

*Execution copy***SETTLEMENT AGREEMENT**

This Settlement Agreement is made as of and is effective this 14 day of March, 2022 (the "**Effective Date**"),

BETWEEN:

**KINGSTON MIDSTREAM WESTSPUR LIMITED, a corporation
formed under the laws of Canada**

(hereinafter "**Kingston Westspur**")

- and -

**SECURE ENERGY SERVICES INC., a corporation formed under
the laws of Alberta**

(hereinafter "**Secure**")

(collectively hereinafter the "**Parties**" and each a "**Party**")

RECITALS:

A. Kingston Westspur is the owner and operator of the Westspur Pipeline and a crude oil terminal near Alida, Saskatchewan ("**Kingston Alida Terminal**"). The Westspur Pipeline is a pipeline system regulated by the Canada Energy Regulator ("**CER**") that transports crude oil from points in Saskatchewan and Manitoba to the Manitoba Interconnect Westspur Facility and the Enbridge Mainline at a point near Cromer, Manitoba.

B. Secure is the owner and operator of a crude oil terminal and blending facility near Alida, Saskatchewan ("**Secure Alida Terminal**"). The Secure Alida Terminal is connected to two pipelines on the provincially regulated system and related infrastructure ("**Interconnection Facilities**") owned and operated by Kingston Midstream Saskatchewan Limited ("**Kingston Saskatchewan**"). The Interconnection Facilities, upon being restarted and reconnected to the Secure Alida Terminal, can provide the Secure Alida Terminal with physical access to the Westspur Pipeline at the Kingston Alida Terminal.

C. In 2019, certain disputes arose among the Parties to this Settlement Agreement and their affiliates with respect to Secure's access to the Westspur Pipeline at the Secure Alida Terminal. On December 30, 2019, Secure filed an application with the Commission of the CER ("**Commission**") under the *Canadian Energy Regulator Act* requesting the Commission to direct Kingston Westspur to provide Secure with service on the Westspur Pipeline, to construct suitable and adequate facilities to facilitate Secure's service, and to set the terms and conditions, including the tolls payable by Secure, for the foregoing service.

D. On July 6, 2021, the Commission issued its Reasons for Decision in RH-003-2020 (the "**Decision**") and Order MO-020-2021 (the "**Order**"), granting Secure's application.

E. On July 23, 2021, Kingston Westspur filed a review and variance application with the Commission challenging certain portions of the Decision and Order ("**R&V Application**").

F. Since the issuance of the Decision and Order, the following court filings have been made as between the Parties (collectively, the "**Proceedings**"):

- a. on August 4, 2021, Kingston Westspur filed a motion with the Federal Court of Appeal seeking leave to appeal the Decision and Order; and
- b. on November 3, 2021, Secure filed a statement of claim with the Court of Queen's Bench of Alberta against Kingston Westspur and its affiliates ("**Secure Statement of Claim**").

G. In addition to the Proceedings, the following court filings have been made (the "**Other Proceedings**"):

- a. on August 5, 2021, Kingston Marketing Limited ("**Kingston Marketing**") filed a motion with the Federal Court of Appeal seeking leave to appeal the Decision and Order; and
- b. on August 6, 2021, Kingston Marketing filed an application with the Federal Court of Appeal seeking judicial review of the Decision and Order.

H. Secure and Kingston Saskatchewan have agreed to terms for the interconnection and restart of the Interconnection Facilities to the Secure Alida Terminal which will allow the Secure Alida Terminal to access the Westspur Pipeline through the Interconnection Facilities.

I. The Parties wish to fully and finally resolve all disputes between them with respect to the Secure Alida Terminal, the Decision and Order, the R&V Application, the Proceedings and the Other Proceedings, including any claims for interest and costs related to the foregoing matters (collectively, the "**Disputed Matters**") consensually, pursuant to the terms of this Settlement Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, THE PARTIES AGREE AS FOLLOWS:

Recitals

1. The recitals set out above are accurate and form part of this Settlement Agreement.

Principles

2. The Parties agree that this Settlement Agreement is the result of good faith, arm's length negotiations, which have resulted in an agreement that is fair and equitable to the Parties.

3. Each of the Parties:

- (a) represent and warrant that all necessary steps have been taken to authorize and approve the execution and delivery of this Settlement Agreement and the completion of the transactions contemplated herein;
- (b) acknowledges that Kingston Westspur expressly denies and does not admit any allegation of unlawful conduct alleged in the Secure Statement of Claim;
- (c) agrees that neither the fact of this Settlement Agreement, nor any statement made in the negotiation thereof or the terms of this Settlement Agreement shall be deemed, nor construed to be an admission by, nor used as evidence against any Party, nor used as evidence of the truth of any of the allegations or claims against any Party in any subsequent negotiation or proceeding, which every Party expressly denies, except only for the matters expressly agreed to be settled hereunder;

- (d) is entering into this Settlement Agreement to avoid the further expense, inconvenience, and burden of the Disputed Matters and to achieve a resolution of the claims asserted in the Secure Statement of Claim, and to avoid the risks inherent in uncertain, complex and protracted litigation and undue regulatory process, including the potentially indefinite delay of the restart and operation of the Secure Alida Terminal which may have a detrimental impact to producers, and thereby to put the Disputed Matters to rest.

