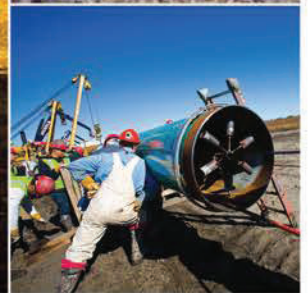
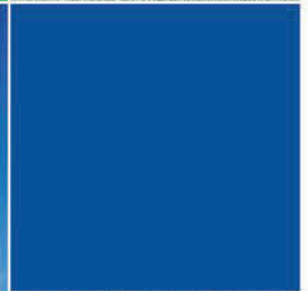


**KEYSTONE PIPELINE
JULY 2015
OPEN SEASON**



STRICTLY CONFIDENTIAL
PROVIDED UNDER CONFIDENTIALITY AGREEMENT



KEYSTONE PIPELINE JULY 2015 OPEN SEASON

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**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 1.0
INTRODUCTION**



KEYSTONE PIPELINE JULY 2015 OPEN SEASON

1.0 INTRODUCTION

This information package is provided only to parties who have executed an acceptable Confidentiality Agreement with a relevant TransCanada entity. The information is confidential and shall not be disclosed except in accordance with the provisions of the Confidentiality Agreement.

Parties should refer to Sections 4.2 and 5.2 of the Open Season package for procedures to follow in responding to this Keystone July 2015 Open Season. The deadline for submissions is noon Mountain Time on September 23, 2015.

For the Port Arthur service offering, completed and executed TransCanada Keystone Canada Pipeline System Petroleum Transportation Service Agreement (“Canadian TSA”) and TransCanada Keystone Pipeline, LP Petroleum Transportation and Throughput Agreement (“U.S. TSA”) (collectively, the “TSAs”) including Bid Rate (for the U.S. TSA) are required with all submissions.

For the Patoka service offering, completed and executed TransCanada Keystone Canada Pipeline System Patoka Convertible Petroleum Transportation Service Agreement (“Canadian Convertible TSA”) and TransCanada Keystone Pipeline, LP Patoka Convertible Petroleum Transportation and Throughput Agreement (“U.S. Convertible TSA”) (collectively, the “Convertible TSAs”) are required with all submissions.

For further information regarding the Open Season, please contact either of:

Ron Catchick

office: 403.920.2119

cell: 403.836.3652

email: ron_catchick@transcanada.com

Anar Velji

office: 403.920.8158

cell: 403.837.8276

email: anar_velji@transcanada.com

Inquiries may also be directed to oil_pipelines@transcanada.com.

**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 2.0
KEYSTONE PIPELINE MAP**



KEYSTONE PIPELINE JULY 2015 OPEN SEASON

2.0 KEYSTONE PIPELINE MAP



**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 3.0
PURPOSE OF OPEN SEASON**



KEYSTONE PIPELINE JULY 2015 OPEN SEASON

3.0 PURPOSE OF OPEN SEASON

TransCanada PipeLines Limited (“TransCanada”) is conducting this Open Season process for the Keystone pipeline system on behalf of (i) in Canada, TransCanada Keystone Pipeline GP Ltd., as general partner on behalf of TransCanada Keystone Pipeline Limited Partnership, and (ii) in the United States (“U.S.”), TransCanada Keystone Pipeline, LP (collectively, “Keystone”). The purpose of this binding Open Season is to offer commitments on the existing Keystone pipeline system to interested parties.

This Open Season provides an opportunity for potential Shippers to enter into binding agreements for crude oil transportation from Hardisty, AB to Port Arthur, TX or to Patoka, IL.

About 10,000 barrels per day (“bpd”) of capacity is available for subscription to Port Arthur (“Port Arthur Open Season Capacity”), and about 5,000 bpd of capacity is available for subscription to Patoka (“Patoka Open Season Capacity”). The Port Arthur Open Season Capacity and the Patoka Open Season Capacity are anticipated to be available as early as November 1, 2015 (subject to regulatory approvals).

Capitalized terms used but not defined in the Open Season package will have the meanings given in the applicable TSAs being offered in this Open Season.

The Open Season closes at noon Mountain Time on September 23, 2015.

**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 4.0
NOTICE OF OPEN SEASON PART 1 – PORT ARTHUR SERVICE
OFFERING**



**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

4.0 NOTICE OF OPEN SEASON PART 1 – PORT ARTHUR SERVICE OFFERING

- 4.1 COMMERCIAL TERMS
- 4.2 OPEN SEASON BIDS
- 4.3 EXAMPLE OF FULL PATH TOLLS/RATES
- 4.4 FORM OF CANADIAN TSA
- 4.5 FORM OF U.S. TSA

4.1 COMMERCIAL TERMS

The Keystone pipeline system provides crude oil transportation service from Hardisty, AB to various destinations. For this part of the Open Season, commitments for transportation service from Hardisty, AB to Contract Delivery Points of Port Arthur, TX and Houston, TX are being offered⁽¹⁾⁽²⁾. Alternate Delivery Points would be available to Cushing, OK, Wood River and Patoka, IL.

Facilities include receipt custody transfer metering systems and operational tankage in Hardisty, AB and Cushing, OK. The Port Arthur and Houston Delivery Points are located in proximity to a number of pipelines, storage facilities, and refineries in the area, providing Shippers with diverse access to the U.S. Gulf Coast market.

Toll/Rate Design

A fixed/variable toll/rate design is being offered in this Open Season. The Canadian Fixed Toll is levelized over the term of the contract. The U.S. Term Shipper Commitment Rate will be adjusted by non-negative adjustments of the FERC Index annually. The variable portion of the toll/rate is a flow-through of actual aggregated operating costs for each of the Canadian and U.S. Pipeline Systems, adjusted annually and based on the type of crude (heavy or light) transported.

Bid Rate

In this Open Season, interested parties will provide a bid for the Term Shipper Commitment Rate (“Bid Rate”) of the U.S. portion of the Keystone pipeline system in Appendix ‘A’ of the U.S. TSA. No bid is required for the Canadian Fixed Toll or for the Canadian and U.S. Variable Toll/Rate.

The toll/rate details for the Canadian and the U.S. portions of the Keystone pipeline systems are provided below:

¹ The Houston, TX Delivery Point is expected to be available in Q4-2015.

² Operating conditions may require volumes to breakout into operational tankage at Cushing, OK

Indicative Tolls/Rates for Transportation Service to Port Arthur

| Tolls/Rates (\$/barrel) FX =1 | | | |
|-------------------------------|--|---------------------------------|--------|
| | Fixed Toll/Term Shipper Commitment Rate | Variable Toll/Rate ³ | |
| | | Light | Heavy |
| Canadian TSA | \$1.60 | \$0.61 | \$0.87 |
| U.S. TSA | Bid Rate to be provided by bidding party | \$1.39 | \$1.99 |

The Bid Rate submitted by bidding parties must be between the following ceiling and floor prices:

Ceiling Price = \$10.25/barrel

Floor Price = \$4.25/barrel

Section 4.3 provides illustrative examples of the full path toll/rate breakdown based on indicative ceiling and floor bids.

Contract Term

The contract Term being offered in this Open Season is 20 years. Notwithstanding this Term, under the TSAs, Keystone will have the right, in its sole discretion, upon the occurrence of either (i) the KXL Commencement Date or, (ii) if a regulatory body in either Canada or the U.S. requires a reduction in the operating capacity of either the Keystone Canada or Keystone U.S. Pipeline System to:

- Reduce the Contract Volume in the TSAs; or
- Terminate the TSAs that have been entered into as a result of this Open Season.

Contract Volume

The TSAs include a set Contract Volume of 10,000 bpd of the Port Arthur Open Season Capacity being offered. Interested parties must bid for the Port Arthur Open Season Capacity (subject to the Oversubscription provision outlined in section 4.2 of this Notice of Open Season).

³ The Variable Toll/Rates are based on estimations for 2015.

Service Provisions:

1) Make-Up Rights

Shippers can accrue Make-Up rights when volumes tendered by that Shipper are below its Monthly Volume or during the occurrence of an event of Force Majeure⁴ declared by Keystone. Accrued Make-Up rights can be used within the next 36 months and will expire at the end of the Contract Term.

2) Extension Rights

Shippers will have the right for a single 10-year extension of the Term, on terms as described in the TSAs.

3) Temporary Alternate Delivery Points

Shippers will be able to nominate volumes, to Temporary Alternate Delivery Points on the Keystone U.S. Pipeline System (i.e., Wood River, Patoka, and Cushing) on terms as described in the Keystone Tariff and the TSAs.

Possible Tankage Service at Port Arthur and Houston

Please contact Amanda Ferrari at amanda_ferrari@transcanada.com for potential tankage services at Port Arthur or Houston. Parties seeking such services will not have preferential treatment for the transportation service being offered in this Open Season.

Notes:

- *Tolls/Rates are applicable to services as defined in the TSAs.*
- *Indicative variable tolls and rates are subject to change as provided in Appendix 'B' of the TSAs.*

⁴ If a Force Majeure event declared by Keystone continues beyond 3 consecutive Months, Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights beyond those accrued in such 3-month period.

4.2 OPEN SEASON BIDS

Parties who wish to participate in the Open Season are asked to complete, execute and submit to TransCanada no later than noon Mountain Time on September 23, 2015 the following documents:

1. Two (2) completed copies of each of the applicable TSAs, located in Section 4.4 and Section 4.5 of this Notice of Open Season. Each TSA requires that each bidding party provide the following information:

In the body of both the Canadian TSA and the U.S. TSA:

- The bidding party's legal name on the first page of the TSA;
- Jurisdiction of incorporation on the first page of the TSA;
- Contact information for Notices in Article 11 of the TSA; and
- Signature blocks completed with the bidding party's name, and signed on page 12

In Appendix 'A' of the U.S. TSA, completion of the Bid Rate in $\$/m^3$ and $\$/bbl$ on page 13

2. If applicable, subject to verification by TransCanada prior to completion of the Open Season in respect of the creditworthiness of the bidding party, completion of an appropriate financial assurance, which in the case of a guarantee, shall be in the form attached in Section 6.0 of this Open Season package, including the following information:

- Bidding party's legal name;
- Legal name of guarantor in both the top of the document and the signature block; and
- Execution of the guarantees by the guarantor

If the content of the TSAs have been altered or amended in any way other than by entering the information requested above, then that bidding party's offer may not be accepted, at TransCanada's sole discretion. If the required documents are not returned by noon Mountain Time on September 23, 2015, the bidding party will not be eligible for services under the

proposed Open Season's terms. The properly completed and submitted TSAs will constitute an irrevocable offer binding upon such bidding party from the date of its execution and delivery.

TransCanada may, in its sole discretion and for any reason, elect to:

- Terminate the Open Season process, modify or extend the Open Season process or related documents, or give notice of a subsequent Open Season;
- Award a portion of the capacity or elect not to award any capacity; and
- Adjust the Port Arthur Open Season Capacity.

If, after the close of the Open Season and any extensions, a decision is made to accept bids in accordance with the terms of the Open Season, successful Shippers will be informed in writing that their TSAs have been accepted, and that Shipper should submit a Nomination for November Tenders (subject to any delay in the Commencement Date as outlined in the TSAs). Two (2) copies of the submitted TSAs will be dated and executed by Keystone with one (1) copy returned to the Shipper. If the submitted copies of the TSAs are not executed by Keystone within 60 days following the closing date of the Open Season, such TSAs will expire and be of no force or effect, such that no further obligations will be required by Shipper or Keystone.

Credit Qualification

Each bidding party that submits completed and executed TSAs in accordance with this Open Season will be required to satisfy creditworthiness requirements and to provide any required Contract Financial Assurances on or before September 30, 2015, as specified in the TSAs prior to Carrier accepting the applicable TSAs.

If a bidder does not have an unenhanced senior unsecured debt rating, that bidder may request Keystone, in its sole discretion, to determine an equivalent rating in accordance with the financial rating methodology, criteria, and ratios for the industry of the bidder. If information necessary for the determination of an equivalent rating is not provided in time to allow Keystone to determine an equivalent rating by the close of the Open Season, the bidding party will be deemed to have not met the minimum rating standard outlined below.

If the bidder relies upon a guarantor, such guarantor's debt rating may be used; provided, however, bidder's guarantor and guarantee is acceptable (including as to domicile of the guarantor) to Keystone, in its sole discretion, and agrees to provide a guarantee substantially in the form attached, and sufficient in amount to cover bidders obligations to Keystone under the TSAs. Should a bidder wish to substitute its guarantor's debt rating as provided in the immediately preceding sentence, it must indicate so in Section 6.0 of this Open Season package by inserting the name of the guarantor.

Bid Ranking and Oversubscription

Keystone will award the Port Arthur Open Season Capacity sequentially based on the criteria and priority below until all bids have been processed or until all capacity has been awarded:

First, the Port Arthur Open Season Capacity will be allocated to the bidder (or bidder's guarantor) that has been determined by Keystone to have met the minimum rating standard (subject to Credit Qualification as outlined above), based on unenhanced senior unsecured debt rating of "BBB-" by Standard & Poor's Financial Services LLC ("S&P") or "Baa3" by Moody's Investors Service, Inc. ("Moody's"); if rated by both S&P and Moody's, the lower debt rating applies. If two or more bidders meet the debt rating criterion, capacity will be allocated to the bid with the highest Bid Rate.

If two or more bidders meet the debt rating criterion and have submitted the same Bid Rate, then Keystone will award capacity to such bids on a *pro rata* basis based on the Port Arthur Open Season Capacity.

Second, if no bidders (or bidder's guarantor) have met the minimum rating standard of "BBB-" or "Baa3", the Port Arthur Open Season Capacity will be allocated to the bidder (or bidder's guarantor) with the highest Bid Rate.

If two or more bidders submit the same Bid Rate, then Keystone will award capacity to such bids on a *pro rata* basis based on the Port Arthur Open Season Capacity.

If prorated capacity offered to bidder is below Keystone's Minimum Batch Size (approx. 3,250 bpd) then Keystone will utilize a random generating system to assign each bidder a number. Keystone will award one minimum batch to such bidder(s) sequentially, from highest assigned number to lowest assigned number, until the total number of minimum batches available equals the Port Arthur Open Season Capacity.

Multiple bids by the same bidding party will be treated as separate bids.

If necessary, Keystone is accordingly authorized by Shipper to amend the Contract Volume initially inserted in the applicable TSAs submitted by Shipper to reflect allocations made as a result of the Open Season bids received, or any reductions made to awarded capacity in accordance with Section 4.2 of this Notice of Open Season. One (1) copy of each of the fully executed TSAs with an amended Appendix 'A' to the TSAs reflecting the outcome of any such oversubscription procedure will be provided by Keystone to Shipper within timelines specified in the respective TSAs after the closing date of the Open Season.

Responses should be sent to:

TransCanada
450 - 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

Attn: Crude Oil Contracts Administration

Fax: 403-920-2285

Email: oil_pipelines@transcanada.com

4.3 EXAMPLE OF FULL PATH TOLLS/RATES

Example 1: Bid Rate = Floor Price = \$4.25/barrel (FX=1)

| Transportation of Light Crude to Port Arthur (Bid Price = Floor Price) | | Alternate Delivery Point* | | | |
|---|-------------|---------------------------|-------------|-------------|------------|
| | | Wood River | Patoka | Cushing | |
| Canadian Fixed Toll | 1.60 | 1.60 | 1.60 | 1.60 | |
| Canadian Variable Toll (Light) | 0.61 | 0.61 | 0.61 | 0.61 | |
| U.S. Term Shipper Commitment Rate | 4.25 | 4.25 | 4.25 | 4.25 | ← Bid Rate |
| U.S. Variable Rate (Light) | 1.39 | 1.01 | 1.06 | 0.92 | |
| Total | 7.85 | 7.47 | 7.52 | 7.38 | |

| Transportation of Heavy Crude to Port Arthur (Bid Price = Floor Price) | | Alternate Delivery Point* | | | |
|---|-------------|---------------------------|-------------|-------------|------------|
| | | Wood River | Patoka | Cushing | |
| Canadian Fixed Toll | 1.60 | 1.60 | 1.60 | 1.60 | |
| Canadian Variable Toll (Heavy) | 0.87 | 0.87 | 0.87 | 0.87 | |
| U.S. Term Shipper Commitment Rate | 4.25 | 4.25 | 4.25 | 4.25 | ← Bid Rate |
| U.S. Variable Rate (Heavy) | 1.99 | 1.44 | 1.52 | 1.31 | |
| Total | 8.71 | 8.16 | 8.24 | 8.03 | |

* Variable Toll/Rate for the Alternate Delivery Points are based on estimates for 2015 and posted in the effective tariffs filed with the NEB and the FERC.

In this example, the bidding party wins capacity on Keystone by submitting a Bid Rate at the Floor Price. Such party will pay an estimated full path toll/rate of \$7.85/barrel for the transportation service of light crude oil to Port Arthur and an estimated full path toll/rate of \$8.71/barrel for the transportation service of heavy crude oil to Port Arthur.

4.4 FORM OF CANADIAN TSA

**TRANSCANADA KEYSTONE CANADA PIPELINE SYSTEM
PETROLEUM TRANSPORTATION SERVICE AGREEMENT
(July 2015 Keystone Open Season)**

THIS CONTRACT made as of the 23rd day of September, 2015.

PARTIES:

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

AND

_____, a _____
existing under the laws of _____ (“Shipper”)

WHEREAS:

- A. Shipper has requested and, subject to the satisfaction or waiver of the conditions precedent set forth in ARTICLE 3, Carrier has agreed to transport the Contract Volume of Petroleum Tendered by Shipper pursuant to the terms and conditions of this Agreement, and subject to the Tariff;
- B. Shipper wishes to make a binding commitment to Carrier regarding the transportation of Petroleum as set forth in this Agreement, and upon its execution of this Agreement to become a Term Shipper; and
- C. Carrier is prepared to offer tolls and terms of service to Shipper subject to and in accordance with the provisions of this Agreement and the Tariff.

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

**ARTICLE 1
INTERPRETATION**

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

“**Agreement**” means this Petroleum Transportation Service Agreement and any appendices attached hereto in each case, as may be amended, modified, supplemented or restated from time to time.

“Applicable Law” means any applicable:

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

in each case to the extent having jurisdiction over the Pipeline System, Keystone US Pipeline System, Carrier or the Parties.

“Commencement Date” has the meaning given that term in Section 5.2.

“Contract” has the meaning given in the Rules and Regulations, and this Agreement shall constitute a Contract for such purposes.

“Contract Financial Assurances” has the meaning given that term in Section 7.1.

“Curtailed Event” has the meaning given that term in Section 9.2.

“Fixed Toll” means the Fixed Toll described in paragraph B.1 of Appendix ‘B’.

“Governmental Authority” means any:

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

“Keystone Phase 4 Facilities” means that portion of the Keystone US Pipeline System consisting of the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at the international boundary at or near Monchy, Saskatchewan and terminating at or near Steele City, Nebraska.

“KXL Commencement Date” means the date, as declared by Carrier, on which transportation service on the Keystone Phase 4 Facilities will commence.

“Make-Up Volume” means, in respect of any Month, an accrual of a quantity of Petroleum equal to the difference between the Monthly Volume and actual volumes Tendered for shipment in that Month, calculated in accordance with Section 8.1.

“Notice” has the meaning given that term in Section 11.1.

“Open Season” means the open season bid tender procedures initiated by Carrier in respect of this Agreement (and related Contracts) to provide services to Term Shippers on the Pipeline System (as such procedures may be replaced or amended from time to time).

“Operating, Maintenance and Administration Costs” has the meaning given that term in paragraph D.2 of Appendix ‘B’.

“PHMSA” means the Pipeline and Hazardous Materials Safety Administration agency of the U.S. Department of Transportation, or any other regulatory or governmental authority having similar jurisdiction in substitution thereof.

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

“Rules and Regulations” means the Petroleum Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum filed with or approved by the NEB as in effect at the relevant time.

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

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

“Term” has the meaning given that term in Section 10.1.

“Termination Date” means the relevant termination date outlined in ARTICLE 4.

“US 2015 TSA” means a petroleum transportation service and throughput agreement, on terms and conditions corresponding to this Agreement, for the transportation of Petroleum on the Keystone US Pipeline System.

“Variable Toll” means the “Variable Toll” described in Part D of Appendix ‘B’.

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

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

- a) Appendix ‘A’, entitled “Shipper Elections”; and
- b) Appendix ‘B’, entitled “Schedule of Tolls and Tolling Principles”.

1.3 In this Agreement:

- a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions of this Agreement nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”.

- c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- d) Time is of the essence in the performance of the Parties' respective obligations.
- e) If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
- f) This Agreement, together with the Rules and Regulations in effect at the relevant time, constitutes the entire agreement of the Parties relating to their relationship under this Agreement. All prior negotiations and all provisions and concepts contained in all prior agreements between the Parties on matters contained in this Agreement are expressly superseded by this Agreement. The Parties expressly waive any reliance on representations or course of dealings made prior to the execution of this Agreement regarding the subject matter of this Agreement.

ARTICLE 2 REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Agreement, Carrier, in conjunction with Keystone US, shall proceed with due diligence and in good faith to seek to obtain from all Governmental Authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone US, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to provide transportation service for Shipper as contemplated in the Tariff, except for those that are, in the opinion of each of Carrier and Keystone US, not material (collectively, the "**Regulatory Approvals**").
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone US have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone US shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone US in its sole discretion, to be unsatisfactory to Carrier or Keystone US, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone US for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information (collectively, "**Shipper Information**"). Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not

commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and Applicable Law, Carrier shall not disclose to third parties (other than to Keystone US, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Prior to the Commencement Date, Shipper agrees not to:

- a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone US's applications for Regulatory Approvals before any of: (i) the NEB, (ii) the FERC, (iii) any state certifying authorities in the United States, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing; or
- b) make any statements, whether directly or indirectly, that indicate a lack of support for the Pipeline System or the Keystone US Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.
- c) Notwithstanding the other provisions of this Section 2.4, nothing is intended to, or shall be construed as a waiver of, or any limitation of, Shipper's rights under Applicable Law to intervene in any application for Regulatory Approvals (including reasonable and valid concerns raised before the NEB in respect of the Tariff or the proposed toll methodology outlined in the Tariff) that are materially inconsistent with the terms of this Agreement or the Rules and Regulations, or to require Shipper to act in a manner that would be inconsistent with any Applicable Law.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Subject to Section 2.1 and ARTICLE 4, Carrier's obligations under this Agreement are subject to the satisfaction of the following conditions precedent:

- a) Carrier and its Affiliates shall have obtained, on terms acceptable to Carrier in its sole discretion, all Canadian Regulatory Approvals.
- b) Keystone US and its Affiliates shall have obtained, on terms acceptable to Keystone US in its sole discretion, all United States Regulatory Approvals.
- c) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Agreement, entered into a US 2015 TSA for transportation of Petroleum on the Keystone US Pipeline System, which US 2015 TSA remains in full force and effect.

- d) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone US as contemplated under this Agreement and any petroleum transportation service and throughput agreement with Keystone US, including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone US shall have no liability or obligation whatsoever to Shipper in the event either or both of them declines to file for, withdraws from, or rejects any Regulatory Approval.

- 3.2 The conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.
- 3.3 The execution and delivery by Shipper of this Agreement constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Agreement is executed and delivered by Carrier, subject always to the other provisions of this ARTICLE 3, provided that if this Agreement is not executed by Carrier on or before the date which is 60 days following the completion of the Open Season, Shipper's offer shall, at Shipper's option, expire and be of no further force and effect.

ARTICLE 4 TERMINATION

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

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

- 4.2 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Section 7.1 within 10 Banking Days of Carrier's written demand therefor, Carrier may, subject to Shipper's obligations under Section 4.3, immediately terminate this Agreement by providing further Notice to Shipper.
- 4.3 If the right to terminate this Agreement is exercised by Carrier pursuant to Section 4.1b), 4.1c) or Section 4.2, Shipper shall, to the extent permitted by Applicable Law and subject to Carrier's

obligation to mitigate, pay to Carrier the net present value of the aggregate of: (a) the Monthly Revenue Commitment payable under this Agreement for the unexpired term of this Agreement, (b) all applicable taxes, (c) all amounts owing under this Agreement in respect of Petroleum Delivered but for which all tolls, rates and any other charges are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. The obligations under this Section 4.3 shall survive termination of this Agreement.

- 4.4 If on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt, Shipper may terminate this Agreement on 30 days' prior Notice to Carrier (a "**Shipper Termination Notice**").

ARTICLE 5 COMMENCEMENT OF SERVICE

- 5.1 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition activities in respect of the Pipeline System. Volumes of Working Stock shall be as determined by Carrier, acting reasonably. The Type of Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.
- 5.2 The date on which transportation service under this Agreement is to commence (the "**Commencement Date**") is November 1, 2015. Not later than October 20, 2015, Shipper shall provide Carrier with Shipper's Monthly Nomination for the Month of November 2015, on a Notice of Shipment as prescribed in the Rules and Regulations.

ARTICLE 6 TRANSPORTATION SERVICE

- 6.1 From and after the Commencement Date and during the Term:
- a) Shipper guarantees that it shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Tariff, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
 - b) Carrier shall provide transportation service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Agreement and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Agreement and the Tariff.

ARTICLE 7 CONTRACT FINANCIAL ASSURANCES

- 7.1 Shipper shall, if and when reasonably requested by Carrier at any time, whether prior to the Commencement Date or otherwise, provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier, acting reasonably (the "**Contract Financial Assurances**"), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure all obligations or potential obligations of Shipper under this Agreement.

**ARTICLE 8
MAKE-UP RIGHTS AND BALANCING**

8.1 In the event that, during the Term:

- a) Shipper tenders for shipment by Carrier in any Month a volume less than its Monthly Volume for any reason, or
- b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier,

Shipper shall be entitled to accrue a Make-Up Volume that may be utilized in any of the next following 36 Months **provided that** (i) Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights in respect of any Curtailment Event; and (ii) in the case of a Force Majeure event declared by Carrier which continues beyond 3 consecutive Months, Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights beyond those accrued in such 3-Month period.

8.2 Notwithstanding Section 8.1 or any other provision of this Agreement:

- a) Shipper shall be entitled to utilize Make-Up Volumes only to the extent that operating conditions permit and capacity is available (as determined by Carrier), provided that Shipper has first Tended its Monthly Volume in such Months before making use of any accrued Make-Up Volumes.
- b) Shipper shall only have the right to utilize Make-Up Volumes to the Delivery Point in respect of the Contract US Delivery Point. Nominations in respect of any other Delivery Point on the Keystone US Pipeline System shall be subject to additional tolls, rates and other charges in accordance with the Tariff. Subject to the foregoing, in respect of Make-up Volumes Tended in accordance with Section 8.1 or Section 8.2:
 - (i) no additional Fixed Toll will be payable by Shipper; and
 - (ii) for greater certainty, Shipper shall remain responsible for payment of the Variable Toll in respect of such Make-Up Volumes.
- c) Any Make-Up Volumes of Shipper (and any rights associated therewith) arising out the operation of Section 8.1 or Section 8.2 shall cease, expire and shall be forfeited by Shipper at the expiration of the earlier of: (i) the time period described in Section 8.1; and (ii) the expiration of the Term.

8.3 Where Shipper's Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier's batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier's batching or balancing requirements.

- 8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month Notice of any planned reduction of volume to be Tendered for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.

ARTICLE 9 TOLLS

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Agreement and the Tariff, including: (i) the Fixed Toll, (ii) the Variable Toll, plus (iii) the tolls and all other charges and adjustments as set forth in Appendix 'B'.
- 9.2 In the event of interruption of transportation service pursuant to an outage by Carrier as described in section 13.1 of the Rules and Regulations (a "**Curtailment Event**"), the Fixed Toll in respect of any Monthly Volume not Tendered directly as a result of such Curtailment Event shall not be payable by Shipper during the period of such Curtailment Event.
- 9.3 In the event that: (i) Carrier declares a Force Majeure event pursuant to section 15 of the Rules and Regulations, and (ii) the term of such Force Majeure continues beyond 3 consecutive months, the Fixed Toll in respect of any Monthly Volume not Tendered directly as a result of such Force Majeure event will not be payable by Shipper during the remaining period of such Force Majeure event.
- 9.4 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any Make-Up Volumes pursuant to ARTICLE 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Toll times the Excess Volume.

ARTICLE 10 TERM OF CONTRACT

- 10.1 This Agreement shall be effective as of the date it is signed by Shipper and Carrier. Unless terminated earlier in accordance with its terms, the initial term of this Agreement shall commence on the Commencement Date and shall, subject to termination pursuant to Section 10.2 continue until the 20th anniversary of the Commencement Date, subject also to extension pursuant to Section 10.3 (such period being the "**Term**").
- 10.2 Carrier shall have the following rights in its sole discretion upon the occurrence of either (i) the KXL Commencement Date; or (ii) a requirement of Applicable Law or Governmental Authority in Canada or the United States that Carrier (or Keystone US) determines, in its sole discretion, results in a nominal capacity on the Pipeline System (or the Keystone US Pipeline System, as applicable) that is anticipated to not exceed 91,895 m³/Day (578,000 bbl/Day) on a sustainable basis, to either:
- a) reduce Shipper's Contract Volume; or
 - b) terminate this Agreement.
- 10.3 Provided that (i) Shipper is not otherwise in default under this Agreement or the Tariff, and (ii) Shipper or its Affiliate shall have contemporaneously exercised the equivalent option for the Keystone US Pipeline System pursuant to and in accordance with its US 2015 TSA, Shipper shall have the single option, exercisable by Notice to Carrier received by Carrier not later than 24

Months prior to the expiry of the Term, to extend the Term of this Agreement for a single additional 10-Year Period. Such extension shall be on the same terms and conditions of this Agreement, provided that the Fixed Toll for such extended Term shall be calculated in the manner described in paragraph B.2 of Appendix 'B'. Carrier shall give Notice to Shipper of the Fixed Toll for such extended Term no later than 27 Months prior to the expiry of the initial Term, which Fixed Toll may be subject to regulatory approval.

**ARTICLE 11
NOTICES**

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

In the case of Carrier:

TransCanada Keystone Pipeline GP Ltd.

- (1) Mailing Address: 450 1st Street S.W.
Calgary, AB T2P 5H1
- (2) Delivery Address: 450 1st Street S.W.
Calgary, AB T2P 5H1
Attention: Crude Oil Contracts Administration
Fax: 403.920.2285

In the case of Shipper:

- (1) Mailing Address:
- (2) Delivery Address:

Attention:
Fax:

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given 4 hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given 4 business days after mailing. For the purposes of this Section, a “**business day**” is any day, excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

- 11.2 Notwithstanding the provisions of Section 11.1, operational notices to Shipper may be delivered by Carrier via the Keystone Customer Portal.

ARTICLE 12 MISCELLANEOUS PROVISIONS

- 12.1 Where this Agreement provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party's business or operations (upon reasonable and timely notice and at the auditing Party's expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Petroleum Toll Schedule – Uncommitted Volumes and the Rules and Regulations set out in the Tariff as in effect at that time, as each may be amended or approved from time to time by Carrier or the NEB, are all by reference made a part of and incorporated into this Agreement and operations hereunder shall, in addition to the terms and conditions set out in this Agreement, be subject to the provisions thereof. Carrier shall notify Shipper at any time that Carrier proposes to amend the Tariff, or otherwise files with the NEB revisions to the Tariff and shall provide Shipper with notice of such revisions.
- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental, or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Agreement, then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Agreement to comply with such ruling and in accordance with the initial expectations of the Parties under this Agreement.
- 12.4 This Agreement, and any claims against Carrier arising directly or indirectly out of or in connection with this Agreement, may be assigned, in whole or in part, by Shipper only:
- a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may demand in accordance with this Agreement, or (B) such Financial Assurances as Carrier may demand in accordance with the Tariff, as applicable; or
 - b) to its Affiliate, upon 30 days' prior Notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Agreement.
- 12.5 Carrier may assign this Agreement and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) in connection with the sale of all or substantially all of the assets of Carrier to any other Person.
- 12.6 This Agreement shall be construed and applied and be subject to the laws of the Province of Alberta and the laws of Canada applicable therein, and shall be subject to the rules, regulations

and orders of any regulatory or legislative authority having jurisdiction, including the NEB. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Agreement. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**

- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Agreement or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Agreement shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Agreement may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

APPENDIX 'A'
SHIPPER ELECTIONS

Contract Volume: 1,590 m³/Day (10,000 bbl/Day)

APPENDIX 'B'
SCHEDULE OF TOLLS AND TOLLING PRINCIPLES

A. TRANSPORTATION TOLLS

Every Month during the Term, Shipper shall pay to Carrier on the Payment Due Date, consistent with ARTICLE 9 of the Agreement, the tolls and other charges set forth below and in the Tariff.

B. FIXED TOLL & MONTHLY REVENUE COMMITMENT

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term, Shipper shall pay a “Monthly Revenue Commitment” in respect of its Monthly Volume. Shipper’s Monthly Revenue Commitment for any Month shall be the product obtained by multiplying the Fixed Toll times the Monthly Volume.

| Fixed Toll in Cdn \$ Per m ³ (bbl) |
|---|
| \$10.064 (\$1.60) |

2. **Fixed Toll Applicable to Extension Term:** In the event that Shipper exercises its option to extend the initial Term in the manner described in Section 10.2 of the Agreement, the Fixed Toll applicable and payable for such extension Term shall be such Fixed Toll as is established by Carrier at the time of renewal in accordance with Section 10.3 of the Agreement.
3. **Suspension due to Force Majeure:** In the event that the Carrier declares a Force Majeure event pursuant to Article 15 of the Rules and Regulations, and the term of the Force Majeure event continues beyond three (3) consecutive months, no Fixed Toll in respect of the Contract Volume will be payable by Shipper during the remaining period of such Force Majeure event.

C. [INTENTIONALLY LEFT BLANK]

D. VARIABLE TOLL

1. **Payment of Variable Toll:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Toll (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of kilometres to such Delivery Point, times (iii) (subject to Section 9.1 of the Agreement) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Toll} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Kilometres for that Month}}$$

Where:

Weighted Barrel Kilometres equals Light Barrel Kilometres + Heavy Barrel Kilometres;

Light Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of kilometres to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of kilometres to the relevant Delivery Point.

The Variable Toll in respect of Heavy Crude shall be the amount as calculated above, and the Variable Toll in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Toll:** On an annual basis during the Term, Carrier will estimate the “Operating, Maintenance and Administration Costs” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes to estimate the “**Variable Toll**” for each Month in the Year. In estimating the Variable Toll, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Toll, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
 - (b) property taxes;
 - (c) capital taxes;
 - (d) insurance;
 - (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System; and
 - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Extraordinary Maintenance Costs/Non-routine Adjustments:** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed Cdn\$2,000,000, such amounts will be treated as a non-routine adjustment (“**NRA**”). Carrier will provide prompt notice to Shipper of any NRA and consult with the Term Shippers as to a reasonable allocation of such NRA into the Variable Toll. All NRAs will be amortized in accordance with good accounting practice and (i) added to the Variable Toll in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Toll for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Toll.
4. **Applicable Variable Toll:** The Variable Toll for the Year in which the Commencement Date occurs (based on the Type(s) of Petroleum) shall be as posted in the Tariff. Thereafter, Carrier will revise the estimated Variable Toll annually and provide Shipper with such revised rate, together with details of its calculation and explanation for any adjustments from the previous

applicable Variable Toll, on or before December 1 of each Year during the Term. Such estimated Variable Toll shall take effect as of January 1 of the succeeding Year.

5. **Final Variable Toll:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier's financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Toll. Carrier will provide Shipper with notice of the final Variable Toll, together with details of its calculation and explanation for any adjustments from the estimated Variable Toll. If the final Variable Toll for the applicable Year is greater than or less than the estimated Variable Toll charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly installments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Toll and the final Variable Toll and the aggregate of Shipper's Nominations, up to a maximum of Shipper's Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.
6. **Audit Right:** Shipper shall have the right to conduct a single audit of the calculations underlying the final Variable Toll within 12 Months of the date of Carrier's notice of the final Variable Toll pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1 of the Agreement. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the US 2015 TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in Section 12.1 of the Agreement, and for greater certainty will not include any information attributable to individual shippers.

4.5 FORM OF U.S. TSA

TRANSCANADA KEYSTONE PIPELINE, LP
PETROLEUM TRANSPORTATION SERVICE
AND THROUGHPUT AGREEMENT
(July 2015 Keystone Open Season)

THIS CONTRACT made as of the 23rd day of September, 2015.

PARTIES:

TRANSCANADA KEYSTONE PIPELINE, LP,
a limited partnership registered under the laws of Delaware
with its head office in the City of Houston, Texas (“Carrier”);

AND

_____, a _____
existing under the laws of _____ (“Shipper”)

WHEREAS:

- A. Shipper has requested and, subject to the satisfaction or waiver of the conditions precedent set forth in ARTICLE 3, Carrier has agreed to transport the Contract Volume of Petroleum Tendered by Shipper pursuant to the terms and conditions of this Agreement, and subject to the Tariff;
- B. Shipper wishes to make a binding commitment to Carrier regarding the transportation of Petroleum as set forth in this Agreement, and upon its execution of this Agreement to become a Term Shipper; and
- C. Carrier is prepared to offer rates and terms of service to Shipper subject to and in accordance with the provisions of this Agreement and the Tariff.

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

ARTICLE 1
INTERPRETATION

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

“**Agreement**” means this Petroleum Transportation Service and Throughput Agreement and any appendices attached hereto in each case, as may be amended, modified, supplemented or restated from time to time.

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

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

in each case to the extent having jurisdiction over the Pipeline System, Keystone Canada Pipeline System, Carrier or the Parties.

“Canadian 2015 TSA” means a petroleum transportation service agreement, on terms and conditions corresponding to this Agreement, for the transportation of Petroleum on the Keystone Canada Pipeline System.

“Commencement Date” has the meaning given that term in Section 5.2.

“Contract” has the meaning given in the Rules and Regulations, and this Agreement shall constitute a Contract for such purposes.

“Contract Financial Assurances” has the meaning given that term in Section 7.1.

“Curtailed Event” has the meaning given that term in Section 9.2.

“Governmental Authority” means any:

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

“Keystone Phase 4 Facilities” means that portion of the Pipeline System consisting of the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at the international boundary at or near Monchy, Saskatchewan and terminating at or near Steele City, Nebraska.

“KXL Commencement Date” means the date as declared by Carrier, on which transportation service on the Keystone Phase 4 Facilities will commence.

“Make-Up Volume” means, in respect of any Month, an accrual of a quantity of Petroleum equal to the difference between the Monthly Volume and actual volumes Tendered for shipment in that Month, calculated in accordance with Section 8.1.

“Notice” has the meaning given that term in Section 11.1.

“Open Season” means the open season bid tender procedures initiated by Carrier in respect of this Agreement (and related Contracts) to provide services to Term Shippers on the Pipeline System (as such procedures may be replaced or amended from time to time).

“Operating, Maintenance and Administration Costs” has the meaning given that term in paragraph D.2 of Appendix ‘B’.

“PHMSA” means the Pipeline and Hazardous Materials Safety Administration agency of the U.S. Department of Transportation, or any other regulatory or governmental authority having similar jurisdiction in substitution thereof.

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

“Rules and Regulations” means the “Local Pipeline Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum” filed at the FERC as in effect at the applicable time.

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

“Tariff” means the Rules and Regulations and rates filed at FERC, as may be amended from time to time.

“Term” has the meaning given that term in Section 10.1.

“Term Shipper Commitment Rate” means the Term Shipper Commitment Rate described in paragraph B.3 of Appendix ‘B’.

“Termination Date” means the relevant termination date outlined in ARTICLE 4.

“Variable Rate” means the “Variable Rate” described in Part D of Appendix ‘B’.

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

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

- a) Appendix ‘A’, entitled “Shipper Elections”; and
- b) Appendix ‘B’, entitled “Schedule of Rates and Rate Principles”.

1.3 In this Agreement:

- a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions of this Agreement nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”.

- c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- d) Time is of the essence in the performance of the Parties' respective obligations.
- e) If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
- f) This Agreement, together with the Rules and Regulations in effect at the relevant time, constitutes the entire agreement of the Parties relating to their relationship under this Agreement. All prior negotiations and all provisions and concepts contained in all prior agreements between the Parties on matters contained in this Agreement are expressly superseded by this Agreement. The Parties expressly waive any reliance on representations or course of dealings made prior to the execution of this Agreement regarding the subject matter of this Agreement.

