

Appendix C (New) Pro Forma Precedent Agreement and a Pro Forma Transportation Service Agreement - Crude Oil Pipeline

**NORTHERN GATEWAY PIPELINES PROJECT
OIL EXPORT PIPELINE**

PRECEDENT AGREEMENT

BETWEEN

NORTHERN GATEWAY PIPELINES LIMITED PARTNERSHIP

- AND -

[•]

DATED [•]

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**NORTHERN GATEWAY PIPELINES PROJECT
OIL EXPORT PIPELINE**

PRECEDENT AGREEMENT

THIS PRECEDENT AGREEMENT is made effective as of the day of , 2011 between Northern Gateway Pipelines Limited Partnership ("**Transporter**") and • ("**Shipper**"). Transporter and Shipper may, in this Precedent Agreement, collectively be referred to as the "**Parties**" and individually referred to as a "**Party**".

R E C I T A L S

Transporter plans to develop, construct, own and operate the Oil Pipeline.

Transporter has or will apply for and seek to obtain all Transporter Approvals to construct and operate the Oil Pipeline from the NEB in accordance with this Precedent Agreement and will provide the Services to shippers that become Term Shippers in accordance with the terms and conditions set forth herein. Transporter estimates that it will receive the Transporter Approvals on or before July 31, 2013.

Subject to the terms and conditions of this Precedent Agreement, Transporter and Shipper will enter into the TSA.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth in this Precedent Agreement, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Capitalized words used in this Precedent Agreement have the following meanings:

“**AACE Guidelines**” means the applicable guidelines of the Association for the Advancement of Cost Engineering in effect, and as they read, as at the time the Class III Capital Cost Estimate is prepared;

“**Acceptable Credit Support**” means any of the following security, provided it is in form and substance acceptable to Transporter and in an amount sufficient to secure performance of Shipper’s obligations to fund its PA Share of the costs of the Technical Studies pursuant to its Letter of Support, if applicable: (a) pre-payment; (b) an irrevocable, unconditional letter of credit or letter of guarantee issued by a bank or by a syndicate of such banks, which has or have senior unsecured long-term debt (or long-term deposits) with a credit rating that is not less than one of the following: (i) “A” by S&P.; (ii) “A2” by Moody’s; or (iii) “A” by DBRS, provided that where the provider or providers of such letter of credit is rated by more than one debt rating agency, the lowest credit rating of each such provider will apply; (c) an irrevocable guarantee from a guarantor whose Rated Debt has an Investment Grade Credit Rating; or (d) a first priority, perfected pledge of an amount of cash or cash-equivalent securities on deposit with a financial institution acceptable to Transporter, acting reasonably;

“**Acknowledgment Request**” has the meaning given to it in Section 7.5;

“**Affiliate**” means, with respect to a Party, any other Person that is affiliated with such Party and for such purpose:

- (a) two Persons will be considered to be affiliated with one another if one of them controls the other, or if both of them are controlled by a common third party; and

(b) one Person will be considered to control another Person (other than in the capacity of a director, officer or employee of such other Person) if it has the power to direct or cause the direction of the management and policies of the other Person, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by virtue of the ownership of shares or other equity interests, the holding of voting rights or contractual rights, or otherwise;

“**Allocable Capacity**” means a capacity equal to the Estimated Firm Capacity, as may be reduced, if required, pursuant to Sections 9.9 or 9.11;

“**Applicable Law**” means, in relation to any Person, transaction or event, all applicable provisions of laws, statutes, rules, regulations, official directives and orders of all federal, provincial, municipal and local government bodies in Canada (whether administrative, legislative, regulatory, executive or otherwise) and judgments, orders and decrees of all courts, commissions or bodies exercising similar functions in Canada in action or proceedings in which the Person in question is a party or by which it is bound or having application to the matter;

“**Arbitration Rules**” has the meaning given to it in Section 18.2;

“**Assignee**” means an assignee of this Precedent Agreement, whether in whole or in part;

“**Barrel**” means 0.158987 cubic metres at Standard Conditions;

“**Batch**” means a homogenous volume of Crude Oil of no less than 200,000 Barrels received from a Shipper at the Receipt Point or as otherwise determined in accordance with the Rules;

“Business Day” means any day that is not a Saturday, Sunday or a statutory holiday in Calgary, Alberta;

“CEMP” means a construction execution management plan for the Oil Pipeline and the facilities required for the construction of the Oil Pipeline and the provision of Services which shall include, without limitation, a project schedule, a description of contract packages, a contracting strategy including prequalification procedure, a draft contract with commercial terms and lists of possible bidders for each contract package, a safety and environmental management plan, a quality assurance plan, a project execution risk analysis and mitigation plan, and any other deliverables that are agreed to by Transporter and the Supporting Term Shippers as relevant to the execution of the construction of the Oil Pipeline or the provision of Services;

“Class III Capital Cost Estimate” means a Class III estimate of the costs of constructing the Oil Pipeline and the facilities required for the provision of Services prepared by Transporter in accordance with the AACE Guidelines, having an accuracy level within the range of plus 25% and minus 15% after the application of a risk dependant contingency;

“Class III Toll Estimate” means an estimate prepared by Transporter of the tolls that will be payable by Shipper for the Services, which estimate will be derived from the Class III Capital Cost Estimate and an estimate prepared by Transporter of the operating expenses for the Oil Pipeline and the provision of Services and the application of the Oil Pipeline Toll Principles;

“Commencement Date” means the date on which the Oil Pipeline is available to provide the Services (or would have been available with sufficient line fill, whether or not sufficient line fill had been provided);

“Committed Volume” means, for a Term Shipper (including Shipper), the sum of the FP Option Volume and the Non-FP Option Committed Volume and **“Committed Volumes”** means the aggregate of the Committed Volume of all Term Shippers;

“Condensate Pipeline” has the meaning given to it in Section 8.3(b);

“Conditional Put Option” means the conditional option of a Non-Consenting FP to terminate its Funding Support Agreement in exchange for re-imbursement by the Consenting FPs of all funds that were paid to Transporter by such Non-Consenting FP pursuant to its Funding Support Agreement, the exercise of which shall be conditional upon its acceptance by the Consenting FPs pursuant to Section 5.3 and completion of the matters set forth in Section 5.4;

“Confidential Information” means, subject to the exceptions set forth in Section 14.2, all information of a Party of a proprietary, intellectual or similar nature, including technical, financial, operational, marketing, transportation, processing, information and data, including, but not limited to surveys, engineering data, proprietary software programs, economic evaluations and third party studies, whether factual or interpretative which is disclosed as a result of or in connection with this Precedent Agreement including the provisions of this Precedent Agreement or the fact that this Precedent Agreement has been entered into by Shipper and regardless of whether such information

is disclosed directly or indirectly, or acquired and exchanged between the Parties and their Affiliates, in written, oral, visual or electronic form;

“Confirmed Funding Participant” means a Funding Participant that has executed a precedent agreement (substantially in the same form as this Precedent Agreement) on or before the Funding Participant PA Date;

“Consenting FP” means a Confirmed Funding Participant that has elected pursuant to Section 5.2(a) to consent to the acceleration of the matters set forth in Section 5.4;

“Consequential Losses” means any and all consequential or indirect Losses, loss or anticipated loss of profit, loss or anticipated loss of revenue, loss or anticipated loss of business opportunity or business interruption;

“Crude Oil” means the direct liquid product of oil wells, oil processing plants, the indirect liquid petroleum products of oil or gas wells, oil sands, or a mixture of such products, which product or mixture of products meets the quality specifications set out in the Rules and previously approved for transportation in accordance with the commodity approval process, but does not include the indirect liquid petroleum products of oil or gas wells having a Reid vapour pressure in excess of 103 kilopascals;

“DBRS” means DBRS Limited and its successors and assigns;

“Default” has the meaning given to it in Section 15.3;

“Default Notice” has the meaning given to it in Section 15.3;

“**Delivery Point**” means the delivery flange, being the point of interconnection between the outlet of the Kitimat Terminal included in the Oil Pipeline and the vessel receiving delivery of the Crude Oil from the Oil Pipeline;

“**Direct Owner**” means a Funding Participant DO, or its permitted assignee, that has exercised its Direct Ownership Option and has entered into a Direct Ownership Agreement with the Transporter;

“**Direct Ownership Agreement**” means one or more agreements between the Transporter and a Funding Participant DO, or its permitted assignee, entered into following the exercise of the Direct Ownership Option in respect of the co-ownership of the Oil Pipeline and the entitlement of the Funding Participant DO, or its permitted assignee, to the Direct Ownership Capacity;

“**Direct Ownership Capacity**” has the meaning given to it in the Transportation Services Agreement;

“**Direct Ownership Option**” means the option, if any, of a Funding Participant DO, or its permitted assignee, to elect to hold an undivided ownership interest in the Oil Pipeline and to receive use of the Direct Ownership Capacity, as set forth in such Funding Participant DO's Funding Support Agreement, if applicable, but the “**Direct Ownership Option**” does not mean an option to acquire indirect ownership of the Oil Pipeline through the acquisition of equity in Transporter;

“Direct Ownership Share” means the undivided ownership interest in the Oil Pipeline expressed as a percentage that is held by a Direct Owner pursuant to a Direct Ownership Agreement;

“Disclosing Party” has the meaning given to it in Section 14.1;

“Emergency Response” means those services and facilities as set forth in the *Canada Shipping Act*, as amended by *Chapter 36, Statutes of Canada 1993*, which outlines Canada's marine oil spill preparedness and response regime along with such other services as Transporter deems necessary with the objective to ensure that suitable response equipment, infrastructure and personnel is in place and ready to be deployed in the event of any oil spill;

“Estimated Firm Capacity” means five hundred thousand (500,000) Barrels per day of Crude Oil on the Oil Pipeline;

“Execution Coordination Group” has the meaning given to it in Appendix “C”;

“Execution Oversight Committee” has the meaning given to it in Appendix “C”;

“Finance Plan” means a plan prepared by Transporter setting out the parameters for the proposed debt and equity financing to be obtained by Transporter to enable Transporter to construct and place the Oil Pipeline into service and including a written opinion from a financial consultant (whose appointment is agreed to between Transporter and a majority of the Supporting Term Shippers that represent at least 51% of the aggregate of all Letter of Support Volumes that have been accepted by Transporter pursuant to Article 4) indicating that the proposed financing is reasonably achievable.

“Firm Service” has the meaning given to such term in the Transportation Services Agreement;

“Force Majeure Event” means any event that prevents or restricts a Party’s ability to satisfy its obligations hereunder, that was not or is not within the reasonable control of the affected Party (acting and having acted with due diligence and in a reasonable manner and in accordance with good pipeline industry practice) and that is directly related to the development of the Oil Pipeline or the Transporter Approvals provided however that Force Majeure Event shall expressly exclude: (i) a lack of funds; and (ii) a change in market or economic conditions that renders performance of the obligations of the Party claiming force majeure uneconomical or disadvantageous;

“Founding Shipper” has the meaning given to it in Appendix “C”;

“FP Consent” means the written consent from Confirmed Funding Participants that represent at least 66% of the aggregate of FSA Volumes of all Confirmed Funding Participants to accelerate the commencement of the Technical Studies and the Finance Plan in accordance with Article 5;

“FP Consent Notice” has the meaning given to it in Section 5.1;

“FP Option Volume” means, for a Term Shipper that is a Funding Participant (including, if applicable, the Shipper), a volume of Crude Oil (expressed in Barrels per day) elected by Shipper and set forth in Paragraph (a) of Schedule “A” of such Term Shipper’s Transportation Services Agreement, which shall not be greater than such Term Shipper’s FSA Volume;

“**FSA Volume**” means, for a Term Shipper that is a Funding Participant (including, if applicable, the Shipper), a volume of Crude Oil (expressed in Barrels per day) that the Funding Participant is permitted to reserve pursuant to such Term Shipper’s Funding Support Agreement;

“**Funding Participant**” means a Person who has entered into a Funding Support Agreement with Transporter and shall include any permitted assignee of a Funding Participant under its Funding Support Agreement;

“**Funding Participant PA Date**” means July 28, 2011;

“**Funding Participant DO**” means a Funding Participant who holds a Direct Ownership Option;

“**Funding Support Agreement**” means: (i) any funding support agreement entered into between Transporter and a Funding Participant prior to April 17, 2008 (as may have been amended, modified or restated before, on or after such date) and which provides for, *inter alia*, financial support to be given by such Funding Participant to Transporter for certain preparatory activities required to achieve approval of the Oil Pipeline under Part III and Part IV of the *National Energy Board Act* (Canada) as further described in the funding support agreement (each, an “**Original FSA**”); or (ii) where there has been an assignment by a Funding Participant of all or a portion of its interest in an Original FSA, any amended and/or restated funding support agreement entered into (whether before, on or after April 17, 2008) between Transporter and any Person taking assignment of such interest in such Original FSA, provided such amended and/or restated funding support

agreement does not confer any greater material rights than were originally provided to the assigning Funding Participant under the Original FSA;

“Governmental Authority” means any government, any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal or judicial or arbitral body having jurisdiction over the Oil Pipeline or the operation of the Oil Pipeline;

"Investment Grade Credit Rating" means, in respect of a Person, a credit rating not less than one of the following:

Moody's	Baa3
S&P	BBB(minus)
DBRS	BBB(low)

which has been assigned to the Rated Debt of that Person by the respective agency. If the Person’s Rated Debt has a credit rating from all three agencies set forth above, at least two of the ratings are not to be less than the ratings set forth above to be considered “Investment Grade Credit Rating”. Where the Person’s Rated Debt only has a credit rating from two of the agencies set forth above, at least one of the ratings is not to be less than the ratings set forth above to be considered “Investment Grade Credit Rating”;

“Joint FP Notice” has the meaning given to it in Section 5.3;

“JRP Decision Date” means the date the Minister of Environment for the Government of Canada, on behalf of the Joint Review Panel (JRP) established for the Northern Gateway

Pipelines Project, makes publicly available the report setting out the JRP's rationale, conclusions and recommendations relating to the environmental assessment of the Oil Pipeline;

"Kitimat Terminal" means the tanks, pump facilities, tanker berths, and other infrastructure located near Kitimat, British Columbia, as further described in Schedule "C" of the TSA;

"Letter of Support" means a letter substantially in the form attached hereto as Appendix "B" confirming a Term Shipper's obligation to reimburse Transporter for its PA Share of the costs associated with the preparation and delivery of the Technical Studies in the event that a Transporter Condition has not been satisfied or waived or the Oil Pipeline is not brought into service;

"Letter of Support Volumes" means, for any Term Shipper that executes and delivers a Letter of Support to Transporter, the volume of Crude Oil such Term Shipper elects to include as its "Letter of Support Volume", which volume: (i) for any Term Shipper that is a Confirmed Funding Participant (other than a Funding Participant DO), cannot be greater than its FSA Volume; or (ii) for a Funding Participant DO, cannot be greater than its FSA Volume less the Maximum Direct Ownership Carve-Out Volumes, unless increased pursuant to Section 4.3(a) or otherwise amended in accordance with Section 4.5;

"Losses" means any and all damages, claims, losses, expenses, liabilities, injuries, fines, penalties, settlements, awards, judgments, or other costs whatsoever (including costs as between a solicitor and his client).

“Management Plan” means the procedure and management plan set forth in Appendix “C” for the development of the Technical Studies and Finance Plan, as may be further modified by the agreement of Transporter and Supporting Term Shippers that represent not less than 51% of the aggregate of all Letter of Support Volumes that have been accepted by Transporter pursuant to Article 4;

“Material Change” means:

- (a) a downgrade of the Rated Debt of Shipper or, if applicable, the Rated Debt of Shipper’s guarantor to less than Investment Grade Credit Rating;
- (b) a downgrade of Rated Debt of the provider of an irrevocable standby letter of credit respecting the Shipper to a lower credit rating than one of the following:
 - (i) “A” by S&P; (ii) “A2” by Moody’s; or (iii) “A” by DBRS. For greater certainty, where the provider of such letter of credit is rated by more than one debt rating agency, the lowest credit rating will apply;

“Maximum Aggregate PA Share” means 49% multiplied by: (one (1) minus the Maximum Direct Ownership Share);

“Maximum Direct Ownership Carve-Out Volumes” means the volume expressed in Barrels per day which is equal to the product of the Maximum Direct Ownership Share and 500,000 Barrels per day;

“Maximum Direct Ownership Share” means the maximum undivided ownership interest in the Oil Pipeline expressed as a percentage that a Funding Participant DO is entitled to acquire by exercising its Direct Ownership Option and entering into a Direct Ownership Agreement, which maximum undivided ownership interest is determined

pursuant to the Funding Support Agreement to which the Funding Participant DO is a party;

“Month” means the period commencing at 0700 MST on the first day that the Services are provided by the Transporter and ending at 0700 MST of the first day of the following calendar month in which the Services commence, and each successive month thereafter;

“Monthly Committed Volume” means, for a Month, the product of: (i) the Committed Volume and (ii) the number of days in such Month;

“Moody’s” means Moody’s Investor Services, Inc. and its successors and assigns;

“NEB” means the National Energy Board of Canada;

“Non-Confirmed Funding Participants” means Funding Participants who executed a precedent agreement subsequent to the Funding Participant PA Date;

“Non-Consenting FP” means a Confirmed Funding Participant that has elected pursuant to Section 5.2(b) not to consent to the acceleration of the matters set forth in Section 5.5;

“Non-FP Option Committed Volume” means, for a Term Shipper (including, if applicable, the Shipper) the volume of Crude Oil (expressed in Barrels per day) if any, set forth in Paragraph (b) of Schedule “A” of such Term Shipper’s Transportation Services Agreement;

“Notice” has the meaning given to it in Section 19.4;

“Oil Pipeline” means the oil pipeline and tanks system to transport Crude Oil from the Receipt Point to the Delivery Point which oil pipeline will have an estimated throughput

capacity of five-hundred and twenty-five thousand (525,000) Barrels of Crude Oil per day, of which five-hundred thousand (500,000) Barrels of Crude Oil per day will be reserved for Committed Volumes and twenty-five (25,000) Barrels of Crude Oil per day will be reserved for Uncommitted Volume;

“Oil Pipeline Toll Principles” means the toll principles set forth in Schedule “B” of the Transportation Services Agreement;

“Order-in-Council” means an order issued by the Governor General of Canada authorizing the issuance of the certificate of public convenience and necessity for the Oil Pipeline issued pursuant to Section 52 of the *National Energy Board Act* (Canada) R.S. 1985 c.N-7;

“Original FSA” has the meaning given to it in the definition of “Funding Support Agreement”;

“PA Share” means, for any Term Shipper, the percentage that is equal to such Term Shipper’s Letter of Support Volume which has been accepted by Transporter pursuant to Article 4 divided by the Estimated Firm Capacity multiplied by 49%;

“PA Volume” means, for any Term Shipper, the volume of Crude Oil, described in Appendix “A” to such Term Shipper’s precedent agreement, that is estimated to be committed through the future execution and delivery to Transporter of a TSA, and **“PA Volumes”** means the aggregate of the PA Volume of all Term Shippers;

“Party” or **“Parties”** has the meaning given to it in the recitals to this Precedent Agreement;

“**Person**” means an individual, partnership, limited liability company, corporation, trust, estate, unincorporated association, nominee, joint venture, or other legal entity;

“**Precedent Agreement**” or “**PA**” means this precedent agreement and the appendices attached hereto;

“**Preparation Plan**” means the plan to be prepared by Transporter and agreed to by a Simple Majority of Confirmed Funding Participants pursuant to Article 2, to be applied and used in developing the Technical Studies and Finance Plan, which shall include, without limitation:

- (a) the terms of reference for the Finance Plan,
- (b) the work breakdown structure that will be used for allocation of costs in the Technical Studies,
- (c) a defined and detailed risk analysis process,
- (d) a defined set of engineering deliverables associated with the Class III Capital Cost Estimate,
- (e) the expected methodologies for establishing quantities for all components of a Class III Capital Cost Estimate including direct physical installed quantities and indirect quantities of support labour, material and equipment,
- (f) timeline constraints for the development of the Technical Studies, including the minimum lead time for establishing the Oil Pipeline’s scope of work, durations

and milestones required to complete the work, and the key review meetings for the Technical Studies,

- (g) a detailed description of the method of analysis for determining the level of contingency and how it applies to components of the work breakdown structure,
- (h) supporting documentation upon which the Class III Capital Cost Estimate will be based, including the project schedule and expected working hours and work week assumed, as applicable to the major trades and disciplines for the work,
- (i) a list of key defined meetings with Transporter's internal or third party engineers that Transporter anticipates during the process of preparing the Technical Studies; and
- (j) an estimate and description of the costs associated with the development and delivery of the Technical Studies;

"Prime Rate" means the rate of interest per annum publicly announced from time to time by the Royal Bank of Canada as its prime rate in effect at its principal office in Toronto; provided that each change in the prime rate will be effective from and including the date such change is publicly announced as being effective and compounded annually;

"Prudent Practices" means for the purpose of the Transporter, those practices, methods, techniques and standards that are commonly used under similar circumstances (recognizing, without limitation, the construction and operational challenges imposed by the mountainous terrain, aboriginal, marine and environmental issues), in light of the facts known or that reasonably should have been known, by the Transporter, in the

pipeline business in Canada or the United States to design, construct, operate and maintain equipment lawfully, reliably, efficiently, economically and safely with regard to equipment of a similar size, service and type used in the Oil Pipeline;

“**Purchasing FPs**” has the meaning given to it in Section 5.3;

“**Put Exercise Notice**” has the meaning given to it in Section 5.3;

“**Rated Debt**” means, with respect to a Person, such Person’s senior, unsecured long term debt obligations (not supported by third party credit enhancement);

“**Recipient**” has the meaning given to it in Section 14.1;

“**Receipt Point**” means the receipt flange of the Oil Pipeline to be located at or near the North East Quarter of Section 4, Township 56, Range 21, West of the 4th Meridian in the Province of Alberta where Transporter will accept Crude Oil;

“**Reimbursement Event**” has the meaning given to it in Section 3.3(b);

“**Risk Premium**” means the premium which Transporter, in its sole discretion, elects to apply to the Class III Capital Cost Estimate for the purposes of calculating the Estimated Costs (as such term is defined in the Transportation Services Agreement), which premium may be, but is not limited to, a combination of a fixed amount and formulas to adjust the Class III Capital Cost Estimate;

“**Rules**” means the rules and regulations governing the provision of Services for the Oil Pipeline as developed pursuant to the process set forth in Appendix “C” and as may be

amended from time to time by the Transporter, in consultation with the Term Shippers, in accordance with Prudent Practices and as subsequently filed with the NEB;

“**S&P**” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. and its successors and assigns;

“**Services**” means, subject to the terms of the Transportation Services Agreement, the operation and maintenance of the Oil Pipeline and marine navigational facilities, and, for the Monthly Committed Volume of Shipper, the provision of Crude Oil receipt terminalling at the Receipt Point, transportation, delivery terminalling and tankage at the Kitimat Terminal and delivery services from the Receipt Point to the Delivery Point on the Oil Pipeline on a Batch basis and Towing and Mooring Services and Emergency Response and the provision of Firm Service provided that the “Services” will not include receipt tankage, vessel piloting, demurrage or marine navigation;

“**Shipper**” has the meaning given to it in the recitals to this Precedent Agreement;

“**Shipper Condition**” and “**Shipper Conditions**” have the meanings given to it in Section 7.3;

“**Shipper Condition Period**” has the meaning given to it in Section 7.3;

“**Shipper Default**” has the meaning given to it in Section 15.2;

“**Simple Majority**” means the affirmative vote of Confirmed Funding Participants that represent at least 51% of the aggregate of FSA Volumes of all such Confirmed Funding Participants;

“**Standard Condition**” means a temperature of 15°C and a pressure of 1 atmosphere (101.325 kPa);

“**Support Date**” shall have the meaning ascribed to it in Section 4.1;

“**Supporting Term Shipper**” means a Term Shipper that has executed and delivered to Transporter a Letter of Support and has received written acceptance thereof by Transporter pursuant to Article 4;

“**Technical Studies**” means the CEMP, the Class III Capital Cost Estimate and the Class III Toll Estimate;

“**Technical Studies Oversight Committee**” shall have the meaning ascribed to it in Appendix “C”;

“**Technical Studies Coordination Group**” shall have the meaning ascribed to it in Appendix “C”;

“**Term Shipper**” means a Person who, as the context requires: (i) has executed a precedent agreement with Transporter and will, subject to the satisfaction of certain conditions precedent set forth in such respective precedent agreement, execute and deliver a TSA; or (ii) has executed and delivered a TSA to the Transporter, and “**Term Shippers**” means all such Persons, and, where the context requires, includes the Shipper;

“**Towing and Mooring Services**” means those services to assist in the docking, undocking, mooring, unmooring, towing and escorting of marine vessels accessing the Kitimat Terminal;

“Transportation Services Agreement” or **“TSA”** means, in respect of a Term Shipper, the agreement to be entered into between such Term Shipper and Transporter governing the provision of Services by Transporter to such Term Shipper, which agreement will be in a form substantially the same as the form of agreement attached hereto as Appendix “D”;

“Transporter” has the meaning given to it in the recitals to this Precedent Agreement;

“Transporter Approvals” means, collectively: (i) the certificate of public convenience and necessity issued pursuant to Section 52 of the *National Energy Board Act* (Canada) R.S. 1985 c.N-7, as amended, for the construction and operation of the Oil Pipeline; and (ii) the approval by the NEB pursuant to Part IV of the *National Energy Board Act* (Canada) of the Oil Pipeline Toll Principles;

“Transporter Approval Date” means the date upon which Transporter receives the last of the Transporter Approvals and all rights of appeal therefrom will have expired and any appeals therefrom will have been concluded, subject to Section 7.5;

“Transporter Condition” and **“Transporter Conditions”** have the meanings given to them in Section 7.1;

“Transporter Default” has the meaning given to it in Section 15.1;

“Uncommitted Volume” means: (i) a volume of Crude Oil expressed in Barrels scheduled for transportation on the Oil Pipeline (other than on Direct Ownership Capacity) for any shipper that is not a Term Shipper; and (ii) a volume of Crude Oil expressed in Barrels scheduled for transportation on the Oil Pipeline (other than on Direct

Ownership Capacity) for a Term Shipper (including Shipper) for a Month that is in excess of the product of such Term Shipper's Committed Volume and the number of days in the Month; and

“Unconditional Commercial Support” means:

- (a) if, either, the Funding Participant DO and Transporter have executed a Direct Ownership Agreement or the Direct Ownership Option has expired in accordance with the terms of the Funding Support Agreement, then receipt of executed: (i) Transportation Service Agreements from Term Shippers, representing firm shipping commitments of Committed Volumes; and, if applicable (ii) Direct Ownership Agreements from Direct Owners, which, in the aggregate and subsequent to the allocation procedures set forth in Article 9, account for the Estimated Firm Capacity on the Oil Pipeline;
- (b) if, either, the Direct Ownership Agreement has not been executed by the Funding Participant DO and Transporter and the Direct Ownership Option has not yet expired in accordance with the terms of the Funding Support Agreement, or the Direct Ownership Option has been exercised by the Funding Participant DO but a Direct Ownership Agreement has not yet been executed by the Funding Participant DO and Transporter, then receipt of executed Transportation Service Agreements from Term Shippers, representing firm shipping commitments of Committed Volumes which, in the aggregate and subsequent to the allocation procedures set forth in Article 9, account for the Allocable Capacity on the Oil Pipeline; or

- (c) such lesser volumes as would allow the Transporter to conclude, in its sole discretion, that the construction and operation of the Oil Pipeline is commercially viable.

1.2 **Interpretation.**

- (a) Unless otherwise expressly specified herein, (i) defined terms in the singular will also include the plural and vice versa, (ii) the words "hereof", "herein", "hereunder" and other similar words refer to this Precedent Agreement as a whole, (iii) Section and Appendix references in this Precedent Agreement are to Sections of or Appendices to this Precedent Agreement, and (iv) words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders.
- (b) The headings in this Precedent Agreement are for convenience only and will not in any way affect the meaning or construction of any provision of this Precedent Agreement.
- (c) Unless the context otherwise requires, "including" means "including without limitation".
- (d) The following Appendices are attached to and incorporated into this Precedent Agreement:

Appendix "A"	PA Volume
Appendix "B"	Form of Letter of Support
Appendix "C"	Management Plan

ARTICLE 2
PREPARATION PLAN PROCEDURE

- 2.1 Transporter shall prepare and present a draft Preparation Plan to the Term Shippers no later than thirty (30) days before the anticipated JRP Decision Date, using the best information then available to Transporter.
- 2.2 Transporter will meet with the Term Shippers, at all reasonable times as the Term Shippers may reasonably request prior to the JRP Decision Date, to discuss and attempt to resolve any concerns the Term Shippers may have regarding the draft Preparation Plan.
- 2.3 Transporter shall deliver the final Preparation Plan to the Term Shippers no later than thirty (30) days after the JRP Decision Date.
- 2.4 Subject to Article 5, within the later of: (a) thirty (30) days after delivery of the final Preparation Plan; or (b) thirty (30) days after the JRP Decision Date, the Confirmed Funding Participants shall vote on whether to approve the final Preparation Plan, which shall be approved upon Simple Majority.
- 2.5 If the final Preparation Plan is not approved pursuant to Section 2.4:
- (a) Transporter, in good faith consultation and negotiation with the Term Shippers, shall prepare and present a revised Preparation Plan to the Term Shippers within thirty (30) days of the most recent vote to be considered in good faith by the Term Shippers.

- (b) Within thirty (30) days of the date that Transporter has presented the revised Preparation Plan to the Term Shippers, the Confirmed Funding Participants shall vote on whether to approve the revised Preparation Plan, which shall be approved upon Simple Majority.

- (c) If the revised Preparation Plan is not approved pursuant to Section 2.5(b), Sections 2.5(a) and 2.5(b) shall continue to apply until the Preparation Plan is approved by Simple Majority, provided that if the Preparation Plan is not approved by Simple Majority following the fourth attempt in total to obtain approval of the Preparation Plan by the Transporter, then Transporter will have no further obligation pursuant to Sections 2.5(a) and 2.5(b) to prepare and present any further revised Preparation Plan to the Term Shippers and Transporter shall not be required to proceed to obtaining funding for or begin the preparation of the Technical Studies unless and until it obtains approval of a Preparation Plan by Simple Majority.

ARTICLE 3
FUNDING OF TECHNICAL STUDIES

3.1 Provided that:

- (a) a Preparation Plan has been approved in accordance with Article 2;
- (b) the condition precedent in Section 3.2 has been satisfied or waived; and
- (c) subject to Article 5, an Order-in-Council has been obtained,

then Transporter shall, in accordance with the Preparation Plan and with the supervision of the Technical Studies Oversight Committee pursuant to the Management Plan, commence the preparation of and thereafter deliver the Technical Studies, Finance Plan, and a *bona fide* estimate of the Commencement Date.

3.2 Transporter's obligation to prepare and deliver the Technical Studies, Finance Plan, and a *bona fide* estimate of the Commencement Date in accordance with Section 3.1 is subject to the condition precedent (which condition is for the sole benefit of Transporter) that Transporter receives and accepts, in accordance with the provisions of Article 4, executed Letters of Support from Term Shippers that in the aggregate are committing to reimburse Transporter, in accordance with Section 3.3(b), for the Maximum Aggregate PA Share of the costs associated with the preparation and delivery of the Technical Studies. For certainty, nothing herein shall be construed as obligating Transporter to fund a share of the costs associated with undertaking the Technical Studies greater than the difference between 100% and the Maximum Aggregate PA Share, unless the foregoing condition precedent is waived by Transporter.

3.3

(a) If the Transporter Conditions are satisfied or waived by Transporter within the time period stipulated for the satisfaction or waiver of the Transporter Conditions and the Oil Pipeline is subsequently brought into service, then all costs and expenses incurred by Transporter in the preparation of the Technical Studies and Finance Plan shall be added to the Rate Base (as defined in the Oil Pipeline Toll Principles); or

- (b) If a Transporter Condition has not been satisfied or waived by Transporter or the Oil Pipeline is not brought into service by January 1, 2022 (the occurrence of any of the foregoing is hereinafter referred to as a “**Reimbursement Event**”), then, subject to Section 3.4:
- (i) the Supporting Term Shippers shall be required to reimburse Transporter for their respective PA Share of all costs incurred by Transporter in the preparation and delivery of the Technical Studies plus interest at the Prime Rate calculated from the date such costs were incurred by Transporter until the date of reimbursement by such Supporting Term Shipper, which reimbursement shall be due and payable within thirty (30) days of receipt of a Notice from Transporter notifying the Supporting Term Shipper of the occurrence of the Reimbursement Event; and
 - (ii) subject to the satisfaction or waiver of the condition set forth in Section 3.2, Transporter shall fund the remaining costs of the Technical Studies that exceed the PA Shares of all Supporting Term Shippers, and 100% of the costs associated with the preparation of the Finance Plan.

If the Oil Pipeline is subsequently brought into service, Transporter shall, within thirty (30) days of the in-service date of the Oil Pipeline, refund each such Supporting Term Shipper who paid its PA Share for the amounts that were reimbursed to Transporter by such Supporting Term Shipper in accordance with Section 3.3(b)(i) plus interest on such reimbursed amount at the Prime Rate calculated from the date of such reimbursement.

- 3.4 Section 3.3 shall survive termination of this Precedent Agreement.
- 3.5 To the extent the actual costs of the development and delivery of the Technical Studies is expected to exceed the estimate set forth in the Preparation Plan, then Transporter shall not be obligated to continue expending any further funds in the development of the Technical Studies over and above the estimate and Transporter's obligation to deliver the Technical Studies pursuant to Section 3.1 shall be put into abeyance until such time as Transporter and one or more of the Supporting Term Shippers agree to ensure the future recovery of any further costs that are required to be incurred over and above the estimate in order to complete the Technical Studies. Unless otherwise agreed to by Transporter and all of the Supporting Term Shippers, there will be no impact on the allocation process pursuant to Article 9 as a result of any agreement between Transporter and one or more of the Supporting Term Shippers for the future recovery of any further costs incurred above the estimate.
- 3.6 No later than six (6) Months following the commencement of the Technical Studies, Transporter shall deliver to the Shipper the then current toll calculation model that is proposed to be used by Transporter to calculate the Class III Toll Estimate.
- 3.7 To the extent Transporter finalizes the form of Direct Ownership Agreement and/or any equity agreement governing a Funding Participant's subscription for equity in the Transporter during the Term hereof, Transporter shall deliver to Shipper, within ten (10) Business Days of their respective finalization, a copy of the executable forms of the Direct Ownership Agreement and/or any equity agreement governing a Funding Participant's subscription for equity in the Transporter.

