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July 27, 2016

National Energy Board
517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

Filed Electronically

Attention: Ms. Sheri Young, Secretary of the Board

Dear Ms. Young:

**Re: TransCanada Keystone Pipeline GP Ltd., as general partner on behalf of
TransCanada Keystone Pipeline Limited Partnership (Keystone)
Filing of Keystone Pipeline System NEB Tariff No. 23 (Rules and Regulations):**

Pursuant to Section 60(1)(a) of the *National Energy Board Act*, Keystone files the enclosed Rules and Regulations¹ on July 27, 2016, to be effective on September 1, 2016. Keystone is proposing to amend its Rules and Regulations to implement changes to its existing invoicing process. Currently, Keystone is invoicing for transportation tolls and others charges based on the volumes measured at the Receipt Point. As of September 1, 2016, Keystone will be invoicing for tolls and others charges based on the volumes measured at the Delivery Point. For the purposes of invoicing, the volumes Delivered at the Delivery Point are deemed to be the volumes delivered by Keystone US to a delivery point on the Keystone US Pipeline System. The proposed amendments provide a benefit to the Shippers as their transportation charges will be more closely aligned to their actual volumes Delivered.

Shipper meetings were held to inform and consult with Shippers on this issue, as discussed in more detail below. In between meetings, consultation continued with individual Shippers either in-person or via email and phone calls addressing comments and concerns.

¹ Capitalized terms used herein and not otherwise defined have the meanings set out in the Rules and Regulations in effect.

Shipper Consultation

Keystone was approached by Shippers in 2014 raising an issue in regards to inconsistencies between their transportation charges and their actual volumes delivered due to normal operational overages/shortages that occur on the Pipeline System.

Keystone began to work on a solution to address the issue. A Shipper meeting was held on April 14, 2015, to discuss a solution of substituting measurement at the Delivery Point instead of the Receipt Point to quantify actual volumes Tendered by Shipper to determine invoice charges and account statements (Receipt to Delivery Based Tolling (R-to-DBT) proposal). A presentation was given to illustrate the high level impacts to invoice and account statements, make-up rights and numerical examples. Shipper feedback received was supportive of continuing to evaluate the R-to-DBT proposal.

A second Shipper meeting was held on June 26, 2015, to review and vet the next level of details regarding the R-to-DBT proposal and consequential proposed changes to the Rules and Regulations. Term Shippers were informed that changes affecting their Transportation Service Agreements (TSA) would be addressed in follow up Term Shipper only meetings. Keystone posted the draft Rules and Regulations on the Keystone Customer Portal for all Shippers on August 7, 2015 and requested feedback prior to September 1, 2015. Keystone did not receive any material objections to the proposed amendments and the feedback received was generally supportive of the proposed amendments.

A draft of a memorandum was issued to Term Shippers on September 21, 2015, to clarify TSA provisions that would be affected by the R-to-DBT proposal. A follow-up Term Shipper meeting was held on September 29, 2015, to review the proposed changes to the Rules and Regulations. In addition, TSA provisions that would be affected were reviewed in detail with examples provided. For added clarity, key processes that were not changing were also identified (i.e., nominations, position settlement etc.). Based on feedback received, an updated version of the Rules and Regulations which incorporated clarification changes and an updated draft of the memorandum were issued to Term Shippers on February 10, 2016.

Another Term Shipper meeting was held on March 2, 2016 to review updated R-to-DBT proposal clarification changes to the Rules and Regulations and updates to the draft memorandum. On March 16, 2016, another updated draft of the memorandum was sent to Term Shippers which incorporated mostly structural, editorial and clarification changes. On April 27, 2016, the pre-filing version of the draft Rules and Regulations was posted on the Keystone Customer Portal for all Shippers and included a summary of all changes. It was requested that any final concerns be communicated by May 16, 2016. No concerns were raised to Keystone. A pre-execution version of the memorandum was sent on May 17, 2016, which addressed the final outstanding clarification. A Term Shipper meeting was held on May 31, 2016, to review the change and a final outline of R-to-DBT implementation process was provided. The memorandum was executed in July 2016.

Revisions to Rules and Regulations

Enclosed as Attachments 1 and 2 are a black-line to the previously filed NEB Tariff No. 21 and a clean copy of the Rules and Regulations, respectively. The amended Rules and Regulations include the following revisions:

Revised or added new definitions

- Abandonment Surcharge definition was revised to clarify that the calculation includes actual volumes Tendered;
- Tender definition was revised to define Tender for invoicing purposes; and
- US Tariff definition was added.

