

# Appendix 8

**TRANS MOUNTAIN PIPELINE**

**TRANSPORTATION SERVICE AGREEMENT**

**BETWEEN**

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

**and**

\_\_\_\_\_  
**(as Shipper)**

**Effective: \_\_\_\_\_, 2012**

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## TRANSPORTATION SERVICE AGREEMENT

THIS TRANSPORTATION SERVICE 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 and the Shipper have entered into a Facility Support Agreement dated ●, 2012 (the “**Facility Support Agreement**”) wherein Carrier offered to provide and Shipper requested 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 “**Mainline System**”);

AND WHEREAS the Shipper wishes to commit to Firm Service on the Mainline System for the Service Options, on the terms and conditions set forth in this Agreement;

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:

“**Acceleration Payment**” means the present value (using a discount rate equal to the then current Prime Rate) of 100% of the Fixed Toll applicable to Delivery from the Designated Receipt Point to the Designated Delivery Point for unshipped Contract Volumes for the remainder of the applicable Contract Term;

“**Actual Monthly Volume**” means the actual physical volume of Petroleum Delivered by the Carrier to the Shipper in a Month to the Designated Delivery Point;

“**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 Transportation Service Agreement together with the recitals and schedules hereto, and includes all written instruments hereafter supplementing, amending or confirming this Transportation Service Agreement;

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

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

“**Carrier Force Majeure**” means a Force Majeure declared by Carrier;

“**Carrier Force Majeure Volume**” means that volume of Petroleum that Carrier was unable to receive from Shipper as a result of a Force Majeure declared by Carrier;

“**Commencement Date**” has the meaning set forth in Section 4.2;

“**Contract Term**” means that period of time as set forth in the Service Option, commencing on the Commencement Date, as such period may be extended by renewal as contemplated in Section 5.1;

“**Contract Volume**” means the daily volume of Petroleum as set forth in Schedule A;

“**Cubic Metre**” or “**m<sup>3</sup>**” 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;

“**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;

“**Effective Date**” means the date of this Agreement;

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

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

“**Firm Service**” means the firm transportation service to be provided by the Carrier to the Shipper in accordance with the Facility Support Agreement, the Rules and Regulations and this Agreement;

“**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 toll component is defined in Schedule C;

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

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

“**Line Fill**” means the volume of Petroleum initially required to fill and maintain the Expansion or any portion thereof as contemplated in Section 2.3(a);

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

“**Make-up Volumes**” has the meaning set forth in the Rules and Regulations;

“**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;

“**Monthly Volume**” means, in respect of a Service Option for a Month, the Contract Volume for such Service Option for that Month multiplied by the number of days in that Month;

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

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

“**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;

“**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;

“**Prime Rate**” means the annual rate of interest announced from time to time by Royal Bank of Canada (or any successor thereof) as its reference rate then in effect for determining interest rates it will charge on Canadian dollar commercial loans made by Royal Bank of Canada (or any successor thereof) in Canada;

“**Regulatory Bodies**” means the NEB and any other governmental authorities having jurisdiction or control of any matter related hereto;

“**Rules and Regulations**” means the Rules and Regulations Governing the Transportation of Petroleum applicable to the Carrier, including the toll schedule, as filed with the NEB from time to time;

“**Service Option**” means, for the Shipper, the service option as designated in Schedule A setting out the Contract Volume, Petroleum type, Designated Receipt Point, Designated Delivery Point and Contract Term for Firm Service pursuant to the terms and conditions of this 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 6.1;

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

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

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

“**Uncommitted Toll**” means the toll payable by shippers for uncommitted volumes shipped on the Mainline System as provided for in the Rules and Regulations and published in Carrier’s NEB approved tariff;

“**Variable Toll**” means the variable portion of the Firm Service Toll as such variable toll component 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**

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 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 Facility Support 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 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 this Agreement.

#### **1.14 Schedules**

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

- (a) Schedule A - Service Option
- (b) Schedule B - Firm Service Tolls
- (c) Schedule C - Toll Principles

## **ARTICLE 2 SERVICE**

### **2.1 Nature of Service**

Subject to the provisions of this Agreement, the Carrier shall provide Firm Service to the Shipper from the Commencement Date in accordance with the Service Option. Firm Service shall, on a Monthly basis, consist of receipt at the Designated Receipt Point for the Service Option of a volume of Petroleum equal to the Contract Volume for the Service Option, transportation of that Petroleum on the Mainline System, and delivery for the Shipper's account to the associated Designated Delivery Point of a volume of Petroleum which is equivalent to the Contract Volume, all during the Contract Term for the Service Option and in accordance with the terms and conditions set forth in this Agreement and the Rules and Regulations.