ARTICLE 2 REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Agreement, Carrier, in conjunction with Keystone Canada, shall proceed with due diligence and in good faith to seek to obtain from all Governmental Authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone Canada, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to provide transportation service for Shipper as contemplated in the Tariff, except for those that are, in the opinion of each of Carrier and Keystone Canada, not material (collectively, the "**Regulatory Approvals**").
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone Canada have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone Canada shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone Canada in its sole discretion, to be unsatisfactory to Carrier or Keystone Canada, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone Canada for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information (collectively, "**Shipper Information**"). Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not

commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and Applicable Law, Carrier shall not disclose to third parties (other than to Keystone Canada, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Prior to the Commencement Date, Shipper agrees not to:

- a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone Canada's applications for Regulatory Approvals before any of: (i) the FERC, (ii) the NEB, (iii) any state certificating authorities, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing; or
- b) make any statements, whether directly or indirectly, that indicate a lack of support for the Pipeline System or the Keystone Canada Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.
- c) Notwithstanding the other provisions of this Section 2.4, nothing is intended to, or shall be construed as a waiver of, or any limitation of, Shipper's rights under Applicable Law to intervene in any application for Regulatory Approvals (including reasonable and valid concerns raised before the FERC in respect of the Tariff or the proposed toll methodology outlined in the Tariff) that are materially inconsistent with the terms of this Agreement or the Rules and Regulations, or to require Shipper to act in a manner that would be inconsistent with any Applicable Law.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Subject to Section 2.1 and ARTICLE 4, Carrier's obligations under this Agreement are subject to the satisfaction of the following conditions precedent:

- a) Carrier and its Affiliates shall have obtained, on terms acceptable to Carrier in its sole discretion, all U.S. Regulatory Approvals.
- b) Keystone Canada and its Affiliates shall have obtained, on terms acceptable to Keystone Canada in its sole discretion, all Canadian Regulatory Approvals.
- c) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Agreement, entered into a Canadian 2015 TSA for transportation of Petroleum on the Keystone Canada Pipeline System, which Canadian 2015 TSA remains in full force and effect.

- d) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone Canada as contemplated under this Agreement and any petroleum transportation service agreement with Keystone Canada, including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone Canada shall have no liability or obligation whatsoever to Shipper in the event either or both of them declines to file for, withdraws from, or rejects any Regulatory Approval.

- 3.2 The conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.
- 3.3 The execution and delivery by Shipper of this Agreement constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Agreement is executed and delivered by Carrier, subject always to the other provisions of this ARTICLE 3, provided that if this Agreement is not executed by Carrier on or before the date which is 60 days following the completion of the Open Season, Shipper's offer shall, at Shipper's option, expire and be of no further force and effect.

ARTICLE 4 TERMINATION

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

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

- 4.2 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Section 7.1 within 10 Banking Days of Carrier's written demand therefor, Carrier may, subject to Shipper's obligations under Section 4.3, immediately terminate this Agreement by providing further Notice to Shipper.

- 4.3 If the right to terminate this Agreement is exercised by Carrier pursuant to Section 4.1b), 4.1c) or Section 4.2, Shipper shall, to the extent permitted by Applicable Law and subject to Carrier's obligation to mitigate, pay to Carrier the net present value of the aggregate of: (a) the Monthly Revenue Commitment payable under this Agreement for the unexpired term of this Agreement, (b) all applicable taxes, (c) all amounts owing under this Agreement in respect of Petroleum Delivered but for which all tolls, rates and any other charges are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. The obligations under this Section 4.3 shall survive termination of this Agreement.
- 4.4 If on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt, Shipper may terminate this Agreement on 30 days' prior Notice to Carrier (a "**Shipper Termination Notice**").

ARTICLE 5 COMMENCEMENT OF SERVICE

- 5.1 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition activities in respect of the Pipeline System. Volumes of Working Stock shall be as determined by Carrier, acting reasonably. The Type of Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.
- 5.2 The date on which transportation service under this Agreement is to commence (the "**Commencement Date**") is November 1, 2015. Not later than October 20, 2015, Shipper shall provide Carrier with Shipper's Monthly Nomination for the Month of November 2015, on a Notice of Shipment as prescribed in the Rules and Regulations.

ARTICLE 6 TRANSPORTATION SERVICE

- 6.1 From and after the Commencement Date and during the Term:
- a) Shipper guarantees that it shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Tariff, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
 - b) Carrier shall provide transportation service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Agreement and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Agreement and the Tariff.

ARTICLE 7 CONTRACT FINANCIAL ASSURANCES

- 7.1 Shipper shall, if and when reasonably requested by Carrier at any time, whether prior to the Commencement Date or otherwise, provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier, acting reasonably (the "**Contract Financial Assurances**"), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure all obligations or potential obligations of Shipper under this Agreement.

ARTICLE 8
MAKE-UP RIGHTS AND BALANCING

8.1 In the event that, during the Term:

- a) Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume for any reason, or
- b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier,

Shipper shall be entitled to accrue a Make-Up Volume that may be utilized in any of the next following 36 Months **provided that** (i) Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights in respect of any Curtailment Event; and (ii) in the case of a Force Majeure event declared by Carrier which continues beyond 3 consecutive Months, Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights beyond those accrued in such 3-Month period.

8.2 Notwithstanding Section 8.1 or any other provision of this Agreement:

- a) Shipper shall be entitled to utilize Make-Up Volumes only to the extent that operating conditions permit and capacity is available (as determined by Carrier), provided that Shipper has first Tendered its Monthly Volume in such Months before making use of any accrued Make-Up Volumes.
- b) Shipper shall only have the right to utilize Make-Up Volumes to the Contract Delivery Point. Nominations in respect of any other Delivery Point shall be subject to additional rates and other charges in accordance with the Tariff. Subject to the foregoing, in respect of Make-up Volumes Tendered in accordance with Section 8.1 or Section 8.2:
 - (i) no additional Term Shipper Commitment Rate will be payable by Shipper; and
 - (ii) for greater certainty, Shipper shall remain responsible for payment of the Variable Rate in respect of such Make-Up Volumes.
- c) Any Make-Up Volumes of Shipper (and any rights associated therewith) arising out the operation of Section 8.1 or Section 8.2 shall cease, expire and shall be forfeited by Shipper at the expiration of the earlier of: (i) the time period described in Section 8.1; and (ii) the expiration of the Term.

8.3 Where Shipper's Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier's batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier's batching or balancing requirements.

8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month Notice of any planned reduction of volume to be Tendered for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.

**ARTICLE 9
RATES**

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Agreement and the Tariff, including: (i) the Term Shipper Commitment Rate, (ii) the Variable Rate, plus (iii) the rates and all other charges and adjustments as set forth in Appendix 'B'.
- 9.2 In the event of interruption of transportation service pursuant to an outage by Carrier as described in section 13.1 of the Rules and Regulations (a "**Curtailed Event**"), the Term Shipper Commitment Rate in respect of any Monthly Volume not Tendered directly as a result of such Curtailed Event shall not be payable by Shipper during the period of such Curtailed Event.
- 9.3 In the event that: (i) Carrier declares a Force Majeure event pursuant to Item 15 of the Rules and Regulations, and (ii) the term of such Force Majeure continues beyond 3 consecutive months, the Term Shipper Commitment Rate in respect of any Monthly Volume not Tendered directly as a result of such Force Majeure event will not be payable by Shipper during the remaining period of such Force Majeure event.
- 9.4 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any Make-Up Volumes pursuant to ARTICLE 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Rate times the Excess Volume.

**ARTICLE 10
TERM OF CONTRACT**

- 10.1 This Agreement shall be effective as of the date it is signed by Shipper and Carrier. Unless terminated earlier in accordance with its terms, the initial term of this Agreement shall commence on the Commencement Date and shall, subject to termination pursuant to Section 10.2 continue until the 20th anniversary of the Commencement Date, subject also to extension pursuant to Section 10.3 (such period being the "**Term**").
- 10.2 Carrier shall have the following rights in its sole discretion upon the occurrence of either (i) the KXL Commencement Date; or (ii) a requirement of Applicable Law or Governmental Authority in Canada or the United States that Carrier (or Keystone Canada) determines, in its sole discretion, results in a nominal capacity on the Pipeline System (or the Keystone Canada Pipeline System, as applicable) that is anticipated to not exceed 91,895 m³/Day (578,000 bbl/Day) on a sustainable basis, to either:
- a) reduce Shipper's Contract Volume; or
 - b) terminate this Agreement.
- 10.3 Provided that (i) Shipper is not otherwise in default under this Agreement or the Tariff, and (ii) Shipper or its Affiliate shall have contemporaneously exercised the equivalent option for the Keystone Canada Pipeline System pursuant to and in accordance with its Canadian 2015 TSA, Shipper shall have the single option, exercisable by Notice to Carrier received by Carrier not later than 24 Months prior to the expiry of the Term, to extend the Term of this Agreement for a single additional 10-Year Period. Such extension shall be on the same terms and conditions of this Agreement, provided that the Term Shipper Commitment Rate for such extended Term shall be calculated in the manner described in paragraph B.2 of Appendix 'B'. Carrier shall give Notice to

Shipper of the Term Shipper Commitment Rate for such extended Term no later than 27 Months prior to the expiry of the initial Term, which Term Shipper Commitment Rate may be subject to regulatory approval.

**ARTICLE 11
NOTICES**

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

In the case of Carrier: **TransCanada Keystone Pipeline, LP**

- (1) Mailing Address: PO Box 2446
Houston, TX 77252-2446
- (2) Delivery Address: 700 Louisiana Street, Suite 700
Houston, TX 77002-2700

Attention: Corporate Secretary
Fax: 832.320.6201

WITH A COPY TO: 450 1st Street SW
Calgary, AB Canada T2P 5H1
Attention: Crude Oil Contracts Administration
Fax: 403.920.2285

In the case of Shipper:

- (1) Mailing Address:
- (2) Delivery Address:

Attention:
Fax:

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given 4 hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given 4 business days after mailing. For the purposes of this Section, a “**business day**” is any day, excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall

provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

- 11.2 Notwithstanding the provisions of Section 11.1, operational notices to Shipper may be delivered by Carrier via the Keystone Customer Portal.

ARTICLE 12 MISCELLANEOUS PROVISIONS

- 12.1 Where this Agreement provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party's business or operations (upon reasonable and timely notice and at the auditing Party's expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Rules and Regulations and the rates and other charges set out in the Tariff (the "**Rates**") as in effect at that time, as each may be amended or approved from time to time by Carrier or the FERC, are all by reference made a part of and incorporated into this Agreement and operations hereunder shall, in addition to the terms and conditions set out in this Agreement, be subject to the provisions thereof. Carrier shall notify Shipper at any time that Carrier proposes to amend the Tariff or the Rates, or otherwise files with the FERC revisions to the Tariff or the Rates and shall provide Shipper with notice of such revisions.
- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental, or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Agreement, then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Agreement to comply with such ruling and in accordance with the initial expectations of the Parties under this Agreement.
- 12.4 This Agreement, and any claims against Carrier arising directly or indirectly out of or in connection with this Agreement, may be assigned, in whole or in part, by Shipper only:
- a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may demand in accordance with this Agreement, or (B) such Financial Assurances as Carrier may demand in accordance with the Tariff, as applicable; or
 - b) to its Affiliate, upon 30 days' prior Notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Agreement.
- 12.5 Carrier may assign this Agreement and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with

such Person, (b) an Affiliate of Carrier, or (c) in connection with the sale of all or substantially all of the assets of Carrier to any other Person.

- 12.6 This Agreement shall be construed and applied and be subject to the laws of the Province of Alberta, Canada, and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction, including the FERC. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Agreement. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**
- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Agreement or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Agreement shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Agreement may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.

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

**TRANSCANADA KEYSTONE PIPELINE,
LP by its general partner TRANSCANADA
KEYSTONE PIPELINE GP, LLC**

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

APPENDIX 'A'
SHIPPER ELECTIONS

Contract Delivery Point: Port Arthur, TX or Houston, TX

Contract Volume: 1,590 m³/Day (10,000 bbl/Day)

| Term Shipper Commitment Rate in U.S. \$ Per m³ (bbl) |
|--|
| \$_____ /m ³ (\$_____ /bbl) |

NOTES:

- Shipper to provide the Term Shipper Commitment Rate in \$/m³ and \$/bbl using the conversion rate of 1\$/m³ = \$6.2898108/bbl. The \$/m³ amount should be rounded to 3 decimal places while \$/bbl should be rounded to 2 decimal places
- Term Shipper Commitment Rate must be between \$26.732/m³ (\$4.25/bbl) and \$64.471/m³ (\$10.25/bbl)

APPENDIX 'B'
SCHEDULE OF RATES AND RATE PRINCIPLES

A. TRANSPORTATION RATES

1. **Payment:** Every Month during the Term, Shipper shall pay to Carrier on the Payment Due Date, consistent with ARTICLE 9 of the Agreement, the rates and other charges set forth below and in the Tariff.
2. **Indexing:** Carrier may apply FERC's annual indexing methodology to the Term Shipper Commitment Rate set out in this Appendix 'B' effective each Year during the Term (including any extension term in accordance with Section 10.3 of the Agreement), provided however, such rate shall never fall below the amount specified in the table in paragraph B.1 below. In the event FERC indexing were to terminate, Carrier may apply indexing according to the annual change in the Producer Price Index for Finished Goods, as published, plus 2%.

B. MONTHLY REVENUE COMMITMENT

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term, Shipper shall pay a "Monthly Revenue Commitment" in respect of its Monthly Volume. Shipper's Monthly Revenue Commitment for any Month shall be the product obtained by multiplying the Term Shipper Commitment Rate times the Monthly Volume.

| |
|---|
| Term Shipper Commitment Rate in U.S. \$ Per m³ (bbl) |
| As specified in Appendix 'A', subject to adjustment by Carrier following the Open Season in accordance with the Open Season procedures, as indexed as described in Part A.2 |

2. **Term Shipper Commitment Rate Applicable to Extension Term:** In the event that Shipper exercises its option to extend the initial Term in the manner described in Section 10.3 of the Agreement, the Term Shipper Commitment Rate applicable and payable for such extension Term shall be such Term Shipper Commitment Rate as is established by Carrier at the time of renewal in accordance with Section 10.3 of the Agreement.

C. ALTERNATE DELIVERY POINT RATE PRINCIPLES

1. **Rates Applicable to Wood River/Patoka and Cushing Alternative Delivery Points:** To the extent that Shipper Nominates all or any portion of its Contract Volume to either (i) Wood River or Patoka, Illinois or (ii) Cushing, Oklahoma as an Alternate Delivery Point in accordance with section 7.15 of the Rules and Regulations, the "applicable rates and charges" for purposes of such section 7.15 shall be the sum of:
 - (a) the Term Shipper Commitment Rate in respect of such Volumes forming part of the Monthly Volume; plus
 - (b) the applicable Variable Rate in respect of such Alternate Delivery Point as outlined in Part D of this Appendix 'B'.

For greater certainty, for any Nominations to such Alternate Delivery Point constituting Excess Volume, the “applicable rates and charges” for such Excess Volumes shall be the Uncommitted Rate to such Alternate Delivery Point.

D. VARIABLE RATE

1. **Payment of Variable Rate:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Rate (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of miles to such Delivery Point, times (iii) (subject to Section 9.1 of the Agreement) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Rate} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Miles for that Month}}$$

Where:

Weighted Barrel Miles equals Light Barrel Miles + Heavy Barrel Miles;

Light Barrel Miles equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of miles to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Miles equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of miles to the relevant Delivery Point.

The Variable Rate in respect of Heavy Crude shall be the amount as calculated above, and the Variable Rate in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Rate:** On an annual basis during the Term, Carrier will estimate the “Operating, Maintenance and Administration Costs” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes to estimate the “**Variable Rate**” for each Month in the Year. In estimating the Variable Rate, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Rate, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
- (b) property taxes;
- (c) capital taxes;
- (d) insurance;

- (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System; and
 - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Extraordinary Maintenance Costs/Non-routine Adjustments:** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed U.S.\$2,000,000, such amounts will be treated as a non-routine adjustment (“NRA”). Carrier will provide prompt notice to Shipper of any NRA and consult with the Term Shippers as to a reasonable allocation of such NRA into the Variable Rate. All NRAs will be amortized in accordance with good accounting practice and (i) added to the Variable Rate in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Rate for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Rate.
4. **Applicable Variable Rate:** The Variable Rate for the Year in which the Commencement Date occurs (based on the Type(s) of Petroleum) shall be as posted in the Tariff. Thereafter, Carrier will revise the estimated Variable Rate annually and provide Shipper with such revised rate, together with details of its calculation and explanation for any adjustments from the previous applicable Variable Rate, on or before December 1 of each Year during the Term. Such estimated Variable Rate shall take effect as of January 1 of the succeeding Year.
5. **Final Variable Rate:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier’s financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Rate. Carrier will provide Shipper with notice of the final Variable Rate, together with details of its calculation and explanation for any adjustments from the estimated Variable Rate. If the final Variable Rate for the applicable Year is greater than or less than the estimated Variable Rate charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly installments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Rate and the final Variable Rate and the aggregate of Shipper’s Nominations, up to a maximum of Shipper’s Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.
6. **Audit Right:** Shipper shall have the right to conduct a single audit of the calculations underlying the final Variable Rate within 12 Months of the date of Carrier’s notice of the final Variable Rate pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1 of the Agreement. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the Canadian 2015 TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of

the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in Section 12.1 of the Agreement, and for greater certainty will not include any information attributable to individual shippers.

**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 5.0
NOTICE OF OPEN SEASON PART 2 – PATOKA SERVICE
OFFERING**



**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

5.0 NOTICE OF OPEN SEASON PART 2 – PATOKA SERVICE OFFERING

- 5.1 COMMERCIAL TERMS
- 5.2 OPEN SEASON BIDS
- 5.3 FORM OF CANADIAN CONVERTIBLE TSA
- 5.4 FORM OF U.S. CONVERTIBLE TSA

5.1 COMMERCIAL TERMS

The Keystone pipeline system provides crude oil transportation service from Hardisty, AB to various destinations. For this part of the Open Season, commitments for transportation service from Hardisty, AB to Contract Delivery Points of Wood River and Patoka, IL are being offered.

In addition to the provision of transportation services, the Convertible TSAs include a right for a Shipper under the Convertible TSAs to convert its committed transportation service for transportation service from Hardisty, AB to Port Arthur, TX via the Phase 4 Expansion Facilities (the “KXL Pipeline”) under new TSAs entered into for the KXL Pipeline as described in section 10.2 and appendix ‘C’ of the Convertible TSAs (the “KXL TSAs”).

The commercial terms (including Service Provisions) outlined in this Section 5.1 relate to the service provided under the Convertible TSAs. Terms may vary under the KXL TSAs. Please see forms of KXL TSAs attached as appendix ‘C’ to the Convertible TSAs for the terms applicable to service in the event that the Shipper under the Convertible TSAs elects to exercise its option to convert those TSAs into the KXL TSAs.

Toll/Rate Design

A fixed/variable toll/rate design is being offered in this Open Season. The Canadian Fixed Toll and the U.S. Term Shipper Commitment Rate are levelized over the term of the contract. The variable portion of the toll/rate is a flow-through of actual aggregated operating costs for each of the Canadian and U.S. Pipeline Systems, adjusted annually and based on the type of crude (heavy or light) transported.

The toll/rate details for the Canadian and the U.S. portions of the Keystone pipeline systems are provided below:

Tolls/Rates for Transportation Service to Patoka

| | Tolls/Rates (\$/barrel) FX =1 | | |
|---------------------------------|---|--|---------|
| | Fixed Toll/Term Shipper Commitment Rate | Variable Toll/Rate ⁵ (Indicative) | |
| | | Light | Heavy |
| Canadian Convertible TSA | \$1.237 | \$0.610 | \$0.872 |
| U.S. Convertible TSA | \$2.141 | \$1.062 | \$1.517 |

Contract Term

The contract Term for the Convertible TSAs being offered in this Open Season is 20 years.

Contract Volume

The Convertible TSAs include a set Contract Volume of 5,000 bpd of the Patoka Open Season Capacity being offered. Interested parties must bid for the Patoka Open Season Capacity (subject to the Oversubscription provision outlined in section 5.2 of this Notice of Open Season).

Service Provisions:

1) Make-Up Rights

Shippers can accrue Make-Up rights when volumes tendered by that Shipper are below its Monthly Volume or during the occurrence of an event of Force Majeure declared by Keystone. Accrued Make-Up rights can be used within the next 36 months and will expire 36 months following the last day of the contract Term.

2) Extension Rights

Shippers will have the right to extend the Term by up to 10 years, on terms as described in the Convertible TSAs.

⁵ The Variable Toll/Rates are based on estimations for 2015.

3) Conversion Right

Shippers will have the right for a single option to convert the Convertible TSA into a new 20-year Contract to Port Arthur via KXL pipeline, subject to the terms and conditions of that Contract.

4) Temporary Alternate Delivery Points

Shippers will be able to nominate volumes, to Alternate Delivery Points on the Keystone U.S. Pipeline System (e.g. . Cushing, OK, Port Arthur, TX) on terms as described in the Keystone Tariff. These volumes will be subject to uncommitted tolls/ rates, unless Shipper enters into a supplemental rate agreement.

Notes:

- *Tolls/Rates are applicable to services as defined in the Convertible TSAs.*
- *Indicative variable tolls and rates are subject to change as provided in Appendix 'B' of the Convertible TSAs.*

5.2 OPEN SEASON BIDS

Parties who wish to participate in the Open Season are asked to complete, execute and submit to TransCanada no later than noon Mountain Time on September 23, 2015 the following documents:

1. Two (2) completed copies of each of the applicable Convertible TSAs, located in Section 5.3 and 5.4 of this Notice of Open Season. Each Convertible TSA requires that each bidding party provide the following information:

In the body of both the Canadian Convertible TSA and the U.S. Convertible TSA:

- The bidding party's legal name on the first page of the Convertible TSA;
- Jurisdiction of incorporation on the first page of the Convertible TSA;
- Contact information for Notices in Article 11 of the Convertible TSA; and
- Signature blocks completed with the bidding party's name, and signed on page 10 of the Convertible TSA.

2. If applicable, subject to verification by TransCanada prior to completion of the Open Season in respect of the creditworthiness of the bidding party, completion of an appropriate financial assurance, which in the case of a guarantee, shall be in the form attached in Section 6.0 of this Open Season package, including the following information:

- Bidding party's legal name;
- Legal name of guarantor in both the top of the document and the signature block; and
- Execution of the guarantees by the guarantor

If the content of the Convertible TSAs have been altered or amended in any way other than by entering the information requested above, then that bidding party's offer may not be accepted, at TransCanada's sole discretion. If the required documents are not returned by noon Mountain Time on September 23, 2015, the bidding party will not be eligible for services under the proposed Open Season's terms. The properly completed and submitted Convertible TSAs will

constitute an irrevocable offer binding upon such bidding party from the date of its execution and delivery.

TransCanada may, in its sole discretion and for any reason, elect to:

- Terminate the Open Season process, modify or extend the Open Season process or related documents, or give notice of a subsequent Open Season;
- Award a portion of the capacity or elect not to award any capacity; and
- Adjust the Patoka Open Season Capacity.

If, after the close of the Open Season and any extensions, a decision is made to accept bids in accordance with the terms of the Open Season, successful Shippers will be informed in writing that their Convertible TSAs have been accepted, and that Shipper should submit a Nomination for November Tenders (subject to any delay in the Commencement Date as outlined in the TSAs). Two (2) copies of the submitted Convertible TSAs will be dated and executed by Keystone with one (1) copy returned to the Shipper. If the submitted copies of the Convertible TSAs are not executed by Keystone within 60 days following the closing date of the Open Season, such Convertible TSAs will expire and be of no force or effect, such that no further obligations will be required by Shipper or Keystone.

Credit Qualification

Each bidding party that submits completed and executed Convertible TSAs in accordance with this Open Season will be required to satisfy creditworthiness requirements and to provide any required Contract Financial Assurances on or before September 30, 2015, as specified in the Convertible TSAs prior to Carrier accepting the applicable Convertible TSAs.

If a bidder does not have an unenhanced senior unsecured debt rating, that bidder may request Keystone, in its sole discretion, to determine an equivalent rating in accordance with the financial rating methodology, criteria, and ratios for the industry of the bidder. If information necessary for the determination of an equivalent rating is not provided in time to allow Keystone to determine an equivalent rating by the close of the Open Season, the bidding party will be deemed to have not met the minimum rating standard outlined below.

If the bidder relies upon a guarantor, such guarantor's debt rating may be used; provided, however, bidder's guarantor and guarantee is acceptable (including as to domicile of the guarantor) to Keystone, in its sole discretion, and agrees to provide a guarantee substantially in the form attached, and sufficient in amount to cover bidders obligations to Keystone under the Convertible TSAs. Should a bidder wish to substitute its guarantor's debt rating as provided in the immediately preceding sentence, it must indicate so in Section 6.0 of this Open Season package by inserting the name of the guarantor.

Bid Ranking and Oversubscription

Keystone will award the Patoka Open Season Capacity sequentially based on the criteria and priority below until all bids have been processed or until all capacity has been awarded:

First, the Patoka Open Season Capacity will be allocated to the bidder (or bidder's guarantor) that has been determined by Keystone to have met the minimum rating standard (subject to Credit Qualification as outlined above), based on unenhanced senior unsecured debt rating of "BBB-" by Standard & Poor's Financial Services LLC ("S&P") or "Baa3" by Moody's Investors Service, Inc. ("Moody's"); if rated by both S&P and Moody's, the lower debt rating applies. If two or more bidders meet such minimum rating standard, then Keystone will utilize a random generating system to assign each bidder a number. Keystone will award the entire Patoka Open Season Capacity to such bidder that is randomly assigned the highest number.

Second, if no bidders (or bidder's guarantor) have met the minimum rating standard of "BBB-" or "Baa3", and there are two or more bidders, then Keystone will utilize a random generating system to assign each bidder a number. Keystone will award the entire Patoka Open Season Capacity to the bidder that is randomly assigned the highest number. In the event there is only one bidder, Keystone will award the entire Patoka Open Season Capacity to such bidder.

Multiple bids submitted by affiliated entities will only be assigned one number for the purpose of the random generating system described above.

If necessary, Keystone is accordingly authorized by Shipper to amend the Contract Volume initially inserted in the applicable Convertible TSAs submitted by Shipper to reflect allocations made as a result of the Open Season bids received, or any reductions made to awarded capacity in accordance with Section 5.2 of this Notice of Open Season. One (1) copy of each of the fully executed Convertible TSAs with an amended Appendix 'A' to the Convertible TSAs will be provided by Keystone to Shipper within timelines specified in the respective Convertible TSAs after the closing date of the Open Season.

Responses should be sent to:

TransCanada
450 - 1st Street S.W.
Calgary, Alberta
Canada T2P 5H1

Attn: Crude Oil Contracts Administration

Fax: 403-920-2285

Email: oil_pipelines@transcanada.com

5.3 FORM OF CANADIAN CONVERTIBLE TSA

TRANSCANADA KEYSTONE CANADA PIPELINE SYSTEM
PATOKA CONVERTIBLE PETROLEUM
TRANSPORTATION SERVICE AGREEMENT
(2015 Keystone Open Season)

THIS CONTRACT made as of the 23rd day of September, 2015.

PARTIES:

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

AND

_____, a _____
existing under the laws of _____ (“Shipper”)

WHEREAS:

- A. Shipper has requested and, subject to the satisfaction or waiver of the conditions precedent set forth in ARTICLE 3, Carrier has agreed to transport the Contract Volume of Petroleum Tendered by Shipper pursuant to the terms and conditions of this Agreement, and subject to the Tariff;
- B. Shipper wishes to make a binding commitment to Carrier regarding the transportation of Petroleum as set forth in this Agreement, and upon its execution of this Agreement to become a Term Shipper; and
- C. Carrier is prepared to offer tolls and terms of service to Shipper subject to and in accordance with the provisions of this Agreement and the Tariff.

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

ARTICLE 1
INTERPRETATION

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

“**Advance Notice**” means the Advance Notice to be provided by Carrier to the Term Shippers pursuant to section 5.1(a) of the Gulf Coast Expansion Contract.

“Agreement” means this Petroleum Transportation Service Agreement and any appendices attached hereto in each case, as may be amended, modified, supplemented or restated from time to time.

“Applicable Law” means any applicable:

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

in each case to the extent having jurisdiction over the Pipeline System, Keystone US Pipeline System, Carrier or the Parties.

“Commencement Date” has the meaning given that term in Section 5.2.

“Contract” has the meaning given in the Rules and Regulations, and this Agreement shall constitute a Contract for such purposes.

“Contract Financial Assurances” has the meaning given that term in Section 7.1.

“Convertible Patoka Contract” means a Contract between Carrier and a Term Shipper, on terms and conditions corresponding to this Agreement.

“Curtailment Event” has the meaning given that term in Section 9.2.

“Fixed Toll” means the Fixed Toll described in paragraph B.1 of Appendix ‘B’.

“Governmental Authority” means any:

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

“Gulf Coast Expansion Contract” means a contract between Carrier and a Term Shipper, on terms and conditions corresponding to the contract attached as Appendix ‘C’, as such form may have been amended following the date of this Agreement by the other Term Shippers party to Gulf Coast Expansion Contracts.

“Make-Up Volume” means, in respect of any Month, an accrual of a quantity of Petroleum equal to the difference between the Monthly Volume and actual volumes Tendered for shipment in that Month, calculated in accordance with Section 8.1.

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

“**Open Season**” means the open season bid tender procedures initiated by Carrier in respect of this Agreement (and related Contracts) to provide services to Term Shippers on the Pipeline System (as such procedures may be replaced or amended from time to time).

“**Operating, Maintenance and Administration Costs**” has the meaning given that term in paragraph D.2 of Appendix ‘B’.

“**Option Notice**” has the meaning given that term in Section 10.2a).

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

“**Rules and Regulations**” means the Petroleum Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum filed with or approved by the NEB as in effect at the relevant time.

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

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

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

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

“**US Convertible TSA**” means a petroleum transportation service and throughput agreement, on terms and conditions corresponding to this Agreement, for the transportation of Petroleum on the Keystone US Pipeline System.

“**Variable Toll**” means the “Variable Toll” described in Part D of Appendix ‘B’.

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

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

- a) Appendix ‘A’, entitled “Shipper Elections”;
- b) Appendix ‘B’, entitled “Schedule of Tolls and Tolling Principles”; and
- c) Appendix ‘C’, entitled “Form of Gulf Coast Expansion Contract”.

1.3 In this Agreement:

- a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions of this Agreement nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”.

- c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- d) Time is of the essence in the performance of the Parties' respective obligations.
- e) If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
- f) This Agreement, together with the Rules and Regulations in effect at the relevant time, constitutes the entire agreement of the Parties relating to their relationship under this Agreement. All prior negotiations and all provisions and concepts contained in all prior agreements between the Parties on matters contained in this Agreement are expressly superseded by this Agreement. The Parties expressly waive any reliance on representations or course of dealings made prior to the execution of this Agreement regarding the subject matter of this Agreement.

ARTICLE 2 REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Agreement, Carrier, in conjunction with Keystone US, shall proceed with due diligence and in good faith to seek to obtain from all Governmental Authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone US, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to provide transportation service for Shipper as contemplated in the Tariff, except for those that are, in the opinion of each of Carrier and Keystone US, not material (collectively, the "**Regulatory Approvals**").
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone US have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone US shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone US in its sole discretion, to be unsatisfactory to Carrier or Keystone US, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone US for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information (collectively, "**Shipper Information**"). Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not

commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and Applicable Law, Carrier shall not disclose to third parties (other than to Keystone US, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Prior to the Commencement Date, Shipper agrees not to:

- a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone US's applications for Regulatory Approvals before any of: (i) the NEB, (ii) the FERC, (iii) any state certificating authorities in the United States, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing; or
- b) make any statements, whether directly or indirectly, that indicate a lack of support for the Pipeline System or the Keystone US Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.
- c) Notwithstanding the other provisions of this Section 2.4, nothing is intended to, or shall be construed as a waiver of, or any limitation of, Shipper's rights under Applicable Law to intervene in any application for Regulatory Approvals (including reasonable and valid concerns raised before the NEB in respect of the Tariff or the proposed toll methodology outlined in the Tariff) that are materially inconsistent with the terms of this Agreement or the Rules and Regulations, or to require Shipper to act in a manner that would be inconsistent with any Applicable Law.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Subject to Section 2.1 and ARTICLE 4, Carrier's obligations under this Agreement are subject to the satisfaction of the following conditions precedent:

- a) Carrier and its Affiliates shall have obtained, on terms acceptable to Carrier in its sole discretion, all Canadian Regulatory Approvals.
- b) Keystone US and its Affiliates shall have obtained, on terms acceptable to Keystone US in its sole discretion, all United States Regulatory Approvals.
- c) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Agreement, entered into a US Convertible TSA for transportation of Petroleum on the Keystone US Pipeline System, which US Convertible TSA remains in full force and effect.

- d) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone US as contemplated under this Agreement and any petroleum transportation service and throughput agreement with Keystone US, including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone US shall have no liability or obligation whatsoever to Shipper in the event either or both of them declines to file for, withdraws from, or rejects any Regulatory Approval.

- 3.2 The conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.
- 3.3 The execution and delivery by Shipper of this Agreement constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Agreement is executed and delivered by Carrier, subject always to the other provisions of this ARTICLE 3, provided that if this Agreement is not executed by Carrier on or before the date which is 60 days following the completion of the Open Season, Shipper's offer shall, at Shipper's option, expire and be of no further force and effect.

ARTICLE 4 TERMINATION

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

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

- 4.2 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Section 7.1 within 10 Banking Days of Carrier's written demand therefor, Carrier may, subject to Shipper's obligations under Section 4.3, immediately terminate this Agreement by providing further Notice to Shipper.
- 4.3 If the right to terminate this Agreement is exercised by Carrier pursuant to Section 4.1b), 4.1c) or Section 4.2, Shipper shall, to the extent permitted by Applicable Law and subject to Carrier's

obligation to mitigate, pay to Carrier the net present value of the aggregate of: (a) the Monthly Revenue Commitment payable under this Agreement for the unexpired term of this Agreement, (b) all applicable taxes, (c) all amounts owing under this Agreement in respect of Petroleum Delivered but for which all tolls, rates and any other charges are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. The obligations under this Section 4.3 shall survive termination of this Agreement.

- 4.4 If on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt, Shipper may terminate this Agreement on 30 days' prior Notice to Carrier (a "**Shipper Termination Notice**").

ARTICLE 5 COMMENCEMENT OF SERVICE

- 5.1 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition activities in respect of the Pipeline System. Volumes of Working Stock shall be as determined by Carrier, acting reasonably. The Type of Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.
- 5.2 The date on which transportation service under this Agreement is to commence (the "**Commencement Date**") is November 1, 2015. Not later than October 20, 2015, Shipper shall provide Carrier with Shipper's Monthly Nomination for the Month of November 2015, on a Notice of Shipment as prescribed in the Rules and Regulations.

ARTICLE 6 TRANSPORTATION SERVICE

- 6.1 From and after the Commencement Date and during the Term:
- a) Shipper guarantees that it shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Tariff, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
 - b) Carrier shall provide transportation service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Agreement and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Agreement and the Tariff.

ARTICLE 7 CONTRACT FINANCIAL ASSURANCES

- 7.1 Shipper shall, if and when reasonably requested by Carrier at any time, whether prior to the Commencement Date or otherwise, provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier, acting reasonably (the "**Contract Financial Assurances**"), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure all obligations or potential obligations of Shipper under this Agreement.

ARTICLE 8
MAKE-UP RIGHTS AND BALANCING

8.1 In the event that, during the Term:

- a) Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume for any reason, or
- b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier,

Shipper shall be entitled to accrue a Make-Up Volume that may be utilized in any of the next following 36 Months **provided that** (i) Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights in respect of any Curtailment Event; and (ii) in the case of a Force Majeure event declared by Carrier which continues beyond 3 consecutive Months, Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights beyond those accrued in such 3-Month period.

8.2 Notwithstanding Section 8.1 or any other provision of this Agreement:

- a) Shipper shall be entitled to utilize Make-Up Volumes only to the extent that operating conditions permit and capacity is available (as determined by Carrier), provided that Shipper has first Tendered its Monthly Volume in such Months before making use of any accrued Make-Up Volumes.
- b) Shipper shall only have the right to utilize Make-Up Volumes to the Delivery Point in respect of the Contract US Delivery Point. Nominations in respect of any other Delivery Point on the Keystone US Pipeline System shall be subject to additional tolls, rates and other charges in accordance with the Tariff. Subject to the foregoing, in respect of Make-up Volumes Tendered in accordance with Section 8.1 or Section 8.2:
 - (i) no additional Fixed Toll will be payable by Shipper; and
 - (ii) for greater certainty, Shipper shall remain responsible for payment of the Variable Toll in respect of such Make-Up Volumes.
- c) Any Make-Up Volumes of Shipper (and any rights associated therewith) arising out the operation of Section 8.1 or Section 8.2 shall cease, expire and shall be forfeited by Shipper at the expiration of the earlier of: (i) the time period described in Section 8.1; and (ii) the expiration of the Term.

8.3 Where Shipper's Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier's batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier's batching or balancing requirements.

- 8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month Notice of any planned reduction of volume to be Tendered for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.

ARTICLE 9 TOLLS

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Agreement and the Tariff, including: (i) the Fixed Toll, (ii) the Variable Toll, plus (iii) the tolls and all other charges and adjustments as set forth in Appendix 'B'.
- 9.2 In the event of interruption of transportation service pursuant to an outage by Carrier as described in section 13.1 of the Rules and Regulations (a "**Curtailment Event**"), the Fixed Toll in respect of any Monthly Volume not Tendered directly as a result of such Curtailment Event shall not be payable by Shipper during the period of such Curtailment Event.
- 9.3 In the event that: (i) Carrier declares a Force Majeure event pursuant to section 15 of the Rules and Regulations, and (ii) the term of such Force Majeure continues beyond 3 consecutive months, the Fixed Toll in respect of any Monthly Volume not Tendered directly as a result of such Force Majeure event will not be payable by Shipper during the remaining period of such Force Majeure event.
- 9.4 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any Make-Up Volumes pursuant to ARTICLE 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Toll times the Excess Volume.

ARTICLE 10 TERM OF CONTRACT

- 10.1 This Agreement shall be effective as of the date it is signed by Shipper and Carrier. Unless terminated earlier in accordance with its terms, the initial term of this Agreement shall commence on the Commencement Date and shall, subject to termination pursuant to Section 10.2 continue until the 20th anniversary of the Commencement Date, subject also to extension pursuant to Section 10.3 (such period being the "**Term**").
- 10.2 In respect of the Gulf Coast Expansion Contract:
- a) So long as Shipper is not otherwise in default of this Agreement or the Tariff, upon receiving Notice from Carrier (the "**Option Notice**"), Shipper shall have the single option, exercisable by Notice to the Carrier (which Notice shall include an executed copy of the Gulf Coast Expansion Contract) within 60 days following receipt of the Option Notice, to elect to convert this Agreement into a Gulf Coast Expansion Contract with a 20-Year Term commencing on the Commencement Date under the Gulf Coast Expansion Contract, on terms and conditions corresponding with the then-existing Gulf Coast Expansion Contracts, in the same manner as if Shipper had subscribed as "Shipper" under the Gulf Coast Expansion Contract during the original open season for the Gulf Coast Expansion Contracts held in the summer of 2008; provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone US Pipeline System pursuant to and in accordance with its US Convertible TSA with Keystone US. Carrier agrees not to issue the Option Notice until: (i) Carrier and

Keystone US have obtained the applicable regulatory approvals for the KXL Expansion Facilities in accordance with section 2.1 of the Gulf Coast Expansion Contract, and (ii) Carrier has commenced construction of the KXL Expansion Facilities. In the event that Shipper has not exercised such option within 60 days following receipt of the Option Notice, such option shall expire and be of no further force and effect.

- b) If Shipper has exercised its option to Convert this Agreement into a Gulf Coast Expansion Contract in accordance with Section 10.2a), and if Shipper is not otherwise in default of this Agreement, the Gulf Coast Expansion Contract or the Tariff, then, effective the “Commencement Date” under the Gulf Coast Expansion Contract, this Agreement will be terminated and replaced with the Gulf Coast Expansion Contract.
 - c) For greater certainty, in respect of the exercise of any option to convert this Agreement into a Gulf Coast Expansion Contract:
 - (i) to the extent that Shipper was prorated as a result of the Open Season such that Shipper received a Contract Volume under this Agreement of less than 795 m³/Day (5,000 bbl/Day), Shipper shall nonetheless execute and to deliver to Carrier a Gulf Coast Expansion Contract with a Contract Volume of 795 m³/Day (5,000 bbl/Day); provided that Carrier shall have the option, in its discretion (exercisable prior to the date of the Advance Notice under the Gulf Coast Expansion Contract on Notice to Shipper), to prorate the Contract Volume under the Gulf Coast Expansion Contract to the Contract Volume received by Shipper under this Agreement; and
 - (ii) nothing in this Agreement shall limit Shipper’s obligations in respect of Line Fill and Working Stock pursuant to article 5 of the Gulf Coast Expansion Contract, which shall be binding upon Shipper from and after the Advance Notice, in the manner described in article 5 of the Gulf Coast Expansion Contract.
- 10.3 Subject to Section 10.2, and so long as Shipper is not otherwise in default of this Contract or the Tariff, Shipper shall have the single option, exercisable by Notice to Carrier received by Carrier not later than 24 Months prior to the expiry of the Term, to extend the Term of this Agreement for a single additional Yearly period nominated by Shipper, not to exceed 10 Years, provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone US Pipeline System pursuant to and in accordance with its US Convertible TSA with Keystone US. Such extension shall be on the same terms and conditions of this Agreement, provided that the Fixed Toll for such extended Term shall be calculated in the manner described in paragraph B.2 of Appendix ‘B’. Carrier shall give Notice to Shipper of the Fixed Toll for such extended Term no later than 27 Months prior to the expiry of the initial Term, which Fixed Toll may be subject to regulatory approval.