Requested Relief

4. Forthwith following the Effective Date, Kingston Westspur and Secure will jointly submit to the Commission the request for review and variance of the Order in the form attached hereto as Exhibit "A", which includes a request to withdraw, cancel, terminate or otherwise cease the R&V Application ("**Requested Relief**"), and will cooperate to obtain a decision from the Commission that is not an Adverse Decision ("**Favourable Decision**").

Discontinuance of Proceedings

5. If the Commission issues a Favourable Decision, the Parties will forthwith following the date on which the Favourable Decision is received by the Parties, take all steps required to withdraw, cancel, terminate or otherwise cease the Proceedings on a no-costs basis.

Amendment to the Westspur Tariff

6. The Parties acknowledge and agree that Kingston Westspur will, following the date on which the Favourable Decision is received by the Parties, file an updated Tariff that no longer lists the Secure Alida Terminal as a receipt point or delivery point.

Adverse Decision or Withdrawal Outside Date

7. If:
- (a) in direct response to the Requested Relief, the Commission issues an order that: (i) denies the Requested Relief; (ii) varies the Requested Relief in a manner that is materially adverse to either Party or its affiliates; or (iii) is otherwise materially adverse to either Party or its affiliates or any of the agreements entered into to

resolve the Disputed Matters, or otherwise indicates to the Parties that it will issue such an order ("**Adverse Decision**"), or

- (b) the Proceedings and Other Proceedings have not been withdrawn, cancelled and/or terminated within 60 days of the date a Favourable Decision is received by the Parties ("**Withdrawal Outside Date**"),

then the Parties shall meet and negotiate in good faith and acting reasonably an appropriate solution or amendments that are mutually agreeable to allow for the terms of this Settlement Agreement to continue in full force and effect. If the Parties cannot agree to an appropriate solution or amendment within sixty (60) days following the date the Adverse Decision is received or the Withdrawal Outside Date, as applicable, unless extended by written agreement of the Parties, then this Settlement Agreement may be terminated by either Party giving notice to the other Party, which termination shall be effective on the date that is thirty (30) days following the date that such notice of termination is received by the other Party. Neither Party shall be entitled to exercise the right of termination where it is in default of its obligations hereunder. If the Parties agree that the Commission has issued an Adverse Decision, the Parties will jointly request the Commission to stay the Adverse Decision during the period the Parties are negotiating a solution or amendment under this Section 7. If there is a disagreement between the Parties as to whether or not the Commission has issued an Adverse Decision, any such disagreement shall be resolved by binding arbitration in accordance with the procedures set forth in Exhibit "B" and the timelines in this Section 7 shall be suspended until the conclusion of the process in Exhibit "B".

No Action by Kingston Westspur

8. Except as expressly permitted under this Settlement Agreement, and subject to the provisions and obligations contained in this Settlement Agreement, Kingston Westspur, for itself and on behalf of its present and former related corporations, related entities, shareholders, members, agents, servants, employees, directors, officers, solicitors, insurers, affiliates, partners, predecessors, successors, assigns and representatives (collectively with Kingston Westspur, the "**Kingston Representatives**"), covenants and agrees not to institute, commence, maintain, prosecute or otherwise bring any action, claim, suit, or other

proceedings to review, appeal, vary, overturn or otherwise challenge the Decision, or the Order as it pertains to the granting of relief specifically provided to Secure in respect of the Secure Alida Terminal.

9. Notwithstanding Section 8, Kingston Westspur expressly denies the Commission's findings in the Decision as pertains to the issues raised with the Decision as set forth in Kingston Westspur's application materials in the Proceedings and Kingston Marketing's application materials in the Other Proceedings, and this Settlement Agreement is without prejudice to Kingston Westspur or any of the Kingston Representatives challenging the application of the Commission's findings in the Decision in any subsequent proceeding that does not relate specifically to the Secure Alida Terminal and is further without prejudice to Kingston Westspur challenging the aspects of the Order that do not relate specifically to the Secure Alida Terminal.

No Action by Secure

10. Except as expressly permitted in this Settlement Agreement, and subject to the provisions and obligations contained in this Settlement Agreement, Secure, for itself and on behalf of its present and former related corporations, related entities, shareholders, members, agents, servants, employees, directors, officers, solicitors, insurers, affiliates, partners, predecessors, successors, assigns and representatives (collectively with Secure, the "**Secure Representatives**"), covenants and agrees not to institute, commence, maintain, prosecute or otherwise bring any action, claim, suit, or other proceedings to review, appeal, vary, overturn or otherwise challenge the Decision and Order.
11. Notwithstanding Section 10, this Settlement Agreement is without prejudice to Secure or any of the Secure Representatives challenging the application of the Commission's findings in the Decision in any subsequent proceeding that does not relate specifically to the Secure Alida Terminal.