### **2.2 Change to Service Option**

The Shipper may request by notice in writing to the Carrier a permanent change to the Service Option such that any one or more of Designated Receipt Point, Designated Delivery Point or Petroleum type may be changed. Upon receipt of such a request the Carrier shall, through commercial discussions with other shippers, decide if and how such a request could be accommodated, taking into account that such change shall not negatively impact the Carrier or other shippers on the Mainline System. Such commercial discussions may result in an open season and/or an expansion of the Mainline System or related facilities.

### **2.3 Shipper's Obligations**

- (a) The Carrier shall endeavour to provide the Shipper with notice and a timetable of such Shipper's individual line fill obligations as provided for and required under the Rules and Regulations ("**Line Fill**"). Such notice shall be given to Shipper approximately two (2) weeks prior to the Monthly Nomination Date as described in the Rules and Regulations prior to first requirement, provided however failure to give such notice in accordance with the timing contemplated herein shall not relieve Shipper from its obligation to provide its proportionate share of Line Fill as requested by the Carrier. Upon receipt of Line Fill from Shipper, Carrier shall issue to Shipper a receipt ticket.
- (b) Effective as of the Commencement Date, the Shipper shall be obligated to Nominate and Tender on a Monthly basis during the Contract Term a volume of Petroleum equal to the Contract Volume at the Designated Receipt Point for the Service Option and receive a volume of Petroleum which is equivalent to such Contract Volume at the Designated Delivery Point, and shall make all necessary arrangements with transporters upstream of the Designated Receipt Point and downstream of the Designated Delivery Point for such purposes, all in accordance with this Agreement and the Rules and Regulations.

- (c) The Shipper shall pay to Carrier the Firm Service Toll in respect of the Actual Monthly Volume. In the event that the Actual Monthly Volume is less than the Monthly Volume, the Firm Service Shipper shall pay to the Carrier the Fixed Toll on the difference. Fixed Tolls paid in respect of such Monthly Volumes not yet Delivered shall be accounted for by Carrier as a toll credit held on account in the name of the Shipper, and such toll credit shall only be applied against Fixed Tolls payable by the Shipper in respect of carry-over, Carrier Force Majeure Volumes or Make-up Volumes of Petroleum Delivered by the Carrier to the Shipper. Rules applicable to carry-over and Make-up Volumes shall be as set out in the Rules and Regulations.
- (d) If a Carrier Force Majeure event exceeds twelve (12) months and such event results in the inability of the Carrier to accept all of the Contract Volume nominated in each month during such Carrier Force Majeure event, Contract Volume will, from the thirteenth (13<sup>th</sup>) month forward until such Carrier Force Majeure event ends, be amended to reflect the volume that Carrier is able to accept during the thirteenth (13<sup>th</sup>) month. Carrier shall continue to adjust the Contract Volume as necessary until the Carrier Force Majeure event ends, at which time Contract Volume shall be restored to the volume that existed prior to the Carrier Force Majeure event.

### **ARTICLE 3 TOLLS**

#### **3.1 Calculation of Firm Service Tolls**

- (a) Initially the Firm Service Toll shall be set as the Commencement Date Toll (as defined in the Facility Support Agreement) until the Firm Service Toll is determined and set pursuant to Section 3.2(d) of the Facility Support Agreement. If subsequent to the delivery of the Notice of Firm Service Toll (as defined in the Facility Support Agreement), further changes in Costs and Expenses (as defined in the Facility Support Agreement) are incurred or determined, Carrier may with notice to Shipper further adjust the Fixed Toll for such changes in Costs and Expenses. The Fixed Toll shall be increased or decreased by \$0.07 per barrel for every one hundred million dollar (\$100,000,000), or portion thereof, change in Costs and Expenses, 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 (as such terms are defined in the Facility Support Agreement). All such further adjustments to the Firm Service Toll shall be made effective as of Commencement Date.
- (b) Commencing on the first anniversary date of the Commencement Date and on each anniversary date thereafter, the Fixed Toll shall be increased by two and one half percent (2.5%) of the then prevailing Fixed Toll and included and charged in the Firm Service Toll for the next tolling year.

- (c) The Variable Toll shall first be determined as of the Commencement Date and at the end of each calendar year thereafter. Each determined amount will then be included in the Firm Service Toll in accordance with Schedule C.
- (d) The Indicative Tolls set out in Schedule B are for information only and a Toll Schedule shall be filed with the NEB from time to time setting out the then current Firm Service Toll.