ARTICLE 11 NOTICES

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

In the case of Carrier: **TransCanada Keystone Pipeline GP Ltd.**

(1) Mailing Address: 450 1st Street S.W.
Calgary, AB T2P 5H1

(2) Delivery Address: 450 1st Street S.W.
Calgary, AB T2P 5H1
Attention: Crude Oil Contracts Administration
Fax: 403.920.2285

In the case of Shipper:

(1) Mailing Address:

(2) Delivery Address:

Attention:
Fax:

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given 4 hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given 4 business days after mailing. For the purposes of this Section, a “**business day**” is any day, excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

- 11.2 Notwithstanding the provisions of Section 11.1, operational notices to Shipper may be delivered by Carrier via the Keystone Customer Portal.

ARTICLE 12 MISCELLANEOUS PROVISIONS

- 12.1 Where this Agreement provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party’s business or operations (upon reasonable and timely notice and at the auditing Party’s expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose

- the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Petroleum Toll Schedule – Uncommitted Volumes and the Rules and Regulations set out in the Tariff as in effect at that time, as each may be amended or approved from time to time by Carrier or the NEB, are all by reference made a part of and incorporated into this Agreement and operations hereunder shall, in addition to the terms and conditions set out in this Agreement, be subject to the provisions thereof. Carrier shall notify Shipper at any time that Carrier proposes to amend the Tariff, or otherwise files with the NEB revisions to the Tariff and shall provide Shipper with notice of such revisions.
- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental, or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Agreement, then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Agreement to comply with such ruling and in accordance with the initial expectations of the Parties under this Agreement.
- 12.4 This Agreement, and any claims against Carrier arising directly or indirectly out of or in connection with this Agreement, may be assigned, in whole or in part, by Shipper only:
- a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may demand in accordance with this Agreement, or (B) such Financial Assurances as Carrier may demand in accordance with the Tariff, as applicable; or
 - b) to its Affiliate, upon 30 days' prior Notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Agreement.
- 12.5 Carrier may assign this Agreement and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) in connection with the sale of all or substantially all of the assets of Carrier to any other Person.
- 12.6 This Agreement shall be construed and applied and be subject to the laws of the Province of Alberta and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction, including the NEB. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Agreement. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**
- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Agreement or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Agreement shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.

12.9 This Agreement may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

APPENDIX 'A'
SHIPPER ELECTIONS

Contract Volume: 795 m³/Day (5,000 bbl/Day)

APPENDIX 'B'
SCHEDULE OF TOLLS AND TOLLING PRINCIPLES

A. TRANSPORTATION TOLLS

Every Month during the Term, Shipper shall pay to Carrier on the Payment Due Date, consistent with ARTICLE 9 of the Agreement, the tolls and other charges set forth below and in the Tariff.

B. FIXED TOLL & MONTHLY REVENUE COMMITMENT

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term, Shipper shall pay a “Monthly Revenue Commitment” in respect of its Monthly Volume. Shipper’s Monthly Revenue Commitment for any Month shall be the product obtained by multiplying the Fixed Toll times the Monthly Volume.

| Fixed Toll in Cdn \$ Per m ³ (bbl) |
|---|
| \$7.782 (\$1.237) |

2. **Fixed Toll Applicable to Extension Term:** In the event that Shipper exercises its option to extend the initial Term in the manner described in Section 10.2 of the Agreement, the Fixed Toll applicable and payable for such extension Term shall be such Fixed Toll as is established by Carrier at the time of renewal in accordance with Section 10.3 of the Agreement.

C. [INTENTIONALLY LEFT BLANK]

D. VARIABLE TOLL

1. **Payment of Variable Toll:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Toll (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of kilometres to such Delivery Point, times (iii) (subject to Section 9.1 of the Agreement) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Toll} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Kilometres for that Month}}$$

Where:

Weighted Barrel Kilometres equals Light Barrel Kilometres + Heavy Barrel Kilometres;

Light Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of kilometres to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of kilometres to the relevant Delivery Point.

The Variable Toll in respect of Heavy Crude shall be the amount as calculated above, and the Variable Toll in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Toll:** On an annual basis during the Term, Carrier will estimate the “Operating, Maintenance and Administration Costs” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes to estimate the “**Variable Toll**” for each Month in the Year. In estimating the Variable Toll, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Toll, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
 - (b) property taxes;
 - (c) capital taxes;
 - (d) insurance;
 - (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System; and
 - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Extraordinary Maintenance Costs/Non-routine Adjustments:** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed Cdn\$2,000,000, such amounts will be treated as a non-routine adjustment (“**NRA**”). Carrier will provide prompt notice to Shipper of any NRA and consult with the Term Shippers as to a reasonable allocation of such NRA into the Variable Toll. All NRAs will be amortized in accordance with good accounting practice and (i) added to the Variable Toll in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Toll for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Toll.
 4. **Applicable Variable Toll:** The Variable Toll for the Year in which the Commencement Date occurs (based on the Type(s) of Petroleum) shall be as posted in the Tariff. Thereafter, Carrier will revise the estimated Variable Toll annually and provide Shipper with such revised rate, together with details of its calculation and explanation for any adjustments from the previous applicable Variable Toll, on or before December 1 of each Year during the Term. Such estimated Variable Toll shall take effect as of January 1 of the succeeding Year.
 5. **Final Variable Toll:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for

such Year, as recorded in Carrier's financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Toll. Carrier will provide Shipper with notice of the final Variable Toll, together with details of its calculation and explanation for any adjustments from the estimated Variable Toll. If the final Variable Toll for the applicable Year is greater than or less than the estimated Variable Toll charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly installments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Toll and the final Variable Toll and the aggregate of Shipper's Nominations, up to a maximum of Shipper's Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.

6. **Audit Right:** Shipper shall have the right to conduct a single audit of the calculations underlying the final Variable Toll within 12 Months of the date of Carrier's notice of the final Variable Toll pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1 of the Agreement. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the US Convertible TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in Section 12.1 of the Agreement, and for greater certainty will not include any information attributable to individual shippers.

APPENDIX 'C'
FORM OF GULF COAST EXPANSION CONTRACT

**KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AGREEMENT**

THIS CONTRACT made as of the ___ day of _____, _____.

PARTIES:

_____, a _____
existing under the laws of _____ (“Shipper”)

AND

TRANSCANADA KEYSTONE PIPELINE LIMITED PARTNERSHIP,
a limited partnership registered under the laws of Alberta
 (“Carrier”);

WHEREAS:

- A. Carrier is proposing to construct, own and operate the Keystone Initial Facilities;
- B. Carrier is proposing to construct, own and operate an expansion and extension of the Keystone Initial Facilities, including the construction of additional pipeline facilities from at or near Hardisty, Alberta to the international boundary at or near Monchy, Saskatchewan;
- C. Shipper has requested, and subject to the satisfaction or waiver of the conditions precedent set forth in Article 3, Carrier has agreed, to transport the Contract Volume of Petroleum Tendered by Shipper or Shipper’s agent pursuant to the terms and conditions of this Contract, and subject to the Tariff;
- D. Shipper wishes to make a firm commitment to Carrier regarding the transportation of Petroleum on the Pipeline System as set forth in this Contract, including all Appendices, and upon its execution of this Contract to become a Term Shipper; and
- E. In recognition of the support provided by Shipper for the KXL Expansion Facilities, Carrier is prepared to offer tolls and terms of service to Shipper subject to and in accordance with the provisions of this Contract and the Tariff.

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

**ARTICLE 1
INTERPRETATION**

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

“**Accelerated Execution Plan**” means a Project Execution Plan primarily intended to achieve a Commencement Date earlier than that set forth in the Balanced Execution Plan, including a

mechanism to maintain Carrier's return neutrality relative to the Balanced Execution Plan with supporting information in respect of the neutrality calculation.

"Advance Notice" has the meaning given that term in Section 5.2(a).

"Alternate Gulf Coast Price" has the meaning given that term in Section 9.4(b).

"Balanced Execution Plan" means a Project Execution Plan intended to achieve a balance between the costs, schedule and risks of the construction of the KXL Expansion Facilities.

"Baseline Committed Price" has the meaning given that term in Section 9.4(b).

"business day" has the meaning given that term in Section 11.1.

"Carrier" has the meaning given that term in the recitals.

"Carrier Termination Notice" has the meaning given that term in Section 4.1.

"Commencement Date" has the meaning given that term in Section 5.4.

"Committed Contract Volume" means the Contract Volume committed by a Term Shipper pursuant to a Gulf Coast Expansion Contract between such Term Shipper and Carrier in effect at the relevant time.

"Committed Price" has the meaning given that term in Section 9.4(b).

"Committed Volume" means the sum of the Monthly Volumes of all Term Shippers.

"Contract Financial Assurances" has the meaning given that term in Article 7.

"Final Project Costs" means the "Final Project Costs" described in Part C of Appendix 'B'.

"Firm Transportation Service" means transportation service on the Pipeline System using capacity that is reserved for and committed to Term Shippers for the priority transportation of the Committed Volume.

"Fixed Toll" means the "Fixed Toll" described in Part B of Appendix 'B'.

"Gulf Coast Expansion Contract" means a contract between Carrier and a Term Shipper on terms and conditions substantially corresponding to this Keystone Gulf Coast Expansion Petroleum Transportation Service Agreement (as amended).

"GCEC Term Shipper" means a Term Shipper which is a party to a valid and existing Gulf Coast Expansion Contract.

"HLC Term Shipper" means a Term Shipper which is a party to a valid and existing Houston Lateral Contract.

"Houston Lateral Contract" means a Keystone Houston Lateral Petroleum Transportation Service Agreement between Carrier and a Term Shipper, as amended by the parties pursuant to the terms thereof.

“**Keystone Initial Facilities**” means that portion of the Pipeline System consisting of:

- (a) Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at or near Hardisty, Alberta, and terminating at the international boundary at or near Haskett, Manitoba with a nominal transportation capacity of approximately 435,000 barrels per day of Petroleum, and
- (b) associated facilities required to expand such facilities to a nominal transportation capacity of approximately 590,000 barrels per day of Petroleum.

“**KXL Committed Contract Volumes**” means the aggregate of the Contract Volumes committed by all KXL Term Shippers pursuant to the Gulf Coast Expansion Contracts and the Houston Lateral Contracts in effect at the relevant time.

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

“**KXL Term Shipper**” means a GCEC Term Shipper or a HLC Term Shipper, as the context may require.

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

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

“**Open Season**” means a bid tender process whereby bids will be solicited by Carrier for transportation service on the Pipeline System.

“**Operating, Maintenance and Administration Costs**” has the meaning given in paragraph D.2 of Appendix ‘B’.

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

“**Presidential Permit**” means a permit granted by the United States Secretary of State under Executive Order 13337 for the construction, connection, operation and maintenance of that portion of the Keystone US Pipeline System interconnecting with the Pipeline System at Canadian border at or near Monchy, Saskatchewan and terminating at a receipt point of the Keystone US Pipeline System at or near Steele City, Nebraska.

“**Project Execution Plan**” means a written plan prepared by Carrier including the cost estimates, toll impact, schedule, risk assessment and other matters as determined relevant by Carrier in consultation with GCEC Term Shippers for the construction of the KXL Expansion Facilities.

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

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

“**Regulatory Sunset Date**” means December 31, 2015.

“**Rules and Regulations**” means the Petroleum Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum in effect at the relevant time.

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

“**Shipper Commitment Price**” has the meaning given that term in Section 9.4(b).

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

“**Shipper Termination Notice**” has the meaning given that term in Section 4.2.

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

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

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

“**Threshold Shipping Commitment**” means such aggregate commitment to ship such minimum Contract Volume on the Pipeline System (including consideration of contract terms and applicable Receipt Points and Delivery Points) as Carrier may determine in its sole discretion.

“**Uncommitted Gulf Coast Price**” has the meaning given that term in Section 9.4(b).

“**US GC TSA**” means a petroleum transportation agreement, on terms and conditions corresponding to this Contract, for the transportation of Petroleum on the Keystone US Pipeline System.

“**US Houston Lateral TSA**” means a petroleum transportation agreement, on terms and conditions corresponding to a Houston Lateral Contract, for the transportation of Petroleum on the Keystone US Pipeline System to Houston.

“**Variable Toll**” means the “Variable Toll” described in Part D of Appendix ‘B’.

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

- 1.2 Attached to and forming an integral part of this Contract are the following appendices:
- (a) Appendix ‘A’, comprising the Contract Term and Contract Volume;
 - (b) Appendix ‘B’, comprising the schedule of tolls and tolling principles for Petroleum transportation service from Hardisty, Alberta to the point of interconnection with the pipeline facilities of Keystone US at the international boundary;
 - (c) Appendix ‘C’, comprising a draft of the Rules and Regulations; and

- (d) Appendix 'D', comprising an illustrative example of the calculation set forth in Section 9.4(a).

1.3 In this Contract:

- (a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions hereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms;
- (b) Where the word "including" or "includes" is used, it means "including (or includes) without limitation";
- (c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation;
- (d) Time is of the essence in the performance of the Parties' respective obligations; and
- (e) If, in any jurisdiction, any provision of this Contract or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Contract and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

**ARTICLE 2
REGULATORY APPROVALS**

- 2.1 Subject to the terms and conditions of this Contract, including such initial level of satisfaction of the conditions precedent in Section 3.1(e) for the purposes outlined in this Section 2.1, as may be determined to be desirable or necessary by each of Carrier and Keystone US in its sole discretion, Carrier, in conjunction with Keystone US, shall proceed with due diligence and in good faith to seek to obtain from all governmental, administrative and regulatory (including aboriginal and tribal, if applicable) authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone US, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to construct, acquire, own and operate the Pipeline System (including the Keystone Initial Facilities and the KXL Expansion Facilities) and to provide Firm Transportation Service for Shipper, and for Keystone US to construct, acquire, own and operate the Keystone US Pipeline System (including the "Keystone Initial Facilities" and the "KXL Expansion Facilities" pursuant to the US GC TSA) as contemplated in the contractual arrangements entered into between Keystone US and its shippers, except for those that are, in the reasonable opinion of each of Carrier and Keystone US, not material or not customarily required by prudent pipeline operators prior to the commencement of on-site construction or pre-construction activities (collectively, the "**Regulatory Approvals**").
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone US have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone US shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory

Approval on conditions that are determined by each of Carrier and Keystone US in its sole discretion, to be unsatisfactory to Carrier or Keystone US, as the case may be.

2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone US for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information. Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and applicable law, Carrier shall not disclose to third parties (other than to Keystone US, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Shipper agrees not to:

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

ARTICLE 3 CONDITIONS PRECEDENT

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

- (a) Carrier and its Affiliates shall, by the Regulatory Sunset Date, have obtained all Regulatory Approvals in Canada, on terms acceptable to Carrier in its sole discretion.
- (b) Keystone U.S. and its Affiliates shall, by the Commencement Date, have obtained all U.S. Regulatory Approvals in the United States other than the Presidential Permit, on terms acceptable to Keystone U.S. in its sole discretion.
- (c) Keystone U.S. and its Affiliates shall, by the Regulatory Sunset Date, have obtained the Presidential Permit, on terms acceptable to Keystone U.S. in its sole discretion.
- (d) [this Section is intentionally deleted].
- (e) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Contract, entered into a US GC TSA, which US GC TSA remains in full force and effect.
- (f) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone US as contemplated under this Contract and any US GC TSA including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone US shall have no liability or obligation whatsoever to Shipper in the event either or both of them (i) declines to file for, withdraws from, or rejects any Regulatory Approval, or (ii) determines that there is not a sufficient commitment from Term Shippers on the Pipeline System to justify proceeding with the KXL Expansion Facilities.

- 3.2 Except as provided in Sections 4.2(a) and 4.2(b), the conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.

ARTICLE 4 TERMINATION

- 4.1 If:
 - (a) the conditions precedent set forth in Sections 3.1(a) and 3.1(c) are not satisfied or waived by Carrier on or before the Regulatory Sunset Date;
 - (b) the conditions precedent set forth in Sections 3.1(b), 3.1(e) and 3.1(f) are not satisfied or waived by Carrier on or before the Commencement Date;
 - (c) at any time during the period prior to the Commencement Date, Shipper fails to observe and perform any material agreement, term or condition contained in this Contract;
 - (d) on or before the Commencement Date, Shipper becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Shipper or any of its assets, or if Shipper files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt; or
 - (e) the US GC TSA is terminated in accordance with Section 4.1 thereof,

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

- (i) in respect of Section 4.1(a), Carrier may terminate this Contract only if Keystone U.S. has terminated the US GC TSA in accordance with Section 4.1(a) thereof; and
- (ii) in respect of Section 4.1(c), if Shipper performs such material agreement, term or condition described in the Carrier Termination Notice within such thirty (30) Day period, this Contract shall not terminate but shall continue in force and effect.

If the right to terminate this Contract is exercised by Carrier pursuant to Section 4.1(c) or (d), or from termination pursuant to Section 4.1(e) which results from Section 4.1(c) or (d) of the US GC TSA, Shipper shall, to the extent permitted by applicable law and subject to Carrier’s obligation to mitigate, pay to Carrier the net present value of the aggregate of: (A) the Monthly Revenue Commitment payable under this Contract for the unexpired term of this Contract, (B) all applicable taxes, (C) all amounts owing under the Contract in respect of Petroleum Delivered but for which all tolls and any other charges are not yet paid, and (D) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. Upon termination of this Contract by Carrier pursuant to Section 4.1(a), Section 4.1(b), or from termination pursuant to Section 4.1(e) which results from Section 4.1(a) or Section 4.1(b) of the US GC TSA, Shipper shall not be liable under this Contract for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.2 If:

- (a) the conditions precedent set forth in Sections 3.1(a) and 3.1(c) are not satisfied on or before the Regulatory Sunset Date;
- (b) the condition precedent set forth in 3.1(b) is not satisfied on or before the Commencement Date;
- (c) at any time during the period prior to the Commencement Date, Carrier fails to observe and perform any material agreement, term or condition contained in this Contract;
- (d) on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt; or
- (e) the US GC TSA is terminated in accordance with Section 4.2 thereof,

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

- (i) in respect of Section 4.2(a), if the conditions precedent set forth in Sections 3.1(a) and 3.1(c) are satisfied after the Regulatory Sunset Date:

- (A) where Carrier has received a Shipper Termination Notice from Shipper and such conditions are satisfied within such thirty (30) Day period; or
- (B) where Carrier has not received a Shipper Termination Notice from Shipper prior to the date that such conditions are satisfied,

then this Contract shall not terminate but shall continue in full force and effect and Shipper's termination option outlined above in respect of such conditions shall expire and be of no force or effect.

- (ii) in respect of Section 4.2(c), if Carrier performs such material agreement, term or condition described in the Shipper Termination Notice within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.

Upon termination of this Contract by Shipper pursuant to Section 4.2(a), (b), (c), (d) or from termination of the US GC TSA pursuant to Section 4.2(e) which is exercised by Shipper pursuant to Section 4.2(a), (b), (c) or (d) of the US GC TSA, Shipper shall not be liable under this Contract for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.3 If US GC TSA is terminated by:

- (a) Shipper in accordance with Section 4.3(i) thereof, Shipper may terminate this Contract on thirty (30) Days prior Notice to Carrier (by delivery of a Shipper Termination Notice); or
- (b) Carrier in accordance with Section 4.3(ii) thereof, Carrier may terminate this Contract on thirty (30) Days prior Notice to Shipper (by delivery of a Carrier Termination Notice),

upon termination by a Party of this Contract pursuant to this Section 4.3, Shipper shall not be liable under this Contract for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.4 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Article 7 within ten (10) Banking Days of Carrier's written demand therefor, Carrier may terminate this Contract by providing further written notice to Shipper.

4.5 In the event that:

- (a) one or more Gulf Coast Expansion Contracts are terminated either pursuant to Section 4.2(a) or Section 4.3(a) of such contracts;
- (b) such termination results in an aggregate Committed Contract Volume substantially less than the Threshold Shipping Commitment; and
- (c) Keystone U.S. has decided to commence and conduct an open season in respect of the Keystone US Pipeline System capacity in accordance with Section 4.5 of the US GC TSA,

then, Carrier will commence and conduct an Open Season in respect of the Pipeline System capacity made available by such termination on such terms and conditions as may be determined

by Carrier in its sole discretion. If the Threshold Shipping Commitment is not satisfied as a result of the Open Season, Carrier, on terms and conditions substantially corresponding to this Contract, will offer the Term Shippers which are Term Shippers as of the date hereof such Pipeline System capacity which would allow the Threshold Shipping Commitment to be satisfied.

ARTICLE 5 PROJECT EXECUTION PLANS AND COMMENCEMENT OF SERVICE

5.1 Within ninety (90) days of the receipt of the Presidential Permit, Carrier shall prepare and deliver to Shipper both a Balanced Execution Plan and an Accelerated Execution Plan. Within thirty (30) days of such delivery, Shipper shall by Notice delivered to Carrier elect either the Balanced Execution Plan or the Accelerated Execution Plan. Carrier, in conjunction with Keystone U.S., shall select the Project Execution Plan to be implemented based on the Notices received from KXL Term Shippers within the time frame and in accordance with the principles consistent with those set forth this Section 5.1.

If, without regard to the applicable currency, the sum of the Base Toll set forth in Part B.1 of Appendix 'B' of a Gulf Coast Expansion Contract or a Houston Lateral Contract (as applicable), and the Base Rate set forth in Part B.1 of Appendix 'B' of a US GC TSA or a US Houston Lateral TSA (as applicable):

- (a) is no greater than \$42.331 per m³ (\$6.731 per bbl) for the Accelerated Execution Plan, then Carrier shall implement the Project Execution Plan voted for by the KXL Term Shippers representing fifty percent (50%) or more of the KXL Committed Contract Volumes of the KXL Term Shippers which have provided Notice within the specified timeframe; or
- (b) is greater than \$42.331 per m³ (\$6.731 per bbl) for the Accelerated Execution Plan, then Carrier shall implement the Balanced Execution Plan unless the KXL Term Shippers representing more than eighty percent (80%) of the KXL Committed Contract Volumes of the KXL Term Shippers which have provided Notice within the specified time frame voted for the Accelerated Plan in which case Carrier shall implement the Accelerated Execution Plan.

Shipper acknowledges and agrees that the items contained in the Project Execution Plans will represent Carrier's good faith estimate of such items and such estimates are not intended as representations or warranties of Carrier in respect of the relevant items. The Project Execution Plan selected by Carrier pursuant to this Section 5.1 shall apply to this Contract notwithstanding Shipper's individual election.

- 5.2 (a) Carrier shall provide Shipper with prior written notice (the "**Advance Notice**") of:
- (i) Carrier's schedule of Line Fill procedures requiring Shipper to deliver, over a period beginning approximately ninety (90) Days and ending no later than one hundred eighty (180) Days, following Shipper's receipt of the Advance Notice, its proportionate share of Line Fill necessary for the KXL Expansion Facilities; and
 - (ii) Carrier's intention to commence Working Stock acquisition activities.

Volumes of Line Fill and Working Stock shall be as determined by Carrier, acting reasonably. The Type of Line Fill and Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.

- (b) Carrier shall use reasonable efforts to provide Shipper with periodic updates as to Carrier's expected commencement of Line Fill procedures.
 - (c) If, following Shipper's receipt of the Advance Notice, Carrier alters the schedule of Line Fill procedures from that set forth in the Advance Notice, Carrier shall be solely liable for and shall indemnify Shipper from and against any and all damages, losses, expenses and costs incurred or suffered by Shipper as a result of Carrier's alteration of the schedule of Line Fill procedures from that set forth in the Advance Notice, unless such damages, losses, expenses or costs are due to Shipper's negligence, provided however that Carrier shall not be liable for or indemnify Shipper from and against any Special Damages.
- 5.3 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition, Line Fill and commissioning activities in respect of the KXL Expansion Facilities.
- 5.4 Upon completion of construction, commissioning, Line Fill and Working Stock acquisition activities with respect to the KXL Expansion Facilities pursuant to Section 5.2, Carrier shall provide Shipper with at least thirty (30) Days prior written notice of the date on which Firm Transportation Service under this Contract in respect of the Term is to commence (the "**Commencement Date**"). At least ten (10) Days prior to the Commencement Date, Shipper shall provide Carrier with Shipper's Monthly Nomination for the next ensuing Month on a Notice of Shipment as prescribed in the Rules and Regulations.
- 5.5 Unless otherwise precluded by regulatory requirements, Carrier shall return to Shipper substantially all of Shipper's Working Stock or in-transit batches of Petroleum which shall be of substantially the same type and quality as that which was delivered to Carrier commencing not later than sixty (60) days following the expiration or termination of this Contract, subject to operational constraints.

ARTICLE 6 TRANSPORTATION SERVICE

- 6.1 Subject to Section 9.2, from and after the Commencement Date and during the Term:
- (a) Shipper shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Rules and Regulations, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
 - (b) Carrier shall provide Firm Transportation Service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Contract and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Contract and the Tariff.
- 6.3 If Carrier has not received a Monthly Nomination by the time and date specified in Section 7.1 of the Rules and Regulations, Carrier shall use reasonable efforts to contact Shipper to confirm the failure was not inadvertent.

**ARTICLE 7
CONTRACT FINANCIAL ASSURANCE**

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

**ARTICLE 8
MAKE-UP RIGHTS AND BALANCING**

- 8.1 In the event that, during the Term, (a) Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume, or (b) Carrier does not accept Shipper’s Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier, Shipper shall, to the extent that, in Carrier’s discretion, operating conditions permit and capacity is available, be entitled to transport a make-up volume of the difference between its Monthly Volume and volumes actually Tended for shipment in that Month in any of the next following thirty-six (36) Months, provided that Shipper has first Tended its Monthly Volume in such Months before making use of any make-up volumes. Provided further that if such Force Majeure event continues beyond three (3) consecutive months Shipper shall not be entitled to accrue any make-up rights beyond such three (3) month period.
- 8.2 Where Shipper’s Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier’s batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier’s batching or balancing requirements.
- 8.3 Only the Variable Toll will be payable by Shipper regarding make-up volumes Tended in accordance with Section 8.1.
- 8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month written notice of any planned reduction of volume to be Tended for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.
- 8.5 Any make-up rights of Shipper arising out the operation of this Article 8 shall cease and shall be forfeited by Shipper at the expiration of the date that is 36 months following the last day of the Term.

**ARTICLE 9
TOLLS**

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Contract, including Appendix ‘B’ and the Tariff.

- 9.2 In the event of interruption, curtailment or reduction of Firm Transportation Service pursuant to an outage by Carrier either as described in Section 13.1 of the Rules and Regulations or for any other reason not attributable to Shipper but except for Carrier Force Majeure in accordance with Article 15 of the Rules and Regulations, Shipper shall not, for the period of such interruption, curtailment or reduction only, be required to pay the Fixed Toll hereunder regarding such portion of interrupted, curtailed or reduced Firm Transportation Service.
- 9.3 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any make-up volumes pursuant to Article 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Toll times the Excess Volume.
- 9.4 If Shipper has a Contract Volume of at least 7,950 m³/Day (50,000bbl/Day) and Shipper or its Affiliate has specified a Port Arthur Delivery Point as its delivery point in Appendix 'B' of its US GC TSA (and to the extent of the volumes allocated by Shipper or its Affiliate to the Port Arthur Delivery Point), then:
- (a) provided that neither Shipper nor its Affiliate that is a party to a US GC TSA is then in default of any material obligation under this Contract or the US GC TSA, Carrier agrees that, if Carrier and Keystone US transport volumes on the Pipeline System and the Keystone US Pipeline System with a Port Arthur Delivery Point on the Keystone US Pipeline System and for the same Type of Petroleum for one or more third party shippers, whether or not such shippers are Affiliates of Shipper at an Uncommitted Gulf Coast Price or an Alternate Gulf Coast Price lower than the Baseline Committed Price, then:
 - (i) for so long as such volumes are transported at such Uncommitted Gulf Coast Price or Alternate Gulf Coast Price, Carrier and Keystone US shall collectively reduce the Shipper Commitment Price by an amount per Cubic Meter equal to the difference between such Uncommitted Gulf Coast Price or Alternate Gulf Coast Price (as applicable) and the Baseline Committed Price; and
 - (ii) each of Carrier and Keystone US shall have sole discretion as to the allocation of any such reduction between the Pipeline System and the Keystone US Pipeline System.
 - (b) For the purposes of this Section 9.4, the following interpretative principles shall apply:
 - (i) "**Alternate Gulf Coast Price**" shall mean, at any time, the sum of:
 - (A) the fixed toll payable by a shipper under a contract for delivery to the point of interconnection with the pipeline facilities of Keystone U.S. at the international boundary that is not a Gulf Coast Expansion Contract; plus
 - (B) the commitment rate payable by a shipper under the corresponding contract in respect of the Keystone US Pipeline System for delivery to a Port Arthur Delivery Point that is not a US GC TSA; plus
 - (C) the Variable Toll; plus

- (D) the Variable Rate under the corresponding contract in respect of the Keystone US Pipeline System;
 - (ii) **“Committed Price”** shall mean, at any time, the sum of:
 - (A) the relevant Base Toll outlined in Part B of Appendix ‘B’, as adjusted for capital variance and Final Project Costs; plus
 - (B) the relevant Base Rate outlined in Part B of Appendix ‘B’ of the corresponding US GC TSA, as adjusted for capital variance and Final Project Costs of the Keystone US Pipeline System; plus
 - (C) the Variable Toll; plus
 - (D) the Variable Rate under the corresponding US GC TSA;
 - (iii) **“Baseline Committed Price”** shall mean, at any time, the Committed Price adjusted by the Term Discount for the shortest contract term outlined in Appendix ‘A’ then remaining in effect.
 - (iv) **“Port Arthur Delivery Point”** shall have the meaning given to such term in the US GC TSA;
 - (v) **“Shipper Commitment Price”** shall mean the sum of: (1) the Fixed Toll payable by Shipper under this Contract plus (2) the Term Shipper Commitment Rate payable by Shipper or its Affiliate under the US GC TSA;
 - (vi) **“Uncommitted Gulf Coast Price”** shall mean the sum of: (1) the Uncommitted Toll plus (2) the Uncommitted Rate for the Port Arthur Delivery Point on the Keystone US Pipeline System; and
 - (vii) all calculations of tolls and rates for the Pipeline System and the Keystone US Pipeline System will be made on a per Cubic Meter basis in Canadian dollars, with currency exchange calculations performed at the Bank of Canada noon day rate applicable on the date that is two business days immediately preceding the Monthly Nomination date.
- (c) An illustrative example of the calculation set forth in Section 9.4(a) is attached to this Contract as Appendix ‘D’.

ARTICLE 10 TERM OF CONTRACT

- 10.1 This Contract shall be effective as of the date it is signed by Shipper and Carrier, and unless terminated earlier in accordance with its terms, the initial term of this Contract shall commence on the Commencement Date and shall continue until the anniversary of said Commencement Date in accordance with the contract term specified by Shipper in Appendix ‘A’, subject to adjustment pursuant to Section 8.5 or 10.2 of this Contract (such period being the **“Term”**).
- 10.2 So long as Shipper is not otherwise in default of this Contract or the Rules and Regulations, Shipper shall have the single option, exercisable by written notice to Carrier and received by

Carrier not later than twenty-four (24) Months prior to the expiry of the Term, to extend the Term of this Contract:

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

provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone US Pipeline System pursuant to and in accordance with its US GC TSA with Keystone US. Such extension shall be on the same terms and conditions of this Contract, provided that the Fixed Toll for such extended Term shall be calculated in the manner described in paragraph B.3 of Appendix 'B'. Carrier shall provide Shipper with the Fixed Toll, subject to regulatory approval, for such extended Term no later than twenty-seven (27) Months prior to the expiry of the initial Term.

ARTICLE 11 NOTICES

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

In the case of Carrier: **TransCanada Keystone Pipeline GP Ltd.**

Mailing Address: 450 1st Street S.W.
Calgary, Alberta T2P 5H1

Delivery Address: 450 1st Street S.W.
Calgary, Alberta T2P 5H1
Attention: Crude Oil Contracts Administration
Fax: (403) 920-2285

In the case of Shipper:

Mailing Address:

Delivery Address:

Attention:
Fax:

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission except for any such transmission sent after 2:00 pm local time at the location at which the delivery is made, then such Notice shall be deemed received as of 8:00 am on the next business day. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local

time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) business days after mailing. For the purposes of this Section 11.1, a “**business day**” is any day from 8:00 a.m. to 5:00 p.m., excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

ARTICLE 12 MISCELLANEOUS PROVISIONS

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

and in good faith seek to renegotiate the terms of this Contract to comply with such ruling and in accordance with the initial expectations of the Parties under this Contract.

- 12.4 This Contract, and any claims against Carrier arising directly or indirectly out of or in connection with this Contract, may be assigned, in whole or in part, by Shipper only:
- (a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld or delayed, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may reasonably demand in accordance with this Contract, or (B) such Financial Assurances as Carrier may reasonably demand in accordance with the Rules and Regulations, as applicable; or
 - (b) to its Affiliate, upon 30 Days' prior written notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Contract.
- 12.5 Carrier may assign this Contract and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) any other Person in connection with the sale of all or substantially all of the assets of Carrier to such Person, provided that the rating given to such assignee's senior unsecured long term debt is not lower than any of the following at the time of such assignment: (i) "BBB" from Standard & Poor's Financial Services LLC (including its successors), and (ii) "Baa3" from Moody's Investors Services Inc. (including its successors), and provided further that contemporaneously with such assignment in connection with such sale, Affiliate of Carrier shall have similarly assigned the US GC TSA or its rights thereunder to any such assignee or an Affiliate of such assignee.
- 12.6 This Contract shall be construed and applied and be subject to the laws of the Province of Alberta, Canada and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction including the NEB. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Contract. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**
- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Contract or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Contract shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Contract may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.
- 12.10 Carrier will maintain the confidentiality of information provided and identified by Shipper as confidential or commercially sensitive. Notwithstanding the foregoing, nothing shall restrict disclosure by Carrier of: (i) the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis; or (ii) any information requested or required by applicable law or regulatory authority to be disclosed.

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

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

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

By: _____

Name:

Title:

By: _____

Name:

Title:

By: _____

Name:

Title:

By: _____

Name:

Title:

APPENDIX 'A'
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AGREEMENT
CONTRACT TERM AND CONTRACT VOLUME

Shipper to Complete:

Contract Volume to be a minimum of 795 m³/Day (5,000 bbl/Day), in increments of 795 m³/Day (5,000 bbl/Day).

| Contract Term | Contract Volume |
|----------------------|--|
| 20 Years | 795 m ³ /Day (5,000 bbl/Day) |

**APPENDIX ‘B’
to the
KEYSTONE GULF COAST EXPANSION PETROLEUM
TRANSPORTATION SERVICE AGREEMENT**

**SCHEDULE OF TOLLS AND TOLLING PRINCIPLES
FOR TRANSPORTATION FROM:
HARDISTY, ALBERTA TO THE INTERCONNECTION
WITH THE KEYSTONE US PIPELINE SYSTEM
AT THE INTERNATIONAL BOUNDARY**

A. TRANSPORTATION TOLLS

1. **Term of the Contract:** Every Month during the Term of the Contract Shipper shall pay to Carrier on the Payment Due Date, consistent with Article 9 of the Contract, the tolls and other charges set forth in this Appendix ‘B’ and incorporated into the Tariff.

B. MONTHLY REVENUE COMMITMENT

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

$$\text{Fixed Toll} = \text{Base Toll} - \text{Term Discount}$$

Where:

Base Toll in CAD\$ Per m³ (bbl) shall be Cdn.\$9.677 (Cdn.\$1.539) (Base Toll based on Estimated Project Costs of Cdn.\$2,758 million and to be adjusted for capital variance per Part C);

Term Discount equals the amount set out in the table below that corresponds to the Term of the Contract specified by Shipper in Appendix ‘A’;

| <i>Term of Contract</i> | <i>Term Discount in \$Cdn Per m³ (bbl)</i> |
|-------------------------|--|
| 10 Year | \$0.000 (\$0.000) |
| 15 Year | \$0.536 (\$0.085) |
| 20 Year | \$1.085 (\$0.173) |

2. **Capital Variance:** The Fixed Toll during the Term will be adjusted to reflect capital variance, in the manner described in Part C below; provided, however, Shipper shall not be responsible under this Contract for any capital costs associated with any future expansions of the Pipeline System.
3. **Fixed Toll Applicable to Extension Term:** In the event that Shipper exercises its option to extend the Term of the Contract in the manner described in either Section 10.2(a) or Section 10.2(b) of the Contract, the Fixed Toll applicable and payable for such extension Term

shall be such Fixed Toll as is established by Carrier at the time of renewal for 5-year contract terms.

4. **Suspension due to Force Majeure:** In the event that Carrier declares a Force Majeure event pursuant to Article 15 of the Rules and Regulations and the term of the Force Majeure event continues beyond three (3) consecutive months, no Fixed Toll in respect of the Contract Volume will be payable by Shipper during the remaining period of the Force Majeure event.

C. **CAPITAL VARIANCE**

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

“**AFUDC**” means Carrier’s allowance for funds used during construction, calculated based on the spend profiles of the KXL Expansion Facilities based on a deemed debt/equity split of (a) 60% to debt funding at a deemed cost of debt of 4% per annum, and (b) 40% to equity funding at a deemed cost of equity of 11% per annum, both for the period up to but not including the Commencement Date.

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

- (a) three quarters (3/4) of the difference between the Final Project Costs and \$2,222 million plus one half (1/2) of the difference between \$2,222 million and the Estimated Project Costs, if the amount of the Final Project Costs is no greater than Cdn. \$2,222 million;

or

- (b) one half (1/2) of the difference between the Final Project Costs and the Estimated Project Costs, if the amount of the Final Project Costs is greater than Cdn.\$2,222 million;

and

- (c) interest carrying charges on paragraph (a) or paragraph (b) above, as applicable, calculated at the Prime Rate, from the Commencement Date to the date of the Capital Variance Notice.

“**Estimated Project Costs**” Cdn. \$2,758 million, being the sum of Cdn. \$2,171 million plus estimated AFUDC in the amount of Cdn. \$586 million, representing Carrier’s estimate of the development, construction and acquisition costs of the KXL Expansion Facilities, based on a Balanced Execution Plan.

“**Final Project Costs**” means the sum of the actual development, construction and acquisition costs of the KXL Expansion Facilities, including AFUDC, expressed in Canadian dollars.

2. **Final Project Costs and Fixed Toll:**

- (a) Not later than two (2) Years following the Commencement Date, Carrier shall make a determination of the Final Project Costs. Upon such determination, Carrier will deliver a notice (the “**Capital Variance Notice**”) to Shipper. The Capital Variance Notice will set out the Final Project Costs, the resulting Capital Variance and the required adjustment to the Fixed Toll. For such purposes, the Fixed Toll shall be adjusted by a percentage decrease or increase, as the case may be, equal to the percentage difference between (ii)

the Estimated Project Costs, and (iii) the Estimated Project Costs plus the Capital Variance.

- (b) The Fixed Toll, adjusted to reflect the Capital Variance, will take effect for transportation services provided by Carrier in the first Month following the issuance of the Capital Variance Notice by Carrier. Accordingly, the first invoice issued by Carrier for transportation service provided in the first Month after the issuance of the Capital Variance Notice will charge the Fixed Toll adjusted to reflect the Capital Variance as set out in such Capital Variance Notice.
3. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the Capital Variance Notice within twelve (12) Months of the date of the Capital Variance Notice, in accordance with the audit procedure in Section 12.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the US GC TSA.

D. VARIABLE TOLL

1. **Payment of Variable Toll:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Toll (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of kilometres to such Delivery Point, times (iii) (subject to Section 9.1 of the Contract) the Monthly Volume actually Tended by the Shipper for such Month.

$$\text{Variable Toll} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Kilometres for that Month}}$$

Where:

Weighted Barrel Kilometres equals Light Barrel Kilometres + Heavy Barrel Kilometres;

Light Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Light Crude Tended in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of kilometres to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tended in a Month by all Shippers at such Receipt Point, multiplied by the number of kilometres to the relevant Delivery Point.