Default

12. The rights and obligations of the Parties under this Settlement Agreement are collectively the "**Settlement Terms**" as it pertains to the Parties. A failure by any Party to comply with the Settlement Terms will be considered a "**Default**" and the non-defaulting Party ("**Non-**

Defaulting Party") may exercise its rights and remedies hereunder in accordance with the following:

- (a) If the Default occurs prior to the date on which all of the Proceedings and Other Proceedings have been confirmed by the Courts to be withdrawn, cancelled, terminated, or otherwise ceased ("**Proceeding Termination Date**"):
 - (i) The Non-Defaulting Party will notify the Defaulting Party in writing of the Default ("**Default Notice**") and specify a termination date of the Settlement Agreement ("**Termination Date**") that will not be less than thirty (30) days from the delivery of the Default Notice;
 - (ii) If the Defaulting Party fails to cure the Default by the Termination Date, then the Settlement Agreement will terminate at 5:00 pm Mountain Standard Time on the Termination Date, provided that such termination shall not release the Defaulting Party from losses or liabilities incurred by the Non-Defaulting Party as a result of the Default.
 - (iii) If the Settlement Agreement is terminated in accordance with Section 12(a), then the Non-Defaulting Party may take any action, commence any suit, action or proceeding or exercise such other rights as may be permitted by applicable law with respect to the Default at such times and in such manner as it may consider expedient.

- (b) If the Default occurs on or after the Proceeding Termination Date:
 - (i) The Non-Defaulting Party will provide the Defaulting Party with a Default Notice;
 - (ii) If the Defaulting Party fails to cure the Default no later than thirty (30) days following receipt of the Default Notice, then the Non-Defaulting Party may take any action, commence any suit, action or proceeding or exercise such other rights as may be permitted by applicable law with respect to the Default at such times and in such manner as it may consider expedient.

- (c) Subject to the Defaulting Party's ability to challenge the Default Notice, if the Defaulting Party acknowledges the Default in writing or is found by a court of competent jurisdiction to have defaulted in the terms of this Settlement Agreement, the Defaulting Party shall reimburse the Non-Defaulting Party for any fees, costs or expenses due and payable in connection with the exercise by the Non-Defaulting Party of its rights hereunder, including, without limitation, legal fees on a full indemnity basis.
- (d) The Parties agree that there may be irreparable damage to a Party for which monetary damages, even if available, may not be an adequate remedy in the event of a material breach of this Settlement Agreement by a Party. It is accordingly agreed that, in the event of a material breach of a provision of this Settlement Agreement by a Party, the other Party shall, upon ten (10) business days' notice to the breaching Party, be entitled to seek an injunction or other equitable relief to prevent continuing material breaches of this Settlement Agreement and to seek to enforce specifically the terms and provisions hereof in any court of competent jurisdiction or regulatory body having jurisdiction over the matter, without proof of actual or monetary damages and a breaching Party shall not raise that damages would be an adequate remedy as a basis for defending any such application for injunction or other equitable relief.
- (e) Notwithstanding anything in this Agreement to the contrary, no Party will be liable for indirect or consequential damages including, business loss, loss of profit, economic loss, special, exemplary or punitive damages, or income tax liabilities as a result of the performance or non-performance of its obligations under this Agreement, or its acts or omissions related to this Agreement, whether or not arising from the sole, joint or concurrent negligence or strict liability or otherwise.

Mutual Release

13. Subject to the provisions and obligations contained in this Settlement Agreement, Kingston Westspur, for itself and on behalf of the Kingston Representatives, covenants and agrees to release and forever discharge the Secure Representatives from all actions, causes of action, claims, demands, costs or expenses, known or unknown against one another by

reason of, or pertaining to any matter specifically arising from the Disputed Matters.

14. Subject to the provisions and obligations contained in this Settlement Agreement, Secure, for itself and on behalf of the Secure Representatives, covenants and agrees to release and forever discharge the Kingston Representatives from all actions, causes of action, claims, demands, costs or expenses, known or unknown against one another by reason of, or pertaining to any matter specifically arising from the Disputed Matters.
15. The releases to be granted by the Parties pursuant to Sections 13 and 14 are not intended to, and do not release any of the Parties from their respective obligations under this Settlement Agreement or any other settlement arrangement amongst the Parties or their affiliates related to the Disputed Matters.

Non-Disclosure

16. Each Party agrees that the terms of this Settlement Agreement are confidential and that it will not disclose same without the prior written consent of the other Parties. Notwithstanding the foregoing, nothing in this Settlement Agreement is intended to restrict the Parties from disclosure for legal, tax or accounting purposes as necessary, nor from disclosure which is required by law, securities and government regulation (collectively "**Acceptable Disclosure**"), nor does this Settlement Agreement restrict any Party from making a direct response to an Acceptable Disclosure.

Notices

17. Any notices required pursuant to this Settlement Agreement must be in writing and delivered by email at the email address listed below for the applicable Party:

Secure	Secure Energy Services Inc. 2300, 225 6 Avenue SW Calgary, AB T2P 1N2 Attention: General Counsel and Corporate Secretary Email: legalnotices@secure-energy.com
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Kingston Westspur	Kingston Midstream Limited c/o Legal Services Suite 3700, 308 4th Avenue SW Calgary, Alberta T2P 0H7 Attention: Legal Email: legalnotices@kingstonmidstream.com
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Entire Agreement

18. This Settlement Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties with respect to the Disputed Matters, and supersede all prior and contemporaneous understandings, undertakings, negotiations, representations, promises and agreements in connection herewith and the subject matter hereto.