ARTICLE 4
LETTER OF SUPPORT

- 4.1 If the Preparation Plan is approved pursuant to Article 2, Shipper may elect to fund a portion of the cost of the Technical Studies in accordance with the Preparation Plan by executing and delivering a Letter of Support to Transporter within sixty (60) days of such approval of the Preparation Plan (the “**Support Date**”).
- 4.2 If, as of the Support Date, Transporter has received executed Letters of Support from Confirmed Funding Participants that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share, then Transporter shall provide written acceptance of such Letters of Support from the Confirmed Funding Participants and return, unaccepted, any executed Letters of Support received by it from other Term Shippers.
- 4.3 If, as of the Support Date, Transporter has not received executed Letters of Support from Confirmed Funding Participants that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share, then Transporter shall provide written acceptance of those Letters of Support received from Confirmed Funding Participants, and:
- (a) firstly, within seven (7) days of the Support Date, offer the Confirmed Funding Participants that have executed and delivered a Letter of Support to Transporter the option to increase their Letter of Support Volume which each Confirmed Funding Participant may accept, subject to apportionment pursuant to Section 4.5, by executing and delivering to Transporter within thirty (30) days of such offer, a

revised Letter of Support indicating the Confirmed Funding Participant's revised Letter of Support Volume and PA Share;

- (b) secondly, if Transporter has not received executed Letters of Support that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share after the expiry of the thirty (30) day period in Section 4.3(a), accept, subject to apportionment pursuant to Section 4.5, the Letters of Support that have been executed and delivered to Transporter by Non-Confirmed Funding Participants with priority for acceptance by Transporter based on the date upon which the Transporter received each such Non-Confirmed Funding Participant's executed Letter of Support;
- (c) thirdly, if Transporter has not received executed Letters of Support that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share pursuant to Section 4.3(b), accept subject to apportionment pursuant to Section 4.5, the Letters of Support that have been executed and delivered to Transporter by Term Shippers who executed a precedent agreement on or before the Funding Participant PA Date (other than Confirmed Funding Participants) with priority for acceptance by Transporter based on the date upon which the Transporter received each such Term Shipper's executed Letter of Support;
- (d) fourthly, if Transporter has not received executed Letters of Support that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share pursuant to

Section 4.3(c), accept, subject to apportionment pursuant to Section 4.5, the Letters of Support that have been executed and delivered to Transporter by Term Shippers who executed a precedent agreement after the Funding Participant PA Date (other than Non-Confirmed Funding Participants) with priority for acceptance by Transporter based on the date upon which the Transporter received each such Term Shipper's executed Letter of Support;

- (e) fifthly, if Transporter has not received executed Letters of Support that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share after accepting Letters of Support pursuant to Section 4.3(d), offer third parties the opportunity to execute and deliver to Transporter precedent agreements and Letters of Support;

and, upon Transporter receiving sufficient executed Letters of Support that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share equal to the Maximum Aggregate PA Share in accordance with this Section 4.3, Transporter shall provide written acceptance thereof to each of the applicable Term Shippers, and return, unaccepted, any executed Letters of Support received by it from other Term Shippers or third parties whose Letters of Support have not been accepted.

- 4.4 In determining priority for the purpose of acceptance of Letters of Support within each level of priority pursuant to Sections 4.3(b) through (e), executed Letters of Support that are received by the Transporter prior to four (4) o'clock p.m. Calgary time on the same day will be deemed to have been received at the same time on that day. If such day is not a Business Day, such Letters of Support will be deemed to have been received on the

next following Business Day. Within each level of priority set forth in Section 4.3(a) through (e), Transporter will only accept Letters of Support from a Term Shipper up to the lesser of the PA Share actually requested by it or an aggregate PA Share equal to the Maximum Aggregate PA Share.

4.5 If Confirmed Funding Participants elect to execute Letters of Support that would, if they were to be accepted by Transporter pursuant to this Article 4, represent an aggregate PA Share in excess of the Maximum Aggregate PA Share pursuant to Section 4.3(a), the additional Letter of Support Volumes requested by the Confirmed Funding Participants pursuant to Section 4.3(a) shall be apportioned on a *pro rata* basis based on the ratio of such Confirmed Funding Participant's requested additional Letter of Support Volume to the aggregate of all additional Letter of Support Volumes requested by Confirmed Funding Participants. If, within each level of priority set forth in Sections 4.3(b) through (e), Transporter receives one or more executed Letters of Support from one or more Term Shippers within a level of priority on the same day which when aggregated with all other Letters of Support already accepted by Transporter represent an aggregate PA Share in excess of the Maximum Aggregate PA Share, the Letter of Support Volumes requested by such Term Shipper(s) shall be apportioned to the extent necessary to ensure an aggregate PA Share equal to the Maximum Aggregate PA Share, which apportionment shall be on a *pro rata* basis based on the ratio of such Term Shipper's requested Letter of Support Volume to the aggregate of all Letter of Support Volumes requested by Term Shippers within each such level of priority by way of Letters of Support and received on the same day. In the case of apportionment pursuant to this Section 4.5, the Letter of

Support Volumes and associated PA Share set forth in their respective Letter of Support shall be amended accordingly.

- 4.6 If, on the date that Shipper executes and delivers a Letter of Support to Transporter, Shipper does not have an Investment Grade Credit Rating, or upon the occurrence of a Material Change, Shipper will within ten (10) days following receipt of Notice from Transporter requiring same, provide Acceptable Credit Support to Transporter as security for any default in the Shipper's obligation to reimburse Transporter in accordance with Section 3.3(b)(i).
- 4.7 If Shipper has provided Acceptable Credit Support to Transporter pursuant to Section 4.6, and Shipper can subsequently demonstrate to the Transporter by Notice, to the satisfaction of the Transporter, that Shipper's Rated Debt has been assigned an Investment Grade Credit Rating, then Transporter will, within ten (10) days after receipt of Notice from Shipper, return the Acceptable Credit Support to Shipper. The return by Transporter of an Acceptable Credit Support to Shipper in accordance with this Section 4.7 will not constitute a waiver of or in any way impair the rights of Transporter under this Precedent Agreement to require Shipper to provide an Acceptable Credit Support in the event of a subsequent Material Change.
- 4.8 Maintaining an Acceptable Credit Support will include the provision of a replacement Acceptable Credit Support at least thirty (30) days prior to the day upon which the term of an Acceptable Credit Support expires. Notwithstanding the foregoing, in the case of an issuer of an Acceptable Credit Support disclaiming, repudiating, or rejecting the Acceptable Credit Support, or challenging the validity or enforceability thereof, the

Shipper will provide to Transporter a replacement Acceptable Credit Support within ten (10) days of such issuer disclaiming, repudiating or rejecting the Acceptable Credit Support, or challenging the validity or enforceability thereof.

- 4.9 Where Shipper assigns all or a portion of its interest in this Precedent Agreement in accordance with the provisions of this Precedent Agreement, the Parties will, within a reasonable period of time following the assignment, take all steps necessary, including without limitation the issuance of new Acceptable Credit Support and the return or surrender of the old Acceptable Credit Support, as necessary. Transporter will not be required to release or surrender any security that it holds from Shipper until all obligations of Shipper relating to the assigned interest are assumed by the assignee in form and substance acceptable to Transporter, acting reasonably.

ARTICLE 5

ACCELERATION OF PREPARATION PLAN AND TECHNICAL STUDIES

- 5.1 A Confirmed Funding Participant can make a written request to the Transporter to seek FP Consent in order to accelerate the commencement of the Technical Studies and the Finance Plan in accordance with Section 5.5. Upon receipt of such written request, Transporter may, in Transporter's sole discretion, within five (5) Business Days thereof, provide a Notice to all Term Shippers that it will be seeking FP Consent (the "**FP Consent Notice**").
- 5.2 Upon receipt of the FP Consent Notice, each Confirmed Funding Participant will have a maximum of sixty (60) days to advise Transporter by Notice in writing to elect, either:
- (a) to consent to the acceleration of the matters set forth in Section 5.5; or

- (b) not to consent to the acceleration of the matters set forth in Section 5.5, and, in such case, each such Confirmed Funding Participant shall also advise in such Notice to Transporter, either:
 - (i) that it exercises its Conditional Put Option; or
 - (ii) that it does not exercise its Conditional Put Option.

If a Confirmed Funding Participant fails to provide Notice to Transporter of its election above within sixty (60) days of receipt of the FP Consent Notice, then such Confirmed Funding Participant shall be deemed to have elected: (i) not to consent to the acceleration of the matters set forth in Section 5.5; and (ii) not to exercise its Conditional Put Option. The Conditional Put Option shall only vest to the Non-Consenting FPs to the extent Transporter obtains FP Consent and shall be subject to the approval of the Consenting FPs pursuant to Section 5.3.

- 5.3 Provided that Transporter has obtained FP Consent, if one or more Non-Consenting FPs have elected to exercise their respective Conditional Put Option in accordance with Section 5.2, then Transporter shall provide prompt Notice to the Consenting FPs of such exercise (the “**Put Exercise Notice**”). Upon receipt of such Put Exercise Notice, the Consenting FPs shall meet in good faith to determine whether to accept the exercise of the Conditional Put Options, and if so, to determine which Consenting FPs, if any, are willing to complete the matters set forth in Section 5.4 below and in what proportions. The Consenting FPs shall, not later than thirty (30) days after receipt of the Put Exercise Notice, confirm jointly by a single Notice to Transporter (“**Joint FP Notice**”) whether to accept the exercise of all, but not less than all, of the Conditional Put Options and, if so,

confirm which of the Consenting FPs (the “**Purchasing FPs**”) have agreed to complete the matters set forth in Section 5.4 below which completion shall be on a *pro rata* basis based on the Purchasing FPs respective Funding Support Shares, unless the Purchasing FPs agree to another basis for allocation. If: (a) the Consenting FPs fail to provide the Joint FP Notice within thirty (30) days of receipt of the Put Exercise Notice; or (b) the Joint FP Notice indicates that the Consenting FPs will not accept the exercise of the Conditional Put Options, then the exercise by any Non-Consenting FPs of its Conditional Put Option shall be of no force and effect and Transporter shall not be entitled to accelerate the activities contemplated in this Article 5, and the time periods set forth in this Precedent Agreement for the commencement and execution of such activities shall continue unchanged.

5.4 If a Non-Consenting FP exercises its Conditional Put Option which exercise has been accepted by the Consenting FPs pursuant to Section 5.3, then:

- (a) the Purchasing FPs will pay to such Non-Consenting FP an amount equal to all funds that were paid to Transporter by such Non-Consenting FP pursuant to its Funding Support Agreement, which payment will be made by the Purchasing FPs on the proportionate basis set forth in the Joint FP Notice;
- (b) the payment by each Purchasing FP pursuant to Section 5.4(a) will be deemed to be part of the initial Funding Support Share commitment that such Purchasing FP made in accordance with its Funding Support Agreement, and Transporter and each of the Purchasing FPs will amend their respective Funding Support Agreements to account for such payment and all rights and obligations associated

therewith including increasing the FSA Volumes of each such Purchasing FP proportionate to such payment; and

- (c) upon receipt by the Non-Consenting FP of all the payments from the Purchasing FPs, Transporter and the Non-Consenting FP shall terminate its Funding Support Agreement and enter into a mutual release (in form acceptable to both parties to such agreement) with respect to the Funding Support Agreement;

The Non-Consenting FP, the Purchasing FPs and Transporter shall complete the matters described in this Section 5.4 within 10 Business Days of receipt by Transporter of the Joint FP Notice.

5.5 If Transporter obtains FP Consent then, upon either: (i) the expiry of the sixty (60) day period set forth in subsection 5.2, to the extent no Non-Consenting FPs exercise their respective Conditional Put Options; or (ii) confirmation of the satisfaction of the covenants set forth in Section 5.4, to the extent one or more Non-Consenting FPs exercise their respective Conditional Put Options which have been accepted by the Consenting FPs pursuant to Section 5.3:

- (a) Transporter shall be entitled to present and request approval from the Purchasing FPs of the Preparation Plan in accordance with Article 2, irrespective of the JRP Decision Date; and
- (b) upon receipt of approval of the Preparation Plan in accordance with Article 2, Transporter may, subject to receipt of sufficient Letters of Support in accordance with Article 4 (or waiver by Transporter of such condition precedent pursuant to

Section 3.2) commence the Technical Studies and the Finance Plan, irrespective of whether an Order-in-Council has yet been obtained,

and Shipper hereby acknowledges and consents to the acceleration of such matters, including the bringing forward of any time periods in Articles 3 or 4 affected thereby.

- 5.6 If Transporter does not obtain FP Consent, then Transporter shall not be entitled to accelerate the activities contemplated in this Article 5, and the time periods set forth in this Precedent Agreement for the commencement and execution of such activities shall continue unchanged.
- 5.7 If Shipper is a Purchasing FP, then Shipper hereby acknowledges and agrees to comply with its obligations arising pursuant to Section 5.4 hereto, including the obligation to pay its share (as set forth in the Joint FP Notice) of the Non-Consenting FP's Funding Support Share (plus accumulated Interest (as such term is defined in the relevant Funding Support Agreement)).
- 5.8 Notwithstanding that a Non-Consenting FP who exercised a Conditional Put Option terminated its Funding Support Agreement pursuant to Section 5.4(c), such Non-Consenting FP's precedent agreement will continue in full force and effect, provided that such Non-Consenting FP shall only be considered a Term Shipper (without the corresponding rights conferred to a Confirmed Funding Participant or Funding Participant).

ARTICLE 6
APPROVAL OF COST RISK SHARING METHODOLOGY

- 6.1 Within thirty (30) days of the approval by the Technical Studies Oversight Committee of the capital cost determination for the Class III Capital Cost Estimate in accordance with Appendix “C” attached hereto, Transporter shall notify the Supporting Term Shippers of the Risk Premium.
- 6.2 Within sixty (60) days from receipt of the Notice pursuant to Section 6.1, the Supporting Term Shippers will have a vote, which vote will be determined by a majority of the Supporting Term Shippers that represent not less than 51% of the aggregate of all Letter of Support Volumes accepted by Transporter pursuant to Article 4, on whether to either: (a) accept the cost risk sharing methodology set forth in Section 4 to the Oil Pipeline Toll Principles (as is appended to the Transportation Services Agreement and approved by the NEB pursuant to Part IV of the *National Energy Board Act* (Canada)); or (b) amend the Oil Pipeline Toll Principles as set forth in Section 6.4 below. To the extent a Supporting Term Shipper does not submit its vote, then such Supporting Term Shipper shall be deemed to have voted for subsection (a) above, to accept the cost risk sharing methodology set forth in Section 4 to the Oil Pipeline Toll Principles. Transporter shall promptly, following confirmation of the result of the vote of the Supporting Term Shippers pursuant to this Section 6.2, deliver a Notice of the voting result to each Term Shipper.
- 6.3 If the Supporting Term Shippers vote to accept the cost risk sharing methodology set forth in Section 4 of the Oil Pipeline Toll Principles, the form of Oil Pipeline Toll

Principles shall remain unamended in the form as was approved by the NEB pursuant to Part IV of the *National Energy Board Act* (Canada).

6.4 If the Supporting Term Shippers vote not to accept the cost risk sharing methodology set forth in Section 4 of the Oil Pipeline Toll Principles, the form of Oil Pipeline Toll Principles will be amended as follows:

- (a) the text of Section 4 of the Oil Pipeline Toll Principles will be deleted in its entirety and replaced with the words “*Intentionally Left Blank*”;
- (b) in the definition of “**ROE**” set forth in Section 5(a) to the Oil Pipeline Toll Principles, the return on equity percentage will be changed from 12% to 11%, and the formula ROE_i set forth in Attachment “A” of the Oil Pipeline Toll Principles shall be amended to reflect such change;
- (c) the text of Section 16 of the Oil Pipeline Toll Principles will be deleted in its entirety and replaced with the words “*Intentionally Left Blank*”;
- (d) the formulas for: (i) Rate Base Adjustment (RBA_i); (ii) Rate Base Adjustment Post-Expansion ($RBA_{expansion}$); and (iii) $ECAPEX_i$ will be deleted in their entirety and all formulas set forth in Attachment “A” of the Oil Pipeline Toll Principles relating to or applying RBA_i , $RBA_{expansion}$, or $ECAPEX_i$ shall be amended to reflect such deletion,

and the Transporter shall file an amended set of Oil Pipeline Toll Principles with the NEB reflecting the amendments set forth in this Section 6.4 and circulate such filed and amended Oil Pipeline Toll Principles to Shipper.

6.5 Shipper hereby acknowledges and agrees that the result of the vote of the Supporting Term Shippers as set forth in Section 6.2 will be binding on it, and Shipper agrees that, to the extent it executes and returns the TSA to Transporter in accordance with Article 8, it shall return and execute a TSA which appends the Oil Pipeline Toll Principles which reflect the results of such vote.

ARTICLE 7
CONDITIONS PRECEDENT

Transporter's Conditions:

7.1 The following conditions precedent to the obligation of the Transporter to execute and deliver the TSA in accordance with Section 8.4 (each a "**Transporter Condition**", and collectively, the "**Transporter Conditions**") are for the sole benefit of Transporter and Transporter may waive, by Notice to the Shipper, any of them (except for the condition in Section 7.1(a) which cannot be waived), in whole or in part, without prejudice to the rights of Transporter to rely upon any of the other conditions precedent included herein for its sole benefit:

- (a) Transporter will have received the Transporter Approvals, in each case having terms and conditions which are: (i) consistent with this Precedent Agreement, the TSA and the Funding Support Agreements; and (ii) to the extent not contemplated by this Precedent Agreement, the TSA and the Funding Support Agreements, not materially onerous on Transporter, as determined by Transporter, acting reasonably.
- (b) Transporter will have obtained Unconditional Commercial Support no later than three-hundred (300) days after the later to occur of: (i) the Transporter Approval

Date; or (ii) the delivery to the Term Shippers of the following: the Technical Studies, the Finance Plan, the Rules, a *bona fide* estimate of the Commencement Date and, if applicable, the amended Oil Pipeline Toll Principles, to the extent required pursuant to Article 6.

7.2 Transporter will notify Shipper of the satisfaction, waiver (if applicable), or failure of each of the Transporter Conditions within the time period stipulated for the satisfaction or waiver (if applicable) of each such Transporter Condition.

Shipper's Conditions:

7.3 Nothing in this Precedent Agreement shall oblige the Shipper to execute and deliver the TSA unless Shipper has received, at Shipper's sole discretion: (i) the necessary internal approval of its senior management or board of directors, as the case may be, which approval shall be subject to Shipper's sole discretion; and (ii) government approval, if necessary, (each a "**Shipper Condition**" and collectively, the "**Shipper Conditions**") within one-hundred and fifty (150) days after the later of the dates listed in Paragraphs (a) through (d) (the "**Shipper Condition Period**");

- (a) the Transporter Approval Date;
- (b) the date that Shipper has received the Finance Plan from Transporter;
- (c) the date that Shipper has received a final version of the Rules from Transporter;
and
- (d) the date the Shipper has received the Technical Studies and a *bona fide* estimate of the Commencement Date;

The Shipper Conditions are for the sole benefit of Shipper and Shipper may waive either or both Shipper Conditions, by Notice to Transporter, without prejudice to the rights of Shipper to rely upon any other condition precedent included herein for its benefit.

7.4 Shipper will notify Transporter of the satisfaction, waiver or failure of the Shipper Condition within the time period stipulated for the satisfaction or waiver of the Shipper Condition.

7.5 To the extent that all of the dates set forth in Section 7.3(b) through (d) have occurred and the last of the Transporter Approvals has been received by Transporter, such that the only outstanding matter necessary for achieving the Transporter Approval Date and commencing the Shipper Condition Period is the conclusion of one or more appeals in respect of the Transporter Approvals, then Transporter may, in its sole discretion, send a Notice to all Term Shippers requesting an acknowledgment from the Supporting Term Shippers (an “**Acknowledgment Request**”) that, notwithstanding the outstanding appeal(s) in respect of the Transporter Approvals, the Transporter Approval Date has been deemed to have occurred and that there should be a commencement of the Shipper Condition Period. Upon receipt of the Acknowledgement Request, each Supporting Term Shipper will have sixty (60) days to notify Transporter of whether it will make such acknowledgement that the Transporter Approval Date has been deemed to have occurred. If Transporter receives, within such sixty (60) day period, acknowledgments from Supporting Term Shippers representing at least sixty-seven (67%) percent of all Letter of Support Volumes that the Transporter Approval Date has been deemed to have occurred, then all Term Shippers (including Shipper) will be deemed to have made such

acknowledgment and consented to a commencement of the Shipper Condition Period, and Transporter shall notify all Term Shippers thereof and the Shipper Condition Period will be deemed to have commenced on the date that the Term Shippers receive such Notice.

Failure of Conditions

7.6 The failure by either Party to notify the other Party with respect to the satisfaction or waiver of a Transporter Condition or Shipper Condition, as the case may be, within the time period stipulated in Sections 7.2 and 7.4, as the case may be, will result in such condition being deemed to not have been satisfied or waived.

ARTICLE 8
EXECUTION OF TSA

8.1 If the Shipper Condition has been waived or satisfied by Shipper, then Shipper will, not later than thirty (30) days following satisfaction or waiver by Shipper of the Shipper Condition, complete Schedule "A" to its TSA and execute and return the TSA to Transporter, provided that Schedule "A" to the TSA may nonetheless be amended as a result of the allocation procedures set forth in Article 9. Execution and delivery of the TSA by Shipper to Transporter shall be irrevocable by Shipper other than as expressly set forth elsewhere in this Precedent Agreement.

8.2 If Shipper has executed and returned the TSA to Transporter pursuant to Section 8.1, then Shipper will, if required pursuant to Section 18.1 of the TSA, provide a credit assurance to Transporter in accordance with Section 18.1 of the TSA, which credit assurance will be provided not later than ten (10) days following receipt of Notice from Transporter requiring same. The Class III Toll Estimate will be used for the purpose of determining

the amount or value of any credit assurance to be provided by Shipper pursuant to this Section 8.2. If Shipper is allocated capacity on the Oil Pipeline pursuant to Article 9 that is less than the amount identified in its executed TSA (and Shipper has accepted such lesser allocation of capacity), then the amount or value of any credit assurance shall be reduced accordingly.

8.3 If:

- (a) Shipper has executed and delivered its TSA to Transporter in accordance with Section 8.1; and
- (b) Transporter is seeking the necessary approvals from the NEB and commercial support to construct and operate a pipeline and associated facilities to transport condensate from an interconnection near the Delivery Point to an interconnection near the Receipt Point (the “**Condensate Pipeline**”), which process is being conducted in parallel to the process described herein for the Oil Pipeline, and Transporter determines that it has insufficient commercial support for the Condensate Pipeline,

then Transporter shall promptly, upon making the determination that it has insufficient commercial support of the Condensate Pipeline, provide Notice to Shipper of such determination and Shipper shall have ten (10) Business Days from receipt thereof to notify Transporter that it requests a return, unexecuted by Transporter, of the TSA executed by Shipper and any credit assurance that it was required to provide to Transporter pursuant to the TSA.

8.4 If:

- (a) Transporter has satisfied or waived all of the Transporter Conditions,
- (b) Shipper has executed and delivered the TSA to Transporter within the time period set forth in Section 8.1 and has not requested a return of its executed TSA pursuant to Section 8.3, and
- (c) Shipper has been allocated a portion of the Allocable Capacity on the Oil Pipeline pursuant to Article 9 and, if the provisions of Section 9.6 are applicable, Shipper has accepted Transporter's allocation of capacity,

then Transporter will, not later than thirty (30) days following the occurrence of the last to occur of Paragraphs (a), (b) or (c) of this Section 8.4, execute the TSA and provide a fully executed copy of the TSA to Shipper.

8.5 Nothing in this Precedent Agreement obliges the Shipper to reimburse Transporter for any costs incurred by Transporter in connection with its obligations hereunder except as set forth in a Letter of Support that has been executed and delivered by Shipper and accepted by Transporter or a TSA that has been executed and delivered by the Parties, and nothing in this Precedent Agreement, other than as set forth in Section 9.10, will detract from the rights and obligations of a Term Shipper that is a Funding Participant pursuant to its Funding Support Agreement, including but not limited to any Direct Ownership Option, if applicable.

ARTICLE 9
ALLOCATION OF PIPELINE CAPACITY

- 9.1 Only those Term Shippers that have executed and delivered a TSA to Transporter in accordance with and within the time period set forth in Section 8.1 will have the right to be allocated a portion of the Allocable Capacity on the Oil Pipeline in accordance with the allocation procedures set forth in this Article 9.
- 9.2 Allocation of the Allocable Capacity will commence upon, the earlier of:
- (a) confirmation from each Term Shipper that has not executed and delivered a TSA to Transporter that such Term Shipper does not intend to execute and deliver a TSA; or
 - (b) the expiry of the last outstanding time period for the execution and delivery of a TSA by any Term Shipper as set forth in such Term Shipper's precedent agreement.
- 9.3 The Allocable Capacity shall be allocated to Term Shippers up to the amount identified in Schedule "A" to each Term Shippers' respective TSA subject to the following allocation process:
- (a) First:
 - (i) to Supporting Term Shippers (other than the Funding Participant DO), as follows: (A) if such Supporting Term Shipper requests a volume in Schedule "A" to its TSA that is equal to or greater than its Letter of Support Volume, then it shall be allocated its Letter of Support Volume

pursuant to this Section 9.3(a); or (B) if such Supporting Term Shipper requests a volume in Schedule "A" to its TSA that is less than its Letter of Support Volume, then it shall be allocated the volume requested in Schedule "A" to its TSA; and

(ii) to the Funding Participant DO:

(A) if it has not entered into a Direct Ownership Agreement, as follows: (1) if such Funding Participant DO requests a volume in Schedule "A" to its TSA that is equal to or greater than the sum of its Letter of Support Volume and its Maximum Direct Ownership Carve-Out Volume, then it will be allocated its Letter of Support Volume and its Maximum Direct Ownership Carve-Out Volume pursuant to this Section 9.3(a); or (2) if such Funding Participant DO requests a volume in Schedule "A" to its TSA that is less than the sum of its Letter of Support Volume and its Maximum Direct Ownership Carve-Out Volume, then it shall be allocated the volume requested in Schedule "A" to its TSA; or

(B) if it has entered into a Direct Ownership Agreement, as follows: (1) if such Funding Participant DO requests a volume in Schedule "A" to its TSA that is equal to or greater than its Letter of Support Volume plus its Maximum Direct Ownership Carve-Out Volume less the product of its Direct Ownership Share and the Estimated Firm Capacity, then it will be allocated its Letter of Support

Volume plus its Maximum Direct Ownership Carve-Out Volume less the product of its Direct Ownership Share and the Estimated Firm Capacity pursuant to Section 9.3(a); or (2) if such Funding Participant DO requests a volume in Schedule "A" to its TSA that is less than the Letter of Support Volume plus the Maximum Direct Ownership Carve-Out Volume less the product of its Direct Ownership Share and the Estimated Firm Capacity, then it shall be allocated the volume requested in Schedule "A" to its TSA.

- (b) Second, up to their FP Option Volume,
 - (i) to the extent such FP Option Volumes were not already allocated pursuant to Section 9.3(a), to each of those Confirmed Funding Participants that are Supporting Term Shippers; and
 - (ii) to each of those Confirmed Funding Participants that did not execute and deliver to Transporter a Letter of Support,

with capacity being allocated up to the remaining Allocable Capacity on a *pro rata* basis, based on the ratio of such Confirmed Funding Participant's unallocated FP Option Volumes to the aggregate of unallocated FP Option Volumes of all Confirmed Funding Participants that executed a TSA.
- (c) Third, up to their FP Option Volume, to each of those Non-Confirmed Funding Participants who are not Supporting Term Shippers, with capacity being allocated up to the remaining Allocable Capacity on a *pro rata* basis, based on the ratio of

each such Non-Confirmed Funding Participant's FP Option Volume to the aggregate of FP Option Volumes of all such Non-Confirmed Funding Participants that executed a TSA.

- (d) Fourth, for any volumes set forth in Schedule "A" to each Term Shipper's TSA that have not yet been allocated pursuant to Section 9.3(a), (b) or (c), to any Term Shipper that executed and delivered to Transporter a precedent agreement with priority determined in accordance with Section 9.4.

9.4 For the purposes of allocating capacity pursuant to Section 9.3(d), priority will be based on the date upon which the Transporter received each Term Shipper's executed TSA with capacity being allocated in the order in which each TSA was received. Executed TSAs that are received by the Transporter prior to four (4) o'clock p.m. Calgary time on the same day will be deemed to have been received at the same time on that day for the purposes of determining allocations. If such day is not a Business Day, such TSA will be deemed to have been received on the next following Business Day, and each relevant Term Shipper will be allocated the lesser of its unallocated Committed Volume or such Term Shipper's *pro rata* share of the Allocable Capacity then remaining, in the percentage that such Term Shipper's unallocated Committed Volume bears to the aggregate of the unallocated Committed Volumes of those Term Shippers.

9.5 Shipper will not be allocated a portion of the Allocable Capacity if Shipper is in material default under the terms of this Precedent Agreement or is subject to an Insolvency Event (as such term is defined in the TSA) at the time the allocation procedures set forth in this

Article 9 are being undertaken, notwithstanding that the TSA has not yet been executed and delivered by Transporter.

- 9.6 In the event the allocation procedure set forth in Sections 9.3 and 9.4 results in a Term Shipper being allocated capacity less than the amount identified in Schedule "A" attached to their respective TSA, Transporter will provide Notice to such Term Shipper, return such Term Shipper's TSA together with any credit assurance provided pursuant to Section 8.2 and such Term Shipper shall have fifteen (15) days from receipt of Notice to amend Schedule "A" of its TSA to the allocated volume, execute and return to Transporter such TSA and revised Schedule "A" and provide Transporter with a new credit assurance reflecting the allocated volume. If the Term Shipper does not return such TSA with a revised Schedule "A" and a revised credit assurance, then such Term Shipper will be deemed to have rejected such allocation shall terminate in accordance with Section 12.2(e). Transporter shall then reallocate such Term Shipper's allocated volume in accordance with Sections 9.3(b) to 9.3(d), as applicable.
- 9.7 If, after conducting the allocation procedures set forth in Sections 9.3 and 9.4 there is remaining Allocable Capacity, then Transporter will conduct an open season inviting potential shippers (including those Term Shippers who have already executed TSAs) to execute and deliver TSAs for all or any portion of such remaining Allocable Capacity.
- 9.8 Transporter will give Notice to the Shipper of Shipper's allocation of the Allocable Capacity, if any, resulting from the procedures set forth in this Article 9, not later than thirty (30) days following such determination by Transporter.

- 9.9 If, on the date that Transporter is required to allocate the Allocable Capacity pursuant to this Article 9, a Funding Participant DO has executed a Direct Ownership Agreement, then the Allocable Capacity will be reduced by an amount equal to the product of: (a) the Direct Ownership Share (as set forth in such Direct Ownership Agreement); and (b) the Estimated Firm Capacity.
- 9.10 If, upon the expiry of the period set forth in Section 8.1, the Funding Participant DO: (a) has not executed a Direct Ownership Agreement with Transporter; and (b) has not executed and returned a TSA to Transporter for a Committed Volume equal to or greater than its Maximum Direct Ownership Carve-Out Volume, then the percentage interest that the Funding Participant DO may elect as its Direct Ownership Share pursuant to its Funding Support Agreement shall be equal to its Committed Volume, if any, divided by the Estimated Firm Capacity multiplied by 100% (which Direct Ownership Share may be subject to further adjustment for equity interest provided to Eligible Aboriginal Investors (as such term is defined in the Funding Participant DO's Funding Support Agreement)), and if Shipper is that Funding Participant DO, Shipper hereby acknowledges such adjustment to the Direct Ownership Share that it may elect pursuant to its Funding Support Agreement. Notwithstanding the foregoing, there shall be no adjustment to the Funding Participant DO's Direct Ownership Share where the Funding Participant DO has executed a Direct Ownership Agreement prior to the expiry of the period set forth in Section 8.1.
- 9.11 If the Funding Participant DO has not, prior to the date upon which the Transporter is to allocate the Allocable Capacity pursuant to Article 9, executed a precedent agreement for

the Oil Pipeline, then the Allocable Capacity shall be an amount equal to the Estimated Firm Capacity less the Maximum Direct Ownership Carve-Out Volumes, and Section 9.10 shall be of no force or effect.

ARTICLE 10
SERVICES

- 10.1 The terms and conditions upon which the Services will be provided by Transporter to Shipper and the obligations of Shipper and Transporter in respect of such Services will in all respects be governed by the TSA and not by any provision of this Precedent Agreement.
- 10.2 Schedule "C" (*Oil Pipeline Diagrams and Description*) of the Transportation Services Agreement may be revised by Transporter upon the completion by Transporter of the Technical Studies to reflect the results of the Technical Studies.

ARTICLE 11
TERM

- 11.1 This Precedent Agreement is effective as of the date first written above and will remain in effect until the earlier of:
- (a) the execution of a TSA by the Transporter in accordance with Section 8.4; or
 - (b) any termination of this Precedent Agreement pursuant to Article 12, Section 15.4 or Section 17.3.

ARTICLE 12
TERMINATION

- 12.1 If Transporter:

- (a) notifies Shipper that a Transporter Condition has not been satisfied and which Transporter will not waive; or
- (b) does not notify Shipper of the satisfaction or waiver of a Transporter Condition within the time period stipulated in respect of such Transporter Condition,

then this Precedent Agreement will terminate effective on the date stipulated for the satisfaction of the Transporter Conditions.

12.2 If:

- (a) Shipper notifies Transporter that the Shipper Condition has not been satisfied and which Shipper will not waive;
- (b) Shipper does not notify Transporter of the satisfaction or waiver of the Shipper Condition within the time period stipulated in respect of such Shipper Condition;
- (c) Shipper fails to deliver the executed TSA by the date on which it is required to do so pursuant to Section 8.1;
- (d) Shipper requests return of its TSA pursuant to Section 8.3;
- (e) Shipper elects not to reduce its Committed Volume pursuant to Section 9.6; or
- (f) Transporter satisfies the Transporter Condition set forth in Section 7.1(b) and Shipper is not allocated any portion of the Allocable Capacity following completion by Transporter of the allocations pursuant to Article 9,

then this Precedent Agreement will terminate effective: (i) in the case of Paragraph (a) or (b), on the date stipulated for the satisfaction of the Shipper Condition; (ii) in the case of Paragraph (c), on the date that Transporter was to have received the executed TSA from Shipper; (iii) in the case of Paragraph (d), on the date that Shipper notifies Transporter of its election to have its TSA returned unexecuted pursuant to Section 8.3; (iv) in the case of Paragraph (e), on the date that Shipper notifies Transporter of its election not to reduce its Committed Volume pursuant to Section 9.6; and (v) in the case of Paragraph (f), on the date that Transporter satisfies the Transporter Condition set forth in Section 7.1(b).

