Shipper Splits, Shipper shall be subject to paying the Failure to Tender Charge on the portion of the Allocated Nomination that it has not delivered to Carrier (less the 3% tolerance) (the "**Failure to Tender Volume**") subject to the following:

- (a) the Failure to Tender Volume will first be deemed to apply to Shipper's Uncommitted Volume nominations that form part of the Allocated Nomination in such Month (if any), and such Failure to Tender Volumes will be allocated on a weighted average basis determined based on the aggregate Allocated Nomination of Uncommitted Volumes in such Month; provided that,
- (b) if the Failure to Tender Volume is greater than the Uncommitted Volumes that form part of Shipper's Allocated Nomination for such Month (if any), such excess Failure to Tender Volumes will be deemed to apply to Shipper's Committed Volume nominations that form part of the Allocated Nomination in such Month, and such Failure to Tender Volumes will be allocated between Service Hauls on a weighted average basis determined based on the aggregate of Shipper's Committed Volumes in such Month.

Sample calculations of the Failure to Tender Charge are set forth in Schedule "J".

ARTICLE 8 CALCULATION OF MONTHLY PAYMENTS AND PAYMENT OF TOLLS

8.1 Calculation of Monthly Payments

For each Month of the Term, Shipper will, subject to the terms of this Agreement, pay to Carrier the sum of the following:

- (a) for each Requested Service Haul, the product of:
 - (i) Shipper's Actual Committed Volume Deliveries, pertaining to such Requested Service Haul; and
 - (ii) the applicable Committed Toll for such Month;
- (b) for each Requested Service Haul, the product of:

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- (i) those Uncommitted Volumes pertaining to such Requested Service Haul for which the Committed Toll is to be charged in accordance with Section 8.2; and
- (ii) the applicable Committed Toll for such Month;
- (c) subject to Section 8.3(a), for any Shortfall Volume occurring in a Requested Service Haul (which were not offset by an Excused Event Volume), the Deficiency Payment for each such Requested Service Haul, if any;
- (d) for each Service Haul, for any Failure to Tender Volumes, the Failure to Tender Payment, if any; and
- (e) any other amounts payable by Shipper for such Month pursuant to this Agreement or the Enbridge Tariff, the Lakehead Tariff and/or the Enbridge Joint Tariff, as applicable.

Where Shipper has incurred a Failure to Tender Payment in a Month, Shipper will receive a credit on its invoice in respect of such Failure to Tender Payment for such Month which is equal to the lesser of: (i) the sum of Deficiency Payments for each Requested Service Haul in such Service Haul Segment; or (ii) the sum of the Failure to Tender Payments that are deemed allocated to Committed Volumes for each Requested Service Haul in such Service Haul Segment.

8.2 Crediting Unused Committed Capacity Availability in Uncommitted Volumes

If, in a Month, Shipper has delivered in a Service Haul Segment a volume of Shipper's Product that is in excess of Shipper's aggregate Monthly Volume Commitment related to such Requested Service Haul which would otherwise be an Uncommitted Volume, then Carrier will determine if Shipper has any Unused Committed Volume Capacity Availability in such Requested Service Haul, and if so then, such portion of that Month's Uncommitted Volume that is equal to or less than the Unused Committed Volume Capacity Availability will be charged Committed Tolls on such volumes for such Month and Carrier will only charge Uncommitted Tolls on such portion of the Uncommitted Volume that is in excess of the Unused Committed Volume Capacity Availability. For certainty, Carrier will also apply any ~~Deficiency~~Make-Up Credits available in Shipper's ~~Deficiency~~Make-Up Credit Account for the applicable Service Haul Segment related to such Requested Service Haul against such Uncommitted Volume that were charged the Committed Tolls in accordance with this Section 8.2 to further reduce the Tolls payable. Sample calculations of the crediting of Unused Committed Capacity Availability to Uncommitted Volumes are set forth in Schedule "K". For certainty, Unused Committed Capacity Availability that becomes available hereunder from time to time may not be used under any other Transportation Services Agreement to which Shipper is a party and is not transferrable to any other Person.

8.3 Crediting Uncommitted Volumes Offset Availability to Shortfall Volumes

If, in a Month, Shipper has delivered in a Requested Service Haul a volume of Shipper's Product that is less than Shipper's aggregate Monthly Volume Commitment related to such Requested Service Haul which would otherwise be a Shortfall Volume (which will not be offset by an Excused Event Volume) for which Shipper would be charged a Deficiency Charge, then Carrier will determine if Shipper has any Uncommitted Volume Offset Availability in such Requested Service Haul, and if such availability exists, then:

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- (a) Carrier will not charge Deficiency Charges against such portion of the Shortfall Volume that is equal to or less than the Uncommitted Volume Offset Availability and only charge Deficiency Charges on such portion of the Shortfall Volume that is in excess of the Uncommitted Volume Offset Availability, if any; and
- (b) for such portion of the Uncommitted Volume Offset Availability that is offset against the Shortfall Volume in (a) above (the "**Offset Uncommitted Volumes**"), Carrier will provide a credit back to Shipper for the positive difference between the Uncommitted Tolls paid in respect of such Offset Uncommitted Volumes and the Committed Tolls that apply for such same delivery path in the current Month, provided that if the Uncommitted Volume Offset Availability is greater than the Shortfall Volume, such credit will be applied against the shortest path Uncommitted Volumes first.

Sample calculations of the crediting of Uncommitted Volume Offset Availability to Shortfall Volumes and the crediting of Tolls are set forth in Schedule "K". For certainty, Uncommitted Volume Offset Availability that becomes available hereunder from time to time may not be used under any other Transportation Services Agreement to which Shipper is a party and is not transferrable to any other Person.

8.4 Taxes

For the purposes of this Agreement, the amounts payable by Shipper in this Agreement are exclusive of applicable Taxes. Shipper will be responsible for all applicable Taxes due in respect of all amounts to be paid to Carrier under this Agreement. Carrier will remit all amounts received by it from Shipper which amounts are for the payment of Taxes to the appropriate governmental bodies in accordance with Applicable Laws. Carrier and Shipper shall each be registrants for the purpose of the *Excise Tax Act* (R.S.C., 1985, c.E-15), as amended, and pursuant to any other or similar process which would entitle Shipper to an input tax credit or similar benefit.

8.5 Invoicing and Payment of Tolls

The provisions of the Enbridge Tariff, the Lakehead Tariff and/or the Enbridge Joint Tariff, as applicable, and the Enbridge Mainline invoicing procedures as posted by Carrier and EELP from time to time, relating to invoicing and terms of payment shall apply to this Agreement. Together with the invoice(s) provided to Shipper for each Month from Carrier and, if applicable, from EELP for when Shipper's Product was transported on the Lakehead System, Carrier shall also provide Shipper details as to the balance of the [Deficiency Make-Up](#) Credit Account including any [Deficiency Make-Up](#) Credits that have been credited to such account in such Month and any deductions to the [Deficiency Make-Up](#) Credit Account in respect of [Deficiency Make-Up](#) Credits that have been used to offset against Tolls in accordance with Section 7.8 and/or [Deficiency Make-Up](#) Credits that have expired in accordance with Section 7.8.

8.6 Late Payment

If Shipper fails to pay the entire amount of any invoice rendered by Carrier within ten (10) days of receipt, such failure shall be a Shipper Default to which the provisions of Article 12 will apply and, at any time after the expiry of such ten (10) day period, at Carrier's option, interest will accrue daily on the unpaid portion of the invoice at a nominal annual rate of interest equal to the Prime Rate

(as it may vary from time to time) plus two (2) percentage points, which accrued interest will be due and payable immediately upon demand.

8.7 Correctness of Invoices

Shipper may dispute the correctness of an invoice by providing written Notice to the Carrier, accompanied by reasonable supporting detail, within twelve (12) months following the end of the year in which the invoice was received by Shipper. If Shipper does not dispute an invoice within this time period, the invoice shall be deemed conclusively to be correct, and Shipper shall be deemed to have waived its rights to bring an action against the Carrier with respect to such invoice. Following receipt of written Notice of an invoice dispute, Carrier shall provide Shipper with such documentation as is reasonably necessary to satisfy Shipper of the correctness of the invoice in question. Dispute of an invoice or a claim by Shipper that Carrier has not provided it with such documentation as is reasonably necessary to satisfy Shipper of the correctness of the invoice in question shall not relieve Shipper of its obligation to timely pay such invoice in accordance with this Article 8, and Shipper shall not be entitled to dispute the correctness of an invoice unless and until such invoice has been paid in full. If it is determined that the invoice in question is incorrect and that an overpayment was made, Carrier shall refund such overpayment, including interest at the Prime Rate plus two (2) percentage points from the date of Shipper's payment of the invoice to which such overpayment relates until the date such overpayment is refunded in full, to Shipper on or before the thirtieth (30th) day after such determination is either agreed to in writing by Shipper and Carrier or determined by a decision maker with jurisdiction over the matter.