Independent Legal Advice

19. This Settlement Agreement has been the subject of negotiations and discussions between the Parties, each of which is represented by, and has consulted with, independent legal counsel. Each Party agrees that the terms of this Settlement Agreement are accepted voluntarily and not influenced by any representations of any kind made by any of the Parties, except such representations as are outlined in this Settlement Agreement.

No Admission

20. This Settlement Agreement constitutes a compromise of the Disputed Matters and may not be construed as an admission by any of the Parties of the existence, absence or amount of any liability, rights or obligations.

Governing Law

21. This Settlement Agreement is governed by and shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, excluding any laws which may direct the application of the laws of another jurisdiction. Each of the Parties attorns to and accepts the jurisdiction of the courts in Alberta for all purposes in connection with this Settlement Agreement.

Dispute Resolution

22. All Disputes which arise with respect to matters relating to this Settlement Agreement, other than with respect to those which pertain to matters which are the exclusive jurisdiction of the CER, shall, unless expressly addressed otherwise herein, be resolved by the Parties pursuant to the dispute resolution procedure set out in Exhibit "B".

Further Assurances

23. The Parties will from time to time do such further acts and execute such further documents as reasonably required to fully perform and carry out the terms, spirit and intent of this Settlement Agreement.

Regulation

24. The provisions of this Settlement Agreement and the rights and obligations of the Parties hereunder are subject to all orders, rulings, directives, approvals and licences that relate to the subject matter hereof now or in the future issued by any applicable governmental body and, subject to Section 25, any provision of this Settlement Agreement that conflicts with any such order, ruling, directive, approval or licence shall be automatically amended so as to render such provision to be consistent therewith.
25. If, following the issuance of a Favorable Decision, a governmental body issues a decision which frustrates or materially adversely affects the purpose of this Settlement Agreement, the Parties will meet and negotiate in good faith and acting reasonably an appropriate solution or amendments to the Settlement Agreement to address the governmental body's decision. If the Parties cannot agree to an appropriate solution or amendment within sixty (60) days following the date of the governmental body's decision, unless extended by written agreement of the Parties, then this Settlement Agreement may be terminated by either Party giving notice to the other Party, which termination shall be effective on the date that is thirty (30) days following the date that such notice of termination is received by the other Party.

Amendment

26. Except as set out in Section 24, this Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto.

Enurement

27. This Settlement Agreement shall enure to the benefit of and shall be binding upon the Parties hereto and, as applicable, without limitation, their respective trustees, administrators, affiliates, parents, subsidiaries, partners, directors, officers, managers,

employees, shareholders, owners, successors, predecessors, representatives, servants, agents, insurers and assigns.

Headings

28. Headings used in this Settlement Agreement are used for convenience of reference and do not form a part of this Settlement Agreement.

Execution

29. The Parties agree that this Settlement Agreement may be executed in any number of counterparts and by pdf and email.

[Signature page follows]

The Parties, by their respective duly authorized signatories, have executed this Settlement Agreement effective as of the Effective Date.

SECURE ENERGY SERVICES INC.

KINGSTON MIDSTREAM WESTSPUR LIMITED

Per: _____

Per: _____

The Parties, by their respective duly authorized signatories, have executed this Settlement Agreement effective as of the Effective Date.

SECURE ENERGY SERVICES INC.

KINGSTON MIDSTREAM WESTSPUR LIMITED

Per: _____

Per: _____

Luc Mageau
VP, Corporate Development

Exhibit "A"

Joint Submissions to Commission for Requested Relief

March 14, 2022

File No.: 563995-12

FILED ELECTRONICALLY

Ramona Sladic
Secretary of the Board
Canada Energy Regulator
517 - 10th Avenue SW
Calgary, AB T2R 0A8

Dear Ms. Sladic:

**Re: File OF-Tolls-Group2-K103-2019-01 01
Application by Kingston Midstream Westspur Limited ("Kingston Westspur") for Review
and Variance (Review Application") of Reasons for Decision RH-003-2020 ("Decision") and
Order MO-020-2021 ("Order")
Joint Submission on Disposition of the Review Application and Order**

On February 25, 2022, the Commission of the Canada Energy Regulator ("**Commission**") granted the joint request of Secure Energy Services Inc. ("**Secure**") and Kingston Westspur to extend the adjournment of the Review Application and Order to March 7, 2022. The Commission directed the parties to provide an update to the Commission on the status of the settlement discussions by March 9, 2022.¹

By letter dated March 9, 2022, Secure advised the Commission that the parties anticipated finalizing a comprehensive settlement by March 11, 2022. Secure further advised the Commission that the parties anticipated making a joint submission to the CER requesting certain relief in relation to the Order and the Review Application and requested that the Commission await the joint submission before directing any further process.²

We are writing to advise the Commission that Secure, Kingston Westspur, and their affiliates have agreed to terms which will resolve all matters in dispute between them and which would, among other things, resolve the matter of Secure's access to the Westspur Pipeline in a manner consistent with the intent of the Order. However, the parties require certain changes to the Order to give effect to those terms.