12.3 If Transporter has not, on or before the date that is eighteen (18) Months following the JRP Decision Date, received and accepted, in accordance with Article 4, Letters of Support from Term Shippers representing an aggregate PA Share equal to the Maximum Aggregate PA Share and Transporter, in its sole discretion, has not agreed to waive the condition precedent set forth in Section 3.2, then this Precedent Agreement will terminate immediately thereafter.

12.4 To the extent not otherwise terminated in accordance with the provisions set forth herein, this Precedent Agreement may be terminated by Transporter, in its sole discretion, by Notice to Shipper at any time following December 31, 2020, which date, notwithstanding Section 17.2, shall not be extended due to an event of Force Majeure.

12.5 Notwithstanding Article 15 and Section 16.1, and subject to Section 12.7, any termination of this Precedent Agreement will be without liability, damages, costs or expenses of either Party to the other Party or to any of its shareholders, directors, officers, employees, agents, consultants or representatives, and the Parties will thereafter have no further

rights or obligations whatsoever under this Precedent Agreement; provided however that any termination of this Precedent Agreement shall not impact in any way a Funding Participant's rights under any Funding Support Agreement to become a Founding Shipper (as such term is defined pursuant to its Funding Support Agreement) to the extent that Allocable Capacity remains available following the allocation procedures set forth in Article 9.

- 12.6 If, at the time of termination of this Precedent Agreement pursuant to this Article 12, Shipper has executed and returned the TSA to Transporter pursuant to Section 8.1, Transporter will promptly return, unexecuted by Transporter, the TSA executed by Shipper and any credit assurance that it was required to provide to Transporter pursuant to Section 8.2.
- 12.7 To the extent Shipper has executed and delivered a Letter of Support that has been accepted by Transporter in accordance with Article 4, then nothing in this Article 12 shall affect any rights or obligations of the Parties arising pursuant to such Letter of Support or any rights and obligations arising pursuant to Section 3.3 or Section 4.6 hereof, and the rights and obligations therein shall expressly survive any termination of this Precedent Agreement.

ARTICLE 13
ASSIGNMENT

- 13.1 Subject to obtaining the prior written consent of the Transporter, such consent not to be unreasonably withheld, Shipper may assign its rights and obligations under this Precedent Agreement to an Assignee in whole or in part, and Shipper may assign its rights and

obligations under this Precedent Agreement to an Affiliate without the prior consent of Transporter.

- 13.2 If Shipper is a Funding Participant and it assigns all or a portion of its Oil Pipeline Founder Option (as such term is defined in its Funding Support Agreement) and the associated rights to reserve capacity on the Oil Pipeline as a result of the exercise of such Oil Pipeline Founder Option in accordance with its Funding Support Agreement, then Shipper shall be deemed to have assigned a corresponding portion of its rights as a Funding Participant and, if applicable, as a Confirmed Funding Participant under this Precedent Agreement to the Assignee.
- 13.3 Transporter will not be required to release Shipper from any of its obligations under this Precedent Agreement or, if applicable, a Letter of Support in connection with any assignment under Sections 13.1 or 13.2 unless: (a) such obligations have been unconditionally assumed by the Assignee in forms reasonably satisfactory to the Transporter; and (b) the Assignee demonstrates to the satisfaction of the Transporter, acting reasonably, that the Assignee is capable of performing the obligations of Shipper under this Precedent Agreement or, if applicable, the Letter of Support including, if required, Acceptable Credit Support. Where the provisions of Paragraphs (a) and (b) of this Section 13.3 have been satisfied, Transporter will return to Shipper, within ten (10) days, any Acceptable Credit Support provided by Shipper pursuant to Section 4.6 as well as any credit support that has been provided pursuant to Section 8.2, provided that to the extent the assignment by Shipper is only a partial assignment, then Shipper shall, concurrently with the return of any Acceptable Credit Support or any credit support

provided pursuant to Section 8.2, provide Transporter with replacement credit assurances reflecting such partial assignment.

13.4 Subject to obtaining the prior written consent of the Shipper, such consent not to be unreasonably withheld, Transporter may assign its rights and obligations under this Precedent Agreement to an Assignee, in whole. Transporter may assign its rights and obligations under this Precedent Agreement to an Affiliate (with the exception of Tidal Energy Marketing Inc., or its successors) without the prior consent of Shipper. Shipper will not be required to release Transporter from any of its obligations under this Precedent Agreement in connection with any such assignment unless: (a) such obligations have been unconditionally assumed by the Assignee in forms reasonably satisfactory to the Shipper; and (b) the Assignee demonstrates to the satisfaction of the Shipper, acting reasonably, that the Assignee is capable of performing the obligations of Transporter under this Precedent Agreement.

13.5 Nothing in this Section 13 will apply to or restrict either Party from:

- (a) encumbering, mortgaging or granting a security interest in its interest in this Precedent Agreement; or
- (b) assigning, by way of security or other security interest, its interest in this Precedent Agreement;

for its present or future indebtedness or liabilities, whether direct or indirect and whether financial or otherwise.

ARTICLE 14
CONFIDENTIALITY

- 14.1 Subject to Sections 14.2 and 14.3, each Party (a "**Recipient**") to which Confidential Information of the other Party (a "**Disclosing Party**") is disclosed as a result of, or in connection with, this Precedent Agreement agrees that such Confidential Information will be kept confidential and Recipient will not disclose such Confidential Information to any third party without the prior written consent of Disclosing Party.
- 14.2 For the purposes of Section 14.1, the following information will not be considered Confidential Information and not subject to any obligation of confidence:
- (a) any information that is within the public domain at the time of its disclosure to the Recipient or that thereafter enters the public domain through no fault of the Recipient, but only after such information becomes part of the public domain;
 - (b) any information (other than the provisions of this Precedent Agreement) that the Recipient can show was in its possession prior to receipt or acquisition thereof from the Disclosing Party and that is not subject to an obligation of confidence;
 - (c) any information (other than the provisions of this Precedent Agreement) that, following its disclosure by the Disclosing Party to the Recipient, is received by the Recipient without obligation of confidence from a third party who the Recipient had no reason to believe was not properly or lawfully in possession of such information free from any obligation of confidence;

- (d) any information that is developed independently at any time by a Recipient without the use of the Confidential Information, alone or in conjunction with a third party; or
- (e) any information that a Disclosing Party agrees in writing is not Confidential Information.

14.3 The following Confidential Information may be disclosed by a Recipient to a third party without the consent of the Disclosing Party provided that Recipient will impose the obligations of confidence set forth in Section 14.1 upon the third party receiving the information, and provided further that Recipient will be liable to Disclosing Party for a breach of such obligations of confidence by the third party:

- (a) any information that is reasonably required by a lender, investor or potential lender or investor in order for Recipient to obtain, maintain or renew any loan or investment or to any other Person in connection with obtaining any form of financing by Recipient;
- (b) any information that is reasonably required by an insurer or potential insurer in order for Recipient to obtain, maintain or renew any insurance concerning any of its activities required or incidental to this Precedent Agreement;
- (c) any information that is reasonably required by a third party for the sole purpose of evaluating a purchase of the Oil Pipeline, the Transporter, or any interest in either;
- (d) any information that is reasonably required by a third party for the sole purpose of evaluating the potential acquisition of the Shipper or any of the assets of the

Shipper including capacity allocated pursuant to this Precedent Agreement, where, as a result of such acquisition, the third party would assume all or certain of the rights and obligations under this Precedent Agreement;

- (e) any information that is reasonably required by an Affiliate of Recipient;
- (f) any information that is disclosed by: (i) a Recipient; (ii) an Affiliate of a Recipient; or (iii) by a third party to whom disclosure by a Recipient is otherwise permitted hereunder, to its shareholders, counsel, professional advisers, prospective purchaser, underwriters, or any of their respective directors, officers or employees; and
- (g) any information that is reasonably required by an arbitrator.

14.4 The Parties will co-operate in releasing information concerning this Precedent Agreement, and will furnish to, discuss with, and obtain written approval from the other Party for drafts of all press and other releases prior to publication, which approval may be reasonably withheld; provided that nothing contained herein will prevent either Party, at any time, from furnishing any information to any Governmental Authority or to the public if and to the extent required by the rules of any applicable stock exchange.

14.5 The following Confidential Information may be disclosed by a Recipient to a Governmental Authority without the consent of the Disclosing Party:

- (a) any information that is reasonably required by Transporter to be disclosed to the NEB or other Governmental Authority in the prosecution of the applications for the Transporter Approvals; or

(b) any information disclosed to a Governmental Authority or to the public that is required to be disclosed by Applicable Law,

provided that where the Recipient is required to disclose any Confidential Information by Applicable Law pursuant to Section 14.5, to a Governmental Authority or the public, the Recipient shall notify the Disclosing Party promptly upon the Recipient becoming aware that such disclosure is required or may be required. Before disclosing any Confidential Information, the Recipient shall, to the extent permissible, allow the Disclosing Party the opportunity to prevent or limit such disclosure, apply for a protective order, or obtain assurances of confidentiality from the recipient of the Confidential Information, and the Recipient shall cooperate with the Disclosing Party to the extent reasonably possible to carry out any such actions.

14.6 Any disclosure by Transporter that the Shipper is a Term Shipper to other Term Shippers shall be subject to Transporter first obtaining the written consent of Shipper to such disclosure, which consent shall not be unreasonably withheld. Transporter will, upon a written request from Shipper, use reasonable commercial efforts to obtain from each of the Term Shippers its respective consent to disclose to Shipper that such Term Shipper is a Term Shipper.

ARTICLE 15 **DEFAULT**

15.1 The occurrence and continuation of a material breach by Transporter of any of its obligations under this Precedent Agreement, unless caused by a breach by Shipper of its obligations under this Precedent Agreement will be a "**Transporter Default**".

- 15.2 The occurrence and continuation of a material breach by Shipper of any of its obligations under this Precedent Agreement, including without limitation any obligations of the Shipper arising as a result of executing and delivering a Letter of Support and any obligations of the Shipper to provide Acceptable Credit Support pursuant to Section 4.6 and/or a credit assurance pursuant to Section 8.2, unless caused by a breach by Transporter of its obligations under this Precedent Agreement will be a "**Shipper Default**".
- 15.3 Upon the occurrence of a Transporter Default or a Shipper Default (in each case, a "**Default**"), Transporter or Shipper may provide written notice to the defaulting Party, describing the Default in reasonable detail and requiring the defaulting Party to remedy the Default (the "**Default Notice**").
- 15.4 If the Default has not been remedied within ten (10) days, following receipt by the defaulting Party of a Default Notice, the non-defaulting Party may, by termination notice to the defaulting Party, terminate this Precedent Agreement effective on the tenth (10th) day following receipt of the termination notice by the defaulting Party; provided, however, that if during such ten (10) day period the defaulting Party has commenced to remedy the Default and is continuing in good faith its efforts to remedy such Default, the entitlement of the non-defaulting Party to terminate this Precedent Agreement will be suspended until the earlier of the cessation by the defaulting Party of such efforts and the date which is one hundred and eighty (180) days after the date of the Default Notice.
- 15.5 Any termination of the Funding Support Agreement of a Term Shipper shall result in such Term Shipper no longer being considered a Funding Participant for the purpose of

this Precedent Agreement including any rights herein associated with being a Funding Participant.

ARTICLE 16
GENERAL LIABILITY AND INDEMNITY

16.1 Each Party will:

- (a) be liable to the other Party, its Affiliates and each of their respective directors, officers, contractors, agents and employees, for all Losses which they may sustain, pay or incur, and in addition,
- (b) indemnify and save harmless the other Party, its Affiliates and each of their respective directors, officers, contractors, agents and employees, from all actions, causes of action, proceedings, demands, and Losses which may be brought against, suffered, paid, incurred or made against them,

resulting from any material breach of this Precedent Agreement, any breach of any Applicable Laws, as a result of acts undertaken or omissions made pursuant to this Precedent Agreement or any tortious act or omission, or negligence or wilful misconduct in connection with this Precedent Agreement on the part of the indemnifying party or of its directors, officers, contractors, suppliers, agents or employees. An act or omission by an indemnifying party will be deemed not to result in liability or a right to indemnity hereunder, if that act or omission is done or omitted pursuant to the explicit written instruction of the Party asserting liability or seeking indemnity.

16.2 Notwithstanding anything else contained in this Precedent Agreement to the contrary, no Party will be liable for Consequential Losses that arise out of or relate to this Precedent

Agreement incurred by any other Party or such other Party's Affiliates regardless of whether such Consequential Losses arise under or result from contract, tort or strict liability.

ARTICLE 17
FORCE MAJEURE

- 17.1 If Transporter or Shipper is unable to perform any of its respective obligations or to satisfy any Transporter Conditions or Shipper Condition due to a Force Majeure Event then such failure will be deemed not to be a breach or a failure of such obligations or Transporter Conditions or Shipper Condition, as the case may be, insofar as they are affected by such Force Majeure Event, for the duration of the Force Majeure Event. Transporter and Shipper will make reasonable attempts to remedy such event, provided that the terms of the settlement of any strike, lockout, or other industrial disturbance will be wholly in the discretion of Transporter. The affected Party shall promptly notify the other Party in writing of any Force Majeure Event after the affected party became aware of the occurrence of the Force Majeure Event. The Parties will cooperate with the other Term Shippers to determine a non-binding, written estimate of the anticipated duration of the Force Majeure Event.
- 17.2 Subject to Section 17.3, the time for the performance of any of Transporter or Shipper's respective obligations, or for the satisfaction or waiver of a Transporter Condition or Shipper Condition, will be suspended for the period of time during which a Force Majeure Event is subsisting and the number of days during which the Force Majeure Event was subsisting will be added to any date or deadline for such performance, satisfaction or waiver.

- 17.3 If a Force Majeure Event subsists for a period of greater than twelve (12) months, then either Party may, at its option, elect to terminate this Precedent Agreement by giving Notice to the other Party at any time after the expiration of such twelve (12) month period, but prior to the cessation of the Force Majeure Event.

ARTICLE 18
DISPUTE RESOLUTION

- 18.1 The Parties agree to attempt to resolve any disputes arising under this Precedent Agreement through consultation and negotiation in good faith. If the Parties are not, in respect of any dispute under the Precedent Agreement, able to reach a negotiated resolution of such dispute within sixty (60) days of the initiation of the consultation and negotiation, they agree to resolve that dispute through binding arbitration subject to Sections 18.7.
- 18.2 All arbitrations conducted hereunder will take place in English before a panel of three arbitrators in Calgary, Alberta. Arbitration will be conducted in accordance with the National Arbitration Rules of the ADR Institute of Canada Inc. and any amendments thereto (the “**Arbitration Rules**”) except to the extent that the Arbitration Rules are inconsistent with or conflict with any terms of this Article 18. Any other statute that applies to the dispute resolution will apply only to the extent that it is not inconsistent with this Article 18. The decision of the panel of arbitrators will be final and binding and not subject to appeal.
- 18.3 There will be one arbitrator appointed by each of the Parties to the dispute. The third arbitrator on the panel shall be appointed by the mutual agreement of the arbitrators appointed by the Parties. The arbitrators will sign a declaration attesting to his or her

impartiality with respect to the Parties to the dispute and to the dispute. If, after twenty (20) days following the appointment of the first two arbitrators, they have not agreed on the appointment of the third arbitrator, the Court of Queen's Bench of the Province of Alberta will, on application by either Party, appoint the final arbitrator. Any person serving as an arbitrator will have training or experience in serving as an arbitrator, legal training if the dispute involves substantive legal issues, and will, in any event, be qualified by education and experience to rule on the matters raised by the dispute. Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator will be mutually appointed in accordance with this Section 18.3.

- 18.4 Except as may be modified herein or agreed to by the Parties in writing, the Arbitration Rules shall govern the manner in which the arbitrator will hear witnesses and arguments, review documents and otherwise conduct the arbitration procedure.
- 18.5 Subject only to the express agreement by the Parties to the dispute to amend the date for decision, the arbitrators will issue a written decision within forty-five (45) days from the date of his or their appointment. The decision of the arbitrators will be final and binding on the Parties, will not be subject to any appeal and will deal with the question of the costs of the arbitration and all other related matters.
- 18.6 If a judgment forms a part of the decision of the arbitrators, then any award rendered may be entered in any court having jurisdiction over a Party, or application may be made to such court for judicial recognition of the award or an order of enforcement thereof, as the case may be.

- 18.7 Nothing in this Article 18 will prevent a Party to the dispute from applying to or obtaining from a court of competent jurisdiction, any interim, interlocutory or preliminary injunctive or declaratory relief at any time prior to the appointment of an arbitrator, during the arbitration proceedings or pending the decision of the panel of arbitrators.
- 18.8 Unless contemplated by the decision of the arbitrators pursuant to Section 18.5, each Party to the dispute will bear its respective costs incurred in connection with the negotiation and arbitration procedures set out in this Article 18. The fees and expenses of the arbitrators and the costs of the facilities required for the arbitration will be awarded at the discretion of the arbitrators.
- 18.9 All information disclosed by a Party in the course of negotiation or arbitration will be treated as confidential and neither the delivery nor disclosure thereof will represent any waiver of privilege by a Party disclosing the same. Each Party agrees to not disclose information provided by the other Party for purposes of this Article 18 to any other Person for any other purpose, and such information cannot be used in any subsequent proceedings without the consent of the Party who has made disclosure of the same hereunder. The Parties agree that any negotiator or arbitrator appointed hereunder will not be subpoenaed or otherwise compelled as a witness in any proceedings for any purpose whatsoever in relation to any matter that is a subject of this Precedent Agreement. Nothing in this Article 18 will cause or require a Party to disclose information that is subject to a confidentiality obligation to any third party.

ARTICLE 19
MISCELLANEOUS

- 19.1 **Enurement and Amendment.** This Precedent Agreement will enure to the benefit of and be binding upon each of the Parties and their permitted successors and assigns. This Precedent Agreement may be amended, restated or supplemented only by a written agreement of the Parties.
- 19.2 **Waiver.** The waiver by any Party of a breach or violation of any provision of this Precedent Agreement will not operate as or be construed to be a waiver of any subsequent breach or violation hereof.
- 19.3 **Governing Law.** This Precedent Agreement shall be interpreted and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without regard to principles of conflicts of laws that, if applied, might require the application of the laws of another jurisdiction. Subject to the terms of Article 18 to the contrary, the Parties agree to attorn to the jurisdiction of the Court of Queen's Bench of the Province of Alberta in the Judicial District of the City of Calgary for the purpose of resolving any disputes that may arise out of this Precedent Agreement.
- 19.4 **Notices.** All notices, requests, elections or other communications (each, a "Notice") to be given pursuant to the terms of this Precedent Agreement will be in writing and sent by personal service, prepaid courier service, or facsimile, and will be deemed to be received when delivery or reception of the transmission is complete except that if such delivery or transmission is after 4:00 pm local time in the location where the delivery or transmission is received, or occurs on any day other than a Business Day, such notice will be deemed

to be received on the next Business Day in the location where the delivery or transmission is received. Notices will be addressed as follows:

If to Transporter:

Northern Gateway Pipelines Limited Partnership

c/o Northern Gateway Pipelines Inc.

3000, 425 – 1st St SW

Calgary, Alberta T2P 3L8

Attention: President

Telephone: (403) 231-5719

Fax: (403) 231-5787

If to Shipper:

•

•

Attention: •

Telephone: •

Facsimile: •

A Party may, from time to time, change its address for notice or its fax number or both by giving written notice of such change to the other Party at the address or fax number noted above.

With respect to any matters hereunder requiring a vote by all or any portion of the Term Shippers, Transporter shall keep a written record of the results of any such vote and may

request that each Term Shipper entitled to vote on a matter evidence its vote through a written instrument executed by an authorized representative of such Term Shipper.

19.5 **Form of Precedent Agreement.** Transporter acknowledges and represents to the Shipper that all precedent agreements entered into with other Term Shippers with respect to the Oil Pipeline and the provision of Services will be substantially in the same form of this Precedent Agreement.

19.6 **Severability.** If any of the provisions of this Precedent Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein will not be affected or impaired in any way.

19.7 **Counterparts.** This Precedent Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument.

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

**NORTHERN GATEWAY PIPELINES LIMITED
PARTNERSHIP, by its general partner,
NORTHERN GATEWAY PIPELINES INC.**

By

Name: _____

Title: _____

Name: _____

Title: _____

•

By

Name: _____

Title: _____

Name: _____

Title: _____

Appendix "A"

To the Precedent Agreement

Between

Northern Gateway Pipelines Limited Partnership

("Transporter")

And

•

("Shipper")

PA VOLUME

Shipper's PA Volume is _____ Barrels of Crude Oil per day.

Appendix "B"

To the Precedent Agreement

Between

Northern Gateway Pipelines Limited Partnership

("Transporter")

And

•

("Shipper")

FORM OF LETTER OF SUPPORT

Re: Letter of Support pursuant to the Precedent Agreement between [*Shipper*] and
Transporter dated [*date*] (the "**Precedent Agreement**")

Terms not otherwise defined herein shall have the meanings ascribed to them in the Precedent Agreement.

If: (i) Transporter notifies Shipper that a Transporter Condition has not been satisfied and which Transporter will not waive, or does not notify Shipper of the satisfaction or waiver of a Transporter Condition within the time period stipulated in respect of such Transporter Condition, or (ii) the Oil Pipeline is not brought into service by January 1, 2022, Shipper hereby agrees to reimburse Transporter for Shipper's PA Share of the costs incurred by Transporter in connection with the preparation of the Technical Studies which are to be prepared in accordance with the Preparation Plan approved by the Confirmed Funding Participants in accordance with Article 2 of the Precedent Agreement.

A Supporting Term Shipper's liability to reimburse Transporter shall be capped at an amount equal to its PA Share of the estimate of the costs associated with the development and delivery of the Technical Studies that was set forth in the Preparation Plan.

This Letter of Support shall be of no force and effect unless and until this Letter of Support has been accepted by Transporter in accordance with the procedures set forth in Article 4 of the Precedent Agreement and Transporter has provided Notice confirming such acceptance.

For the purposes of calculating the Shipper's PA Share:

$$\text{PA Share} = \frac{\text{Shipper's Letter of Support Volume}}{\text{Estimated Firm Capacity}} \times 49\%$$

Where:

"Shipper's Letter of Support Volume" means _____ per day, *[insert volume per day of Crude Oil, which volume cannot exceed Shipper's FSA Volume]*.

[If a revised Letter of Support is being provided pursuant to Section 4.3(a) or as amended pursuant to Section 4.5 of the Precedent Agreement, add:

For the purposes of calculating the Shipper's revised PA Share, if applicable, the Shipper's revised Letter of Support Volume is the amount described above plus _____ *[insert additional volume].]*

Appendix "C"

To the Precedent Agreement

Between

Northern Gateway Pipelines Limited Partnership

("Transporter")

And

•

("Shipper")

MANAGEMENT PLAN

This Management Plan applies to the development of the Technical Studies and Finance Plan associated with the Oil Pipeline. The objective of the Management Plan is to set out the governance for the conduct of the Technical Studies and the development of the Rules and the Finance Plan and to provide maximum transparency on both the Class III Capital Cost Estimate and the execution phase. Terms not otherwise defined herein shall have the meanings ascribed to them in the Precedent Agreement.

1. Governance During Development Phase of the Oil Pipeline

One representative from each of the Supporting Term Shippers shall form a committee (the "**Technical Studies Oversight Committee**") for the purposes of approving the following items that will be prepared and presented by the Transporter:

- (a) the scope of work, schedule, manpower and budget for the Technical Studies;
- (b) all individual financial commitments above CDN\$10,000,000 (Ten Million Canadian Dollars),
- (c) any changes to the Preparation Plan and budgets. Where any changes to the Preparation Plan or budgets, Transporter's management of change procedure will be implemented;

- (d) the minimum level of service performance criteria for transportation of each Term Shipper's Committed Volume on the Oil Pipeline;
- (e) the Rules;
- (f) the contracting strategies and any changes thereto;
- (g) risk analysis and any contingencies;
- (h) the capital cost determination and corresponding confidence level for the Class III Capital Cost Estimate; and
- (i) the detailed governance framework for the execution phase of the Oil Pipeline which will, among other items, set forth reasonable timelines for the review and approval of those matters described in Section 3 of this Management Plan.

Each Supporting Term Shipper will have one vote for each percentage of the cost of the Technical Studies that each Supporting Term Shipper has agreed to fund pursuant to such Supporting Term Shipper's Letter of Support. All matters prepared and presented by Transporter to be voted on by the Technical Studies Oversight Committee shall be carried on the basis of a 51% majority. The Technical Studies Oversight Committee shall meet at least once every quarter.

2. Technical Studies Coordination Group

In addition to the Technical Studies Oversight Committee, the Supporting Term Shippers and the Transporter will form a group for the purposes of supervising the development of the Technical Studies, the Rules and Finance Plan as prepared and presented by the Transporter (the "**Technical Studies Coordination Group**"). The Technical Studies Coordination Group will be comprised of one representative from each Supporting Term Shipper and one or more representatives from the Transporter. The Technical Studies Coordination Group will meet at least once every month.

For greater certainty, neither the Technical Studies Oversight Committee nor the Technical Studies Coordination Group shall have any rights in respect of the supervision, development or approval of the Direct Ownership Agreement or any equity agreements respecting the equity of the Transporter.

3. Governance During Execution Phase of Oil Pipeline

One representative from each of the Funding Participants that executed and delivered a TSA to Transporter, and which TSA was accepted by Transporter pursuant to the Precedent Agreement (each, a “**Founding Shipper**”) and the Transporter shall form a committee (the “**Execution Oversight Committee**”) for the purposes of approving the following items that will be prepared and presented by the Transporter:

- (a) all individual financial commitments above CDN\$10,000,000 (Ten Million Canadian Dollars); and
- (b) any changes to the CEMP.

In the event the Supporting Term Shippers vote to accept the cost risk sharing methodology pursuant to Section 6.2 of the Precedent Agreement, then all matters prepared and presented by Transporter to be voted on by the Execution Oversight Committee shall be carried on the basis of a 76% majority with Transporter having voting rights equal to 51% and each Founding Shipper having a voting right equal to the percentage obtained by taking: (i) such Founding Shipper’s Committed Volume following completion of the allocation process set out in Article 9, divided by (ii) the Committed Volumes of all Founding Shippers following completion of the allocation process set out in Article 9, multiplied by (iii) 49%.

In the event the Supporting Term Shippers vote not to accept the cost risk sharing methodology pursuant to Section 6.2 of the Precedent Agreement, then all matters prepared and presented by Transporter to be voted on by the Execution Oversight Committee shall be carried on the basis of a 51% majority, with the Founding Shippers being provided with all votes and each Founding Shipper being entitled to voting rights equal to the percentage obtained by the product of: (i) each Founding Shipper’s Committed Volume following completion of the allocation process set out in Article 9 divided by (ii) the Committed Volumes of all Founding Shippers following completion of the allocation process set out in Article 9, multiplied by (iii) 100%.

4. Execution Coordination Group

In addition to the Execution Oversight Committee, the Founding Shippers and the Transporter will form a group for the purposes of supervising the execution upon the CEMP (the “**Execution Coordination Group**”). The Execution Coordination Group will be comprised of one representative from each Founding Shipper and one or more representatives from the Transporter. The Execution Coordination Group will meet at least once every month.

5. Timing

Transporter shall immediately coordinate the Supporting Term Shippers to enable them to form the Technical Studies Oversight Committee and Coordination Group as soon as sufficient support has been achieved pursuant to Section 4.3 of the Precedent Agreement and the Execution Oversight Committee and Execution Coordination Group upon the receipt of Unconditional Commercial Support.

6. Survival

If a TSA is entered into by Shipper and Transporter, the provisions of this Management Plan applicable to the Execution Oversight Committee and the Execution Coordination Group shall survive termination of the Precedent Agreement and continue until the earlier of: 1) termination of the TSA; and 2) the Commencement Date.

7. Secondments

During the development of the Technical Studies and the execution phase of the Oil Pipeline, a Supporting Term Shipper and/or Founding Shipper, as the case may be, may make a request to Transporter to second one or more employees to the various project and technical management teams of Transporter. Transporter’s acceptance of such secondment request will be at its sole discretion, and such secondment, if accepted, would be subject to negotiation of a secondment agreement on terms and conditions acceptable to Transporter. The acceptance by Transporter of a secondment request shall not imply or create any expectations that the Transporter would be required to accept any

further secondment requests from the same or any other Supporting Term Shipper and/or Founding Shipper, as the case may be.

Appendix “D”

To the Precedent Agreement

Between

Northern Gateway Pipelines Limited Partnership

(“Transporter”)

And

•

(“Shipper”)

SEE ATTACHED

TRANSPORTATION SERVICES AGREEMENT

BETWEEN

NORTHERN GATEWAY PIPELINES LIMITED PARTNERSHIP

- AND -

[•]

DATED [•]

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TRANSPORTATION SERVICES AGREEMENT
NORTHERN GATEWAY PROJECT
OIL EXPORT PIPELINE

RECITALS

This TRANSPORTATION SERVICES AGREEMENT, is made as of _____ (the “**Effective Date**”), between Northern Gateway Pipelines Limited Partnership (“**Transporter**”), and • (“**Shipper**”). Transporter and Shipper may be collectively referred to in this Agreement as the “**Parties**” or individually referred to as a “**Party**”.

Transporter plans to develop, construct, own and operate the Oil Pipeline.

Shipper has requested that Transporter provide the Services, as hereinafter defined, and Transporter has agreed to provide such Services, subject to and upon the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth in this Agreement, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Capitalized words used in this Agreement and the attached Schedules have the following meanings:

“**AACE Guidelines**” means the applicable guidelines of the Association for the Advancement of Cost Engineering in effect, and as they read, as at the time the Class III Capital Cost Estimate is prepared;

“**Acceptable Market Value**” means, in respect of a Term Shipper whose common equity is traded on a recognized North American stock exchange, that the market capitalization of such Term Shipper’s common equity (which will be determined by the Transporter based on the weighted average trading price for Term Shipper’s common equity for the previous twenty (20) trading days) multiplied by 12.5% (“**Shipper Market Value**”) is greater than an amount equal to: (i) the Monthly Committed Volume; multiplied by (ii) the applicable Oil Pipeline Toll; multiplied by (iii) the lesser of: (A) 48 Months, or (B) the number of Months remaining in the Term; (“**Toll Threshold**”);

“**Acceptable Corporate Credit Rating**” means, in respect of a Term Shipper whose common equity is traded on a recognized North American stock exchange, that such Term Shipper has a Corporate Credit Rating not less than one of the following:

Moody’s	Ba2
S&P	BB

which has been assigned by the respective agency;

“**Accumulated Depreciation**” has the meaning given to it in Section 3(e) of the Oil Pipeline Toll Principles;

“**Actual Costs**” means the Capital Expenditures actually incurred;

“**Adequate Financial Assurance**” means a Letter of Credit, a Guarantee or such other credit assurance that is acceptable to Transporter or Shipper, whichever is applicable, acting reasonably, provided and maintained in accordance with Article 18;

“**Affiliate**” means, with respect to a Party, any other Person that is affiliated with such Party and for such purpose: (a) two Persons will be considered to be affiliated with one another if one of them controls the other, or if both of them are controlled by a common third party; and (b) one Person will be considered to control another Person (other than in the capacity of a director, officer or employee of such other Person) if it has the power to direct or cause the direction of the management and policies of the other Person, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by virtue of the ownership of shares or other equity interests, the holding of voting rights or contractual rights, or otherwise;

“**AFUDC**” has the meaning given to it in Section 3(a)(ii) of the Oil Pipeline Toll Principles;

“**Agreement**” means this Transportation Services Agreement executed by Transporter and Shipper;

“**Allocated Overhead Component**” has the meaning given to it in Section 3(a)(i)(H) of the Oil Pipeline Toll Principles;

“**Annual Capital Revenue Requirement**” has the meaning given to it in Section 5 of the Oil Pipeline Toll Principles;

“**Annual Operating Expenses**” has the meaning given to it in Section 7 of the Oil Pipeline Toll Principles;

“**Applicable Laws**” means, in relation to any Person, transaction or event, all applicable provisions of laws, statutes, rules, regulations, official directives and orders of all federal, provincial, municipal and local government bodies in Canada (whether administrative, legislative, regulatory, executive or otherwise) and judgments, orders and decrees of all courts, commissions or bodies exercising similar functions in Canada in action or proceedings in which the Person in question is a party or by which it is bound or having application to the matter;

“**Arbitration Rules**” has the meaning given to it in Section 17.3;

“**Assignee**” has the meaning given to it in Section 23.1;

“**Available Capacity**” means, for a Month, the capacity of the Oil Pipeline, expressed in Barrels of Crude Oil, available to transport Crude Oil in such Month as determined by the Transporter in its sole discretion;

“**Available Firm Capacity**” means, for a Month, the capacity of the Oil Pipeline, expressed in Barrels of Crude Oil, available to transport Crude Oil for the aggregate of Monthly Committed Volumes for all Term Shippers and the TS Share of Reserve Capacity in such Month as determined by the Transporter in its sole discretion and which is the product of: (a) the Available

Capacity for that Month and (b) the difference between: (i) one-hundred percent (100%); and (ii) the Direct Ownership Share;

“Available Committed Volume Capacity” means, for a Month, the aggregate of Monthly Committed Volumes of all Term Shippers for such Month, provided that, if, in such Month, the Available Capacity in such Month is less than the Firm Capacity, **“Available Committed Volume Capacity”** is the product of: (a) the aggregate of Monthly Committed Volumes of all Term Shippers for such Month; and (b) the Firm Availability Factor for such Month;

“Available Reserve Capacity” means, for a Month, the Reserve Capacity for such Month, unless, in such Month, the Available Capacity is less than the Firm Capacity, and in such case **“Available Reserve Capacity”** shall mean the product of: (a) the Reserve Capacity for such Month; and (b) the Firm Availability Factor for such Month;

“Average Rate Base” has the meaning given to it in Section 3 of the Oil Pipeline Toll Principles;

“Barrel” means 0.158987 cubic metres at Standard Conditions;

“Base Month” has the meaning given to it in Section 10.1;

“Batch” means a homogenous volume of Crude Oil of no less than 200,000 Barrels received from a Shipper at the Receipt Point, or as otherwise determined in accordance with the Rules;

“Business Day” means any day that is not a Saturday, Sunday or a statutory holiday in Calgary, Alberta;

“Capacity Release” has the meaning given to it in Section 11.2(a);

“Capital Expenditures” has the meaning given to it in Section 3(a)(i) of the Oil Pipeline Toll Principles;

“Carry Forward Volume” means, for a Term Shipper, the volume of Crude Oil expressed in Barrels that results from the positive difference, if any, in a Month, between: (a) such Term Shipper’s Monthly Committed Volume; less (b) such Term Shipper’s nominations of its Committed Volumes for such Month, which volume will be accumulated for all Months where there is a positive difference, provided that, a **“Carry Forward Volume”** shall not include any volumes that are characterized as a Force Majeure Volume;

“Carry Forward Period” has the meaning given to it in Section 9.1;

“Carrying Charges” means an allowance for interest, which can be positive or negative, that would have been earned on any Prior Year Variance and which will be calculated Monthly by taking the product of the Monthly equivalent of both the Prior Year Variance and the Prime Rate;

“Class III Capital Cost Estimate” means a Class III estimate of the costs of constructing the Oil Pipeline and the facilities required for the provision of Services prepared by Transporter in accordance with the AACE Guidelines, having an accuracy level within the range of plus 25% and minus 15% after the application of a risk dependant contingency;

“Class III Toll Estimate” means an estimate prepared by Transporter of the tolls that will be payable by Shipper for the Services, which estimate will be derived from the Class III Capital

Cost Estimate and an estimate prepared by Transporter of the operating expenses for the Oil Pipeline and the provision of Services and the application of the Oil Pipeline Toll Principles;

“Commencement Date” means the date on which the Oil Pipeline is available to provide the Services (or would have been available with sufficient Line Fill, whether or not sufficient Line Fill had been provided);

“Commercial Arrangements” means the supply, transportation and terminalling arrangements required for Shipper to deliver or cause to be delivered a volume of Crude Oil to the Oil Pipeline at the Receipt Point and the marine transportation arrangements required for Shipper to receive or cause to be received from the Oil Pipeline a volume of Crude Oil at the Delivery Point;

“Committed Toll Revenue” means, for a Year, all revenues that are the sum of the product of: (i) the Committed Volumes of all Term Shippers; (ii) the number of days in such Year; and (iii) the applicable Oil Pipeline Toll for such Year. For greater certainty, revenues resulting from the re-marketing by Transporter of any Default Volumes, whether on a firm or interruptible basis, shall be considered part of the “Committed Toll Revenue”;

“Committed Volume” means, for a Term Shipper (including Shipper), the sum of the FP Option Volume and the Non-FP Option Committed Volume and **“Committed Volumes”** means the aggregate of the Committed Volume of all Term Shippers.