8.8 Recognition of Shipper's Product

- (a) Subject to Section 8.8(b), Shipper acknowledges and agrees that, for the purposes of invoicing and establishing whether Shipper has satisfied its Monthly Volume Commitment, Carrier shall only be required to recognize volumes of Shipper's Product delivered to a Regular Delivery Point for which Shipper is recorded as the "shipper" on the applicable custody transfer meter pertaining to such volumes.
- (b) Shipper may appoint an Affiliate pursuant to Paragraph ~~76~~ of Schedule "A" to be the shipper of record and to receive delivery of Shipper's Product when Shipper's Product is transported on the Lakehead System and/or delivered to Delivery Points (Border Downstream) (the "**Affiliated Shipper of Record**"). Where, in a Month, Shipper has notified Carrier that its Affiliated Shipper of Record, if applicable, will receive delivery of Shipper's Product at an applicable Delivery Point (Border Downstream) on the Lakehead System, then, when the Affiliated Shipper of Record is verified by Carrier to have received delivery of Shipper's Product at the applicable Delivery Points (Border Downstream) on the Lakehead System (or any other in-line transfers received by the Affiliated Shipper of Record and delivered at Delivery Points (Border Downstream) on the Lakehead System for Crude Petroleum originating from Regular Receiving Points on the Canadian Mainline), such delivered volumes shall be included as part of Shipper's Actual Committed Volume Deliveries for such Month up to Shipper's Monthly Volume Commitment for such Requested Service Haul and invoiced to Shipper accordingly, with any volumes in excess of Shipper's Monthly Volume Commitment for such Requested Service Haul being included as part of Shipper's Actual Uncommitted Volume Deliveries. To accommodate Carrier's administration of destination verification, Shipper

acknowledges and agrees that an Affiliated Shipper of Record that has been appointed pursuant to Paragraph 7.6 of Schedule "A" cannot be a party to any other Transportation Services Agreement or an "Affiliated Shipper of Record" to any other Person that has Transportation Services Agreement and cannot have its own Uncommitted Volumes from Regular Receiving Points on the Canadian Mainline with deliveries at Delivery Points (Border Downstream). Shipper may change the Affiliated Shipper of Record from time to time.

8.9 Unit of Measurement

Notwithstanding that this Agreement uses "Barrels" as its unit of measurement, Shipper acknowledges that Carrier may refer to and rely on cubic metres for the purpose of invoicing, calculations of Monthly charges for Services including calculations of Deficiency Payments and Deficiency Credits, nomination procedures, posting of tolls and other matters related to the operation of the Enbridge Mainline and the provisions of Services.

8.10 Tax Accounting

Unless otherwise required by a Governmental Authority or Applicable Law, Carrier shall continue to use flow through tax accounting as directed by the NEB under Order TO-1-92.

ARTICLE 9 APPORTIONMENT

9.1 Apportionment

If the nominations for Crude Petroleum to be transported on the Canadian Mainline received and verified by Carrier in a Month exceed the Available Capacity for such Month such that apportionment of transportation capacity is required, then, Carrier will allocate capacity as follows:

- (a) Nominations of Committed Volumes for Crude Petroleum will be allocated on a *pro rata* basis, without discrimination between affected Service Hauls up to an amount which equals the Reserved Committed Capacity;
- (b) Nominations of Uncommitted Volumes for Crude Petroleum, if any, will be allocated up to an amount which equals the Reserved Uncommitted Capacity;
- (c) any remaining Available Capacity after the allocations in subsections (a) and (b) above will be allocated as follows:
 - (i) first, to nominations of Committed Volumes for Crude Petroleum which were not otherwise allocated in accordance with (a) above, if any; and
 - (ii) second, to nominations of Uncommitted Volumes for Crude Petroleum which were not allocated pursuant to (b) above, if any.

9.2 Mid-Month Apportionment

Notwithstanding Section 9.1, where Carrier has approved nominations in a Month, and subsequently, those approved nominations exceed the available transportation capacity such that

apportionment of transportation capacity is required, then, Carrier will reduce the current nominations by allocating the available transportation capacity on a *pro rata* basis amongst all current nominations in such Month. Shippers with nominations that have not yet been injected into the Canadian Mainline in such Month will be required to reduce their nominations accordingly.

9.3 Terminal Apportionment

Notwithstanding Section 9.1, Committed Volumes and Uncommitted Volumes will be treated equally with regards to access to capacity at the terminal and tankage facilities on the Canadian Mainline, and apportionment on such terminal and tankage facilities shall be subject to Carrier's terminal apportionment policies, in effect from time to time.

9.4 Canadian Mainline Capacity

Shipper acknowledges that the available capacity of the Canadian Mainline and the actual ability of Carrier to accept nominations on the Canadian Mainline may differ from the Design Capacity based on a number of factors including, without limitation: (a) the effect of the volumes of various Petroleum types nominated and accepted for transportation on the Enbridge Mainline; (b) the addition or subtraction of Regular Receiving Points or Regular Delivery Points; (c) operational constraints of the Enbridge Mainline; and (d) the physical curtailment, for any reason and for any period of time, of a segment of the Enbridge Mainline and the impact of such physical curtailment on any other upstream or downstream segment of the Enbridge Mainline. Shipper further acknowledges and agrees that, notwithstanding that Carrier will use reasonable commercial efforts to provide the Services in respect of Shipper's Monthly Volume Commitment for each Month, the Enbridge Mainline may, from time to time, during the Service Term be unable to accommodate the full Monthly Volume Commitment of all shippers at each Regular Receiving Point or Regular Delivery Point for a Month and be subject to apportionment and that any such event shall not constitute a material breach by Carrier of its obligations hereunder and, without prejudice to the rights of Shipper to claim relief for an Excused Event (Carrier) in accordance with Section 5.5, and notwithstanding anything herein to the contrary, Carrier shall have no liability whatsoever to Shipper as a result of any apportionment on the Enbridge Mainline affecting Carrier's ability to accept and/or deliver volumes of Shipper's Product regardless of the cause, extent or duration of such apportionment. See Schedule "M" for reference capacity of each line on the Enbridge Mainline, which is intended for informational purposes only and shall not be construed as a binding commitment on behalf of Carrier to provide Services hereunder in accordance with any particular service or capacity level reflected therein.

ARTICLE 10 CONFIDENTIALITY

10.1 Confidentiality

- (a) Subject to Sections 10.1(b) and 10.1(c), each Party (a "**Recipient**") to which Confidential Information of the other Party (a "**Disclosing Party**") is disclosed as a result of, or in connection with, this Agreement agrees that such Confidential Information will be kept confidential and Recipient will not disclose without the prior written consent of Disclosing Party such Confidential Information to any Person, other than to any of the Recipient's Representatives who need to know such Confidential Information. The Recipient shall use the same degree of care to preserve the confidentiality of the Confidential Information

as the Recipient uses in preserving the confidentiality of its own proprietary or confidential information but in no event with less than reasonable care.

- (b) For the purposes of this Section 10.1, the following information will not be considered Confidential Information and will not be subject to any obligation of confidence:
- (i) any information that is within the public domain at the time of its disclosure to the Recipient or that thereafter enters the public domain through no fault of the Recipient, but only after such information becomes part of the public domain;
 - (ii) any information that the Recipient can show was in its possession prior to receipt or acquisition thereof from the Disclosing Party and that is not subject to an obligation of confidence;
 - (iii) any information that, following its disclosure by the Disclosing Party to the Recipient is received by the Recipient without obligation of confidence from a Third Party who the Recipient had no reason to believe was not properly or lawfully in possession of such information free from any obligation of confidence;
 - (iv) any information that is developed independently at any time by a Recipient without the use of the Confidential Information, alone or in conjunction with a Third Party; and
 - (v) any information that a Disclosing Party agrees in writing is not Confidential Information.
- (c) The following Confidential Information may be disclosed to a Third Party without the consent of the Disclosing Party provided that Recipient will impose the obligations of confidence set forth in this Section 10.1 upon the Third Party receiving the information, and provided further that Recipient will be liable to Disclosing Party for a breach of such obligations of confidence by the Third Party:
- (i) any information that is reasonably required by a lender, investor or potential lender or investor in order for Recipient or its Affiliates to obtain, maintain or renew any loan or investment or to any other Person in connection with obtaining any form of financing by Recipient or its Affiliates;
 - (ii) any information that is reasonably required by an insurer or potential insurer in order for Recipient or its Affiliates to obtain, maintain or renew any insurance concerning any of its activities required or incidental to this Agreement;
 - (iii) any information that is reasonably required by a Third Party for the sole purpose of evaluating a potential purchase, whether direct or indirect, of all or a portion of the Enbridge Mainline, the Carrier, EELP or any interest in any of the foregoing; and
 - (iv) any information that is reasonably required by a Third Party for the sole purpose of evaluating the potential acquisition of Shipper or any of the assets of Shipper including capacity hereunder, where, as a result of such acquisition, the Third

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Party would assume all or certain of the rights and obligations under this Agreement.