The Variable Toll in respect of Heavy Crude shall be the amount as calculated above, and the Variable Toll in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Toll:** On an annual basis during the Term of the Contract, Carrier will estimate the “**Operating, Maintenance and Administration Costs**” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes, to estimate the “**Variable Toll**” for each Month in the Year. In estimating the Variable Toll, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices,

Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Toll, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
 - (b) property taxes;
 - (c) capital taxes;
 - (d) insurance;
 - (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System; and
 - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Maintenance Capital Items (“MCI”)**: Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed Cdn\$2,000,000, such amounts will be treated as an MCI. Carrier will provide prompt notice to Shipper of any MCI and consult with the Term Shippers as to a reasonable allocation of such MCI into the Variable Toll. All MCIs will be amortized in accordance with good accounting practice and (i) added to the Variable Toll in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Toll for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Toll.
4. **Notice of Estimated Variable Toll**: Carrier shall provide Shipper with its estimate of the Variable Toll for each Month (based on the Type(s) of Petroleum) for the upcoming Year in the notice of the Commencement Date contemplated in Section 5.3 of the Contract. Thereafter, Carrier will revise the estimated Variable Toll annually and provide Shipper with such revised toll, together with details of its calculation and explanation for any adjustments from the previous Variable Toll, on or before December 1 of each Year during the Term. Such estimated Variable Toll shall take effect as of January 1 of the succeeding Year.
5. **Final Variable Toll**: After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier’s financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Toll. Carrier will provide Shipper with notice of the final Variable Toll, together with details of its calculation and

explanation for any adjustments from the estimated Variable Toll. If the final Variable Toll for the applicable Year is greater than or less than the estimated Variable Toll charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly instalments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Toll and the final Variable Toll and the aggregate of Shipper's Nominations, up to a maximum of Shipper's Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.

6. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the final Variable Toll within twelve (12) Months of the date of Carrier's notice of the final Variable Toll pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the US GC TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in section 12.1 and for greater certainty will not include any information attributable to individual shippers.
7. **Incentive Tolling Arrangements:** After the third anniversary of the Commencement Date, Carrier shall seek to negotiate an incentive tolling agreement with the Term Shippers whereby Term Shippers and Carrier would be entitled to share in any cost savings realized as a result of any reductions in the Operating, Maintenance and Administration Costs.

APPENDIX 'C'
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AGREEMENT

DRAFT RULES AND REGULATIONS

See attached.

Note: The Rules and Regulations that will be attached to this Contract, when executed, will reflect the Petroleum Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum filed with or approved by the NEB as in effect as of the date of the Option Notice, as such term is defined in the Patoka Convertible Petroleum Transportation Service and Throughput Agreement to which this Contract is appended, and will include such other changes as are reasonably necessary to incorporate the KXL Expansion Facilities.

APPENDIX 'D'
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AGREEMENT

ILLUSTRATIVE EXAMPLE OF THE CALCULATION SET FORTH IN SECTION 9.4(a)

This illustrative example is calculated in U.S. \$/barrel and actual calculations are performed in Cdn. \$/m³ in accordance with Section 9.4(b)(vii).

General Assumptions:

No Capital Variance adjustment
No inflation in variable toll (assumed \$1.77 total variable and 75/25 split US/Canada)
All tolls are in US\$ per bbl (foreign exchange factor of 0.90 \$US/\$Cdn assumed for Canadian tolls)
Alternate Gulf Coast Price to Port Arthur = US\$ 6.00
Spot Price (Uncommitted Gulf Coast Price) to Port Arthur = US\$6.00

Example A - Year of analysis: 2020 (8 years after Commencement)

Baseline Committed Price: Shortest term remaining in effect = 10 year term

Note: Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

| | | | |
|-----------------------------------|----------|--------|--|
| Base Rate - US: | 3.492 | | |
| Base Toll - Canada: | 0.988 | | |
| | Subtotal | 4.48 | |
| Estimated Variable Rate – US: | 1.3275 | | |
| Estimated Variable Toll – Canada: | 0.4425 | | |
| | Subtotal | 1.77 | |
| | Total | \$6.25 | |

Calculation:

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

Example: Shipper Commitment Price - Assume 20 Year, Volume Discount

| | | | |
|-----------------------------------|--------|--|--|
| Term Shipper Commitment Rate: | 2.852 | | (Base – term discount – volume discount) |
| Canadian Fixed Toll: | 0.878 | | (Base – term discount) |
| Subtotal | \$3.73 | | |
| Uncommitted Gulf Coast Price | 6.000 | | |
| <u>– Baseline Committed Price</u> | 6.250 | | |
| Adjustment amount | \$0.25 | | |
| New Term Shipper Commitment Rate | \$3.48 | | |

Summary Table of New Term Shipper Commitment Rate for US and Canada:

| | |
|------------------------------------|------------------------------------|
| <i>20 Year, 120,000 bpd</i> | <i>3.73 – 0.25 = \$3.48</i> |
| <i>20 Year</i> | <i>3.98 – 0.25 = \$3.73</i> |

| | |
|----------------|------------------------|
| <i>15 Year</i> | $4.23 - 0.25 = \$3.98$ |
| <i>10 year</i> | $4.48 - 0.25 = \$4.23$ |

Example B - Year of analysis: 2025 (13 years after Commencement)

Baseline Committed Price: Shortest term remaining in effect = 15 year term

Note: Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

| | | |
|-----------------------------------|----------|--------|
| Base Rate - US: | 3.297 | |
| Base Toll - Canada: | 0.933 | |
| | Subtotal | 4.23 |
| Estimated Variable Rate – US: | 1.3275 | |
| Estimated Variable Toll – Canada: | 0.4425 | |
| | Subtotal | 1.77 |
| | Total | \$6.00 |

Calculation:

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

Example: Shipper Commitment Price - Assume 20 Year, Volume Discount

| | | |
|--------------------------------------|-------------------|--|
| Term Shipper Commitment Rate: | 2.852 | (Base – term discount – volume discount) |
| Canadian Fixed Toll: | 0.878 | (Base – term discount) |
| | Subtotal | \$3.73 |
| Uncommitted Gulf Coast Price | 6.000 | |
| <u>– Baseline Committed Price</u> | <u>6.000</u> | |
| | Adjustment amount | \$0.00 |
| New Term Shipper Commitment Rate | \$3.73 | |

Summary Table of New Term Shipper Commitment Rate for US and Canada:

| | |
|-----------------------------|------------------------|
| <i>20 Year, 120,000 bpd</i> | $3.73 - 0.00 = \$3.73$ |
| <i>20 Year</i> | $3.98 - 0.00 = \$3.98$ |
| <i>15 Year</i> | $4.23 - 0.00 = \$4.23$ |
| <i>10 year</i> | $4.48 - 0.00 = \$4.48$ |

Example C - Year of analysis: 2030 (18 years after Commencement)

Baseline Committed Price: Shortest term remaining in effect = 20 year term

Note: Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

| | | |
|-----------------------------------|----------|--------|
| Base Rate - US: | 3.102 | |
| Base Toll - Canada: | 0.878 | |
| | Subtotal | 3.98 |
| Estimated Variable Rate – US: | 1.3275 | |
| Estimated Variable Toll – Canada: | 0.4425 | |
| | Subtotal | 1.77 |
| | Total | \$5.75 |

Calculation:

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

Example: Shipper Commitment Price - Assume 20 Year, Volume Discount

| | | |
|-----------------------------------|--------|--|
| Term Shipper Commitment Rate: | 2.852 | (Base – term discount – volume discount) |
| Canadian Fixed Toll: | 0.878 | (Base – term discount) |
| Subtotal | \$3.73 | |
| Uncommitted Gulf Coast Price | 6.000 | |
| <u>– Baseline Committed Price</u> | 5.750 | |
| Adjustment amount | | * |

* No calculation required per 9.4 a) since Uncommitted Gulf Coast Price is higher than Baseline Committed Price.

5.4 FORM OF U.S. CONVERTIBLE TSA

TRANSCANADA KEYSTONE PIPELINE, LP
PATOKA CONVERTIBLE PETROLEUM TRANSPORTATION
SERVICE AND THROUGHPUT AGREEMENT
(2015 Keystone Open Season)

THIS CONTRACT made as of the 23rd day of September, 2015.

PARTIES:

TRANSCANADA KEYSTONE PIPELINE, LP,
a limited partnership registered under the laws of Delaware
with its head office in the City of Houston, Texas (“Carrier”);

AND

_____, a _____
existing under the laws of _____ (“Shipper”)

WHEREAS:

- A. Shipper has requested and, subject to the satisfaction or waiver of the conditions precedent set forth in ARTICLE 3, Carrier has agreed to transport the Contract Volume of Petroleum Tendered by Shipper pursuant to the terms and conditions of this Agreement, and subject to the Tariff;
- B. Shipper wishes to make a binding commitment to Carrier regarding the transportation of Petroleum as set forth in this Agreement, and upon its execution of this Agreement to become a Term Shipper; and
- C. Carrier is prepared to offer rates and terms of service to Shipper subject to and in accordance with the provisions of this Agreement and the Tariff.

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

ARTICLE 1
INTERPRETATION

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

“**Advance Notice**” means the Advance Notice to be provided by Carrier to the Term Shippers pursuant to section 5.1(a) of the Gulf Coast Expansion Contract

“**Agreement**” means this Petroleum Transportation Service and Throughput Agreement and any appendices attached hereto in each case, as may be amended, modified, supplemented or restated from time to time.

“Applicable Law” means any applicable:

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

in each case to the extent having jurisdiction over the Pipeline System, Keystone Canada Pipeline System, Carrier or the Parties.

“Canadian Convertible TSA” means a petroleum transportation service agreement, on terms and conditions corresponding to this Agreement, for the transportation of Petroleum on the Keystone Canada Pipeline System.

“Commencement Date” has the meaning given that term in Section 5.2.

“Contract” has the meaning given in the Rules and Regulations, and this Agreement shall constitute a Contract for such purposes.

“Contract Financial Assurances” has the meaning given that term in Section 7.1.

“Convertible Patoka Contract” means a Contract between Carrier and a Term Shipper, on terms and conditions corresponding to this Agreement.

“Curtailment Event” has the meaning given that term in Section 9.2.

“Governmental Authority” means any:

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

“Gulf Coast Expansion Contract” means a contract between Carrier and a Term Shipper, on terms and conditions corresponding to the contract attached as Appendix ‘C’, as such form may have been amended following the date of this Agreement by the other Term Shippers party to Gulf Coast Expansion Contracts.

“Make-Up Volume” means, in respect of any Month, an accrual of a quantity of Petroleum equal to the difference between the Monthly Volume and actual volumes Tendered for shipment in that Month, calculated in accordance with Section 8.1.

“Notice” has the meaning given that term in Section 11.1.

“Open Season” means the open season bid tender procedures initiated by Carrier in respect of this Agreement (and related Contracts) to provide services to Term Shippers on the Pipeline System (as such procedures may be replaced or amended from time to time).

“Operating, Maintenance and Administration Costs” has the meaning given that term in paragraph D.2 of Appendix ‘B’.

“Option Notice” has the meaning given that term in Section 10.2a).

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

“Rules and Regulations” means the “Local Pipeline Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum” filed at the FERC as in effect at the applicable time.

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

“Tariff” means the Rules and Regulations and rates filed at FERC, as may be amended from time to time.

“Term” has the meaning given that term in Section 10.1.

“Term Shipper Commitment Rate” means the Term Shipper Commitment Rate described in paragraph B.3 of Appendix ‘B’.

“Termination Date” means the relevant termination date outlined in ARTICLE 4.

“Variable Rate” means the “Variable Rate” described in Part D of Appendix ‘B’.

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

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

- a) Appendix ‘A’, entitled “Shipper Elections”;
- b) Appendix ‘B’, entitled “Schedule of Rates and Rate Principles”; and
- c) Appendix ‘C’, entitled “Form of Gulf Coast Expansion Contract”.

1.3 In this Agreement:

- a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions of this Agreement nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”.

- c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- d) Time is of the essence in the performance of the Parties' respective obligations.
- e) If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
- f) This Agreement, together with the Rules and Regulations in effect at the relevant time, constitutes the entire agreement of the Parties relating to their relationship under this Agreement. All prior negotiations and all provisions and concepts contained in all prior agreements between the Parties on matters contained in this Agreement are expressly superseded by this Agreement. The Parties expressly waive any reliance on representations or course of dealings made prior to the execution of this Agreement regarding the subject matter of this Agreement.

ARTICLE 2 REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Agreement, Carrier, in conjunction with Keystone Canada, shall proceed with due diligence and in good faith to seek to obtain from all Governmental Authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone Canada, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to provide transportation service for Shipper as contemplated in the Tariff, except for those that are, in the opinion of each of Carrier and Keystone Canada, not material (collectively, the "**Regulatory Approvals**").
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone Canada have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone Canada shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone Canada in its sole discretion, to be unsatisfactory to Carrier or Keystone Canada, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone Canada for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information (collectively, "**Shipper Information**"). Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not

commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and Applicable Law, Carrier shall not disclose to third parties (other than to Keystone Canada, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Prior to the Commencement Date, Shipper agrees not to:

- a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone Canada's applications for Regulatory Approvals before any of: (i) the FERC, (ii) the NEB, (iii) any state certificating authorities, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing; or
- b) make any statements, whether directly or indirectly, that indicate a lack of support for the Pipeline System or the Keystone Canada Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.
- c) Notwithstanding the other provisions of this Section 2.4, nothing is intended to, or shall be construed as a waiver of, or any limitation of, Shipper's rights under Applicable Law to intervene in any application for Regulatory Approvals (including reasonable and valid concerns raised before the FERC in respect of the Tariff or the proposed toll methodology outlined in the Tariff) that are materially inconsistent with the terms of this Agreement or the Rules and Regulations, or to require Shipper to act in a manner that would be inconsistent with any Applicable Law.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Subject to Section 2.1 and ARTICLE 4, Carrier's obligations under this Agreement are subject to the satisfaction of the following conditions precedent:

- a) Carrier and its Affiliates shall have obtained, on terms acceptable to Carrier in its sole discretion, all U.S. Regulatory Approvals.
- b) Keystone Canada and its Affiliates shall have obtained, on terms acceptable to Keystone Canada in its sole discretion, all Canadian Regulatory Approvals.
- c) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Agreement, entered into a Canadian Convertible TSA for transportation of Petroleum on the Keystone Canada Pipeline System, which Canadian Convertible TSA remains in full force and effect.

- d) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone Canada as contemplated under this Agreement and any petroleum transportation service agreement with Keystone Canada, including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone Canada shall have no liability or obligation whatsoever to Shipper in the event either or both of them declines to file for, withdraws from, or rejects any Regulatory Approval.

- 3.2 The conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.
- 3.3 The execution and delivery by Shipper of this Agreement constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Agreement is executed and delivered by Carrier, subject always to the other provisions of this ARTICLE 3, provided that if this Agreement is not executed by Carrier on or before the date which is 60 days following the completion of the Open Season, Shipper's offer shall, at Shipper's option, expire and be of no further force and effect.

ARTICLE 4 TERMINATION

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

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

- 4.2 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Section 7.1 within 10 Banking Days of Carrier's written demand therefor, Carrier may, subject to Shipper's obligations under Section 4.3, immediately terminate this Agreement by providing further Notice to Shipper.

- 4.3 If the right to terminate this Agreement is exercised by Carrier pursuant to Section 4.1b), 4.1c) or Section 4.2, Shipper shall, to the extent permitted by Applicable Law and subject to Carrier's obligation to mitigate, pay to Carrier the net present value of the aggregate of: (a) the Monthly Revenue Commitment payable under this Agreement for the unexpired term of this Agreement, (b) all applicable taxes, (c) all amounts owing under this Agreement in respect of Petroleum Delivered but for which all tolls, rates and any other charges are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. The obligations under this Section 4.3 shall survive termination of this Agreement.
- 4.4 If on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt, Shipper may terminate this Agreement on 30 days' prior Notice to Carrier (a "**Shipper Termination Notice**").

ARTICLE 5 COMMENCEMENT OF SERVICE

- 5.1 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition activities in respect of the Pipeline System. Volumes of Working Stock shall be as determined by Carrier, acting reasonably. The Type of Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.
- 5.2 The date on which transportation service under this Agreement is to commence (the "**Commencement Date**") is November 1, 2015. Not later than October 20, 2015, Shipper shall provide Carrier with Shipper's Monthly Nomination for the Month of November 2015, on a Notice of Shipment as prescribed in the Rules and Regulations.

ARTICLE 6 TRANSPORTATION SERVICE

- 6.1 From and after the Commencement Date and during the Term:
- a) Shipper guarantees that it shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Tariff, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
 - b) Carrier shall provide transportation service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Agreement and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Agreement and the Tariff.

ARTICLE 7 CONTRACT FINANCIAL ASSURANCES

- 7.1 Shipper shall, if and when reasonably requested by Carrier at any time, whether prior to the Commencement Date or otherwise, provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier, acting reasonably (the "**Contract Financial Assurances**"), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure all obligations or potential obligations of Shipper under this Agreement.

ARTICLE 8
MAKE-UP RIGHTS AND BALANCING

8.1 In the event that, during the Term:

- a) Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume for any reason, or
- b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier,

Shipper shall be entitled to accrue a Make-Up Volume that may be utilized in any of the next following 36 Months **provided that** (i) Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights in respect of any Curtailment Event; and (ii) in the case of a Force Majeure event declared by Carrier which continues beyond 3 consecutive Months, Shipper shall not be entitled to accrue any Make-Up Volumes or associated rights beyond those accrued in such 3-Month period.

8.2 Notwithstanding Section 8.1 or any other provision of this Agreement:

- a) Shipper shall be entitled to utilize Make-Up Volumes only to the extent that operating conditions permit and capacity is available (as determined by Carrier), provided that Shipper has first Tendered its Monthly Volume in such Months before making use of any accrued Make-Up Volumes.
- b) Shipper shall only have the right to utilize Make-Up Volumes to the Contract Delivery Point. Nominations in respect of any other Delivery Point shall be subject to additional rates and other charges in accordance with the Tariff. Subject to the foregoing, in respect of Make-up Volumes Tendered in accordance with Section 8.1 or Section 8.2:
 - (i) no additional Term Shipper Commitment Rate will be payable by Shipper; and
 - (ii) for greater certainty, Shipper shall remain responsible for payment of the Variable Rate in respect of such Make-Up Volumes.
- c) Any Make-Up Volumes of Shipper (and any rights associated therewith) arising out the operation of Section 8.1 or Section 8.2 shall cease, expire and shall be forfeited by Shipper at the expiration of the earlier of: (i) the time period described in Section 8.1; and (ii) the expiration of the Term.

8.3 Where Shipper's Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier's batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier's batching or balancing requirements.

8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month Notice of any planned reduction of volume to be Tendered for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.

**ARTICLE 9
RATES**

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Agreement and the Tariff, including: (i) the Term Shipper Commitment Rate, (ii) the Variable Rate, plus (iii) the rates and all other charges and adjustments as set forth in Appendix 'B'.
- 9.2 In the event of interruption of transportation service pursuant to an outage by Carrier as described in section 13.1 of the Rules and Regulations (a "**Curtailed Event**"), the Term Shipper Commitment Rate in respect of any Monthly Volume not Tendered directly as a result of such Curtailed Event shall not be payable by Shipper during the period of such Curtailed Event.
- 9.3 In the event that: (i) Carrier declares a Force Majeure event pursuant to Item 15 of the Rules and Regulations, and (ii) the term of such Force Majeure continues beyond 3 consecutive months, the Term Shipper Commitment Rate in respect of any Monthly Volume not Tendered directly as a result of such Force Majeure event will not be payable by Shipper during the remaining period of such Force Majeure event.
- 9.4 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any Make-Up Volumes pursuant to ARTICLE 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Rate times the Excess Volume.

**ARTICLE 10
TERM OF CONTRACT**

- 10.1 This Agreement shall be effective as of the date it is signed by Shipper and Carrier. Unless terminated earlier in accordance with its terms, the initial term of this Agreement shall commence on the Commencement Date and shall, subject to termination pursuant to Section 10.2 continue until the 20th anniversary of the Commencement Date, subject also to extension pursuant to Section 10.3 (such period being the "**Term**").
- 10.2 In respect of the Gulf Coast Expansion Contract:
- a) So long as Shipper is not otherwise in default of this Agreement or the Tariff, upon receiving Notice from Carrier (the "**Option Notice**"), Shipper shall have the single option, exercisable by Notice to the Carrier (which Notice shall include an executed copy of the Gulf Coast Expansion Contract) within 60 days following receipt of the Option Notice, to elect to convert this Agreement into a Gulf Coast Expansion Contract with a 20-Year Term commencing on the Commencement Date under the Gulf Coast Expansion Contract, on terms and conditions corresponding with the then-existing Gulf Coast Expansion Contracts, in the same manner as if Shipper had subscribed as "Shipper" under the Gulf Coast Expansion Contract during the original open season for the Gulf Coast Expansion Contracts held in the summer of 2008; provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone Canada Pipeline System pursuant to and in accordance with its Canadian Convertible TSA with Keystone Canada. Carrier agrees not to issue the Option Notice until: (i) Carrier and Keystone Canada have obtained the applicable regulatory approvals for the KXL Expansion Facilities in accordance with section 2.1 of the Gulf Coast Expansion Contract, and (ii) Carrier has commenced construction of the KXL Expansion Facilities.

In the event that Shipper has not exercised such option within 60 days following receipt of the Option Notice, such option shall expire and be of no further force and effect.

- b) If Shipper has exercised its option to Convert this Agreement into a Gulf Coast Expansion Contract in accordance with Section 10.2a), and if Shipper is not otherwise in default of this Agreement, the Gulf Coast Expansion Contract or the Tariff, then, effective the “Commencement Date” under the Gulf Coast Expansion Contract, this Agreement will be terminated and replaced with the Gulf Coast Expansion Contract.
 - c) For greater certainty, in respect of the exercise of any option to convert this Agreement into a Gulf Coast Expansion Contract:
 - (i) to the extent that Shipper was prorated as a result of the Open Season such that Shipper received a Contract Volume under this Agreement of less than 795 m³/Day (5,000 bbl/Day), Shipper shall nonetheless execute and to deliver to Carrier a Gulf Coast Expansion Contract with a Contract Volume of 795 m³/Day (5,000 bbl/Day); provided that Carrier shall have the option, in its discretion (exercisable prior to the date of the Advance Notice under the Gulf Coast Expansion Contract on Notice to Shipper), to prorate the Contract Volume under the Gulf Coast Expansion Contract to the Contract Volume received by Shipper under this Agreement; and
 - (ii) nothing in this Agreement shall limit Shipper’s obligations in respect of Line Fill and Working Stock pursuant to article 5 of the Gulf Coast Expansion Contract, which shall be binding upon Shipper from and after the Advance Notice, in the manner described in article 5 of the Gulf Coast Expansion Contract.
- 10.3 Subject to Section 10.2, and so long as Shipper is not otherwise in default of this Contract or the Tariff, Shipper shall have the single option, exercisable by Notice to Carrier received by Carrier not later than 24 Months prior to the expiry of the Term, to extend the Term of this Agreement for a single additional Yearly period nominated by Shipper, not to exceed 10 Years provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone Canada Pipeline System pursuant to and in accordance with its Canadian Convertible TSA with Keystone Canada. Such extension shall be on the same terms and conditions of this Agreement, provided that the Term Shipper Commitment Rate for such extended Term shall be calculated in the manner described in paragraph B.2 of Appendix ‘B’. Carrier shall give Notice to Shipper of the Term Shipper Commitment Rate for such extended Term no later than 27 Months prior to the expiry of the initial Term, which Term Shipper Commitment Rate may be subject to regulatory approval.

ARTICLE 11 NOTICES

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

In the case of Carrier: TransCanada Keystone Pipeline, LP

(1) Mailing Address: PO Box 2446
Houston, TX 77252-2446

(2) Delivery Address: 700 Louisiana Street, Suite 700
Houston, TX 77002-2700

Attention: Corporate Secretary
Fax: 832.320.6201

WITH A COPY TO: 450 1st Street SW
Calgary, AB Canada T2P 5H1
Attention: Crude Oil Contracts Administration
Fax: 403.920.2285

In the case of Shipper:

(1) Mailing Address:

(2) Delivery Address:

Attention:
Fax:

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given 4 hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given 4 business days after mailing. For the purposes of this Section, a “**business day**” is any day, excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

11.2 Notwithstanding the provisions of Section 11.1, operational notices to Shipper may be delivered by Carrier via the Keystone Customer Portal.

ARTICLE 12
MISCELLANEOUS PROVISIONS

- 12.1 Where this Agreement provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party's business or operations (upon reasonable and timely notice and at the auditing Party's expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Rules and Regulations and the rates and other charges set out in the Tariff (the "**Rates**") as in effect at that time, as each may be amended or approved from time to time by Carrier or the FERC, are all by reference made a part of and incorporated into this Agreement and operations hereunder shall, in addition to the terms and conditions set out in this Agreement, be subject to the provisions thereof. Carrier shall notify Shipper at any time that Carrier proposes to amend the Tariff or the Rates, or otherwise files with the FERC revisions to the Tariff or the Rates and shall provide Shipper with notice of such revisions.
- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental, or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Agreement, then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Agreement to comply with such ruling and in accordance with the initial expectations of the Parties under this Agreement.
- 12.4 This Agreement, and any claims against Carrier arising directly or indirectly out of or in connection with this Agreement, may be assigned, in whole or in part, by Shipper only:
- a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may demand in accordance with this Agreement, or (B) such Financial Assurances as Carrier may demand in accordance with the Tariff, as applicable; or
 - b) to its Affiliate, upon 30 days' prior Notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Agreement.
- 12.5 Carrier may assign this Agreement and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) in connection with the sale of all or substantially all of the assets of Carrier to any other Person.
- 12.6 This Agreement shall be construed and applied and be subject to the laws of the Province of Alberta, Canada, and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction, including the FERC. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of

any action, suit or other judicial procedures in respect of this Agreement. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**

- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Agreement or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Agreement shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Agreement may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.

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

**TRANSCANADA KEYSTONE PIPELINE
LP** by its general partner **TRANSCANADA
KEYSTONE PIPELINE GP, LLC**

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

APPENDIX 'A'
SHIPPER ELECTIONS

Contract Delivery Point: Wood River and/or Patoka, Illinois

Contract Volume: 795 m³/Day (5,000 bbl/Day)

APPENDIX 'B'
SCHEDULE OF RATES AND RATE PRINCIPLES

A. TRANSPORTATION RATES

1. **Payment:** Every Month during the Term, Shipper shall pay to Carrier on the Payment Due Date, consistent with ARTICLE 9 of the Agreement, the rates and other charges set forth below and in the Tariff.
2. **No-Indexing:** Subject to paragraph D.7, Carrier shall not apply the FERC's indexing methodology to determine any of the rates set out in this Appendix 'B'.

B. MONTHLY REVENUE COMMITMENT

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term, Shipper shall pay a "Monthly Revenue Commitment" in respect of its Monthly Volume. Shipper's Monthly Revenue Commitment for any Month shall be the product obtained by multiplying the Term Shipper Commitment Rate times the Monthly Volume.

| Term Shipper Commitment Rate in U.S. \$ Per m ³ (bbl) |
|--|
| \$13.464 (\$2.141) |

2. **Term Shipper Commitment Rate Applicable to Extension Term:** In the event that Shipper exercises its option to extend the initial Term in the manner described in Section 10.3 of the Agreement, the Term Shipper Commitment Rate applicable and payable for such extension Term shall be such Term Shipper Commitment Rate as is established by Carrier at the time of renewal in accordance with Section 10.3 of the Agreement.

C. [INTENTIONALLY LEFT BLANK]

D. VARIABLE RATE

1. **Payment of Variable Rate:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Rate (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of miles to such Delivery Point, times (iii) (subject to Section 9.1 of the Agreement) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Rate} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Miles for that Month}}$$

Where:

Weighted Barrel Miles equals Light Barrel Miles + Heavy Barrel Miles;

Light Barrel Miles equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of miles to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Miles equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of miles to the relevant Delivery Point.

The Variable Rate in respect of Heavy Crude shall be the amount as calculated above, and the Variable Rate in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Rate:** On an annual basis during the Term, Carrier will estimate the “Operating, Maintenance and Administration Costs” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes to estimate the “**Variable Rate**” for each Month in the Year. In estimating the Variable Rate, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Rate, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
 - (b) property taxes;
 - (c) capital taxes;
 - (d) insurance;
 - (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System; and
 - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Extraordinary Maintenance Costs/Non-routine Adjustments:** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed U.S.\$2,000,000, such amounts will be treated as a non-routine adjustment (“**NRA**”). Carrier will provide prompt notice to Shipper of any NRA and consult with the Term Shippers as to a reasonable allocation of such NRA into the Variable Rate. All NRAs will be amortized in accordance with good accounting practice and (i) added to the Variable Rate in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Rate for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Rate.

4. **Applicable Variable Rate:** The Variable Rate for the Year in which the Commencement Date occurs (based on the Type(s) of Petroleum) shall be as posted in the Tariff. Thereafter, Carrier will revise the estimated Variable Rate annually and provide Shipper with such revised rate, together with details of its calculation and explanation for any adjustments from the previous applicable Variable Rate, on or before December 1 of each Year during the Term. Such estimated Variable Rate shall take effect as of January 1 of the succeeding Year.
5. **Final Variable Rate:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier's financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Rate. Carrier will provide Shipper with notice of the final Variable Rate, together with details of its calculation and explanation for any adjustments from the estimated Variable Rate. If the final Variable Rate for the applicable Year is greater than or less than the estimated Variable Rate charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly installments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Rate and the final Variable Rate and the aggregate of Shipper's Nominations, up to a maximum of Shipper's Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.
6. **Audit Right:** Shipper shall have the right to conduct a single audit of the calculations underlying the final Variable Rate within 12 Months of the date of Carrier's notice of the final Variable Rate pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1 of the Agreement. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the Canadian Convertible TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in Section 12.1 of the Agreement, and for greater certainty will not include any information attributable to individual shippers.

APPENDIX 'C'
FORM OF GULF COAST EXPANSION CONTRACT

**KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE
AND THROUGHPUT AGREEMENT**

THIS CONTRACT made as of the ___ day of _____, _____.

PARTIES:

_____, a _____
existing under the laws of _____ (“Shipper”)

AND

TRANSCANADA KEYSTONE PIPELINE, LP,
a limited partnership registered under the laws of Delaware
with its head office in the City of Houston, Texas (“Carrier”);

WHEREAS:

- A. Carrier is proposing to construct, own and operate the Keystone Initial Facilities;
- B. Carrier is proposing to construct, own and operate an expansion and extension of the Keystone Initial Facilities, including an extension to the U.S. Gulf Coast;
- C. Shipper has requested, and subject to the satisfaction or waiver of the conditions precedent set forth in Article 3, Carrier has agreed, to transport the Contract Volume of Petroleum Tendered by Shipper or Shipper’s agent pursuant to the terms and conditions of this Contract, and subject to the Tariff;
- D. Shipper wishes to make a firm commitment to Carrier regarding the transportation of Petroleum on the Pipeline System as set forth in this Contract, including all Appendices, and upon its execution of this Contract to become a Term Shipper; and
- E. In recognition of the support provided by Shipper for the KXL Expansion Facilities Carrier is prepared to offer rates and terms of service to Shipper subject to and in accordance with the provisions of this Contract, and the Tariff.

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

**ARTICLE 1
INTERPRETATION**

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

“**Accelerated Execution Plan**” means a Project Execution Plan primarily intended to achieve a Commencement Date earlier than that set forth in the Balanced Execution Plan, including a

mechanism to maintain Carrier's return neutrality relative to the Balanced Execution Plan with supporting information in respect of the neutrality calculation.

"Advance Notice Sunset Date" means June 30, 2018.

"Advance Notice" has the meaning given that term in Section 5.2.

"Alternate Gulf Coast Price" has the meaning given that term in Section 9.4(b).

"Balanced Execution Plan" means a Project Execution Plan intended to achieve a balance between the costs, schedule and risks of the construction of the Keystone Phase 4 Facilities.

"Baseline Committed Price" has the meaning given that term in Section 9.4(b).

"business day" has the meaning given that term in Section 11.1.

"Canadian GC TSA" means a petroleum transportation agreement, on terms and conditions corresponding to this Contract, for the transportation of Petroleum on the Keystone Canada Pipeline System.

"Canadian Houston Lateral TSA" means a petroleum transportation agreement, on terms and conditions corresponding to a Houston Lateral Contract, for the transportation of Petroleum on the Keystone Canada Pipeline System.

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

"Carrier" has the meaning given that term in the recitals.

"Carrier Termination Notice" has the meaning given that term in Section 4.1.

"Commencement Date" has the meaning given that term in Section 5.4.

"Committed Contract Volume" means the Contract Volume committed by a Term Shipper pursuant to a Gulf Coast Expansion Contract between such Term Shipper and Carrier in effect at the relevant time.

"Committed Price" has the meaning given that term in Section 9.4(b).

"Contract Financial Assurances" has the meaning given that term in Article 7.

"Final Project Costs" means the "Final Project Costs" described in Part C of Appendix 'B'.

"Gulf Coast Expansion Contract" means a contract between Carrier and a Term Shipper on terms and conditions substantially corresponding to this Keystone Gulf Coast Expansion Petroleum Transportation Service and Throughput Agreement (as amended).

"GCEC Term Shipper" means a Term Shipper which is a party to a valid and existing Gulf Coast Expansion Contract.

“**HLC Term Shipper**” means a Term Shipper which is a party to a valid and existing Houston Lateral Contract.

“**Houston Lateral Contract**” means a Keystone Houston Lateral Petroleum Transportation Service and Throughput Agreement between Carrier and a Term Shipper, as amended by the parties pursuant to the terms thereof.

“**In-Service Sunset Date**” means June 30, 2019.

“**Keystone Initial Facilities**” means, collectively, the Keystone Phase 1 Facilities and the Keystone Phase 2 Facilities.

“**Keystone Phase 1 Facilities**” means that portion of the Pipeline System consisting of:

- (a) Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at the international boundary at or near Haskett, Manitoba and terminating at or near Patoka, Illinois, with a nominal transportation capacity of approximately 435,000 barrels per day of Petroleum and
- (b) associated facilities required to expand the Keystone Phase 1 Facilities to a nominal transportation capacity of approximately 590,000 barrels per day of Petroleum.

“**Keystone Phase 2 Facilities**” means that portion of the Pipeline System consisting of:

- (a) the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at a point of interconnection with the Keystone Phase 1 Facilities located at or near Steele City, Nebraska and terminating at or near Cushing, Oklahoma, with a nominal transportation capacity of approximately 590,000 barrels per day of Petroleum and
- (b) associated facilities required to expand the Keystone Phase 2 Facilities to a nominal transportation capacity of approximately 700,000 barrels per day of Petroleum.

“**Keystone Phase 3 Facilities**” means that portion of the Pipeline System consisting of the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at a point of interconnection with the Keystone Phase 2 Facilities at or near Cushing, Oklahoma and terminating at or near Port Arthur, Texas having a nominal transportation capacity of approximately 700,000 barrels per day of Petroleum.

“**Keystone Phase 4 Facilities**” means that portion of the Pipeline System consisting of Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at the international boundary at or near Monchy, Saskatchewan, connecting with the Keystone Initial Facilities at a point of interconnection located at or near Steele City, Nebraska, and terminating at a point of interconnection with the Keystone Phase 3 Facilities located at or near Cushing, Oklahoma having a nominal transportation capacity of approximately 700,000 barrels per day of Petroleum.

“**KXL Committed Contract Volumes**” means the aggregate of the Contract Volumes committed by all KXL Term Shippers pursuant to the Gulf Coast Expansion Contracts and the Houston Lateral Contracts in effect at the relevant time.

“**KXL Expansion Facilities**” means, collectively, the Keystone Phase 3 Facilities, the Keystone Phase 4 Facilities and such portion of the Keystone Phase 2 Facilities as are required for Carrier and Shipper to meet their respective obligations under this Contract.

“**KXL Term Shipper**” means a GCEC Term Shipper or a HLC Term Shipper, as the context may require.

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

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

“**Open Season**” means a bid tender process whereby bids will be solicited by Carrier for transportation service on the Pipeline System.

“**Operating, Maintenance and Administration Costs**” has the meaning given in paragraph D.2 of Appendix ‘B’.

“**Phase 4 Expansion Facilities**” means, collectively, the Canadian KXL Expansion Facilities and the Keystone Phase 4 Facilities, excluding that portion of pipeline included in the Keystone Phase 4 Facilities that commences at or near Steele City, Nebraska and terminates at or near Cushing, Oklahoma.

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

“**Port Arthur Delivery Point**” has the meaning given that term in Section 9.4(b).

“**Presidential Permit**” means a permit granted by the United States Secretary of State under Executive Order 13337 for the construction, connection, operation and maintenance of the Keystone Phase 4 Facilities.

“**Project Execution Plan**” means a written plan prepared by Carrier including the cost estimates, toll impact, schedule, risk assessment and other matters as determined relevant by Carrier in consultation with GCEC Term Shippers for the construction of the Keystone Phase 4 Facilities.

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

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

“**Regulatory Sunset Date**” means December 31, 2015.

“**Rules and Regulations**” means the Local Pipeline Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum filed at the FERC and in effect at the relevant time.

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

“**Shipper Commitment Price**” has the meaning given that term in Section 9.4(b).

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

“**Shipper Termination Notice**” has the meaning given that term in Section 4.2.

“**Substantial Completion**” means the installation and backfilling of eighty (80) percent of the pipeline by length required for the Phase 4 Expansion Facilities.

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

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

“**Term Shipper Commitment Rate**” means the “Term Shipper Commitment Rate” described in Part B of Appendix ‘B’.

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

“**Threshold Shipping Commitment**” means such aggregate commitment to ship such minimum Contract Volume on the Pipeline System (including consideration of contract terms and applicable Receipt Points and Delivery Points) as Carrier may determine in its sole discretion.

“**Uncommitted Gulf Coast Price**” has the meaning given that term in Section 9.4(b).

“**Variable Rate**” means the “Variable Rate” described in Part D of Appendix ‘B’.

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

- 1.2 Attached to and forming an integral part of this Contract are the following appendices:
- (a) Appendix ‘A’, comprising the Contract Term, Contract Delivery Point and Contract Volume;
 - (b) Appendix ‘B’, comprising the Schedule of Rates and Rate Principles for Petroleum Transportation Service from the point of interconnection with the pipeline facilities of Keystone Canada at the international boundary to Port Arthur, Texas;
 - (c) Appendix ‘C’, comprising an illustrative map of the proposed route of the Keystone Phase 1 Facilities, the Keystone Phase 2 Facilities, the Keystone Phase 3 Facilities and the Keystone Phase 4 Facilities and a summary description of the KXL Facilities;
 - (d) Appendix ‘D’, comprising a draft of the Rules and Regulations; and,
 - (e) Appendix ‘E’, comprising an illustrative example of the calculation set forth in Section 9.4(a).
- 1.3 In this Contract:
- a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions hereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms;

- b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”;
- c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation;
- d) Time is of the essence in the performance of the Parties’ respective obligations; and
- e) If, in any jurisdiction, any provision of this Contract or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Contract and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

ARTICLE 2 REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Contract, including such initial level of satisfaction of the conditions precedent in Section 3.1(e) for the purposes outlined in this Section 2.1, as may be determined to be desirable or necessary by each of Carrier and Keystone Canada in its sole discretion, Carrier, in conjunction with Keystone Canada, shall proceed with due diligence and in good faith to seek to obtain from all governmental, administrative and regulatory (including aboriginal and tribal, if applicable) authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone Canada, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to construct, acquire, own and operate the Pipeline System (including the Keystone Initial Facilities and the KXL Expansion Facilities) and to provide transportation service for Shipper, and for Keystone Canada to construct, acquire, own and operate the Keystone Canada Pipeline System (including the “Keystone Initial Facilities” and “KXL Expansion Facilities” pursuant to the Canadian GC TSA) as contemplated in the contractual arrangements entered into between Keystone Canada and its shippers, except for those that are, in the reasonable opinion of each of Carrier and Keystone Canada, not material or not customarily required by prudent pipeline operators prior to the commencement of on-site construction or pre-construction activities (collectively, the “**Regulatory Approvals**”).
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone Canada have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone Canada shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone Canada in its sole discretion, to be unsatisfactory to Carrier or Keystone Canada, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone Canada for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such

information. Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and applicable law, Carrier shall not disclose to third parties (other than to Keystone Canada, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.