“Commodity Approval Process” has the meaning given to it in Section 2.7;

“Condensate Pipeline” means a condensate pipeline and tanks system to transport condensate from an interconnection at or near the Delivery Point to an interconnection at or near the Receipt Point;

“Confidential Information” means, subject to the exceptions set forth in Section 12.2, all information of a Party of a proprietary, intellectual or similar nature, including technical, financial, operational, marketing, transportation, processing, information and data, including, but not limited to surveys, engineering data, proprietary software programs, economic evaluations and third party studies, whether factual or interpretative which is disclosed as a result of or in connection with this Agreement including the provisions of this Agreement or the fact that this Agreement has been entered into by Shipper and regardless of whether such information is disclosed directly or indirectly, or acquired and exchanged between the Parties and their Affiliates, in written, oral, visual or electronic form;

“Consequential Losses” means any and all consequential or indirect Losses, loss or anticipated loss of profit, loss or anticipated loss of revenue, loss or anticipated loss of business opportunity or business interruption;

“Contracted Capacity” means, for a Month, such portion of the capacity on the Oil Pipeline equal to 85% of Design Capacity (as may be increased by an Expansion, if any) multiplied by the number of days in such Month;

“Corporate Credit Rating” means the credit rating assigned to an overall entity by S&P or Moody’s, rather than a specific financial obligation of such entity and is defined as a “Corporate Credit Rating” by S&P and as a “Corporate Family Rating” by Moody’s;

“Cost of Debt” has the meaning given to it in Section 5(b) of the Oil Pipeline Toll Principles;

“**Crude Oil**” means the direct liquid product of oil wells, oil processing plants, the indirect liquid petroleum products of oil or gas wells, oil sands, or a mixture of such products, which product or mixture of products meets the quality specifications set out in the Rules and previously approved for transportation in accordance with the Commodity Approval Process, but does not include the indirect liquid petroleum products of oil or gas wells having a Reid vapour pressure in excess of 103 kilopascals;

“**Daily Capital Revenue Requirement**” has the meaning given to it in Section 5 of the Oil Pipeline Toll Principles;

“**Daily Operating Expenses**” has the meaning given to it in Section 7 of the Oil Pipeline Toll Principles;

“**DBRS**” means DBRS Limited and its successors and assigns;

“**Debt**” has the meaning given to it in Section 2 of the Oil Pipeline Toll Principles;

“**Debt Service Reserve**” has the meaning given to it in Section 3(d) of the Oil Pipeline Toll Principles;

“**Debt Service Reserve Interest Income**” has the meaning given to it in Section 5(f) of the Oil Pipeline Toll Principles;

“**Default**” has the meaning given to it in Section 14.3;

“**Default Notice**” has the meaning given to it in Section 14.3;

“**Default Volumes**” means the Committed Volume of a Term Shipper (other than the Shipper hereunder) under a Transportation Services Agreement which has been terminated by the Transporter as a result of a default by such Term Shipper thereunder in accordance with the terms thereof;

“**Delivery Point**” means the delivery flange, being the point of interconnection between the outlet of the Kitimat Terminal included in the Oil Pipeline and the vessel receiving delivery of the Crude Oil from the Oil Pipeline;

“**Density**” means mass per unit volume at Standard Conditions expressed in kilograms per cubic metre;

“**Depreciation Expense**” has the meaning given to it in Section 5(d) of the Oil Pipeline Toll Principles;

“**Design Capacity**” means the maximum hydraulic capacity of the Oil Pipeline as calculated by Transporter over a period of twenty-four (24) consecutive hours without interruption or reduction of service for maintenance or other reason, which is expected to be approximately 588,000 Barrels per day for the initial facilities assuming the Crude Oil moved on the Oil Pipeline has the following properties:

- (a) a kinematic viscosity of 350 square millimetres per second at a temperature of 11.9°C;
- and

(b) a Density of 940 kilograms per cubic metre;

“**Disclosing Party**” has the meaning given to it in Section 12.1;

“**Direct Owner**” means a Funding Participant DO, or its permitted assignee, that has exercised its Direct Ownership Option and has entered into a Direct Ownership Agreement with the Transporter;

“**Direct Ownership Agreement**” means one or more agreements between the Transporter and a Funding Participant DO, or its permitted assignee, entered into following the exercise of the Direct Ownership Option in respect of the co-ownership of the Oil Pipeline and the entitlement of the Funding Participant DO, or its permitted assignee, to the Direct Ownership Capacity;

“**Direct Ownership Capacity**” means, upon execution of a Direct Ownership Agreement, for a Month, the capacity on the Oil Pipeline which a Direct Owner owns and is entitled to use of pursuant to such Direct Owner's Funding Support Agreement and any such Direct Ownership Agreement and which is the product of: (a) the Direct Ownership Share and (b) the difference between: (i) the Available Capacity for such Month; and (ii) the Available Reserve Capacity, provided that, if a Direct Owner does not participate in an Expansion in its full Direct Ownership Share, then, for the purposes of this definition only, the Direct Ownership Share shall be adjusted to account for such portion of the Expansion in which the Direct Owner did not participate;

“**Direct Ownership Carve-out Volumes**” means, upon execution of a Direct Ownership Agreement, the volume expressed in Barrels per day which is equal to the product of the Direct Ownership Share and 500,000 Barrels per day;

“**Direct Ownership Option**” means the option, if any, of a Funding Participant DO, or its permitted assignee, to elect to hold an undivided ownership interest in the Oil Pipeline and to receive use of the Direct Ownership Capacity, as set forth in such Funding Participant DO's Funding Support Agreement, if applicable, but the “**Direct Ownership Option**” does not mean an option to acquire indirect ownership of the Oil Pipeline through the acquisition of equity in Transporter;

“**Direct Ownership Share**” means the undivided ownership interest in the Oil Pipeline expressed as a percentage that is held by a Direct Owner pursuant to a Direct Ownership Agreement;

“**Dispute Resolution**” has the meaning given to it in Section 17.1;

“**Earlier Month**” has the meaning given to it in Section 10.1;

“**Effective Date**” has the meaning given to it in the first recital;

“**Emergency Response**” means those services and facilities as set forth in the *Canada Shipping Act*, as amended by *Chapter 36, Statutes of Canada 1993*, which outlines Canada's marine oil spill preparedness and response regime along with such other services as Transporter deems necessary with the objective to ensure that suitable response equipment, infrastructure and personnel is in place and ready to be deployed in the event of any oil spill;

“**Equity**” has the meaning given to it in Section 2 of the Oil Pipeline Toll Principles;

“Equity Owner” means a Funding Participant that holds an ownership interest in Transporter, and has entered into an Equity Ownership Agreement;

“Equity Ownership Agreement” means one or more agreements between the Transporter and a Funding Participant, or its permitted assignee, entered into in respect of the ownership of equity in the Transporter;

“Estimated Costs” means the Class III Capital Cost Estimate as adjusted for the Risk Premium, any scope changes and any costs imposed by a Governmental Authority;

“Excess Revenue” has the meaning given to it in Section 15 of the Oil Pipeline Toll Principles;

“Expansion” means any increase to the Design Capacity after the Commencement Date that requires additional Capital Expenditure, provided that an Expansion shall not include any looping of the Oil Pipeline;

“Expansion Request” has the meaning given to it in Section 11.1;

“Expansion Requesting Shipper” has the meaning given to it in Section 11.1;

“Expansion Volumes” has the meaning given to it in Section 11.1;

“Financing Parties” means any and all lenders, indenture trustees or agents who are financing the Oil Pipeline or trustees for any such lenders, trustees or holders of bonds, debentures, notes or other evidences of indebtedness;

“Firm Availability Factor” means, for a Month, the percentage of Firm Capacity in such Month if the Available Firm Capacity is less than the Firm Capacity and is calculated by dividing: (a) the Available Firm Capacity for that Month by (b) the Firm Capacity for that Month;

“Firm Capacity” means, for a Month, such portion of the capacity on the Oil Pipeline equal to the sum of: (a) the aggregate of the Monthly Committed Volumes of all Term Shippers for that Month; and (b) the TS Share of Reserve Capacity;

“Firm Service” means the transportation of the Committed Volume of Shipper by Transporter on the Oil Pipeline that meets the Minimum Service Level subject to curtailment or suspension of Services associated with events of Force Majeure;

“First Commencement Notice” has the meaning given to it in Section 5.3;

“First Nation Adjustment” has the meaning given to it in Section 3(c) of the Oil Pipeline Toll Principles;

“First Nation Note Receivable” has the meaning given to it in Section 6 of the Oil Pipeline Toll Principles;

“First Nation Interest” has the meaning given to it in Section 6 of the Oil Pipeline Toll Principles;

“Force Majeure” means any cause, event or circumstance beyond the reasonable control of the Party claiming force majeure (acting and having acted with due diligence and in a reasonable manner and in accordance with good pipeline industry practice) which delays, hinders or prevents

such Party from fulfilling any one or more of its obligations under this Agreement. Events which (provided that they satisfy the requirements stated in the preceding sentence) will constitute events of Force Majeure include acts of God, forces of nature, wars, insurrections, acts of terrorism, riots, acts of protest or civil disobedience, fires, landslides, floods, earthquakes, explosions, seriously adverse weather conditions, acts of any Governmental Authority (whether or not legally valid), strikes, industrial action or unrest or lock-outs, breakdown or accidents affecting a Party. Notwithstanding the above (i) a lack of funds, or (ii) a change in market or economic conditions that renders performance of the obligations of the Party claiming force majeure uneconomical or disadvantageous, shall be expressly excluded from the term Force Majeure;

“Force Majeure Volumes” means:

- (a) any volumes of Crude Oil that were nominated by a shipper on or before the date of the event of Transporter Force Majeure for which Transporter is unable to provide Services as a result of the event of Transporter Force Majeure; and
- (b) any Committed Volume of a Term Shipper that Transporter is unable to provide Services for during the subsistence of an event of Transporter Force Majeure;

“Founding Shipper” means a Person who has entered into both a Funding Support Agreement and Transportation Services Agreement with Transporter;

“FP Option Volume” means, for a Founding Shipper (including, if applicable, the Shipper), a volume of Crude Oil (expressed in Barrels per day) set forth in Paragraph (a) of Schedule “A” of such Term Shipper’s Transportation Services Agreement, except as may be increased, if applicable, in accordance with Section 14.10, subject to any reduction in accordance with Section 2.10 hereof;

“FP Option Volume Toll” has the meaning given to it in Section 12 of the Oil Pipeline Toll Principles;

“FSA Volume” means, in respect of a Funding Participant, a volume of Crude Oil (expressed in Barrels per day) that the Funding Participant is permitted to reserve pursuant to such Funding Participant’s Funding Support Agreement;

“Funding Participant” means a Person who has entered into a Funding Support Agreement with Transporter and shall include any permitted assignee of a Funding Participant under its Funding Support Agreement;

“Funding Participant DO” means a Funding Participant who holds a Direct Ownership Option;

“Funding Support Agreement” means: (i) any funding support agreement entered into between Transporter and a Funding Participant prior to April 17, 2008 (as may have been amended, modified or restated before, on or after such date) and which provides for, *inter alia*, financial support to be given by such Funding Participant to Transporter for certain preparatory activities required to achieve approval of the Oil Pipeline under Part III and Part IV of the *National Energy Board Act* (Canada) as further described in the funding support agreement (each, an **“Original FSA”**); or (ii) where there has been an assignment by a Funding Participant of all or a portion of its interest in an Original FSA, any amended and/or restated funding support agreement entered into (whether before, on or after April 17, 2008) between Transporter and any Person taking

assignment of such interest in such Original FSA, provided such amended and/or restated funding support agreement does not confer any greater material rights than were originally provided to the assigning Funding Participant under the Original FSA;

“**GAAP**” has the meaning given to it in Section 9 of the Oil Pipeline Toll Principles;

“**Governmental Authority**” means any government, any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal or judicial or arbitral body having jurisdiction over the Oil Pipeline or the operation of the Oil Pipeline;

“**Gross Plant In Service**” has the meaning given to it in Section 3(a) of the Oil Pipeline Toll Principles;

“**Guarantee**” means a guarantee from a Guarantor, in form and substance that is acceptable to Transporter in its sole discretion, which guarantees the performance of the financial obligations of a Term Shipper in an amount as contemplated in Article 18, and “**Guarantees**” shall mean more than one guarantee that, collectively, amount to a Guarantee;

“**Guarantor**” means a Person (including an Affiliate of a Shipper) whose Rated Debt has an Investment Grade Credit Rating and who has provided a Guarantee;

“**Guarantor Material Change**” means, where a Guarantee has been issued, a downgrade of the Rated Debt of Shipper’s Guarantor to less than an Investment Grade Credit Rating;

“**Guaranteed Amount**” means an amount equal to: (i) the Monthly Committed Volume; multiplied by (ii) the applicable Oil Pipeline Toll; multiplied by (iii) the lesser of: (a) 36 Months, or (b) the number of Months remaining in the Term;

“**Heavy Crude Oil**” has the meaning given to in Section 8 of the Oil Pipeline Toll Principles;

“**Income Tax Allowance**” has the meaning given to it in Section 5(c) of the Oil Pipeline Toll Principles;

“**Initial Gross Plant In Service**” means the Gross Plant In Service of the Oil Pipeline before any Expansion or the expenditure of Maintenance Capital thereon;

“**Initial Term**” means the period of time set forth in Schedule “A” attached hereto which shall commence on the Commencement Date and continue thereafter for such period unless otherwise terminated as provided herein, plus any extension thereof pursuant to Section 5.4;

“**Insolvency Event**” means, in the case of a Party, that it: (i) files a voluntary application in or for liquidation, receivership or bankruptcy; (ii) is finally and validly declared and adjudged to be liquidated, bankrupt or insolvent; (iii) is subject to a resolution passed by its members for the purposes of placing it in voluntary administration; (iv) is subject to an order by any court of competent jurisdiction for its winding up; (v) is the subject of an appointment of a receiver or receiver and manager or like officer of all or substantially all of its assets; (vi) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied or enforced on it or against all or substantially all of its assets; and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Business Days thereafter; (vii) is

the subject of an appointment of an administrator, official manager or like officer in circumstances where such other Party, is or is likely to become insolvent; or (viii) enters into a scheme or plan of arrangement with its creditors or any of them or declares a moratorium on the payment of its creditors, but does not include any voluntary proceeding for the purpose of amalgamation, reconstruction or reorganization not taken at the request of or to meet the requirements of the creditors of such Party, or such Party's Guarantor or other providers of Adequate Financial Assurances;

"Investment Grade Credit Rating" means, in respect of a Person, a credit rating not less than one of the following:

Moody's	Baa3
S&P	BBB(minus)
DBRS	BBB(low)

which has been assigned to the Rated Debt of that Person by the respective agency. If the Person's Rated Debt has a credit rating from all three agencies set forth above, at least two of the ratings are not to be less than the ratings set forth above to be considered "Investment Grade Credit Rating". Where the Person's Rated Debt only has a credit rating from two of the agencies set forth above, at least one of the ratings are not to be less than the ratings set forth above to be considered "Investment Grade Credit Rating".

"Kitimat Terminal" means the tanks, pump facilities, tanker berths, and other infrastructure described in Schedule "C" and located near Kitimat, British Columbia;

"Lender Consent Agreement" has the meaning given to it in Section 23.4;

"LC Material Change" means, where a Letter of Credit has been issued, a downgrade of the Rated Debt of the provider(s) of such Letter of Credit respecting the Shipper to less than the rating requirements referred to in the definition of Letter of Credit;

"Letter of Credit" means an irrevocable standby letter of credit with a term to expiry of twelve (12) Months from the date of issue or renewal and in an amount determined in accordance with Article 18 and otherwise in form and substance that is acceptable to Transporter in its sole discretion, the drawing condition for which, subject to applicable cure periods relating to Shipper, is:

- (a) a Shipper Default pursuant to Section 14.2(b); or
- (b) the failure to provide a replacement letter of credit not less than thirty (30) days before the expiry of a letter of credit.

The letter of credit must be issued by a bank or syndicate of banks or by a syndicate of such banks, which has or have senior unsecured long-term debt (or long-term deposits) with a credit rating that is not less than one of the following: (i) "A" by S&P.; (ii) "A2" by Moody's; or (iii) "A" by DBRS. Where the issuing bank or banks, as the case may be, is rated by more than one debt rating agency, the lowest credit rating for each such issuing bank will apply;

“Line Fill” means the volume of Crude Oil which is required to initially fill the Oil Pipeline in sufficient quantity so as to permit first deliveries of Crude Oil at the Delivery Point;

“Losses” means any and all damages, claims, losses, expenses, liabilities, injuries, fines, penalties, settlements, awards, judgments, or other costs whatsoever (including costs as between a solicitor and his client);

“Maintenance Capital” has the meaning given to it in Section 3(a)(i)(J) of the Oil Pipeline Toll Principles;

“Make-Up Volume” means, for a Term Shipper, the Committed Volume nominated by such Term Shipper in a Month that was not shipped on the Oil Pipeline due to an apportionment by Transporter in such Month;

“Make Up Period” has the meaning give to it in Section 15.3(a);

“Market Value Material Change” means, with respect to a Shipper whose common equity is traded on a recognized North American stock exchange that such Shipper (a) experiences a downgrade of its Corporate Credit Rating to less than an Acceptable Corporate Credit Rating; or (b) fails to maintain an Acceptable Market Value;

“Material Change” means any of the following: (a) a Private or Foreign Company Material Change; (b) a Ratings Material Change; (c) a Market Value Material Change; (d) a Guarantor Material Change; or (e) an LC Material Change;

“Maximum Direct Ownership Carve-Out Volumes” means the volume expressed in Barrels per day which is equal to the product of the Maximum Direct Ownership Share and 500,000 Barrels per day;

“Maximum Direct Ownership Share” means the maximum undivided ownership interest in the Oil Pipeline expressed as a percentage that a Funding Participant DO is entitled to acquire by exercising its Direct Ownership Option and entering into a Direct Ownership Agreement, which maximum undivided ownership interest is determined pursuant to the Funding Support Agreement to which the Funding Participant DO is a party;

“Minimum Service Level” means the minimum level of service performance criteria for transportation of each Term Shipper’s Committed Volume on the Oil Pipeline as were established through the completion of the technical studies for the Oil Pipeline and set forth in the Rules;

“Month” means the period commencing at 0700 MST on the first day that the Services are provided by the Transporter and ending at 0700 MST of the first day of the following calendar month in which the Services commence, and each successive month thereafter;

“Monthly Committed Volume” means, for a Month, the product of: (i) the Committed Volume and (ii) the number of days in such Month;

“Moody’s” means Moody’s Investor Services, Inc. and its successors and assigns;

“NEB” means the National Energy Board of Canada;

“Non-FP Option Committed Volume” means, for a Term Shipper (including, if applicable, the Shipper) the volume of Crude Oil (expressed in Barrels per day) if any, set forth in Paragraph (b) of Schedule “A” of such Term Shipper’s Transportation Services Agreement;

“Non-FP Option Committed Volume Toll” has the meaning given to it in Section 13 of the Oil Pipeline Toll Principles;

“Notice” has the meaning given to it in Section 25.6;

“Notional Future Income Tax Asset/Liability” has the meaning given to it in Section 3(f) of the Oil Pipeline Toll Principles;

“Oil Pipeline” means an oil pipeline and tanks system to transport Crude Oil from the Receipt Point to the Delivery Point as further described in Schedule C;

“Oil Pipeline Toll” has the meaning given to it in Section 11 of the Oil Pipeline Toll Principles;

“Oil Pipeline Toll Principles” means those principles used to calculate the Oil Pipeline Toll as set out in Schedule “B” to this Agreement;

“Operating Expenses” has the meaning given to it in Section 7 of the Oil Pipeline Toll Principles;

“Payment Due Date” has the meaning given to it in Section 7.3;

“Party” or **“Parties”** has the meaning given to it in the recitals;

“Person” means an individual, partnership, limited liability company, corporation, trust, estate, unincorporated association, nominee, joint venture, or other legal entity;

“Physical Construction” means stripping, clearing and grading activities for the right-of-way and site-leases by the Transporter or its contractors on a repeated and consistent basis subject to the project execution plan for the Oil Pipeline;

“Precedent Agreement” means an agreement executed between a Term Shipper and the Transporter which states, among other things, the terms and conditions upon which the Term Shipper will execute a transportation services agreement;

“Pre-Delivery Notice” has the meaning given to it in Section 10.1;

“Pre-Delivery Volume” has the meaning given to it in Section 10.1;

“Prime Rate” means the rate of interest per annum publicly announced from time to time by the Royal Bank of Canada as its prime rate in effect at its principal office in Toronto; provided that each change in the Prime Rate will be effective from and including the date such change is publicly announced as being effective and compounded annually;

“Prior Year Variance” has the meaning given to it in Section 1 of the Oil Pipeline Toll Principles;

“Private or Foreign Company Material Change” means, with respect to a Shipper whose common equity is not traded on a recognized North American stock exchange, that such Shipper experiences a downgrade of its Rated Debt to less than an Investment Grade Credit Rating;

“Prudent Practices” means for the purpose of the Transporter, those practices, methods, techniques and standards that are commonly used under similar circumstances (recognizing, without limitation, the construction and operational challenges imposed by the mountainous terrain, aboriginal, marine and environmental issues), in light of the facts known or that reasonably should have been known, by the Transporter, in the pipeline business in Canada or the United States to design, construct, operate and maintain equipment lawfully, efficiently, reliably, economically and safely with regard to equipment of a similar size, service and type used in the Oil Pipeline;

“Rate Base” has the meaning given to it in Section 3 of the Oil Pipeline Toll Principles;

“Rate Base Adjustment” has the meaning given to it in Section 3(a)(iii) of the Oil Pipeline Toll Principles;

“Rated Debt” means, with respect to a Person, such Person’s senior, unsecured, long term debt obligations (not supported by third party credit enhancement);

“Ratings Material Change” means, with respect to a Shipper whose common equity is traded on a recognized North American stock exchange and who has Rated Debt, that such Shipper experiences a downgrade of its Rated Debt to less than an Investment Grade Credit Rating;

“RC Excess Revenue” has the meaning given to it in Section 15(a) of the Oil Pipeline Toll Principles;

“Receipt Conditions” means, for Crude Oil accepted at the Receipt Point, a rate of flow capable of meeting the Design Capacity of the Oil Pipeline and which provides for a delivery pressure of a minimum of 75 psig at the inlet of the mainline station on the Oil Pipeline;

“Receipt Point” means the receipt flange of the Oil Pipeline to be located at or near the North East Quarter of Section 4, Township 56, Range 21, West of the 4th Meridian in the Province of Alberta where Transporter will accept Crude Oil at the Receipt Conditions;

“Recipient” has the meaning given to it in Section 12.1;

“Renewal Period” means an extension of the Initial Term:

- (a) where such Initial Term is one-hundred eighty (180) Months, for one additional sixty (60) Month period; and
- (b) where such Initial Term is two-hundred forty (240) Months, for each of two additional sixty (60) Month periods;

“Reserve Capacity” means, for a Month, such portion of the capacity on the Oil Pipeline equal to 5% of Contracted Capacity (as may be increased by an Expansion, if any);

“Return on Equity” has the meaning given to it in Section 5(a) of the Oil Pipeline Toll Principles;

“**Risk Premium**” means the premium which Transporter, in its sole discretion, elects to apply to the Class III Capital Cost Estimate for the purposes of calculating the Estimated Costs, which premium may be, but is not limited to, a combination of a fixed amount and formulas to adjust the Class III Capital Cost Estimate;

“**ROE**” has the meaning given to it in Section 5(a) of the Oil Pipeline Toll Principles;

“**Rules**” means the rules and regulations governing the provision of Services for the Oil Pipeline filed by Transporter with the NEB and in force as of the date of this Agreement and as may be amended from time to time by the Transporter, in consultation with the Term Shippers, acting in accordance with Prudent Practices, and as subsequently filed with the NEB;

“**S&P**” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. and its successors and assigns;

“**SC Excess Revenue**” has the meaning given to it in Section 15(b) of the Oil Pipeline Toll Principles;

“**Scheduled Maintenance**” has the meaning given to it in Section 19.1;

“**Second Commencement Notice**” has the meaning given to it in Section 5.3;

“**Services**” means, subject to the terms of this Agreement, the operation and maintenance of the Oil Pipeline and marine navigational facilities, and, for the Monthly Committed Volume of Shipper, the provision of Crude Oil receipt terminalling at the Receipt Point, transportation, delivery terminalling and tankage at the Kitimat Terminal and delivery services from the Receipt Point to the Delivery Point on the Oil Pipeline on a Batch basis and Towing and Mooring Services and Emergency Response and the provision of Firm Service, provided that the “Services” will not include receipt tankage, vessel piloting, demurrage or marine navigation;

“**Shipper**” has the meaning given to it in the recitals to this Agreement;

“**Shipper Force Majeure**” has the meaning given to it in Section 15.4;

“**Shipper Market Value**” has the meaning given to it in the definition of “Acceptable Market Value”;

“**Shipper Permits**” means any and all authorizations, permits and approvals necessary for the removal and export of a daily volume of Crude Oil equal to the nominated volume from Alberta, British Columbia and Canada;

“**Shipper Default**” has the meaning given to it in Section 14.2;

“**Spot Capacity**” means, for a Month, the positive difference, if any, between: (a) the Available Capacity for such Month; and (b) the sum of: (i) the aggregate of the Monthly Committed Volumes nominated by all Term Shippers for that Month, (ii) the Direct Ownership Capacity for that Month; and (iii) the Available Reserve Capacity for that Month;

“**Standard Conditions**” means a temperature of 15°C and a pressure of 1 atmosphere (101.325 kPa);

“Sustainability Initiatives” means those programs which are prudently and reasonably implemented by the Transporter to promote a positive impact of its operations for Oil Pipeline community partners or the environment. Such programs shall include:

- (a) Stewardship programs designed to offset the environmental footprint of both construction and operation of the Oil Pipeline;
- (b) Community based programs to support the safety, education and engagement of right-of-way communities; and
- (c) A trustee-administered fund supporting the development of beneficial projects in right-of-way communities;

For greater certainty, “Sustainability Initiatives” shall not include any Aboriginal participation provided in accordance with Section 6 of the Oil Pipeline Toll Principles;

“Taxes” means all taxes of any nature whatsoever, including fees, excise taxes, sales and use taxes, goods and services taxes or governmental charges and any additions or charges hereinafter imposed by Canada, a Province, or any political subdivision thereof, or therein relating to this Agreement and any penalties, interest or charges related thereto but will not include income taxes, large corporations tax or other capital taxes;

“Term” means the period of time commencing on the Commencement Date and continuing until the expiration of the Initial Term or, if applicable, any Renewal Periods thereafter unless this Agreement is otherwise terminated in accordance herewith;

“Term Shipper” means a Person who has executed a Transportation Services Agreement with Transporter and **“Term Shippers”** means all such Persons, and, where the context so requires, includes the Shipper;

“Third Party” means any Person that is not a Party;

“Toll Relief Period” has the meaning given to it in Section 15.2;

“Toll Threshold” has the meaning given to it in the definition of “Acceptable Market Value”;

“Towing and Mooring Services” means those services to assist in the docking, undocking, mooring, unmooring, towing and escorting of marine vessels accessing the Kitimat Terminal;

“Transportation Services Agreement” means, in respect of a Term Shipper (including Shipper), the agreement entered into between such Term Shipper and Transporter governing the provision of Services by Transporter to such Term Shipper, which agreement is substantially in the same form as this Agreement;

“Transporter” has the meaning given to it in the recitals to this Agreement;

“Transporter Condition” and **“Transporter Conditions”** have the meaning given to such terms in Section 2.2;

“Transporter Default” has the meaning given to it in Section 14.1;

“Transporter Force Majeure” has the meaning given to it in Section 15.1;

“TS Share of Reserve Capacity” means, for a Month, the portion of the Reserve Capacity funded by the Term Shippers and which is calculated as the product of: (a) the Reserve Capacity for that Month and (b) the difference between: (i) one-hundred percent (100%); and (ii) the Direct Ownership Share;

“Unallocated Expansion Volumes” has the meaning given to it in Section 11.3;

“Unallocated Volumes” has the meaning given to it in Section 4.4;

“Unallocated Volume Notice” has the meaning given to it in Section 4.4;

“Uncommitted Shipper” means any a shipper on the Oil Pipeline that is not a Term Shipper or a Direct Owner;

“Uncommitted Volume” means: (i) a volume of Crude Oil expressed in Barrels scheduled for transportation on the Oil Pipeline (other than on Direct Ownership Capacity) for any shipper that is not a Term Shipper; and (ii) a volume of Crude Oil expressed in Barrels scheduled for transportation on the Oil Pipeline (other than on Direct Ownership Capacity) for a Term Shipper (including Shipper) for a Month that is in excess of the product of such Term Shipper's Committed Volume and the number of days in the Month. Notwithstanding the foregoing, an “Uncommitted Volume” does not include a Pre-Delivery Volume, Carry Forward Volume, Make-Up Volume or Force Majeure Volume;

“Uncommitted Volume Toll” has the meaning given to it in Section 14 of the Oil Pipeline Toll Principles;

“Unscheduled Maintenance” has the meaning given to it in Section 19.2;

“Variable Power Costs” has the meaning given to it in Section 8 of the Oil Pipeline Toll Principles;

“Working Capital Allowance” has the meaning given to it in Section 3(b) of the Oil Pipeline Toll Principles;

“Year” means, as the context requires:

- (a) a calendar year, which for accounting purposes starts at 0700 MST on January 1st and ends at 0700 MST on January 1st of the following year;
- (b) the period beginning on the Commencement Date and ending on the December 31 that next follows the Commencement Date; or
- (c) the period beginning on January 1 of the calendar year in which the Term ends and ending on the last day of the Term; and

“13 Point Average Method” means, for a Year, the average Rate Base determined by taking the sum of the Rate Base for the first day of a Year and the Rate Base on the last day of each Month in that Year and dividing such value by 13;

1.2 **Interpretation.**

- (a) Unless otherwise expressly specified herein, (i) defined terms in the singular will also include the plural and vice versa, (ii) the words “hereof”, “herein”, “hereunder” and other similar words refer to this Agreement as a whole, (iii) Section and Schedule references in this Agreement are to Sections of or Schedules to this Agreement, and (iv) words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders.
- (b) The headings in this Agreement are for convenience only and will not in any way affect the meaning or construction of any provision of this Agreement.
- (c) Unless the context otherwise requires, “including” means “including without limitation”.
- (d) The following Schedules are attached to and incorporated into this Agreement:
 - Schedule “A” Committed Volume
 - Schedule “B” Oil Pipeline Toll Principles
 - Schedule “C” Oil Pipeline Diagrams and Description

ARTICLE 2
TRANSPORTER OBLIGATIONS

- 2.1 Transporter will, acting as a reasonable and prudent owner and operator of a pipeline system, take or cause to be taken all reasonable measures to construct the Oil Pipeline and to provide the Services, all in a diligent manner and in accordance with Prudent Practices, Applicable Laws and the terms and conditions of this Agreement.
- 2.2 Transporter's obligation to construct the Oil Pipeline and to provide the Services will be conditional upon Transporter having obtained:
 - (a) on or before the Commencement Date, all necessary permits, approvals, authorizations and land access rights from any Governmental Authority or Third Party, as necessary, all on terms and conditions satisfactory to Transporter, acting reasonably, to permit Transporter to construct, open and operate the Oil Pipeline; and
 - (b) within one-hundred and eighty (180) days following the later of: (i) the Effective Date or (ii) confirmation of the completion of the processes set forth in Sections 4.3, if necessary, a financial commitment or commitments from financial institutions acceptable to Transporter, in its sole discretion, to enable Transporter to construct the Oil Pipeline, provided that such financial commitment or commitments are on terms and conditions that are substantially the same as the terms and conditions described in the Finance Plan (as such term is defined in the Precedent Agreement).