Enclosed please find the joint submission of Kingston Westspur and Secure which outlines the relief that the parties are requesting from the Commission and the basis for such request.

¹ [C17894-1](#).

² [C18075-1](#).

If you have any questions, please do not hesitate to contact us.

Yours very truly,

Dentons Canada LLP



Bernard J. Roth
Partner

cc: Jim Hand, Kingston Westspur
Sean Assié, Bennett Jones LLP (Counsel for Secure)
List of Participants to Proceeding RH-003-2020

NATDOCS\61835787

CANADA ENERGY REGULATOR

IN THE MATTER OF the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 ("CER Act") and *National Energy Board Rules of Practice and Procedure, 1995*, SOR/95-208 ("Rules");

AND IN THE MATTER OF Reasons for Decision RH-003-2020 and Order MO-020-2021, dated July 6, 2021, approving an application by Secure Energy Services Inc. for service and suitable and adequate interconnection facilities on the Westspur Pipeline (File OF-Tolls-Group2-K103-2019-01 01);

AND IN THE MATTER OF an application by Kingston Midstream Westspur Limited for review and variance of Reasons for Decision RH-003-2020 and Order MO-020-2021 pursuant to s 69(1) of the CER Act and Part III of the Rules ("Review Application").

**JOINT SUBMISSION OF KINGSTON MIDSTREAM WESTSPUR LIMITED
AND SECURE ENERGY SERVICES INC. ON DISPOSITION OF THE APPLICATIONS**

March 14, 2022

Table of Contents

I.	Facts.....	3
II.	Requested Relief.....	5
III.	Joint Submission	6
IV.	Conclusion	9

I. **FACTS**

1. On December 30, 2019, Secure Energy Services Inc. ("**Secure**") filed an application with the Commission of the Canada Energy Regulator ("**CER**" or "**Commission**") seeking, among other things, an order or orders ("**Requested Relief**"): ¹
 - (a) directing Kingston Midstream Westspur Limited ("**Kingston Westspur**") to deliver crude oil off of the Westspur Pipeline to the Secure Alida Terminal ("**Alida Delivery**") and to receive, transport and deliver crude oil offered by Secure for transmission on the Westspur Pipeline ("**Alida Receipt**");
 - (b) directing Kingston Westspur to provide adequate and suitable facilities for an interconnection between the Secure Alida Terminal and the Westspur Pipeline, if necessary; and
 - (c) setting just and reasonable tolls for Alida Delivery and Alida Receipt.

2. On July 6, 2021, following a written hearing process, the Commission issued its Reasons for Decision in the RH-003-2020 proceeding (the "**Decision**") and Order MO-020-2021 (the "**Order**") granting the Requested Relief. ² Specifically, the Commission ordered Kingston Westspur to provide Alida Delivery and Alida Receipt on the Westspur Pipeline. ³ The Commission also ordered Kingston Westspur to file an application for the construction and operation of necessary connecting facilities between the Secure Alida Terminal and the Kingston Alida Terminal. ⁴ Kingston Westspur was also ordered to file an updated Westspur Pipeline tariff that included the Secure Alida Terminal as a receipt and delivery point as well as the tolls to and from the Secure Alida Terminal. ⁵ Finally, the Order set tolls for the interconnection between the Secure Alida Terminal and the Westspur

¹ [C03902-2](#).

² [C13917-1](#) and [C13917-4](#).

³ Order, s 1.

⁴ Order, s 2.

⁵ Order, s 3.

Pipeline as well as for tolls for crude delivery to the Secure Alida Terminal and for transport from the Secure Alida Terminal to Cromer, Manitoba.⁶

3. On July 23, 2021, Kingston Westspur filed the Review Application with the CER.⁷ In August 2021, Kingston Westspur and its affiliate, Kingston Marketing Limited ("**Kingston Marketing**") filed separate motions with the Federal Court of Appeal seeking leave to appeal the Decision and Order ("**Kingston Leave Applications**"). In addition, Kingston Marketing filed an application with the Federal Court of Appeal seeking judicial review of the Decision and Order (the "**Kingston Marketing Judicial Review**" and together with the Kingston Appeal Motions, the "**Kingston Court Applications**").
4. On August 5, 2021, Kingston Westspur complied with paragraph 3 of the Order and further direction by the Commission⁸ by filing an updated interim Westspur Tariff.⁹
5. On August 11, 2021, Kingston Westspur and Secure (collectively, the "**Parties**") jointly requested a stay of the Review Application and a stay of the Order to facilitate settlement discussions between the Parties. The Commission granted that request and stayed the Review Application and Order.¹⁰ The Commission granted subsequent requests by Secure and Kingston to extend the stay of the Review Application and Order on October 6, 2021¹¹, November 4, 2021¹², December 6, 2021¹³, January 28, 2022¹⁴ and February 25, 2022.¹⁵
6. Secure, Kingston Westspur, and their affiliates have agreed to terms which will ensure that the matter of Secure's access to the Westspur Pipeline is resolved in a manner consistent with the

⁶ Order, s 4.