2.4 Shipper agrees not to:

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

ARTICLE 3
CONDITIONS PRECEDENT

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

- (a) Carrier and its Affiliates shall, by the Commencement Date, have obtained all Regulatory Approvals in the United States other than the Presidential Permit, on terms acceptable to Carrier in its sole discretion.
- (b) Keystone Canada and its Affiliates shall, by the Regulatory Sunset Date, have obtained all Regulatory Approvals in Canada, on terms acceptable to Keystone Canada in its sole discretion.
- (c) Carrier and its Affiliates shall, by the Regulatory Sunset Date, have obtained the Presidential Permit, on terms acceptable to Carrier in its sole discretion.

- (d) **[this Section is intentionally deleted].**
- (e) Shipper or an Affiliate of Shipper shall have, contemporaneously with the execution of this Contract, entered into a Canadian GC TSA, which Canadian GC TSA remains in full force and effect.
- (f) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone Canada as contemplated under this Contract and any Canadian GC TSA, including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone Canada shall have no liability or obligation whatsoever to Shipper in the event either or both of them: (i) declines to file for, withdraws from, or rejects any Regulatory Approval, or (ii) determines that there is not a sufficient commitment from Term Shippers on the Pipeline System to justify proceeding with the KXL Expansion Facilities.

- 3.2 Except as provided in Sections 4.2(a) and 4.2(b), the conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.

ARTICLE 4 TERMINATION

- 4.1 If:
 - (a) the conditions precedent set forth in Sections 3.1(b) and 3.1(c) are not satisfied or waived by Carrier on or before the Regulatory Sunset Date;
 - (b) the conditions precedent set forth in Sections 3.1(a), 3.1(e) and 3.1(f) are not satisfied or waived by Carrier on or before the Commencement Date;
 - (c) at any time during the period prior to the Commencement Date, Shipper fails to observe and perform any material agreement, term or condition contained in this Contract;
 - (d) on or before the Commencement Date, Shipper becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Shipper or any of its assets, or if Shipper files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt;
 - (e) **[this Section is intentionally deleted];** or
 - (f) the Canadian GC TSA is terminated in accordance with Section 4.1 thereof,

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

- (i) in respect of Section 4.1(a), Carrier may terminate this Contract only if Carrier has decided to cancel the construction of the Keystone Phase 4 Facilities and terminate all Gulf Coast Expansion Contracts entered into by Carrier; and

- (ii) in respect of Section 4.1(c), if Shipper performs such material agreement, term or condition described in the Carrier Termination Notice within such thirty (30) Day period, this Contract shall not terminate but shall continue in force and effect.

If the right to terminate this Contract is exercised by Carrier pursuant to Section 4.1(c) or (d), or from termination pursuant to Section 4.1(f) which results from Section 4.1(c) or (d) of the Canadian GC TSA, Shipper shall, to the extent permitted by applicable law and subject to Carrier's obligation to mitigate, pay to Carrier the net present value of the aggregate of: (A) the Monthly Revenue Commitment payable under this Contract for the unexpired term of this Contract, (B) all applicable taxes, (C) all amounts owing under the Contract in respect of Petroleum Delivered but for which all rates and any other charges are not yet paid, and (D) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. Upon termination of this Contract by Carrier pursuant to Section 4.1(a), Section 4.1(b) or from termination pursuant to Section 4.1(f) which results from Section 4.1(a) or Section 4.1(b) of the Canadian GC TSA, Shipper shall not be liable under this Contract for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.2 If:

- (a) the conditions precedent set forth in Sections 3.1(b) and 3.1(c) are not satisfied on or before the Regulatory Sunset Date;
- (b) the condition precedent set forth in Section 3.1(a) is not satisfied on or before the Commencement Date;
- (c) at any time during the period prior to the Commencement Date, Carrier fails to observe and perform any material agreement, term or condition contained in this Contract;
- (d) on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt; or
- (e) the Canadian GC TSA is terminated in accordance with Section 4.2 thereof,

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

- (i) in respect of Section 4.2(a), if the conditions precedent set forth in Sections 3.1(b) and 3.1(c) are satisfied after the Regulatory Sunset Date:
 - (A) where Carrier has received a Shipper Termination Notice from Shipper and such conditions are satisfied within such thirty (30) Day period; or
 - (B) where Carrier has not received a Shipper Termination Notice from Shipper prior to the date that such conditions are satisfied,

then this Contract shall not terminate but shall continue in full force and effect and Shipper's termination option outlined above in respect of such conditions shall expire and be of no force or effect.

- (ii) in respect of Section 4.2(c), if Carrier performs such material agreement, term or condition described in the Shipper Termination Notice within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.

Upon termination of this Contract by Shipper pursuant to Section 4.2(a), (b), (c) or (d), or from termination of the Canadian GC TSA pursuant to Section 4.2(e) hereof which is exercised by Shipper pursuant to Section 4.2(a), (b), (c) or (d) of the Canadian GC TSA, Shipper shall not be liable under this Contract for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.3 If:

- (a) on or before the Advance Notice Sunset Date: (A) Carrier has not provided Shipper with the Advance Notice, and (B) Substantial Completion has not occurred; or
- (b) the Commencement Date has not occurred on or before the In-Service Sunset Date,

then:

- (i) Shipper may terminate this Contract on thirty (30) Days prior Notice to Carrier (by delivery of a Shipper Termination Notice), provided however:
 - (A) in respect of Section 4.3(a), if Substantial Completion occurs after the Advance Notice Sunset Date:
 - (1) where Carrier has received a Shipper Termination Notice from Shipper and Substantial Completion occurs within such thirty (30) Day period; or
 - (2) where Carrier has not received a Shipper Termination Notice from Shipper prior to the date that Substantial Completion occurs,

then this Contract shall not terminate but shall continue in full force and effect and Shipper's termination option in respect of Section 4.3(a) shall expire and be of no force or effect.

- (B) in respect of Section 4.3(b), if the Commencement Date occurs after the In-Service Sunset Date:
 - (1) where Carrier has received a Shipper Termination Notice from Shipper and the Commencement Date occurs within such thirty (30) Day period; or
 - (2) where Carrier has not received a Shipper Termination Notice from Shipper prior to the Commencement Date,

then this Contract shall not terminate but shall continue in full force and effect and Shipper's termination option in respect of Section 4.3(b) shall expire and be of no force or effect.

- (ii) Carrier may terminate this Contract on thirty (30) Days prior Notice to Shipper (by delivery of a Carrier Termination Notice) where Carrier has decided to cancel the construction of the Keystone Phase 4 Facilities and terminate all Gulf Coast Expansion Contracts.

In the event that the conditions outlined in Section 4.3(a) have not been satisfied prior to the Advance Notice Sunset Date or those in Section 4.3(b) have not been satisfied prior to the In-Service Sunset Date as a result of an event of Force Majeure, the Advance Notice Sunset Date or the In-Service Sunset Date, as applicable, shall be extended by the same period of time as the relevant events of Force Majeure which resulted in Carrier not providing the Advance Notice on or before the Advance Notice Sunset Date or the Commencement Date not occurring on or before the In-Service Sunset Date, as applicable. For certainty and for the purposes of this Section 4.3, an event of Force Majeure shall not include any delay of any governmental, administrative or regulatory authority having jurisdiction in the United States to grant such authorizations or exemptions or both, or any amendments or supplements thereto, that are necessary for Carrier, in its sole discretion, to construct, acquire, own and operate the KXL Expansion Facilities. Upon termination by a Party of this Contract pursuant to this Section 4.3, Shipper shall not be liable under this Contract for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.4 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Article 7 within ten (10) Banking Days of Carrier's written demand therefor, Carrier may terminate this Contract by providing further written notice to Shipper.

4.5 In the event that:

- (a) one or more Gulf Coast Expansion Contracts are terminated either pursuant to Section 4.2(a) or Section 4.3(a) of such contracts;
- (b) such termination results in an aggregate Committed Contract Volume substantially less than the Threshold Shipping Commitment; and
- (c) such termination is not as a result of a denial of any Regulatory Approval,

then, Carrier will commence and conduct an Open Season in respect of the Pipeline System capacity made available by such termination on such terms and conditions as may be determined by Carrier in its sole discretion. If the Threshold Shipping Commitment is not satisfied as a result of the Open Season, Carrier, on terms and conditions substantially corresponding to this Contract, will offer the Term Shippers which are Term Shippers as of the date hereof such Pipeline System capacity which would allow the Threshold Shipping Commitment to be satisfied.

ARTICLE 5 PROJECT EXECUTION PLANS AND COMMENCEMENT OF SERVICE

5.1 Within ninety (90) days of the receipt of the Presidential Permit, Carrier shall prepare and deliver to Shipper both a Balanced Execution Plan and an Accelerated Execution Plan. Within thirty (30) days of such delivery, Shipper shall by Notice delivered to Carrier elect either the Balanced

Execution Plan or the Accelerated Execution Plan. Carrier, in conjunction with Keystone Canada, shall select the Project Execution Plan to be implemented based on the Notices received from KXL Term Shippers within the time frame and in accordance with the principles consistent with those set forth this Section 5.1.

If, without regard to the applicable currency, the sum of the Base Rate set forth in Part B.1 of Appendix 'B' of a Gulf Coast Expansion Contract or a Houston Lateral Contract (as applicable), and the Base Toll set forth in Part B.1 of Appendix 'B' of a Canadian GC TSA or a Canadian Houston Lateral TSA (as applicable):

- (a) is no greater than \$42.331 per m³ (\$6.731 per bbl) for the Accelerated Execution Plan, then Carrier shall implement the Project Execution Plan voted for by the KXL Term Shippers representing fifty percent (50%) or more of the KXL Committed Contract Volumes of the KXL Term Shippers which have provided Notice within the specified timeframe; or
- (b) is greater than \$42.331 per m³ (\$6.731 per bbl) for the Accelerated Execution Plan, then Carrier shall implement the Balanced Execution Plan unless the KXL Term Shippers representing more than eighty percent (80%) of the KXL Committed Contract Volumes of the KXL Term Shippers which have provided Notice within the specified time frame voted for the Accelerated Plan in which case Carrier shall implement the Accelerated Execution Plan.

Shipper acknowledges and agrees that the items contained in the Project Execution Plans will represent Carrier's good faith estimate of such items and such estimates are not intended as representations or warranties of Carrier in respect of the relevant items. The Project Execution Plan selected by Carrier pursuant to this Section 5.1 shall apply to this Contract notwithstanding Shipper's individual election.

- 5.2 (a) Carrier shall provide Shipper with prior written notice (the "**Advance Notice**") of:
- (i) Carrier's schedule of Line Fill procedures requiring Shipper to deliver, over a period beginning approximately ninety (90) Days and ending no later than one hundred eighty (180) Days, following Shipper's receipt of the Advance Notice, its proportionate share of Line Fill necessary for the KXL Expansion Facilities; and
 - (ii) Carrier's intention to commence Working Stock acquisition activities.

Volumes of Line Fill and Working Stock shall be as determined by Carrier, acting reasonably. The Type of Line Fill and Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.

- (b) Carrier shall use reasonable efforts to provide Shipper with periodic updates as to Carrier's expected commencement of Line Fill procedures.
- (c) If, following Shipper's receipt of the Advance Notice, Carrier alters the schedule of Line Fill procedures from that set forth in the Advance Notice, Carrier shall be solely liable for and shall indemnify Shipper from and against any and all damages, losses, expenses and costs incurred or suffered by Shipper as a result of Carrier's alteration of the schedule of Line Fill procedures from that set forth in the Advance Notice, unless such damages,

losses, expenses or costs are due to Shipper's negligence, provided however that Carrier shall not be liable for or indemnify Shipper from and against any Special Damages.

- 5.3 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition, Line Fill and commissioning activities in respect of the KXL Expansion Facilities.
- 5.4 Upon completion of construction, commissioning, Line Fill and Working Stock acquisition activities with respect to the KXL Expansion Facilities pursuant to Section 5.3, Carrier shall provide Shipper with at least thirty (30) Days prior written notice of the date on which transportation service under this Contract in respect of the Term is to commence (the "**Commencement Date**"). At least ten (10) Days prior to the Commencement Date, Shipper shall provide Carrier with Shipper's Monthly Nomination for the next ensuing Month on a Notice of Shipment as prescribed in the Rules and Regulations.
- 5.5 Unless otherwise precluded by regulatory requirements, Carrier shall return to Shipper substantially all of Shipper's Working Stock or in-transit batches of Petroleum which shall be of substantially the same type and quality as that which was delivered to Carrier commencing not later than sixty (60) days following the expiration or termination of this Contract at the Delivery Point specified by Shipper subject to operational constraints.

ARTICLE 6 TRANSPORTATION SERVICE

- 6.1 Subject to Section 9.2, from and after the Commencement Date and during the Term:
- (a) Shipper shall Tender (or otherwise pay for, as contemplated by Appendix 'B' and the Rules and Regulations, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
 - (b) Carrier shall provide transportation service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Contract and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Contract and the Tariff.
- 6.3 If Carrier has not received a Monthly Nomination by the time and date specified in Section 7.1 of the Rules and Regulations, Carrier shall use reasonable efforts to contact Shipper to confirm the failure was not inadvertent.

ARTICLE 7 CONTRACT FINANCIAL ASSURANCE

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

**ARTICLE 8
MAKE-UP RIGHTS AND BALANCING**

- 8.1 In the event that, during the Term: (a) Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume, or (b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier, Shipper shall, to the extent that, in Carrier's discretion, operating conditions permit and capacity is available, be entitled to transport a make-up volume of the difference between its Monthly Volume and volumes actually Tended for shipment in that Month in any of the next following thirty-six (36) Months, provided that Shipper has first Tended its Monthly Volume in such Months before making use of any make-up volumes. Provided further, if such Force Majeure event continues beyond three (3) consecutive months, Shipper shall not be entitled to accrue any make-up rights beyond such three (3) month period.
- 8.2 Where Shipper's Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier's batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier's batching or balancing requirements.
- 8.3 Only the Variable Rate will be payable by Shipper regarding make-up volumes Tended in accordance with Section 8.1 and Delivered to the Contract Delivery Point.
- 8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month written notice of any planned reduction of volume to be Tended for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.
- 8.5 Any make-up rights of Shipper arising out the operation of this Article 8 shall cease and shall be forfeited by Shipper at the expiration of the date that is 36 months following the last day of the Term.

**ARTICLE 9
RATES**

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Contract, including Appendix 'B', and the Tariff.
- 9.2 In the event of interruption, curtailment or reduction of transportation service pursuant to an outage by Carrier either as described in Section 13.1 of the Rules and Regulations or for any other reason not attributable to Shipper, but except for Carrier Force Majeure in accordance with Article 15 of the Rules and Regulations, Shipper shall not, for the period of such interruption, curtailment or reduction only, be required to pay the Term Shipper Commitment Rate hereunder regarding such portion of interrupted, curtailed or reduced transportation service.
- 9.3 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any make-up volumes pursuant to Article 8 (such excess volume being the "**Excess Volume**"), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Rate times the Excess Volume.

- 9.4 If Shipper has a Contract Volume of at least 7,950 m³/Day (50,000bbl/Day) and to the extent of the Allocated Volume to the Port Arthur Delivery Point, then:
- (a) provided that neither Shipper nor its Affiliate that is party to a Canadian GC TSA is then in default of any material obligation under this Contract or the Canadian GC TSA, Carrier agrees that, if Carrier and Keystone Canada transport volumes on the Pipeline System and the Keystone Canada Pipeline System for the same Type of Petroleum for delivery to a Port Arthur Delivery Point for one or more third party shippers, whether or not such shippers are Affiliates of Shipper at an Uncommitted Gulf Coast Price or an Alternate Gulf Coast Price lower than the Baseline Committed Price, then:
 - (i) for so long as such volumes are transported at such Uncommitted Gulf Coast Price or Alternate Gulf Coast Price, Carrier and Keystone Canada shall collectively reduce the Shipper Commitment Price by an amount per Cubic Meter equal to the difference between such Uncommitted Gulf Coast Price or Alternate Gulf Coast Price (as applicable) and the Baseline Committed Price; and
 - (ii) each of Carrier and Keystone Canada shall have sole discretion as to the allocation of any such reduction between the Pipeline System and the Keystone Canada Pipeline System.
 - (b) For the purposes of this Section 9.4, the following interpretative principles shall apply:
 - (i) **“Alternate Gulf Coast Price”** shall mean, at any time, the sum of:
 - (A) the commitment rate payable by a shipper under any contract for delivery to the Port Arthur Delivery Point that is not a Gulf Coast Expansion Contract; plus
 - (B) the fixed toll payable by a shipper under the corresponding contract in respect of the Keystone Canada Pipeline System with any contract that is not a Canadian GC TSA; plus
 - (C) the Variable Rate; plus
 - (D) the Variable Toll under the corresponding contract in respect of the Keystone Canada Pipeline System;
 - (ii) **“Committed Price”** shall mean, at any time, the sum of:
 - (A) the Base Rate outlined in Part B of Appendix ‘B’, as adjusted for capital variance and Final Project Costs; plus
 - (B) the Base Toll outlined in Part B of Appendix ‘B’ of the corresponding Canadian GC TSA, as adjusted for capital variance and Final Project Costs of the Keystone Canada Pipeline System; plus
 - (C) the Variable Rate; plus
 - (D) the Variable Toll under the corresponding Canadian GC TSA;

- (iii) “**Baseline Committed Price**” shall mean, at any time, the Committed Price adjusted by the Term Discount for the shortest contract term outlined in Appendix ‘A’ then remaining in effect;
 - (iv) “**Port Arthur Delivery Point**” shall mean a Delivery Point located on the Keystone Phase 3 Facilities at or near Port Arthur, Texas;
 - (v) “**Shipper Commitment Price**” shall mean the sum of: (1) the Term Shipper Commitment Rate payable by Shipper under this Contract plus (2) the Fixed Toll payable by Shipper or its Affiliate under the Canadian GC TSA;
 - (vi) “**Uncommitted Gulf Coast Price**” shall mean the sum of: (1) the Uncommitted Rate for the Port Arthur Delivery Point plus (2) the Uncommitted Toll for the Keystone Canada Pipeline System; and
 - (vii) all calculations of tolls and rates for the Pipeline System and the Keystone Canada Pipeline System will be made on a per Cubic Meter basis in Canadian dollars, with currency exchange calculations performed at the Bank of Canada noon day rate applicable on the date that is two business days immediately preceding the Monthly Nomination date.
- (c) An illustrative example of the calculation set forth in Section 9.4(a) is attached to this Contract as Appendix ‘E’.

ARTICLE 10 TERM OF CONTRACT

- 10.1 This Contract shall be effective as of the date it is signed by Shipper and Carrier, and unless terminated earlier in accordance with its terms, the initial term of this Contract shall commence on the Commencement Date and shall continue until the anniversary of said Commencement Date in accordance with the contract term specified by Shipper in Appendix ‘A’, subject to adjustment pursuant to Sections 8.5 or 10.2 of this Contract (such period being the “**Term**”).
- 10.2 So long as Shipper is not otherwise in default of this Contract or the Rules and Regulations, Shipper shall have the single option, exercisable by written notice to Carrier and received by Carrier not later than twenty-four (24) Months prior to the expiry of the Term, to extend the Term of this Contract:
- (a) where the initial Term is less than twenty (20) Years, for a single additional five (5) Year period; or
 - (b) where the initial Term is twenty (20) Years, for a single additional (i) five (5) Year period; or (ii) ten (10) Year period, as exercised by Shipper in its option notice,

provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone Canada Pipeline System pursuant to and in accordance with its Canadian GC TSA with Keystone Canada. Such extension shall be on the same terms and conditions of this Contract, provided that the Term Shipper Commitment Rate for such extended Term shall be calculated in the manner described in paragraph B.3 of Appendix ‘B’. Carrier shall provide Shipper with the Term Shipper Commitment Rate, subject to regulatory approval, for

such extended Term no later than twenty-seven (27) Months prior to the expiry of the initial Term.

**ARTICLE 11
NOTICES**

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

In the case of Carrier: TransCanada Keystone Pipeline, LP

- (1) Mailing Address: 450 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
- (2) Delivery Address: 450 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
Attention: Crude Oil Contracts Administration
Fax: (403) 920-2285

In the case of Shipper:

- (1) Mailing Address:
- (2) Delivery Address:

Attention:
Fax:

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission except for any such transmission sent after 2:00 pm local time at the location at which the delivery is made, then such Notice shall be deemed received as of 8:00 am on the next business day. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) business days after mailing. For the purposes of this Section 11.1, a “**business day**” is any day from 8:00 a.m. to 5:00 p.m., excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

ARTICLE 12
MISCELLANEOUS PROVISIONS

- 12.1 Where this Contract provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party's business or operations (upon reasonable and timely notice and at the auditing Party's expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Rules and Regulations and the rates as calculated under this Contract will be set out in the Tariff (the "**Rates**") as initially filed, and as each may be amended and approved from time to time by Carrier or FERC are all by reference made a part of and incorporated into this Contract and operations hereunder shall, in addition to the terms and conditions set out in this Contract, be subject to the provisions thereof. The Parties further expressly recognize that it is reasonable for Shipper to support the actual construction of the KXL Expansion Facilities and to want to obtain capacity on the Pipeline System and to also have legitimate issues concerning the Rates, Rules and Regulations and terms of service that need to be addressed by FERC, NEB or other governmental, regulatory, administrative or judicial bodies. Accordingly, except as expressly provided in Section 2.4, nothing in this Contract or in the Tariff shall be deemed to restrict, waive or otherwise limit Shipper's right to initiate or participate in any governmental, regulatory, administrative or judicial proceedings (including appeals) that may affect the Rates or the terms and conditions of service under this Contract or the Tariff. Carrier shall notify Shipper at any time that Carrier proposes to amend the Rules and Regulations, the Tariff or the Rates, and shall provide Shipper with notice of such revisions. The Rules and Regulations filed prior to the Commencement Date shall be substantially the same as those set forth in Appendix 'D' and shall be consistent with this Contract, subject to changes that may be required by FERC. During the Term of this Contract Carrier shall not initiate any changes to the Rules and Regulations, the Tariff or the Rates that adversely impact Shipper's rights under this Contract, excluding Appendix 'D'.
- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental, or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Contract, excluding Appendix 'D', then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Contract to comply with such ruling and in accordance with the initial expectations of the Parties under this Contract.
- 12.4 This Contract, and any claims against Carrier arising directly or indirectly out of or in connection with this Contract, may be assigned, in whole or in part, by Shipper only:
- (a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld or delayed, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may reasonably demand in accordance with this Contract, or (B) such Financial Assurances as Carrier may reasonably demand in accordance with the Rules and Regulations, as applicable; or
 - (b) to its Affiliate, upon 30 Days' prior written notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall

remain jointly and severally liable for any and all obligations arising under or out of this Contract.

- 12.5 Carrier may assign this Contract and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) any other Person in connection with the sale of all or substantially all of the assets of Carrier to such Person, provided that the rating given to such assignee's senior unsecured long term debt is not lower than any of the following at the time of such assignment: (i) "BBB" from Standard & Poor's Financial Services LLC (including its successors), and (ii) "Baa3" from Moody's Investors Services Inc. (including its successors), and provided further that contemporaneously with such assignment in connection with such sale, Affiliate of Carrier shall have similarly assigned the Canadian GC TSA or its rights thereunder to any such assignee or an Affiliate of such assignee.
- 12.6 This Contract shall be construed and applied and be subject to the laws of the Province of Alberta, Canada, and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction, including the FERC. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Contract. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**
- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Contract or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Contract shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Contract may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.
- 12.10 Carrier will maintain the confidentiality of information provided and identified by Shipper as confidential or commercially sensitive. Notwithstanding the foregoing, nothing shall restrict disclosure by Carrier of: (a) the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis; or (b) any information requested or required by applicable law or regulatory authority to be disclosed.
- 12.11 The Parties shall execute their obligations under this Contract in good faith.

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

**TRANSCANADA KEYSTONE PIPELINE
GP, LLC** in its capacity as general partner for
and on behalf of **TRANSCANADA
KEYSTONE PIPELINE, LP**

By: _____

Name:

Title:

By: _____

Name:

Title:

By: _____

Name:

Title:

By: _____

Name:

Title:

APPENDIX 'A'
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AND THROUGHPUT AGREEMENT

CONTRACT TERM, CONTRACT DELIVERY POINT, AND
CONTRACT VOLUME

Contract Volume to be a minimum of 795 m³/Day (5,000 bbl/Day), in increments of 795 m³/Day (5,000 bbl/Day).

Delivery Point: Cushing and/or Port Arthur

| Contract Term | Contract Volume |
|----------------------|--|
| 20 Years | 795 m ³ /Day (5,000 bbl/Day) |

**APPENDIX ‘B’
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AND THROUGHPUT AGREEMENT**

***SCHEDULE OF RATES AND RATE PRINCIPLES FOR TRANSPORTATION
FROM THE INTERCONNECTION WITH KEYSTONE CANADA
PIPELINE SYSTEM AT THE INTERNATIONAL BOUNDARY,
TO PORT ARTHUR, TEXAS***

A. TRANSPORTATION RATES

1. **Term of the Contract:** Every Month during the Term of the Contract, Shipper shall pay to Carrier on the Payment Due Date, consistent with Article 9 of the Contract, the rates and other charges set forth in this Appendix ‘B’ and incorporated into the Tariff.
2. Subject to paragraph D.7, Carrier shall not apply the FERC’s indexing methodology to determine any of the rates set out in this Appendix B.

B. MONTHLY REVENUE COMMITMENT

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term of the Contract Shipper shall pay a Monthly Revenue Commitment in respect of its Monthly Volume. Shipper’s Monthly Revenue Commitment for any Month shall be the product obtained by multiplying the applicable Term Shipper Commitment Rate (as outlined below) times the amount of the Monthly Volume. For greater certainty, the same Term Shipper Commitment Rate as calculated in this Appendix “B” shall apply for the entire Term for any Delivery Point available as a Contract Delivery Point as outlined in Appendix “A”.

$$\text{Term Shipper Commitment Rate} = \text{Base Rate} - \text{Term Discount} - \text{Volume Discount.}$$

Where:

Base Rate in U.S.\$ Per m³ (bbl) shall be U.S. \$31.710 (\$5.042) (Base Rate based on Estimated Project Costs of \$9,510 million and to be adjusted for Capital Variance) per Part C;

Term Discount equals the amount set out in the table below that corresponds to the Term of the Contract specified by Shipper in Appendix ‘A’;

| <i>Term of Contract</i> | <i>Term Discount in \$US Per m³ (bbl)</i> |
|-------------------------|---|
| 10 Year | \$0.000 (\$0.000) |
| 15 Year | \$1.771 (\$0.282) |
| 20 Year | \$3.541 (\$0.563) |

Volume Discount in U.S.\$ Per m³ (bbl) shall be \$2.267 (\$0.360) for Contract Volume of a minimum 120,000 bbl/Day and a Contract Term of 20 years.

2. **Capital Variance:** The Term Shipper Commitment Rate during the Term will be adjusted to reflect capital variance, in the manner described in Part C, below; provided, however, Shipper shall not be responsible under this Contract for any capital costs associated with any future expansions of the Pipeline System.
3. **Term Shipper Commitment Rate Applicable to Extension Term:** In the event that Shipper exercises its option to extend the Term of the Contract in the manner described in either Section 10.2(a) or Section 10.2(b) of the Contract, the Term Shipper Commitment Rate applicable and payable for such extension Term shall be such Term Shipper Commitment Rate as is established by Carrier at the time of renewal for 5 year contract terms.
4. **Suspension due to Force Majeure:** In the event that Carrier declares a Force Majeure event pursuant to Article 15 of the Rules and Regulations and the term of the Force Majeure event continues beyond three (3) consecutive months, no Term Shipper Commitment Rate in respect of the Contract Volume will be payable by Shipper during the remaining period of the Force Majeure event.

C. CAPITAL VARIANCE

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

“**AFUDC**” means Carrier’s allowance for funds used during construction, calculated based on the spend profiles of the KXL Expansion Facilities based on a deemed debt/equity split of (a) 60% to debt funding at a deemed cost of debt of 4% per annum, and (b) 40% to equity funding at a deemed cost of equity of 11% per annum, both for the period up to but not including the Commencement Date.

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

- (a) three quarters (3/4) of the difference between the Final Project Costs and \$7,595 million plus one half (1/2) of the difference between \$7,595 million and the Estimated Project Costs, if the amount of the Final Project Costs is no greater than U.S. \$7,595 million;

or

- (b) one half (1/2) of the difference between the Final Project Costs and the Estimated Project Costs, if the amount of the Final Project Costs is greater than U.S. \$7,595 million;

and

- (c) interest carrying charges on paragraph (a) or paragraph (b) above, as applicable, calculated at the Prime Rate, from the Commencement Date to the date of the Capital Variance Notice.

“**Estimated Project Costs**” U.S. \$9,510 million, being the sum of U.S. \$7,967 million plus estimated AFUDC in the amount of U.S. \$1,544 million, representing Carrier’s estimate of the

development, construction and acquisition costs of the KXL Expansion Facilities, based on a Balanced Execution Plan.

“**Final Project Costs**” means the sum of the actual development, construction and acquisition costs of the KXL Expansion Facilities, including AFUDC, expressed in U.S. dollars.

2. **Final Project Costs and Term Shipper Commitment Rate:**

(a) Not later than two (2) Years following the Commencement Date, Carrier shall make a determination of the Final Project Costs. Upon such determination, Carrier will deliver a notice (the “**Capital Variance Notice**”) to Shipper. The Capital Variance Notice will set out the Final Project Costs, the resulting Capital Variance and the required adjustment to the Term Shipper Commitment Rate. For such purposes, the Term Shipper Commitment Rate shall be adjusted by a percentage decrease or increase, as the case may be, equal to the percentage difference between (A) the Estimated Project Costs and (B) the Estimated Project Costs plus the Capital Variance.

(b) The Term Shipper Commitment Rate, adjusted to reflect the Capital Variance, will take effect for transportation services provided by Carrier in the first Month following the issuance of the Capital Variance Notice by Carrier. Accordingly, the first invoice issued by Carrier for transportation service provided in the first Month after the issuance of the Capital Variance Notice will charge the Term Shipper Commitment Rate adjusted to reflect the Capital Variance as set out in such Capital Variance Notice.

3. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the Capital Variance Notice within twelve (12) Months of the date of the Capital Variance Notice, in accordance with the audit procedure in Section 12.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the Canadian GC TSA.

D. VARIABLE RATE

1. **Payment of Variable Rate:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Rate (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of miles to such Delivery Point, times (iii) (subject to Section 9.1 of the Contract) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Rate} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Miles for that Month}}$$

Where:

Weighted Barrel Miles equals Light Barrel Miles + Heavy Barrel Miles;

Light Barrel Miles equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of miles to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Miles equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of miles to the relevant Delivery Point.

The Variable Rate in respect of Heavy Crude shall be the amount as calculated above, and the Variable Rate in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Rate:** On an annual basis during the Term of the Contract, Carrier will estimate the “Operating, Maintenance and Administration Costs” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes to estimate the “**Variable Rate**” for each Month in the Year. In estimating the Variable Rate, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

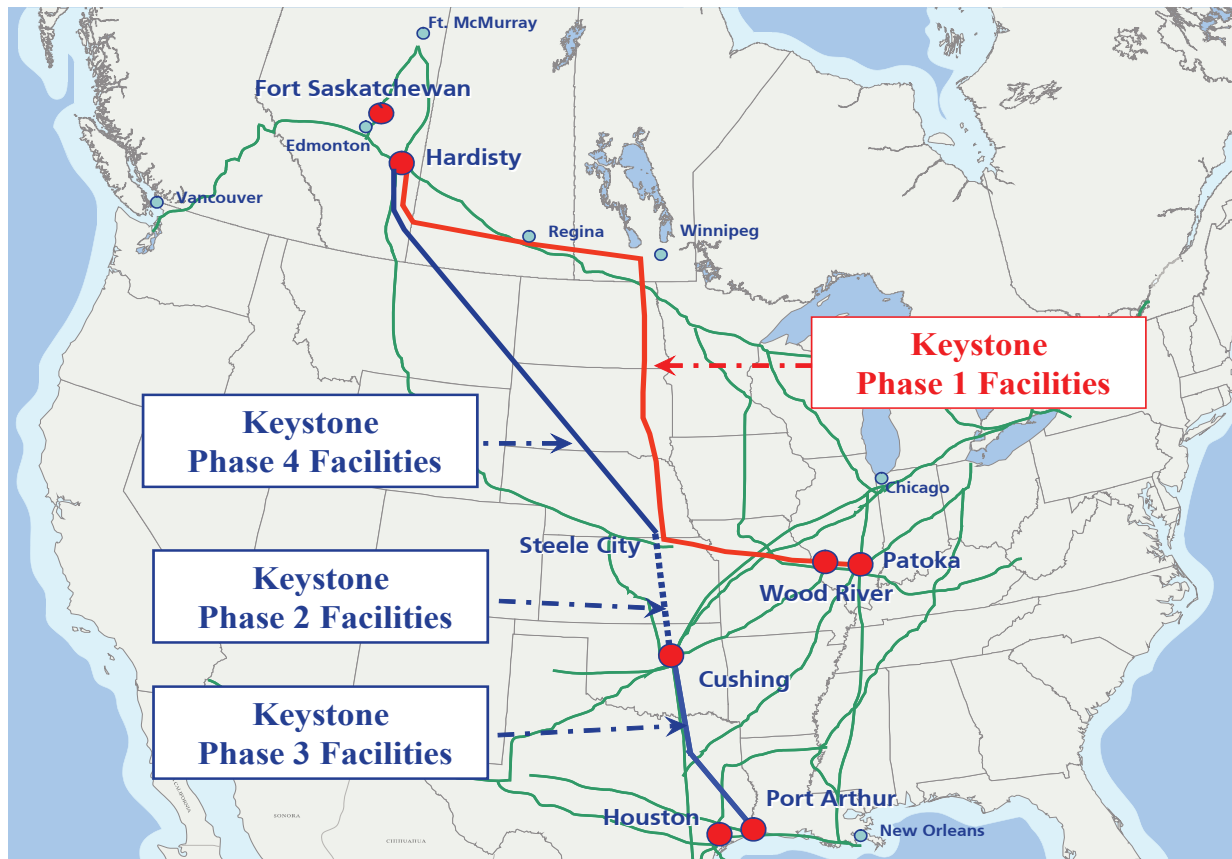
For the purposes of calculating the Variable Rate, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
 - (b) property taxes;
 - (c) capital taxes;
 - (d) insurance;
 - (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System;
 - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Maintenance Capital Items (“MCI”):** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed U.S.\$2,000,000, such amounts will be treated as an MCI. Carrier will provide prompt notice to Shipper of any MCI and consult with the Term Shippers as to a reasonable allocation of such MCI into the Variable Rate. All MCIs will be amortized in accordance with good accounting practice and (i) added to the Variable Rate in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Rate for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Rate.

4. **Notice of Estimated Variable Rate:** Carrier shall provide Shipper with its estimate of the Variable Rate for each Month (based on the Type(s) of Petroleum) for the upcoming Year in the notice of the Commencement Date contemplated in Section 5.4 of the Contract. Thereafter, Carrier will revise the estimated Variable Rate annually and provide Shipper with such revised rate, together with details of its calculation and explanation for any adjustments from the previous Variable Rate, on or before December 1 of each Year during the Term. Such estimated Variable Rate shall take effect as of January 1 of the succeeding Year.
5. **Final Variable Rate:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier's financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Rate. Carrier will provide Shipper with notice of the final Variable Rate, together with details of its calculation and explanation for any adjustments from the estimated Variable Rate. If the final Variable Rate for the applicable Year is greater than or less than the estimated Variable Rate charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly installments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Rate and the final Variable Rate and the aggregate of Shipper's Nominations, up to a maximum of Shipper's Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.
6. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the final Variable Rate within twelve (12) Months of the date of Carrier's notice of the final Variable Rate pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the Canadian GC TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in Section 12.1 and for greater certainty will not include any information attributable to individual shippers.
7. **Incentive Tolling Arrangements:** After the third anniversary of the Commencement Date, Carrier shall seek to negotiate an incentive tolling agreement with the Term Shippers whereby Term Shippers and Carrier would be entitled to share in any cost savings realized as a result of any reductions in the Operating, Maintenance and Administration Costs.

APPENDIX 'C'
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AND THROUGHPUT AGREEMENT

*ILLUSTRATIVE MAP AND DESCRIPTION OF CANADIAN AND U.S. PORTION OF THE
PIPELINE SYSTEM*



| Segment | Facilities Description |
|---|---|
| Hardisty, Alberta to a point at or near Steele City, Nebraska | <ul style="list-style-type: none"> - approximately 1,200 miles of 36-inch diameter pipeline - 26 pump stations - three (3) operational crude oil storage tanks located at or near Hardisty, Alberta - nominal capacity of 700,000 barrels/ day |
| At or near Steele City, Nebraska to Cushing, Oklahoma | <ul style="list-style-type: none"> - two (2) new pump stations - additional pump stations at three (3) existing pump stations - increase nominal capacity from 590,000 barrels/day to 700,000 barrels/day |
| Cushing, Oklahoma to a point at or near Port Arthur, Texas | <ul style="list-style-type: none"> - approximately 475 miles of 36-inch diameter pipeline - ten (10) new pump stations - three (3) operational crude oil storage tanks located at or near Cushing, Oklahoma - nominal capacity of 700,000 barrels/day |
| International boundary at or near Monchy, Saskatchewan to a point at or near Port Arthur, Texas | <ul style="list-style-type: none"> - cooling facilities as required for delivery of nominal capacity of 700,000 barrels/ day |

APPENDIX 'D'
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AND THROUGHPUT AGREEMENT

DRAFT RULES AND REGULATIONS

See attached.

Note: The Rules and Regulations that will be attached to this Contract, when executed, will reflect the Local Pipeline Tariff Containing Rules and Regulations Applying to the Transportation of Petroleum filed by the Carrier at the FERC and in effect as of the date of the Option Notice, as such term is defined in the Patoka Convertible Petroleum Transportation Service and Throughput Agreement to which this Contract is appended, and will include such other changes as are reasonably necessary to incorporate the KXL Expansion Facilities.

**APPENDIX ‘E’
to the
KEYSTONE GULF COAST EXPANSION
PETROLEUM TRANSPORTATION SERVICE AND THROUGHPUT AGREEMENT**

ILLUSTRATIVE EXAMPLE OF THE CALCULATION SET FORTH IN SECTION 9.4(a)

This illustrative example is calculated in U.S. \$/barrel and actual calculations are performed in Cdn. \$/m³ in accordance with Section 9.4(b)(vii).