(each a “**Transporter Condition**”, and collectively, the “**Transporter Conditions**”)

The Transporter Conditions are for the sole benefit of Transporter and, Transporter may waive, by Notice to the Shipper, any of them, in whole or in part, or elect to extend the time stipulated for the satisfaction of the Transporter Conditions by Notice to the Shipper without prejudice to

the rights of Transporter to rely upon any of the other conditions precedent included herein for its sole benefit.

- 2.3 If the Transporter Conditions are not satisfied or waived within the time period stipulated in Section 2.2 or any extension thereof and Transporter has satisfied its obligation in Section 2.1 to take or cause to be taken all reasonable measures to construct the Oil Pipeline and to provide the Services, then Transporter may, in its sole discretion, elect to terminate this Agreement which termination will be effective the date stipulated for the satisfaction of such Transporter Condition. Immediately upon such termination, Transporter will return to Shipper any financial assurance that has been provided by the Shipper pursuant to Article 18. Any termination of this Agreement pursuant to this Section 2.3 will be without liability, damages, costs or expenses of either Party to the other Party or to any of its shareholders, directors, officers, employees, agents, consultants or representatives, and the Parties will thereafter have no further rights or obligations whatsoever under this Agreement.
- 2.4 Shipper may request the establishment of new receipt points and delivery points which the Transporter may accept in its sole discretion, provided that Transporter shall not accept such new receipt point or delivery point if it determines that such new receipt or delivery point shall have a material adverse impact to other Term Shippers. To the extent a Shipper requests an additional receipt flange or delivery flange at or near the Receipt Point or an additional delivery flange at or near the Delivery Point, then Transporter shall comply with such request provided that: (a) such additional receipt flange has no adverse impact to the operation of the Oil Pipeline; and (b) Shipper commits to reimburse Transporter for all direct and indirect costs and expenses incurred by Transporter and associated with the design, construction and operation of such additional receipt flange or delivery flange.
- 2.5 Transporter shall not contract for Committed Volumes that, in aggregate, prevent Transporter from maintaining the Firm Service for Shipper's Committed Volume.
- 2.6 During the Term, Transporter shall conduct an annual meeting with Term Shippers to provide updates on the operations of the Oil Pipeline, any proposed changes to the types of insurance maintained by Transporter for the Oil Pipeline, any proposed amendments to the Rules or the Commodity Approval Process and a budget for Sustainability Initiatives that are budgeted to be incurred by Transporter for the next ensuing Year. Quorum for such annual meeting shall be a majority of Term Shippers that represent a minimum of 51% of the aggregate of Committed Volumes.
- 2.7 The approval process for determining the type of Crude Oil that will be accepted for Services on the Oil Pipeline (the "**Commodity Approval Process**") will be developed in consultation with, and agreement in writing by a simple majority of Term Shippers and Direct Owners that represent a minimum of 51% of the aggregate of Committed Volumes and Direct Ownership Carve-Out Volumes, and which may be amended from time to time by the Transporter, acting as a reasonable and prudent operator and with the agreement in writing by a simple majority of Term Shippers and Direct Owners that represent a minimum of 51% of the aggregate of Committed Volumes and Direct Ownership Carve-Out Volumes.
- 2.8 The Minimum Service Level, as set forth in the Rules, may only be amended by Transporter provided such amendment is approved in writing by a simple majority of Term Shippers that represent a minimum of 51% of the aggregate of Committed Volumes.

- 2.9 Transporter has not entered into and will not enter into a Direct Ownership Agreement, an Equity Ownership Agreement or related ancillary documents or any amendments thereto that, taken on its or their own, contain any provision or provisions or fail to contain any provision or provisions that has or results in a material adverse impact on the Oil Pipeline Toll or the operations of the Oil Pipeline (including, without limitation, quality or performance of Services), at any time during the Term. Transporter will also not take or fail to take any action or actions or fail to fulfill any obligation or obligations under or pertaining to a Direct Ownership Agreement, an Equity Ownership Agreement or related ancillary documents that has or results in a material adverse impact on the Oil Pipeline Toll or the operations of the Oil Pipeline (including, without limitation, quality or performance of Services), during the performance of its rights and obligations under either a Direct Ownership Agreement or an Equity Ownership Agreement or related ancillary documents at any time during the Term.

For the purposes of this Section 2.9, “material adverse impact” includes, without limitation, the following:

- (a) a significant delay or delays in the provision of Services, a significant reduction in the quality of Services, and/or significantly increased costs and expenses; and
- (b) increased financing costs incurred as a result of failing to include provisions, including remedies, or including provisions in a Direct Ownership Agreement, an Equity Ownership Agreement or related ancillary documents that, in the normal course of business, would be reasonably expected to be included or excluded in a joint venture, limited partnership or other co-ownership agreement for a project in the nature of the Oil Pipeline,

The Parties acknowledge and agree that “material adverse impact” shall exclude any of the matters described in (a) and (b) that arise solely as a result of the existence of a Direct Owner or an Equity Owner, or both.

- 2.10 If, following execution of a Transportation Services Agreement, the Funding Participant DO or its permitted assignee executes a Direct Ownership Agreement, the Funding Participant DO’s FP Option Volume will be reduced by an amount equal to the Direct Ownership Carve-Out Volumes, and Schedule “A” to such Funding Participant DO’s Transportation Services Agreement shall be deemed to have been amended accordingly, such that the FP Option Volume is so reduced and the aggregate of its amended Committed Volume and its Direct Ownership Carve-out Volumes shall be equal to the Committed Volume set forth in Schedule “A” to such Funding Participant DO’s Transportation Services Agreement on the date hereof. Upon such deemed amendment, the Funding Participant DO’s Direct Ownership Carve-Out Volumes shall not be governed by this Agreement. If Schedule “A” to such Funding Participant DO’s Transportation Services Agreement is deemed to have been amended such that the Funding Participant DO’s Committed Volume is reduced to zero, then the Funding Participant DO’s Transportation Services Agreement will terminate upon the execution by such Funding Participant DO, or its permitted assignee, and Transporter of a Direct Ownership Agreement. If the Direct Ownership Option expires or the Direct Ownership Agreement is not executed by the Funding Participant DO and the Transporter, then the FP Option Volume of the Funding Participant DO shall not be adjusted.
- 2.11 If Shipper is a Funding Participant DO, then, until the earlier to occur of a Direct Ownership Agreement being executed or the expiry of the Direct Ownership Option pursuant to its Funding Support Agreement, the Monthly Committed Volume for purposes of calculating whether or not Adequate Financial Assurance is required, as well as the amounts to be provided as Adequate

Financial Assurance, where required, pursuant to Article 18 shall be deemed to be the positive amount, if any resulting from the product of: (i) the difference between the Committed Volume of the Funding Participant DO and the Maximum Direct Ownership Carve-Out Volume; and (ii) the number of days in the applicable Month.

ARTICLE 3 SHIPPER OBLIGATIONS

- 3.1 To the extent Shipper nominates any volumes on the Oil Pipeline, it will use reasonable commercial efforts to ensure that it will have in place, at the time of such nomination, and thereafter maintain, for the volumes actually scheduled by Transporter, all Commercial Arrangements. Failure to obtain and to maintain at any relevant period of time, the necessary Commercial Arrangements will not affect Shipper's obligations to make payments hereunder.
- 3.2 Shipper will use reasonable commercial efforts to ensure that it will, as of the Commencement Date, have in place any and all Shipper Permits. Failure to obtain and to maintain as of the Commencement Date the Shipper Permits will not affect Shipper's obligations to make payments hereunder.
- 3.3 Schedule "A" to this Agreement sets forth the Committed Volume of Shipper, subject to any amendment pursuant to Sections 2.10, 4.3 and 14.10, if applicable. Shipper will indicate an amount of Committed Volume, which amount will be no less than that amount required to meet Transporter's operational requirements, as set forth in the Rules.
- 3.4 Regardless of whether or not Shipper intends to make shipments on the Oil Pipeline as of the Commencement Date, Shipper shall: (a) provide its respective proportionate share of Line Fill for the Oil Pipeline, in the proportion that its Committed Volume bears to the sum of the aggregate of all Committed Volumes and the Direct Ownership Carve-out Volumes, within such reasonable time period prior to the Commencement Date as is determined by Transporter and specified in a written notice (the "**Line Fill Notice**") given by Transporter to Shipper (within a reasonable period of time prior to the Commencement Date), and (b) thereafter, provide its share of Line Fill as is required pursuant to the Rules.
- 3.5 If any Term Shipper (including Shipper) or Direct Owner does not provide its proportionate share of Line Fill within the time period set forth in the Line Fill Notice, then Transporter shall promptly notify the other Term Shippers and any Direct Owner of such failure, and the other Term Shippers or any Direct Owner shall have the right, but not the obligation, to provide the outstanding Line Fill, provided that the failure on the part of a Term Shipper or any Direct Owner to provide its Line Fill shall not affect the Commencement Date.

ARTICLE 4 PRE-COMMENCEMENT DATE TERMINATION

- 4.1 Subject to Section 4.2, either Party may terminate this Agreement, without liability to the other Party, immediately upon Notice to the other Party if the Transporter has not commenced Physical Construction of the Oil Pipeline within 24 months following the later of: (i) the Effective Date; or (ii) confirmation of the completion of the processes set forth in Sections 4.3, if necessary, unless the reason for not having commenced Physical Construction of the Oil Pipeline is due to an event of Force Majeure, in which case the provisions of Article 15 will apply. Immediately upon such termination, Transporter shall return to Shipper any financial assurance that has been provided by Shipper pursuant to Article 18. A Party's right to terminate this Agreement pursuant to this

Section 4.1 will only be triggered on the date that is 24 months after the Effective Date and may only be exercised by such Party at any time following such date but prior to the commencement of Physical Construction by Transporter. For greater certainty, if a Party has not exercised its termination right pursuant to this Section 4.1 within such period, such right of termination shall lapse and be of no further force and effect.

- 4.2 Transporter may not terminate this Agreement where the failure to commence Physical Construction of the Oil Pipeline within 24 months following the later of: (i) the Effective Date; or (ii) confirmation of the completion of the processes set forth in Sections 4.3, if necessary, is due to a Transporter Default.
- 4.3 If a Funding Participant DO has not executed a precedent agreement, and following the Effective Date: (i) the Funding Participant DO's Direct Ownership Option has expired; or (ii) a Funding Participant DO does exercise its Direct Ownership Option but either, does not execute a Direct Ownership Agreement or does execute a Direct Ownership Agreement but for a Direct Ownership Share for less than the maximum that it was entitled to elect for pursuant to its Direct Ownership Agreement, then Transporter shall notify each of the Term Shippers thereof (the "**Unallocated Volumes Notice**"), and shall market the volumes, if any, which are unallocated as a result of the action or inaction above by the Funding Participant DO (hereinafter referred to as the "**Unallocated Volumes**") by inviting potential shippers (including existing Term Shippers) to execute and deliver Transportation Services Agreements, or if applicable, amend their existing Transportation Services Agreements, to subscribe for all or any portion of such Unallocated Volumes.
- (a) For the purposes of allocating the Unallocated Volumes to requesting potential shippers, priority of allocation will be based on the date upon which the Transporter received each requesting potential shipper's executed Transportation Services Agreement with capacity being allocated in the order in which each Transportation Services Agreement was received. Executed Transportation Services Agreements that are received by the Transporter prior to four (4) o'clock p.m. Calgary local time on the same day will be deemed to have been received at the same time on that day for the purposes of determining allocations. If such day is not a Business Day, such Transportation Services Agreement will be deemed to have been received on the next following Business Day, and each relevant potential shipper will be allocated the lesser of: (A) the amount of Unallocated Volumes it requested; or (B) such potential shipper's *pro rata* share of the then remaining unallocated Unallocated Volumes, in the percentage that such requesting potential shipper's Unallocated Volumes requested bears to the aggregate of the Unallocated Volumes being requested by all such requesting potential shippers.
- (b) If Transporter has not, within one-hundred and eighty (180) days following delivery of the Open Season Notice to the Term Shippers, been able to secure commitments from potential shippers (including existing Term Shippers) to subscribe for all of the Unallocated Volumes through the execution of new Transportation Services Agreements or amendments to existing Transportation Services Agreements, then Transporter may, in its sole discretion, elect to terminate this Agreement which termination will be effective the date that Shipper receives such Notice. Immediately upon such termination, Transporter will return to Shipper any financial assurance that has been provided by the Shipper pursuant to Article 18.
- 4.4 Any termination of this Agreement pursuant to Section 4.3 will be without liability, damages, costs or expenses of either Party to the other Party or to any of its shareholders, directors, officers,

employees, agents, consultants or representatives, and the Parties will thereafter have no further rights or obligations whatsoever under this Agreement.

ARTICLE 5 TERM

- 5.1 Upon execution by the Parties, this Agreement will take effect and become binding on the Parties as of the Effective Date and, unless it is terminated in accordance with its terms, will continue in full force and effect until the end of the Term.
- 5.2 The provision of the Services in respect of any Committed Volume and the obligation of Shipper to make payments in respect thereof will commence on the Commencement Date and continue thereafter for the remainder of the Term (or, in the case of Shipper's payment obligations, until all outstanding amounts payable hereunder have been received by Transporter).
- 5.3 Not later than thirty (30) days following the Effective Date, Transporter will provide a Notice to Shipper that states an estimated Commencement Date for the Oil Pipeline. Not later than thirty (30) days following the commencement of Physical Construction of the Oil Pipeline, Transporter will provide a Notice (the "**First Commencement Notice**") to Shipper that states a one-hundred and eighty (180) day period within which Transporter anticipates that the Commencement Date will occur. Transporter shall, at least one year prior to the estimated Commencement Date, issue a further Notice (the "**Second Commencement Notice**") to Shipper that states a ninety (90) day period within which Transporter anticipates that the Commencement Date will occur. Each of the First Commencement Notice and the Second Commencement Notice will be a non-binding estimate. On or before the fifteenth (15th) day of each Month in each of the six (6) Months preceding the ninetieth (90th) day identified in the Second Commencement Notice, the Parties shall discuss the progress of the construction of the Oil Pipeline.
- 5.4 Provided that Shipper is not in material default of any of its obligations under this Agreement, Shipper will have the option to extend the Initial Term for a Renewal Period, which shall be exercisable by Notice from Shipper to Transporter and received by Transporter not later than thirty-six (36) Months prior to: (a) if the Initial Term is one-hundred eighty (180) Months, then the expiry of the Initial Term, or (b) if the Initial Term is two-hundred forty (240) Months, then: (i) the expiry of the Initial Term for the first additional Renewal Period; and (ii) the expiry of the first additional renewal for the second additional Renewal Period.

ARTICLE 6 TOLLS

- 6.1 Subject to, and in accordance with the terms of this Agreement, Shipper will, for each Month during the Term, pay to Transporter the tolls as determined in accordance with the Oil Pipeline Toll Principles and other charges payable for such Month calculated in accordance with Article 7. Subject to Article 9 and Article 10, if Shipper fails in any Month during the Term to deliver its Monthly Committed Volume or all of its scheduled Uncommitted Volumes to Transporter, Shipper will nevertheless be obligated to pay the applicable toll for its Monthly Committed Volume and its scheduled Uncommitted Volumes for such Month, as the case may be.
- 6.2 Subject to the provisions of Article 16 and to the extent required or permitted by Applicable Laws, Transporter agrees not to change the Oil Pipeline Toll Principles for tolls related to Uncommitted Volumes without Shipper's prior written consent, except in respect of Default

Volumes. Subject to Section 14.10, Transporter shall be entitled to market Default Volumes without regard to the Oil Pipeline Toll Principles.

ARTICLE 7
CALCULATION OF MONTHLY PAYMENTS, PAYMENT OF TOLLS AND LIEN FOR UNPAID CHARGES

- 7.1 For each Month of the Term, Shipper will, subject to the terms of this Agreement, pay to Transporter the sum of the following:
- (a) the product of:
 - (i) the FP Option Volume, if any;
 - (ii) the number of days in such Month; and
 - (iii) the FP Option Volume Toll for such Month; and
 - (b) the product of:
 - (i) the Non-FP Option Committed Volume, if any;
 - (ii) the number of days in the Month; and
 - (iii) the Non-FP Option Committed Volume Toll for such Month; and
 - (c) the product of:
 - (i) the greater of: (A) the sum of Shipper's Uncommitted Volumes and Pre-Delivery Volumes scheduled by Transporter in such Month, if any (as adjusted for any apportionment by Transporter); or (B) the sum of Shipper's Uncommitted Volumes and Pre-Delivery Volumes actually delivered by Transporter in such Month, if any; and
 - (ii) the Uncommitted Volume Toll for such Month; and
 - (d) the product of:
 - (i) the greater of: (A) the sum of Shipper's Carry Forward Volumes, Make-Up Volumes or Force Majeure Volumes scheduled by Transporter in such Month (as adjusted for any apportionment by Transporter), if any; or (B) the sum of such Shipper's Carry Forward Volumes, Make-Up Volumes or Force Majeure Volumes actually delivered by Transporter in such Month, if any; and
 - (ii) the proportionate share of the Variable Power Costs for each such Barrel actually delivered to the Delivery Point for such Month; and
 - (e) any other amounts payable by Shipper for such Month pursuant to this Agreement;
- 7.2 Not later than the tenth (10th) Business Day of a Month in Calgary, Alberta, the Transporter will use reasonable commercial efforts to provide Shipper an invoice detailing the amounts payable to the Transporter for the preceding Month.

- 7.3 Each invoice will be payable by Shipper not later than the twenty-fifth (25th) day of the Month in which it was received by Shipper if received on or before the tenth (10th) Business Day of that Month, and otherwise not later than fifteen (15) days following receipt of the invoice (the “**Payment Due Date**”), provided that if the Payment Due Date falls on a day that the designated depository is not open in the normal course of business to receive Shipper’s payment, then Shipper’s payment shall be made not later than the first day after the Payment Due Date that such depository is open in the normal course of business.
- 7.4 For the purposes of this Agreement, the amounts payable by Shipper in this Agreement are exclusive of applicable Taxes. Shipper will be responsible for all applicable Taxes due in respect of all amounts to be paid to Transporter under this Agreement. Transporter will remit all amounts received by it from Shipper which amounts are for the payment of Taxes to the appropriate governmental bodies in accordance with Applicable Laws. Transporter shall be a registrant for the purpose of the *Excise Tax Act* and pursuant to any other or similar process which would entitle the Shipper to an input tax credit or similar benefit.
- 7.5 If Shipper fails to pay all of the amount of any invoice as herein provided when such amount is due:
- (a) interest on the unpaid portion of the bill will accrue daily at a rate of interest per annum equal to the Prime Rate (as it may vary from time to time) plus two (2) percentage points, and the principal and accrued interest will be payable and due immediately upon demand, and
 - (b) the provisions of Article 14 will apply.

ARTICLE 8 APPORTIONMENT

- 8.1 If, in a Month, the nominations received by Transporter for transportation of Crude Oil in such Month exceed the Available Capacity, then the Available Capacity will be apportioned in accordance with the Rules.
- 8.2 Notwithstanding anything to the contrary in the Rules, if, in a Month, apportionment of transportation capacity on the Oil Pipeline is required, then:
- (a) nominations for Spot Capacity, if any, in such Month shall be apportioned in the following order: (i) Pre-Delivery Volumes, first; (ii) Carry Forward Volumes, second; (iii) Uncommitted Volumes, third; (iv) Make-Up Volumes, fourth; and (v) Force Majeure Volumes, fifth;
 - (b) nominations for Available Reserve Capacity, in such Month shall be apportioned in the following order: (i) Pre-Delivery Volumes, first; (ii) Carry Forward Volumes, second; (iii) Make-Up Volumes, third; (iv) Force Majeure Volumes, fourth; and (v) Uncommitted Volumes, fifth; and
 - (c) nominations for Committed Volumes in such Month shall be apportioned only if the Available Committed Volume Capacity is less than the aggregate of nominated Committed Volumes for such Month.

- 8.3 In a Month where the Transporter reduces the Available Capacity after volume nominations have been accepted by Transporter, and notwithstanding anything to the contrary in the Rules, where apportionment of the accepted nominated volumes is required due to such reduction, such volumes shall be apportioned in the following order: (a) Pre-Delivery Volumes not already delivered to the Receipt Point; (b) Carry Forward Volumes not already delivered to the Receipt Point; and (c) all other scheduled volumes;
- 8.4 In a Month where there are nominations for Uncommitted Volumes the Transporter shall first schedule Uncommitted Volumes to fill the Spot Capacity, if any, and second to fill the Available Reserve Capacity.

ARTICLE 9 CARRY FORWARD VOLUMES AND MAKE-UP VOLUMES

- 9.1 Carry Forward Volumes and Make-Up Volumes shall be held on account by Transporter for shipment by Shipper at any time during the remainder of the Term and for thirty-six (36) Months following the end of the Term, subject to the provisions of Subsection 9.1(b) (the “**Carry Forward Period**”), after which such Carry Forward Volume or Make-Up Volume as the case may be will expire and be removed from Shipper’s Carry Forward Volume and Make-Up Volume account, subject to the following:
- (a) Shipper will be permitted to nominate its Carry Forward Volumes and Make-Up Volumes for a Month during the Carry Forward Period only after it has nominated its Monthly Committed Volume for such Month; and
 - (b) Shipper will have the right to nominate a Carry Forward Volume and a Make-Up Volume during the portion of the Carry Forward Period that is the thirty-six (36) Month period following the end of the Term, provided that such Shipper has entered into an agreement for moving committed volume on the Oil Pipeline. In the event the volume committed under such agreement is less than the Committed Volume under this Agreement, such Shipper’s Carry Forward Volume and Make-Up Volume account will be reduced to the proportion such new committed volume bears to the Committed Volume applicable to that Shipper’s Agreement at the end of the Term.

ARTICLE 10 PRE-DELIVERY VOLUMES

- 10.1 Shipper may, not later than ninety (90) days prior to the date for which Shipper must nominate its volumes of Crude Oil for a Month (the “**Base Month**”), provide Notice to Transporter (a “**Pre-Delivery Notice**”) that it desires to deliver all or a portion of its Monthly Committed Volume for the Base Month prior to the Base Month, such Notice to state the amount of its Monthly Committed Volume in the Base Month that will be delivered prior to the Base Month (its “**Pre-Delivery Volume**”) and the Month (the “**Earlier Month**”) in which Shipper expects to deliver such Pre-Delivery Volume, subject to the following:
- (a) Shipper will be entitled to issue a maximum of two (2) Pre-Delivery Notices per calendar year;

- (b) Acceptance in the Earlier Month by Transporter of a Pre-Delivery Volume will be subject to the Available Capacity and the apportionment provisions set forth in Article 8 and the Rules;
- (c) Shipper will be permitted to nominate its Pre-Delivery Volume for the Earlier Month only after it has nominated its Monthly Committed Volume for the Earlier Month.
- (d) If Shipper has properly notified Transporter, in accordance with the provisions of this Article 10, and has shipped all, or a portion of, its Pre-Delivery Volume in accordance with Section 10.1, Shipper will, during the Base Month, reduce its nominations for Committed Volume by an amount that is equal to or less than the amount of the Pre-Delivery Volumes that was shipped in the Earlier Month. On the invoice for the Base Month, Transporter will credit to Shipper an amount that is the product of: (i) the number of Barrels by which Shipper has reduced its nomination; and (ii) the Uncommitted Volume Toll applicable to such Pre-Delivery Volumes.
- (e) Any such nomination reduction made by Shipper will not create a Carry Forward Volume for the purposes of Section 9.1.

ARTICLE 11 EXPANSIONS

- 11.1 Any Person may request that Transporter undertake an Expansion (each an “**Expansion Requesting Shipper**”) in order to accommodate a committed volume in excess of the Committed Volumes (“**Expansion Volumes**”) by executing and returning to Transporter a backstopping agreement in form and substance acceptable to Transporter, acting reasonably, in respect of the Expansion request (“**Expansion Request**”).
- 11.2 Within thirty (30) days of an Expansion Request, Transporter shall solicit by Notice to the Term Shippers (and Term Shippers shall have thirty (30) days from receipt of such Notice to respond) to determine:
 - (a) if any Term Shipper will terminate or amend its existing Transportation Services Agreement by releasing all or a portion of its respective Committed Volume back to Transporter for the purpose of minimizing or eliminating the need for the Expansion (“**Capacity Release**”), which terminations or amendments may be accepted by Transporter on a *pro rata* basis until all Expansion Volumes requested pursuant to Section 11.1 or 11.2(b) are satisfied by such Capacity Release, provided that any such terminations or amendments shall be: (i) conditional on the execution of a Transportation Services Agreement pursuant to Section 11.6 with one or more Expansion Requesting Shippers to assume the released Committed Volume; and (ii) such Capacity Release does not negatively impact Transporter, and
 - (b) if any Term Shipper has a requirement for Expansion Volumes (in which case they will be considered an Expansion Requesting Shipper once they execute and return to Transporter a backstopping agreement in form and substance acceptable to Transporter, acting reasonably).
- 11.3 Within ninety (90) days of an Expansion Request, if there is insufficient capacity available pursuant to Capacity Releases approved pursuant to Section 11.2(a) to satisfy the Expansion

Volumes requested by Expansion Requesting Shippers, Transporter shall allocate the Capacity Release approved pursuant to Section 11.2(a) as follows:

- (a) firstly, to Expansion Requesting Shippers who are Funding Participants *pro rata* based on the Expansion Volumes requested;
- (b) secondly, to Expansion Requesting Shippers who are Term Shippers (other than Funding Participants) *pro rata* based on the Expansion Volumes requested; and
- (c) finally, to Expansion Requesting Shippers who are not Term Shippers (other than Funding Participants) *pro rata* based on the Expansion Volumes requested,

and, to the extent any Expansion Volumes remain unallocated (“**Unallocated Expansion Volumes**”) following the allocation of the Capacity Release, if any, above, Transporter shall, subject to the backstopping agreements entered into pursuant to Section 11.1 and 11.2(b), undertake technical studies to determine the scope, cost and effect on the Oil Pipeline Toll, and schedule for the requested Expansion in regards to such Unallocated Expansion Volumes.

11.4 Subject to Section 11.5, if the technical studies undertaken pursuant to Section 11.3 indicate that there will be insufficient Expansion capacity available following an Expansion to satisfy the Unallocated Expansion Volumes and any Expansion capacity that a Direct Owner elects to participate for (which capacity election shall not exceed the product of the Direct Ownership Share multiplied by the difference between the Expansion capacity and the portion thereof allocable for reserve capacity), Transporter shall allocate to the Unallocated Expansion Volumes the Expansion capacity (less such Expansion capacity that a Direct Owner elects to participate for) that will be available following an Expansion as follows:

- (a) firstly, to Expansion Requesting Shippers who are Funding Participants *pro rata* based on the Expansion Volumes requested;
- (b) secondly, to Expansion Requesting Shippers who are Term Shippers (other than Funding Participants) *pro rata* based on the Expansion Volumes requested; and
- (c) finally, to Expansion Requesting Shippers who are not Term Shippers (other than Funding Participants) *pro rata* based on the Expansion Volumes requested.

11.5 Subject to the approval of the NEB, if there is insufficient capacity available pursuant to any Capacity Releases approved pursuant to Section 11.2(a) to satisfy the Expansion Volumes requested by Expansion Requesting Shippers, then Transporter shall undertake an Expansion, provided that such Expansion shall only be undertaken if Transporter, reasonably determines that the Expansion and Expansion Volumes requested by Expansion Requesting Shippers will not have the effect of increasing the Oil Pipeline Toll (applicable to a Founding Shipper under a Transportation Services Agreement after any Expansion).

11.6 (a) Subject to Section 11.6(b), Expansion Requesting Shippers that have been allocated Expansion capacity pursuant to an Expansion or any Capacity Release shall be required to execute and deliver a new Transportation Services Agreement for the Expansion Volumes allocated to it, which Transportation Services Agreement will be for a minimum term of 15 years from the in-service date of the Expansion.

(b) A Direct Owner shall only be required to execute and deliver a new Transportation Services Agreement pursuant to Section 11.6(a) where it is allocated capacity pursuant to Section 11.3.

11.7 Subject to Section 11.5, Transporter shall use reasonable commercial efforts to complete an Expansion within sixty (60) months or as soon as practicable from the date that an Expansion Request is made pursuant to Section 11.1.

ARTICLE 12 CONFIDENTIALITY

12.1 Subject to Sections 12.2 and 12.3, each Party (a "**Recipient**") to which Confidential Information of the other Party (a "**Disclosing Party**") is disclosed as a result of, or in connection with, this Agreement agrees that such Confidential Information will be kept confidential and Recipient will not disclose such Confidential Information to any third party without the prior written consent of Disclosing Party.

12.2 For the purposes of Section 12.1, the following information will not be considered Confidential Information and will not be subject to any obligation of confidence:

- (a) any information that is within the public domain at the time of its disclosure to the Recipient or that thereafter enters the public domain through no fault of the Recipient, but only after such information becomes part of the public domain;
- (b) any information (other than the provisions of this Agreement) that the Recipient can show was in its possession prior to receipt or acquisition thereof from the Disclosing Party and that is not subject to an obligation of confidence;
- (c) any information (other than the provisions of this Agreement) that, following its disclosure by the Disclosing Party to the Recipient is received by the Recipient without obligation of confidence from a third party who the Recipient had no reason to believe was not properly or lawfully in possession of such information free from any obligation of confidence;
- (d) any information that is developed independently at any time by a Recipient without the use of the Confidential Information, alone or in conjunction with a third party;
- (e) any information that a Disclosing Party agrees in writing is not Confidential Information.

12.3 The following Confidential Information may be disclosed to a third party without the consent of the Disclosing Party provided that Recipient will impose the obligations of confidence set forth in Section 12.1 upon the third party receiving the information, and provided further that Recipient will be liable to Disclosing Party for a breach of such obligations of confidence by the third party:

- (a) any information that is reasonably required by a lender, investor or potential lender or investor in order for Recipient to obtain, maintain or renew any loan or investment or to any other Person in connection with obtaining any form of financing by Recipient;

- (b) any information that is reasonably required by an insurer or potential insurer in order for Recipient to obtain, maintain or renew any insurance concerning any of its activities required or incidental to this Agreement;
 - (c) any information that is reasonably required by a third party for the sole purpose of evaluating a potential purchase of the Oil Pipeline, the Transporter, or any interest in either;
 - (d) any information that is reasonably required by a third party for the sole purpose of evaluating the potential acquisition of the Shipper or any of the assets of the Shipper including capacity hereunder, where, as a result of such acquisition, the third party would assume all or certain of the rights and obligations under this Agreement;
 - (e) any information that is reasonably required by an Affiliate of Recipient;
 - (f) any information that is disclosed by: (i) a Recipient; (ii) an Affiliate of a Recipient; or (iii) by a third party to whom disclosure by a Recipient is otherwise permitted hereunder to its shareholders, counsel, professional advisers, underwriters or any of their respective directors, officers or employees; and
 - (g) any information that is reasonably required by an arbitrator.
- 12.4 A Recipient may disclose any Confidential Information that is required to be disclosed by Applicable Law to a Governmental Authority or to the public without the consent of the Disclosing Party provided that where the Recipient is required to disclose any Confidential Information by Applicable Law, to a Governmental Authority or the public, the Recipient shall notify the Disclosing Party promptly upon the Recipient becoming aware that such disclosure is required or may be required. Before disclosing any Confidential Information, the Recipient shall, to the extent permissible, allow the Disclosing Party the opportunity to prevent or limit such disclosure, apply for a protective order, or obtain assurances of confidentiality from the recipient of the Confidential Information, and the Recipient shall cooperate with the Disclosing Party to the extent reasonably possible to carry out any such actions.
- 12.5 The Parties will co-operate in releasing information concerning this Agreement, and will furnish to, discuss with, and obtain written approval from the other Party for drafts of all press and other releases prior to publication, which approval may be reasonably withheld; provided that nothing contained herein will prevent either Party, at any time, from furnishing any information to any Governmental Authority or to the public if and to the extent required by the rules of any applicable stock exchange.

ARTICLE 13 GENERAL LIABILITY AND INDEMNITY

- 13.1 Each Party will:
- (a) be liable to the other Party, its Affiliates and each of their respective directors, officers, contractors, agents and employees, for all Losses which they may sustain, pay or incur, and in addition,
 - (b) indemnify and save harmless the other Party, its Affiliates and each of their respective directors, officers, contractors, agents and employees, from all actions, causes of action,

proceedings, demands and Losses, which may be brought against, suffered, paid, incurred or made against them,

resulting from any breach of this Agreement, any breach of any Applicable Laws, as a result of acts undertaken or omissions made pursuant to this Agreement or any tortious act or omission or negligence or wilful misconduct in connection with this Agreement on the part of the indemnifying party or of its directors, officers, contractors, suppliers, agents or employees. An act or omission by an indemnifying party will be deemed not to result in liability or a right to indemnity hereunder if that act or omission is done or omitted pursuant to the electronic or written instruction of the Party asserting liability or seeking indemnity.

- 13.2 Notwithstanding anything else contained in this Agreement to the contrary, no Party will be liable for Consequential Losses that arise out of or relate to this Agreement incurred by any other Party or such other Party's Affiliates regardless of whether such Consequential Losses arise under or result from contract, tort or strict liability.
- 13.3 If Crude Oil is lost while in the custody of Transporter on the Oil Pipeline, the full amount of the loss of Crude Oil shall be borne by the shippers on the Oil Pipeline in the proportions that their respective (receipts + deliveries)/2 bear to all (receipts + deliveries)/2 for transportation service on the Oil Pipeline for the Month in which the loss occurs. If it can be determined that the lost Crude Oil is owned by one or more identifiable shippers, the full loss shall be borne by those shippers in the proportions of their respective volumes of lost Crude Oil. Notwithstanding the foregoing, where Crude Oil is lost while in the custody of Transporter on the Oil Pipeline and such losses are caused by Transporter's gross negligence or wilful misconduct, such loss shall be borne by Transporter and the valuation methodology will be agreed to by the affected parties at the time of such loss, provided that such valuation methodology will be representative of the market price for such Crude Oil at the time of such loss. In the event the affected parties cannot agree on a valuation methodology, such matter shall be addressed by the dispute resolution procedures outlined in Article 17.
- 13.4 Transporter shall:
- (a) be liable to the Shipper, its Affiliates and each of their respective directors, officers, contractors, agents and employees for all Losses, which they may sustain, pay or incur; and in addition;
 - (b) indemnify the Shipper, its Affiliates and each of their respective directors, officers, contractors, agents and employees from all Losses, actions, causes of action, proceedings and demands, which may be suffered, sustained, paid or incurred by other Persons (where intra-party or inter-party) brought or made against them;

arising from or related to any and all environmental damage, pollution, compensation, contamination, abandonment, reclamation or other environmental liabilities pertaining to, related to, caused by or emanating from the Oil Pipeline, howsoever caused, except where such environmental damage, pollution, compensation, contamination or other environmental liabilities is attributable to a breach of any Applicable Laws, negligence, tortious act or omission, wilful misconduct or a breach of this Agreement by Shipper.