⁷ [C14211-2](#).

⁸ [C14323-1](#).

⁹ [C14346-2](#).

¹⁰ [C14433-1](#).

¹¹ [C15300-1](#).

¹² [C15940-1](#).

¹³ [C16493-1](#).

¹⁴ [C17435-1](#).

¹⁵ [C17894-1](#).

intent of the Order. While the agreed upon terms are consistent with the Commission's overall intent, the Parties nevertheless require certain changes to the Order to give effect to those terms.

II. REQUESTED RELIEF

7. For the reasons set out in this joint submission, Secure and Kingston Westspur hereby jointly request that the Commission:
 - (a) amend the Order to remove sections 2 and 4 from the Order;
 - (b) confirm that Kingston Westspur may file an updated Westspur Tariff which does not include the Secure Alida Terminal as a Westspur Pipeline receipt point or delivery point; and
 - (c) discontinue the proceedings related to the Review Application.
8. As part of the settlement between the Parties, if the Commission grants the requested relief, Kingston Westspur and Kingston Marketing will discontinue the Kingston Court Applications and Secure will discontinue litigation that it commenced in the Court of Queen's Bench of Alberta.
9. All three aspects of the relief requested in paragraph 7 are needed to effect a comprehensive commercial arrangement among Secure, Kingston Westspur, and their affiliates. As a result, if any part of the relief requested in paragraph 7 is not acceptable to the Commission, Kingston Westspur and Secure would need time to consider any potential implications to the negotiated resolution. In such a case, the Parties request that the Commission advise the Parties of same before making any final determinations.
10. As the terms of the comprehensive settlement amongst the Parties are contingent on the Commission approving the relief requested in paragraph 7, the Parties respectfully request that the Commission determine this application as expeditiously as possible.

III. JOINT SUBMISSION

11. Commission decisions and orders are final and conclusive except as provided for in the CER Act.¹⁶ Subsection 69(1) of the CER Act allows the Commission to review, vary or rescind any decision or order it makes. Pursuant to Part III of the Rules, the Commission may review and vary a decision or order where, among other things, changed circumstances or new facts have arisen since the close of the original proceeding that raise a doubt as to the correctness of the decision or order.¹⁷

12. For the reasons that follow, the Parties jointly submit that new facts or changed circumstances since the Decision and Order were issued justify removing sections 2 and 4 from the Order.

1. Grounds for Review and Variance

13. Section 1 of the Order directed Kingston Westspur to provide "Alida Delivery" and "Alida Receipt" on the Westspur Pipeline. Those terms are defined in the Decision as follows:¹⁸

Alida Delivery Delivery of oil from the Westspur Pipeline to the Secure Alida Terminal via the Delivery Connection.

Alida Receipt Receipt, transport, and delivery of crude oil offered by Secure via the Receipt Connection for transmission on the Westspur Pipeline.

14. The terms "Delivery Connection" and "Receipt Connection" are defined in the Decision as follows:¹⁹

Delivery Connection An interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of delivering crude oil from the Westspur Pipeline to the Secure Alida Terminal.

Receipt Connection An interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of receiving, transmitting and delivering oil offered by Secure for transmission on the Westspur Pipeline.

15. While the Commission found that it was reasonable for Kingston Westspur to provide Alida Delivery and Alida Receipt on the Westspur Pipeline²⁰, the Decision left open the possibility that the existing

¹⁶ CER Act, s 70(1).

¹⁷ Rules, s 44(2).

¹⁸ Decision, PDF p 6.

¹⁹ Decision, PDF pp 6 and 7.

²⁰ Decision, PDF p 31.

provincially-regulated facilities which connect the Secure Alida Terminal and the Kingston Alida Terminal ("**Connection Facilities**") could be used to provide Alida Receipt and Alida Delivery:

[...] the Commission encourages all parties to find a way to utilize the existing facilities regardless of jurisdiction. It is in the public interest to use existing facilities as much as possible, particularly in this case where the existing facilities are relatively new. How the facilities may be utilized would be up to the parties or their affiliates. Kingston stated that it, and its affiliate Kingston Saskatchewan, would not negotiate to facilitate Secure's access to the Westspur Pipeline because it would jeopardize the Settlement Agreement. Given the Commission's findings above regarding the breach of common carriage requirements, it may be possible that such a position could be reconsidered. Other solutions, such as the purchase of these facilities by Secure or the transfer of these facilities to Kingston from its affiliate, may be viable options. The Commission leaves these matters to the parties to consider. [...]²¹

16. The settlement between the Parties gives effect to this direction. As a result of commercial negotiations, the Parties and their non-CER-regulated affiliates agreed to terms whereby the Secure Alida Terminal would be served in the same manner as it historically had been, using the Connection Facilities which are owned and operated by Kingston Midstream Saskatchewan Limited ("**Kingston Saskatchewan**").
17. Section 2 of the Order directs Kingston Westspur to, among other things, file with the CER a facility application for the construction and operation of facilities connecting the Secure Alida Terminal and the Kingston Alida Terminal. Because of the commercial arrangements facilitating Alida Receipt and Alida Delivery using the Connection Facilities, there is no longer any need to construct new facilities connecting the Secure Alida Terminal with the Kingston Alida Terminal. Kingston Saskatchewan has already expended capital and taken steps to ensure that its facilities are ready to provide Alida Receipt and Alida Delivery as soon as possible. Because Kingston Westspur and Secure no longer intend to rely on the construction of new facilities to provide Alida Receipt and Alida Delivery, section 2 of the Order is no longer required.