- (d) A Recipient may disclose any Confidential Information that is required to be disclosed by Applicable Law to a Governmental Authority or to the public without the consent of the Disclosing Party provided that where the Recipient is required to disclose any Confidential Information by Applicable Law, to a Governmental Authority or the public, the Recipient shall notify the Disclosing Party promptly upon the Recipient becoming aware that such disclosure is required or may be required. Before disclosing any Confidential Information, the Recipient shall, to the extent permissible, allow the Disclosing Party the opportunity to, at its own expense, prevent or limit such disclosure, apply for a protective order, or obtain assurances of confidentiality from the recipient of the Confidential Information, and the Recipient shall cooperate with the Disclosing Party to the extent reasonably possible to carry out any such actions.

ARTICLE 11 GENERAL LIABILITY AND INDEMNITY

11.1 Liability and Indemnity

- (a) Subject to the other provisions in this Article 11 and any other limitations set forth in this Agreement (including in respect of Section 9.4), Carrier shall be liable to and indemnify Shipper for any Losses suffered, sustained or incurred by Shipper as a result of a breach by Carrier of the terms of this Agreement, the Enbridge Tariff or the Enbridge Joint Tariff, as applicable.
- (b) Subject to Sections 9.4, 11.1(e), 11.2 and 11.3, except where caused by the direct negligence of the Carrier, the Carrier shall not be liable to Shipper for any delay or Losses suffered, sustained or incurred by Shipper as a result of Carrier's transportation (and all services and procedures related thereto), commingling or intermixing of Shipper's Product in the facilities of Carrier. In no event shall Carrier have any liability for damages on behalf of any Third Party (whether or not Affiliated with Shipper).
- (c) If damage or loss to Petroleum (including, if applicable, Shipper's Product) in the custody of Carrier results from any cause other than the direct negligence of Carrier while Carrier is in possession of such Petroleum (including, if applicable, Shipper's Product), then Carrier may apportion the cost of such damage or loss on a pro rata basis among all shippers on the Canadian Mainline. Each such shipper's share of such costs shall be determined by Carrier based on the proportion of the volume of each shipper's Petroleum in the possession of Carrier on the date of such loss to the total volume of Petroleum in the possession of Carrier on the date of such loss. Carrier will be obligated to deliver only that portion of Shipper's Product remaining after such deduction.
- (d) If Shipper Product is lost in transit while in the custody of Carrier due to the direct negligence of Carrier, then Carrier shall, as full compensation therefor, either obtain and deliver to Shipper other Petroleum of the same quantity and grade as that which was lost, or compensate Shipper for such loss in money.

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- (e) Notwithstanding anything in this Agreement to the contrary, except to the extent Carrier is intentionally refusing to provide the Services where the Available Capacity can otherwise provide such Services and Shipper is not in default under the terms of this Agreement, the Enbridge Tariff, the Lakehead Tariff or the Enbridge Joint Tariff, as applicable, Carrier shall have no liability whatsoever to Shipper if Carrier is unable to provide Shipper with Services in respect of its Monthly Volume Commitment or any Uncommitted Service as a result of a reduction of Available Capacity for any reason or cause whatsoever, including, without limitation, as a result of an event of Force Majeure.

11.2 Shipper Liability

Shipper shall be liable to and indemnify Carrier for any Losses suffered, sustained or incurred by Carrier as a result of Shipper's failure to comply with any provision of this Agreement, the Enbridge Tariff or the Enbridge Joint Tariff, as applicable.

11.3 Consequential Losses

Notwithstanding anything else contained in this Agreement to the contrary, no Party will be liable for Consequential Losses that arise out of or relate to this Agreement incurred by any other Party or such other Party's Affiliates regardless of whether such Consequential Losses arise under or result from contract, tort or strict liability.

11.4 Exclusion of Liability

Notwithstanding anything else contained in this Agreement to the contrary, EELP shall have no liability whatsoever to Shipper in connection with this Agreement, including in respect of any obligations, covenants or commitments made hereunder by Carrier in connection with the Services or Priority Access in respect of Shipper's Committed Volumes.

ARTICLE 12 DEFAULT

12.1 Carrier Default

The occurrence and continuation of a material breach by Carrier of any of its obligations under this Agreement, the Enbridge Tariff or the Enbridge Joint Tariff, as applicable, will be a "**Carrier Default**".

12.2 Shipper Default

Any of the following events, unless caused by a breach by Carrier of its obligations under this Agreement, will be a "**Shipper Default**" in respect of Shipper:

- (a) the occurrence and continuation of a material breach by Shipper of any of its obligations under this Agreement, the Enbridge Tariff, the Lakehead Tariff or the Enbridge Joint Tariff, if applicable;
- (b) the failure by Shipper to pay an invoice issued by Carrier pursuant to Article 8 within ten (10) days of receipt of the invoice or to pay any other amount payable hereunder when due;

- (c) the failure by Shipper, or a Guarantor of Shipper, as applicable, to comply with any of the terms and conditions respecting Financial Assurances set forth in Schedule "D";
- (d) Shipper or a Guarantor of Shipper is subject to an Insolvency Event;
- (e) the occurrence and continuation of a material breach by Shipper of any of its obligations under the Enbridge Tariff, the Lakehead Tariff or the Enbridge Joint Tariff, if applicable, as it pertains to such Shipper's Uncommitted Volumes; ~~(f) the occurrence and continuation of a material breach by Shipper of any of its obligations under any Contracting Owner Acknowledgment, if applicable;~~ or
- (f) ~~(g)~~ the occurrence and continuation of a material breach by Shipper of any of its representations and warranties under any officer's certificate delivered by Shipper pursuant to the Open Season or this Agreement.

12.3 Notice of Default

Upon the occurrence of a Carrier Default or a Shipper Default (in each case a "Default"), Carrier or Shipper, as the case may be, may provide Notice to the defaulting Party, describing the Default in reasonable detail and requiring the defaulting Party to remedy the Default (the "Default Notice").

12.4 Cure Period and Remedies for Shipper Default

- (a) If a Shipper Default, other than a default under Section 12.2(b), 12.2(c) or 12.2(d), has not been remedied by Shipper within sixty (60) days of receipt of a Default Notice, or, if such default is not reasonably capable of being remedied within sixty (60) days, if Shipper has not promptly commenced to remedy such default following its receipt of a Default Notice and thereafter is not proceeding with diligence and good faith to remedy such default as soon as reasonably practicable but in any event no later than one-hundred and eighty (180) days from receipt of the Default Notice, then, in addition to Carrier's right to enforce the Financial Assurances provided in accordance with Schedule "D" (including the exercising and enforcement of Carrier's rights and remedies under any Guarantee and/or calling on any Letter of Credit, or other security as applicable) Carrier may:
 - (i) by written termination Notice to Shipper, terminate this Agreement, such termination to be effective on the tenth (10th) day following receipt of the termination Notice by Shipper; or
 - (ii) suspend the provision of Services hereunder and the provision of Uncommitted Services in accordance with the Enbridge Tariff and/or the Enbridge Joint Tariff, including the ability of Shipper to make nominations and the further receipt by Carrier of Shipper's Product from Shipper until such Shipper Default has been fully remedied, *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 this Agreement, the Enbridge Tariff and/or the Enbridge Joint Tariff and Shipper shall not be entitled to rely on an Excused Event to reduce its exposure to any Deficiency Payment during such period of suspension.

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- (b) If a Shipper Default under Section 12.2(b), 12.2(c) or 12.2(d) has not been remedied within ten (10) days following receipt by Shipper of a Default Notice, then, in addition to Carrier's right to enforce the Financial Assurances provided in accordance with Schedule "D" (including the exercising and enforcement of Carrier's rights and remedies under any Guarantee and/or calling on any Letter of Credit, or other security as applicable), Carrier may:
- (i) by written termination Notice to Shipper, terminate this Agreement, such termination to be effective on the thirtieth (30th) day following receipt of the termination Notice by Shipper;
 - (ii) suspend the provision of Services hereunder and the provision of Uncommitted Services in accordance with the Enbridge Tariff and/or the Enbridge Joint Tariff, including the ability of Shipper to make nominations and the further receipt by Carrier of Shipper's Product from Shipper until such Shipper Default has been fully remedied, *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 this Agreement, the Enbridge Tariff and/or the Enbridge Joint Tariff, as applicable, and Shipper shall not be entitled to rely on an Excused Event to reduce its exposure to any Deficiency Payment during such period of suspension; or
 - (iii) either:
 - A. ~~(A)~~ transfer ownership of a sufficient amount of the Shipper's Product to Carrier that may at any time be in the possession of Carrier in satisfaction of any amounts owing by Shipper to Carrier that are the subject of a Shipper Default. Carrier may effect such transfer by giving Notice to Shipper which Notice will describe the date upon which the transfer to Carrier is effective, the volume of Shipper's Product transferred, the value of the Shipper's Product transferred and the amount of the indebtedness satisfied by the transfer. For the purpose of determining the price of Shipper's Product being transferred to Carrier pursuant to this Section 12.4(b)(iii)~~(A)~~, the parties will use the arithmetic average of the prices posted for the applicable quality of Shipper Product similar to the Shipper's Product by refiners at or near Edmonton, Alberta less applicable transportation costs from Edmonton to the point of transfer; or
 - B. ~~(B)~~ immediately and without further Notice to Shipper, directly or through an agent, remove and sell any Shipper Product delivered to the Canadian Mainline by Shipper or for Shipper's account and then in the custody of the Carrier or its agent, in such manner as deemed appropriate by Carrier. As part of said sale, Carrier will have the right to bid and, if the highest bidder, to become the purchaser. From the proceeds of such sale Carrier will pay itself all amounts owing to it by Shipper under this Agreement (including any interest accrued thereon), and may further use

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such proceeds to pay itself reasonable storage charges pending sale and expenses incident to such sale including incremental transportation costs that arise in respect of the handling and transport of such Shipper Product. Carrier will remit the balance remaining, if any, to Shipper. Any such funds may be commingled in any other account or accounts maintained by the Carrier from time to time.

Carrier covenants and agrees not to dispose of Shipper's Product other than as set forth in Article 11, Section 12.4(b)(iii)~~(A)~~ or Section 12.4(b)(iii)~~(B)~~.

- (c) If a Shipper Default under Section 12.2(d) occurs, then Carrier will have the right, for so long as Shipper or such Guarantor is subject to an Insolvency Event, to: (i) request pre-payment of tolls and any other amounts that will be payable for Services hereunder, and where Shipper fails to make such pre-payment, Carrier will have the right to immediately suspend Services to Shipper; or (ii) terminate this Agreement by sending a Default Notice, such termination will be effective on the tenth (10th) day following receipt of the Default Notice by Shipper.
- (d) Carrier will have the right to terminate this Agreement by sending a Default Notice if a Guarantor of Shipper or any provider of Financial Assurances on behalf of Shipper is subject to an Insolvency Event. Such termination will be effective on the tenth (10th) day following receipt of the Default Notice by Shipper, unless, within such period, Shipper has provided replacement Financial Assurances acceptable to Carrier, provided that whether or not the Carrier has given Notice of termination of this Agreement under this Section 12.4(d) and notwithstanding any restriction on the Carrier giving any such Notice which may then apply, the Carrier will not be required to perform its obligations hereunder until such time as the Carrier has received a replacement Financial Assurance acceptable to Carrier in respect of the provision of such Services.
- (e) Shipper shall immediately notify Carrier if Shipper, any Guarantor of Shipper or any of the Affiliates of Shipper is or becomes a Sanctioned Person. If Shipper, such Guarantor or any of Shipper's Affiliates becomes a Sanctioned Person, then Carrier will have the right: (i) to immediately suspend Services to Shipper for so long as Shipper or such Guarantor or Affiliate remains a Sanctioned Person; (ii) to immediately enforce the full amount of any Financial Assurances; (iii) to terminate this Agreement by sending a Notice, such termination will be effective on the earlier of, the tenth (10th) day following receipt of the Notice by Shipper or the date that it becomes illegal for Carrier to continue its commercial relationship hereunder with Shipper in accordance with any Sanctions Laws.
- (f) In the event that Carrier shall have terminated this Agreement pursuant to this Section 12.4, Shipper shall be liable to Carrier for all of its accrued obligations up to and including the effective date of such termination and, in addition to any other rights and remedies Carrier may have hereunder, Carrier shall be entitled to draw upon any Financial Assurances in respect thereof.

12.5 Cure Period and Remedies for Carrier Default

If a Carrier Default has not been remedied within sixty (60) days, following receipt by the Carrier of a Default Notice, Shipper may, subject to the provisions of any Lender Consent Agreement, by termination Notice to the Carrier, terminate this Agreement, such termination to be effective on the tenth (10th) day following receipt of the termination Notice by the Carrier; provided, however, that if during such sixty (60) day period the Carrier has commenced remedying the Carrier Default and is continuing in good faith its efforts to remedy such breach, the entitlement of Shipper to terminate this Agreement will be suspended insofar as Carrier continues in good faith to remedy such default.

12.6 No Liens or Encumbrances

~~Unless Shipper has failed to remedy a material breach of this Agreement, Carrier shall not claim or seek to register a lien, caveat, or encumbrance over any interest of Shipper in the Designated Interests or any Designated Facilities applicable thereto.~~

[Intentionally Deleted]

12.7 Remedies Not Exhaustive

In the case of a Default by a Party, in addition to the remedies expressly set out in this Agreement (including those remedies provided in Sections 12.4 and 12.5), the non-Defaulting Party shall be entitled to exercise any other remedy that such Party may have at law or in equity and pursuant to the Enbridge Tariff or the Enbridge Joint Tariff, as applicable, but subject to any limitations (including any limitations on liability) expressly set forth hereunder.

ARTICLE 13 FORCE MAJEURE

13.1 Force Majeure

“**Force Majeure**” means any event, condition or occurrence (and the effect thereof) which is beyond the reasonable control of Carrier or its Affiliates, which neither the Carrier nor its Affiliates could reasonably overcome or mitigate, and which causes a delay or disruption in the performance of any obligation imposed on the Carrier or any of its Affiliates and, subject to the foregoing, includes:

- (a) floods, earthquakes, storms, lightning, fires, epidemics, wars, explosions, riots, acts of any public enemy, acts of civil or military authority, acts of terrorism, civil disturbances, disobedience, blockades, strikes, lockouts, or other similar events;
- (b) accidents, vandalism, sabotage, ruptures, and breakage of or damage to any pipeline, facility, machinery or equipment including any pipeline, facility, machinery or equipment upstream or downstream of the Enbridge Mainline;
- (c) inability to obtain or the curtailment of supplies of any materials or equipment, shortage of labour and government restraint, action, delay or inaction, material changes to or application of any Applicable Law;
- (d) any change in Applicable Laws that ceases or restricts, or causes the cessation or restriction of, the operation of the Enbridge Mainline; and

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- (e) failure or inability to obtain a decision from a Governmental Authority in a timely manner; provided that the Carrier has used commercially reasonable efforts to obtain such decision and such decision is reasonably necessary in order for the Carrier to comply with its obligations under this Agreement.

Notwithstanding the above, (i) a lack of funds, or (ii) a change in market or economic conditions that renders performance of the obligations of the Carrier uneconomical or disadvantageous, shall be expressly excluded as events of Force Majeure.

13.2 Relief due to Force Majeure

- (a) Subject to the other provisions of this Article 13, if Carrier fails to observe or perform any of its covenants or obligations hereunder and such failure shall have been occasioned by, or in connection with, or in consequence of an event of Force Majeure, the observance or performance of the covenant or obligation by Carrier affected by the event of Force Majeure shall be suspended while (but only so long as) the event of Force Majeure continues to prevent the observance or performance of such covenants or obligations and, subject to Section 13.2(b), all relevant time periods provided for in this Agreement shall be accordingly extended.
- (b) The Term shall not be extended by any event of Force Majeure.

13.3 Notice of Force Majeure

Carrier shall promptly provide a Notice to Shipper of the particulars of the event of Force Majeure, including its expected duration, and a further Notice when Carrier can resume performance of the affected obligations pursuant to this Agreement.

13.4 Carrier to Remedy

Carrier shall use commercially reasonable efforts to remedy the conditions of the event of Force Majeure and resume the performance of its obligations as soon as practicable provided that Carrier is not required to mitigate the effects caused by the event of Force Majeure that only affect Shipper. If Carrier fails to use commercially reasonable efforts to mitigate the effects of the Force Majeure event, remedy the conditions of the Force Majeure event and resume the performance of its obligations as soon as practicable, it will not be entitled to claim the benefits of this Article 13.

13.5 Force Majeure Relief for Downstream Facilities Interruption

- (a) Where:
 - (i) a facility or pipeline which is operated by Carrier or any of its Affiliates that is directly interconnected with the Enbridge Mainline at a Regular Delivery Point is unable to provide service as a result of an event or circumstance which is validly claimed as an event of force majeure pursuant to any committed contract applicable to such downstream facility or pipeline; and
 - (ii) the event of force majeure affecting such downstream facility or pipeline renders the operator of such downstream facility or pipeline unable to accept delivery of

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some or all of Shipper's Product at the Regular Delivery Point which interconnects with such downstream facility,

then Shipper shall be entitled to relief of its obligation under Section 5.1 to deliver all or a portion of its Monthly Volume Commitment for such Requested Service Haul that is affected by such event of Force Majeure (including any obligation to make a Deficiency Payment in respect of such affected portion of Shipper's Monthly Volume Commitment during such event of Force Majeure), which amount of volume relief that Shipper is entitled to will be the lesser of:

- (iii) the arithmetic average of the preceding three (3) Months of Shipper's deliveries of Committed Volumes to such Regular Delivery Point prior to the Month in which the event of Force Majeure occurred, provided that if Shipper was claiming Excused Events (Shipper) during such preceding three (3) Months, Carrier will consider Shipper's arithmetic average of the three (3) Months prior to the Month in which Shipper claimed an Excused Event (Shipper); and
 - (iv) Shipper's contract commitment on such downstream facility or pipeline.
- (b) Except as provided in Section 13.5(a) or where Shipper is entitled to claim relief as a result of an Excused Event hereunder, Shipper shall not be entitled to any relief of its monthly obligation under Section 5.1 to deliver its Monthly Volume Commitment in such Requested Service Haul (including any obligation to make a Deficiency Payment, if applicable).

13.6 Strikes, Lockouts and Other Industrial Disturbances

Notwithstanding anything to the contrary in this Article 13 expressed or implied, the Parties agree that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of Carrier and Carrier may make settlement thereof at such time and on such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive Carrier of the benefits of this Article 13.

13.7 No Shipper Force Majeure

The Parties acknowledge and agree that there shall be no right of Shipper to declare Force Majeure under this Agreement. Notwithstanding the preceding sentence, Shipper shall be entitled to relief under: (i) an Excused Event (Carrier) in accordance with the procedures set forth in Section 5.5; (ii) an Excused Event (Shipper) in accordance with the procedures set forth in Section 5.6; and (iii) due to a Feedstock Impairment in accordance with the procedures set forth in Section 14.4.

ARTICLE 14 TARIFFS AND COMPLIANCE WITH LAWS

14.1 Incorporation and Application of the Tariffs

The Enbridge Tariff and, if applicable, the Enbridge Joint Tariff, as filed with the CER and in effect from time to time in accordance with Part 3 of the *Canadian Energy Regulator Act* (Canada), are incorporated herein by reference and constitutes part of this Agreement. To the extent of conflict

or inconsistency between any of the terms contained in the body of this Agreement and the Enbridge Tariff or, if applicable, the portion of the Enbridge Joint Tariff that pertains to shipments on the Canadian Mainline, the terms contained in the body of this Agreement shall prevail as it pertains to Services on the Canadian Mainline pertaining to Committed Volumes. Carrier and Shipper agree that Carrier may make reasonable amendments or modifications to the Enbridge Tariff, and the Enbridge Joint Tariff, as Carrier deems appropriate, and which otherwise do not materially derogate from the Parties' rights and obligations in this Agreement. Subject to Section 14.3, the preceding sentence shall not apply where the amendments or modifications to the Enbridge Tariff are required by a change in Applicable Law (including any order or directive by any Governmental Authority that has jurisdiction over all or part of the Enbridge Mainline), and in such circumstances, the amendment or modification shall apply immediately upon being made by Carrier and communicated to Shipper.

14.2 Compliance with Applicable Laws

Both Parties will, in carrying out the terms and conditions hereof, abide by all present and future Applicable Laws of any Governmental Authority having jurisdiction over this Agreement.

14.3 Invalidity

If any part of this Agreement is found invalid by a court of competent jurisdiction or is found by the CER or other Governmental Authority having jurisdiction over all or part of the Enbridge Mainline to be in conflict with any Applicable Laws, and such findings are binding and not stayed, then, except where a process to rectify such invalidity is otherwise provided for in this Agreement, Carrier and all Committed Shippers affected by such circumstance will diligently and in good faith seek to renegotiate the terms of this Agreement and all other affected Transportation Services Agreements to comply with such ruling and to put Carrier and the affected Committed Shippers in the same or similar economic position, *provided* that this Agreement shall be deemed to be amended to the extent required to comply with Applicable Laws during such negotiation period and, if after ninety (90) days Carrier and the affected Committed Shippers have not come to an agreement on such terms then either Party may terminate this Agreement on ninety (90) days Notice.

14.4 Feedstock Impairment

- (a) Subject to the provisions of this Section 14.4, Shipper shall be excused in a Month from its obligation to accept delivery of its Monthly Volume Commitment set forth in Section 5.1 for a Requested Service Haul to the extent such failure is directly resulting from a change in Applicable Law that is enacted by the Federal government of the United States or Canada, the government of a Province of Canada or the government of a State of the United States that is of general application to:
- (i) the Crude Petroleum extraction industry or the Crude Petroleum transportation industry in Western Canada; or
 - (ii) the Crude Petroleum ~~upstream~~refining industry or the Crude Petroleum transportation industry in the United States of America or any state thereof,

and ~~has the effect of reducing the volumes~~ is not applicable to Crude Petroleum that is not extracted in Western Canada, and is the primary cause of Crude Petroleum originating in the Western Canadian Sedimentary Basin ("**WCSB Crude Petroleum**") ~~that can be produced from the Designated Interests by reason of such change in Applicable Law mandating a curtailment of production of WCSB Crude Petroleum, prohibiting the export of WCSB Crude Petroleum from Canada to the United States, prohibiting the import of WCSB Crude Petroleum into the United States~~ becoming uneconomic for refining at one or more refining facilities that is directly connected or in the immediate vicinity of Regular Delivery Points within the affected Requested Service Haul (the "**Affected Delivery Points**") and for which Shipper has received delivery of Shipper's Product in the preceding twelve (12) months at such Regular Delivery Points, and which it can be shown that WCSB Crude Petroleum has become uneconomic relative to other sources of Crude Petroleum that Shipper has, acting reasonably, identified as a reliable substitution source that can be delivered to and processed at such Designated Facilities to replace the WCSB Petroleum at such time, and where there is also then in operation at such time one or more pipelines in Crude Petroleum transportation service that:

- (iii) are in addition to the Trans Mountain Pipeline including the expansion of such pipeline as contemplated in NEB Hearing Order OH-001-2014;
- (iv) transport WCSB Crude Petroleum;
- (v) have its respective downstream terminus at a port facility at tidewater within Canada; and
- (vi) have an aggregate capacity to transport to tidewater not less than: (I) 600,000 Barrels of Crude Petroleum per day, where the expansion to the Trans Mountain Pipeline contemplated in subsection (iii), above is constructed; or (II) 1,100,000 Barrels of Crude Petroleum per day, where the expansion to the Trans Mountain Pipeline contemplated in subsection (iii) above is not constructed,

(any of the events described in this Section 14.4(a) are, in this Section 14.4, referred to as a "**Feedstock Impairment**"). Examples of Feedstock Impairment are set forth in Schedule "P".

- (b) Except as set forth in Section 14.4(e) in a Month where a Feedstock Impairment is in effect, Shipper shall only be entitled to relief of its delivery obligation in Section 5.1 and the obligation to pay Deficiency Charges once such Feedstock Impairment is affecting greater than twenty percent (20%) of Shipper's Monthly Volume Commitment in the affected Requested Service Haul and, where such circumstances arise, then Shipper's relief of its obligation to accept delivery of its Monthly Volume Commitment set forth in Section 5.1 and the obligation to pay Deficiency Charges shall only apply in respect of such portion of Shipper's Monthly Volume Commitment in the affected ~~portion that~~ Requested Service Haul that is equal to the average of the twelve (12) Months of deliveries to Shipper at the Affected Delivery Points preceding the first Month of the Feedstock Impairment and which is above twenty percent (20%) of its Monthly Volume Commitment in such affected Requested Service Haul. An example of this relief is set forth in Schedule "P".