ARTICLE 14
DEFAULT

- 14.1 The occurrence and continuation of a material breach by Transporter of any of its obligations under this Agreement will be a “**Transporter Default**”.
- 14.2 Any of the following events, unless caused by a breach by Transporter of its obligations under this Agreement, will be a “**Shipper Default**” in respect of Shipper:
- (a) the occurrence and continuation of a material breach by Shipper of any of its obligations under this Agreement;
 - (b) subject to Section 14.6, the failure by Shipper to pay its invoice pursuant to Article 7 or any other amount due hereunder or the failure by Shipper or its Guarantor to maintain the Adequate Financial Assurance, if required, pursuant to Article 18;
 - (c) the occurrence and continuation of a material default by Shipper, or an Affiliate of Shipper, under the terms of a transportation services agreement respecting the Condensate Pipeline;
 - (d) the occurrence and continuation of a material default by Shipper, or an Affiliate of Shipper, under the terms of a Funding Support Agreement or any of its agreements defining the rights and obligations of the Shipper, or the Affiliate of the Shipper, as a Funding Participant, if any; or
 - (e) the occurrence and continuation of a material default by Shipper, or an Affiliate of Shipper, under the terms of any of its agreements defining the rights and obligations of the Shipper, or the Affiliate of the Shipper, as an equity owner of the Transporter or as a Direct Owner, if any.
- 14.3 Upon the occurrence of a Transporter Default or a Shipper Default (in each case a “**Default**”), Transporter or Shipper, as the case may be, may provide Notice to the defaulting Party, describing the Default in reasonable detail and requiring the defaulting Party to remedy the Default (the “**Default Notice**”).
- 14.4 If a Shipper Default, other than a default under Section 14.2(b) has not been remedied within sixty (60) days, following receipt by the Shipper of a Default Notice, Transporter may by written termination Notice to the Shipper, terminate this Agreement, such termination to be effective on the tenth (10th) day following receipt of the termination Notice by the Shipper, provided however, that if during such sixty (60) day period for a Default the Shipper has commenced to remedy the Shipper Default and is continuing in good faith its efforts to remedy such breach, the entitlement of the Transporter to terminate this Agreement shall be suspended until the earlier of the cessation by the Shipper of such efforts and the date which is six (6) Months after the date of the Default Notice.
- 14.5 If a Shipper Default under Section 14.2(b) has not been remedied within ten (10) days, following receipt by the Shipper of a Default Notice, Transporter may:
- (a) by written termination Notice to the Shipper, terminate this Agreement, such termination to be effective on the tenth (10th) day following receipt of the termination Notice by the Shipper;

- (b) suspend further receipt of Crude Oil from Shipper until such amount is paid;
- (c) transfer ownership of a sufficient amount of the Shipper's Crude Oil to Transporter that may at any time be in the possession of Transporter in satisfaction of any amounts owing by the Shipper to Transporter that are the subject of a Shipper Default. Transporter may effect such transfer by giving Notice to Shipper which Notice will describe the date upon which the transfer to Transporter is effective, the volume of Crude Oil transferred, the value of the Crude Oil transferred and the amount of the indebtedness satisfied by the transfer. For the purpose of determining the price of the Crude Oil being transferred to Transporter pursuant to this Section 14.5(c), the parties will use the arithmetic average of the prices posted for the applicable quality of Crude Oil by refiners at or near Edmonton Alberta less applicable transportation costs from Edmonton to the point of transfer; or
- (d) immediately and without further Notice to Shipper, directly or through an agent, remove and sell any Crude Oil delivered to the Oil Pipeline by Shipper or for Shipper's account and then in the custody of the Transporter or its agent, in such manner as deemed appropriate by Transporter, including without limitation, by public auction. If by public auction, such auction will be held at the office of Transporter, in Calgary, Alberta, Canada, on any Business Day, any time after 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, stating the time, place of sale, type, quantity and location of Crude Oil to be sold. At said sale, Transporter will have the right to bid and, if the highest bidder, to become the purchaser. From the proceeds of such sale Transporter will pay itself all amounts owing to it by the Shipper under this Agreement (including any interest accrued thereon), and may further use such proceeds to pay itself reasonable storage charges pending sale and expenses incident to such sale including, without limitation, incremental transportation costs that arise in respect of the handling and transport of such Crude Oil. Transporter will remit the balance remaining, if any, to the Shipper. Any such funds may be commingled in any other account or accounts maintained by the Transporter from time to time. Shipper covenants and agrees not to dispose of Crude Oil other than as set forth in this Section 14.5(d).

14.6 Notwithstanding Section 14.5, if Shipper:

- (a) in good faith, disputes the amount of any such statement or part thereof and has provided Notice to the Transporter of same prior to the Payment Due Date; and
- (b) pays to the Transporter such amounts as it concedes to be correct and thereafter, within twenty (20) days after a demand made by the Transporter, places into trust with its solicitor on terms and conditions satisfactory to the Transporter, the disputed amount;

then the Transporter will not be entitled to terminate this Agreement or suspend further receipt of, or remove and sell any, Crude Oil because of such non-payment. Shipper's payment obligations hereunder will continue notwithstanding the exercise by the Transporter of any remedies it may have pursuant to this Agreement or at law.

- 14.7 If a Transporter Default has not been remedied within sixty (60) days, following receipt by the Transporter of a Default Notice, Shipper may, subject to the provisions of any Lender Consent Agreement, by termination Notice to the Transporter, terminate this Agreement, such termination to be effective on the tenth (10th) day following receipt of the termination Notice by the Transporter; provided, however, that if during such sixty (60) day period the Transporter has

commenced remedying the Transporter Default and is continuing in good faith its efforts to remedy such breach, the entitlement of the Shipper to terminate this Agreement will be suspended until the earlier of the cessation by the Transporter of such efforts and the date which is six (6) Months after the date of the Default Notice.

- 14.8 If Shipper is subject to an Insolvency Event, then Transporter will have the right, for so long as Shipper is subject to an Insolvency Event, to: (i) request pre-payment of tolls and any other amounts that will be payable for Services hereunder, and where Shipper fails to make such pre-payment, Transporter will have the right to immediately suspend Services to Shipper; or (ii) terminate this Agreement by sending a Default Notice, such termination will be effective on the tenth (10th) day following receipt of the Default Notice by the Shipper.
- 14.9 Transporter will have the right to terminate this Agreement by sending a Default Notice if Shipper's Guarantor or any provider of an Adequate Financial Assurance on behalf of Shipper is subject to an Insolvency Event. Such termination will be effective on the tenth (10th) day following receipt of the Default Notice by the Shipper, unless, within such period, Shipper has provided a replacement Adequate Financial Assurance, provided that whether or not the Transporter has given Notice of termination of this Agreement under this Section 14.9 and notwithstanding any restriction on the Transporter giving any such Notice which may then apply, the Transporter will not be required to perform its obligations hereunder until such time as the Transporter has received a replacement Adequate Financial Assurance in respect of the provision of such Services.
- 14.10 Where Default Volumes arise as a result of a default by any Term Shipper, Transporter shall provide to each non-defaulting Founding Shipper an option, which option is exercisable within ten (10) days from receipt of Notice from Transporter in respect thereof, to increase the non-defaulting Founding Shipper's Committed Volume by a volume not to exceed the Default Volumes, and the toll payable for such Default Volumes shall be at the same Oil Pipeline Toll as was payable by the defaulting Term Shipper. If the aggregate of the Default Volumes sought by the non-defaulting Founding Shippers exceeds the Default Volumes available, each non-defaulting Founding Shipper shall be entitled to their pro rata share of such Default Volumes (based on their FP Option Volumes) provided that if a non-defaulting Founding Shipper, as a result of such pro rata allocation, would receive less than the portion of the Default Volumes it elected to assume, such non-defaulting Founding Shipper can elect not to have its Committed Volume increased and such Default Volumes shall be made available to the other electing non-defaulting Founding Shippers on a pro rata basis. If the aggregate of the Default Volumes sought by the non-defaulting Founding Shippers is less than the Default Volumes, Transporter shall be entitled to provide to other Term Shippers or Third Parties the option to contract for an amount equal to such remaining Default Volumes, provided that if the terms of such contract provides for a toll applicable to such Default Volumes that is less than the Oil Pipeline Toll that was payable by the defaulting Term Shipper for such Default Volumes, then each Founding Shipper shall have a further option, exercisable in the same manner as the initial option and subject to the same rules respecting proration, to increase the non-defaulting Founding Shipper's Committed Volume by a volume not to exceed the Default Volumes, and the toll payable for such Default Volumes shall be the same toll as is being offered to the other Term Shippers or Third Parties.
- 14.11 If Transporter has, or is subject to, an Insolvency Event that results in Transporter becoming unable to continue to construct the Oil Pipeline or provide the Services or that results in Transporter (or any receiver or trustee in bankruptcy of Transporter) electing to discontinue the construction of the Oil Pipeline or the provision of the Services, then Shipper will, for so long as Transporter is subject to an Insolvency Event and subject to the provisions of any Lender Consent

Agreements, have the right to terminate this Agreement by sending a Default Notice to Transporter,. Such termination will be effective on the tenth (10th) day following receipt of the Default Notice by the Transporter unless, within such period, Transporter has provided either a guarantee, in form and substance that is acceptable to Shipper in its sole discretion, of all of the obligations of Transporter pursuant to this Agreement from a Third Party (including an Affiliate of a Party) that, at the time that the guarantee is provided, has an Investment Grade Credit Rating or such other credit assurance that is acceptable to Shipper acting reasonably.

- 14.12 Any lost revenues or related losses associated with any Default Volumes or the failure to pay on the part of any shipper on the Oil Pipeline shall not be recoverable by Transporter through the Oil Pipeline Tolls.
- 14.13 The above remedies for Default are in addition to any other remedy Shipper or Transporter, whichever is applicable, may have at law or equity or pursuant to this Agreement.

ARTICLE 15 FORCE MAJEURE

- 15.1 Transporter Force Majeure. If Transporter is unable to perform any obligations, including in respect of constructing the Oil Pipeline or providing any of the Services, due to an event of Force Majeure (a “**Transporter Force Majeure**”), such failure will be deemed not to be a breach of such obligations, insofar as they are affected by such Transporter Force Majeure. Transporter will make reasonable attempts to remedy such event, provided that the terms of the settlement of any strike, lockout, or other industrial disturbance will be wholly in the discretion of Transporter. Transporter will promptly notify Shipper in writing of any Transporter Force Majeure event and will provide a non-binding, written estimate of the anticipated duration of the Transporter Force Majeure event.
- 15.2 Payment Obligation during Transporter Force Majeure.
- (a) If an event of Transporter Force Majeure continues for a continuous period of twelve (12) Months, after the twelfth (12th) Month and for so long as Transporter is unable to provide the Services for Shipper’s Committed Volume (the “**Toll Relief Period**”), Shipper will, subject to 15.2(b), be relieved of its obligation to pay the Oil Pipeline Tolls to the extent the Services are affected, except that portion of the Oil Pipeline Tolls that pertains to the Cost of Debt;
 - (b) Losses of Transporter incurred during a Toll Relief Period as a result of Term Shippers paying reduced tolls pursuant to Section 15.2(a) shall not be included in the determination of the Prior Year Variance provided in Section 1 of the Oil Pipeline Toll Principles.
- 15.3 Force Majeure Volumes. For any Force Majeure Volumes that accrue to Shipper during an event of Transporter Force Majeure, Shipper may make up the Force Majeure Volume subject to the following:
- (a) subject to subsection 15.3(c) below, Shipper may, following the date upon which the event of Force Majeure ended, nominate its Force Majeure Volume at any point during the remainder of the Term or the term of any new agreement for committed volumes that Shipper may execute with Transporter following the end of the Term and for

thirty-six (36) Months following the end of the Term, subject to the provisions of Subsection 15.3(e) (the “**Make Up Period**”).

- (b) during the Make Up Period, in the Month that Shipper nominates any Force Majeure Volumes that accrued to it:
 - (i) prior to the Toll Relief Period, Shipper shall not be required to pay a toll for such Force Majeure Volumes other than its proportionate share of the Variable Power Costs for each such Force Majeure Volume actually delivered to the Delivery Point;
 - (ii) during the Toll Relief Period, Shipper shall be obligated to pay that portion of the Oil Pipeline Tolls applicable to such Force Majeure Volumes being nominated that it received relief from during the Toll Relief Period and its proportionate share of the Variable Power Costs for each such Force Majeure Volumes actually delivered to the Delivery Point.
- (c) nomination for a Month by Shipper of any Force Majeure Volumes will be subject to the apportionment provisions set forth in Article 8 and the Rules; and
- (d) Shipper may nominate any portion of its Force Majeure Volumes for a Month during the Make Up Period only after it has nominated its full Monthly Committed Volume for such Month.
- (e) Shipper will have the right to nominate any portion of its Force Majeure Volumes during the portion of the Make Up Period that is the thirty-six (36) Month period following the end of the Term, provided that Shipper has entered into an agreement for moving committed volume on the Oil Pipeline.

15.4 Shipper Force Majeure. Subject to Section 15.5, if Shipper is unable to perform any obligations due to an event of Force Majeure (a “**Shipper Force Majeure**”), such failure will be deemed not to be a breach of such obligations, insofar as they are affected by such Shipper Force Majeure, for the duration of the event of Shipper Force Majeure. Shipper will make reasonable attempts to remedy such event, provided that the terms of the settlement of any strike, lockout, or other industrial disturbance will be wholly in the discretion of Shipper. Shipper will promptly notify Transporter in writing of any Shipper Force Majeure event and will provide a non-binding, written estimate of the anticipated duration of the Shipper Force Majeure event.

15.5 Continuing Obligations During Shipper Force Majeure. It is expressly agreed that any cause or event whatsoever, including a Shipper Force Majeure, that renders Shipper unable to, deliver Crude Oil to the Oil Pipeline, or accept delivery of Crude Oil from the Oil Pipeline will not excuse or suspend Shipper's obligation to: (i) make any payment provided for in this Agreement; (ii) provide any financial assurances required in accordance with this Agreement; or (iii) remove its Crude Oil pursuant to the Rules.

ARTICLE 16 COMMON CARRIER AND COMPLIANCE WITH LAWS

16.1 The Oil Pipeline will be operated as a common carrier pipeline and Shipper's rights hereunder will be subject to all Applicable Laws related to common carrier pipelines, except as such rights

are modified hereunder and to the extent that such modifications are approved by the NEB, provided that the Direct Ownership Capacity will not be operated as a common carrier pipeline.

- 16.2 Both Parties will, in carrying out the terms and conditions hereof, abide by all present and future Applicable Laws of any Governmental Authority having jurisdiction over this Agreement.
- 16.3 If any part of this Agreement is found invalid by a court of competent jurisdiction, or is found by the NEB or other Governmental Authority to be in conflict with any such valid and Applicable Laws, statute, regulation, order, or rule, this Agreement will, subject to the consent of the Parties, be deemed to be amended to the extent required to comply with such law, statute, regulation, order, or rule. If a Party will not consent to amending the Agreement, the Parties will refer such matter to Dispute Resolution.

ARTICLE 17 DISPUTE RESOLUTION

- 17.1 The Parties agree to attempt to resolve any disputes arising under this Agreement through consultation and negotiation in good faith. If the Parties are not, in respect of any dispute arising under this Agreement, able to reach a negotiated resolution of such dispute within ninety (90) days of the initiation of the consultation and negotiation, they agree to resolve that dispute through binding arbitration, subject to Section 17.2 and 17.8. Either Party may refer a dispute arising under this Agreement that is not subject to the jurisdiction of the NEB or subject to Section 17.8 to dispute resolution by providing Notice to the other Party of its intention to refer the dispute to arbitration (“**Dispute Resolution**”).
- 17.2 Any dispute that is subject to the jurisdiction of the NEB will be referred to the NEB. Where a disagreement arises concerning whether a dispute is subject to the jurisdiction of the NEB, such matter will be referred to the NEB for resolution.
- 17.3 All arbitrations conducted hereunder will take place in English before a panel of three arbitrators in Calgary, Alberta. Arbitration will be conducted in accordance with the National Arbitration Rules of the ADR Institute of Canada Inc. and any amendments thereto (the “**Arbitration Rules**”) except to the extent that the Arbitration Rules are inconsistent with or in conflict with any terms of this Article 17. Any other statute that applies to the Dispute Resolution will apply only to the extent that it is not inconsistent with this Article 17. The decision of the panel of the arbitrators will be final and binding and not subject to appeal.
- 17.4 There will be one arbitrator appointed by each of the Parties to the dispute. The third arbitrator on the panel shall be appointed by the mutual agreement of the arbitrators appointed by the Parties. Each arbitrator will sign a declaration attesting as to his or her impartiality with respect to the Parties to the dispute and to the dispute. If, after twenty (20) days following the appointment of the first two arbitrators, they have not agreed on the appointment of the third arbitrator, the Court of Queen’s Bench of the Province of Alberta will, on application by either Party, appoint the final arbitrator. Any person serving as an arbitrator will have training or experience in serving as an arbitrator, and will have legal training if the dispute involves substantive legal issues and will, in any event, be qualified by education and experience to rule on the matters raised by the dispute. Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator will be mutually appointed in accordance with this Section 17.4.

- 17.5 Except as may be modified herein or agreed to by the Parties in writing, the Arbitration Rules shall govern the manner in which the arbitrator will hear witnesses and arguments, review documents and otherwise conduct the arbitration procedure.
- 17.6 Subject only to the express agreement by the Parties to the dispute to amend the date for decision, the arbitrators will issue a written decision within forty-five (45) days from the date of his or their appointment. The decision of the arbitrators will be final and binding on the Parties, will not be subject to any appeal and will deal with the question of the costs of the arbitration and all other related matters.
- 17.7 If a judgment forms a part of the decision of the arbitrators then any award rendered may be entered in any court having jurisdiction over a Party or the Oil Pipeline or application may be made to such court for judicial recognition of the award or an order of enforcement thereof, as the case may be.
- 17.8 Nothing in this Article 17 will prevent a Party to the dispute from applying to a court of competent jurisdiction for or obtaining any interim, interlocutory or preliminary injunctive or declaratory relief at any time prior to the appointment of an arbitrator, during the arbitration proceedings or pending the decision of the arbitrators.
- 17.9 Unless contemplated by the decision of the arbitrators pursuant to Section 17.6, each Party to the dispute will bear its respective costs incurred in connection with the negotiation and arbitration procedures set out in this Article 17. The fees and expenses of the arbitrators and the costs of the facilities required for the arbitration will be awarded at the discretion of the arbitrators.
- 17.10 All information disclosed by a Party in the course of negotiation or arbitration will be treated as confidential and neither the delivery nor disclosure thereof will represent any waiver of privilege by a Party disclosing the same. Unless compelled by a court or regulatory authority of competent jurisdiction, each Party agrees to not disclose information provided by the other Party for purposes of any negotiation or arbitration in connection with the dispute to any other Person for any other purpose, and such information cannot be used in any subsequent proceedings without the consent of the Party who has made disclosure of the same hereunder. The Parties agree that any negotiator or arbitrator appointed hereunder will not be subpoenaed or otherwise compelled as a witness in any proceedings for any purpose whatsoever in relation to any matter that is a subject of the Agreement. Nothing in this Article 17 will cause or require a party to disclose information that is subject to a confidentiality obligation to any Third Party.

ARTICLE 18
FINANCIAL ASSURANCE

- 18.1 If, upon execution and delivery of this Agreement:
- (a) Shipper's common equity is not traded on a recognized North American stock exchange, and Shipper does not have an Investment Grade Credit Rating, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Section 18.3, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount;
 - (b) Shipper's common equity is traded on a recognized North American stock exchange, and Shipper does not have either: (i) an Investment Grade Credit Rating; or (ii) both an Acceptable Corporate Credit Rating and an Acceptable Market Value, then Shipper shall

be required to provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, the amount of which shall be determined in accordance with Section 18.1(c);

- (c) Where, an Adequate Financial Assurance is required to be provided by Shipper to Transporter pursuant to Section 18.1(b) and:
 - (i) Shipper has an Acceptable Corporate Credit Rating and the Shipper Market Value is below the Toll Threshold but is above 80% of the Toll Threshold, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the difference between the Toll Threshold and the Shipper Market Value;
 - (ii) Shipper has an Acceptable Corporate Credit Rating and the Shipper Market Value is less than 80% of the Toll Threshold, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount; or
 - (iii) Shipper does not have an Acceptable Corporate Credit Rating, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount;

provided however that if Shipper can provide assurances to Transporter, which are acceptable to Transporter in its sole discretion, that Shipper will be able to provide Adequate Financial Assurance in accordance with this Section 18.1, Transporter shall not issue a notice to Shipper requiring it to provide Adequate Financial Assurance until thirty (30) days prior to the earlier of the commencement of Physical Construction and the closing date of the financing for the Gateway project.

18.2 Upon the occurrence of a Material Change, the following shall apply:

- (a) if the Material Change is a Private or Foreign Company Material Change, then Shipper shall within ten (10) days following receipt of a demand Notice from Transporter, provide to Transporter and subject to Section 18.3, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount;
- (b) if the Material Change is a Ratings Material Change and Shipper does not have both an Acceptable Corporate Credit Rating and an Acceptable Market Value then, where:
 - (i) Shipper has an Acceptable Corporate Credit Rating and the Shipper Market Value is below the Toll Threshold but is above 80% of the Toll Threshold, then Shipper shall within ten (10) days following receipt of a demand Notice, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the difference between the Toll Threshold and the Shipper Market Value;
 - (ii) Shipper has an Acceptable Corporate Credit Rating and the Shipper Market Value is less than 80% of the Toll Threshold, then Shipper shall within ten (10)

days following receipt of a demand Notice, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount; or

- (iii) Shipper does not have an Acceptable Corporate Credit Rating, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount;
- (c) if the Material Change is a Market Value Material Change and Shipper does not have an Investment Grade Credit Rating, where:
- (i) Shipper has an Acceptable Corporate Credit Rating and the Shipper Market Value is below the Toll Threshold but is above 80% of the Toll Threshold, then Shipper shall within ten (10) days following receipt of a demand Notice, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the difference between the Toll Threshold and the Shipper Market Value;
 - (ii) Shipper has an Acceptable Corporate Credit Rating and the Shipper Market Value is less than 80% of the Toll Threshold, then Shipper shall within ten (10) days following receipt of a demand Notice, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount; or
 - (iii) Shipper does not have an Acceptable Corporate Credit Rating, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount;
- (d) if the Material Change is a Guarantor Material Change or an LC Material Change, Shipper shall within ten (10) days following receipt of a demand Notice from Transporter, provide to Transporter and subject to Sections 18.3 and 18.4, thereafter maintain a replacement Adequate Financial Assurance in an amount equal to the Guaranteed Amount.

18.3 If Shipper has provided an Adequate Financial Assurance to Transporter, and Shipper can subsequently demonstrate by Notice to the Transporter, to the reasonable satisfaction of the Transporter, that:

- (a) if Shipper's common equity is not traded on a recognized North American stock exchange, Shipper's Rated Debt has been assigned an Investment Grade Credit Rating; or
- (b) if Shipper's common equity is traded on a recognized North American stock exchange either:
 - (i) Shipper's Rated Debt has been assigned an Investment Grade Credit Rating; or
 - (ii) Shipper has an Acceptable Corporate Credit Rating and Shipper's common equity has an Acceptable Market Value,

then, subject to Section 18.4, Transporter will, within ten (10) days after receipt of Notice from Shipper, return the Adequate Financial Assurance to Shipper. The return by Transporter of an Adequate Financial Assurance to Shipper in accordance with this Section 18.3 will not constitute a waiver of or in any way impair the rights of Transporter under Section 18.2 to require Shipper to provide an Adequate Financial Assurance in the event of a subsequent Material Change.

- 18.4 If, pursuant to the provisions of this Article 18, Shipper is required to provide an Adequate Financial Assurance pursuant to Subsection 18.1(c)(i) or (ii), 18.2(b)(i) or (ii) or 18.2(c)(i) or (ii), then:
- (a) where its Shipper Market Value is below the Toll Threshold but is above 80% of the Toll Threshold, the Parties will evaluate the Shipper Market Value at the end of each quarter and adjust the Adequate Financial Assurance within ten (10) days of the end of each quarter based on the difference between the Toll Threshold and the Shipper Market Value at the end of such quarter, provided that if at any time the Shipper Market Value falls below 80% of the Toll Threshold, then Shipper shall within ten (10) days following receipt of Notice from Transporter requiring same, provide to Transporter and subject to Section 18.4(b), thereafter maintain an Adequate Financial Assurance, in an amount equal to the Guaranteed Amount.
 - (b) where its Shipper Market Value is less than 80% of the Toll Threshold, the Parties will evaluate the Shipper Market Value on a quarterly basis, and to the extent, at the end of a quarter, the Shipper Market Value is greater than 80% of the Toll Threshold, then the Parties shall adjust the Adequate Financial Assurance within ten (10) days from the end of such quarter.
- 18.5 Until the Oil Pipeline Toll is approved by the NEB, the Parties will rely on the Class III Toll Estimate for the purpose of the calculation of the amount or value of any Adequate Financial Assurance to be provided by Shipper pursuant to this Article 18. Once the Oil Pipeline Toll is finalized, the Parties shall adjust the amount of such Adequate Financial Assurance to account for any difference between the Oil Pipeline Toll and the Class III Toll Estimate.
- 18.6 Maintaining an Adequate Financial Assurance will include the provision of a replacement Adequate Financial Assurance at least thirty (30) days prior to the day upon which the term of an Adequate Financial Assurance expires. Notwithstanding the foregoing, in the case of an issuer of an Adequate Financial Assurance disclaiming, repudiating, or rejecting the Adequate Financial Assurance, or challenging the validity or enforceability thereof, the Shipper will provide to Transporter a replacement Adequate Financial Assurance within ten (10) days of such issuer disclaiming, repudiating or rejecting the Adequate Financial Assurance, or challenging the validity or enforceability thereof.
- 18.7 In the event of a change to the amounts that are payable by Shipper under this Agreement as determined by Transporter, the required amount of the Adequate Financial Assurance will be increased or decreased, as the case may be, to reflect such changes. In the event of an increase, Shipper will, upon it being determined that there will be an increase to the amounts that are payable by it hereunder, provide a replacement or additional Adequate Financial Assurance not later than ten (10) days following the day upon which such determination is made in an amount equal to the aggregate amount that is then owing. In the event of a decrease, Shipper may, upon it being determined that there will be a decrease to the amounts that are payable by it hereunder, provide a replacement Adequate Financial Assurance in an amount equal to the aggregate amount that is then owing. Where a replacement Adequate Financial Assurance is to be provided by

Shipper pursuant to this Section 18.7, Transporter shall return to Shipper the Adequate Financial Assurance being replaced concurrently with the delivery of the replacement Adequate Financial Assurance by Shipper.

- 18.8 Where Shipper assigns its interest in this Agreement in accordance with the provisions of this Agreement, the Parties will, on or prior to such assignment, take all steps necessary, including without limitation the issuance of new Adequate Financial Assurance and the return or surrender of the old Adequate Financial Assurance. Transporter will not be required to release or surrender any security, including without limitation, any Adequate Financial Assurance, that it holds from Shipper until all obligations of Shipper relating to the assigned interest which were accrued prior to the effective time of the assignment are performed or fulfilled by Shipper.
- 18.9 At any time, upon the request of the Transporter, Shipper will provide information to the Transporter that is reasonably required to allow the Transporter to determine the Shipper's capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Oil under the terms of this Agreement, including the payment of tolls.

ARTICLE 19 MAINTENANCE

- 19.1 Transporter will conduct scheduled maintenance activities in accordance with Prudent Practices ("**Scheduled Maintenance**"). Transporter will, in its discretion, determine the dates on which it intends to curtail or suspend Services for Scheduled Maintenance and notify Shipper of such dates not less than six (6) Months prior to the date of each Scheduled Maintenance.
- 19.2 If an unexpected event occurs (other than an event of Force Majeure) which requires Transporter to conduct unscheduled maintenance activities ("**Unscheduled Maintenance**"), Transporter will be entitled, upon giving prompt Notice to the Shipper, to curtail or suspend the Services affected by such Unscheduled Maintenance. Transporter will be without liability to Shipper for any Losses suffered by Shipper as a result of an Unscheduled Maintenance unless such Unscheduled Maintenance could have reasonably been avoided or mitigated through the conduct of Prudent Practices.
- 19.3 Nothing in this Article 19 will be construed as relieving Shipper from any of its payment obligations under this Agreement.
- 19.4 Transporter will use its reasonable commercial efforts to conduct all Scheduled Maintenance and Unscheduled Maintenance on the Oil Pipeline in such a way that results in a minimum of disruption to Shipper.

ARTICLE 20 INSURANCE

- 20.1 Transporter will obtain and continuously maintain as of the Effective Date and until the end of the Term such kinds and amounts of insurance as are consistent with the operation of the Oil Pipeline in accordance with Prudent Practices and Applicable Laws.
- 20.2 Upon receipt of Notice from the Shipper, Transporter shall provide a summary of the insurance in effect covering the Oil Pipeline outlining the limits of insurance; effective dates and insurers for the following insurances:

- (a) automobile liability insurance;
 - (b) aviation liability insurance;
 - (c) commercial general and excess liability insurance;
 - (d) property all risk insurance, as applicable; and
 - (e) any other insurance that may be prudently and customarily maintained by the Transporter.
- 20.3 Where the repair or replacement of portions of the Oil Pipeline is required due to damages or losses incurred by fire, flood, storm, theft, accident or other causes, Transporter shall provide Shipper with written notice of damage or losses incurred as soon as practicable after damage or loss has been discovered. Proceeds of any insurance carried by Transporter shall be allocated when received by Transporter to the appropriate cost or expense items being reimbursed and credited against the applicable portion of the Oil Pipeline Toll.

ARTICLE 21 GENERAL AUDIT RIGHTS

- 21.1 Each of the Term Shippers individually or as a member of a group of Term Shippers may, at its sole cost and expense, engage an independent confidential third party auditor to act on such Term Shipper's behalf; and each Term Shipper individually or as a member of a group of Term Shippers will have the right once a year during the Term and any extension thereof; and for a period of twenty-four (24) Months thereafter, on not less than thirty (30) days Notice to Transporter, to audit that portion of Transporter's books and records required to verify the Annual Operating Expenses, the Capital Expenditures, the volumes of Crude Oil delivered hereunder and shutdowns for maintenance or curtailment.
- 21.2 Term Shippers will only be entitled to conduct one audit pursuant to Section 21.1 for each Year of the Term, regardless of whether such audit was conducted by one or more Term Shippers.
- 21.3 Results of any audit conducted pursuant to Section 21.1 will be supplied by the Term Shipper(s) conducting the audit to Transporter and all other Term Shippers not later than forty-five (45) days following completion of the audit.
- 21.4 The Transporter and Term Shippers shall use reasonable commercial efforts to resolve any discrepancies disclosed by an audit report as soon as reasonably practicable and in any event within one-hundred eighty (180) days following presentation of the audit report to Transporter. If any audit gives rise to a dispute between the Term Shipper(s) conducting the audit and Transporter, such Term Shipper(s) and Transporter will resolve such dispute in accordance with Article 17.

ARTICLE 22 RECORDS

- 22.1 Transporter will maintain or cause to be maintained complete and adequate books and records related to the Oil Pipeline and retain such books or records for a period of not less than seven (7) years from the date of its creation.

**ARTICLE 23
ASSIGNMENT**

- 23.1 Subject to obtaining the prior written consent of the Transporter, such consent not to be unreasonably withheld, Shipper may assign its rights and obligations under this Agreement to a third party (the “Assignee”) in whole or in part of its Committed Volume for the remainder of the Term or for any portion thereof. Shipper may assign its rights and obligations under this Agreement to an Affiliate without the prior consent of Transporter, provided Shipper continues to be bound by all of its rights and obligations under this Agreement and such Affiliate agrees to be bound by all of the restrictions in this Agreement, including the restrictions in this Section 23.1. Transporter will not be required to release Shipper from any of its obligations under this Agreement in connection with any such assignment unless: (a) such obligations have been unconditionally assumed by the Assignee in forms reasonably satisfactory to the Transporter; and (b) the Assignee demonstrates to the satisfaction of the Transporter, acting reasonably, that the Assignee is capable of performing the obligations of Shipper under this Agreement, including meeting and maintaining the Adequate Financial Assurance requirements of Transporter, if required, in all respects.
- 23.2 Subject to obtaining the prior written consent of the Shipper, such consent not to be unreasonably withheld, Transporter may assign all, but not less than all, of its rights and obligations under this Agreement to an Assignee. Transporter may assign its rights and obligations under this Agreement to an Affiliate (with the exception of Tidal Energy Marketing Inc., or its successors) without the prior consent of Shipper. Shipper will not be required to release Transporter from any of its obligations under this Agreement in connection with any such assignment unless: (a) such obligations have been unconditionally assumed by the Assignee in forms reasonably satisfactory to the Shipper; and (b) the Assignee demonstrates to the satisfaction of the Shipper, acting reasonably, that the Assignee is capable of performing the obligations of Transporter under this Agreement.
- 23.3 Except: (a) as contemplated pursuant to Section 23.4 below; or (b) to fulfill Transporter’s obligation to assign to a Direct Owner its Direct Ownership Share of the Oil Pipeline upon the execution by Transporter and the Direct Owner of the Direct Ownership Agreement, from and after the Effective Date and until the end of the Term, Transporter shall be prohibited from assigning to a third party any portion of its ownership interest in the Oil Pipeline, unless:
- (a) in the case of an assignment of Transporter’s entire undivided ownership interest in the Oil Pipeline: (i) the obligations and liabilities of the Transporter under this Agreement have been unconditionally assumed by the Assignee in form reasonably satisfactory to the Shipper; and (ii) the Assignee demonstrates to the satisfaction of the Shipper, acting reasonably, that the Assignee is capable of performing the obligations of Transporter under this Agreement; and
 - (b) in the case of an assignment of a portion of Transporter’s undivided ownership interest in the Oil Pipeline, the Assignee and Transporter have agreed to be jointly and severally liable for the obligations and liabilities of the Transporter under this Agreement, in form reasonably satisfactory to the Shipper.
- 23.4 Notwithstanding Section 23.2 or 23.3 hereof, Transporter will be entitled, without restriction, to make one or more assignments of this Agreement and/or any or all of its rights and benefits hereunder to or for the benefit of Financing Parties, or grant to Financing Parties a lien on or security interest in any right, title or interest in all or any part of Transporter's rights under this

Agreement or in the Oil Pipeline for the purpose of the financing or successive refinancings of the Oil Pipeline; provided, however, that such assignment shall recognize Shipper's rights under this Agreement so long as Shipper is not in default under this Agreement. In order to facilitate the obtaining of financing or successive refinancing of the Oil Pipeline, Shipper shall cooperate with Transporter and shall execute and deliver such consents, acknowledgements, agreements or similar documents as may be reasonably requested by any Financing Party with respect thereto, (a "**Lender Consent Agreement**") and prepare and provide such information and cause its counsel to deliver such opinions, in a form consistent with customary project financing principles, as are reasonably and customarily required by such lenders to give effect to the provisions of this Section 23.4, including agreeing to provide copies of any Default Notice given by Shipper hereunder to the Financing Party and according to the Financing Party a reasonable opportunity to cure any default by Transporter including time to obtain possession or control of the Oil Pipeline, if necessary to effect a cure, and in the case of the bankruptcy or insolvency of Transporter, a reasonable opportunity to make alternative arrangements such that the Shipper will continue to receive Services on the Oil Pipeline substantially in accordance with the terms hereof notwithstanding such bankruptcy or insolvency.