General Assumptions:

- No Capital Variance adjustment
- No inflation in variable toll (assumed \$1.77 total variable and 75/25 split US/Canada)
- All tolls are in US\$ per bbl (foreign exchange factor of 0.90 \$US/\$Cdn assumed for Canadian tolls)
- Alternate Gulf Coast Price** to Port Arthur = **US\$ 6.00**
- Spot Price (Uncommitted Gulf Coast Price)** to Port Arthur = **US\$6.00**

Example A - Year of analysis: 2020 (8 years after Commencement)

Baseline Committed Price: Shortest term remaining in effect = 10 year term

Note: Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

| | | |
|-----------------------------------|---------------|-------------|
| Base Rate - US: | 3.492 | |
| Base Toll - Canada: | <u>0.988</u> | |
| Subtotal | | 4.48 |
| Estimated Variable Rate – US: | 1.3275 | |
| Estimated Variable Toll – Canada: | <u>0.4425</u> | |
| Subtotal | | <u>1.77</u> |
| Total | | \$6.25 |

Calculation:

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

Example: Shipper Commitment Price - Assume 20 Year, Volume Discount

| | | |
|-----------------------------------|--------------|--|
| Term Shipper Commitment Rate: | 2.852 | |
| Canadian Fixed Toll: | <u>0.878</u> | (Base – term discount – volume discount) |
| Subtotal | | \$3.73 |
| Uncommitted Gulf Coast Price | 6.000 | |
| – <u>Baseline Committed Price</u> | <u>6.250</u> | |
| Adjustment amount | | <u>\$0.25</u> |
| New Term Shipper Commitment Rate | | \$3.48 |

Summary Table of New Term Shipper Commitment Rate for US and Canada:

| | |
|------------------------------------|------------------------------------|
| <i>20 Year, 120,000 bpd</i> | <i>3.73 – 0.25 = \$3.48</i> |
| <i>20 Year</i> | <i>3.98 – 0.25 = \$3.73</i> |
| <i>15 Year</i> | <i>4.23 – 0.25 = \$3.98</i> |
| <i>10 year</i> | <i>4.48 – 0.25 = \$4.23</i> |

Example B - Year of analysis: 2025 (13 years after Commencement)

Baseline Committed Price: Shortest term remaining in effect = 15 year term

Note: Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

| | | |
|-----------------------------------|---------------|-------------|
| Base Rate - US: | 3.297 | |
| Base Toll - Canada: | <u>0.933</u> | |
| Subtotal | | 4.23 |
| Estimated Variable Rate – US: | 1.3275 | |
| Estimated Variable Toll – Canada: | <u>0.4425</u> | |
| Subtotal | | <u>1.77</u> |
| Total | | \$6.00 |

Calculation:

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

Example: Shipper Commitment Price - Assume 20 Year, Volume Discount

| | | |
|-----------------------------------|--------------|--|
| Term Shipper Commitment Rate: | 2.852 | (Base – term discount – volume discount) |
| Canadian Fixed Toll: | <u>0.878</u> | (Base – term discount) |
| Subtotal | | \$3.73 |
| Uncommitted Gulf Coast Price | 6.000 | |
| <u>– Baseline Committed Price</u> | <u>6.000</u> | |
| Adjustment amount | | <u>\$0.00</u> |
| New Term Shipper Commitment Rate | | \$3.73 |

Summary Table of New Term Shipper Commitment Rate for US and Canada:

| | |
|-----------------------------|-----------------------------|
| <i>20 Year, 120,000 bpd</i> | <i>3.73 – 0.00 = \$3.73</i> |
| <i>20 Year</i> | <i>3.98 – 0.00 = \$3.98</i> |
| <i>15 Year</i> | <i>4.23 – 0.00 = \$4.23</i> |
| <i>10 year</i> | <i>4.48 – 0.00 = \$4.48</i> |

Example C - Year of analysis: 2030 (18 years after Commencement)

Baseline Committed Price: Shortest term remaining in effect = 20 year term

Note: Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

| | | |
|-----------------------------------|---------------|-------------|
| Base Rate - US: | 3.102 | |
| Base Toll - Canada: | <u>0.878</u> | |
| Subtotal | | 3.98 |
| Estimated Variable Rate – US: | 1.3275 | |
| Estimated Variable Toll – Canada: | <u>0.4425</u> | |
| Subtotal | | <u>1.77</u> |
| Total | | \$5.75 |

Calculation:

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

Example: Shipper Commitment Price - Assume 20 Year, Volume Discount

| | | |
|-----------------------------------|--------------|--|
| Term Shipper Commitment Rate: | 2.852 | (Base – term discount – volume discount) |
| Canadian Fixed Toll: | <u>0.878</u> | (Base – term discount) |
| Subtotal | | \$3.73 |
| Uncommitted Gulf Coast Price | 6.000 | |
| <u>– Baseline Committed Price</u> | <u>5.750</u> | |
| Adjustment amount | | * |

** No calculation required per 9.4 a) since Uncommitted Gulf Coast Price is higher than Baseline Committed Price*

**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 6.0
FORMS OF FINANCIAL ASSURANCES**

Canadian Guarantee

GUARANTEE

This Guarantee dated _____, 20__, is made by _____,
a _____ (“Guarantor”) in favor of
TransCanada Keystone Pipeline GP Ltd., in its capacity as general partner on behalf of **TransCanada
Keystone Pipeline Limited Partnership**, an Alberta limited partnership (“Creditor”).

WITNESSETH:

WHEREAS, Creditor and _____, a
_____ (“Debtor”) have entered into, or may hereafter
enter into in the future, certain contracts, agreements or arrangements, including, but in no way limited
to, contracts, agreements or arrangements involving the purchase, sale, transportation, exchange or other
similar transactions with respect to petroleum, petroleum products or for products or services similar or
related thereto (such contracts, agreements and arrangements, whether now existing or hereafter entered
into between Debtor and Creditor, are individually referred to as an “Agreement” and collectively referred
to as the “Agreements”); and

WHEREAS, to induce Creditor to extend or to continue to extend credit to Debtor, Guarantor
has agreed to provide this Guarantee to Creditor;

NOW, THEREFORE, Guarantor agrees with Creditor as follows:

1. **Guarantee.** Guarantor unconditionally, absolutely and irrevocably guarantees to Creditor and its
successors and assigns the full and prompt payment when due of all debts, obligations and
liabilities, present or future, direct or indirect, absolute or contingent, matured or not, secured or
unsecured, primary or secondary, at any time owing by Debtor to Creditor or remaining unpaid
by Debtor to Creditor incurred under, or arising out of, the Agreements (all such debts,
obligations and liabilities are collectively referred to as the “Guaranteed Obligations”). Guarantor
shall pay interest on any amounts due under this Guarantee as set forth in Section 18. Guarantor
shall pay any and all out-of-pocket costs, including legal fees and disbursements on a solicitor and
own client basis and in-house counsel on a reasonable basis, and other expenses incurred by
Creditor in enforcing Guarantor’s obligations under this Guarantee; provided that Guarantor
shall not be liable for such expenses of Creditor if Creditor is not successful in such enforcement
action. This is a guarantee of payment and not of collection. This Guarantee is in addition to,
and does not limit, any other guarantee of Guarantor. Nothing herein shall be construed as an
obligation on the part of Creditor to extend credit to Debtor or to continue to extend credit to
Debtor.
2. **Liability as principal debtor.** Creditor may recover from Guarantor as a principal debtor any
Guaranteed Obligations that Creditor may not recover from Guarantor as guarantor under
Section 1, and Guarantor agrees to pay all such Guaranteed Obligations to Creditor as principal
debtor. The provisions of this Guarantee shall apply generally with the necessary changes as to the
points of detail to the liability of Guarantor as principal debtor hereunder.
3. **Guarantee absolute.** The liability of Guarantor is unconditional, absolute and irrevocable and
shall remain in full force and effect without regard to, and shall not be released, suspended,
discharged, impaired, terminated, limited or otherwise affected by, any circumstance or
occurrence whatsoever, including, without limitation:
 - a) any action or inaction by Creditor as contemplated in Section 4;

- b) any change in the structure, form of entity, ownership or existence of Debtor, Guarantor or Creditor or any other change in the relationship between Debtor, Creditor or Guarantor;
 - c) any change in the financial condition of Debtor, Guarantor or Creditor;
 - d) the bankruptcy, winding-up, liquidation, dissolution, insolvency, reorganization or other similar proceeding affecting Debtor or its assets or any resulting release, stay or discharge of any Guaranteed Obligations;
 - e) any event or occurrence beyond the reasonable control of any party (other than any such event or occurrence that relieves Debtor of liability for the performance of any Guaranteed Obligation under any Agreement) or act of government in relation to, or directly or indirectly affecting, any Agreement, any Guaranteed Obligations, Debtor, Guarantor or Creditor;
 - f) any law, regulation or other circumstance that might otherwise constitute a defense available to, or a discharge of, Debtor or Guarantor in respect of any of the Guaranteed Obligations, other than the payment in full of the Guaranteed Obligations;
 - g) if Creditor, Debtor or Guarantor, respectively, is a partnership, any change in the membership of Creditor, Debtor or Guarantor through the death or retirement of one or more partners or the introduction of one or more partners or otherwise, any change in the constitution of Creditor, Debtor or Guarantor, or any incorporation of Creditor, Debtor or Guarantor; or
 - h) any lack or limitation of power, incapacity or disability on the part of Debtor or of its directors, partners or agents or any other irregularity, defect or informality on the part of Debtor in the Guaranteed Obligations.
4. **No release.** The liability of Guarantor is not released, suspended, discharged, impaired, terminated, limited or in any way affected by anything Creditor does, suffers or permits in connection with any duties or liabilities of Debtor to Creditor or any security for those duties or liabilities, including without limitation any loss of or in respect of any security received by Creditor from Debtor or others. Creditor may, at any time and from time to time, without the consent of or notice to Guarantor, and without impairing, releasing, discharging, limiting or otherwise affecting in whole or in part the obligations of Guarantor hereunder:
- a) change the manner, place or terms of payment of, and/or exchange or extend the time of payment of, renew, amend, alter, release, discharge or terminate, any of the Agreements or the Guaranteed Obligations;
 - b) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any assets securing the Guaranteed Obligations;
 - c) exercise or refrain from exercising any rights against Debtor or others or otherwise act or refrain from acting;
 - d) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof;
 - e) apply any sums, regardless of how realized, to any liability owing by Debtor to Creditor under or pursuant to the Agreements;

- f) consent to or waive any breach of, or any act, omission or default under any Agreement or otherwise amend, modify, restate, amend and restate or supplement any Agreement;
 - g) act or fail to act in any manner referred to in this Guarantee which may deprive Guarantor of any right against Debtor of the type described in Section 12 to recover any payments made pursuant to this Guarantee;
 - h) release Debtor or any other party liable in any manner for payment of any or all of the Guaranteed Obligations;
 - i) take or abstain from taking security or collateral from Debtor or from perfecting security or collateral of Debtor;
 - j) enter into new Agreements with Debtor from time to time after the date of this Guarantee, which new Agreements will, for all purposes, form a part of and be incorporated into the Guaranteed Obligations; and
 - k) otherwise deal with Debtor and security as Creditor sees fit.
5. **No exhaustion of remedies.** Creditor is not bound or obliged to commence or exhaust its recourse against Debtor or any other persons or any security or collateral it may hold or take any other action before being entitled to demand payment from Guarantor.
6. **No set-off or counterclaim.** Subject to Section 13, payments under this Guarantee shall be made without set-off or counterclaim whatsoever and free of any deductions or withholdings.
7. **Continuing guarantee.** This Guarantee is a continuing guarantee and is binding as a continuing obligation of Guarantor. This Guarantee shall apply to any ultimate balance due or remaining due to Creditor, and Guarantor shall continue to be bound, despite the payment from time to time during the term of this Guarantee of the whole or any part of the Guaranteed Obligations owed by Debtor to Creditor. This Guarantee shall continue to be effective or shall be reinstated, as the case may be, if at any time payment of any of the Guaranteed Obligations is rendered unenforceable or is rescinded or must otherwise be returned by Creditor upon the occurrence of any action or event, including, without limitation, the bankruptcy, reorganization, winding-up, liquidation, dissolution or insolvency of Debtor or Guarantor, all as though such payment had not been made.
8. **Representations and warranties.** Guarantor represents and warrants to Creditor that:
- a) Guarantor (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation and (ii) has the power and authority to own its property and assets, to transact the business in which it is engaged and to enter into and perform its obligations under this Guarantee;
 - b) the execution, delivery, observance and performance of this Guarantee by Guarantor do not and will not conflict with or result in a breach of the articles, certificate, by-laws, or other organizational or formation documents of Guarantor, or of the terms or provisions of any judgment, law, decree, order, statute, rule, regulation or agreement, indenture or instrument to which Guarantor is a party or by which Guarantor or its assets are bound or to which Guarantor or its assets are subject, or constitute a default under any of them;
 - c) this Guarantee has been duly authorized, executed and delivered by Guarantor;

- d) this Guarantee constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms;
 - e) Debtor is a direct or indirect wholly-owned subsidiary of Guarantor; and
 - f) this Guarantee reasonably may be expected to benefit Guarantor, either directly or indirectly.
9. **Demand for payment.** Guarantor shall pay to Creditor, within five (5) business days (as determined in the location where payment is to be made) after demand by Creditor and in immediately available funds, all Guaranteed Obligations due under the Agreements. Guarantor shall make all such payments in accordance with the instructions set forth in such demand. There are no other requirements of notice, presentment or demand that are required to be made under this Guarantee.
10. **Stay of acceleration.** If acceleration of the time for payment of any amount payable by Debtor in respect of the Guaranteed Obligations is stayed on the insolvency, bankruptcy, arrangement or reorganization of Debtor or on any moratorium affecting the payment of the Guaranteed Obligations, Guarantor shall nonetheless pay immediately on demand all amounts that would otherwise be subject to acceleration.
11. **Termination.** This Guarantee is a continuing guarantee effective from and after the date hereof; however, Guarantor may terminate its liability under this Guarantee with respect to Guaranteed Obligations incurred under or arising from any Agreement entered into on or after the Effective Date (as defined below) by providing written notice of such termination to Creditor in accordance with Section 25. Guarantor's notice of termination will become effective on the thirtieth (30th) day (the "Effective Date") after receipt of the notice by Creditor. From and after the Effective Date, Guarantor will not be liable pursuant to this Guarantee for any debts, obligations or liabilities incurred under or arising out of any Agreement entered into by Debtor on or after the Effective Date; **PROVIDED, HOWEVER, Guarantor will continue to remain liable for any and all Guaranteed Obligations under Agreements entered into by Debtor prior to the Effective Date, whether such Guaranteed Obligations arose prior to, on or after the Effective Date.** In addition, the termination of this Guarantee shall not affect Guarantor's liability for interest accruing as set forth in Section 18 on all Guaranteed Obligations for which Guarantor remains liable and shall not affect Guarantor's liability for legal fees, costs and other expenses incurred by Creditor in collecting such Guaranteed Obligations.
12. **Subordination and subrogation.** If and to the extent that Guarantor makes any payment to Creditor pursuant to this Guarantee, any claim which Guarantor may have against Debtor by reason thereof shall be subject and subordinate to the prior payment in full of all of the Guaranteed Obligations. Guarantor agrees that it will not exercise any rights that it may now have or hereafter acquire against Debtor that arise from the existence, payment, performance or enforcement of the Guaranteed Obligations under this Guarantee, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or proceeding, or remedy of any other party against Debtor, unless and until all of the Guaranteed Obligations and all other amounts payable under this Guarantee shall have been irrevocably paid, satisfied or discharged in full.
13. **Liability for Taxes.** Any and all payments made by Guarantor to Creditor shall be made in full, without set-off or counterclaim, and free and clear of and without deduction for any and all present and future taxes, liens, imposts, stamp taxes, deductions, charges or withholdings, and all liabilities with respect thereto and any interest, additions to tax and penalties imposed with respect thereto. If Guarantor shall be required by law to deduct any taxes, deductions, charges or withholdings from or in respect of any sum payable hereunder to Creditor (i) the sum payable

shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this section) Creditor receives an amount equal to the sum it would have received had no such deductions been made and (ii) Guarantor shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

14. **Waivers.** Guarantor waives diligence, presentment, protest, notice of acceptance of this Guarantee and notice of any liability to which it may apply, notice of dishonor or nonpayment, and any other notice not expressly required by this Guarantee.
15. **No merger.** Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence to any further action or proceeding that may be brought under this Guarantee. Any action, proceeding, judgment or recovery does not constitute a merger of any of Creditor's rights or remedies under this Guarantee. Any judgment obtained by Creditor in whole or in part of any of the Guaranteed Obligations under this Guarantee does not constitute a merger of this Guarantee into that judgment.
16. **Foreign currency obligations.** Guarantor shall make any payments under this Guarantee in the currency (the "Original Currency") in which Debtor is required to pay its Guaranteed Obligations. If Guarantor makes payment in a currency other than Original Currency (whether voluntarily or under an order or judgment of a court or tribunal of any jurisdiction), the payment constitutes a discharge of Guarantor's liability only to the extent of the amount of Original Currency that Creditor is able to purchase with the amount of the currency it receives on the date of receipt utilizing Creditor's customary foreign exchange practices as in effect on such date. Guarantor agrees to indemnify and hold harmless Creditor from and against any loss arising out of any currency-related deficiency in payment. This indemnity constitutes a separate and independent obligation giving rise to a separate cause of action. A certificate of an officer of Creditor certifying any deficiency or loss is, in the absence of manifest error, prima facie evidence of that deficiency or loss.
17. **Benefit of the Guarantee.** Subject to the terms of Section 26, this Guarantee shall be binding upon Guarantor and its successors and permitted assigns and shall inure to the benefit of and be enforceable by Creditor and its successors and assigns and shall apply to Debtor and its successors and assigns.
18. **Interest.** If payment of interest is not provided for in any Agreement, then Guarantor shall pay to Creditor interest on the unpaid portion of the Guaranteed Obligations under such Agreement at an annual rate equal to the sum of the prime rate of interest established from time to time by the Royal Bank of Canada for loans to creditworthy commercial customers plus 2% per annum, that interest to be calculated daily from and including the due date until payment is made in full.
19. **Entire agreement.** This Guarantee represents the entire rights and obligations of the parties pertaining to the subject matter hereof and supersedes all prior oral or written agreements, representations and understandings pertaining hereto.
20. **No waiver, remedies.** No failure or delay on the part of Creditor in exercising any right, power or privilege under this Guarantee and no course of dealing between Guarantor or Creditor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Guarantee preclude any other or further exercise thereof or any other right, power or privilege. The rights, powers or remedies in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which Creditor would otherwise have.

21. **Additional information.** Guarantor covenants and agrees that, so long as any part of the Guaranteed Obligations shall remain unpaid or any of the Agreements remain in effect, Guarantor will furnish to Creditor information regarding the financial condition of Guarantor as Creditor may from time to time reasonably request.
22. **Further assurances.** Guarantor agrees to promptly execute and deliver to Creditor, whenever and as often as reasonably requested to do so by Creditor, any further instruments of further assurances and consents as Creditor may deem necessary to confirm the continuing nature and extent of this Guarantee.
23. **Amendments.** No amendment or waiver of any provision of this Guarantee nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed (i) in the case of an amendment, by Guarantor and Creditor, and (ii) in the case of a waiver or consent, by Creditor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
24. **Severability.** If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will apply only to that provision and all other provisions of this Guarantee will continue in full force and effect as if such invalid or unenforceable provision were omitted. If this Guarantee is determined to be invalid or unenforceable for any reason, such invalidity or unenforceability will not apply to any of the representations and warranties provided in Section 8, which is deemed to be a separate and independent legal, valid, binding and enforceable agreement between Guarantor and Creditor and will continue in full force. Creditor is entitled to proceed with any remedy available to it as a result of Guarantor's breach of any of the representations and warranties provided in Section 8.
25. **Notices.** All notices and other communications hereunder shall be in writing and may be given in any manner described below (except that a demand notice may not be given by facsimile) to the address or facsimile number set forth below or at such other address or facsimile number for a party as shall be designated in a written notice by such party to the other party and will be deemed effective as indicated:
 - a) if delivered in person or by courier, on the date it is delivered;
 - b) if sent by mail, registered or certified, postage prepaid and return receipt requested, on the date it is delivered; or
 - c) if sent by facsimile transmission, on the date it is received by the recipient in legible form,unless the date of delivery or receipt, as applicable, is not a local business day or that communication is delivered or received, as applicable, after the close of business on a local business day, in which case that communication will be deemed given and effective on the first following day that is a local business day:

If to Guarantor, to:

Attention: _____

Fax: _____

If to Creditor, to:

TransCanada Keystone Pipeline GP Ltd.

450 – 1st Street SW

Calgary, Alberta

Canada T2P 5H1

Attention: Director, Counterparty Risk

Fax: 403-920-2359

26. **Assignment.** Guarantor may not assign its obligations under this Guarantee in part or in whole without the prior written consent of Creditor, and any purported assignment or delegation without such consent shall be null, void and of no effect. Creditor may assign all or any of its rights under this Guarantee without the consent of Debtor or Guarantor.
27. **Governing law.** This Guarantee is governed by and to be construed according to the laws applicable in the Province of Alberta without giving effect to any choice or conflict of law rules or provisions that would require the application of the laws of another jurisdiction. Guarantor irrevocably consents to the non-exclusive jurisdiction of the Alberta courts for the purposes of any action or proceeding arising out of or related to this Guarantee. Guarantor agrees that all claims in respect of such action or proceeding may be heard and determined in any such court and irrevocably waives, to the fullest extent permitted by law, any claim of inconvenient forum or other objection which it may now or hereafter have to the laying of venue in any such court. Guarantor also irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Guarantor at the address specified by it pursuant to this Guarantee. Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section shall affect Creditor's right to

serve legal process in any other manner permitted by law or its right to bring any action or proceeding against Guarantor or its property in the courts of other jurisdictions.

28. **Headings and section references.** The headings contained in this Guarantee are for reference purposes only and shall not affect the meaning or interpretation of this Guarantee. Unless the context indicates otherwise, all references in this Guarantee to sections shall refer to the corresponding section of this Guarantee.
29. **Facsimile signature, counterparts.** A signature delivered by facsimile or by any other reliable electronic transmission shall be deemed to be an original signature for purposes of the Guarantee and shall be binding upon Guarantor as an original signature. Notwithstanding that Guarantor may deliver a signature by facsimile or by any other reliable electronic transmission, Guarantor covenants to deliver an originally executed counterpart of this Guarantee to Creditor within a reasonable period of time after executing the Guarantee. This Guarantee may be executed in counterparts, each of which shall be deemed an original but which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has signed and delivered this Guarantee to be effective as of the date first-above written.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

U.S. Guarantee

GUARANTEE

This Guarantee dated _____, 20__, is made by _____,
a _____ (“Guarantor”) in favor of
TransCanada Keystone Pipeline GP, LLC, in its capacity as general partner on behalf of **TransCanada
Keystone Pipeline, LP**, a Delaware limited partnership (“Creditor”).

WITNESSETH:

WHEREAS, Creditor and _____, a
_____ (“Debtor”) have entered into, or may hereafter
enter into in the future, certain contracts, agreements or arrangements, including, but in no way limited
to, contracts, agreements or arrangements involving the purchase, sale, transportation, exchange or other
similar transactions with respect to petroleum, petroleum products or for products or services similar or
related thereto (such contracts, agreements and arrangements, whether now existing or hereafter entered
into between Debtor and Creditor, are individually referred to as an “Agreement” and collectively referred
to as the “Agreements”); and

WHEREAS, to induce Creditor to extend or to continue to extend credit to Debtor, Guarantor
has agreed to provide this Guarantee to Creditor;

NOW, THEREFORE, Guarantor agrees with Creditor as follows:

1. **Guarantee.** Guarantor unconditionally, absolutely and irrevocably guarantees to Creditor and its
successors and assigns the full and prompt payment when due of all debts, obligations and
liabilities, present or future, direct or indirect, absolute or contingent, matured or not, secured or
unsecured, primary or secondary, at any time owing by Debtor to Creditor or remaining unpaid
by Debtor to Creditor incurred under, or arising out of, the Agreements (all such debts,
obligations and liabilities are collectively referred to as the “Guaranteed Obligations”). Guarantor
shall pay interest on any amounts due under this Guarantee as set forth in Section 18. Guarantor
shall pay any and all out-of-pocket costs, including reasonable legal fees and expenses, and other
expenses incurred by Creditor in enforcing Guarantor’s obligations under this Guarantee;
provided that Guarantor shall not be liable for such expenses of Creditor if Creditor is not
successful in such enforcement action. This is a guarantee of payment and not of collection. This
Guarantee is in addition to, and does not limit, any other guarantee of Guarantor. Nothing
herein shall be construed as an obligation on the part of Creditor to extend credit to Debtor or to
continue to extend credit to Debtor.
2. **Liability as principal debtor.** Creditor may recover from Guarantor as a principal debtor any
Guaranteed Obligations that Creditor may not recover from Guarantor as guarantor under
Section 1, and Guarantor agrees to pay all such Guaranteed Obligations to Creditor as principal
debtor. The provisions of this Guarantee shall apply generally with the necessary changes as to the
points of detail to the liability of Guarantor as principal debtor hereunder.
3. **Guarantee absolute.** The liability of Guarantor is unconditional, absolute and irrevocable and
shall remain in full force and effect without regard to, and shall not be released, suspended,
discharged, impaired, terminated, limited or otherwise affected by, any circumstance or
occurrence whatsoever, including, without limitation:

- a) any action or inaction by Creditor as contemplated in Section 4;
 - b) any change in the structure, form of entity, ownership or existence of Debtor, Guarantor or Creditor or any other change in the relationship between Debtor, Creditor or Guarantor;
 - c) any change in the financial condition of Debtor, Guarantor or Creditor;
 - d) the bankruptcy, winding-up, liquidation, dissolution, insolvency, reorganization or other similar proceeding affecting Debtor or its assets or any resulting release, stay or discharge of any Guaranteed Obligations;
 - e) any event or occurrence beyond the reasonable control of any party (other than any such event or occurrence that relieves Debtor of liability for the performance of any Guaranteed Obligation under any Agreement) or act of government in relation to, or directly or indirectly affecting, any Agreement, any Guaranteed Obligations, Debtor, Guarantor or Creditor;
 - f) any law, regulation or other circumstance that might otherwise constitute a defense available to, or a discharge of, Debtor or Guarantor in respect of any of the Guaranteed Obligations, other than the payment in full of the Guaranteed Obligations;
 - g) if Creditor, Debtor or Guarantor, respectively, is a partnership, any change in the membership of Creditor, Debtor or Guarantor through the death or retirement of one or more partners or the introduction of one or more partners or otherwise, any change in the constitution of Creditor, Debtor or Guarantor, or any incorporation of Creditor, Debtor or Guarantor; or
 - h) any lack or limitation of power, incapacity or disability on the part of Debtor or of its directors, partners or agents or any other irregularity, defect or informality on the part of Debtor in the Guaranteed Obligations.
4. **No release.** The liability of Guarantor is not released, suspended, discharged, impaired, terminated, limited or in any way affected by anything Creditor does, suffers or permits in connection with any duties or liabilities of Debtor to Creditor or any security for those duties or liabilities, including without limitation any loss of or in respect of any security received by Creditor from Debtor or others. Creditor may, at any time and from time to time, without the consent of or notice to Guarantor, and without impairing, releasing, discharging, limiting or otherwise affecting in whole or in part the obligations of Guarantor hereunder:
- a) change the manner, place or terms of payment of, and/or exchange or extend the time of payment of, renew, amend, alter, release, discharge or terminate, any of the Agreements or the Guaranteed Obligations;
 - b) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any assets securing the Guaranteed Obligations;
 - c) exercise or refrain from exercising any rights against Debtor or others or otherwise act or refrain from acting;
 - d) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof;

- e) apply any sums, regardless of how realized, to any liability owing by Debtor to Creditor under or pursuant to the Agreements;
 - f) consent to or waive any breach of, or any act, omission or default under any Agreement or otherwise amend, modify, restate, amend and restate or supplement any Agreement;
 - g) act or fail to act in any manner referred to in this Guarantee which may deprive Guarantor of any right against Debtor of the type described in Section 12 to recover any payments made pursuant to this Guarantee;
 - h) release Debtor or any other party liable in any manner for payment of any or all of the Guaranteed Obligations;
 - i) take or abstain from taking security or collateral from Debtor or from perfecting security or collateral of Debtor;
 - j) enter into new Agreements with Debtor from time to time after the date of this Guarantee, which new Agreements will, for all purposes, form a part of and be incorporated into the Guaranteed Obligations; and
 - k) otherwise deal with Debtor and security as Creditor sees fit.
5. **No exhaustion of remedies.** Creditor is not bound or obliged to commence or exhaust its recourse against Debtor or any other persons or any security or collateral it may hold or take any other action before being entitled to demand payment from Guarantor.
6. **No set-off or counterclaim.** Subject to Section 13, payments under this Guarantee shall be made without set-off or counterclaim whatsoever and free of any deductions or withholdings.
7. **Continuing guarantee.** This Guarantee is a continuing guarantee and is binding as a continuing obligation of Guarantor. This Guarantee shall apply to any ultimate balance due or remaining due to Creditor, and Guarantor shall continue to be bound, despite the payment from time to time during the term of this Guarantee of the whole or any part of the Guaranteed Obligations owed by Debtor to Creditor. This Guarantee shall continue to be effective or shall be reinstated, as the case may be, if at any time payment of any of the Guaranteed Obligations is rendered unenforceable or is rescinded or must otherwise be returned by Creditor upon the occurrence of any action or event, including, without limitation, the bankruptcy, reorganization, winding-up, liquidation, dissolution or insolvency of Debtor or Guarantor, all as though such payment had not been made.
8. **Representations and warranties.** Guarantor represents and warrants to Creditor that:
- a) Guarantor (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation and (ii) has the power and authority to own its property and assets, to transact the business in which it is engaged and to enter into and perform its obligations under this Guarantee;
 - b) the execution, delivery, observance and performance of this Guarantee by Guarantor do not and will not conflict with or result in a breach of the articles, certificate, by-laws, or other organizational or formation documents of Guarantor, or of the terms or provisions of any judgment, law, decree, order, statute, rule, regulation or agreement, indenture or instrument to which Guarantor is a party or by which Guarantor or its assets are bound or to which Guarantor or its assets are subject, or constitute a default under any of them;

- c) this Guarantee has been duly authorized, executed and delivered by Guarantor;
 - d) this Guarantee constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms;
 - e) Debtor is a direct or indirect wholly-owned subsidiary of Guarantor; and
 - f) this Guarantee reasonably may be expected to benefit Guarantor, either directly or indirectly.
9. **Demand for payment.** Guarantor shall pay to Creditor, within five (5) business days (as determined in the location where payment is to be made) after demand by Creditor and in immediately available funds, all Guaranteed Obligations due under the Agreements. Guarantor shall make all such payments in accordance with the instructions set forth in such demand. There are no other requirements of notice, presentment or demand that are required to be made under this Guarantee.
10. **Stay of acceleration.** If acceleration of the time for payment of any amount payable by Debtor in respect of the Guaranteed Obligations is stayed on the insolvency, bankruptcy, arrangement or reorganization of Debtor or on any moratorium affecting the payment of the Guaranteed Obligations, Guarantor shall nonetheless pay immediately on demand all amounts that would otherwise be subject to acceleration.
11. **Termination.** This Guarantee is a continuing guarantee effective from and after the date hereof; however, Guarantor may terminate its liability under this Guarantee with respect to Guaranteed Obligations incurred under or arising from any Agreement entered into on or after the Effective Date (as defined below) by providing written notice of such termination to Creditor in accordance with Section 25. Guarantor's notice of termination will become effective on the thirtieth (30th) day (the "Effective Date") after receipt of the notice by Creditor. From and after the Effective Date, Guarantor will not be liable pursuant to this Guarantee for any debts, obligations or liabilities incurred under or arising out of any Agreement entered into by Debtor on or after the Effective Date; **PROVIDED, HOWEVER, Guarantor will continue to remain liable for any and all Guaranteed Obligations under Agreements entered into by Debtor prior to the Effective Date, whether such Guaranteed Obligations arose prior to, on or after the Effective Date.** In addition, the termination of this Guarantee shall not affect Guarantor's liability for interest accruing as set forth in Section 18 on all Guaranteed Obligations for which Guarantor remains liable and shall not affect Guarantor's liability for legal fees, costs and other expenses incurred by Creditor in collecting such Guaranteed Obligations.
12. **Subordination and subrogation.** If and to the extent that Guarantor makes any payment to Creditor pursuant to this Guarantee, any claim which Guarantor may have against Debtor by reason thereof shall be subject and subordinate to the prior payment in full of all of the Guaranteed Obligations. Guarantor agrees that it will not exercise any rights that it may now have or hereafter acquire against Debtor that arise from the existence, payment, performance or enforcement of the Guaranteed Obligations under this Guarantee, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or proceeding, or remedy of any other party against Debtor, unless and until all of the Guaranteed Obligations and all other amounts payable under this Guarantee shall have been irrevocably paid, satisfied or discharged in full.
13. **Liability for Taxes.** Any and all payments made by Guarantor to Creditor shall be made in full, without set-off or counterclaim, and free and clear of and without deduction for any and all present and future taxes, liens, imposts, stamp taxes, deductions, charges or withholdings, and all liabilities with respect thereto and any interest, additions to tax and penalties imposed with

respect thereto. If Guarantor shall be required by law to deduct any taxes, deductions, charges or withholdings from or in respect of any sum payable hereunder to Creditor (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this section) Creditor receives an amount equal to the sum it would have received had no such deductions been made and (ii) Guarantor shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

14. **Waivers.** Guarantor waives diligence, presentment, protest, notice of acceptance of this Guarantee and notice of any liability to which it may apply, notice of dishonor or nonpayment, and any other notice not expressly required by this Guarantee.
15. **No merger.** Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence to any further action or proceeding that may be brought under this Guarantee. Any action, proceeding, judgment or recovery does not constitute a merger of any of Creditor's rights or remedies under this Guarantee. Any judgment obtained by Creditor in whole or in part of any of the Guaranteed Obligations under this Guarantee does not constitute a merger of this Guarantee into that judgment.
16. **Foreign currency obligations.** Guarantor shall make any payments under this Guarantee in the currency (the "Original Currency") in which Debtor is required to pay its Guaranteed Obligations. If Guarantor makes payment in a currency other than Original Currency (whether voluntarily or under an order or judgment of a court or tribunal of any jurisdiction), the payment constitutes a discharge of Guarantor's liability only to the extent of the amount of Original Currency that Creditor is able to purchase with the amount of the currency it receives on the date of receipt utilizing Creditor's customary foreign exchange practices as in effect on such date. Guarantor agrees to indemnify and hold harmless Creditor from and against any loss arising out of any currency-related deficiency in payment. This indemnity constitutes a separate and independent obligation giving rise to a separate cause of action. A certificate of an officer of Creditor certifying any deficiency or loss is, in the absence of manifest error, prima facie evidence of that deficiency or loss.
17. **Benefit of the Guarantee.** Subject to the terms of Section 26, this Guarantee shall be binding upon Guarantor and its successors and permitted assigns and shall inure to the benefit of and be enforceable by Creditor and its successors and assigns and shall apply to Debtor and its successors and assigns.
18. **Interest.** If payment of interest is not provided for in any Agreement, then Guarantor shall pay to Creditor interest on the unpaid portion of the Guaranteed Obligations under such Agreement at an annual rate equal to the lesser of (i) two percent (2%) above the prime rate of interest from time to time published under "Money Rates" in The Wall Street Journal (or if at the time of determination thereof, such rate is not being published in The Wall Street Journal, such comparable rate from a federally insured bank in New York, New York as Creditor may reasonably determine), or (ii) the maximum rate of interest permitted by applicable law, the rate in either case to be calculated daily from and including the due date until payment is made in full.
19. **Entire agreement.** This Guarantee represents the entire rights and obligations of the parties pertaining to the subject matter hereof and supersedes all prior oral or written agreements, representations and understandings pertaining hereto.
20. **No waiver, remedies.** No failure or delay on the part of Creditor in exercising any right, power or privilege under this Guarantee and no course of dealing between Guarantor or Creditor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege

under this Guarantee preclude any other or further exercise thereof or any other right, power or privilege. The rights, powers or remedies in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which Creditor would otherwise have.

21. **Additional information.** Guarantor covenants and agrees that, so long as any part of the Guaranteed Obligations shall remain unpaid or any of the Agreements remain in effect, Guarantor will furnish to Creditor information regarding the financial condition of Guarantor as Creditor may from time to time reasonably request.
22. **Further assurances.** Guarantor agrees to promptly execute and deliver to Creditor, whenever and as often as reasonably requested to do so by Creditor, any further instruments of further assurances and consents as Creditor may deem necessary to confirm the continuing nature and extent of this Guarantee.
23. **Amendments.** No amendment or waiver of any provision of this Guarantee nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed (i) in the case of an amendment, by Guarantor and Creditor, and (ii) in the case of a waiver or consent, by Creditor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
24. **Severability.** If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will apply only to that provision and all other provisions of this Guarantee will continue in full force and effect as if such invalid or unenforceable provision were omitted. If this Guarantee is determined to be invalid or unenforceable for any reason, such invalidity or unenforceability will not apply to any of the representations and warranties provided in Section 8, which is deemed to be a separate and independent legal, valid, binding and enforceable agreement between Guarantor and Creditor and will continue in full force. Creditor is entitled to proceed with any remedy available to it as a result of Guarantor's breach of any of the representations and warranties provided in Section 8.
25. **Notices.** All notices and other communications hereunder shall be in writing and may be given in any manner described below (except that a demand notice may not be given by facsimile) to the address or facsimile number set forth below or at such other address or facsimile number for a party as shall be designated in a written notice by such party to the other party and will be deemed effective as indicated:
 - d) if delivered in person or by courier, on the date it is delivered;
 - e) if sent by mail, registered or certified, postage prepaid and return receipt requested, on the date it is delivered; or
 - f) if sent by facsimile transmission, on the date it is received by the recipient in legible form,

unless the date of delivery or receipt, as applicable, is not a local business day or that communication is delivered or received, as applicable, after the close of business on a local business day, in which case that communication will be deemed given and effective on the first following day that is a local business day:

If to Guarantor, to:

Attention: _____

Fax: _____

If to Creditor, to:

TransCanada Keystone Pipeline GP, LLC

c/o TransCanada Corporation

450 – 1st Street SW

Calgary, Alberta

Canada T2P 5H1

Attention: Director, Counterparty Risk

Fax: 403-920-2359

26. **Assignment.** Guarantor may not assign its obligations under this Guarantee in part or in whole without the prior written consent of Creditor, and any purported assignment or delegation without such consent shall be null, void and of no effect. Creditor may assign all or any of its rights under this Guarantee without the consent of Debtor or Guarantor.
27. **Governing law.** This Guarantee is governed by and to be construed according to the laws of the State of New York without giving effect to any choice or conflict of law rules or provisions that would require the application of the laws of another jurisdiction. Guarantor irrevocably consents to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court, in each case located in the borough of Manhattan in New York City for the purposes of any action or proceeding arising out of or related to this Guarantee. Guarantor agrees that all claims in respect of such action or proceeding may be heard and determined in any such court and irrevocably waives, to the fullest extent permitted by law, any claim of inconvenient forum or other objection which it may now or hereafter have to the laying of venue in any such court. Guarantor also irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Guarantor at the address specified by it

pursuant to this Guarantee. Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section shall affect Creditor's right to serve legal process in any other manner permitted by law or its right to bring any action or proceeding against Guarantor or its property in the courts of other jurisdictions.

28. **Headings and section references.** The headings contained in this Guarantee are for reference purposes only and shall not affect the meaning or interpretation of this Guarantee. Unless the context indicates otherwise, all references in this Guarantee to sections shall refer to the corresponding section of this Guarantee.
29. **Facsimile signature, counterparts.** A signature delivered by facsimile or by any other reliable electronic transmission shall be deemed to be an original signature for purposes of the Guarantee and shall be binding upon Guarantor as an original signature. Notwithstanding that Guarantor may deliver a signature by facsimile or by any other reliable electronic transmission, Guarantor covenants to deliver an originally executed counterpart of this Guarantee to Creditor within a reasonable period of time after executing the Guarantee. This Guarantee may be executed in counterparts, each of which shall be deemed an original but which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has signed and delivered this Guarantee to be effective as of the date first-above written.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 7.0
CURRENT KEYSTONE CANADA PIPELINE SYSTEM RULES
AND REGULATIONS**

NEB Tariff No. 15

Keystone Pipeline System

Petroleum Tariff

Containing Rules and Regulations
Applying to the Transportation of
Petroleum

From Hardisty, Alberta

To the International Boundary at or near Haskett, Manitoba

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

Issued: June 5, 2015

Issued by:

Trudy Eisele
TransCanada Keystone Pipeline GP Ltd.,
as general partner on behalf of
TransCanada Keystone Pipeline Limited
Partnership
450 – 1st Street SW
Calgary, Alberta T2P 5H1
Canada

Effective: June 15, 2015

Compiled by:

Julie Kemp
TransCanada Keystone Pipeline GP Ltd.,
as general partner on behalf of
TransCanada Keystone Pipeline Limited
Partnership
450 – 1st Street SW
Calgary, Alberta T2P 5H1
Canada
(403) 920-2918
(403) 920-2347 (fax)
julie_kemp@transcanada.com

website: <http://www.transcanada.com/keystone-shipper-information.html>

**ARTICLE 1
DEFINITIONS**

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

“**Abandonment Charge**” shall mean the monthly abandonment charge payable by Shipper to Carrier determined as follows:

- i) For Non-Term Shippers, the Abandonment Surcharge will be multiplied by the greater of:
 - (a) the volumes Tendered; and
 - (b) 95% of the highest Allocated Volume;
- ii) For Term Shippers, the Abandonment Surcharge will be multiplied by the sum of:
 - (a) Term Shipper’s Monthly Volume, irrespective of actual volume Tendered in a given Month; and
 - (b) For volumes Tendered in excess of Term Shipper’s Monthly Volumes, excluding make-up volumes, based on the greater of: (A) the volumes Tendered; and (B) 95% of the highest Allocated Volume.

“**Abandonment Surcharge**” shall mean the abandonment surcharge set out in the Petroleum Toll Schedule.

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

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

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

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

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

“**Alternate Delivery Point**” has the meaning as set out in Section 7.14.

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

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

“**Available Capacity**” has the meaning set out in Section 7.2.

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

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

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

“**Contract**” means a Petroleum Transportation Service Agreement between Carrier and a Shipper for the transportation and delivery of Petroleum for any portion of the Pipeline System.

“**Contract US Delivery Point**” means a delivery point specified by a Term Shipper or its Affiliate in a US Contract. For such purposes, where such Term Shipper or its Affiliate has entered into an agreement with Keystone US supplemental to its US Contract for a volume commitment to an alternate delivery point on the Keystone US Pipeline System, such alternate delivery point shall constitute a Contract US Delivery Point.

“**Contract Volume**” means the daily volume of Petroleum specified by Term Shipper in Appendix ‘A’ of a Contract, whereby Term Shipper commits to ship on the Pipeline System under the terms of such Contract.

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

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

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

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

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

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

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

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

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

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

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

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

“**Heavy Crude**” means Petroleum having a density from and including 876 kilograms per Cubic Metre (kg/m^3) up to and including 940 kg/m^3 , and a viscosity from and including 20 square millimetres per second (mm^2/s) up to and including $350 \text{ mm}^2/\text{s}$.

“**Keystone Customer Portal**” means the internet-based interface between Carrier and Shippers. The Keystone Customer Portal may be accessed at <http://www.transcanada.com/keystone-shipper-information.html>.

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

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

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

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

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

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

“**Monthly Revenue Commitment**” means the product of the Monthly Volume multiplied by the fixed toll as described in Appendix “B” of a Contract.

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

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

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

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

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

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

“**Notice of Shipment**” means the form prescribed by Carrier from time to time to be used by Shipper to notify Carrier of proposed Tenders for the following Month, as such form may be amended by Carrier from time to time. A Notice of Shipment may include, without limitation, Shipper’s name, contact person and contact information, Month of shipment, volume and Type of Petroleum to be Tendered in such Month, and the designated Receipt Point(s), Delivery Point(s), Contract US Delivery Point(s) and Alternate Delivery Point. Keystone’s Notice of Shipment can be accessed in the Keystone Customer Portal.

“**Party**” means Carrier or a Shipper, as applicable, and “**Parties**” means both Carrier and a Shipper.

“**Payment Due Date**” means the date that is the later of: (i) 25th day of each month; and (ii) ten (10) Days after the date that Carrier issues an invoice pursuant to Section 9.1. If such date is not a Banking Day, then the Payment Due Date shall be the first Banking Day immediately after such day.

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

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

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

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

“**Receipt Point(s)**” means the inlet flange of Carrier’s receipt meter at Hardisty, Alberta or elsewhere in Canada as the Tariff may designate from time to time.

“**Remaining Available Capacity**” has the meaning set out in Section 7.2(iii).

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“**Shipper**” means any Person who uses the transportation service of the Pipeline System pursuant to the Tariff.

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

“**Standard Conditions**” is defined as a density at a reference temperature of fifteen (15) degrees Celsius and pressure of 101.325 kPa-a.

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

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

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

“**True Vapor Pressure**” means the resulting temperature dependent vapor pressure as measured in accordance with ASTM D6377 (most current version), specifically applied as $VPCR_4(X)$ where VPCR is the vapor pressure of the crude, $(_4)$ is the vapor/liquid ratio of the test condition and (X) is the equilibrium temperature at which the test is conducted.

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

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

“**US Contract**” means a Petroleum Transportation and Throughput Agreement entered into by a Term Shipper or its Affiliate with Keystone US in respect of the Keystone US Pipeline System on terms and conditions corresponding to its Contract.

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

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

1.2 Construction. In construing these Rules and Regulations:

- (i) unless otherwise specified, references to Articles and Sections refer to Articles and Sections of these Rules and Regulations,
- (ii) no consideration shall be given to the captions of any Articles or Sections, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction; and
- (iii) the singular shall be deemed to include the plural and vice versa.

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**ARTICLE 2
COMMODITY AND STANDARD**

- 2.1 Commodity.** The Tariff applies to the transportation of Petroleum by Carrier and Carrier shall have no obligation to transport any commodity other than Petroleum.
- 2.2 Standard.** Carrier shall act as a reasonable and prudent operator in the discharge of Carrier's duties hereunder.

**ARTICLE 3
ORIGIN AND DESTINATION**

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

**ARTICLE 4
QUALITY**

- 4.1 Permitted Petroleum.** Only that Petroleum having properties that conform to the specifications of Petroleum described in Sections 4.2, 4.3 and 4.4 will be permitted in the Pipeline System. Shipper will not Tender to Carrier, and Carrier will have no obligation to accept, transport or Deliver Petroleum which does not meet said specifications.
- 4.2 Specifications of Petroleum.** For the purposes of Section 4.1, the specifications of the Petroleum shall be as follows:
- (i) The True Vapor Pressure shall not exceed sixty nine (69) kPa absolute (kPa-a) at 37.8 degrees Celsius as measured in accordance with the most recent version of ASTM D6377;
 - (ii) Sediment and water shall not exceed one-half of one percent (0.5%) of volume, as determined by the centrifuge method in accordance with ASTM D4007 standards (most current version) or by any other test that is generally accepted in the petroleum industry as may be implemented from time to time;
 - (iii) The temperature at the Receipt Point shall not exceed thirty-eight degrees Celsius (38°C);
 - (iv) The density at Standard Conditions shall be a minimum density of eight hundred and twenty five (825) kilograms per Cubic Meters (kg/m³) and not exceed nine hundred and forty (940) kg/m³;
 - (v) The kinematic viscosity shall not exceed three hundred and fifty (350) square millimetres per second (mm²/s) determined at the Carrier's reference line temperature as posted on Carrier's website; and

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- (vi) Shall have no physical or chemical characteristics that may render such Petroleum not readily transportable by Carrier or that may materially affect the quality of other Petroleum transported by Carrier or that may otherwise cause disadvantage or harm to Carrier or the Pipeline System, or otherwise impair Carrier's ability to provide service on the Pipeline System.
- 4.3 Modifications to Specifications.** Notwithstanding Sections 4.1 and 4.2, or any other provision in these Rules and Regulations to the contrary, Carrier shall have the right to make any reasonable changes to the specifications under Section 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System or Carrier's personnel, provided that Carrier shall give Shipper reasonable notice of such changes prior to filing.
- 4.4 Freedom from Objectionable Matter.** Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances in quantities that may be injurious to Carrier, the Pipeline System or downstream facilities, or which may otherwise interfere with the transportation of Petroleum in the Pipeline System.
- 4.5 Failure to Conform to Specifications.** If Carrier determines that a Shipper does not comply with the provisions of Section 4.2, 4.3 or 4.4 of these Rules and Regulations, then, upon notice from Carrier, such Shipper shall, at Shipper's sole cost and expense, remove its off-specification Petroleum from the Pipeline System as and when directed by Carrier, acting reasonably.
- 4.6 Failure to Remove Objectionable Matter.** If a Shipper fails to remove its off-specification Petroleum from the Pipeline System in accordance with the provision of Section 4.5, then, in addition to any other remedy available to Carrier under the Tariff, at law or in equity, Carrier shall have the right to remove and sell such Petroleum in any manner deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum and Carrier shall be entitled to retain a reasonable pre-estimate of any damages, losses, costs, expenses and other charges incurred or anticipated to be incurred by Carrier in respect of the presence of such objectionable matter. The remainder of such proceeds, if any, shall be promptly paid by Carrier to the Shipper or as directed in writing by Shipper. Carrier may take such further action and recourse as it deems appropriate to compensate, mitigate or reimburse Carrier for any adverse impact to Carrier or the Pipeline System that is attributable to the presence of such objectionable matter. Shipper shall indemnify and save harmless Carrier in accordance with Section 11.2 of these Rules and Regulations for any adverse impact to downstream facilities imposed on Carrier that is attributable to the presence of such objectionable matter.

**ARTICLE 5
MEASUREMENTS**

- 5.1 Measurement Base.** The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Metre.
- 5.2 Metering.** All Petroleum received by Carrier for transportation shall be gauged or metered and tested by a representative of Carrier prior to its acceptance at Hardisty. The Shipper may have a representative present at the gauging, metering and testing. If tank calibration tables are used for such purpose, quantities will be computed from the most recent regularly compiled tank calibration tables showing one hundred percent (100%) of the full capacity of the tanks. Such

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tank calibration tables shall be maintained in accordance with API 653. Carrier shall prove all meters situated at Hardisty at least once each month and Shipper may have a representative present to witness such proving. In addition, Shipper shall have the right to request that a meter(s) be proven if it has reasonable grounds to believe that such meter is not functioning properly. Should any meter be determined by Carrier to be functioning improperly, Carrier shall promptly notify each Shipper affected thereby. Whenever there is substantial evidence of meter malfunctions in a custody transfer measurement, the parties involved in the custody transfer shall negotiate an appropriate adjustment on the basis of the most reliable and accurate information available. Such adjustments may only be claimed for a period of up to one hundred twenty (120) Days after the date that the affected Party discovers and advises the other Party of the meter malfunction.

5.3 Meter Tickets. All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:

- (i) Gross Standard Volume and Net Standard Volume received and Delivered;
- (ii) kinematic viscosity and associated temperature;
- (iii) weighted average density;
- (iv) weighted average pressure; and
- (v) sediment and water.

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

5.4 Overages and Shortages. Carrier shall deliver and account to each Shipper for one hundred percent (100%) of Petroleum Tendered for its account subject to any actual Pipeline System gains or losses due to evaporation or shrinkage due to normal pipeline operations on the Pipeline System. Adjustments for overages or shortages, (including losses for shrinkage and evaporation incident to Carrier transportation), will then be based on the proportion that such Shipper's total Deliveries from the Carrier bears to the total Deliveries of all Shippers from the Carrier. Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis and settled by Keystone US in accordance with the procedures applicable to the Keystone US Pipeline System.

5.5 Carrier Right of Access. Subject to applicable laws and government regulations applicable to Shipper's premises, Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's premises where Petroleum is stored and have access to any and all tankage situated therein for the purpose of making any examination, inspection, measurement or test provided for under the Tariff; provided, however, Shipper shall not be liable to Carrier for any loss, injury, or damage to or suffered by Carrier or Carrier's representative during such entry or access unless and to the extent caused by Shipper's negligence.

5.6 Crude Type. Petroleum shall be classified by Type by Carrier on the basis of measured density and viscosity at the time of Tender. Where the density of the Petroleum falls within the density range of one Petroleum Type and the viscosity of the Petroleum falls within the viscosity range of

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another Type, then the Petroleum shall be deemed to be of the Type with the higher transportation toll.

**ARTICLE 6
SEGREGATION AND CHANGES IN QUALITY**

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

**ARTICLE 7
NOMINATIONS, TENDERS AND APPORTIONMENT**

- 7.1 Monthly Nominations.** Each Month, in respect of transportation service for the following Month, Shippers shall submit their respective Nominations (each a "**Monthly Nomination**") to Carrier on a Notice of Shipment delivered no later than 7:00 a.m., Mountain Standard Time, on Carrier's designated Monthly Nomination date which date shall be posted on a schedule of nomination dates listed on Carrier's website. Shippers shall submit the Notice of Shipment in the Nominations application located within the Keystone Customer Portal. Only one Notice of Shipment is required for the Pipeline System and the Keystone US Pipeline System. A Notice of Shipment is accepted by Carrier upon Carrier posting a status of "Accepted" on the Notice of Shipment within the Keystone Customer Portal, subject to the following:
- (i) Except as expressly provided in a Contract, if a Shipper fails to Nominate any volume, the Shipper's Monthly Nomination will be deemed to be zero;

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- (ii) If Shipper's Tenders have been curtailed pursuant to Article 13 of these Rules and Regulations, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment;
- (iii) Except as otherwise provided in a Contract, Shipper shall not be responsible for any payments on that curtailed portion of Monthly Nomination; and
- (iv) In support of a Shipper's Monthly Nomination;
 - (a) Carrier may, at its discretion and at its own behest where Carrier has reasonable grounds, seek to verify; or
 - (b) Upon notice from Carrier, Shipper shall provide written verification of Shipper's ability to (1) Tender Petroleum at the Receipt Point; and (2) Remove or have removed such Petroleum at the Delivery Point(s) (which removal verification shall be made by a relevant third party). Carrier shall not be obligated to accept Shipper's Monthly Nomination where such verification is, in the reasonable discretion of Carrier, unacceptable to Carrier.

7.2 Allocation of Available Capacity. Following the receipt by Carrier of Monthly Nominations, Carrier shall determine the capacity available to each Delivery Point on the Pipeline System for transportation service in that Month, including, where applicable, capacity available on the Keystone US Pipeline System in consultation with Keystone US ("**Available Capacity**"). In the event Monthly Nominations exceed Available Capacity, then, having regard to the operating conditions of the Pipeline System, as determined by Carrier, the Available Capacity shall be allocated by Carrier as follows:

- (i) ***Term Shippers' Priority Allocation:*** Each Term Shipper shall first be allocated all or a portion of its Monthly Nominations to the Delivery Point in respect of a Contract US Delivery Point up to a maximum level of its Monthly Volume. If there is not sufficient Available Capacity to accommodate such portion of the Monthly Nomination of each Term Shipper, then each Term Shipper shall receive its *prorata* share of Available Capacity based on the lesser of its: (A) Monthly Volume; and (B) submitted or deemed Monthly Nominations to such Delivery Point up to a maximum level of its Monthly Volume.
- (ii) ***Term Shippers' Priority Allocation to temporary Alternate Delivery Point:*** Secondly, subject to Section 7.14, each Term Shipper shall be allocated all or a portion of its Monthly Nominations in respect of a temporary Alternate Delivery Point, up to a maximum level of its remaining Monthly Volume which was not allocated capacity pursuant to Section 7.2(i). If there is not sufficient Available Capacity to accommodate such portion of the Monthly Nomination of each Term Shipper, then each Term Shipper shall receive its *prorata* share of Available Capacity based on the lesser of its: (A) remaining Monthly Volume; and (B) submitted or deemed Monthly Nominations to such Alternate Delivery Point, up to a maximum level of its remaining Monthly Volume.

The sum of all such allocations to all Term Shippers under Sections 7.2(i) and 7.2(ii) is the "**Monthly Term Shipper Allocation.**"

- (iii) ***Allocation of Remaining Available Capacity:*** Subject to Section 7.2(iv), if applicable, the positive difference, if any, between Available Capacity and the Monthly Term Shipper

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Allocation (“**Remaining Available Capacity**”) shall be allocated among Term Shippers and Non-Term Shippers on a *prorata* basis calculated for each Shipper based on the Remaining Available Capacity multiplied by a fraction where:

- (a) the numerator of which is, (1) in the case of a Term Shipper, the portion (if any) of that Term Shipper’s Monthly Nomination which was not allocated capacity pursuant to Section 7.2(i) and 7.2(ii), and, (2) in the case of a Non-Term Shipper, its Monthly Nomination; and
 - (b) the denominator of which is the sum of the numerators outlined above in Section (a).
- (iv) **Lottery Process for Non-Term Shipper:**¹ In the event the *prorata* allocation to a Non-Term Shipper under Section 7.2(iii) does not satisfy the minimum batch size requirements (“**minimum batch**”) as set forth in Section 7.4, then Carrier will administer a lottery process in order to reallocate such portion of unallocated Remaining Available Capacity amongst such Non-Term Shippers as follows:
- (a) Carrier shall determine the total number of minimum batches available for such Month for such Non-Term Shippers based on the sum of the *prorata* allocations under Section 7.2(iii) which did not satisfy the minimum batch;
 - (b) Carrier will utilize a random number generating system to assign each such Non-Term Shipper a number; and
 - (c) Carrier will allocate one minimum batch at a time to such Non-Term Shippers sequentially, from lowest assigned number to highest assigned number, until the total number of minimum batches available to such Non-Term Shippers for such Month is fully allocated.
- (v) **Revised Notice of Shipment.** During instances of allocation, a Shipper will be deemed to have submitted a revised Notice of Shipment, containing a Nomination equal to its Allocated Volume determined by Carrier. Following the posting of the Allocated Volume, Shipper will have an opportunity to advise Carrier which Nominations on its submitted Notice of Shipment are to be revised to match its Allocated Volume. In the event that a Shipper does not so advise Carrier by the deadline posted by Carrier on the Notice of Shipment form, the Shipper’s Nominations on its submitted Notice of Shipment shall be reduced *prorata* by Carrier to match Shipper’s Allocated Volume. A revised Notice of Shipment is accepted upon Carrier posting a status of “Accepted” on the Notice of Shipment within the Keystone Customer Portal.

7.3 Mid-Month Apportionment. In the event the Carrier is required to curtail, interrupt or reduce transportation service for reasons described in Article 13 and/or unable to perform its obligations due to Force Majeure events described in Article 15 during the month where Available Capacity is reduced after Monthly Nominations have been allocated, the remaining tenders of Term Shippers and Non-Term Shippers will be reduced *prorata* by the amount of Available Capacity reduction.

¹ Section 7.2(iv) applies on a pilot basis from June 15, 2015 to June 15, 2016.

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- 7.4 Batch Size.** A Shipper's Tender will be accepted only when the total quantity covered thereby will be Tendered to Carrier at a Receipt Point for transportation within said Month at a daily rate, or in quantities and at times to be specified or accepted by Carrier. Except as hereunder provided, Carrier will not accept a batch size of less than sixteen thousand Cubic Metres (16,000 m³) (100,000 bbls) or a batch size of greater than thirty-two thousand Cubic Metres (32,000 m³) (200,000 bbls). Carrier may, in its sole discretion, acting reasonably, (i) agree to accept Tenders of Petroleum in batch sizes less than 16,000 m³ (100,000 bbls) or in batch sizes greater than 32,000 m³ (200,000 bbls) and (ii) outline procedures or criteria under which it may accept Tenders of Petroleum in such batch sizes.
- 7.5 Tenders.** A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with Carrier's batch schedule. The projected batch schedule will be posted in the Keystone Customer Portal as necessary. Upon Carrier's request, if Shipper is unable to provide Carrier with reasonable evidence of Shipper's ability to remove from a Delivery Point the volume of Petroleum to be Tendered, Carrier may reduce the amount of Petroleum received from Shipper at a Receipt Point to the amount determined by Carrier which Shipper has verified it will be able to remove at the Delivery Point.
- 7.6 Late Nominations.** If capacity is available and operating conditions permit, as determined by Carrier in its sole discretion, Carrier may accept Nominations after Carrier's designated Monthly Nomination date. Shippers shall submit such Nominations by submitting a Late Nomination Form, which can be accessed in the Keystone Customer Portal. A Late Nomination Form is accepted by Carrier upon Carrier posting a status of "Accepted" on the Late Nomination Form within the Keystone Customer Portal. Late Nominations shall be accepted on a non-discriminatory basis, subject to operating conditions.
- 7.7 Revised Nominations.** If capacity is available and operating conditions permit, as determined by Carrier in its reasonable sole discretion, Carrier may accept revised Nominations after Carrier's designated Monthly Nomination date. Shippers shall submit such revised Nominations by submitting a Change Request Form which can be accessed in the Keystone Customer Portal. A Change Request Form is accepted by Carrier upon Carrier posting a status of "Accepted" on the Change Request Form within the Keystone Customer Portal. Revised nominations shall be accepted on a non-discriminatory basis, subject to operating conditions.
- 7.8 Working Stock.** Shipper shall supply its proportionate share of Working Stock as determined from time to time by Carrier or, for Term Shippers as specified in the Contract and as posted on Keystone Customer Portal.
- 7.9 Term Shipper Nominations.** Except as provided in Section 7.1, in the event that a Term Shipper fails to Nominate or Tender a volume of Petroleum equal to the Monthly Volume, it shall nonetheless pay to Carrier the Monthly Revenue Commitment and all other tolls and charges set forth in the Contract.
- 7.10 Term Shipper Make Up Rights.** Term Shippers who fail to meet their Monthly Volume requirements in a Month will be subject to uniform provisions with respect to their ability to make up those volumes in subsequent Months, in the manner described in the Contract. Any make-up volumes to be Tendered by Term Shippers pursuant to the Contract shall be Nominated and ranked equally with all volumes Nominated for the purpose of allocating Remaining Available Capacity on the Pipeline System pursuant to Section 7.2(iii).

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- 7.11 Non-Term Shippers.** Each Non-Term Shipper shall in each Month Tender to Carrier a volume of Petroleum equal to its Allocated Volume. Each Month, such Non-Term Shipper shall pay to Carrier an amount equal to the product of (i) the Uncommitted Toll, multiplied by (ii) the greater of Non-Term Shipper's Tendered Petroleum or ninety-five percent (95%) of Non-Term Shipper's Allocated Volume. The transportation of Petroleum by Carrier for Non-Term Shippers shall be in accordance with and subject to the terms and conditions of the Tariff.
- 7.12 Uniform Tenders.** Each Shipper shall endeavour to Tender Petroleum to Carrier in each Month in accordance with Carrier's rateable batch schedule to make up its Allocated Volume and having such Petroleum specifications as will reasonably be compatible with Pipeline System operations. Carrier may curtail receipts of Petroleum from a Shipper if such Shipper attempts to Tender in excess of volumes equal to its Allocated Volume in accordance with Carrier's rateable batch schedule.
- 7.13 Flow Rates and Volumes.** Carrier will normally take full stream receipts at Receipt Points and will make full stream Deliveries of Petroleum at Delivery Point(s) at flow rates and volumes compatible with the Pipeline System operations.
- 7.14 Alternate Delivery Points.** For any Month and during any Month, (1) a Term Shipper may Nominate an alternate delivery point on the Keystone US Pipeline System other than its Contract US Delivery Point; and (2) any Shipper may change the delivery point in its Nomination to an alternate delivery point on the Keystone US Pipeline System ("**Alternate Delivery Point**"). Carrier is under no obligation to accept a Nomination to an Alternate Delivery Point but may do so:
- (i) subject to Carrier and Keystone US determining there is sufficient Available Capacity to such Alternate Delivery Point to accommodate such diversion. In the event there is insufficient Available Capacity to accommodate a Term Shipper Nomination pursuant to Section 7.14(1) above, Carrier will allocate the temporary diversion volumes to the Delivery Point in respect of such Alternate Delivery Point in accordance with Section 7.2(ii); and
 - (ii) provided that Shipper will be responsible for any applicable tolls, rates and other charges payable for Petroleum delivered to such Alternate Delivery Point.

**ARTICLE 8
APPLICATION OF TOLLS**

- 8.1 Effective Tolls.** Petroleum accepted for transportation shall be subject to the tolls and interest if applicable, in effect for the Month such Petroleum is Nominated for Tender to the Carrier at the Receipt Point(s), irrespective of the date of Nomination, the date of Tender or date of Delivery at the Delivery Point(s).
- 8.2 Discounted Uncommitted Tolls.** Carrier may discount the Light Crude or Heavy Crude Uncommitted Rates reflected on the currently effective toll schedule in a not unduly discriminatory manner. Any discount will be reflected on a toll schedule, which shall be filed with the NEB as soon as possible and which will not become effective until after the day on which Carrier receives a Tender eligible for such discount.

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

9.1 Invoicing and Payment. Shipper shall pay to Carrier the applicable Monthly Revenue Commitment, and all other tolls and charges including the Abandonment Charge payable in accordance with the Tariff on or before the Payment Due Date. On or before the 15th day of each calendar month, Carrier will electronically issue to Shipper an invoice detailing:

- (i) the tolls payable to Carrier pursuant to the Tariff for service provided during the previous Month: and
- (ii) any other charges for which Shipper is liable under a Contract or the Tariff (including, without limitation, any applicable taxes).

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

9.2 Carrier's Lien. Carrier shall have a lien, charge and security interest on all Petroleum in its possession Tendered by or on behalf of Shipper, and on all proceeds of such Petroleum, to secure the performance of all obligations of Shipper under the Tariff, including without limitation, the payment of any and all unpaid tolls and other charges that are due Carrier and unpaid by Shipper. Carrier may withhold such Petroleum from Delivery until all such unperformed obligations or unpaid tolls and charges have been performed or paid in full, as the case may be. The lien and other remedies contained in this Section 9.2 are in addition to any other remedies available to Carrier at law, in equity, or under a Contract or the Tariff.

9.3 Carrier Remedies. Should Shipper fail to pay the full amount of any invoice described in this Article 9 on or before the Payment Due Date, in addition to any other remedy Carrier may have under a Contract, the Tariff, at law or in equity:

- (i) interest on the unpaid portion of the invoice shall accrue daily, commencing on the Day immediately following the Payment Due Date, at a rate of interest per annum equal to the Prime Rate; and
- (ii) Carrier may, upon five (5) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such amount is paid in full, provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further tolls, charges or other amounts payable to Carrier under the Tariff. If, at any time during such suspension, Shipper pays the full amount payable to Carrier, Carrier shall, within two (2) Banking Days of receipt of payment, recommence receipt and Delivery of Shipper's Petroleum. If Shipper fails to pay the full amount payable to Carrier after such suspension, Carrier may, at its option at any time, in addition to any other remedy that may be available to it under a Contract, the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, (a) seize and sell any of Shipper's Petroleum then in Carrier's possession pursuant to Section 9.4, and (b) for a Term Shipper, terminate the Contract with such Term Shipper, provided however, if Carrier terminates the Contract, Term Shipper shall remain liable for and shall, to the extent permitted by applicable law and subject to Carrier's obligation to mitigate, pay to Carrier within five (5) Banking Days

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of such termination, pursuant to Carrier's invoice, the net present value of the aggregate of: (A) the monthly charges payable under the Contract or the Tariff (including, without limitation, the Monthly Revenue Commitment) for the unexpired term(s) of such Contract, (B) all applicable taxes, (C) all amounts owing under the Contract in respect of Petroleum Delivered but for which all tolls and any other charges are not yet paid, and (D) all other amounts for which Term Shipper is obligated to pay Carrier pursuant to the Tariff.

- 9.4 Seizure and Sale by Carrier.** Pursuant to Sections 9.3, 10.2 and 12.2, Carrier shall have the right itself or through an agent, to seize and sell at public auction or, if not permitted by applicable law, by such other lawful means available to Carrier in its discretion, any Petroleum delivered to the Carrier by the Shipper and then in the possession of Carrier or its agent, or otherwise traceable and lienable by Carrier. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than forty-eight (48) hours after publication of notice of such sale in a daily newspaper of general circulation published in the area of the proposed sale. Such notice shall state the time, place of sale and quantity, type, and location of Petroleum to be sold. Shipper covenants and agrees not to dispose of its Petroleum other than subject to the lien, charge and security interest granted to Carrier hereby. At such sale, Carrier shall have the right to bid and, if the highest bidder, to become the purchaser of the Petroleum. From the proceeds of the sale of the Petroleum, Carrier will pay itself the tolls, charges, damages and other amounts payable to Carrier under the Tariff, including, without limitation, reasonable storage expenses pending sale of such Petroleum, and all costs and expenses incident to the sale, and the balance remaining, if any, shall be held for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. Any such funds may be commingled in any account or accounts maintained by Carrier from time to time. Carrier is authorized by Shipper to retain possession of Petroleum Tendered by Shipper or to take Delivery of Petroleum at a Delivery Point for the purpose of enforcing its rights under and pursuant to the Tariff.
- 9.5 Disputed Invoices.** If Shipper disputes any amount payable under an invoice, Shipper shall nonetheless pay to Carrier the full amount of such invoice on or before the Payment Due Date, except in the case of manifest error, in which case Shipper shall notify Carrier of such manifest error before the Payment Due Date and Carrier shall issue a corrected invoice. If it is finally determined that Shipper's invoice was incorrect and that an overpayment has been made, Carrier shall reimburse Shipper for such overpayment, together with interest calculated from the date such overpayment was made until the date of reimbursement at the Prime Rate, provided however any overpayment of the Abandonment Charge shall be refunded only by a credit on an invoice in any subsequent Month that an Abandonment Charge would be payable.

**ARTICLE 10
DELIVERY AND ACCEPTANCE**

- 10.1 Delivery.** Carrier will transport Petroleum with reasonable diligence and dispatch and Shipper shall with reasonable diligence and dispatch accept and remove its Petroleum from the facilities of Carrier upon Delivery of the Petroleum at a Delivery Point.
- 10.2 Acceptance.** If Shipper fails to remove its Petroleum from the Pipeline System with reasonable diligence and dispatch upon Carrier's Delivery, then Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (i) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (ii) all tolls and other charges due and payable to Carrier under the

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Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the Shipper and any other Person lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Carrier from time to time, without any obligation to pay interest thereon.

**ARTICLE 11
LIABILITY OF SHIPPER**

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

**ARTICLE 12
DEFAULT, SUSPENSION AND TERMINATION**

- 12.1 Default.** Subject to Article 15, if Carrier or Shipper (a "**Defaulting Party**") shall fail to perform any of the material covenants or obligations imposed upon it under a Contract or the Tariff, other than Shipper's failure to pay an invoice on or before the Payment Due Date (which circumstance is addressed in Article 9), then in addition, to any other remedies the non-Defaulting Party may have under a Contract, the Tariff, at law or in equity, the non-Defaulting Party may terminate the Contract in the following manner: The non-Defaulting Party shall deliver a written notice (a "**Default Notice**") to the Defaulting Party, stating the relevant default, and declaring it to be the intention of the non-Defaulting Party giving the Default Notice to terminate such Contract. The Defaulting Party shall have (i) in the case of a default of a monetary nature (which includes, without limitation, a default pursuant to Article 20), ten (10) Days after receipt of the Default Notice, or (ii) in the case of a default of a non-monetary nature, thirty (30) Days after receipt of the Default Notice (in either case, the "**Default Period**") in which to remedy or remove the cause or causes of the default stated in the Default Notice. If such default is remedied within the Default Period, or if the Defaulting Party fully indemnifies by payment to the non-Defaulting Party or otherwise secures the non-Defaulting Party (in form and substance satisfactory to the non-Defaulting Party) for any and all consequences of such default, then the Default Notice shall be withdrawn and the Contract shall continue in full force and effect provided that such indemnity or security remains in place.
- 12.2 Remedies.** If the Defaulting Party does not remedy the default or does not indemnify by payment to the non-Defaulting Party or otherwise secure the non-Defaulting Party for any and all

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

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

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

12.4 Rejected Nominations. Carrier may, in its sole discretion and without limiting any other remedy that may be available to it under the Tariff, at law or in equity, reject a Nomination from and deny service to any Non-Term Shipper if such Non-Term Shipper has failed to pay within five (5) Banking Days of the Payment Due Date, any invoice issued by Carrier to such Non-Term Shipper pursuant to the Tariff.

12.5 No Waiver. No waiver by Carrier or Shipper of any one or more defaults by the other Party in the performance of any provisions of the Tariff shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

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**ARTICLE 13
INTERRUPTION AND CURTAILMENT**

- 13.1 Interruption and Curtailment.** Carrier may interrupt, curtail or reduce transportation service to Shippers for such periods of time as it may reasonably require for the purpose of effecting or allowing any repairs, maintenance, replacement, upgrading or other work related to the Pipeline System, Carrier's other facilities or downstream facilities in circumstances which do not constitute Force Majeure. If such interruption is due to a planned outage, Carrier shall give Shippers prior notice of such interruption and curtailment as soon as reasonably possible. If such interruption is unforeseen, Carrier shall give Shippers notice of such interruption and curtailment as soon as reasonably possible. Carrier shall use reasonable commercial efforts to minimize the extent and duration of any interruption and the impact of such interruption on the operation of the Pipeline System.
- 13.2 Curtailed Service and Allocation of Available Capacity.** During periods of interruption pursuant to Section 13.1, Carrier shall curtail transportation service and allocate Available Capacity in accordance with Article 7.

**ARTICLE 14
LIABILITY OF CARRIER**

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

**ARTICLE 15
FORCE MAJEURE**

- 15.1 Performance Excused.** If either Carrier or Shipper fails to perform, in whole or in part, its obligations under a Contract or the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.
- 15.2 Force Majeure Definition.** The term "Force Majeure", as used herein and for all purposes relating hereto, shall mean any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, storms,

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civil disturbances, the act, regulation, order, direction or requisition of any governmental or other legal authority having jurisdiction, breakdown or failures of pipe, plant, machinery or equipment, inability to obtain or the curtailment of electric power, water or fuel, or other event, cause or occurrence whether of the kind enumerated or otherwise which in all cases are not within the reasonable control of the Party claiming suspension, and which by the exercise of due diligence such Person is unable to prevent or overcome.

15.3 Excluded Items. The following shall not, under any circumstance, constitute an event of Force Majeure:

- (i) Shipper's inability to purchase Petroleum;
- (ii) lack of funds;
- (iii) availability of more attractive markets for Petroleum;
- (iv) absence of a market for Petroleum; or
- (v) availability of alternative Petroleum transportation systems.

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

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

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

15.6 No Payment Relief. Except as otherwise expressly provided in a Contract and notwithstanding anything in this Article 15 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under a Contract or the Tariff to make payments pursuant to Article 9 or to provide Financial Assurances pursuant to Article 20 to Carrier under the Tariff during the continuance of such Force Majeure event.

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

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**ARTICLE 16
ADVERSE CLAIMS AGAINST PETROLEUM**

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

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

- 17.1 Condition Precedent.** As a condition precedent to the payment by Carrier of any claims for loss, damage or delay asserted by Shipper in connection with the transportation of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within one hundred eighty (180) Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within one hundred eighty (180) Days after a reasonable time for Delivery has elapsed. Any suits arising out of such claims must be instituted against Carrier within two (2) Years from the date when notice in writing is given by Carrier to Shipper that Carrier has disallowed the claim or any part or parts thereof as specified in the notice. Claims advanced beyond such two (2) Year period shall be null and void as between Shipper and Carrier. In Tendering Petroleum to be transported under the Tariff, Shipper agrees to be bound by the provisions of this Section 17.1 and waive any rights which it might otherwise have at common law, in equity or otherwise, to make a claim after the expiration of said period of one hundred eighty (180) Days or to bring an action after the expiration of the said period of two (2) Years. Nothing contained in this Section 17.1 shall be construed as constituting a waiver or release of any rights or defences which Carrier may have at law, in equity or pursuant to the Tariff, in respect of any claim or demand asserted by Shipper.
- 17.2 No Special Damages.** Except as expressly provided in this Tariff, neither Party nor its respective Affiliates shall have any liability or responsibility to the other Party or the other Party’s Affiliates for any Special Damages incurred by such Person that arise out of or otherwise relate to this Tariff or the subject matter of this Tariff or any Contract, regardless of whether such claim arises under or results from contract, tort or strict liability; provided that, subject to Sections 6.2 and 14.1, such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed in favour of Persons that are not a Party or an Affiliate of a Party.

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ARTICLE 18
REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS

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

ARTICLE 19
GOVERNING LAW

19.1 Governing Law. The Contract and Tariff shall be construed and applied in accordance with and be subject to the laws of the Province of Alberta, and the laws of Canada applicable therein, but shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein including, without limitation, the NEB. Other than matters falling within the jurisdiction of the NEB, no Person will institute any action, suit or other proceeding with respect to the Contract or Tariff other than in the Alberta Court of Queen's Bench in the judicial district of Calgary, or, if that court for any reason lacks subject matter jurisdiction, the appropriate court for the Province of Alberta, or Canada, as applicable. In that regard, each person subject to the Contract and Tariff hereby irrevocably attorns to the jurisdiction of such courts in Alberta or Canada in the event of any such action, suit or other proceeding by the other Party. **ALL PERSONS SUBJECT TO THE CONTRACT OR THE TARIFF SPECIFICALLY AND KNOWINGLY WAIVE ANY TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.**

ARTICLE 20
FINANCIAL INFORMATION AND ASSURANCES

20.1 Financial Information and Assurances. Except as provided in a contract, Shipper shall provide to Carrier, at any time:

(i) upon Carrier's request, information ("**Financial Information**") that will allow the Carrier to evaluate (or re-evaluate) and establish Shipper's capacity to perform any financial obligations that could arise from the transportation of Shipper's Petroleum on the Pipeline System; and

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

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

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

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

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

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

20.4 Required Elements. The following aspects of any Financial Assurances must be acceptable to Carrier, acting reasonably:

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- (i) the terms of any letter of credit;
- (ii) the adequacy (including terms) of any proposed financial assurance; and
- (iii) the creditworthiness of the issuer of any letter of credit or other financial assurance.

ARTICLE 21
TERMS AND CONDITIONS OF ACCESS TO CONTRACTED TRANSPORTATION
CAPACITY

21.1 The following terms when used in this Article 21, shall have the following meanings:

- (i) “**Acceptance Deadline**” means the date by which Carrier shall deliver fully executed Governing Documents to Proposed Shipper following close of an Open Season.
- (ii) “**Available Uncommitted Capacity**” means capacity available on the Pipeline System for Petroleum transportation service, which capacity specifically excludes Reserved Spot Capacity.
- (iii) “**CA Deadline**” means the time and date by which a Person must deliver an executed Confidentiality Agreement to Carrier.
- (iv) “**Confidentiality Agreement**” means the Carrier’s form of confidentiality agreement which must be executed by a Person in order to receive confidential documents relating to the Open Season.
- (v) “**Financial Assurances Deadline**” means the date by which applicable Proposed Shipper shall deliver Financial Assurances to Carrier.
- (vi) “**Governing Documents**” means the Carrier’s form of Contract and any other type of agreement or document to be executed by a Person interested in obtaining Open Season Capacity.
- (vii) “**Notice of Open Season**” has the meaning set out in Section 21.2.
- (viii) “**Open Season**” means a bid tender process which the Carrier intends to commence whereby bids for Open Season Capacity may be submitted to the Carrier.
- (ix) “**Open Season Capacity**” means the volume of Available Uncommitted Capacity available for bid during an Open Season.
- (x) “**Open Season Documents**” has the meaning set out in Section 21.3.
- (xi) “**Proposed Shippers**” means Persons who execute and deliver to Carrier prior to the CA Deadline a Confidentiality Agreement.
- (xii) “**Reserved Spot Capacity**” means the volume of Available Capacity reserved for Non-Term Shippers on the Pipeline System in accordance with any directions of the NEB which may be in effect as of the date the Carrier posts on Carrier’s website the Notice of Open Season.

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- 21.2** Carrier may, in its sole discretion, hold an Open Season to provide Persons with non-discriminatory access to Open Season Capacity. If Carrier wishes to hold an Open Season, Carrier shall post a notice (“**Notice of Open Season**”) on the Carrier’s website. The Notice of Open Season shall include the following information:
- (i) the Open Season commencement and closing dates, the Financial Assurances Deadline and the Acceptance Deadline;
 - (ii) the volume of Open Season Capacity; and
 - (iii) the availability on the Carrier’s website to the Open Season Documents, the Confidentiality Agreement and the CA Deadline.
- 21.3** Persons who execute and deliver to Carrier a Confidentiality Agreement prior to the CA Deadline shall be provided access to documentation (“**Open Season Documents**”) by Carrier in respect of the Open Season Capacity during the Open Season. Open Season Documents include but are not limited to:
- (i) information describing the proposed commercial terms relating to the particular Open Season; and
 - (ii) forms of Governing Documents.
- 21.4** Proposed Shippers shall be required to comply with the following bid submission criteria:
- (i) complete the Governing Documents in accordance with instructions contained in the Open Season Documents;
 - (ii) execute two copies of the Governing Documents and deliver same to the Carrier in accordance with instructions contained in the Open Season Documents prior to the Open Season closing date; and
 - (iii) prior to the Financial Assurances Deadline and subject to Section 21.4(iv), be considered creditworthy by Carrier or provide financial assurances satisfactory to Carrier, in an amount indicated in Section 20.3; or
 - (iv) prior to the Financial Assurances Deadline, be considered creditworthy by Carrier or provide financial assurances satisfactory to Carrier in an amount up to the full Contract term of tolls and other charges plus all applicable taxes based on the Proposed Shipper’s Monthly Volume associated with the Open Season Capacity in the event capital expenditures are to be incurred by Carrier to expand the Pipeline System and Open Season Capacity results therefrom.
- 21.5** If aggregate volumes committed to by Proposed Shippers in the Governing Documents exceed the Open Season Capacity:
- (i) Open Season Capacity shall be allocated on a pro-rata basis, rounded in 1,000 barrel per day increments, based on the capacity requested in each bid or as otherwise specified in the Open Season Documents, among those Proposed Shippers that satisfy Carrier’s

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creditworthiness requirements and deliver executed Governing Documents on or prior to the Open Season closing date; and

- (ii) by submitting executed Governing Documents in accordance with the Open Season, a Proposed Shipper authorizes Carrier to amend the Proposed Shipper's contract volume initially specified by such Proposed Shipper in its submitted Governing Documents to reflect the reduced allocation of capacity and such amendment shall be binding on the Proposed Shipper.

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

21.7 Subject to the receipt by Carrier of the Governing Documents in accordance with Section 21.4 and Proposed Shipper meeting the applicable creditworthiness requirements set forth therein, if following the Open Season closing date, and in the sole discretion of Carrier, a decision is made to proceed in awarding Open Season Capacity pursuant to the Open Season, on or before the Acceptance Deadline and subject to Section 21.5, Carrier will execute and deliver a fully executed Governing Document to those Proposed Shippers who are to be awarded all or a portion of the Open Season Capacity.

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

**ARTICLE 22
IN-LINE TRANSFERS**

22.1 In-Line Transfers. No in-line transfers of any Petroleum Tendered by Shipper shall be permitted on the Pipeline System.

**KEYSTONE PIPELINE
JULY 2015 OPEN SEASON**

**SECTION 8.0
CURRENT KEYSTONE U.S. PIPELINE SYSTEM RULES AND
REGULATIONS**

FERC ICA Oil Tariff

F.E.R.C. No. 5.3.0
(Cancels F.E.R.C. No. 5.2.0)

TransCanada Keystone Pipeline, LP

Local Pipeline Tariff

Containing Rules and Regulations
Applying to the Transportation of
Petroleum

From the International Boundary with Canada at or near Haskett, Manitoba
To Points in Illinois, Oklahoma and Texas

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

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

Issued: May 20, 2014

Effective: June 20, 2014

Issued by:

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ITEM 1 – DEFINITIONS

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

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

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

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

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

“**Allocated Volume**” means for any Month that volume of Pipeline System capacity allocated to a Shipper pursuant to Item 7.

“**Alternate Delivery Point**” has the meaning set out in Section 7.15.

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

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

“**Available Capacity**” has the meaning set out in Section 7.2.

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

“**Canadian Contract**” means a Petroleum Transportation Service Agreement between Carrier and either a Term Shipper or its Affiliate for the transportation and delivery of Petroleum for any portion of the Keystone Canada Pipeline System.

“**Canadian Tariff**” means the rules and regulations governing the transportation of Petroleum on the Keystone Canada Pipeline System and any Petroleum toll schedule filed at the NEB by Keystone Canada, all as may be amended from time to time.

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

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

“**Contract**” means a Petroleum Transportation Service and Throughput Agreement between Carrier and a Shipper for the transportation and delivery of Petroleum for any portion of the Pipeline System.

“**Contract Delivery Point**” means any Delivery Point specified by Term Shipper in Appendix ‘A’ of a Contract.

“**Contract Volume**” means the daily volume of Petroleum specified by Term Shipper in Appendix ‘A’ of a Contract, whereby Term Shipper commits to ship on the Pipeline System under the terms of such Contract.

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

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

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

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

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

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

“**Delivery Point(s)**” means the outlet meter at one or more of the locations on the Pipeline System as designated by Shipper to Carrier from time to time as the destination for the Petroleum to be shipped hereunder and recognized by Carrier as a Delivery Point.

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

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

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

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

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

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“**Heavy Crude**” means Petroleum having a density from and including 876 kilograms per Cubic Meter (kg/m^3) up to and including 940 kg/m^3 , and a viscosity from and including 20 square millimeters per second (mm^2/s) up to and including $350 \text{ mm}^2/\text{s}$.

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

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

“**Keystone Customer Portal**” means the internet-based interface between the Carrier and Shippers. The Keystone Customer Portal may be accessed at <http://www.transcanada.com/keystone-shipper-information.html>

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

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

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

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

“**Monthly Revenue Commitment**” means the product of the Monthly Volume multiplied by the term shipper commitment rate as described in Appendix “B” of a Contract.

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

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

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

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

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

“**Notice of Shipment**” means the form prescribed by Carrier from time to time to be used by Shipper to notify Carrier of proposed Tenders for the following Month, as such form may be amended by Carrier from time to time. A Notice of Shipment may include, without limitation, Shipper’s name, contact person and contact information, Month of shipment, volume and Type of Petroleum to be Tendered in such Month, and the designated Receipt Point and Delivery Point(s). Keystone’s Notice of Shipment can be accessed in the Keystone Customer Portal.

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“**Party**” means Carrier or a Shipper, as applicable, and “**Parties**” means both Carrier and a Shipper.

“**Payment Due Date**” means the date that is the 25th day of each month. If the 25th day is not a Banking Day, then the Payment Due Date shall be the first Banking Day immediately after the 25th day of such month.

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

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

“**Pipeline System**” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Carrier which are connected to the Keystone Canada Pipeline System commencing at the international boundary at or near Haskett, Manitoba, and terminating at or near Patoka, Illinois and Port Arthur, Texas, as such facilities may be modified, expanded or extended from time to time.

“**Position Settlement**” means the Monthly process used by Carrier to balance Shipper positions by financially settling individual Shipper overages and shortages (including losses for shrinkage and evaporation incident to Carrier transportation) on the Pipeline System for the preceding month, thereby resulting in the balancing of all Shipper positions from one Month to the next.

“**Position Settlement Cost Recovery**” means the pro-rata allocation method used to distribute the aggregated financial gain or loss resulting from Position Settlement, among all Shippers subject to Position Settlement, for a Month, as described in Section 5.4.

“**Prime Rate**” means the variable annual rate of interest charged by Citibank, New York (or its successor) as its reference rate of interest for calculating interest on variable rate commercial loans made in U.S. dollars in the United States to its most creditworthy customers.

“**Receipt Point**” means the point of interconnection between the Pipeline System and the Keystone Canada Pipeline System at the international boundary at or near Haskett, Manitoba where Petroleum enters the Pipeline System.

“**Shipper**” means any Person who uses the transportation service of the Pipeline System pursuant to the Tariff.

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

“**Standard Conditions**” is defined as a density at a reference temperature of fifteen (15) degrees Celsius and pressure of 101.325 kPa-absolute.

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

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

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

“**True Vapor Pressure**” means the resulting temperature dependent vapor pressure as measured in accordance with ASTM D6377 (most current version), specifically applied as $VPCR_4(X)$ where VPCR is the vapor pressure of the crude, (4) is the vapor/liquid ratio of the test condition and (X) is the equilibrium temperature at which the test is conducted.

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

“**Uncommitted Rate**” means the rates and charges charged to a Shipper pursuant to the Tariff.

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

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

1.2 Construction. In construing these Rules and Regulations;

- (i) unless otherwise specified, references to Items and Sections refer to Items and Sections of these Rules and Regulations,
- (ii) no consideration shall be given to the captions of any Items or Sections, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction, and
- (iii) the singular shall be deemed to include the plural and *vice versa*.

ITEM 2 – COMMODITY AND STANDARD

2.1 Commodity. The Tariff applies to the transportation of Petroleum by Carrier and Carrier shall have no obligation to transport any commodity other than Petroleum.

2.2 Standard. Carrier shall act as a reasonable and prudent operator in the discharge of Carrier’s duties hereunder.

ITEM 3 – ORIGIN AND DESTINATION

3.1 Acceptance and Delivery. Petroleum will be accepted for transportation only when Tendered at the Receipt Point and Nominated for Delivery to the Shipper or its consignee or designee at a Delivery Point pursuant to the Tariff.

3.2 Delivery Facilities. Petroleum will be accepted for transportation only when the Shipper has provided or made arrangements for the necessary facilities and transportation service satisfactory to Carrier at the specified Delivery Point for handling the Petroleum at the rate of flow at which Carrier is then operating the Pipeline System at such Delivery Point.

3.3 Information To Be Maintained By Shipper. Each Shipper shall be responsible to maintain all information, including, but not limited to, any information pertaining to the source (including the country of origin), value, and quantity, regarding Shipper's Petroleum or its respective components that is received by, transported through or stored in the Pipeline System in accordance with all applicable laws, including for the purposes of complying with any customs and trade laws. At no time will Carrier be required to maintain or provide any such information unless specifically mandated by law.

ITEM 4 – QUALITY

4.1 Permitted Petroleum. Only that Petroleum having properties that conform to the specifications of Petroleum described in Sections 4.2, 4.3 and 4.4 will be permitted in the Pipeline System. Shipper will not Tender to Carrier, and Carrier will have no obligation to accept, transport or Deliver Petroleum which does not meet said specifications.

4.2 Specifications of Petroleum. For the purposes of Section 4.1, the specifications of the Petroleum shall be as follows:

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

transported by Carrier or that may otherwise cause disadvantage or harm to Carrier or the Pipeline System, or otherwise impair Carrier's ability to provide service on the Pipeline System.

4.3 Modifications to Specifications. Notwithstanding Sections 4.1 and 4.2, or any other provision in these Rules and Regulations to the contrary, Carrier shall have the right to make any reasonable changes to the specifications under Section 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System, or Carrier's personnel, or to ensure compliance with federal, state or local requirements, provided that Carrier shall give Shipper reasonable notice of such changes prior to filing.

4.4 Freedom from Objectionable Matter. Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances in quantities that may be injurious to Carrier, the Pipeline System or downstream facilities, or which may otherwise interfere with the transportation of Petroleum in the Pipeline System.

4.5 Failure to Conform to Specifications. If Carrier determines that a Shipper does not comply with the provisions of Section 4.2, 4.3 or 4.4 of these Rules and Regulations, then, upon notice from Carrier, such Shipper shall, at Shipper's sole cost and expense, remove its off-specification Petroleum from the Pipeline System as and when directed by Carrier, acting reasonably.

4.6 Failure to Remove Objectionable Matter. If a Shipper fails to remove its off-specification Petroleum from the Pipeline System in accordance with the provision of Section 4.5, then, in addition to any other remedy available to Carrier under the Tariff, at law or in equity, Carrier shall have the right to remove and sell such Petroleum in any manner deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum and Carrier shall be entitled to retain a reasonable pre-estimate of any damages, losses, costs, expenses and other charges incurred or anticipated to be incurred by Carrier in respect of the presence of such objectionable matter. The remainder of such proceeds, if any, shall be promptly paid by Carrier to the Shipper or as directed in writing by Shipper. Carrier may take such further action and recourse as it deems appropriate to compensate, mitigate or reimburse Carrier for any adverse impact to Carrier or the Pipeline System that is attributable to the presence of such objectionable matter. Shipper shall indemnify and save harmless Carrier in accordance with Section 11.2 of these Rules and Regulations for any adverse impact to downstream facilities imposed on Carrier that is attributable to the presence of such objectionable matter.

ITEM 5 – MEASUREMENTS

5.1 Measurement Base. The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Meter.

5.2 Metering. All Petroleum received by Carrier for transportation shall be gauged or metered and tested by a representative of Carrier prior to its acceptance at Hardisty on the Keystone Canada Pipeline System and at the Delivery Point(s). The Shipper may have a representative present at the gauging, metering and testing. If tank calibration tables are used for such purpose, quantities will be computed from the most recent, regularly compiled tank calibration tables showing one hundred percent (100%) of the full capacity of the tanks. Such tank calibration tables shall be maintained in accordance with API MPMS 653. Carrier shall prove all meters situated at both Hardisty and the Delivery Points at least once

each month and Shipper may have a representative present to witness such proving. In addition, Shipper shall have the right to request that a meter(s) be proven if it has reasonable grounds to believe that such meter is not functioning properly. Should any meter be determined by Carrier to be functioning improperly, Carrier shall promptly notify each Shipper affected thereby. Whenever there is substantial evidence of meter malfunctions in a custody transfer measurement, the parties involved in the custody transfer shall negotiate an appropriate adjustment on the basis of the most reliable and accurate information available. Such adjustments may only be claimed for a period of up to one hundred twenty (120) Days after the date that the affected Party discovers and advises the other Party of the meter malfunction.

5.3 Meter Tickets. All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:

- (i) Gross Standard Volume and Net Standard Volume received and Delivered;
- (ii) kinematic viscosity and associated temperature;
- (iii) weighted average density;
- (iv) weighted average pressure; and
- (v) sediment and water.

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

5.4 Overages and Shortages. Carrier shall deliver and account to each Shipper for one hundred percent (100%) of Petroleum Tendered for its account subject to any actual Pipeline System gains or losses due to evaporation or shrinkage due to normal pipeline operations on the Pipeline System. Adjustments for overages or shortages (including losses for shrinkage and evaporation incident to Carrier transportation), will then be based on the proportion that such Shipper's total Deliveries from the Carrier bears to the total Deliveries of all Shippers from the Carrier. Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis.

Shipper position imbalances will be settled using the two step process referred to as Position Settlement and Position Settlement Cost Recovery. Position Settlement will only involve settlement of commodity value, while transportation charges will continue to be based on volumes tendered at Receipt Point. In accordance with Carrier's Position Settlement Cost Recovery, a Shipper subject to Position Settlement for a Month will be charged or credited in an amount equal to that Shipper's pro-rata share of its deliveries off the Pipeline System for a given Month, multiplied by the total cost of settlement during the same Month. If conditions so require, Carrier may suspend Position Settlement or settle less than 100% of a Shipper's position in a non-discriminatory fashion.

5.5 Carrier Right of Access. Subject to applicable laws and government regulations applicable to Shipper's premises, Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's premises where Petroleum is stored and have access to any and all tankage situated therein for the purpose of making any examination, inspection, measurement or test provided for

under the Tariff; provided, however, Shipper shall not be liable to Carrier for any loss, injury, or damage to or suffered by Carrier or Carrier's representative during such entry or access unless and to the extent caused by Shipper's negligence.

5.6 Crude Type. Petroleum shall be classified by Type by Carrier on the basis of measured density and viscosity at the time of Tender. Where the density of the Petroleum falls within the density range of one Petroleum Type and the viscosity of the Petroleum falls within the viscosity range of another Type, then the Petroleum shall be deemed to be of the Type with the higher transportation rate.

ITEM 6 – SEGREGATION AND CHANGES IN QUALITY

6.1 Delivery of Types of Petroleum. Carrier shall endeavour to Deliver substantially the same Type and quality of Petroleum as that received by Carrier from Shipper. Notwithstanding the foregoing, Carrier shall not be obligated to make Delivery of Petroleum of identical quality or specification Tendered by Shipper.

6.2 Alterations of Specifications. Shipper acknowledges and accepts that any Petroleum Tendered for transportation will be received by Carrier only on the condition that such Petroleum shall be subject to such changes in density, specification, quality and characteristics while in transit as may result from the transportation thereof in the Pipeline System, including, without limitation, the mixture of said Petroleum with other Petroleum (meeting the specifications set forth in Section 4.2) in the Pipeline System. Carrier shall not be liable for any Special Damages resulting from any alteration in density, specification or other quality or characteristic of Petroleum transported by Carrier, and shall not be liable for any direct damages resulting from any such alteration, except where such direct damages are directly caused by the negligence or wilful misconduct of Carrier.

6.3 Segregated Movement. If the Petroleum Nominated by a Shipper is of a Type or quality not then being transported through the Pipeline System but meets the specifications set out in Item 4, Carrier may, in its reasonable discretion and as operating conditions permit, at the request of Shipper, attempt to make Delivery of substantially the same Type and quality of Petroleum at the Delivery Point Nominated by Shipper. Notwithstanding the foregoing, Carrier's efforts under this Section 6.3 shall not constitute a waiver, release or amendment of the provisions set forth in Sections 6.1 and 6.2, which provisions shall nonetheless apply to the transportation and Delivery of Petroleum by Carrier under this Section 6.3. To the extent the transportation of such Petroleum causes the Pipeline System or Carrier to incur extraordinary costs not normally incurred for other Types or quality of Petroleum typically transported through the Pipeline System, such Shipper shall be liable for, and shall indemnify Carrier for, all such costs.

ITEM 7 – NOMINATIONS, TENDERS AND APPORTIONMENT

7.1 Monthly Nominations. Each Month, in respect of transportation service for the following Month, subject to Section 7.14, Shippers shall submit their respective Nominations (each a "**Monthly Nomination**") to Carrier on a Notice of Shipment delivered no later than 7:00 a.m., Mountain Standard Time, on Carrier's designated Monthly Nomination date which date shall be posted on a schedule of nomination dates listed on Carrier's website. Shippers shall submit the Notice of Shipment in the Nominations application located within the Keystone Customer Portal. Only one Notice of Shipment is required for the Pipeline System and the Keystone Canada Pipeline System. A Notice of Shipment is

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accepted by Carrier upon Carrier posting a status of “Accepted” on the Notice of Shipment within the Keystone Customer Portal, subject to the following:

- (i) Except as expressly provided in a Contract, if a Shipper fails to Nominate any volume, the Shipper’s Monthly Nomination will be deemed to be zero.
- (ii) If Shipper’s Tenders have been curtailed pursuant to Item 13 of these Rules and Regulations, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment.
- (iii) Except as otherwise provided in a Contract, Shipper shall not be responsible for any payments on that curtailed portion of Monthly Nomination.
- (iv) In support of a Shipper’s Monthly Nomination:
 - (a) Carrier may, at its discretion, on a non-discriminatory basis, and at its own behest where Carrier has reasonable grounds, seek to verify; or
 - (b) Upon notice from Carrier, Shipper shall provide written verification of Shipper’s ability to 1) Tender Petroleum at the Receipt Point; and 2) Remove or have removed such Petroleum at the Delivery Point(s) (which removal verification shall be made by a relevant third party). Carrier shall not be obligated to accept Shipper’s Monthly Nomination where such verification is, in the reasonable discretion of Carrier, unacceptable to Carrier.

7.2 Allocation of Available Capacity. Following the receipt by Carrier of Monthly Nominations, Carrier shall determine the capacity available at the Receipt Point and each Delivery Point on the Pipeline System for transportation service in that Month (“**Available Capacity**”). In the event Monthly Nominations exceed Available Capacity, then, having regard to the operating conditions of the Pipeline System, as determined by Carrier, ninety-five percent (95%) of the Available Capacity shall be allocated by Carrier on a non-discriminatory historical basis to all Shippers, with an individual Shipper’s entitlement based on the greater of the volumes transported or paid for during a representative period, provided however, for the first six (6) Months following in-service of Keystone XL (as such term is referenced from time to time on the Carrier’s website) the Monthly Volume of a Term Shipper which has executed a Contract for transportation service to Port Arthur on Keystone XL shall be the basis of determining such Term Shipper’s minimum historical entitlement to Available Capacity at Port Arthur. For those Months in the representative period where transportation service to Port Arthur for Term Shippers which have executed a Contract for transportation service to Port Arthur was unavailable to such Term Shippers as a result of Keystone XL not yet being completed and placed into service, the volumes transported by any Shippers to Port Arthur shall be excluded from the representative period.

The remaining five percent (5%) of the Available Capacity shall be allocated on a pro rata basis to new Shippers. Any new Shipper shall not be allocated more than one percent (1%) of the Available Capacity. If aggregate Monthly Nominations by all new Shippers is less than five percent (5%) of Available Capacity, all new Shippers shall be allocated their Monthly Nominations and the remaining Available Capacity shall be allocated to historical Shippers which transported or paid for volumes during the

representative period. For the purposes of this Section 7.2, historical Shippers are deemed to be those Shippers that transported or paid for volumes during a representative period.

During instances of allocation, a Shipper will be deemed to have submitted a revised Notice of Shipment, containing a Nomination equal to its Allocated Volume determined by Carrier. Following the posting of the Allocated Volume, Shipper will have an opportunity to advise Carrier which nominations on its submitted Notice of Shipment are to be revised to match its Allocated Volume. In the event that a Shipper does not so advise Carrier by the deadline posted by Carrier on the Notice of Shipment form, the Shipper's nominations on its submitted Notice of Shipment shall be reduced pro-rata by Carrier to match Shipper's Allocated Volume. A revised Notice of Shipment is accepted upon Carrier posting a status of "Accepted" on the Notice of Shipment within the Keystone Customer Portal.

7.3 Mid-Month Apportionment. In the event the Carrier is required to curtail, interrupt or reduce transportation service for reasons described in Item 13 and/or unable to perform its obligations due to Force Majeure events described in Item 15 during the month where Available Capacity is reduced after Monthly Nominations have been allocated, the remaining tenders of Term and Non-Term Shippers will be reduced pro-rata by the amount of Available Capacity reduction.

7.4 Batch Size. A Shipper's Tender will be accepted only when the total quantity covered thereby will be Tendered to Carrier at a Receipt Point for transportation within said Month at a daily rate, or in quantities and at times to be specified or accepted by Carrier. Except as hereunder provided, Carrier will not accept a batch size of less than sixteen thousand Cubic Meters (16,000 m³) (100,000 bbls) or a batch size of greater than thirty-two thousand cubic meters (32,000 m³) (200,000 bbls). Carrier may, in its sole discretion, acting reasonably, (i) agree to accept Tenders of Petroleum in batch sizes less than 16,000 m³ (100,000 bbls) or in batch sizes greater than 32,000 m³ (200,000 bbls) and (ii) outline procedures or criteria under which it may accept Tenders of Petroleum in such batch sizes.

7.5 Tenders. A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with Carrier's batch schedule. The projected batch schedule will be posted in the Keystone Customer Portal as necessary. Upon Carrier's request, if Shipper is unable to provide Carrier with reasonable evidence of Shipper's ability to remove from a Delivery Point the volume of Petroleum to be Tendered, Carrier may reduce the amount of Petroleum received from Shipper at a Receipt Point to the amount determined by Carrier which Shipper has verified it will be able to remove at the Delivery Point.

7.6 Late Nominations. If capacity is available and operating conditions permit, as determined by Carrier in its reasonable sole discretion, Carrier may accept Nominations after Carrier's designated Monthly Nomination date. Shippers shall submit such Nominations by submitting a Late Nomination Form, which can be accessed in the Keystone Customer Portal. A Late Nomination Form is accepted by Carrier upon Carrier posting a status of "Accepted" on the Late Nomination Form within the Keystone Customer Portal. Late Nominations shall be accepted on a non-discriminatory basis, subject to operating conditions.

7.7 Revised Nominations. If capacity is available and operating conditions permit, as determined by Carrier in its reasonable sole discretion, Carrier may accept revised Nominations after Carrier's designated Monthly Nomination date. Shippers shall submit such revised Nominations by submitting a Change Request Form which can be accessed in the Keystone Customer Portal. A Change Request Form is accepted by Carrier upon Carrier posting a status of "Accepted" on the Change Request Form within

the Keystone Customer Portal. Revised nominations shall be accepted on a non-discriminatory basis, subject to operating conditions.

7.8 Working Stock. As of the Commencement Date, a Non-Term Shipper is not required to supply Working Stock for the Pipeline System, and a Term Shipper is required to supply Working Stock for the Pipeline System pursuant to the terms of the Term Shipper's Contract when required by operating conditions. Carrier may, from time to time, change the Working Stock requirements on the Pipeline System on a non-discriminatory basis, in which case it will notify Shippers of their Working Stock requirements through the Keystone Customer Portal.

7.9 Term Shipper Nominations. Except as provided in Section 7.1, in the event that a Term Shipper fails to Nominate or Tender a volume of Petroleum equal to the Monthly Volume, it shall nonetheless pay to Carrier the Monthly Revenue Commitment and all other rates and charges set forth in the Contract.

7.10 Term Shipper Make Up Rights. Term Shippers who fail to meet their Monthly Volume requirements in a Month will be subject to uniform provisions with respect to their ability to make up those volumes in subsequent Months, in the manner described in the Contract. Any make-up volumes to be Tendered by Term Shippers pursuant to the Contract shall be Nominated and ranked equally with all volumes Nominated for the purpose of allocating Available Capacity on the Pipeline System pursuant to Section 7.2.

7.11 Non-Term Shippers. Each Non-Term Shipper shall in each Month Tender to Carrier a volume of Petroleum equal to its Allocated Volume. Except as provided in Item 8, Non-Term Shippers shall pay to Carrier each Month an amount equal to the product of (i) the Uncommitted Rate, multiplied by (ii) the greater of Non-Term Shipper's Tendered Petroleum or ninety-five percent (95%) of Non-Term Shipper's Allocated Volume. The transportation of Petroleum by Carrier for Non-Term Shippers shall be in accordance with and subject to the terms and conditions of the Tariff.

7.12 Uniform Tenders. Each Shipper shall endeavor to Tender Petroleum to Carrier in each Month in accordance with Carrier's rateable batch schedule to make up its Allocated Volume and having such Petroleum specifications as will reasonably be compatible with Pipeline System operations. Carrier may curtail receipts of Petroleum from a Shipper if such Shipper attempts to Tender in excess of volumes equal to its Allocated Volume in accordance with Carrier's rateable batch schedule.

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

7.14 Deemed Nominations, Tenders and Custody Transfer. Shipper shall be deemed to have submitted its Monthly Nomination and Notice of Shipment in accordance with Section 7.1 provided that Shipper, or its Affiliate, who is either a party to a Canadian Contract, or in the case of a Non-Term Shipper, has otherwise satisfied the requirements of the Canadian Tariff to be a Shipper on the Keystone Canada Pipeline System, has submitted a nomination and notice of shipment in accordance with the provisions of the Canadian Tariff. For greater certainty, the monthly volumes of Petroleum deemed nominated and Tendered by Shipper for transportation by Carrier on the Pipeline System and monthly volumes received by Carrier at the Receipt Point is deemed to be the Petroleum nominated and tendered

by Shipper, or its Affiliate, and received by Keystone Canada at Hardisty, Alberta for transportation by Keystone Canada on the Keystone Canada Pipeline System in accordance with the provisions of the Canadian Tariff.

7.15 Alternate Delivery Point. Carrier shall, upon written request of Shipper, subject to the operating conditions and Available Capacity and at Carrier's discretion: (i) allow a Term Shipper to Nominate an alternate Delivery Point from the Contract Delivery Point to another Delivery Point in the Tariff; or (ii) allow a Shipper to change the Delivery Point designated in its Nomination to an alternate Delivery Point in the Tariff ("Alternate Delivery Point"), provided that in either case, such Shipper will be responsible for any applicable rates and charges payable for Petroleum delivered to such Alternate Delivery Point.

ITEM 8 – APPLICATION OF RATES

8.1 Effective Rates. Petroleum accepted for transportation shall be subject to the Uncommitted Rate, except as such Uncommitted Rate may be discounted pursuant to Section 8.2 below, or the rates set forth in a Contract, and interest if applicable, in effect or agreed upon for the Month such Petroleum is Nominated for Tender to the Carrier at the Receipt Point, irrespective of the date of Nomination, the date of Tender or date of Delivery at the Delivery Point(s), [N] **unless otherwise specified in the rate Tariff.**

8.2 Discounted Uncommitted Rates. Carrier may discount the Light Crude or Heavy Crude Uncommitted Rates reflected on the currently effective rate tariff in a not unduly discriminatory manner. Any discount will be reflected on a rate tariff, which shall be filed as soon as possible, but on no less than one day's notice, and which will not become effective until after the day on which Carrier receives a Tender of Light Crude or Heavy Crude eligible for such discount.

ITEM 9 – PAYMENT OF TARIFF RATES AND OTHER CHARGES AND LIEN FOR UNPAID CHARGES

9.1 Invoicing and Payment. Shipper shall pay to Carrier the applicable Monthly Revenue Commitment and all other rates and charges payable in accordance with the Tariff on or before the Payment Due Date. On or before the 15th day of each calendar month, Carrier will electronically issue to Shipper an invoice detailing:

- (i) the rates payable to Carrier pursuant to the Tariff for service provided during the previous Month, and
- (ii) any other charges for which Shipper is liable under a Contract or the Tariff (including, without limitation, any applicable taxes). Invoice payments shall be made on or before the Payment Due Date to the account of Carrier at Citibank, Main Branch, New York, New York, or such other bank or financial institution as Carrier may designate in writing.

9.2 Carrier's Lien. Carrier shall have a lien, charge and security interest on all Petroleum in its possession Tendered by or on behalf of Shipper, and on all proceeds of such Petroleum, to secure the performance of all obligations of Shipper under the Tariff, including without limitation, the payment of any and all unpaid rates and other charges that are due Carrier and unpaid by Shipper. Carrier may withhold such Petroleum from Delivery until all such unperformed obligations or unpaid rates and charges have been performed or paid in full, as the case may be. The lien, and other remedies contained

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in this Section 9.2, are in addition to any other remedies available to Carrier at law, in equity, or under a Contract or the Tariff.

9.3 Carrier Remedies. Should Shipper fail to pay the full amount of any invoice described in this Item 9 on or before the Payment Due Date, in addition to any other remedy Carrier may have under a Contract, the Tariff, at law or in equity:

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

9.4 Seizure and Sale by Carrier. Pursuant to Sections 9.3, 10.2 and 12.2, Carrier shall have the right itself or through an agent, to seize and sell at public auction, or, if not permitted by applicable law, by such other lawful means available to Carrier in its discretion, any Petroleum delivered to the Carrier by the Shipper and then in the possession of Carrier or its agent, or otherwise traceable and lienable by Carrier. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than forty-eight (48) hours after publication of notice of such sale in a daily newspaper of general circulation published in the area of the proposed sale. Such notice shall state the time, place of sale and quantity, Type, and location of Petroleum to be sold. Shipper covenants and agrees not to dispose of its Petroleum other than subject to the lien, charge and security interest granted to Carrier hereby. At such sale, Carrier shall have the right to bid and, if the highest bidder, to become the purchaser of the Petroleum. From the proceeds of the sale of the Petroleum, Carrier will pay itself the rates, charges, damages and other amounts payable to Carrier under the Tariff, including, without limitation, reasonable storage expenses pending sale of such Petroleum, and all costs and expenses incident to the sale, and the balance remaining, if any, shall be held for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. Any such funds may be commingled in any account or accounts

maintained by Carrier from time to time. Carrier is authorized by Shipper to retain possession of Petroleum Tendered by Shipper or to take Delivery of Petroleum at a Delivery Point for the purpose of enforcing its rights under and pursuant to the Tariff.

9.5 Disputed Invoices. If Shipper disputes any amount payable under an invoice, Shipper shall nonetheless pay to Carrier the full amount of such invoice on or before the Payment Due Date, except in the case of manifest error, in which case Shipper shall notify Carrier of such manifest error before the Payment Due Date and Carrier shall issue a corrected invoice. If it is finally determined that Shipper's invoice was incorrect and that an overpayment has been made, Carrier shall reimburse Shipper for such overpayment, together with interest calculated from the date such overpayment was made until the date of reimbursement at the Prime Rate.

ITEM 10 – DELIVERY AND ACCEPTANCE

10.1 Delivery. Carrier will transport Petroleum with reasonable diligence and dispatch and Shipper shall with reasonable diligence and dispatch accept and remove its Petroleum from the facilities of Carrier upon Delivery of the Petroleum at a Delivery Point.

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

ITEM 11 – LIABILITY OF SHIPPER

11.1 Liability of Shipper. If Shipper fails to remove its Petroleum from Carrier's facilities upon Delivery and a disruption of Carrier's operations or the operation of downstream facilities results, Shipper shall be solely responsible and liable if and to the extent that any and all expenses, costs, damages and losses whatsoever are incurred or suffered by Carrier in connection with such disruption unless the non-removal of such Petroleum is due to Carrier's negligence or willful misconduct.

11.2 Carrier Indemnification. Shipper shall indemnify Carrier for any and all damages, losses, expenses and costs incurred or suffered by Carrier and any other Person as a result of such Shipper's failure to comply with any material provision of the Tariff, unless Shipper's failure to comply is due to Carrier's negligence or willful misconduct.

11.3 Associated Costs. Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies and other assessments made or imposed by any governmental or regulatory authority having jurisdiction with respect to the Petroleum to be transported by Carrier for such Shipper's account and shall indemnify and save harmless Carrier from any such taxes, duties, charges, levies and assessments so made or imposed.

ITEM 12 – DEFAULT, SUSPENSION AND TERMINATION

12.1 Default. Subject to Item 15, if Carrier or Shipper (a “**Defaulting Party**”) shall fail to perform any of the material covenants or obligations imposed upon it under a Contract or the Tariff, other than Shipper’s failure to pay an invoice on or before the Payment Due Date (which circumstance is addressed in Item 9), then in addition to any other remedies the non-Defaulting Party may have under a Contract, the Tariff, at law or in equity, the non-Defaulting Party may terminate the Contract in the following manner: The non-Defaulting Party shall deliver a written notice (a “**Default Notice**”) to the Defaulting Party, stating the relevant default, and declaring it to be the intention of the non-Defaulting Party giving the Default Notice to terminate such Contract. The Defaulting Party shall have (i) in the case of a default of a monetary nature (which includes, without limitation, a default pursuant to Item 20), ten (10) Days after receipt of the Default Notice, or (ii) in the case of a default of a non-monetary nature, thirty (30) Days after receipt of the Default Notice (in either case, the “**Default Period**”) in which to remedy or remove the cause or causes of the default stated in the Default Notice. If such default is remedied within the Default Period, or if the Defaulting Party fully indemnifies by payment to the non-Defaulting Party or otherwise secures the non-Defaulting Party (in form and substance satisfactory to the non-Defaulting Party) for any and all consequences of such default, then the Default Notice shall be withdrawn and the Contract shall continue in full force and effect provided that such indemnity or security remains in place.

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

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

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

12.4 Rejected Nominations. Carrier may, in its reasonable sole discretion and without limiting any other remedy that may be available to it under the Tariff, at law or in equity, reject a Nomination from and deny service to any Non-Term Shipper if such Non-Term Shipper has failed to pay within five (5) Banking Days of the Payment Due Date, any invoice issued by Carrier to such Non-Term Shipper pursuant to the Tariff.

12.5 No Waiver. No waiver by Carrier or Shipper of any one or more defaults by the other Party in the performance of any provisions of the Tariff shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

ITEM 13 – INTERRUPTION AND CURTAILMENT

13.1 Interruption and Curtailment. Carrier may interrupt, curtail or reduce transportation service to Shippers for such periods of time as it may reasonably require for the purpose of effecting or allowing any repairs, maintenance, replacement, upgrading or other work related to the Pipeline System, Carrier's other facilities, or downstream facilities in circumstances which do not constitute Force Majeure. If such interruption is due to a planned outage, Carrier shall give Shippers prior notice of such interruption and curtailment as soon as reasonably possible. If such interruption is unforeseen, Carrier shall give Shippers notice of such interruption and curtailment as soon as reasonably possible. Carrier shall use reasonable commercial efforts to minimize the extent and duration of any interruption and the impact of such interruption on the operation of the Pipeline System.

13.2 Curtailed Service and Allocation of Available Capacity. During periods of interruption pursuant to Section 13.1, Carrier shall curtail transportation service and allocate Available Capacity in accordance with Item 7.

ITEM 14 – LIABILITY OF CARRIER

14.1 Limitation of Liability. Notwithstanding anything in the Tariff to the contrary, Carrier shall not be liable to Shipper for any losses, damages, claims, costs, expenses or delay incurred or suffered by Shipper unless caused by Carrier's breach, negligence or willful misconduct and in any event Carrier shall have no liability whatsoever to Shipper for Special Damages.

14.2 Physical Losses to Petroleum. If damage to or loss of Petroleum occurs while Carrier is in possession of such Petroleum, then Carrier may apportion the cost of such damage or loss on a pro rata basis among all Shippers provided such damage or loss is not caused by the breach, negligence or willful misconduct of Carrier. Each Shipper's share of such cost shall be determined by Carrier based on the proportion of the volume of the Shipper's Petroleum in the possession of Carrier on the date of such loss to the total volume of all Shippers' Petroleum in the possession of Carrier on the date of such loss.

14.3 Shipper Liability for Losses. All Shippers shall be responsible for their proportionate share of physical losses of Petroleum resulting from normal Pipeline System operations, including line losses and shrinkage.

ITEM 15 – FORCE MAJEURE

15.1 Performance Excused. If either Carrier or Shipper fails to perform, in whole or in part, its obligations under a Contract or the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.

15.2 Force Majeure Definition. The term "Force Majeure", as used herein and for all purposes relating hereto, shall mean any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, storms, civil disturbances, the act, regulation, order, direction or requisition of any governmental or other legal authority having jurisdiction, breakdown or failures of pipe, plant, machinery or equipment, inability to obtain or the curtailment of electric power, water or fuel, or other event, cause or occurrence whether of the kind enumerated or otherwise which in all cases are not within the reasonable control of the Party claiming suspension, and which by the exercise of due diligence such Person is unable to prevent or overcome.

15.3 Excluded Items. The following shall not, under any circumstance, constitute an event of Force Majeure:

- (i) Shipper's inability to purchase Petroleum;
- (ii) lack of funds;
- (iii) availability of more attractive markets for Petroleum;
- (iv) absence of a market for Petroleum; or
- (v) availability of alternative Petroleum transportation systems.

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

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

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

15.6 No Payment Relief. Except as otherwise expressly provided in a Contract and notwithstanding anything in this Item 15 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under a Contract or the Tariff to make payments pursuant to Item 9 or to provide Financial Assurances pursuant to Item 20 to Carrier under the Tariff during the continuance of such Force Majeure event.

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

ITEM 16 – ADVERSE CLAIMS AGAINST PETROLEUM

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

ITEM 17 – CLAIMS, SUITS AND TIME FOR FILING

17.1 Condition Precedent. As a condition precedent to the payment by Carrier of any claims for loss, damage or delay asserted by Shipper in connection with the transportation of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within one hundred eighty (180) Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within one hundred eighty (180) Days after a reasonable time for Delivery has elapsed. Any suits arising out of such claims must be instituted against Carrier within two (2) Years from the date when notice in writing is given by Carrier to Shipper that Carrier has disallowed the claim or any part or parts thereof as specified in the notice. Claims advanced beyond such two (2) Year period shall be

null and void as between Shipper and Carrier. In Tendering Petroleum to be transported under the Tariff, Shipper agrees to be bound by the provisions of this Section 17.1 and waive any rights which it might otherwise have at common law, in equity or otherwise, to make a claim after the expiration of said period of one hundred eighty (180) Days or to bring an action after the expiration of the said period of two (2) Years. Nothing contained in this Section 17.1 shall be construed as constituting a waiver or release of any rights or defences which Carrier may have at law, in equity or pursuant to the Tariff, in respect of any claim or demand asserted by Shipper.

17.2 No Special Damages. Except as expressly provided in this Tariff, neither Party nor its respective Affiliates shall have any liability or responsibility to the other Party or the other Party's Affiliates for any Special Damages incurred by such Person that arise out of or otherwise relate to this Tariff or the subject matter of this Tariff or any Contract, regardless of whether such claim arises under or results from contract, tort or strict liability; provided that, subject to Sections 6.2 and 14.1, such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed in favor of Persons that are not a Party or an Affiliate of a Party.

ITEM 18 – REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS

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

ITEM 19 – GOVERNING LAW

19.1 Governing Law. The Tariff is subject to the provisions of the Interstate Commerce Act or any legislation passed in amendment thereto or substitution thereof.

19.2 Construction and Application. The Contract shall be construed and applied in accordance with and be subject to the laws of the Province of Alberta, and the laws of Canada applicable therein, but shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein including, without limitation, FERC. Other than matters falling within the jurisdiction of FERC, no Person will institute any action, suit or other proceeding with respect to the Contract, other than in the Alberta Court of Queen's Bench in the judicial district of Calgary, or, if that court for any reason lacks subject matter jurisdiction, the appropriate court for the Province of Alberta, or Canada, as applicable. In that regard, each Person subject to the Contract hereby irrevocably attorns to the jurisdiction of such courts in the event of any such action, suit or other

proceeding by the other Party. **ALL PERSONS SUBJECT TO THE CONTRACT OR THE TARIFF SPECIFICALLY AND KNOWINGLY WAIVE ANY TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.**

ITEM 20 – FINANCIAL INFORMATION AND ASSURANCES

20.1 Financial Information and Assurances. Except as provided in a contract, Shipper shall provide to Carrier, at any time:

- (i) upon Carrier's request, information ("**Financial Information**") that will allow the Carrier to evaluate (or re-evaluate) and establish Shipper's capacity to perform any financial obligations that could arise from the transportation of Shipper's Petroleum on the Pipeline System; and
- (ii) upon Carrier's reasonable request, financial security for the payment of the rates and other charges to be paid by Shipper to Carrier in respect of transportation or other service ("**Financial Assurances**").

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

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

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

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

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

20.4 Required Elements. The following aspects of any Financial Assurances must be acceptable to Carrier, acting reasonably:

- (i) the terms of any letter of credit;
- (ii) the adequacy (including terms) of any proposed financial assurance; and
- (iii) the creditworthiness of the issuer of any letter of credit or other financial assurance.

ITEM 21 – IN-LINE TRANSFERS

21.1 Transfer Rights. Subject to Section 21.2 21.3 and 21.4 and at the Carrier's reasonable discretion Shipper may transfer its rights to a Tendered batch of Petroleum to another Shipper, provided such initial transferring Shipper retains all liabilities and obligations under the Tariff relating to the transferred batch.

21.2 Limitations. No in-line transfers of any Petroleum Tendered by Shipper shall be permitted until the entire batch of Petroleum enters the Pipeline System. In this regard, such in-line batch transfers shall be deemed to take place immediately south of the Canada/U.S. international boundary. The in-line transfer will be based on the Net Standard Volume of Petroleum delivered by Shipper or Shipper's Affiliate on the Keystone Canada Pipeline System to Keystone Canada at Hardisty, Alberta.

21.3 Financial Settlement. For in-line transfers involving financial settlement between Shippers, the transfer (i) may involve different commodity types; and (ii) may be one way or an exchange. For in-line transfers involving non-financial settlement between approved Shippers, the transfer (i) must be an exchange; (ii) must involve the same commodity type; and (iii) must occur within the same month that the balances of Shippers are settled by Carrier for the Pipeline System.

21.4 Change Requests Forms. Both Shippers involved in an in-line transfer must execute and submit to Carrier a Change Request Form, which can be accessed within the Keystone Customer Portal. A Change Request Form is accepted by Carrier upon Carrier posting a status of "Accepted" on the Change Request Form within the Keystone Customer Portal.

Explanation of reference marks:

[N] New