²¹ Decision, PDF p 36; see also Decision, PDF p 55.

18. Section 4 of the Order is inextricably linked to section 2 of the Order. Whereas section 2 of the Order requires Kingston Westspur to file an application to construct new facilities to connect the Secure Alida Terminal with the Kingston Alida Terminal, section 4 of the Order sets the tolls for the use of those new facilities. Because the Parties and their affiliates have arrived at commercial arrangements to use the existing Connection Facilities, there will be no new interconnection facilities between the Secure Alida Terminal and the Kingston Alida Terminal. Given that the Parties intend to provide Secure access to the Westspur Pipeline without new interconnection facilities, there is no need for the Order to set tolls for the use of such facilities, nor would such tolls apply on the existing Connection Facilities.
19. Section 3 of the Order required Kingston Westspur to file an updated Westspur Tariff that includes the Secure Alida Terminal as a receipt and delivery point, as well as the tolls to and from the Secure Alida Terminal. Kingston Westspur filed that updated Westspur Tariff on August 5, 2021. As a result of the commercial arrangements among Secure, Kingston Westspur, and their affiliates, the Secure Alida Terminal would be connected to the Westspur Pipeline in substantially the same manner as it had been prior to Secure filing its application with the Commission, using the existing Connection Facilities. As such, the Secure Alida Terminal would not be directly connected to the Westspur Pipeline and would not be a Westspur Pipeline receipt or delivery point. Instead, crude oil nominated to the Secure Alida Terminal for blending would be delivered off of the Westspur Pipeline into the existing Connection Facilities at the Kingston Alida Terminal and from there to the Secure Alida Terminal. The existing Connection Facilities would also be used to transport crude from the Secure Alida Terminal to the Kingston Alida Terminal where it would be receipted onto the Westspur Pipeline.
20. Because Kingston Westspur already complied with section 3 of the Order by filing an updated Westspur Tariff on an interim basis, the Parties understand that section 3 of the Order is spent. As such, the Parties understand that section 3 does not need to be reviewed or varied by the Commission. However, in the interests of transparency, the Parties are advising the Commission that Kingston Westspur intends to file a further updated Westspur Tariff that does not list the Secure


Alida Terminal as a Westspur Pipeline receipt or delivery point. Notwithstanding the amendments to the Westspur Tariff, third parties that wish to access the Secure Alida Terminal from the Westspur Pipeline will be able to do so via the existing Connection Facilities in the same manner that they did historically, by negotiating mutually agreeable commercial terms with Secure. The Parties note that this is consistent with Secure's evidence in the RH-003-2020 proceeding that commercial agreements would be required to access the Secure Alida Terminal in the event Secure's application was approved by the Commission. A copy of the revised Westspur Tariff, which is substantially similar to the Westspur Tariff filed with the CER prior to the Decision and Order being issued, is attached to this Joint Submission.

IV. CONCLUSION

21. Changed circumstances and new facts that have arisen since the Commission issued the Order justify removal of sections 2 and 4 of the Order. In particular, based on the encouragement to the Parties expressed in its Decision Report, Secure, Kingston Westspur and their affiliates reached commercial agreements that would provide Secure with the transportation access it needs using the existing Connection Facilities. The commercial arrangements eliminate the need to establish the Secure Alida Terminal as a new receipt and delivery point. The commercial arrangements also eliminate the need to construct new interconnection facilities and set tolls for those facilities. As noted above, third parties that wish to access the Secure Alida Terminal from the Westspur Pipeline will be able to do so, subject to agreement on commercial terms.
22. Finally, as a result of the settlement between the Parties, and provided that the Commission grants the relief requested in paragraphs 7(a) and (b), above, Kingston Westspur no longer intends to pursue the Review Application.
23. Accordingly, the Parties jointly request that the Commission:
 - (a) remove sections 2 and 4 from the Order;
 - (b) confirm that Kingston Westspur may file the attached revised Westspur Tariff; and
 - (c) discontinue the proceedings related to the Review Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th Day of March, 2022.

Dated at the City of Calgary, in the Province of Alberta

For 

Sean Assié
Bennett Jones LLP
Counsel for Secure Energy Services Inc.