### **3.2 Most Favoured Nations**

If, during the term of this Agreement, the Carrier has in effect an Uncommitted Toll that is discounted to a rate lower than the Firm Service Toll for the same Service Option, the Firm Service Toll will be discounted by the same percentage for so long as the Uncommitted Toll is discounted (unless such lower toll is the result of a direction by the NEB not initiated by the Carrier). In the event of a further expansion of the Mainline System, the toll applicable to new service options for expanded capacity shall not be less than the Firm Service Toll.

### **3.3 Goods and Services Tax**

Notwithstanding any other provision of this Agreement, the Shipper shall be liable to pay any goods and services tax imposed on the Shipper pursuant to the *Excise Tax Act* (Canada), or any other federal or provincial legislation, or other similar tax, in respect of all charges for services payable by the Shipper under this Agreement.

## **ARTICLE 4 TERM**

### **4.1 Term of the Agreement**

This Agreement shall become effective on the Effective Date and shall continue in full force and effect for the duration of the Contract Term, subject to termination in accordance with Article 6 hereto.

### **4.2 Commencement Date**

Firm Service under this Agreement will commence on the first full day following the day on which all facilities comprising the Expansion are completed and the Mainline System is available to provide Firm Service (the “**Commencement Date**”).

### **4.3 Notices**

The Carrier shall provide to the Shipper not less than two (2) weeks prior written notice of the Commencement Date.

**ARTICLE 5  
RENEWAL AND EXTENSION RIGHTS**

**5.1 Renewal Right**

The Shipper shall have the right to renew this Agreement on the following terms and conditions:

- (a) The Shipper shall be entitled to obtain Firm Service pursuant to any renewed Agreement at rates to be established by the Carrier and communicated to the Shipper not less than twelve (12) Months prior to the expiry of the Contract Term;
- (b) The Shipper shall be entitled to renew the Agreement for a volume equal to or less than that specified in Schedule A hereto;
- (c) The Shipper shall be entitled to renew the Agreement for a term of five (5) years; and
- (d) The Shipper shall provide written notice of its request to renew the existing Agreement no less than nine (9) Months prior to the expiry of the Contract Term.

**5.2 Extension for Carrier Force Majeure**

If, on the final day of the Contract Term, the Shipper is not then in default and the Shipper has an outstanding right to ship Carrier Force Majeure Volumes, then the Contract Term shall automatically extend for that period required to permit shipment of the Carrier Force Majeure Volumes, at a daily volume equal to the Contract Volume. The Shipper's sole right during such extension period shall be to transport the Carrier Force Majeure Volumes at a daily volume equal to the Contract Volume.

**5.3 Extension for Make-Up Volumes**

If, on the final day of the Contract Term, the Shipper has an outstanding right to transport Make-up Volumes, then the Contract Term shall automatically extend for a period of up to eighteen (18) months in order to permit the transportation of such Make-up Volumes. The Shipper's sole right during such extension period shall be to transport Make-up Volumes in accordance with the Rules and Regulations.

**ARTICLE 6  
DEFAULT AND TERMINATION**

**6.1 Shipper Default**

The occurrence and continuation of any of the following events, unless any such event occurs directly 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; 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.

## **6.2 Remedies**

Without limiting the Carrier's rights under the Rules and Regulations, upon the occurrence and continuation of a Shipper Default under Section 6.1, the Carrier shall, at its option, have the right to (i) seek damages as would be available under law subject to Carrier's duty to mitigate, including without limitation re-contracting capacity; and/or (ii) terminate this Agreement in accordance with Section 6.3. In no event shall either Party be liable to the other for lost profits or indirect, special, incidental, consequential, punitive damages or exemplary damages in connection with this Agreement.

## **6.3 Termination and Cure Period**

In the event that a Shipper Default has occurred and is continuing, the Carrier shall have the right to terminate this Agreement by giving thirty (30) days prior written notice to the Shipper of its intent to terminate; provided however, if the Shipper Default is cured within such notice period, such termination shall not be effective unless there have been more than two (2) Shipper Defaults, whether or not such Shipper Defaults have been cured, within any twelve (12) month period, in which case the termination shall be effective unless waived by the Carrier.