Clarified the applicable rates and charges will apply in the event:

- a Shipper fails to remove objectionable matter;
- of seizure and sale of Petroleum by Carrier;
- a Shipper fails to remove its Petroleum from the Pipeline System; and
- a Defaulting Party does not remedy the default.

Clarified Tender for the purposes of invoicing

- Volumes Delivered at the Delivery Point are deemed to be the volumes delivered by Keystone US to a delivery point on the Keystone US Pipeline System for invoicing purposes.

Clarified Non-Term Shippers transportation rates and deficiency payments

- Transportation rates will be based on actual volumes measured at the Delivery Point; and
- The deficiency charge will continue to be levied in the event Non-Term Shipper does not Tender at least 95% of their highest Allocated Volumes, as measured at the Receipt Point and irrespective of volumes measured at the Delivery Point.

Clarified effective tolls for invoicing purposes

- Actual Volumes used for invoicing purposes are based on Net Standard Volumes as measured at the Delivery Point.

Added Deemed Deliveries upon Removal/Seizures article

- Petroleum shall be deemed Delivered at that time of removal and seizures and that applicable rates and charges will be applied.

Revised Financial Assurance language

- Revised the language to cover the increased credit risk as Non-Term Shippers will now be invoiced at the Delivery Point and no longer at the Receipt Point.

With the exception of the revisions identified above, all other changes to the Rules and Regulations are either editorial in nature, providing greater clarification, or are made to improve readability of the document.

Ms. S. Young
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Keystone concurrently provides notice of this filing to Keystone Pipeline System shippers and interested parties.

Should the Board require additional information regarding this filing, please contact me by phone at (403) 920-2918 or by email at julie_kemp@transcanada.com.

Yours truly,
TransCanada Keystone Pipeline GP Ltd.,
as general partner on behalf of TransCanada
Keystone Pipeline Limited Partnership

Original signed by

Julie Kemp
Liquids Pipelines Regulatory

Enclosure

cc: Keystone Pipeline System shippers and interested parties

Attachment 1
NEB Tariff No. 23
Rules and Regulations

Black-line Pages

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: July 27~~June 1~~, 2016

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: September 1~~July 2~~, 2016 |

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

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 actual 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 actual 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.

“**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 Tendered 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 and Houston, 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.

“**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, with the actual volume for such Tender for invoicing purposes determined in accordance with Article 8.

“**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.

“**US Tariff**” means the rules and regulations governing the transportation of Petroleum on the Keystone US Pipeline System and any Petroleum rate schedule filed at the FERC by Keystone US, all as may be amended from time to time.

“**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.

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);

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- (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 millimetres 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, 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, tolls and charges for any removal or Delivery, or pending removal or Delivery, of the Petroleum (as contemplated in Section 9.5), ~~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 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 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;
 - (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.

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- (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 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:** 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

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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.
- 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 and Deemed Volume of Petroleum Delivered.** 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. For invoicing purposes, the volume of Petroleum Delivered by Carrier at the Delivery Point pursuant to a Nomination is deemed to be the Petroleum delivered by Keystone US to a delivery point on the Keystone US Pipeline System pursuant to such Nomination and in accordance with the provisions of the US Tariff.
- 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.

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- 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 Tended 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).
- 7.11 Non-Term Shippers.** 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. 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:
- (i) the applicable transportation charges an amount equal to the product of (a) the Uncommitted Toll, multiplied by (b) the actual volume greater of Non-Term Shipper's Tended Petroleum as determined in accordance with Article 8; and
 - (ii) if applicable, a deficiency payment equal to the product of (a) the Uncommitted Toll, multiplied by (b) the positive difference between (A) ~~or~~ ninety-five percent (95%) of Non-Term Shipper's Allocated Volume, and (B) such Non-Term Shipper's Tended Petroleum as measured at the Receipt Point(s). ~~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:

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- (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 and Actual Volumes for Invoicing Purposes.** 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). The actual volume of such Tender to which such toll is applied for invoicing purposes shall be based on the Net Standard Volume of Petroleum Delivered (for such purposes, calculated in accordance with Section 7.5), unless otherwise stated in the Tariff.
- 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.

**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

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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 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, tolls and charges for any removal or Delivery, or pending removal or Delivery, of the Petroleum (as contemplated in Section 9.5), and all costs and expenses incident

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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 **Deemed Deliveries upon Removal/Seizure.** In the event of removal, seizure, or seizure and sale of Petroleum in accordance with the terms of the Tariff or a Contract, including as provided for in Sections 4.5, 4.6, 9.3(ii), or 9.4, or in the event Shipper otherwise fails to take Delivery of Petroleum, Petroleum shall be deemed Delivered to Shipper at the time removed from the Pipeline System or Delivered to a third party (as part of seizure or seizure and sale) and Carrier shall be entitled to invoice Shipper for all applicable tolls and charges under the Tariff and the applicable Contract in relation thereto (not otherwise recovered by Carrier pursuant to Section 9.4).