- 23.5 Notwithstanding Section 23.1, Shipper shall be entitled to contract with a third party for the use by such third party of Shipper's rights in respect of any portion of its Committed Volume for the remainder of the Term or for any portion thereof without the prior consent of Transporter, provided that: (a) Shipper shall not be released from any of its obligations and will continue to be bound by all of its obligations under this Agreement; and (b) such third party agrees to comply with the Rules; and (c) Transporter may enforce any rights it may have hereunder through Shipper.

ARTICLE 24 DIRECT OWNERSHIP

- 24.1 If a Funding Participant exercises its Direct Ownership Option, the Transporter shall ensure, unless otherwise ordered by the NEB, that the Direct Ownership Agreement shall include terms and conditions providing for the following:
- (a) there shall be no: (i) subsidization by the Transporter of the Direct Owner's Direct Ownership Share of all costs and expenses associated with the development, construction, ownership and operation of the Oil Pipeline; or (ii) subsidization by the Direct Owner of the Transporter's share (proportionate to its undivided interest in the Oil Pipeline) of all costs and expenses associated with the development, construction, ownership and operation of the Oil Pipeline.
 - (b) the Direct Owner shall be required to provide its proportionate share of Line Fill for the Oil Pipeline within the same time period prior to the Commencement Date as set forth in Section 3.4 and, thereafter, provide its share of Line Fill as is required pursuant to the Rules.
 - (c) Transporter shall be responsible for the operation of the Oil Pipeline and the use by the Direct Owner of its Direct Ownership Capacity shall be subject to such portion of the Rules which relate to the physical operation of the Oil Pipeline and to the provision of Services.
 - (d) a Direct Owner shall be entitled to participate in an Expansion proportionate to its Direct Ownership Share.

- (e) A Direct Owner shall be treated on a proportionate basis with other Term Shippers where the overall capacity of the Oil Pipeline and other facilities used to provide Services is reduced due to operational issues affecting the Oil Pipeline and the provision of Services, including but not limited to, events of Force Majeure and curtailment.

**ARTICLE 25
MISCELLANEOUS**

- 25.1 **Enurement, Entire Agreement and Amendment.** This Agreement will enure to the benefit of and be binding upon each of the Parties and their permitted successors and assigns. This Agreement, the Rules (as may be amended from time to time as contemplated herein), the surviving provisions of any precedent agreement between Shipper and Transporter and, to extent Shipper is a Funding Participant, the Funding Support Agreement between Transporter and Shipper constitute the entire agreement and understanding between the Parties with respect to the subject matter herein, supersedes all prior agreements and understandings with respect thereto, and this Agreement may be amended, restated or supplemented only by written agreement of the Parties.
- 25.2 **Further Assurance.** From time to time, as and when reasonably requested by either Party, the other Party will execute and deliver or cause to be executed and delivered all such documents and instruments and will take or cause to be taken all such further or other actions to implement or give effect to this Agreement, provided such documents, instruments or actions are consistent with the provisions of this Agreement and accepted industry practice. All such further documents, instruments or actions will be delivered or taken at no additional consideration by the Party at whose request such documents or instruments were delivered or acts performed.
- 25.3 **Time.** Time is of the essence of this Agreement.
- 25.4 **Waiver.** The waiver by any Party of a breach or violation of any provision of this Agreement will not operate as or be construed as a waiver of any subsequent breach or violation hereof.
- 25.5 **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without regard to principles of conflicts of laws that, if applied, might require the application of the laws of another jurisdiction. Subject to the terms of this Agreement and of Applicable Laws, the Parties agree to attorn to the jurisdiction of the Court of Queen's Bench of the Province of Alberta in the Judicial District of the City of Calgary for the purpose of resolving any disputes that may arise out of this Agreement that are not dealt with through negotiation, mediation or arbitration.
- 25.6 **Notices.** All notices, requests, elections or other communications (each, a "Notice") to be given pursuant to this Agreement will be in writing and sent by personal service, prepaid registered post, prepaid courier service or by facsimile and will be deemed to be received when delivery or reception of the transmission is complete, except that if such delivery or transmission is after 4:00 pm local time in the location where the delivery or transmission is received, or occurs on any day other than a Business Day, such Notice will be deemed to be received on the next Business Day in the location where the delivery or transmission is received. Notices will be addressed as follows:

If to Transporter:

Northern Gateway Pipelines Limited Partnership
c/o Enbridge Pipelines Inc.
3000, 425 – 1st Street SW
Calgary, AB T2P 3L8

Attention: President
Telephone: •
Fax No.: •

Copy to VP Legal, Enbridge Pipelines Inc.

Attention: VP & Deputy General Counsel
Telephone: (403) 231-5941
Fax: (403) 231-4842

If to Shipper:

•
•
•

Attention: •
Telephone: •
Facsimile: •

A Party may, from time to time, change its address for Notices or its fax number by giving Notice of such change to the other Party at the address noted above.

- 25.7 **Survival of Accrued Liabilities.** Notwithstanding the termination of this Agreement for any reason whatsoever, each Party will be liable for all of its accrued obligations hereunder up to and including the date on which the termination becomes effective.
- 25.8 **Severability.** If any of the provisions of this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein will not be affected or impaired in any way.
- 25.9 **Extension of Limitation Period.** The two year period for seeking a remedial order under Section 3(1)(a) of the *Limitations Act*, R.S.A. 2000 c.L-12;2007 c.22 as amended, for any claim (as defined in that Act) arising in connection with this Agreement and which is disclosed by an audit, is extended to two years after the time this Agreement permits that audit to be performed.
- 25.10 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument.

25.11 **Most Favoured Nations.** Transporter shall not, at any time during the Term, offer or provide Services on the Oil Pipeline to any Term Shipper or Uncommitted Shipper on terms that are more favourable than those provided for in this Agreement (including, without limitation, in respect of the tolls and costs payable by any such Term Shipper or Uncommitted Shipper for Services except as provided for in Section 6.2 in relation to Default Volumes).

IN WITNESS THEREOF, this Agreement is executed on the dates set forth below the respective execution lines, but following execution by both Parties, will be effective as of the Effective Date.

SHIPPER:

•

By

Name: _____

Title: _____

Name: _____

Title: _____

TRANSPORTER:

**NORTHERN GATEWAY PIPELINES LIMITED PARTNERSHIP, by its general partner,
NORTHERN GATEWAY PIPELINES INC.**

By

Name: _____

Title: _____

Name: _____

Title: _____

Schedule "A"

**Attachment to the Transportation Services Agreement
between**

**Northern Gateway Oil Pipelines Limited Partnership
("Transporter"), and**

**•
("Shipper"),**

as of the _____ day of _____

COMMITTED VOLUME

Shipper's total Committed Volume, will be [a + b] Barrels of Crude Oil per day for a term of 180 Months/240 Months, of which:

(a) _____ Barrels of Crude Oil per day is Shipper's FP Option Volume (if applicable)¹; and

Initial Term: 180 Months _____

Or

240 Months _____

(b) _____ Barrels of Crude Oil per day is Shipper's Non-FP Option (if applicable) Committed Volume.

Initial Term: 180 Months _____

Or

240 Months _____

¹ This option (a) is only available to Funding Participants.

Schedule "B"

**to the Transportation Service Agreement
between**

**Northern Gateway Pipelines Limited Partnership
("Transporter")**

and

**•
("Shipper"),**

made as of the ____ day of _____

OIL PIPELINE TOLL PRINCIPLES

These Oil Pipeline Toll Principles set forth the methodology to determine the tolls on the Oil Pipeline. Capitalized terms used and not otherwise defined herein will have the meanings given to them in the Transportation Services Agreement.

The tolls payable by shippers to the Transporter shall be applicable during the Term and Renewal Periods (if any) as defined in the Transportation Services Agreement, and shall be calculated in accordance with the following principles:

1. Forward Test Year Basis

The tolls for each Year will be established based on Transporter's forward test year estimates and all differences between such estimates and the actual tolls determined in accordance with these Oil Pipeline Toll Principles along with Carrying Charges on those differences (the "**Prior Year Variance**"), will be recorded and will be incorporated into the calculation of the tolls for the following Year.

2. Capital Structure

The Oil Pipeline (excluding any Direct Ownership Share) will have a capital structure of seventy percent (70%) debt ("**Debt**") and thirty percent (30%) equity ("**Equity**") which will apply to Rate Base for the calculation of the capital portion of the Oil Pipeline Toll.

3. Rate Base Components

The sum of the Gross Plant in Service, Working Capital Allowance, the First Nation Adjustment and the Debt Service Reserve, less Accumulated Depreciation then adjusted for the Notional Future Income Tax Asset/Liability is the "**Rate Base**", where:

- (a) "**Gross Plant in Service**" means the sum of all Capital Expenditures and AFUDC less the Rate Base Adjustment, if any, where;

- (i) **"Capital Expenditures"** are the sum of all costs reasonably and prudently incurred in the development, design, construction and commissioning of the Oil Pipeline and to facilitate the provision of Services including the costs for the pursuit of regulatory approvals, procurement and financing, and any Expansion, as determined in accordance with GAAP as being of a capital nature, including:
- (A) the cost of labour hired for construction;
 - (B) the cost of third party services, equipment, materials and utility infrastructure supplied or provided in relation to any construction;
 - (C) the direct and indirect third party costs of design and engineering;
 - (D) the cost of acquiring the necessary rights to lands, the right-of-ways and site leases, including the costs of options for these acquisitions and any property tax incurred on these lands prior to the Commencement Date;
 - (E) the cost of restoring lands, the right-of-ways and site leases as a result of the construction of the Oil Pipeline;
 - (F) the third party costs of submitting and obtaining Transporter Approvals;
 - (G) the cost of Sustainability Initiatives to the extent they are incurred as a result of construction of the Oil Pipeline;
 - (H) the cost of salaries, wages and employee benefits for the employees of Transporter or its Affiliates who perform any direct work, plus the Allocated Overhead Component (as defined below) in relation to them;

"Allocated Overhead Component" means the overhead component that Transporter or its Affiliates typically charges to third parties for whom it provides oil pipeline and tankage design, engineering and construction to cover all payroll burden, benefits and overhead including pension and group insurance cost, sick pay and excused absence, statutory holiday and vacation pay, severance pay, payroll taxes and insurance (including Canada Pension Plan, employment insurance, disability, Workers' Compensation, Personal Liability & Property Damage and the deductibles associated with them) and all department, office and corporate overheads, as applicable. The salaries and payroll burdens associated with administrative and managerial personnel who perform services indirectly in connection with the work who are not directly performing work or providing services, such as corporate officers and directors, managers of corporate departments, vice-presidents, general corporate support staff, corporate accounting, corporate finance, corporate business development, project management office, strategic procurement, construction services, legal, information technology, human resources, home office payroll and billing personnel and other similar corporate services personnel required for normal business activity, are also included in the overhead and are not to be charged as Capital Expenditures, unless such personnel are directly performing the work or providing services.

Transporter shall provide Shippers with the Allocated Overhead Component concurrent with the Class III Capital Cost Estimate and annually thereafter until the Commencement Date. Transporter shall provide details of any changes to the Allocated Overhead Component;

- (I) the initial cost of all spare parts and equipment for repairing or replacing facilities or equipment arising from an occurrence after the Commencement Date for the Oil Pipeline or any Expansion to them; provided that Transporter shall take reasonable steps to recover any such costs of repair or replacement and credit the costs so recovered (less unrecovered expenses to effect such recovery) from its insurers and third parties as a result of any loss or damage to the Oil Pipeline if caused by the gross negligence or wilful misconduct of Transporter or any Affiliate of Transporter, or any of their respective directors, officers, employees or agents or by any other third party, to Capital Expenditures; and
- (J) annual maintenance capital, spent by Transporter for the ongoing upkeep and maintenance, as incurred on, and subsequent to, the Commencement Date and which includes all capital expenditures that are, individually, in excess of \$2,000,000 that are performed in order to maintain, or to restore, the Oil Pipeline to its original condition, and includes equipment replacements in-kind and the restoration of equipment to its original specifications, and excludes funds for work that allows equipment to exceed its original design parameters (“**Maintenance Capital**”). Transporter shall submit a copy of the annual Maintenance Capital budget to Shippers for information purposes prior to the Year the Maintenance Capital is incurred;
- (K) capital expenditures resulting from Applicable Law or non-mandatory guidelines by any Governmental Authority in Canada that result in changes to health, safety, environmental, security, anti-terrorism and taxation (other than property tax incurred subsequent to the Commencement Date and income tax) requirements, practices or procedures for the Transporter will be included as Capital Expenditures; provided that the inclusion in Capital Expenditures of costs resulting from compliance with non-mandatory guidelines shall be subject to agreement among Transporter and the Term Shippers; and
- (L) financing costs including all applicable transaction costs, standby fees, credit fees, interest rate hedging costs, settlement fees and other fees, charges or costs incurred by Transporter in connection with debt financing of the costs of the Oil Pipeline incurred prior to or on the commencement date (as such term is defined in any financing agreement(s) entered into with Financing Parties).

Notwithstanding the foregoing, Capital Expenditures do not include:

- (A) capital expenditures related to other facilities,
- (B) any profit component or mark-up of or by Transporter on third party costs,

- (C) charges for employees whose salaries, wages and employee benefits have been factored into the Allocated Overhead Component; and
 - (D) financing costs including all applicable transaction costs, standby fees, credit fees, interest rate hedging costs, settlement fees and other fees, charges or costs incurred by Transporter in connection with debt financing of the costs of the Oil Pipeline incurred after the commencement date (as such term is defined in any financing agreement(s) entered into with Financing Parties).
- (ii) "AFUDC" is an allowance for funds used during construction which will be the product of the portion of the Capital Expenditures applicable to Debt (as outlined in Section 2) multiplied by the actual Cost of Debt and the product of the portion of the Capital Expenditures applicable to Equity (as outlined in section 2) multiplied by the Return on Equity percentage; and
 - (iii) "**Rate Base Adjustment**" is the amount, if any, determined pursuant to Section 4.
- (b) "**Working Capital Allowance**" for a Year is an amount equal to the sum of Return on Equity, Cost of Debt, Income Tax Allowance, Depreciation Expense, Debt Service Reserve Interest Income and Prior Year Variance, if any, divided by 12.
 - (c) "**First Nation Adjustment**" for a Year is an amount equal to the First Nation Note Receivable, including any fees incurred to secure such note receivable, less the accumulated amount of principal repaid on such note.
 - (d) "**Debt Service Reserve**" is the amount of cash, acceptable credit support and/or letter(s) of credit and any costs associated thereto required to comply with the terms or conditions of the financing agreements(s) entered into with Financing Parties;
 - (e) "**Accumulated Depreciation**" is the cumulative amount of Depreciation Expense.
 - (f) "**Notional Future Income Tax Asset/Liability**" means the cumulative future income tax expense determined as if the Transporter was a standalone Canadian corporation. For certainty, a Future Income Tax Asset will be additive to the Rate Base whereas a Future Income Tax Liability will reduce the Rate Base.

For each Year, the Rate Base will be determined using a 13 Point Average Method (the "**Average Rate Base**").

Any amounts that are incurred as Capital Expenditures and are recovered by the Transporter as a result of either a claim against insurance or a settlement against a third party shall be credited to Gross Plant in Service.

4. Rate Base Adjustment

The Rate Base shall be adjusted based on the Actual Costs as compared to the Estimated Costs by an amount calculated as follows:

- (a) If the Actual Costs are between 85% and 125% of the Estimated Costs, Transporter is considered to be within the band estimate, and;

- (i) if the Actual Costs are less than the Estimated Costs, an amount equal to 25% of the difference between the Estimated Costs and the Actual Costs shall be added to the Rate Base;
 - (ii) if the Actual Costs are greater than the Estimated Costs, an amount equal to 25% of the difference between the Actual Costs and the Estimated Costs shall be subtracted from the Rate Base.
- (b) If the Actual Costs are less than 85% of the Estimated Costs or greater than 125% of the Estimated Costs, Transporter is considered to be outside the band estimate, and;
- (i) if the Actual Costs are less than the Estimated Costs, an amount equal to the sum of 50% of the difference between 85% of the Estimated Costs and the Actual Costs and 25% of the difference between the Estimated Costs and 85% of the Estimated Costs shall be added to the Rate Base;
 - (ii) if the Actual Costs are greater than the Estimated Costs, an amount equal to the sum of 50% of the difference between 125% of the Estimated Costs and the Actual Costs and 25% of the difference between the Estimated costs and 125% of the Estimated Costs shall be subtracted from the Rate Base.

5. Capital Revenue Requirement

For each Year, the sum of the Return on Equity, Cost of Debt, Income Tax Allowance, Depreciation Expense, less the First Nation Interest, Debt Service Reserve Interest Income and plus or minus, as applicable, any Prior Year Variance, shall be the "**Annual Capital Revenue Requirement**" where:

- (a) "**Return on Equity**" is the product of the Average Rate Base for such Year, multiplied by the Equity percent set forth in Section 2 and then multiplied by the return on equity percentage of 12% (such percentage being the "**ROE**").
- (b) "**Cost of Debt**" is the product of the Average Rate Base for such Year, multiplied by the Debt percent set forth in Section 2 and then multiplied by a rate of interest, reasonably and prudently incurred by Transporter, equal to the weighted average of the interest rates borne by Transporter's debt from and after the Commencement Date. These debt rates will reflect changes in the actual cost of debt as well as all applicable transaction costs, standby fees, credit fees, interest rate hedging costs, settlement fees, unhedged foreign currency gains and losses and other fees, charges or costs prudently incurred and directly related to such debt.
- (c) "**Income Tax Allowance**" will be calculated on a normalized basis (the liability method) using the Return on Equity for such Year and determined as if the Transporter was a standalone Canadian corporation. All large corporation taxes or other capital taxes that would apply if the Transporter was a standalone Canadian corporation will also be included in the determination of the Income Tax Allowance.
- (d) "**Depreciation Expense**" will be the sum of:
 - (i) an amount calculated for the Initial Gross Plant In Service using a rate similar to example Table 1 which will be finalized and fixed by the Transporter prior to the execution date of the Transportation Services Agreement by the Shipper. This Table 1 will be prepared with the objective of creating an Annual Capital

Revenue Requirement that escalates by approximately 2% per year for Years 1 to 15 and which results in an Accumulated Depreciation of the Initial Gross Plant In Service of 50% at that time. After the end of year 15, depreciation will be charged on a straight line basis, at the rate required so that Accumulated Depreciation of the Initial Gross Plant In Service will be 100% at the end of year 30, provided that, in the event the Oil Pipeline undergoes an Expansion, the period of time in which the remaining Initial Gross Plant In Service is depreciated will be adjusted to coincide with the end of the 30 year life of the Expansion, and

- (ii) an amount calculated for Maintenance Capital costs incurred during the term of a Transportation Services Agreement using a straight line basis and the remaining life of the asset, and
 - (iii) an amount calculated for any Expansion costs incurred during the Term using a straight line basis, at the rate required so that Accumulated Depreciation of the Expansion costs incurred will be 100% at the end of 30 years.
- (e) First Nation Interest is determined pursuant to Section 6.
 - (f) **"Debt Service Reserve Interest Income"** means the interest earned on the Debt Service Reserve.
 - (g) Prior Year Variance is determined pursuant to Section 1.

The **"Daily Capital Revenue Requirement"** is the Annual Capital Revenue Requirement divided by the number of days in the Year.

6. **Aboriginal Participation**

Up to 10% of the Equity capitalization will be available to qualified Aboriginal groups. The qualified Aboriginal groups electing to participate in the equity offering will have the project fund their portion of the Aboriginal Equity. The project funded option will utilize a note receivable which shall be funded 30% by Equity and 70% by Debt ("First Nation Note Receivable"). The First Nation Note Receivable shall be amortized over a period of time not to exceed 30 years with annual interest payable calculated by taking the product of the outstanding balance on the First Nation Note Receivable multiplied by an interest rate equal to the Cost of Debt, as calculated in Section 5(b) above, plus 100 basis points ("First Nation Interest").

7. **Operating Expenses**

The costs borne by Transporter associated with the construction and operation of the Oil Pipeline and to facilitate the provision of Services (the **"Operating Expenses"**) shall mean those costs, as determined in accordance with GAAP as being of an expense nature, that are reasonable and incurred by Transporter in accordance with Prudent Practices that are incurred with, or related to, the construction, operation and maintenance of the Oil Pipeline or any Expansion thereof or as incurred in the provision of Services including:

- (a) payroll costs, including all salaries, wages, applicable fringe benefits and burdens of and for employees;

- (b) costs of utilities and other services relative or incidental to operations, other than Variable Power Costs;
- (c) overhead attributed on an annual basis which, in any Month, is to be allocated among the Oil Pipeline or any Expansion based upon an equitable allocation;
- (d) the costs of commencing, defending and settling any claim or judgment made by or against Transporter or any of its Affiliates or any of their respective directors, employees, or agents arising from an incident after the Commencement Date for the Oil Pipeline in connection with operations, which incident is not a result of the negligence or wilful misconduct of the Transporter;
- (e) all non-creditable Taxes (other than actual or future income taxes) duties, royalties or other charges or levies provided for pursuant to any law or legal obligation imposed by any Governmental Authority having jurisdiction;
- (f) all rentals, renewals or extension fees and other similar charges or payment required to maintain Transporter's interest in the right-of-ways or sites to gain access to them;
- (g) all costs of or costs incidental to the restoration of the right-of-ways to the extent they do not relate to initial construction and completion or abandonment thereof and costs relating to actions required for environmental issues to the extent they do not relate to initial construction and completion or abandonment thereof;
- (h) insurance premiums for any policy of insurance required pursuant to this Transportation Services Agreement;
- (i) the cost of Sustainability Initiatives not included as Capital Expenditures;
- (j) the costs of any studies required for an Expansion;
- (k) capital expenditure items for maintenance of the Oil Pipeline that are, individually, less than \$2,000,000; and
- (l) such other direct costs or items of direct outlay and expense which, in accordance with generally accepted pipeline practices and GAAP are considered to be operating costs;

(collectively the "**Annual Operating Expenses**").

For clarity, no costs included as part of the Annual Capital Revenue Requirement shall be included in the calculation of Annual Operating Expenses. Furthermore, any amounts that are incurred as Operating Expenses and are recovered by the Transporter as a result of either a claim against insurance or a settlement against a third party shall be credited to the following Year's Operating Expenses.

Changes to costs resulting from Applicable Law or non-mandatory guidelines by any Governmental Authority that result in changes to health, safety, environmental, security, anti-terrorism and taxation (other than income tax) requirements, practices or procedures for the Transporter will be included as Annual Operating Expenses; provided that the inclusion to Annual Operating Expenses of costs resulting from compliance with non-mandatory guidelines shall be subject to agreement among Transporter and the Term Shippers.

For each Year, the Prior Year Variances for Annual Operating Expenses will include any differences between the actual Annual Operating Expenses elements incurred by the Transporter and the amounts used for the forward test year estimate.

The "**Daily Operating Expenses**" are the Annual Operating Expenses applicable to the Oil Pipeline for a Year divided by the number of days in the Year.

8. Variable Power Costs

"Variable Power Costs" are expenditures for electrical energy that are not of a capital nature and are directly influenced by throughput or usage including all charges on the bill received by the Transporter from the utility (or utilities) for demand, energy and customer charges along with any Taxes or rate riders thereon. Variable Power Costs will be charged through the toll separately from the Daily Operating Expenses at a rate equal to the actual costs incurred by Transporter for the Month divided by the number of Barrels actually delivered to the Delivery Point on the Oil Pipeline in such Month with any Crude Oil shipped that has a viscosity of 100 square millimetres per second or more at 11.9°C and a Density of 904 kilograms per cubic metre or more at Standard Conditions ("Heavy Crude Oil") paying the Variable Power Costs equal to 2.2075 times that paid by Crude Oil that is not Heavy Crude Oil.

Due to timing of invoices the actual Variable Power Costs billed in a given Month may include an accrued amount for that Month or an amount equal to a variance between actual costs and accrued costs from a prior Month.

9. GAAP

Unless otherwise stated, accounting terms used in these Oil Pipeline Toll Principles and that are given definition in Generally Accepted Accounting Principles in Canada or Generally Accepted Accounting Principles in the US, as applicable, (with either being referred to as "**GAAP**" for the purposes of this document) have such meanings where used in these Oil Pipeline Toll Principles. For certainty, changes in amounts and/or costs resulting from changes in GAAP will be reflected in the calculation of the Oil Pipeline Toll, as appropriate.

10. Direct Ownership

The Oil Pipeline Toll Principles do not apply to the costs and expenses to be borne and incurred by a Direct Owner in respect of its Direct Ownership Capacity pursuant to a Direct Ownership Agreement, or costs incurred by Transporter in respect of Direct Ownership Capacity pursuant to a Direct Ownership Agreement. The costs and expenses allocated to a Direct Owner shall be determined by taking the gross costs and expenses, where applicable, borne or incurred by the Transporter for the Oil Pipeline, and multiplying them by the Direct Ownership Share. The costs and expenses remaining after this allocation plus any other costs and expenses set forth herein which are not applicable to the Direct Ownership Capacity will be used to determine the Oil Pipeline Tolls pursuant to this Schedule.

The exercise by a Direct Owner of its Direct Ownership Option shall not result in: (a) the subsidization by the Transporter (or the Shippers through the payment of the Oil Pipeline Tolls) of the Direct Owner's Direct Ownership Share of all costs and expenses associated with the development, construction, ownership and operation of the Oil Pipeline; or (b) the subsidization by the Direct Owner of the Transporter's share (proportionate to its undivided interest in the Oil Pipeline) (or the Shippers through the payment of the Oil Pipeline Tolls) of all costs and expenses associated with the development, construction, ownership and operation of the Oil Pipeline, and nothing in these Oil Pipeline Toll Principles, any Transportation Services Agreement or a Direct Ownership Agreement shall be construed as requiring same.

11. Oil Pipeline Toll

A Term Shipper will pay the applicable toll as set forth in Sections 12 and 13 below (each applicable toll is hereinafter collectively referred to as the "Oil Pipeline Toll"), and which: (i) for the capital portion and Operating Expense portion of each applicable toll shall be expressed in dollars per Barrel and multiplied by such Term Shipper's Committed Volume; and (ii) for the Variable Power Costs, shall be expressed in dollars per Barrel but based on Barrels actually delivered to the Delivery Point.

12. Determination of the FP Option Volume Toll

The Oil Pipeline Toll applicable to FP Option Volume (the "FP Option Volume Toll") shall be the sum of:

- (a) The capital portion of the FP Option Volume Toll, and
- (b) The Operating Expenses portion of the FP Option Volume Toll, and
- (c) the proportionate share of the Variable Power Costs for each Barrel actually delivered to the Delivery Point.

The capital portion of the FP Option Volume Toll will be determined by the following formula;

$$\text{capital portion of the FP Option Volume Toll} = \frac{\text{Daily Capital Revenue Requirement}}{(\text{FPvol} + 1.25 \text{ NFPvol})}$$

Where,

"FPvol" means the aggregate of all FP Option Volume, expressed in Barrels per day;

"NFPvol" means the aggregate of all Non-FP Option Committed Volume, expressed in Barrels per day;

And;

The sum of "FPvol" and "NFPvol" will be the greater of;

- (i) The sum of all FPvol or NFPvol for the upcoming Year expressed in Barrels per day if all Committed Volumes are equal to or greater than the difference between 500,000 Barrels per day and any Direct Ownership Carve-out Volumes; and
- (ii) The sum of all FPvol or NFPvol for the upcoming Year expressed in Barrels per day grossed up on a pro-rata basis in relation to actual FPVol and NFPVol to ensure the sum of all Committed Volumes equals the difference between 500,000 Barrels per day and any Direct Ownership Carve-out Volumes.

The Operating Expenses portion of the FP Option Volume Toll will be determined by the following formula:

$$\text{Operating Expense portion of the FP Option Volume Toll} = \frac{\text{Daily Operating Expenses}}{\text{FPVol} + \text{NFPVol}}$$

And,

The sum of “FPVol” and “NFPVol” will be the greater of: (a) the actual Committed Volumes; and (b) the difference between 500,000 Barrels per day and any Direct Ownership Carve-out Volumes.

The Variable Power Costs portion of the FP Option Volume Toll for each Term Shipper will be equal to the amount calculated pursuant to Section 8 of these Oil Pipeline Toll Principles.

13. Determination of the Non-FP Option Committed Volume Toll

The Oil Pipeline Toll applicable to Non-FP Option Committed Volume (the “**Non-FP Option Committed Volume Toll**”) shall be the sum of:

- (a) The capital portion of the Non-FP Option Committed Volume Toll, and
- (b) The Operating Expenses portion of the Non-FP Option Committed Volume Toll, and
- (c) For each Barrel actually delivered to the Delivery Point, the Variable Power Costs.

The capital portion of the Non-FP Option Committed Volume Toll will be determined by the following formula:

$$\text{capital portion of the Non-FP Option Committed Volume Toll} = \text{capital portion of the FP Option Volume Toll} \times 1.25$$

The Operating Expenses portion of the Non-FP Option Committed Volume Toll will be equal to the Operating Expense portion of the FP Option Volume Toll as calculated in Section 12.

The Variable Power Costs portion of the Non-FP Option Volume Toll for each Term Shipper will be equal to the amount calculated pursuant to Section 8 of these Oil Pipeline Toll Principles.

14. Determination of the Uncommitted Volume Toll

The Oil Pipeline Toll applicable to Uncommitted Volume (the “**Uncommitted Volume Toll**”) shall be the sum of:

- (a) The capital portion of the Uncommitted Volume Toll,
- (b) The Operating Expense portion of the Uncommitted Volume Toll, and
- (c) For each Barrel actually delivered to the Delivery Point, the Variable Power Costs.

The capital portion of the Uncommitted Volume Toll will be equal to the capital portion of the Non-FP Option Committed Volume Toll multiplied by 1.5.

The Operating Expenses portion of the Uncommitted Volume Toll will be equal to the Operating Expense portion of the FP Option Volume Toll multiplied by 1.5.

The Variable Power Cost portion of the toll for each shipper will be equal to the amount calculated pursuant to Section 8 of these Oil Pipeline Toll Principles.

15. Excess Revenue Sharing

All revenues collected by Transporter that are in excess of the Committed Toll Revenue ("**Excess Revenue**") in a Year, less Variable Power Costs attributable to such Excess Revenue shall be allocated and distributed in the following Year as follows:

- (a) in respect of Excess Revenue for such Year attributable to Reserve Capacity ("**RC Excess Revenue**"), the RC Excess Revenue shall first be allocated as follows:
 - (i) each Direct Owner shall be allocated an amount of the RC Excess Revenue equal to the product of: the RC Excess Revenue for such Year multiplied by its Direct Ownership Share; and
 - (ii) the remaining unallocated RC Excess Revenue following the allocation to Direct Owners in subsection (i) above, shall be allocated as follows: Seventy five percent (75%) of such remaining RC Excess Revenue shall be allocated to all Term Shippers, each in proportion that the Term Shipper's Committed Volume bears to the aggregate of the Committed Volumes of all Term Shippers. Each Term Shipper shall receive an annual credit for its proportionate share of such remaining RC Excess Revenue, which shall reduce the amount payable by such Term Shipper for services related to such Term Shipper's Committed Volume. Twenty five percent (25%) of such remaining RC Excess Revenue shall be retained by Transporter.
- (b) In respect of Excess Revenue attributable to Spot Capacity ("**SC Excess Revenue**"), Seventy five percent (75%) of such SC Excess Revenue shall be allocated to all Term Shippers, each in proportion that the Term Shipper's Committed Volume bears to the aggregate of the Committed Volumes of all Term Shippers. Each Term Shipper shall receive an annual credit for its proportionate share of such Excess Revenue, which shall reduce the amount payable by such Term Shipper for services related to such Term Shipper's Committed Volume. Twenty five percent (25%) of the Excess Revenue shall be retained by Transporter.

16. Expansion Benefit Sharing

In the event the actual costs to construct the initial facilities of the Oil Pipeline are higher than the Estimated Costs, Transporter shall be entitled to share in any decrease to the capital portion of the Oil Pipeline Toll which results from an Expansion, with such share being calculated as follows:

$$\text{Change in the capital portion of the toll for FP Option Volume} \times \sum(\text{FPVol} + \text{NFPVol}) \times \frac{\text{Rate Base Adjustment for initial facilities}}{(\text{Actual Costs for Initial Facilities} - \text{Estimated Costs for initial facilities})}$$

Where,

The "**Change in the capital portion of the toll for FP Option Volume**" is equal to the difference between the capital Portion of the toll for FP Option Volume pre-Expansion and the capital Portion of the toll for FP Option Volume post-Expansion.

Transporter's entitlement to share in any decrease to the capital portion of the Oil Pipeline Toll pursuant to this Section 16, will be capped at a point where Transporter's ROE returns to 12%.

17. **Miscellaneous**

All tolls shall be calculated in accordance with the methodology outlined in Attachment "A" attached hereto and incorporated herein.

**Attachment “A” to the
Oil Pipeline Toll Principles
Toll Calculation Methodology**

Note: all calculations hereunder do not take into account any Direct Ownership Share

In the event of any conflict between the Oil Pipeline Toll Principles and this toll calculation methodology, the Oil Pipeline Toll Principles shall take precedence over this Toll Calculation Methodology to the extent of the conflict.

FP Option “FP Option Volume Toll” or “FT” is calculated annually and is determined as:

**Volume toll
(FT)**

$$FT_{it} = CT_{it} + OT_{it} + \text{Variable Power Costs}$$

Where:

- a) “CT” means the capital portion of the toll for facility “i” and will be determined as:

$$CT_{it} = \frac{ACRR_{it}}{(FPV + 1.25 * NFPV)}$$

Where:

- i. “ACRR” is the “Annual Capital Revenue Requirement” and is calculated as: $RORB_i + D_i + ITA_i + PYY_i - DSR_{int} - FNI_i$ for the year “t”
- ii. “FPV” is the aggregate of all “FP Option Volume” for the year “t” expressed in Barrels
- iii. “NFPV” is aggregate of all “Non-FP Option Committed Volume” for the year “t” expressed in Barrels

The sum of “FPV” and “NFPV” will be the greater of;

- (i) The sum of all FPvol or NFPvol for the upcoming Year expressed in Barrels if all Committed Volumes are equal to or greater than the product of: (A) the difference between 500,000 Barrels per day less any Direct Ownership Carve-out Volumes; multiplied by (B) the number of days in such Year; and
 - (ii) The sum of all FPvol or NFPvol for the upcoming Year expressed in Barrels grossed up on a pro-rata basis in relation to actual FPVol and NFPVol to ensure the sum of all Committed Volumes equals the product of: (A) the difference between 500,000 Barrels per day less any Direct Ownership Carve-out Volumes; multiplied by (B) the number of days in such Year;
- b) “OT” means Operating Expense portion of the toll for facility “i” and will be

determined as:

$$OT_{it} = \frac{AOE_{it} + PYV_{it}}{FPV + NFPV}$$

Where:

The sum of “FPV” and “NFPV” will be the greater of: (a) the aggregate of the actual Committed Volumes for the Year; and the product of: (A) the difference between 500,000 Barrels per day less any Direct Ownership Carve-out Volumes; multiplied by (B) the number of days in such Year.

- c) “Variable Power Costs” means the cost for variable power applicable to the type of Crude Oil moved by the Term Shipper and will be determined as:

$$VPC_{light} = \frac{\sum \text{Variable Power Costs}_n}{(2.2075 * \text{Heavy Crude Oil}_n + \text{Light Crude Oil}_n)}$$

and

$$VPC_{heavy} = 2.2075 * VPC_{light}$$

Where:

- i. “VPC_{light}” is the Variable Power Cost per Barrel of Light Crude Oil
 - ii. “∑Variable Power Costs_n” is the sum of all Variable Power costs for the Month “n”
 - iii. “Heavy Crude Oil_n” is the sum of all Heavy Crude Oil, expressed in Barrels, actually shipped on the Oil Pipeline for the Month “n”
 - iv. “Light Crude Oil_n” is the sum of all Crude Oil that is not Heavy Crude Oil, expressed in Barrels, actually shipped on the Oil Pipeline for the Month “n”
 - v. “VPC_{heavy}” is the Variable Power Cost per Barrel of Heavy Crude Oil
- d) “t” is the year during which the toll is being calculated, can range from 0 to 31, with “t” = 0 equal to the Commencement Date and “t” = 1 is the year of the Commencement Date

AOE means the “Annual Operating Expense” as defined in Article 7 of the Oil Pipeline Toll Principles

Non-FP Option Committed Volume Toll (NFT) “Non-FP Option Committed Volume Toll” or “NFT” is calculated annually and is determined as:

$$NFT_{it} = 1.25 * CT_{it} + OT_{it} + \text{Variable Power Costs}$$

Uncommitted Volume Toll (UT) “Uncommitted Toll” or “UT” is calculated annually and is determined as:
$$UT = 1.5[NFT_{it} - \text{Variable Power Costs}] + \text{Variable Power Costs}$$

RORB_i means the annual Return on Rate Base determined as:

$$RORB_i = RORBE_i + RORBD_i$$

RORBE_i means annual Return on Equity on Rate Base determined as:

$$ARB * \%E_i * ROE_i * SPA_i$$

RORBD_i means the Cost of Debt on Rate Base determined as:

$$ARB * \%D_i * COD_i * SPA_i$$

RB_i means the annual Rate Base determined as:

$$GPIS_i - AD_i - FITL_i + WC_i + DSR + FN_{adj}$$

ARB means the average Annual Rate Base determined as:

$$ARB_i = \sum(RB_{(t*)}) / 13$$

Where:

“t*” means the aggregate of the Rate Base for January 1 and the Rate Base for the end of each Month in year “t”. For clarity, RB will be adjusted monthly for the purposes of this calculation.

DSR means the Debt Service Reserve.

DSR_{int} means the interest earned on the Debt Service Reserve.

FNI_t means the First Nation Interest and shall be equal to the actual amount of interest payable by First Nations on the First Nation Note Receivable for year “t”.

FN_{adj} means the First Nation Adjustment determined as:

$$FN_{adj} = FN_{note} - AFN_{repayment}$$

FN_{note} means the First Nation Note Receivable determined as:

$$FN_{note} = \frac{(GPIS_i + WC_i + DSR_i - FITL_i) * \%E_i * \%FN_e}{(1 - \%E_i * \%FN_e)}$$

Where:

“%FN_e” is the First Nation Equity percentage and shall not exceed 10%, and;

“AFUDC_i” “WC_i” “DSR_i” and “FITL_i” are all as calculated as per the financial

statements, and.

AFN_{repayment} means the Accumulated First Nation Note Receivable Repayment and shall be equal to the sum of all capital repayments received from First Nations by Transporter

GPIS_i means "Gross Plant in Service" determined as:

$$GPIS_i = ACAPEX_i + AFUDC_i - RBA_i + RBA_{expansion}$$

ACAPEX_i means Capital Expenditures and is the aggregated sum of the actual Capital Expenditures committed, incurred or related to facility "i" including any Maintenance Capital or Expansion thereof.

AFUDC_i means the aggregate of the allowance for funds used during construction, based on actual Capital Expenditures incurred by Transporter up to the Commencement Date of facility "i" or Expansion thereof. The Monthly AFUDC for the Month "n" is calculated as:

$$AFUDC_{in} = AIDC_{in} + AEDC_{in}$$

Where:

$$AIDC_{in} = (GPUC_{i(n-1)} - AEDC_{gross-up(n-1)} + 0.5 * PUC_{in}) * ((1 + AIDC Rate_{in})^{1/12} - 1)$$

$$AEDC_{in} = \frac{(GPUC_{i(n-1)} - AEDC_{gross-up(n-1)} + 0.5 * PUC_{in}) * ((1 + AEDC Rate_{in})^{1/12} - 1)}{(1-TR)}$$

AEDC Rate means a fixed rate which is calculated as follows:

$$AEDC Rate_{in} = (E\% * ROE)$$

AIDC Rate means a floating rate which is calculated for any given Period or Month as follows:

$$AIDC Rate_{in} = (D\% * COD_{During Construction})$$

AEDC_{gross-up} means the aggregate of the months AEDC gross-up. The Monthly AEDC gross-up is calculated as:

$$AEDC_{gross-up in} = TR * AEDC_{in}$$

ECAPEX_i means the Class III Capital Cost Estimate as provided by the Transporter as adjusted for any scope changes and/or costs imposed on the Project by a Governmental Authority and as increased by the Risk Premium

RBA_i means the "Rate Base Adjustment" and is the Transporter's share of any variance between ECAPEX_i and ACAPEX_i, and is calculated as:

$$RBA_i = RBA_{wbe} + RBA_{obe}$$

Where:

- a) RBA_{wbe} is the Rate Base Adjustment within the band estimate, and;
- b) RBA_{obe} is the Rate Base Adjustment outside the band estimate.

and:

- i) if $ACAPEX_i > ECAPEX_i$

$$RBA_{wbe} = \min[ACAPEX_i - ECAPEX_i, 0.25(ECAPEX_i)] * TRisk_{wbe}$$

and

$$RBA_{obe} = \max[0, ACAPEX_i - 1.25(ECAPEX_i)] * TRisk_{obe}$$

- ii) if $ACAPEX_i < ECAPEX_i$

$$RBA_{wbe} = \max[ACAPEX_i - ECAPEX_i, -0.15(ECAPEX_i)] * TRisk_{wbe}$$

and

$$RBA_{obe} = \min[0, ACAPEX_i - 0.85(ECAPEX_i)] * TRisk_{obe}$$

Where:

- i) “ $TRisk_{wbe}$ ” is the “Transporter Risk Within Band Estimate” and is equal to 25%, and;
- ii) “ $TRisk_{obe}$ ” is the “Transporter Risk Outside Band Estimate” and is equal to 50%.

$RBA_{expansion}$

means the “Rate Base Adjustment Post-Expansion” and is calculated as:

$$RBA_{expansion} = [(CT_{itpre} - CT_{itpost}) * (FPV_t + NFPV_t)] * (RBA_i \div (ACAPEX_i - ECAPEX_i))$$

Where:

- a) “ CT_{itpre} ” is the Capital Toll as calculated in the year immediately preceding an Expansion;
- b) “ CT_{itpost} ” is the Capital Toll as calculated for the year immediately following the completion of an Expansion prior to adjustment for $RBA_{expansion}$;
- c) “ FPV_t ” is the aggregate of all “FP Option Volume” for the year “t” expressed in Barrels (where year “t” is the year immediately following an Expansion);
- d) “ $NFPV_t$ ” is aggregate of all “Non-FP Option Committed Volume” for the year “t” expressed in Barrels (where year “t” is the year immediately following an Expansion);

- e) "RBA_i" equals the Rate Base Adjustment as calculated above if ACAPEX_i > ECAPEX_i for the initial facilities and "0" (zero) if not, and;
- f) "ECAPEX_i" is the Estimated Class III Capital Cost Estimate as provided by the Transporter for the initial facilities
- g) "ACAPEX_i" is as calculated above for the initial facilities

%E_i means Equity capitalization of the rate base expressed as a percentage (%) and is set at 30% subject to Section 2 of the Oil Pipeline Toll Principles

ROE_i means the annual percentage (%) Return on Equity and is set at 12.0%.

%D_i means Debt capitalization of the rate base expressed as a percentage (%) and is set at 70% subject to Section 2 of the Oil Pipeline Toll Principles.

COD_{During Construction} means "Cost of Debt During Construction" expressed as a percentage (%) and shall be the actual cost of debt incurred, as well as all applicable transaction costs, standby fees, credit fees, interest rate hedging costs, settlement fees and other fees, charges or costs directly related to such debt prior to the Commencement Date.

GPUC_{i(n-1)} means "Gross Plant Under Construction", which is the aggregated sum of PUC and associated AFUDC at the end of the previous Month from the Month of such calculation;

PUC_{in} means the Monthly spending for "Plant Under Construction" and is based on the actual Capital Expenditures incurred during the Month.

PYV_i means the "Prior Year Variance" and includes any differences between the actual Annual Capital Revenue Requirement or Annual Operating Expense elements, as applicable, and the amounts used for the forward test year.

TR_i means "Effective Income Tax Rate" and is inclusive of the applicable Provincial and Federal statutory income tax rates enacted for the given year.

D_i means the annual "Depreciation Expense" and is based on the depreciation rates in Table 1 for the initial facilities which have been determined such that the Capital portion of the toll will escalate by approximately 2% per annum. Provided that the rates in Table 1 and calculation listed below will be adjusted pursuant to sections 5(d)(i) and 5(d)(iii) in the event of an Expansion. The Depreciation Expense will be determined as follows:

$$D_{it} = DEIC_{it} + DEMC_{it}$$

Where:

- a) "DEIC" means "Depreciation Expense of Initial Capital" and is determined as:

$$DEIC_{it} = DR_t * (ACAPEX_i - AMC_i - RBA_i + AFUDC_i - \text{Non Depreciable Items})$$

- b) "DEMC" means "Depreciation Expense of Maintenance Capital" and will be determined as follows:

$$DEM C_{it} = IF (t = End Year, DR_{MCI} * (AMC_{i(t-1)} + MC_t - ADEM C_{i(t-1)}), DR_{MCI} * (AMC_{i(t-1)} + 0.5 * MC_t - ADEM C_{i(t-1)})$$

Where:

“ DR_t ” means the Depreciation Rate for initial capital for year “t” as defined in Table 1

“ DR_{MCI} ” means the Depreciation Rate for Maintenance Capital for year “t” and will be determined as:

$$DR_{MCI} = \frac{1}{RLF_t} * SPA$$

Where:

“ RLF_t ” means the Remaining Life Factor for year “t” and will be determined as:

$|30 - t - SPA_1 + 1|$ where Commencement Date is January 1 of any given year or

$|31 - t - SPA_1 + 1|$ where Commencement Date is any date other than January 1 of any given year or

“ AMC ” means the Accumulated Maintenance Capital

“ MC ” means “Maintenance Capital” for year “t”

“ $ADEM C$ ” means “Accumulated Depreciation Expense of Maintenance Capital” and will be determined as:

$$ADEM C_{it} = \sum_{i=1}^t DEM C_{it}$$

“*Non-Depreciable Items*” means those items in the $GPIS_i$ that do not depreciate in economic value with use, as per GAAP (For example, land).

AD_i means "Accumulated Depreciation", for any given year, of the depreciable Gross Plant In Service. AD_i is the aggregate amount of D_i from ISD Year and up to the end of the current calendar year.

$FITL_{it}$ means “Future Income Tax Liability” and is calculated as

$$(Depreciable GPIS_i \text{ Opening Balance} - \sum D_i - UCC_{it} - TLCF_{it}) * TR$$

Where;

“ TR ” is the tax rate expected when the $FITL$ is drawn down.

CCA_i means the "Capital Cost Allowance" and for any given year, CCA_{it} includes total cost allowance on tangibles and eligible capital property (example, pipeline right of way) for the Initial Facility or Expansion net of the RBA_i, if any.

UCC_{it} Means "Undepreciated Capital Cost" which is equal to the initial GPIS_i at time of in-service excluding AFUDC_i calculated as:

$$UCC_{it} = \text{Depreciable GPIS}_i - AFUDC_i - \sum CCA_i$$

TLCF_{it} Means the "Tax Loss Carry Forward Balance" for any given year and is calculated as:

$$\text{If } [TLCF_{i(t-1)} > 0, \text{Max}(0, AIDC_i + CCA_i - D_i - RORBE_i / (1-TR) + TLCF_{i(t-1)}), 0]$$

WC_i means annual "Working Capital Allowance" and is calculated as:

$$WC_i = \frac{WC_{RORBE} + WC_{RORBD} + D_i + ITA_i + PYV_i - DSR_{int}}{12}$$

Where:

- a) "*WC_{RORBE}*" means the Working Capital Return on Rate Base for Equity and is calculated for year "t" as:

$$([(GPIS_{it} - AD_{it} - FITL_{it}) + (GPIS_{i(t-1)} - AD_{i(t-1)} - FITL_{i(t-1)})] * 0.5) * \%E_i * ROE_i * SPA_i$$

- b) "*WC_{RORBD}*" means the Working Capital Return on Rate Base for Debt and is calculated for year "t" as:

$$([(GPIS_{it} - AD_{it} - FITL_{it}) + (GPIS_{i(t-1)} - AD_{i(t-1)} - FITL_{i(t-1)})] * 0.5) * \%D_i * COD_i * SPA_i$$

- c) "*ITA_i*" means Income Tax Allowance

- d) "*PYV_i*" means Prior Year Variance

- e) "*DSR_{int}*" means the interest earned on the Debt Service Reserve

COD_i Means the Cost of Debt post Commencement Date, determined as a rate of interest equal to the weighted average of the interest rates borne by Transporter's debt and will reflect changes in the actual cost of debt from time to time as well as all applicable transaction costs, standby fees, credit fees, interest rate hedging costs, settlement fees and other fees, charges or costs directly related to such debt and not already included in the financing costs incorporated in either ACAPEX or COD_{During Construction}.

SPA_i means "Stub Period Adjustment" such that:

- For the Commencement Date Year:

$$SPA_1 = [(Days\ in\ Service\ in\ Commencement\ Date\ Month / Total\ Days\ in\ Commencement\ Date\ Month) + M_i - 1] / 12$$

- SPA_i for End Year = 1 – SPA_i for Commencement Date Year
- For all remaining years of the Toll Period between Commencement Date Year and End Year, SPA_i = 1.0

M_i means the number of Months in a calendar year for which the ACRR is calculated.

- For the Commencement Date Year: M_i includes the Commencement Date Month
- For the End Year: M_i = 12 – M_i for the Commencement Date Year
- For all remaining years of the Term between the Commencement Date Year and the End Year, M_i = 12

ITA_i means "Annual Income Tax Allowance" for any given year for which the calculation is being done and will be calculated on a normalized basis using the Return on Equity for such Year and determined as if the Transporter was a standalone Canadian corporation. All large corporation taxes or other capital taxes that would apply if the Transporter was a standalone Canadian corporation will also be included in the determination of the Income Tax Allowance.:

$$ITA_{it} = TI_{it} \times TR$$

where:

$$TI_{it} = \frac{[RORBE_{it} \pm \text{applicable permanent difference}]}{(1 - TR_t)}$$

and:

TR_t = the tax rate

TABLE 1 – INDICATIVE DEPRECIATION SCHEDULE¹

Year	Rate
1*	0.01%
2	0.19%
3	0.44%
4	0.77%
5	1.14%
6	1.54%
7	1.98%
8	2.47%
9	3.00%
10	3.58%
11	4.22%
12	4.89%
13	5.56%
14	6.23%
15	6.95%
16**	7.30%
17	3.33%
18	3.33%
19	3.33%
20	3.33%
21	3.33%
22	3.33%
23	3.33%
24	3.33%
25	3.33%
26	3.33%
27	3.33%
28	3.33%
29	3.33%
30	3.33%
31*	3.06%

The above table does not equal 100% due to rounding, however, subject to Sections 5(d)(i) and 5(d)(iii), the initial facilities will be fully depreciated at the end of 30 years.

**Years 1 and 31 represent partial years as a result of an assumed Q4 2016 start date.*

***Year 16 is a blended rate of sculpted and straight line depreciation.*

Schedule "C"

Attachment to the Transportation Services Agreement

Between

Northern Gateway Oil Pipelines Limited Partnership

("Transporter"), and

("Shipper")

As of the _____ day of _____

(as at July 9, 2010)

Oil Pipeline Diagrams and Description

Oil Pipeline

The Oil Pipeline will originate at the Receipt Point located on an approximately 2.2 Ha site at NE 4-56-21 W4, near Bruderheim, Alberta, and terminate at the Delivery Point.

Pump Stations

	Approximate Kilometre Post	Purpose	Oil Pumps^a and Motor Size
Bruderheim	0	Oil	6 @ 4,290 KW (5,750 HP)
Whitecourt	203.2	Oil and Condensate	5 @ 4,290 KW (5,750 HP)
Smoky River	400.6	Oil and Condensate	5 @ 4,290 KW (5,750 HP)
Tumbler Ridge	598.1	Oil and Condensate	3 @ 4,290 KW (5,750 HP)
Bear Lake	716.0	Oil and Condensate	2 @ 4,290 KW (5,750 HP)
Fort St. James	824.5	Oil and Condensate	3 @ 4,290 KW (5,750 HP)
Burns Lake	925.5	Oil and Condensate	3 @ 4,290 KW (5,750 HP)

NOTES:

^a Number of oil pumps includes one installed spare at Bruderheim.

HP – horsepower

N/A — not applicable

Bruderheim Station

- Custody Transfer Metering

Kitimat Terminal

The Kitimat Terminal, located on an approximately 220 Ha site at UTM Zone 9 Easting 518436, Northing 5977703, near Kitimat, B.C will consist of the following major facilities for the Oil Pipeline:

- a tank terminal including:
 - 11 oil tanks
 - hydrocarbon transfer systems, including custody transfer metering
 - a remote impoundment reservoir
 - Crude Oil receiving facilities
 - associated infrastructure
- a marine terminal including two tanker berths, one utility berth, Crude Oil loading system, custody transfer metering and associated infrastructure

Oil Tank Specifications

Item	Metric Units	Imperial Units
Tank diameter	74.07 m	243 ft.
Tank height	18.29 m	60 ft.
Roof type	Open-top external floating pontoon	
Minimum freeboard	1 m	3.3 ft.
Nominal capacity per tank	78,800 m ³	496,000 bbl
Working capacity per tank	67,700 m ³	426,000 bbl
Total working capacity for 11 tanks	744,100 m ³	4,680,000 bbl
Design injection flow rate per tank	92,700 m ³ /d	583,000 bbl/d
Average takeaway flow rate per tank	190,800 m ³ /d	1,200,000 bbl/d

Crude Oil Loading System

Both tanker berths will have Crude Oil loading capabilities. Two 1,067-mm OD (NPS 42) Crude Oil lines will connect the tank manifold to the foreshore for simultaneous oil loading capabilities to both berths. Crude Oil will flow by gravity from the tanks through the berths to the moored tankers.

A vapour recovery unit (VRU) system is included in the preliminary design.

The loading headers and loading arms will be used for loading Crude Oil to the tankers at a maximum design rate of 15,900 m³/h (100,000 bbl/h) at each loading berth.

Custody Transfer Metering

Two custody transfer metering skids will be installed near the north tanker berth.

The 406-mm OD (NPS 16) positive displacement meters will measure custody transfers. Each metering skid will house 11 flow meters and can handle the design loading rate of 15,900 m³/h (100,000 bbl/h). The combined capacity of the two metering skids is 31,800 m³/h (200,000 bbl/h). The meter in-service limits of error will be within the range of ±0.25%.

Tanker and Utility Berths

The Oil Pipeline includes two tanker berths that will provide simultaneous Crude Oil loading at both berths and single condensate unloading from either berth. The Oil Pipeline also includes a utility berth that may be used to support construction activities and service tugs during operations.

Tanker Berths

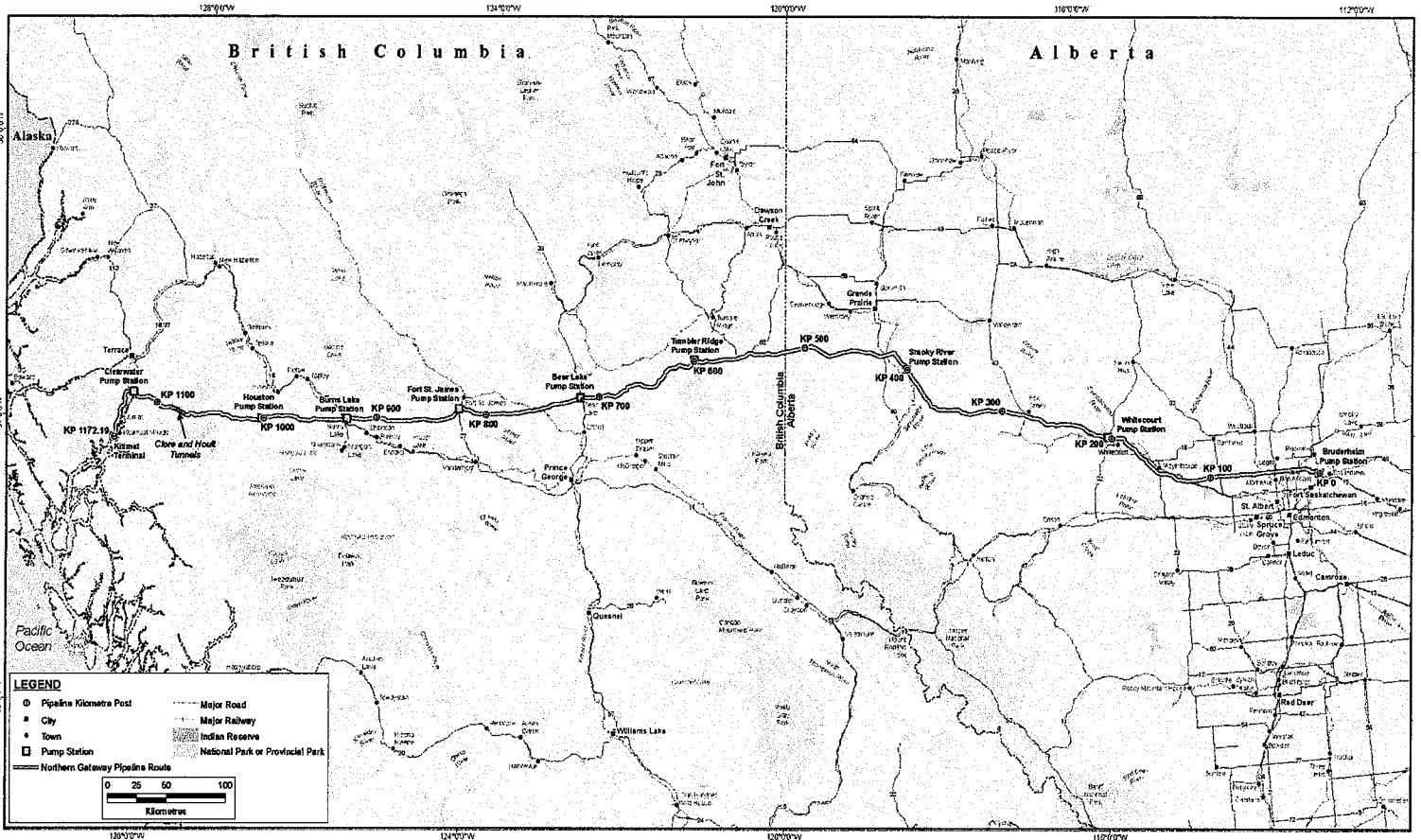
The tanker berths will be designed to handle a range of tanker sizes. The characteristics are given for the largest sized VLCC, an average-sized Suezmax tanker and the smallest sized Aframax.

Design Vessel Specifications

Tanker Characteristic	Oil	Oil and Condensate	
		Suezmax (average values)	Aframax (smallest sized)
Tanker class	VLCC (largest sized)	Suezmax (average values)	Aframax (smallest sized)
Deadweight (tonnes)	320,472 (summer load) 312,500 (winter load)	160,000 (summer load) 155,000 (winter load)	81,408 (summer load) 79,000 (winter load)
Overall length (m)	343.7	274.0	220.8
Beam (m)	70.0	48.0	32.2
Moulded depth (keel to main deck) (m)	30.5	23.1	18.6
Loaded draft (m)	23.1 (summer load) 22.5 (winter load)	17.0 (summer load) 16.6 (winter load)	11.6 (summer load) 11.3 (winter load)
Hull type ^a	Double	Double	Double
Average cargo capacity (m ³)	330,000	160,000	110,000
Estimated average cargo transfer rate (m ³ /h)	12,800	8,000	6,400
NOTE: ^a Only double-hulled tankers will be allowed at the Kitimat Terminal.			

Utility Berth

The utility berth will have facilities that can accommodate the mooring of harbour tugs and two utility work boats. The utility work boats will be needed primarily for maintenance of the tanker berths and deploying the containment boom. A davit system will be used to launch the utility boats from the utility berth deck and retrieve the boats for storage and maintenance.

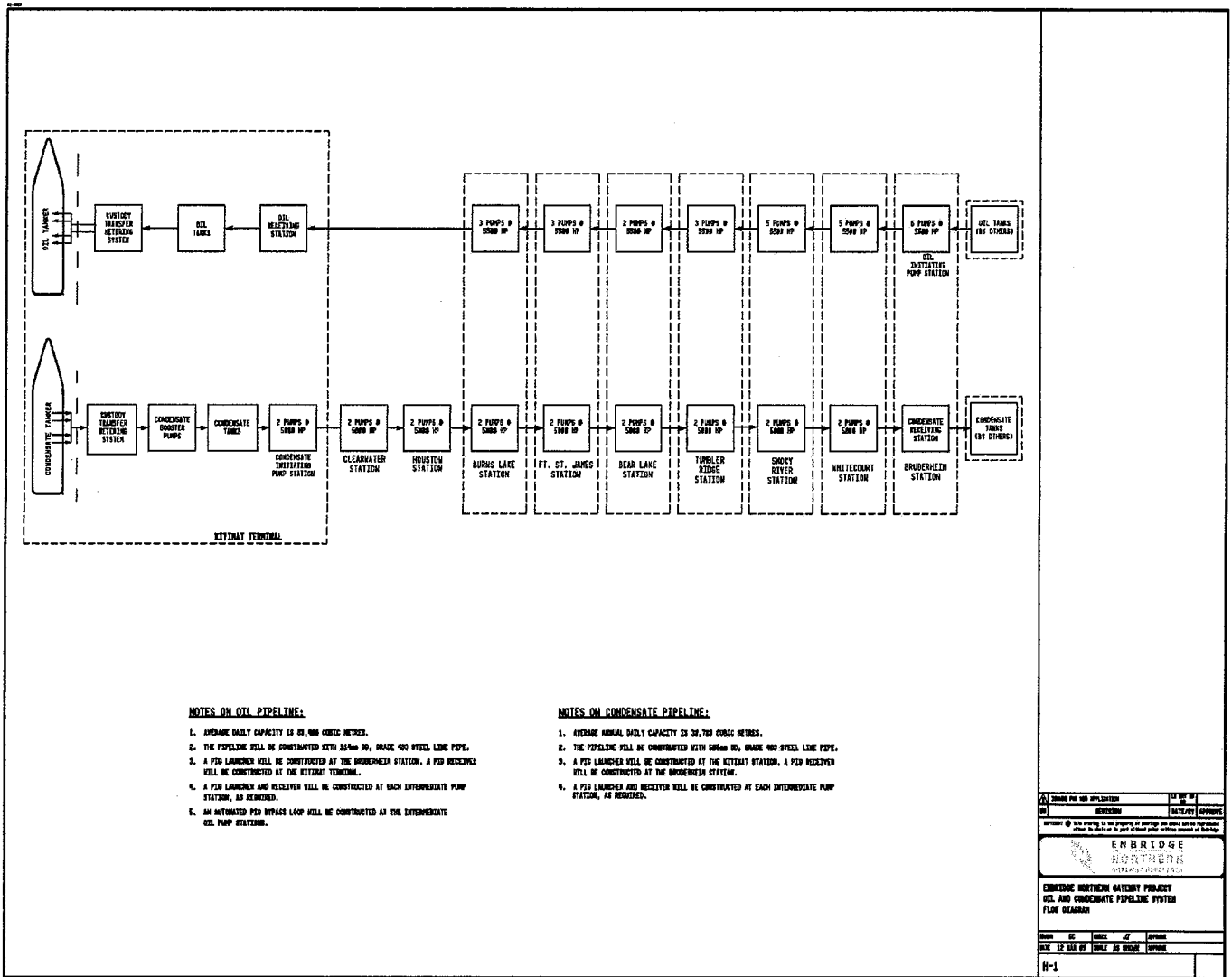


LEGEND

- Pipeline Kilometer Post
- City
- Town
- Pump Station
- Northern Gateway Pipeline Route
- Major Road
- Major Railway
- Indian Reserve
- National Park or Provincial Park

0 25 50 100
Kilometres

<p>PREPARED FOR</p>	REFERENCE: Pipeline Route: Plan R, 2009 Applied by Northern Pipelines Company, LCC Projection (Central Meridian 121W Standard Parallel 53N & 58N) and NAD 83 Datum National Parks 1:50,000 (April 2006) AB Provinces and Crown Reserves 1:75,000 (April 2009) BC Protected Areas, Special Forestry, & Forest Protection 1:250,000 (Oct. 2008) by Geographic Data Source: Geographic Division Statistics Canada, JCS Boundary Files, V2, 180, AVERT, Water Road and Rail data obtained from Geographic Information Department of Natural Resources Canada. All rights reserved.	SCALE 1:3,000,000 DATE 9 July 2010 FIGURE ID 11-024-001 REVISION C FIGURE NO. A-1
	ENBRIDGE NORTHERN GATEWAY PROJECT	
	<h2>Overview Map (Proposed)</h2>	



NOTES ON OIL PIPELINE:

1. AVERAGE DAILY CAPACITY IS 61,000 CUBIC METERS.
2. THE PIPELINE WILL BE CONSTRUCTED WITH 813mm ID, GRADE 400 STEEL LINE PIPE.
3. A PID LAUNCHER WILL BE CONSTRUCTED AT THE BROOKMEIER STATION. A PID RECEIVER WILL BE CONSTRUCTED AT THE KITZMAT TERMINAL.
4. A PID LAUNCHER AND RECEIVER WILL BE CONSTRUCTED AT EACH INTERMEDIATE PUMP STATION, AS REQUIRED.
5. AN AUTOMATED PID BYPASS LOOP WILL BE CONSTRUCTED AT THE INTERMEDIATE OIL PUMP STATIONS.

NOTES ON CONDENSATE PIPELINE:

1. AVERAGE ANNUAL DAILY CAPACITY IS 30,700 CUBIC METERS.
2. THE PIPELINE WILL BE CONSTRUCTED WITH 813mm ID, GRADE 400 STEEL LINE PIPE.
3. A PID LAUNCHER WILL BE CONSTRUCTED AT THE KITZMAT STATION. A PID RECEIVER WILL BE CONSTRUCTED AT THE BROOKMEIER STATION.
4. A PID LAUNCHER AND RECEIVER WILL BE CONSTRUCTED AT EACH INTERMEDIATE PUMP STATION, AS REQUIRED.

ENBRIDGE PROJECT NO. 10000000000000000000	DATE: 01/15/2010	BY: [Signature]	APPROVE: [Signature]
ENBRIDGE NORTHWESTERN ENERGY SERVICES			
ENBRIDGE NORTHWESTERN GATEWAY PROJECT OIL AND CONDENSATE PIPELINE SYSTEM FLOW DIAGRAM			
DATE: 01/15/2010	BY: [Signature]	DATE: 01/15/2010	BY: [Signature]
DATE: 12/08/09	BY: [Signature]	DATE: 01/15/2010	BY: [Signature]
H-1			