Bernard J. Roth
Dentons Canada LLP
Counsel for Kingston Midstream Westspur Limited

Exhibit "B"

DISPUTE RESOLUTION

1. Negotiation to Resolve Disputes

If any controversy, dispute, claim, question or difference (a "**Dispute**") arises with respect to this Agreement or its performance, enforcement, breach, termination or validity, including as to whether or not the Commission has delivered an Adverse Decision, the parties to the Dispute shall use all reasonable commercial efforts to attempt to settle the Dispute. To this end, they shall consult and negotiate with each other in good faith and understanding of their mutual interests to reach a just and equitable solution satisfactory to all parties.

2. Arbitration

If the Parties do not reach a solution pursuant to Section 1 of this Exhibit "B" within a 15 Business Day period after which a Party has first requested in writing to the other Party to the Dispute that the matter be resolved by negotiation, then upon written notice by any Party to the other, the Dispute shall be exclusively and finally settled by arbitration administered by ICDR Canada in accordance with its Canadian Arbitration Rules and based upon the following:

- (a) The arbitration tribunal shall consist of one arbitrator, appointed by mutual agreement of the Parties, or in the event of failure to agree within 15 Business Days following delivery of the written notice to arbitrate, the appointing authority shall be ICDR Canada in accordance with its Arbitrator Appointing Authority Rules. The arbitrator shall be qualified by education and training to pass upon the particular matter to be decided;
- (b) the arbitrator shall be instructed that time is of the essence in the arbitration proceeding and the Parties shall request that the arbitration award be made as soon as reasonably practicable after the appointment of the arbitrator, taking into consideration the size, nature and complexity of the matters in the Dispute;
- (c) in any arbitration under this Section 2, the Parties shall request that the arbitrator make a procedural order to set a limit on the number of witnesses to be called by either Party both for purposes of deposition and the arbitration hearing, taking into consideration the size, nature and complexity of the matters in the Dispute;
- (d) the Parties shall request that the arbitrator make an order to set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrator, to discover relevant information from the opposing parties about the subject matter of the Dispute and in keeping with the timing requirements of Section 2(b) of this Exhibit "B". The arbitrator shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions for discovery abuses, including legal fees and costs, to the same extent as a competent court of law or equity, should the arbitrator determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification;
- (e) the arbitration shall take place in Calgary, Alberta;

- (f) except as otherwise provided in this Agreement or otherwise decided by the arbitrator, the fees and other costs associated with the arbitration shall be shared equally by the Parties to the Dispute and each Party to the Dispute shall be responsible for its own fees and costs;
- (g) the arbitration award shall be given in writing, shall provide reasons for the decision, and shall be final and binding on the Parties, not subject to any appeal, and shall deal with all costs and related matters;
- (h) judgment upon any award may be entered in any court having jurisdiction or application may be made to the court for a judicial recognition of the award or an order of enforcement, as the case may be;
- (i) all Disputes referred to arbitration (including without limitation the scope of the agreement to arbitrate, any statute of limitations, conflict of laws rules, tort claims and interest claims) shall be governed by the substantive law of Alberta and the federal laws of Canada applicable therein; and
- (j) the Parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, the Parties, their counsel and any person necessary to the conduct of the proceeding, except as may lawfully be required in judicial proceedings relating to the arbitration or otherwise.

3. Joinder and Consolidation

- (a) In any Dispute being arbitrated hereunder, the arbitrator may, independently or upon the application of a disputing Party, join any party to any of the Related Contracts to the Dispute being arbitrated hereunder, and further may, independently or upon the application of a disputing Party, consolidate into a single arbitration proceeding two or more disputes being arbitrated under any of the Related Contracts, provided that such arbitrator deems it efficient to do so in the exercise of its discretion and having regard to the rights of all affected parties. Each Party agrees that it shall be party to a multi-party arbitration as a "Related Party" under a Related Contract if the arbitrator under such Related Contract so directs. Where all of the parties to a multi-party arbitration cannot agree on the joint appointment of the arbitrator, the Parties hereby expressly consent to the appointment of such arbitrator by the Court of Queen's Bench of Alberta.
- (b) For the purpose of Section 3(a) of this Exhibit "B", the expression "**Related Contracts**" means: (i) this Settlement Agreement; (ii) the Settlement Agreement among Kingston Midstream Limited, Kingston Marketing Limited, Kingston Midstream Saskatchewan Limited, SECURE Energy Services Inc., and SECURE Alida Terminal Inc., dated March 14, 2022; (iii) the Asset Conveyance Agreement among SECURE Energy Services Inc. and SECURE Alida Terminal Inc., dated March 14, 2022; (iv) the Contract Operating Agreement among SECURE Energy Services Inc. and SECURE Alida Terminal Inc., dated _____, 2022; (v) the Interconnection Agreement among Kingston Midstream Saskatchewan Limited and SECURE Alida Terminal Inc., dated _____, 2022; (vi) the Share Purchase Agreement among Kingston Midstream Limited and SECURE Energy Services Inc., dated _____, 2022; and (vii) the

Unanimous Shareholders Agreement among SECURE Energy Services Inc., Kingston Midstream Limited and SECURE Alida Terminal Inc., dated _____, 2022; and **"Related Party"** or **"Related Parties"** refer to one or more of the parties to such Related Contract(s).