9.65 **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 Tariff including tolls and charges for any removal or Delivery, or pending removal or Delivery, of the Petroleum (as contemplated in Section 9.5). 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 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:

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- (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 including tolls and charges for any removal or Delivery, or pending removal or Delivery, of such Petroleum (as contemplated in Section 9.5). 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.

**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

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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, 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.

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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.

**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.

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
 - (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

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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 sufficient in amount for the payment of all of~~ tolls and other charges based on Shipper's Allocated Volume for applicable Months, 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.

**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:

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- (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.

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

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- (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 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.

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- 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.

Attachment 2
NEB Tariff No. 23
Rules and Regulations

Clean Copy

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: July 27, 2016

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: September 1, 2016

Compiled by:

Julie Kemp
TransCanada Keystone Pipeline GP Ltd.,
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Partnership
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Canada

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 actual 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 actual 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 Tendered 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 and Houston, 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, with the actual volume for such Tender for invoicing purposes determined in accordance with Article 8.

“**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.

“**US Tariff**” means the rules and regulations governing the transportation of Petroleum on the Keystone US Pipeline System and any Petroleum rate schedule filed at the FERC by Keystone US, all as may be amended from time to time.

“**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,

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- (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.

**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);

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- (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 millimetres 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, 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, tolls and charges for any removal or Delivery, or pending removal or Delivery, of the Petroleum (as contemplated in Section 9.5), 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 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.

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- 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 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;
- (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.

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- (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 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:** 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

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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.
- 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 and Deemed Volume of Petroleum Delivered.** 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. For invoicing purposes, the volume of Petroleum Delivered by Carrier at the Delivery Point pursuant to a Nomination is deemed to be the Petroleum delivered by Keystone US to a delivery point on the Keystone US Pipeline System pursuant to such Nomination and in accordance with the provisions of the US Tariff.
- 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.

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- 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).
- 7.11 Non-Term Shippers.** 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. 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:
- (i) the applicable transportation charges equal to the product of (a) the Uncommitted Toll, multiplied by (b) the actual volume of Non-Term Shipper's Tendered Petroleum as determined in accordance with Article 8; and
 - (ii) if applicable, a deficiency payment equal to the product of (a) the Uncommitted Toll, multiplied by (b) the positive difference between (A) ninety-five percent (95%) of Non-Term Shipper's Allocated Volume, and (B) such Non-Term Shipper's Tendered Petroleum as measured at the Receipt Point(s).
- 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

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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 and Actual Volumes for Invoicing Purposes.** 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). The actual volume of such Tender to which such toll is applied for invoicing purposes shall be based on the Net Standard Volume of Petroleum Delivered (for such purposes, calculated in accordance with Section 7.5), unless otherwise stated in the Tariff.
- 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.

**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

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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 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, tolls and charges for any removal or Delivery, or pending removal or Delivery, of the Petroleum (as contemplated in Section 9.5), 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

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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 Deemed Deliveries upon Removal/Seizure. In the event of removal, seizure, or seizure and sale of Petroleum in accordance with the terms of the Tariff or a Contract, including as provided for in Sections 4.5, 4.6, 9.3(ii), or 9.4, or in the event Shipper otherwise fails to take Delivery of Petroleum, Petroleum shall be deemed Delivered to Shipper at the time removed from the Pipeline System or Delivered to a third party (as part of seizure or seizure and sale) and Carrier shall be entitled to invoice Shipper for all applicable tolls and charges under the Tariff and the applicable Contract in relation thereto (not otherwise recovered by Carrier pursuant to Section 9.4).

9.6 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 Tariff including tolls and charges for any removal or Delivery, or pending removal or Delivery, of the Petroleum (as contemplated in Section 9.5). 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

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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 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:

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- (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 including tolls and charges for any removal or Delivery, or pending removal or Delivery, of such Petroleum (as contemplated in Section 9.5). 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.

**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

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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, 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.

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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.

**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.

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

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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
 - (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

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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 sufficient in amount for the payment of all tolls and other charges based on Shipper's Allocated Volume for applicable Months, plus all applicable taxes.

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.

**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:

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- (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.

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

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- (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 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.

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- 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.