## **6.4 Acceleration Right**

If this Agreement is terminated by the Carrier pursuant to Section 6.3, or by Shipper pursuant to Section 9.2, the Carrier shall, in good faith and in a commercially reasonable manner, determine the Acceleration Payment resulting from the termination of this Agreement. The Carrier shall give the Shipper written notice of the amount of the Acceleration Payment, stating in reasonable detail how such amount was calculated. The Carrier shall issue an invoice and Shipper shall pay such invoice within thirty (30) days of receipt of invoice. The Parties acknowledge and agree that the Acceleration Payment is a reasonable pre-estimate of the loss suffered by the Carrier in the event of termination of this Agreement, and is not a penalty. Carrier shall make reasonable efforts to re-contract the volume associated with the Acceleration Payment to another shipper. If volumes are re-contracted the Shipper shall be relieved of the obligation to pay the Acceleration Payment, to the extent of the value of the re-contracted volumes. If at the time the Carrier re-contracts the volumes the Shipper has already paid some or all of the Acceleration Payment, the Carrier shall refund to Shipper the difference between the amount paid and the value of the re-contracted volumes. The Acceleration Payment is not 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. Value means the present value of the re-contracted volume using a discount rate equal to the Prime Rate.

## **6.5 Accrued Rights Unaffected**

No termination of this Agreement, 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.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

### **7.1 Carrier's Representations and Warranties**

The Carrier represents and warrants as at 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;
- (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; and
- (d) except for any lien or encumbrance the Carrier may have at the time of delivery of the Petroleum at the applicable Designated Delivery Point, such Petroleum will be free and clear of all liens and encumbrances arising under or by virtue of the Carrier.

### **7.2 Shipper's Representations and Warranties**

The Shipper represents and warrants as at 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;
- (d) the Shipper has taken all corporate or other necessary action to authorize the execution and delivery by the Shipper of this Agreement; and



- (e) at the time of Tendering at the applicable Designated Receipt Point until Petroleum is delivered to the Shipper at the applicable Designated Delivery Point, the Shipper will have title to or the right to Tender all Petroleum Tendered by it or on its behalf to the Carrier for transportation free and clear of liens and encumbrances and adverse claims of every kind.

**7.3 Financial Capacity of Shipper**

In addition to the representations and warranties made by the Shipper in Section 7.2, 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 8  
NOTICES**

**8.1 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 to Trans Mountain Pipeline LP  
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.: \_\_\_\_\_

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).

## **8.2 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 9 ASSIGNMENT**

### **9.1 Assignment By Shipper**

The Shipper shall have the right to permanently 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, and provided that the assignee agrees to enter into a novation agreement; 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 the Rules and Regulations.

### **9.2 Assignment By Carrier**

The Carrier shall have the right to permanently 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 to pay the Acceleration Payment as contemplated in Section 6.4.

### **9.3 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.

### **9.4 Affiliates**

Section 9.1 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, 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 7.3, 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.

## **9.5 Pledging**

It is agreed that the restrictions on assignment contained in this Article 9 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 Shippers rights under this Agreement.

## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Dispute Resolution**

In the event of a dispute regarding the provisions of this Agreement, 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.

## **10.2 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. If any such modification materially and adversely affects a Party to this Agreement, including as a result of a discount to the Uncommitted Toll contemplated in Section 3.2, all Parties agree to negotiate in good faith to mitigate and/or alleviate the impacts of such modifications.

## **10.3 Amendment**

Except as provided below, this Agreement may be amended only by a written instrument executed by 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 for the Service Option. The Carrier will, provided that such alternative Designated Receipt Point is available as requested, prepare a revised Schedule A to reflect the amended Designated Receipt Point and upon distribution by the Carrier to the Shipper of Schedule A as so revised, this Agreement and Schedule A of the Facility Support Agreement, if it is still in effect, shall be deemed to be amended by the replacement of the Schedule A then in effect with the revised Schedule A;
- (b) if the Shipper has exercised its right hereunder to renew the Agreement, the Carrier will prepare a revised Schedule A, and a revised Schedule B which shall include a toll schedule, which revised schedules will reflect any amendments resulting from the exercise of such right. Upon distribution by the Carrier to the Shipper of the revised Schedule A and Schedule B, this Agreement shall be deemed to be amended by the replacement of Schedule A and Schedule B then in effect with the revised Schedule A and Schedule B; and
- (c) each time that the Carrier adjusts the Firm Service Toll pursuant to the Facility Support Agreement or as contemplated in the Toll Principles, the Carrier will prepare a revised toll schedule to reflect the adjusted Firm Service Toll, a copy of which shall be provided to the Shipper and filed with the NEB for approval.

#### **10.4 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.

#### **10.5 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 Mainline System.

#### **10.6 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.

#### **10.7 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.

#### **10.8 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 10.8(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.

**10.9 Time**

Time shall be of the essence in this Agreement.

**10.10 Enurement**

Subject to the provisions of Article 9, this Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

**10.11 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.

**10.12 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.

**10.13 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 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 in its  
capacity as General Partner of TRANS  
MOUNTAIN PIPELINE L.P.**

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

**[SHIPPER]**

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

\_\_\_\_\_