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- (c) If a Feedstock Impairment has lasted for thirty-six (36) Months or longer, Shipper or the Carrier may on not less than ninety (90) days' Notice to the other elect to reduce the Monthly Committed Volume for the applicable Requested Service Haul(s) affected by the Feedstock Impairment to a volume of Crude Petroleum that is equal to the average of the volumes of Crude Petroleum delivered to Shipper by Carrier in the applicable Requested Service Haul(s) in the thirty (30) Months of the Feedstock Impairment Period having the largest difference between the Monthly Committed Volume and the volume of Crude Petroleum delivered to Shipper in the applicable Requested Service Haul(s).
- (d) Except as set forth in Section 14.4(e) in regard to any event described in Section 14.4(a), Shipper shall only be able to rely on such event as a Feedstock Impairment in so far as Shipper has provided Carrier with a minimum of sixty (60) days' Notice (unless the Feedstock Impairment is a circumstance specified in Section 14.4(e) in which case Shipper may rely on such event as a Feedstock Impairment as of the date the Feedstock Impairment took effect), which Notice shall include all pertinent details of the alleged Feedstock Impairment, including the anticipated level of reduction in the volumes of Crude Petroleum that Shipper will be able to receive during the currency of the Feedstock Impairment. Shipper shall, for each Month that ends during the sixty (60) day period, pay to Carrier all amounts due hereunder for such Month, without regard to the Feedstock Impairment. Carrier shall not later than sixty (60) days following the end of the sixty (60) day period, refund that portion of such amounts that are, pursuant to this Section 14.4, not owing by Shipper.
- (e) If the Feedstock Impairment is a change in Applicable Law that prohibits the export, import, transportation or refining of WCSB Crude Petroleum to be delivered to an Affected Delivery Point, then the requirement in Section 14.4(a) related to additional pipeline capacity having been brought into operation shall not apply and Shipper shall be entitled to immediate relief of its obligation to accept delivery of its Monthly Volume Commitment set forth in Section 5.1 and the obligation to pay Deficiency Charges ~~to the extent such Feedstock Impairment is affecting~~ in respect of such portion of Shipper's Monthly Volume Commitment in the affected Requested Service Haul that is equal to the average of the twelve (12) Months of deliveries to Shipper at the Affected Delivery Points preceding the first Month of the Feedstock Impairment, provided that Shipper shall still provide Carrier with Notice of such Feedstock Impairment.
- (f) Shipper shall not be entitled to any relief from a Feedstock Impairment, where Shipper failed or is failing to use commercially reasonable efforts to oppose, overcome and mitigate the impact of the Feedstock Impairment or in circumstances where Shipper actively encouraged or supported the Feedstock Impairment.
- (g) Any reference to WCSB Crude Petroleum in this Section 14.4 shall include any individual grade or type of Crude Petroleum originating in the Western Canadian Sedimentary Basin and relief is granted based upon the proportion that such targeted grade or type of Crude Petroleum was ~~produced by~~ delivered to Shipper ~~from the applicable Designated Interests~~ in such Requested Service Haul for the twelve (12) Months preceding the first Month of the Feedstock Impairment relative to all other WCSB Crude Petroleum grades or types ~~produced by the~~ delivered to Shipper ~~from the applicable Designated Interests~~.

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- (h) Any dispute with respect to this Section 14.4, including any entitlement to relief from Shipper's obligation to accept delivery of its Monthly Volume Commitment as a result of Feedstock Impairment and whether the relevant law is the primary cause of the WCSB Crude Petroleum being uneconomic relative to other sources of Crude Petroleum, shall be referred to expert determination in accordance with Schedule "Q". Shipper shall continue to pay to Carrier all amounts due hereunder, without regard to any Feedstock Impairment during the period in which the expert determination is ongoing. If the result of the expert determination is that Carrier is required to refund any amounts so paid to Shipper, Carrier shall not later than sixty (60) days following the issuance of a determination refund to Shipper the amount required to be refunded as a result of the expert determination plus interest thereon calculated at the Prime rate from the date(s) of payment by Shipper to Carrier to the date upon which Carrier pays the refund.

ARTICLE 15 DISPUTE RESOLUTION

15.1 Dispute Resolution

The Parties agree to attempt to resolve any disputes arising under this Agreement through consultation and negotiation in good faith. If the Parties are not, in respect of any dispute arising under this Agreement, able to reach a negotiated resolution of such dispute within ninety (90) days of the initiation of the consultation and negotiation, then:

- (a) if the dispute pertains to whether Shipper is experiencing an event of Feedstock Impairment, including any entitlement to relief from Shipper's obligation to accept delivery of its Monthly Volume Commitment as a result of a Feedstock Impairment in accordance with Section 14.4, either Party may refer the matter for binding expert determination in accordance with Schedule "Q";
- (b) except a dispute as described in subsection 15.1(a), if the dispute pertains to an alleged breach by a Party or interpretation of the terms of this Agreement (except where the subject matter is in the exclusive jurisdiction of the CER), either Party may refer the matter for resolution by the Alberta courts in accordance with Section 17.6; or
- (c) if the dispute pertains to tolls, operation of the Canadian Mainline or other matters within the exclusive jurisdiction of the CER, either Party may refer the matter for resolution by the CER.

ARTICLE 16 ASSIGNMENT

16.1 Shipper Assignment

- (a) Subject to the remaining provisions of this Section 16.1, Shipper shall not assign its rights and obligations under this Agreement to an Assignee in whole or in part for the remainder of the Term or for any portion thereof without the prior consent of Carrier, such consent not to be unreasonably withheld. Notwithstanding the foregoing, it shall be reasonable for the Carrier to withhold its consent in respect of any assignment pursuant to this Section 16.1(a) where (i) in the opinion of Carrier, acting reasonably, any such proposed Assignee

would not be capable of satisfying all of the contractual obligations of Shipper set forth hereunder, including as it relates to satisfying the Financial Assurance requirements set forth in Schedule "D" in all respects ~~and the ability of the Assignee to designate other Interests and/or wells and production facilities in the existing Designated Area or another area that can be designated as a Designated Area that are equivalent to the Designated Interests and/or Designated Facilities designated by Shipper hereunder based on the capability to handle the Monthly Volume Commitment being assigned~~, as determined by Carrier, in its sole discretion, (ii) if such proposed Assignee would be required to provide Financial Assurances at the time of the Assignment as set forth in Schedule "D", until such time as the proposed Assignee provides such Financial Assurances, or (iii) in the event of a partial assignment of Shipper's Monthly Volume Commitment, less than all of the rights and obligations of Assignor corresponding to such assigned portion of the Monthly Volume Commitment would be assigned or assumed by Assignee. Shipper shall, prior to the effect of any such proposed assignment provide Carrier with its intended form of assignment and novation agreement and shall incorporate all requests of Carrier, acting reasonably, for modifications to such form of assignment and novation agreement in respect of form and/or content.

- (b) Shipper may assign its rights and obligations under this Agreement to an Affiliate without the prior consent of Carrier, provided Shipper, unless otherwise agreed to by Carrier, continues to be bound by all of its rights and obligations under this Agreement and such Affiliate agrees to be bound by all of the restrictions in this Agreement, including the restrictions in this Section 16.1. Any such assignment may only be effected on ninety (90) days Notice to Carrier unless Carrier, acting reasonably, has consented to an earlier date.

~~(c) During the applicable Service Terms, if Shipper or, if applicable, its Affiliate, transfers, assigns or otherwise disposes of (other than to encumber or mortgage by way of security or to create a security interest) any Designated Interests or interest in any Designated Facilities applicable to a Requested Service Haul (each a "Sold Interest"), then Shipper shall Notify Carrier promptly upon completion of such transfer, assignment or disposition. If Shipper proposes to transfer its rights and obligations hereunder as it pertains to all or a portion of its Monthly Volume Commitment in the Requested Service Haul to the proposed assignee, such assignment would be subject to Section 16.1(a). If Shipper's entire Monthly Volume Commitment in the Requested Service Haul to which such Sold Interest pertains is not being assigned along with the Sold Interest, then Shipper shall be required to demonstrate that Shipper's (or its Affiliate's) interest in the remaining Designated Interests or interests in any applicable Designated Facilities, if any, applicable to such Requested Service Haul are sufficient to be able to support the Monthly Volume Commitment that it is retaining for such Requested Service Haul for the remainder of the Service Term, provided that if Carrier determines that the remaining Designated Interest or interests in any applicable Designated Facilities are not sufficient to support the Committed Volumes for such Requested Service Haul, then Shipper shall be required to:~~

- ~~(i) enter into a Transportation Services Agreement (Take or Pay) for Crude Petroleum with Carrier for all or a portion of the Committed Volume equivalent to the portion of the Committed Volume that is no longer supported by the Designated Interest or applicable Designated Facilities remaining following the transfer, assignment or disposition of the Sold Interest, such determination to be in the sole discretion of Carrier. The term of the Transportation Services~~

~~Agreement (Take or Pay) shall be equal to the remainder of the Term of this Agreement, and be subject to the provision of any Financial Assurances that will be required to be given by Shipper under a Transportation Services Agreement (Take or Pay); or~~

- ~~(ii) designate other Interests and wells and production facilities and the production of Crude Petroleum therefrom located in the Designated Area or designate another area that can be designated as a Designated Area hereunder, to replace the Designated Interests and applicable Designated Facilities and/or the existing Designated Area in connection with the applicable Requested Service Haul, provided that Shipper can, to the satisfaction of Carrier, in its sole discretion, demonstrate that the production of Crude Petroleum from such new Interests and any applicable wells and production facilities are sufficient to be able to support the Committed Volumes hereunder for the remainder of the applicable Service Terms.~~

~~Shipper shall supply such information as is reasonably required and/or requested by Carrier in order to evaluate any proposal by Shipper to designate new Interests and wells and production facilities or where Shipper is seeking to demonstrate its (or its Affiliate's) interest in the remaining Designated Interests or interests in any Designated Facilities are sufficient to support Shipper's Committed Volume in the affected Requested Service Haul for the remainder of the Service Term, including: (A) information pertaining to the proposed Interests and/or wells and production facilities being proposed to be designated; (B) information pertaining to the reserves, historical production for at least the previous twenty-four (24) Months from the date of the request, current and anticipated production and current development plans pertaining to the proposed Interests, wells and production facilities being proposed to be dedicated; and (C) such other information as may reasonably be required by Carrier to evaluate Shipper's request to determine if the Interests are able to support the Committed Volume hereunder for the remainder of the Service Terms. If Shipper makes a proposal under Section 16.1(c)(ii) and Carrier does not accept such proposal then Shipper will be required to comply with Section 16.1(c)(i). Upon acceptance of the proposal above from Shipper (or where Carrier has not accepted a proposal above and Shipper is required to comply with Section 16.1(c)(i)), the Parties shall, in accordance with Section 17.2, do all such acts and enter into such other further documentation, including amendments to Schedule "A", if necessary, to give effect to such agreement of the Parties. For certainty, Shipper shall not be entitled to rely upon an Excused Event where it has disposed of a Sold Interest not in compliance with the terms of this Section 16.1(c). Notwithstanding the foregoing, Shipper shall not be entitled to claim any Excused Events (Shipper) related to the Designated Area MVC for the Designated Area that is the subject of the Sold Interest until such time as a determination in respect of this Section 16.1(c) is made by Carrier.~~

- (c) ~~(d)~~ Notwithstanding anything to the contrary in this Section 16.1, an assignment by Shipper pursuant to this Section 16.1 shall only be valid and effective if the result of any such assignment would be such that, following such assignment, either Shipper or its assignee would have a Monthly Volume Commitment for an applicable Requested Service Haul that is equal to or greater than 4,400 Barrels per day or exactly 2,200 Barrels per day.

16.2 Carrier Assignment

- (a) Subject to the remaining provisions of this Section 16.2 and 16.3, Carrier shall not assign its rights and obligations under this Agreement to an Assignee in whole or in part for the Term or for any portion thereof without the prior consent of Shipper, such consent not to be unreasonably withheld.
- (b) Carrier may assign its rights and obligations under this Agreement to an Affiliate (with the exception of Tidal Energy Marketing Inc., or its successors) without the prior consent of Shipper. Shipper will not be required to release Carrier from any of its obligations under this Agreement in connection with any such assignment unless: (a) such obligations have been unconditionally assumed by the Assignee in forms reasonably satisfactory to Shipper; and (b) the Assignee demonstrates to the satisfaction of Shipper, acting reasonably, that the Assignee is capable of performing the obligations of Carrier under this Agreement.
- (c) In the event that Carrier has assigned, transferred or otherwise disposed of all or a portion of Carrier's undivided ownership interest in the Canadian Mainline to a Third Party, Carrier may assign its rights and obligations under this Agreement to such Third Party without the prior consent of Shipper, *provided* that, in the case of a partial assignment of Carrier's undivided ownership interest in the Canadian Mainline, Carrier shall remain jointly and severally liable for the obligations of such Third Party hereunder unless such Third Party is acquiring a majority ownership interest in and assuming operatorship of the Canadian Mainline.

16.3 Carrier Refinancing

Notwithstanding Section 16.2 hereof, Carrier will be entitled, without restriction, to make one or more assignments of this Agreement and/or any or all of its rights and benefits hereunder to or for the benefit of Financing Parties, or grant to Financing Parties a lien on or security interest in any right, title or interest in all or any part of Carrier's rights under this Agreement or in the Canadian Mainline for the purpose of the financing or successive refinancings of Carrier or any Affiliates that control the Carrier; provided, however, that such assignment shall recognize Shipper's rights under this Agreement so long as Shipper is not in default under this Agreement. In order to facilitate the obtaining of financing or successive refinancings, Shipper shall cooperate with Carrier and shall execute and deliver such consents, acknowledgements, agreements or similar documents as may be reasonably requested by any Financing Party with respect thereto, (a "**Lender Consent Agreement**") and prepare and provide such information and cause its counsel, at Carrier's reasonable costs, to deliver such opinions, in a form consistent with customary project financing principles, as are reasonably and customarily required by such lenders to give effect to the provisions of this Section 16.3, including agreeing to provide copies of any Default Notice given by Shipper hereunder to the Financing Party and according to the Financing Party a reasonable opportunity to cure any default by Carrier including time to obtain possession or control of the Canadian Mainline, if necessary to effect a cure, and in the case of the bankruptcy or insolvency of Carrier, a reasonable opportunity to make alternative arrangements such that Shipper will continue to receive Services on the Canadian Mainline substantially in accordance with the terms hereof notwithstanding such bankruptcy or insolvency.

16.4 Conversion of Contract Type

~~(a)~~ — From and after satisfaction of the condition precedent in Section 3.1(a) until the end of the Term, Shipper may make a request to Carrier (a “**Conversion Request**”) to convert this Agreement in relation to all or a portion of the Committed Volume in a Requested Service Haul (the “**Converted Portion**”) to either a Transportation Services Agreement (~~Take or Pay~~ for Crude Petroleum RC – Receiving Refiner) or a Transportation Services Agreement (RC – Receiving Refiner Producer) for the same Service Haul as the Requested Service Haul, which request may be accepted by Carrier in its sole discretion. In connection with its Conversion Request:

~~(a)~~ ~~(i)~~ where Shipper is requesting to convert this Agreement to a Transportation Services Agreement (RC – Receiving Refiner), Shipper shall include such information as is reasonably required and/or requested by Carrier in order to evaluate the Conversion Request, including: (A) information pertaining to the nameplate capacity of the refineries that are proposed to be designated, the average of daily deliveries of Petroleum shipments to such refineries, including deliveries from the Canadian Mainline to such refineries for at least the previous 24 Months from the date of the Conversion Request; and (B) such other information as may be relevant in order for Carrier to evaluate the Conversion Request to a Transportation Services Agreement (RC – Receiving Refiner).

~~(b)~~ where Shipper is requesting to convert this Agreement to a Transportation Services Agreement (RC – Producer), Shipper shall include such information as is reasonably required and/or requested by Carrier in order to evaluate the Conversion Request, including: (A) information pertaining to, as applicable, the proposed mineral interests and/or facilities being proposed to be designated in connection with such Converted Portion; (B) information pertaining to the reserves, historical production for at least the previous twenty-four (24) Months from the date of the Conversion Request; and (C) such other information as may be relevant in order for Carrier to evaluate the Conversion Request to a Transportation Services Agreement (RC – Receiving Refiner Producer).

In the case of either Section 16.4(a) or 16.4(b), Carrier shall evaluate the Conversion Request and all information provided by Shipper in support of such Conversion Request to determine if the interests are able to support the Committed Volume pertaining to the Converted Portion. Acceptance of the Conversion Request by Carrier shall be in its sole discretion.

~~(ii)~~ ~~where Shipper is requesting to convert this Agreement to a Transportation Services Agreement (Take or Pay) for Crude Petroleum, Shipper shall include confirmation that Shipper is able to provide any Financial Assurances that will be required to be given by Shipper under the applicable Transportation Services Agreement (Take or Pay).~~ If Carrier accepts Shipper’s Conversion Request, the Parties shall amend Schedule “A” to this Agreement to remove the Converted Portion and the Parties will enter into a Transportation Services Agreement (~~Take or Pay~~ for Crude Petroleum RC – Receiving Refiner) or Transportation Services Agreement (RC – Receiving Refiner Producer), as applicable, for the Converted Portion, which will become effective on the later of the first day of the Month following Carrier’s acceptance of the Conversion Request or the first day of the Month that Carrier receives any additional Financial Assurances that will be

required to be given by ~~the~~ Shipper under the applicable Transportation Services Agreement ~~(Take or Pay)~~.

~~(b) — Where all or a portion of the Designated Interests in a Designated Area hereunder are Contract Designated Interests, then if there are any amendments to, or events affecting the Long Term Agreement applicable to such Contract Designated Interests which result in the Contract Designated Interests applicable to such Long Term Agreement (together with Shipper's other Designated Interests in such Designated Area) no longer supporting the Designated Area MVC allocated to such Designated Area or if a Contract Designated Interests Material Event has occurred which has not been remedied in all material respects within thirty (30) days of the occurrence of such Contract Designated Interests Material Event, then, unless Shipper is able to designate additional Interests as Designated Interests to support the portion of the Designated Area MVC which is no longer supported by the Contract Designated Interests applicable to the Long Term Agreement or which is subject to the Contract Designated Interests Material Event (as determined in Carrier's sole discretion), Shipper will be required, within fifteen (15) days of its receipt of a Default Notice from Carrier (the "Required Conversion Period") to convert such affected portion of the Designated Area MVC to a Transportation Services Agreement (Take or Pay) for Crude Petroleum. If Shipper is required to convert a portion of its Monthly Volume Commitment in a Requested Service Haul pursuant to this Section 16.4(b) then the Parties shall amend Schedule "A" to this Agreement to remove the portion of the Monthly Volume Commitment that is required to be converted and the Parties will enter into a Transportation Services Agreement (Take or Pay) for Crude Petroleum for the portion of the Monthly Volume Commitment that is required to be converted pursuant to this Section 16.4(b), which will become effective on first day of the Month following Carrier's determination that such conversion is required. Upon a conversion of all or a portion of Shipper's Monthly Volume Commitment pursuant to this Section 16.4(b), Shipper shall be required to supply such additional Financial Assurances as contemplated in the Transportation Services Agreement (Take or Pay). Carrier may, from time to time, request from Shipper such information as is reasonably required by Carrier to verify that the Contract Designated Interests applicable to such Long Term Agreement are capable of underpinning the applicable Designated Area MVC, as determined in Carrier's sole discretion.~~

~~(c) — If Shipper fails within the Required Conversion Period to enter into a Transportation Services Agreement (Take or Pay) for Crude Petroleum for that portion of its Monthly Volume Commitment which is no longer supported by the Long Term Agreement in accordance with this Section 16.4 or to provide additional Financial Assurances as contemplated in such Transportation Services Agreement (Take or Pay), then, in addition to Carrier's right to enforce the Financial Assurances provided in accordance with Schedule "D" (including the exercising and enforcement of Carrier's rights and remedies under any Guarantee and/or calling on any Letter of Credit, or other security as applicable), Carrier may (without having to serve any additional default notices to Shipper and without regard to any cure periods in Section 12.4):~~

~~(i) — immediately suspend the provision of Services hereunder and the provision of Uncommitted Services in accordance with the Enbridge Tariff and/or the Enbridge Joint Tariff, including the ability of Shipper to make nominations and the further receipt by Carrier's of Shipper's Product from Shipper until such Shipper Default~~

~~has been fully remedied, 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 this Agreement, the Enbridge Tariff and/or the Enbridge Joint Tariff, as applicable, and Shipper shall not be entitled to rely on an Excused Event to reduce its exposure to any Deficiency Payment during such period of suspension; or~~

~~(ii) exercise any other remedy Carrier may have at law, in equity and pursuant to the Enbridge Tariff, the Enbridge Joint Tariff or this Agreement.~~

16.5 Future Market Access Contract Conversion

To the extent that Carrier or an Affiliate of Carrier, following the Effective Date, conducts an open season (a "**Market Access Open Season**") in relation to a new service offering on any pipeline system that receives or will receive Petroleum from the Enbridge Mainline and which service offering (the "**Market Access Service Offering**") provides for a toll under such Market Access Service Offering that is intended to include payment for transportation service for one or more of the Requested Service Hauls, then Shipper shall have the option to convert all or a portion of its Monthly Volume Commitment within the Requested Service Haul applicable to such Market Access Service Offering hereunder to a new Transportation Service Agreement (Take or Pay) for Crude Petroleum to match all or a portion of the volume awarded to Shipper in the Market Access Open Season, *provided* that the service term under such new Transportation Service Agreement (Take or Pay) for Crude Petroleum shall be for a term that is the longer of: (a) the remaining Service Term hereunder for such Requested Service Haul; or (b) the service term provided for pursuant to the Market Access Service Offering, *provided* that if the service term under the new Transportation Services Agreement (Take or Pay) for Crude Petroleum is less than the remaining Service Term applicable to such Requested Service Haul hereunder then upon the expiry of such service term the entirety of Shipper's converted portion of its Monthly Volume Commitment will once again form part of this Agreement for the remainder of the applicable Service Term. Upon execution of a new Transportation Service Agreement (Take or Pay) for Crude Petroleum as a result of an election pursuant to this Section 16.5, this Agreement shall be of no further force and effect as it pertains to the Monthly Volume Commitment converted to the new Transportation Service Agreement (Take or Pay) other than in respect of liabilities that accrued up to the effective date the replacement takes effect.

16.6 Amendments to Designated Facility MVC Following Open Season

[Intentionally Deleted]

16.7 Third Party Rights of Use for the Purpose of Nominations

Shipper shall be entitled to contract with a Third Party for the use by such Third Party of Shipper's rights of Priority Access for nomination purposes in respect of any portion of its Committed Volume for any portion of Service Term without the prior consent of Carrier, provided that: (i) Shipper shall not be released from any of its obligations and will continue to be bound by all of its obligations under this Agreement, including those obligations being performed by such Third Party during the term of use by such Third Party; (ii) such Third Party agrees to comply with the Enbridge Tariff, the Lakehead Tariff and the Enbridge Joint Tariff (as applicable) and the terms of this Agreement applicable to such Third Party's use of such rights of Priority Access for

nomination purposes in respect of the Committed Volume; and (iii) such Third Party acknowledges that Carrier shall be entitled to enforce any rights it may have hereunder directly against such Third Party. For certainty, the rights of use of any Third Party described in this Section 16.7 shall be for the purposes of nomination priority only and shall at all times be subject to Carrier's invoicing and nomination procedures in effect and applicable at such time.

ARTICLE 17 MISCELLANEOUS

17.1 Enurement, Entire Agreement and Amendment

This Agreement will enure to the benefit of and be binding upon each of the Parties and their permitted successors and assigns. This Agreement, the Enbridge Tariff, the Lakehead Tariff, and the Enbridge Joint Tariff (each as applicable and as may be amended from time to time) and the surviving provisions of any Precedent Agreement between Shipper and Carrier, if applicable, constitute the entire agreement and understanding between the Parties with respect to the subject matter herein, supersede all prior agreements and understandings with respect thereto, and this Agreement may be amended, restated or supplemented only by written agreement of the Parties.

17.2 Further Assurance

From time to time, as and when reasonably requested by either Party, the other Party will execute and deliver or cause to be executed and delivered all such documents and instruments and will take or cause to be taken all such further or other actions to implement or give effect to this Agreement, provided such documents, instruments or actions are consistent with the provisions of this Agreement and accepted industry practice. All such further documents, instruments or actions will be delivered or taken at no additional consideration by the Party at whose request such documents or instruments were delivered or acts performed.

17.3 No Contra Proferentem

No provision in this Agreement shall be interpreted for or against either Party because that Party or its legal counsel drafted such provision, and the *contra proferentem* rule of construction shall have no application to the construction of, interpretation of, or adjudication respecting, this Agreement.

17.4 Time

Time is of the essence of this Agreement.

17.5 Waiver

The waiver by any Party of a breach or violation of any provision of this Agreement will not operate as or be construed as a waiver of any subsequent breach or violation hereof.

17.6 Governing Law

This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without regard to principles of conflicts of laws that, if applied, might require the application of the laws of another jurisdiction. Subject to the

terms of this Agreement and of Applicable Laws, the Parties agree to attorn to the jurisdiction of the Court of Queen's Bench of the Province of Alberta in the Judicial District of the City of Calgary for the purpose of resolving any disputes that may arise out of this Agreement.

17.7 Notices

All notices, requests, elections or other communications (each, a "**Notice**") to be given pursuant to this Agreement will be in writing and sent by personal service, prepaid registered post, prepaid courier service or by email and will be deemed to be received when delivery or reception of the transmission is complete, except that if such delivery or transmission is after 4:00 pm local time in the location where the delivery or transmission is received, or occurs on any day other than a Business Day, such Notice will be deemed to be received on the next Business Day in the location where the delivery or transmission is received. Notices will be addressed as follows:

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If to Carrier:

Enbridge Pipelines Inc.
200, 425 – 1st Street S.W.
Calgary, AB T2P 3L8

Attention: Vice President – Corporate Law
Email: legalnotices@enbridge.com

If to Shipper:

【●】

Attention: 【●】
Facsimile: 【●】

A Party may, from time to time, change its address for Notices or its email address by giving Notice of such change to the other Party at the address noted above.

17.8 Survival of Accrued Liabilities

Notwithstanding the termination of this Agreement for any reason whatsoever, each Party will be liable for all of its accrued obligations hereunder up to and including the date on which the termination becomes effective.

17.9 Severability

If any of the provisions of this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein will not be affected or impaired in any way.

17.10 Extension of Limitation Period

The two (2) year period for seeking a remedial order under Section 3(1)(a) of the *Limitations Act*, R.S.A. 2000 c.L-12;2017 c.22 as amended, for any claim (as defined in such statute) arising in connection with this Agreement and which is disclosed by an audit, is extended to two (2) years after the time this Agreement permits that audit to be performed.

17.11 Counterpart Execution

This Agreement may be executed in any number of counterparts with the same effect as if all signatories to the counterparts had signed one document. All such counterparts shall together constitute and be construed as one instrument. For avoidance of doubt, a signed counterpart provided by way of facsimile transmission or other electronic means shall be as binding upon the Parties as an originally signed counterpart.

[Remainder Left Blank; Signature Page Follows]

IN WITNESS THEREOF, this Agreement is executed on the dates set forth below the respective execution lines, but following execution by both Parties, will be effective as of the Effective Date.

SHIPPER:

[●]

By:

Name:

Title:

Date:

Name:

Title:

Date:

CARRIER:

ENBRIDGE PIPELINES INC.

By:

~~Name:~~ Name: László Varsányi
~~e-~~ Title: Vice President, Mainline Tolling
~~Title:~~ Strategy

Date: