

Appendix 7

TRANS MOUNTAIN PIPELINE EXPANSION PROJECT

FACILITY SUPPORT AGREEMENT

BETWEEN

TRANS MOUNTAIN PIPELINE ULC, as general partner of
TRANS MOUNTAIN PIPELINE L.P. (as Carrier)

and

(as Shipper)

Effective: _____, 2012

TABLE OF CONTENTS

| | |
|--|----|
| ARTICLE 1 INTERPRETATION..... | 1 |
| 1.1 Definitions..... | 1 |
| 1.2 References..... | 7 |
| 1.3 Headings | 7 |
| 1.4 Extended Meanings..... | 7 |
| 1.5 Derivatives | 7 |
| 1.6 Statutory References | 7 |
| 1.7 Invalidity of Provisions..... | 7 |
| 1.8 Conflicts..... | 7 |
| 1.9 Industry Usage | 8 |
| 1.10 Currency..... | 8 |
| 1.11 Units..... | 8 |
| 1.12 Rules and Regulations..... | 8 |
| 1.13 Schedules | 8 |
| ARTICLE 2 REGULATORY APPROVALS | 9 |
| 2.1 Carrier's Approvals..... | 9 |
| 2.2 Support in Proceedings | 9 |
| ARTICLE 3 SERVICE OPTIONS AND FIRM SERVICE TOLL DETERMINATION..... | 10 |
| 3.1 Service Options | 10 |
| 3.2 Firm Service Toll Determination | 10 |
| ARTICLE 4 CONDITIONS PRECEDENT | 12 |
| 4.1 Carrier's Conditions Precedent..... | 12 |
| 4.2 Construction..... | 13 |
| 4.3 Binding Regulatory Approvals | 13 |
| 4.4 Satisfaction or Waiver of Conditions..... | 13 |
| 4.5 Shipper's Conditions Precedent..... | 13 |
| ARTICLE 5 TERM..... | 14 |
| 5.1 Term of the Agreement..... | 14 |
| 5.2 Execution of the Transportation Service Agreement..... | 14 |
| 5.3 Notices | 14 |
| 5.4 Early Termination | 14 |
| 5.5 Concurrent Termination of Agreements | 16 |
| 5.6 Effect of Termination..... | 17 |
| ARTICLE 6 EXPANSION COSTS AND EXPENSES AND AUDIT RIGHTS | 17 |
| 6.1 Cost and Expense Calculation | 17 |
| ARTICLE 7 DEFAULT AND TERMINATION | 19 |
| 7.1 Shipper Default | 19 |
| 7.2 Remedies..... | 19 |
| 7.3 Termination and Cure Period..... | 19 |
| 7.4 Accrued Rights Unaffected..... | 19 |

TABLE OF CONTENTS

(continued)

ARTICLE 8 FINANCIAL ASSURANCES 20

 8.1 Financial Assurances 20

 8.2 Financial Information..... 20

ARTICLE 9 REPRESENTATIONS AND WARRANTIES..... 20

 9.1 Carrier’s Representations and Warranties 20

 9.2 Shipper’s Representations and Warranties 21

 9.3 Financial Capacity of Shipper..... 21

ARTICLE 10 NOTICES..... 21

 10.1 Methods of Notices 21

 10.2 Change of Address..... 22

ARTICLE 11 ASSIGNMENT 22

 11.1 Assignment By Shipper 22

 11.2 Assignment By Carrier 22

 11.3 Merger..... 23

 11.4 Affiliates 23

 11.5 Pledging 23

 11.6 Partial Assignment 23

ARTICLE 12 MISCELLANEOUS 23

 12.1 Dispute Resolution..... 23

 12.2 Authorities..... 24

 12.3 Amendment..... 24

 12.4 Confidentiality 25

 12.5 Further Assurances..... 25

 12.6 Waiver..... 25

 12.7 Governing Law and Attornment 26

 12.8 Time 26

 12.9 Enurement 26

 12.10 No Partnership 26

 12.11 Counterpart Execution 26

 12.12 Survival..... 26

 12.13 Entire Agreement 26

SCHEDULE A SERVICE OPTIONS

SCHEDULE B INDICATIVE TOLLS

SCHEDULE C TOLL PRINCIPLES

SCHEDULE D FORM OF TRANSPORTATION SERVICE AGREEMENT

SCHEDULE E RULES AND REGULATIONS

FACILITY SUPPORT AGREEMENT

THIS FACILITY SUPPORT AGREEMENT is made as of _____, 2012,

BETWEEN:

TRANS MOUNTAIN PIPELINE ULC, as general partner of
TRANS MOUNTAIN PIPELINE L.P., a limited partnership organized under the
laws of Alberta (the “**Carrier**”),

and -

_____, a _____ (the “**Shipper**”).

WHEREAS the Carrier operates a 300,000 barrels per day Petroleum pipeline system which provides transportation service from Edmonton, Alberta to delivery points in British Columbia, as more particularly defined in the Rules and Regulations (the “**Mainline System**”);

AND WHEREAS the Carrier is proposing to offer Firm Service in conjunction with an expansion of the Mainline System through the staged construction of pipeline loops, pumps, receipt and delivery tankage, and other facilities (the “**Expansion**”) in order to increase the capacity of the Mainline System (the Mainline System as expanded by the Expansion, the “**Expanded System**”);

AND WHEREAS the Carrier requires commercial support from shippers for the Expansion pursuant to facility support agreements in order for the Carrier to proceed and obtain Regulatory Approvals;

AND WHEREAS the Shipper wishes to commit to Firm Service on the Expanded System as set out in the Schedule A;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the Parties herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals, the following words and terms shall have the following meanings:

“**AACE International**” means the Association for the Advancement of Cost Engineering International, as more particularly described at www.aacei.org;

“**Accuracy**” means, in respect of a cost estimate Probability Distribution, the cost range within which 90% of the cost outcomes fall, expressed as +X%/-Y%, where X equals the difference between the P95 Cost and the P50 Cost, divided by the P50 Cost and expressed as a percentage, and where Y equals the difference between the P50 Cost and the P5 Cost, divided by the P50 Cost and expressed as a percentage;

“**Affiliate**” means any Person (i) that controls a Party, (ii) that is controlled by a Party, or (iii) that is controlled by the same Person that controls a Party; it being understood and agreed that for purposes of this definition the terms “**controls**” and “**controlled by**” shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares or partnership interest, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with respect to the control of or by a corporation or a partnership, the ownership of shares or partnership interest carrying not less than fifty percent (50%) of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above;

“**Agreement**” means this Facility Support Agreement together with the recitals and schedules hereto, and includes all written instruments hereafter supplementing, amending or confirming this Facility Support Agreement;

“**As-Built Costs and Expenses**” has the meaning set forth in Section 3.2(d);

“**Base Estimate**” means the sum of the cost of all of the items in an estimate, excluding contingency;

“**Business Day**” means any day other than a Saturday, Sunday, or statutory holiday in the Province of Alberta;

“**Capped Costs**” means all Costs and Expenses that are not Uncapped Costs;

“**Capped Costs Toll Limit**” means the amount of the Fixed Toll component calculated for each Service Option using the CPCN Cost Estimate exclusive of Uncapped Costs;

“**Carrier**” means Trans Mountain Pipeline ULC, as general partner of Trans Mountain Pipeline L.P.;

“**Carrier Pro Rata Share**” means a pro rata share calculated as one hundred percent (100%) minus a percentage that is determined by dividing the Firm Capacity by the Deemed Available Capacity;

“**Commencement Date**” has the meaning set forth in the Transportation Service Agreement;

“**Commencement Date Cost Estimate**” means the Carrier’s P95 Cost estimate of Costs and Expenses as of the Commencement Date;

“**Commencement Date Toll**” has the meaning set forth in Section 3.2(c);

“**Contract Term**” means either a period of fifteen (15) years or twenty (20) years from the Commencement Date as indicated in Schedule “A”;

“**Contract Volume**” means, for each Service Option, the daily volume of Petroleum as set forth in Schedule A;

“**Costs and Expenses**” shall have the meaning set forth in Section 6.1(a);

“**CPCN**” means a Certificate of Public Convenience and Necessity made pursuant to section 52 of the *National Energy Board Act* (Canada), and which includes all necessary Governor in Council approvals;

“**CPCN Cost Estimate**” means Carrier’s P95 Cost estimate of Costs and Expenses as of the issuance date of the CPCN and which estimate shall show the Capped Cost Toll Limit and the Uncapped Costs Toll Estimate;

“**Credit Rating**” means, with respect to a Shipper or, if applicable, its Credit Support Provider, on any date of determination, the ratings of its senior unsecured, unsubordinated long-term debt (not supported by third party credit enhancement) issued by S&P, Moody’s or DBRS, or if the Shipper or, if applicable, its Credit Support Provider does not have a rating for its senior unsecured, unsubordinated long-term debt (not supported by third party credit enhancement), then the ratings assigned to the Shipper or, if applicable, its Credit Support Provider corporate or issuer rating by S&P, the issuer rating by Moody’s or the corporate rating by DBRS;

“**Credit Support Provider**” means a Person who has provided a guarantee of the Shipper’s obligations in respect of the provision of service to the Shipper by the Carrier, such guarantee in form and substance acceptable to the Carrier acting reasonably;

“**Cubic Metre**” or “**m³**” means the volume of petroleum which occupies one (1) cubic metre and equals 6.2898108 barrels;

“**Cubic Metre-kilometres**” means the amount calculated by multiplying the total Cubic Metres of Petroleum shipped by the total distance, in kilometres, between the applicable Designated Receipt Point and Designated Delivery Point;

“**DBRS**” means Dominion Bond Rating Service Limited, or any successor thereof;

“**Deemed Available Capacity**” means the capacity of the Expanded System initially deemed to be 600,000 bpd, and which deemed capacity shall be updated by Carrier at the end of the Open Season to reflect the volume of commitments resulting from the Open Season process;

“**Deliver**” and any derivative thereof, means delivered by the Carrier to the Shipper at a Designated Delivery Point;

“**Designated Delivery Point**” means, for a Service Option, the Delivery Point designated by the Shipper in Schedule A;

“**Designated Receipt Point**” means, for a Service Option, the receipt point designated by the Shipper in Schedule A;

“**Expanded System**” has the meaning set forth in the recitals to this Agreement;

“**Expansion**” has the meaning set forth in the recitals to this Agreement;

“**Extension Open Season Notice**” has the meaning set forth in Section 4.1(a);

“**Firm Capacity**” means that total volume of Petroleum which shippers have committed to ship pursuant to firm service facility support agreements and Transportation Service Agreements with the Carrier (including, for greater certainty, the Shipper’s total Contract Volume);

“**Firm Service**” means the firm transportation service to be provided in accordance with this Agreement, the Transportation Service Agreement and the Rules and Regulations;

“**Firm Service Open Season**” means the Open Season for Firm Service conducted pursuant to the Open Season Procedure;

“**Firm Service Pro Rata Share**” means the Shipper’s pro rata share calculated by taking the Shipper’s total Contract Volumes as a percentage of Firm Capacity;

“**Firm Service Toll**” means collectively the Fixed Toll and the Variable Toll, as adjusted in accordance with this Agreement, including without limitation, Schedule C;

“**Fixed Toll**” means the fixed portion of the Firm Service Toll, as such fixed portion is defined in Schedule C and which shall be set out in the Tariff;

“**Initial Cost Estimate**” means the Carrier’s P65 Cost estimate of Costs and Expenses as shown in Schedule B;

“**Indicative Toll**” means the initial estimated Firm Service Toll shown in Schedule B;

“**Investment Grade**” means the Shipper or, if applicable, its Credit Support Provider, has a Credit Rating of at least BBB- by S&P, Baa3 by Moody’s, or BBB(Low) by DBRS. If the Shipper or, if applicable, its Credit Support Provider has only one (1) Credit Rating from S&P, Moody’s or DBRS, then that Credit Rating shall apply. If the Shipper or, if applicable, its Credit Support Provider has a Credit Rating from two (2) or more of S&P, Moody’s, and/or DBRS, then the higher Credit Rating shall apply;

“**Leave to Open**” means the approval or approvals issued by the NEB pursuant to section 47 of the *National Energy Board Act* (Canada) that permits the initial operation of the Expansion;

“**Mainline System**” has the meaning set forth in the recitals to this Agreement;

“**Month**” means the period beginning at 7:00 a.m. Mountain Time on the first day of any calendar month and ending at 7:00 a.m. Mountain Time on the first day of the next calendar month;

“**Moody’s**” means Moody’s Investors Service, Inc., or any successor thereof;

“**NEB**” means the National Energy Board of Canada as constituted pursuant to the *National Energy Board Act* (Canada), or any successor thereof;

“**Notice of Firm Service Toll**” has the meaning set forth in Section 3.2(e)(iii);

“**Open Season**” means a process open and equal to all Persons whereby the Carrier requests binding expressions of interest or otherwise in respect of a proposal for the shipment of Petroleum;

“**Open Season Notice**” has the meaning set forth in Section 4.1(a);

“**Open Season Procedure**” means the notice of open season procedure describing the Firm Service Open Season process issued by the Carrier dated October 20, 2011;

“**Open Season Toll Limit**” means the amount shown in Schedule B;

“**Parties**” means, collectively, the Carrier and the Shipper, and “**Party**” means either one of them;

“**Person**” means a natural person, corporation, partnership, limited partnership, joint venture, association, trust, limited liability company, unlimited liability corporation, or any other entity or organization, including a Regulatory Body;

“**Petroleum**” has the meaning set forth in the Rules and Regulations;

“**Power Costs**” means the cost of energy utilized to move Petroleum through the Expanded System, which, for greater certainty, includes all amounts invoiced by the utility service provider including, but not limited to, demand charges, transmission charges, riders and taxes;

“**Probability Distribution**” means the relationship between all project cost outcomes and the probabilities that these outcomes will not be exceeded;

“**P5, P20, P50, P95 Cost**” means, in respect of a cost estimate Probability Distribution, the cost at which 5, 20, 50 or 95%, as the case may be, of the project cost outcomes are lower; “**Regulatory Approvals**” means all approvals, permits and similar authorizations from governmental, administrative and regulatory (including aboriginal if applicable) authorities having jurisdiction in Canada, including any necessary amendments or supplements thereto that Carrier in its sole discretion determines are necessary for, and on terms satisfactory to, Carrier to construct, acquire, own and operate the Expanded System and to provide transportation service as contemplated hereunder;

“**Regulatory Bodies**” means the NEB and any other governmental, administrative or regulatory authority having jurisdiction or control over any matter related hereto;

“**Revised Toll**” has the meaning set forth in Section 3.2(b);

“**Rules and Regulations**” means the Rules and Regulations Governing the Transportation of Petroleum applicable to the Carrier, as filed with the NEB from time to time, and the initial Rules and Regulations are set forth in Schedule E;

“**S&P**” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., or any successor thereof;

“**Service Option**” means, for the Shipper, each service option as designated in Schedule A setting out the Contract Volume, Contract Term, Petroleum type, Designated Receipt Point, Designated Delivery Point for Firm Service pursuant to the terms and conditions of this Agreement, the Transportation Service Agreement and the Rules and Regulations;

“**Shipper**” means the Party indicated as such on page 1 hereof;

“**Shipper Default**” has the meaning set forth in Section 7.1;

“**Shipper Pro Rata Share**” means the Shipper’s pro rata share calculated by taking the Shipper’s total Contract Volumes as a percentage of the Deemed Available Capacity;

“**Successful Open Season Notice**” has the meaning set forth in Section 4.1(a);

“**Terminated TSAs**” has the meaning set forth in Section 5.4(e);

“**Termination Open Season Notice**” has the meaning set forth in Section 4.1(a);

“**Toll Principles**” means all tolling principles reflected in the calculation of the Firm Service Toll, the provision of Firm Service as the principles are described in Schedule C;

“**Transportation Service Agreement**” means the agreement between the Carrier and the Shipper in the form of Schedule D;

“**Uncapped Costs**” means the Costs and Expenses resulting from or relating to: (a) consultation and accommodation costs, (b) price of steel for pipe, (c) acquisition of property rights, and (d) pipeline construction and inspection as such Costs and Expenses are shown in Schedule B;

“**Uncapped Costs Toll Estimate**” means the amount of the Fixed Toll component, calculated for each Service Option, using the CPCN Cost Estimate exclusive of Capped Costs;

“**Uncommitted Toll**” has the meaning set forth in the Transportation Service Agreement; and

“**Variable Toll**” means the variable portion of the Firm Service Toll, as such variable portion is defined in Schedule C.

1.2 References

References to “hereunder”, “herein”, “hereto” and “hereof” refer to the provisions of this Agreement, and references to Articles, Sections and Schedules herein refer to Articles, Sections and Schedules of this Agreement.

1.3 Headings

The headings of the Articles and Sections and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof.

1.4 Extended Meanings

In this Agreement, unless indicated otherwise, words importing the singular shall include the plural and vice versa and words importing gender shall include the masculine, feminine and neuter genders, all as may be applicable by the context.

1.5 Derivatives

Where a term is defined herein, a capitalized derivative of such term shall have a corresponding meaning unless the context otherwise requires.

1.6 Statutory References

Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or the regulations made pursuant thereto.

1.7 Invalidity of Provisions

Subject always to the right to terminate this Agreement as provided for herein, if any of the provisions of this Agreement should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions herein shall not in any way be affected or impaired thereby.

1.8 Conflicts

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a schedule hereto, the provisions of the schedule hereto shall prevail.

1.9 Industry Usage

Words, phrases or expressions which are not defined in this Agreement and which, in the usage or custom of the business of the transportation and distribution or sale of crude Petroleum and refined Petroleum have a generally accepted meaning, shall have that meaning.

1.10 Currency

Unless otherwise noted in this Agreement, all amounts payable under this Agreement are payable in Canadian dollars and references in this Agreement to monetary amounts are references to lawful currency of Canada.

1.11 Units

The Parties have agreed that, for purposes of this Agreement, Petroleum will be measured in barrels and not in Cubic Metres. Notwithstanding the use of such units in this Agreement, the Parties acknowledge that the Rules and Regulations and any tariffs required to be filed with the NEB or pursuant to the *National Energy Board Act* (Canada) will be prepared on the basis of the measurement of Petroleum in Cubic Metres.

1.12 Prudent Carrier and Shipper

The Parties shall each act prudently and reasonably and in a manner that is consistent with customary and good operating procedures of the crude petroleum and transportation industry in performing their respective obligations pursuant to this Agreement.

1.13 Rules and Regulations

At any time during the term of this Agreement and the Contract Term the Carrier may file with the NEB proposed amendments to the Rules and Regulations which are not inconsistent with the terms of this Agreement, the Transportation Service Agreement, and which do not amend the provisions in the Rules and Regulations related to Make-up Rights, Alternate Delivery Point, Force Majeure, Mainline System Allocation and Apportionment, and Financial Assurances such that there is a material adverse impact on the Firm Service provided to all Firm Service shippers. The Carrier shall provide the Shipper with a copy of any such proposed amendments. Any amendments to the Rules and Regulations shall be effective on filing with, or as otherwise directed by, the NEB. The Rules and Regulations shall be applicable to the provision and receipt of service by the Carrier and the Shipper pursuant to the Transportation Service Agreement.

1.14 Schedules

The following schedules are attached hereto, incorporated in and made part of this Agreement:

- (a) Schedule A - Service Options
- (b) Schedule B - Indicative Tolls
- (c) Schedule C - Toll Principles

- (d) Schedule D - Form of Transportation Service Agreement
- (e) Schedule E - Rules and Regulations

ARTICLE 2 REGULATORY APPROVALS

2.1 Carrier's Approvals

Subject to the terms and conditions of this Agreement, the Carrier shall use commercially reasonable efforts to apply for and obtain all Regulatory Approvals.

2.2 Support in Proceedings

The Shipper agrees to provide support to and cooperate with the Carrier in obtaining Regulatory Approvals contemplated in Sections 4.1(b)(i) and 4.1(b)(ii), and to not oppose the efforts of the Carrier, to obtain such Regulatory Approvals.

The Shipper's support will include:

- (a) the timely filing by the Shipper of an intervention in support of the Carrier's applications to the NEB for the Regulatory Approvals contemplated in Sections 4.1(b)(i) and 4.1(b)(ii);
- (b) the provision of any information reasonably requested by the Carrier in preparing and prosecuting applications for the Regulatory Approvals (including the right to disclose the Shipper as a Party to this Agreement, but excluding any other information that is confidential to the Shipper unless adequate protections can be put in place to safeguard its confidentiality) and any information required by the NEB or any other Regulatory Body to be submitted during review of such applications;
- (c) the Shipper will not oppose, intervene against, or seek to delay, whether directly or indirectly, the applications for the Regulatory Approvals, including without limitation, in respect of the provision of Firm Service and the levying of Firm Service Tolls and Uncommitted Tolls on the basis of the Toll Principles as contemplated; and
- (d) The Shipper's obligations under this Section 2.2 shall not preclude Shipper from advancing a position before the NEB opposing a position advanced by Carrier with respect to the Rules and Regulations, except as they apply to Firm Service, Firm Service Tolls and Uncommitted Tolls on the basis of the Toll Principles as contemplated.

Nothing herein is intended to, or shall be construed as a waiver of, or limitation on, in any way Shipper's right to oppose, intervene against or protest any applications for Regulatory Approvals that are inconsistent with the terms of this Agreement or the Rules and Regulations as they apply to Firm Service, or require Shipper to act, or not act, in

manner that would be inconsistent with any applicable law or Shipper's corporate governance policies or standards of conduct.

ARTICLE 3 SERVICE OPTIONS AND FIRM SERVICE TOLL DETERMINATION

3.1 Service Options

Subject to the provisions of this Agreement, the Shipper commits to ship or pay for all Firm Service Tolls and the Carrier agrees to provide Firm Service in relation to the Service Options as contemplated in the Transportation Service Agreement.

3.2 Firm Service Toll Determination

- (a) The Carrier's initial estimate of the Firm Service Toll is the Indicative Toll for Firm Service shown in Schedule B. The Open Season Toll Limit and Initial Cost Estimate are also shown in Schedule B.
- (b) No earlier than thirty (30) and no later than sixty (60) days from the delivery of the notice described in Section 3.2(e)(i), the Carrier will deliver the CPCN Cost Estimate, together with a revised Fixed Toll component (the "**Revised Toll**"). The Carrier will use all reasonable technical and commercial efforts during the Expansion to achieve a Class II/III CPCN Cost Estimate, in general accordance with AACE International recommended practices, which shall have a deemed Accuracy of +15%/-10%, with the Base Estimate assumed to be the P20 Cost. The Revised Toll shall be determined as the amount of the Fixed Toll component of the Indicative Toll for the applicable Service Option plus or minus:

\$0.07 per barrel for every one hundred million dollar (\$100,000,000), or portion thereof, increase or decrease, respectively, in the CPCN Cost Estimate from the Initial Cost Estimate, as distance adjusted for destinations other than Burnaby.

If the Revised Toll exceeds the Open Season Toll Limit, the Shipper shall have the right to terminate this Agreement pursuant to Section 5.4(d);

- (c) Not less than thirty (30) days before the Commencement Date, the Carrier will deliver the Commencement Date Cost Estimate together with a commencement date toll (the "**Commencement Date Toll**"). The Commencement Date Toll shall be determined as the amount of the Revised Toll plus or minus:

\$0.07 per barrel for every additional one hundred million dollar (\$100,000,000), or portion thereof, increase or decrease, respectively, in the Commencement Date Cost Estimate from the CPCN Cost Estimate, as distance adjusted for destinations other than Burnaby, provided that

in no event shall the Fixed Toll include any amount in respect of Capped Costs in excess of the Capped Costs Toll Limit.

- (d) Within ninety (90) days following the first anniversary of the Commencement Date, the Firm Service Toll will be established to reflect the actual as-built costs and expenses (the “**As-Built Costs and Expenses**”). The Fixed Toll shall be determined as the amount of the Revised Toll plus or minus:

\$0.07 per barrel for every one hundred million dollar (\$100,000,000), or portion thereof, increase or decrease, respectively, in the As-Built Costs and Expenses from the CPCN Cost Estimate, as distance adjusted for destinations other than Burnaby, provided that in no event shall the Fixed Toll include any amount in respect of Capped Costs in excess of the Capped Costs Toll Limit.

Further adjustment to the Fixed Toll may be made by the Carrier, as provided in the Transportation Service Agreement, in the event that the final Costs and Expenses are incurred or determined after the Firm Service Toll is set pursuant to this Section 3.2(d).

- (e) The Carrier shall give the Shipper notice of any toll, cap or estimate adjustment contemplated in this Section 3.2, together with a revised Schedule B, in the following manner:
- (i) a notice of adjustment shall be delivered by the Carrier to the Shipper within thirty (30) days of the issuance of the CPCN, together with the CPCN Cost Estimate containing a breakdown of the Capped Costs and Uncapped Costs;
 - (ii) a notice of adjustment pursuant to Section 3.2(c) shall be delivered by the Carrier to the Shipper within thirty (30) days of the Commencement Date, together with the Commencement Date Cost Estimate containing a breakdown of the Capped Costs and Uncapped Costs; and
 - (iii) a notice of adjustment pursuant to Section 3.2(d) shall be delivered by the Carrier to the Shipper within twelve (12) months of the Commencement Date (the “**Notice of Firm Service Toll**”), together with a statement of As-Built Costs and Expenses containing a breakdown of the Capped Costs and Uncapped Costs, provided however a further adjustment to such Firm Service Toll may be required as contemplated in Section 3.2(d).
 - (iv) prior to filing with the NEB, Carrier shall provide to Shipper a reconciliation showing the Firm Service Toll adjusted in accordance with this Section 3.2, and setting out any over payment or under payment of the Firm Service Toll to such date along with the proposed method by which such over payment or under payment will be settled.

- (f) The Carrier shall file annually with the NEB adjustments to the Variable Toll as contemplated in Schedule C, along with the proposed method by which such over payment or under payment will be settled.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Carrier's Conditions Precedent

The Carrier's obligations under this Agreement (save and except for those set forth in Article 5, Article 6 and Section 12.4) are subject to satisfaction or waiver by the Shipper, as the case may be, of the Shipper's Conditions Precedent set out in Section 4.5 and satisfaction of the following conditions precedent:

- (a) Conclusion of Open Season: The Carrier shall have issued a notice to the Shipper that the Carrier (i) is satisfied with results of the Firm Service Open Season ("**Successful Open Season Notice**"); or (ii) intends to extend the Open Season ("**Extension Open Season Notice**"); or (iii) that the Open Season was unsuccessful and this Agreement is terminated (the "**Termination Open Season Notice**") collectively Successful Open Season Notice, Extension Season Open Notice and Termination Open Season Notice are called the "**Open Season Notices**";
- (b) Regulatory Approvals: The Carrier shall have received and accepted:
 - (i) approval by the NEB of Firm Service and Firm Service Tolls and the tolling principles described in Schedule C;
 - (ii) a CPCN;
 - (iii) all other Regulatory Approvals (in addition to the CPCN) required to commence construction of the Expansion;
 - (iv) Leave to Open; and
 - (v) all other Regulatory Approvals (in addition to the Leave to Open from the NEB) required to place the Expansion in service,

issued in accordance with the requirements of Section 4.3, in form and substance satisfactory to the Carrier, in its sole discretion;

- (c) Minimum Commitment: The Carrier, in its sole discretion, shall have determined that it has a minimum level of commitment from Shippers; and
- (d) Financing: Financing arrangements in respect of the Expansion are or will be available on terms and conditions satisfactory to the Carrier in its sole discretion.

Waiver: The conditions precedent in this Section 4.1(a) and 4.1(b) are for the sole benefit of the Carrier and may be waived by the Carrier, in whole or in part.

4.2 Construction

Upon satisfaction or waiver of all conditions precedent in Sections 4.1(b)(i), 4.1(b)(ii), 4.1(b)(iii), 4.1(c) and 4.1(d), and provided there has been no early termination pursuant to Section 5.4, the Carrier will proceed, using commercially reasonable efforts, to construct the Expansion and perform any other actions as are reasonably necessary to enable the Carrier to provide the Firm Service.

4.3 Binding Regulatory Approvals

All Regulatory Approvals must be duly granted by the Regulatory Bodies and must be final and no longer subject to rehearing or appeal; provided, however, that the Carrier may waive the requirement that any such Regulatory Approval be final and no longer subject to rehearing or appeal.

4.4 Satisfaction or Waiver of Conditions

The Carrier shall give the Shipper written notice of the satisfaction or waiver of the conditions set forth in Sections 4.1(b), 4.1(c) and 4.1(d) within thirty (30) days of such satisfaction or waiver.

4.5 Shipper's Conditions Precedent

The Shipper's obligations under this Agreement (save and except those contained in Article 5, Article 6 and Section 12.4) are subject to satisfaction or waiver by the Carrier as the case may be, of the Carrier's Conditions Precedent set out in Section 4.1, and satisfaction of the following conditions precedent:

- (a) the receipt by Shipper of all corporate, partnership or similar approvals required in respect of this Agreement, notice of which must be provided to Carrier not later than thirty (30) days following delivery of a Successful Open Season Notice issued pursuant to Section 4.1(a)(i);
- (b) the approval by the NEB of Firm Service on terms and conditions which do not apportion the Shipper's access to ship Contract Volumes in a material and adverse manner to the Shipper, but subject always to the Mainline Allocation, Assignment and Apportionment provisions in the Rules and Regulations;
- (c) approval by the NEB such that no change is made to the toll methodology which uses the Fixed Toll component as more particularly described in Schedule C, where such change would have a material negative economic impact on the Shipper; and
- (d) the Carrier shall have received and accepted a CPCN.

Waiver: The conditions precedent in this Section 4.5 are for the sole benefit of the Shipper and may be waived by the Shipper, in whole or in part.

ARTICLE 5 TERM

5.1 Term of the Agreement

This Agreement shall become effective on the date hereof and shall continue in full force and effect until the earlier of either: (i) the Commencement Date, provided that Sections 3.2, 5.6 and 12.3 and Article 6 shall continue until any Firm Service Toll adjustment and audit are completed; or (ii) this Agreement is terminated pursuant to Articles 5 or 7.

5.2 Execution of the Transportation Service Agreement

Within thirty (30) days of delivery to the Shipper of a Successful Open Season Notice issued pursuant to Section 4.1(a)(i), unless the Shipper has given notice to terminate this Agreement pursuant to Section 5.4(c)(i)(A), the Shipper shall execute and unconditionally deliver to the Carrier the Transportation Service Agreement, and the Carrier shall promptly execute and deliver to the Shipper a fully executed copy of the Transportation Service Agreement. Upon execution of the Transportation Service Agreement by the Shipper, the Carrier shall be entitled to publicly disclose and issue a press release stating the Shipper's identity and commercial support for the Expansion, including the Firm Capacity in aggregate.

5.3 Notices

The Carrier shall provide the Shipper with periodic updates as to the status of (i) the Open Season; (ii) the regulatory process; and (iii) the construction of the Expansion, including updates as to the anticipated Commencement Date.

5.4 Early Termination

- (a) (i) Carrier's Right to Terminate:
In the event that an Open Season Notice contemplated in Section 4.1(a) has not been issued on or before a date which is forty-five (45) days following the final date for execution and submission by Shipper of this Agreement, this Agreement shall automatically terminate.
- (ii) Result: If this Agreement is terminated by the Carrier pursuant to Section 5.4(a)(i), the Carrier shall bear one hundred percent (100%) of all Costs and Expenses.
- (b) (i) Carrier's Right to Terminate For Failure to Satisfy Conditions Precedent:
In the event that:
 - (A) the Regulatory Approvals conditions set forth in Sections 4.1(b)(i), 4.1(b)(ii) or 4.1(b)(iii) have not been satisfied or waived by the Carrier on or before a date which is sixty (60) months following the Successful Open Season Notice;

- (B) the Regulatory Approvals conditions set forth in Sections 4.1(b)(iv) or 4.1(b)(v) have not been satisfied or waived by the Carrier on or before a date which is fifty-four (54) months following the issuance of the CPCN.; or
- (C) the minimum commitment and financing conditions set forth in Sections 4.1(c) and 4.1(d) have not been satisfied or waived by the Carrier on or before a date which is one hundred eighty (180) days following satisfaction of each of the Regulatory Approvals conditions set forth in Sections 4.1(b)(i) and 4.1(b)(ii),

the Carrier may at any time thereafter by written notice to the Shipper terminate this Agreement effective as of the date of such notice.

- (ii) Result: If this Agreement is terminated by the Carrier pursuant to Section 5.4(b)(i)(A) or 5.4(b)(i)(C), the Carrier shall bear its Carrier Pro Rata Share of all Costs and Expenses and the Shipper shall pay its Shipper Pro Rata Share of all Costs and Expenses. If this Agreement is terminated by the Carrier pursuant to Section 5.4(b)(i)(B) the Carrier shall pay all Costs and Expenses.
- (c) (i) Shipper's Right to Terminate for Failure to Satisfy Conditions Precedent:
In the event that:
 - (A) the Shipper approval condition set forth in Section 4.5(a) has not been satisfied or waived by the Shipper on or before a date which is thirty (30) days following delivery of the Successful Open Season Notice;
 - (B) the Regulatory Approvals condition set forth in Section 4.5(b) has not been satisfied or waived by the Shipper on or before a date which is thirty (30) days following the issuance of the NEB's decision or order with respect to Firm Service;
 - (C) NEB approval of the toll methodology which uses the Fixed Toll component as described in Schedule C has not be obtained as contemplated in Section 4.5(c) and such failure has not been satisfied or waived by the Shipper within thirty (30) days of such approval; or
 - (D) the CPCN approval condition set forth in Section 4.5(d) is not satisfied or waived by the Shipper on or before a date which is sixty (60) months following delivery of the Successful Open Season Notice,

the Shipper may, after fifteen (15) days, but not later than forty-five (45) days after such event, by written notice to the Carrier, terminate this Agreement effective as of the date of such notice.

- (ii) Result: If this Agreement is terminated by the Shipper pursuant to Section 5.4(c)(i)(A) Carrier shall pay all Costs and Expenses. If this Agreement is terminated by the Shipper pursuant to Section 5.4(c)(i)(B), 5.4(c)(i)(C) or 5.4(c)(i)(D), the Shipper shall pay its Firm Service Pro Rata Share of all Costs and Expenses.

- (d) (i) Shipper's Right to Terminate Following Toll Adjustment: In the event that the Revised Toll exceeds the Open Season Toll Limit as contemplated in Section 3.2(b), the Shipper may terminate this Agreement on written notice to the Carrier, within thirty (30) days, following receipt of notice of the Revised Toll, and this Agreement shall terminate effective as of the date of such notice.

- (ii) Result: If this Agreement is terminated by the Shipper pursuant to Section 5.4(d)(i), the Shipper shall pay its Firm Service Pro Rata Share of all Costs and Expenses, provided however, if the project comprising the Expansion has not been terminated because of terminations pursuant to Section 5.4(d)(i), the use of Firm Service Fees as contemplated in Section 6.1(a) to reduce Costs and Expenses shall not apply to the Firm Service Pro Rata Share of Costs and Expenses for the Shipper terminating pursuant to this section.

- (e) (i) Carrier's Rights Following Shipper Terminations:
In the event that one (1) or more shippers that have entered into Firm Service facility support or transportation service agreements terminate such agreement(s) pursuant to the equivalent of Section 5.4(c) or 5.4(d) contained in such agreements

(the "Terminated TSAs"), the Carrier shall conduct an additional Open Season in respect of the Expanded System in order to provide an option for new and existing shippers to make up for Terminated TSA volumes on terms not more favourable than terms as existing in this Agreement. In the event that the Carrier is not able through such additional Open Season to contract for adequate volumes in respect of the Terminated TSAs, the Carrier may at any time within thirty (30) days following completion of such additional Open Season terminate this Agreement on sixty (60) days written notice to the Shipper.

- (ii) Result: If this Agreement is terminated pursuant to Section 5.4(e)(i), Carrier shall bear its Carrier Pro Rata Share of all Costs and Expenses and the Shipper shall pay its Shipper Pro Rata Share of all Costs and Expenses.

5.5 Concurrent Termination of Agreements

In the event the Carrier terminates this Agreement pursuant to Section 5.4(a), 5.4(b) or 5.4(e), the Carrier shall concurrently terminate all agreements for Firm Service. If this Agreement is terminated pursuant to the early termination provisions in Section 5.4, the Transportation Service Agreement shall terminate concurrently with this Agreement.

5.6 Effect of Termination

Upon termination of this Agreement, this Agreement shall cease to have any force or effect, save as to any unsatisfied obligations or liabilities of either Party arising prior to the date of such termination, or arising as a result of such termination, including the obligations and liabilities of the Parties pursuant to Article 6.

ARTICLE 6 EXPANSION COSTS AND EXPENSES AND AUDIT RIGHTS

6.1 Cost and Expense Calculation

- (a) “**Costs and Expenses**” shall mean all costs and expenses reasonably and necessarily incurred by or on behalf of the Carrier related to work required to be undertaken by or on behalf of the Carrier in connection with the development and construction of the Expansion, including:
- (i) pre-development expenses related to the initial development of the Expansion incurred prior to and during the Open Season;
 - (ii) all engineering design, environmental studies, stakeholder consultation and accommodation, and commercial and regulatory activities;
 - (iii) any capital expenditures, including expenditures related to material and labour supply and any cancellation charges related thereto; and
 - (iv) financing costs, accumulated funds incurred during construction and all applicable taxes on all of the foregoing,

in each case, accrued up to the date of termination pursuant to this Article 6, adjusted in accordance with NEB Reasons for Decision RH-2-2011 issued to the Carrier, Firm Service Fees (as defined therein) shall be applied to reduce Costs and Expenses payable by all Parties, except as contemplated in Section 5.4(d)(ii).

- (b) Where the Shipper is required to pay its Shipper Pro Rata Share or Firm Service Pro Rata Share of the Costs and Expenses on a termination of this Agreement, payment shall be made to the Carrier within thirty (30) days of receipt of written notice from the Carrier together with any interest as provided in the Rules and Regulations;
- (c) Audits of the Costs and Expenses shall, if desired by the Shipper, be conducted in accordance with the following:
- (i) upon Shipper providing notice to the Carrier advising that an audit is being requested, such audit to be commenced and completed within ten (10) Business Days following delivery of the CPCN Cost Estimate as contemplated in Section 3.2(b), provided however that such audit period may be extended at the request of Shipper with the consent of the Carrier, not to be unreasonably withheld;

- (ii) upon Shipper providing notice to the Carrier advising that an audit is being requested, such audit to be commenced within thirty (30) days of setting of the Firm Service Toll as contemplated in Section 3.2(d);
- (iii) all such audits are to be carried out in accordance with CAS 805, as amended or replaced from time to time, and otherwise as contemplated below;
- (iv) the auditors shall be selected by the Shipper with the consent of the Carrier, not to be unreasonably withheld, and such auditors must be a firm of chartered accountants of recognized national standing;
- (v) the Carrier shall provide the auditors with reasonable access to the Carrier's source data necessary for the conduct of the audit and to the Carrier's audit files;
- (vi) where an audit has been requested by the Shipper and by one or more other shippers, all such Persons requesting an audit shall, together with the Carrier, coordinate the audit requests with the intention that only one audit be performed, with the results of that audit to be provided to the Carrier and the Shipper or Shippers requesting such audit;
- (vii) the auditor may confirm the reasonableness of the CPCN Cost Estimate and the Revised Toll, taking into account the formula set out in Section 3.2 and the provision for calculation of Costs and Expenses as set out in this Article 6;
- (viii) the auditor may confirm the As-Built Costs and Expenses and the Fixed Toll, or the auditor may provide an adjusted As-Built Costs and Expenses figure and an adjusted Fixed Toll, which in the auditor's view is reasonable taking into account the formula set out in Section 3.2 and the provision for calculation of Costs and Expenses as set out in this Article 6;
- (ix) the auditor shall keep the details of Costs and Expenses and source data confidential and shall not disclose same to the Shipper;
- (x) the results of audit shall be final and binding on the Parties;
- (xi) each Party will be responsible for its own internal costs in respect of any audits undertaken pursuant to this Section 6.1(c). Shippers requesting the audit shall pay the cost of the auditors; and
- (xii) if the auditor provides an adjusted Fixed Toll as contemplated in paragraph (viii) above, the Carrier undertakes to file with the NEB a tariff reflecting such adjusted Firm Service Toll and appropriate adjustments to reflect the adjusted Firm Service Toll and any associated overpayment or underpayment shall be made by Carrier and communicated to Shipper.

**ARTICLE 7
DEFAULT AND TERMINATION**

7.1 Shipper Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a breach by the Carrier of its obligations under this Agreement, shall constitute a “**Shipper Default**”:

- (a) a breach by the Shipper of any of its material obligations under this Agreement (including, without limitation, Article 8); or
- (b) the Shipper disaffirms, disclaims, repudiates or rejects, in whole or in part, this Agreement or evidences in any manner its intention not to perform its obligations under, or be bound by, this Agreement.

7.2 Remedies

Upon the occurrence and continuation of a Shipper Default under Section 7.1, the Carrier shall, at its option, have the right to (i) seek damages as would be available under law and subject to Carrier’s duty to mitigate, including without limitation re-contracting capacity; and/or (ii) terminate this Agreement in accordance with Section 7.3. In no event shall either Party be liable for lost profits or indirect, special, incidental, consequential, punitive damages or exemplary damages in connection with this Agreement.

7.3 Termination and Cure Period

In the event of a Shipper Default that is then continuing, the Carrier shall have the right to terminate this Agreement by giving thirty (30) days prior written notice of its intent to terminate to the Shipper; but if the Shipper Default is cured within such notice period, then termination will not be effective.

7.4 Accrued Rights Unaffected

No termination of this Agreement as a result of Shipper Default, however effected, shall affect or extinguish any rights or obligations of the Parties which accrued prior to the date of termination or extinguish any remedies available to any Party at law, equity or as provided for herein, including without limitation the right of the Carrier to receive the Shipper’s proportionate share of Costs and Expenses as contemplated in this Agreement. The proportionate share of Costs and Expenses payable by the Shipper shall not be subject to deduction or abatement for any reason, except and only to the extent that Carrier is able to successfully re-contract the Shipper’s Service Option.

ARTICLE 8 FINANCIAL ASSURANCES

8.1 Financial Assurances

If, at any time from the date this Agreement is executed by the Carrier until the end of the Contract Term, the Credit Rating for the Shipper or, if applicable, its Credit Support Provider, is below Investment Grade or the Carrier otherwise has reasonable grounds for insecurity regarding the payment or performance of any obligation of the Shipper pursuant to this Agreement, the Carrier may request and the Shipper shall provide to the Carrier, within seven (7) Business Days of the Carrier's request such security as is acceptable to the Carrier, consistent with Article 19 of the Rules and Regulations.

8.2 Financial Information

The Shipper shall furnish to the Carrier, as soon as available, and, in any event, within one hundred twenty (120) days after the end of each fiscal year of the Shipper, its audited consolidated financial statements (or, if applicable, the audited consolidated financial statements of its Credit Support Provider, or, if the Shipper is a partnership, the audited consolidated financial statements of the general partners of such partnership as are required, in the Shipper's opinion, acting reasonably, to demonstrate to the Carrier the creditworthiness of the Shipper) setting forth in comparative form the corresponding figures of the preceding fiscal year together with an auditor's report thereon. In addition, the Shipper shall, at the Carrier's request, furnish to the Carrier, as soon as available, and, in any event, within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Shipper, or its Credit Support Provider, as applicable, the unaudited consolidated financial statements of the Shipper or its Credit Support Provider, as applicable, prepared on a basis consistent with the corresponding period of the preceding fiscal year. Notwithstanding the foregoing, where the applicable financial statements are made available on an internet site available to the public (such as www.sedar.com), the Shipper shall be deemed to have provided those financial statements to the Carrier when such statements are posted to that internet site. The Shipper shall furnish to the Carrier any other information regarding the business affairs, operations, assets and financial condition of the Shipper or its Credit Support Provider, as applicable, as the Carrier may reasonably request from time to time.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Carrier's Representations and Warranties

The Carrier represents and warrants as of the date of execution that:

- (a) it is duly organized and validly existing under the federal laws of Canada and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;

- (b) this Agreement constitutes a valid, legal and binding obligation of the Carrier, enforceable in accordance with the terms hereof; and
- (c) there are no actions, suits or proceedings pending or, to the Carrier's knowledge, threatened against or affecting the Carrier before any court or administrative body that might materially adversely affect the ability of the Carrier to meet and carry out its obligations under this Agreement.

9.2 Shipper's Representations and Warranties

The Shipper represents and warrants as of the date of execution that:

- (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) this Agreement constitutes a valid, legal and binding obligation of the Shipper, enforceable in accordance with the terms hereof;
- (c) there are no actions, suits or proceedings pending or, to the Shipper's knowledge, threatened against or affecting the Shipper before any court or administrative body that might materially adversely affect the ability of the Shipper to meet and carry out its obligations under this Agreement; and
- (d) the Shipper has taken all corporate or other necessary action to authorize the execution and delivery by the Shipper of this Agreement.

9.3 Financial Capacity of Shipper

In addition to the representations and warranties made by the Shipper in Section 9.2, the Shipper represents and warrants that it currently has the financial capacity to satisfy its obligations under this Agreement and will be able to satisfy the requirements of the Carrier with respect to credit requirements in the manner provided in this Agreement and the Rules and Regulations.

ARTICLE 10 NOTICES

10.1 Methods of Notices

All notices and other communications under this Agreement shall be in writing and shall be sent by personal delivery or facsimile to the address and facsimile number designated below:

Carrier: Trans Mountain Pipeline ULC as general partner of Trans Mountain Pipeline L.P.
c/o Kinder Morgan Canada Inc. (as Operator)
Suite 2700, 300 – 5th Avenue S.W.
Calgary, Alberta T2P 5J2

Attention: Shipper Services
Fax No.: (403) 514-6422
Email Address: customer_accounts@kindermorgan.com

Shipper: _____

Attention: _____
Fax No.: _____
Email Address: _____

Notices given hereunder shall be deemed to be received when delivered by hand or courier if delivered by personal delivery or, if delivered by facsimile, on the Business Day immediately following the day on which the facsimile was delivered (with transmission confirmed).

10.2 Change of Address

Either Party may change its address by written notice to that effect in the manner prescribed herein to the other Party.

**ARTICLE 11
ASSIGNMENT**

11.1 Assignment By Shipper

The Shipper shall have the right to assign its rights and obligations, or any part thereof, under this Agreement subject to the prior written consent of the Carrier, which shall not be unreasonably withheld; provided that it shall be reasonable for the Carrier to withhold consent to assignment if the Carrier is not satisfied with the creditworthiness of the proposed assignee, having regard to the criteria for the provision of financial assurances set forth in Section 8.1.

11.2 Assignment By Carrier

The Carrier shall have the right to assign its rights and obligations, or any part thereof, under this Agreement without the consent of, but with notice to, the Shipper, provided that the Carrier has made provision for the continued operation of the Expanded System by a reputable Person experienced in the operation of oil pipelines, as determined by the Carrier acting reasonably. If Carrier assigns all or any of its rights or obligations under this Agreement to any third party with whom the Shipper is legally unable to do business, including as a result of Shipper policies in place to ensure compliance with anti-money laundering and proceeds of crime legislation, the Shipper shall have the right to terminate this Agreement effective as of the date of the assignment and upon such termination Shipper shall be liable for its Shipper's Pro Rate Share of any Costs and Expenses, except to the extent that Carrier is able to re-contract such volumes.

11.3 Merger

Any Person which shall succeed by purchase of all or substantially all of the assets and assumption of all or substantially all of the liabilities of, or merger or consolidation with, either the Carrier or the Shipper, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement.

11.4 Affiliates

Section 11.1 shall not apply to a disposition by the Shipper of all or part of its interest in this Agreement to an Affiliate of the Shipper (in this clause, called the “**Transferee**”), provided the Shipper executes and delivers to the Carrier a continuing guarantee of the Transferee’s obligations hereunder in form and substance satisfactory to the Carrier, acting reasonably, which guarantee shall provide for financial assurances as set forth in Section 8.1, that the Shipper waives notice of any extensions, modifications or amendments to this Agreement, that no such extension, modification or amendment shall release the Shipper and that the Shipper shall not be released by any waiver of any obligation of the Transferee or by any indulgence or concession granted to it.

11.5 Pledging

It is agreed that the restrictions on assignment contained in this Article 11 shall not in any way prevent the Carrier from pledging or mortgaging its rights hereunder or its rights in respect of any letter of credit or other security given to the Carrier by the Shipper. The Shipper will execute all consents to assignment and acknowledgments in favour of such lenders as requested by such lenders or by the Carrier, provided that such consents and acknowledgements are reasonable and do not waive or impair the Shipper’s rights under this Agreement.

11.6 Partial Assignment

If the Shipper partially assigns its rights under this Agreement to an Affiliate, its rights hereunder must be exercised collectively by the Shipper and such Affiliate. Any non-Affiliate partial assignee of this Agreement may exercise any elections or termination rights under this Agreement in respect of its share of the aggregate Contract Volumes independently of the assignor or any other assigns.

ARTICLE 12 MISCELLANEOUS

12.1 Dispute Resolution

In the event of a dispute, the Parties agree that prior to making a regulatory application or commencing litigation, they shall undertake the resolution of such dispute by negotiation. A Party shall give written notice (“Dispute Notice”) to the other Party of the dispute, outlining in reasonable detail the details of the dispute. Within three days following receipt of the Dispute Notice, each Party shall appoint a management level executive, who shall meet and in good faith attempt to resolve the dispute. If the dispute is not

resolved within thirty (30) days of receipt of the Dispute Notice, the negotiation shall be deemed to have failed and either party may take any other action available to them, provided however that either Party may commence with a regulatory application or litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of such regulatory application or litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of a regulatory application or litigation is otherwise necessary to prevent irreparable harm to that Party. Each Party shall bear their own costs incurred in connection with this dispute resolution process. All Information disclosed during this dispute resolution process shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such information. Subject only to the rules of discovery, the Parties agree to not disclose the information to any other Person or for any other purpose and such disclosed information cannot be used in any subsequent proceedings without the consent of the Party who has made the disclosure. The Parties agree that any representative in the negotiation may not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is a subject of this Agreement. The Parties agree that any records of discussions occurring as part of Negotiation shall be treated as confidential information and shall not be disclosed in litigation. Nothing in this Dispute resolution procedure shall require a Party to disclose information that is subject to confidentiality provisions with third parties.

12.2 Authorities

Performance of this Agreement shall be subject to all valid laws, orders, decisions, rules and regulations of duly constituted governmental authorities having jurisdiction or control of any matter related hereto, including the Regulatory Bodies. Should either of the Parties, by force of any such law, order, decision, rule or regulation, at any time during the Contract Term be ordered or required to do any act inconsistent with the provisions hereof, then for the period during which the requirements of such law, order, decision, rule or regulation are applicable, this Agreement shall be deemed modified to conform with the requirement of such law, order, decision, rule or regulation. In the event that any such modification materially and adversely affects a Party to this Agreement, all Parties agree to negotiate in good faith to mitigate and/or alleviate the impacts of such modifications.

12.3 Amendment

Except as provided below, this Agreement may be amended only by executed written instrument of the Parties:

- (a) if transportation service on a pipeline immediately upstream of a Designated Receipt Point is permanently discontinued, and the Shipper was using that pipeline to transport Petroleum to the Designated Receipt Point, the Shipper shall designate to the Carrier in writing an alternative Designated Receipt Point(s) for each Service Option applicable to that Designated Receipt Point. The Carrier will then prepare a revised Schedule A to reflect the amended Designated Receipt

Point(s) and upon delivery by the Carrier to the Shipper of Schedule A as so revised, this Agreement shall be deemed to be amended by the replacement of the Schedule A then in effect with the revised Schedule A; and

- (b) at each time that the Carrier adjusts the Firm Service Toll pursuant to Section 3.2 , including an audit pursuant to Section 6.1(c), the Carrier will prepare a revised Schedule B to this Agreement to reflect the revised Firm Service Toll, and upon delivery by the Carrier to the Shipper of Schedule B to this Agreement as so revised, this Agreement will be deemed to be amended.

12.4 Confidentiality

Except as set forth herein, the contents of this Agreement and all other documents relating to this Agreement, and any information made available by one Party to the other Party with respect to this Agreement, are confidential and shall not be disclosed to any third party (nor shall any public announcement relating to the contents of this Agreement be made by either Party), except for: (i) such information as may become generally available to the public; (ii) such information as may be required or appropriate in response to any summons, subpoena or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling or accounting disclosure rule or standard; (iii) such information as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the other Party in making such disclosure; (iv) such information as may be furnished to that Party's auditors, attorneys, advisors, lenders or potential assignees which are required to keep the information that is disclosed in confidence; or (v) disclosure by the Carrier of data in an aggregate form such that individual shipper information is not identifiable from such disclosure.

12.5 Insurance

Carrier will, at all times, insure its property and potential liability exposures against loss or damage in a manner that is commercially reasonable having regard to the nature of the Expanded System.

12.6 Further Assurances

The Parties shall from time to time and at all times do all such further acts and execute and deliver all such further documents and instruments as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

12.7 Waiver

No waiver of any default by the other Party under this Agreement shall operate as a waiver of a future default, whether of a like or different character. No waiver shall be effective unless in writing.

12.8 Governing Law and Attornment

- (a) This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Except as provided in Section 12.8(b), each Party attorns to the jurisdiction of the courts of the Province of Alberta and all courts of appeal therefrom.
- (b) All matters relating to the determination of tolls shall be referred to the NEB for approval pursuant to the provisions of the *National Energy Board Act* (Canada), and the Parties hereby attorn to the NEB's jurisdiction to hear all such matters.

12.9 Time

Time shall be of the essence in this Agreement.

12.10 Enurement

Subject to the provisions of Article 11, this Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

12.11 No Partnership

Nothing in this Agreement shall be read or construed as creating a partnership, or imposing upon any Party any partnership duty, obligation or liability of any kind.

12.12 Counterpart Execution

This Agreement may be executed in separate counterparts and delivered by facsimile and all such executed and delivered counterparts together shall constitute one agreement.

12.13 Survival

Sections 12.4, 6.1 and 5.4 shall survive the termination of this Agreement.

12.14 Entire Agreement

This Agreement, including the recitals and schedules hereto, constitutes the entire agreement between the Parties as to the subject matter hereof and supersede all prior agreements, arrangements, negotiations, representations, warranties or understandings by, or between them (including without limitation the Open Season Procedure, other than those portions of the Open Season Procedure referenced herein) relating thereto, whether written or otherwise.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their proper officers duly authorized as of the date first above written.

TRANS MOUNTAIN PIPELINE ULC as General Partner of TRANS MOUNTAIN PIPELINE L.P.

By: _____
Name:
Title:

SHIPPER: _____

By: _____
Name:
Title:

By: _____
Name:
Title: