

**Secure Energy Services Inc.**

**Tariff No. 102**

**Rules and Regulations  
Governing the  
Transportation  
Of  
Crude Petroleum  
By Pipeline**

**General Application**

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These Rules and Regulations apply to all Shippers using Carrier's Pipeline System and by Tendering Crude Petroleum by or on behalf of a Shipper to Carrier's Pipeline System or by delivering a Notice of Shipment to Carrier, each Shipper accepts these Rules and Regulations as a legally binding contract made among each Shipper, Carrier and each of Carrier's other Shippers on the terms and conditions contained herein and as they may be amended in any subsequent revisions which are, from time to time, issued by Carrier and notice of which is given to Shippers.

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**Issued By:**

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## Article 1 Definitions

In these Rules and Regulations the following terms have the following meanings:

**"Affiliate"** of any Person means any other Person who directly or indirectly controls, or is controlled by, or is under common control with, such Person, and for these purposes "control", and related terms including "controlling" and "controlled", shall mean (i) with respect to a corporation or other Person having voting shares or the equivalent and elected directors or individuals performing similar functions, the power to vote, directly or indirectly, shares or the equivalent representing more than 50% of the power to vote in the election of directors or individuals performing similar functions; and (ii) with respect to any other Person (other than an individual), either (A) ownership of more than 50% of the equity or beneficial interest in that Person, or (B) the ability to direct the business and affairs of such Person by acting as a general partner, managing partner, manager or other forms of effective control.

**"API"** means the American Petroleum Institute.

**"Applicable Law"** means in relation to any Person, property or circumstances, statutes (including regulations enacted thereunder), judgments and orders of courts of competent jurisdiction, regulations and orders issued by Government Authorities, and regulatory approvals, permits, licences, approvals and authorizations, which are applicable to such Person, property or circumstances.

**"ASTM"** means the American Society for Testing and Minerals.

**"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday scheduled by Canadian, Alberta or municipal law, on which chartered banks are open for the conduct of commercial banking business in Calgary, Alberta.

**"Carrier"** means the operator of the Pipeline System, Secure Energy Services Inc., an Alberta based corporation.

**"Carrier Receivable"** has the meaning given to that term in Section 12.7.

**"COLC Calendar"** mean the Crude Oil Logistics Committee calendar providing specific monthly dates for pipelines, terminals, shippers, and government organizations on the production and disposition of crude oil in Western Canada, referenced at <http://colcomm.com/calendars.aspx> and subject to change by the Crude Oil Logistics Committee.

**"Consequential Loss"** means (i) indirect, incidental or consequential losses or punitive damages and (ii) loss of production, loss of product, loss of use and loss of revenue, profit or anticipated profit (in all cases, whether direct, indirect or consequential) and whether or not such losses or damages were foreseeable at the time of entering into these Rules and Regulations, or any of them.

**"Consignee or Transfer Shipper"** means the third party who takes possession of the crude at the delivery point as designated by the Shipper.

**"Contract"** means any agreement executed by Carrier and a Shipper, and into which these Rules and Regulations are incorporated, including without limitation a Transportation Services Agreement, a connection agreement, a purchase agreement or a buy/sell agreement.

**"Credit Rating"** means, with respect to a Person, on any date of determination, the ratings of its senior, unsecured, unsubordinated long-term debt (not supported by a third party credit enhancement) issued by S&P, Moody's, DBRS, or if the Person does not have a rating for its senior, unsecured, unsubordinated long-term debt (not supported by a third party credit enhancement), then the ratings assigned to the Person's issuer credit rating by S&P, the issuer rating by Moody's or the issuer rating by DBRS.

**"Credit Rating Agency"** means any or all of S&P, Moody's and DBRS.

**"Credit Support Provider"** means an entity acceptable to Carrier in its sole discretion that has provided an unconditional and irrevocable guarantee of all the payment obligations of Shipper to Carrier pursuant to the Tariff, in a form, amount and term satisfactory to Carrier in its sole discretion.

**"Crude Petroleum"** means the direct liquid product of oil wells or the indirect liquid product of oil or gas wells, or a mixture of such products, that meets the applicable Petroleum Specifications set forth in the Tariff Bulletin, and not containing any injected butane, condensate, diluent, or heavy oil.

**"Cubic Meter" or "m3"** means the volume of Crude Petroleum occupying one cubic meter at a temperature of fifteen degrees Celsius, and at a pressure of 101.325 Kilopascals absolute. It is equivalent to 6.29287 Barrels of clean crude oil.

**"Cure Period"** means:

- (a) for any default or breach involving the payment of amounts due, the 5-day period following the delivery by Carrier of a Default Notice; or
- (b) for any other default or breach, the 30-day period following the delivery by Carrier of a Default Notice.

**"Day"** means a period of 24 consecutive hours, beginning and ending at 7:00 am Mountain Standard Time. The reference date for any Day shall be the calendar date upon which the 24-hour period commences.

**"DBRS"** means DBRS Limited, DBRS, Inc., or DBRS Ratings Limited, as the case may be, its successors and assigns.

**"Default Notice"** means a notice in writing from the Carrier to the Shipper specifying a breach or default by the Shipper or its nominees, agents or representatives of these Rules and Regulations.

**"Deliver"** means delivered by Carrier to Shipper at the Delivery Point.

**"Delivery Point"** means a location on Carrier's Pipeline System at which Carrier has facilities to permit the Delivery of Crude Petroleum to Shipper, as set forth in the Tariff Bulletin.

**"Event of Default"** has the meaning set forth in Article 19.

**"Firm"** means that Carrier may only interrupt its obligation to receive and transport Crude Petroleum without liability only to the extent such obligation is excused by Force Majeure or Outage or by a TSA Shipper's non-performance of its obligations under its Transportation Services Agreement.

**"Firm Volumes"** means, with respect to a TSA Shipper, the volume of Crude Petroleum set out in such TSA Shipper's Transportation Services Agreement that is to be received and transported by Carrier on a Firm basis.

**"Force Majeure"** has the meaning set forth in Article 10.

**"Government Authority"** means any judicial, legislative, administrative or other federal, provincial, municipal or local governmental authority, ministry, department, commission, regulatory body, administrative agency, office, organization or authority having jurisdiction over the Parties, the Pipeline System or any transportation services.

**"kiloPascal" or "kPA"** means a pressure of 1,000.0 Pascals. For reference, a pound per square inch (psi) is equivalent to 6.89476 kiloPascals.

**"LACT"** means Lease Automatic Custody Transfer and includes all equipment necessary to transfer volume from the connected location to the pipeline.

**"Letter of Credit"** means an irrevocable standby letter of credit issued by a Canadian chartered bank, financial or similar institution acceptable to Carrier, in its sole discretion.

**"Month"** means a period beginning at 7:00 am Mountain Standard Time on the first Day of any calendar month and ending at 7:00 am Mountain Standard Time on the first Day of the next calendar month.

**"Monthly Nomination Date"** means the date specified in the COLC calendar, or any successor organization providing this information, or as specified by Carrier from time to time which in no event shall be later than 7:00 a.m. Mountain Standard Time on that Day.

**"Moody's"** means Moody's Investors Service, Inc, its successors and assigns.

**"MPMS"** means the API Manual of Petroleum Measurement Standards.

**"Nomination"** means, collectively, the volume of Crude Petroleum, the Receipt Points, the Delivery Points and the types and anticipated quantity of Crude Petroleum specified in a Notice of Shipment in respect of a Month.

**"Non-Performance Charge"** has the meaning set forth in Article 16.

**"Non-Specification Product"** means hydrocarbon product that does not meet the Petroleum Specifications and the other requirements set out in Section 4.1.

**"Notice of Shipment"** means the form (including electronic forms) prescribed by Carrier to be used by Shippers in notifying Carrier of proposed Tenders, as such form may be amended from time to time by Carrier.

**"Outage"** means, in respect of the Pipeline System, any circumstance, whether planned or unplanned, in which the Pipeline System is unable to receive, transport and/or deliver all or any portion of the Crude Petroleum tendered by Shippers for transportation on the Pipeline System.

**"Party"** means a Person that is bound by this Agreement, being Carrier or a Shipper.

**"Payment Due Date"** means the Day, of a Month, in which Carrier issues an invoice pursuant to Section 12.2, specified in the COLC Calendar, as the Day by which payments are to be made.

**"Performance Assurance"** means security from a Qualified Financial Institution in a form, amount and term satisfactory to Carrier in its sole discretion.

**"Person"** includes any individual, sole proprietorship, partnership, limited partnership, firm, unincorporated association, unincorporated organization, syndicate, trust, joint venture, body corporate, unlimited liability company, Government Authority, and any other entity or organization of any nature whatsoever, and includes any of the foregoing when acting as trustee, executor, administrator or other legal representative or entity however designated or constituted.

**"Petroleum Specifications"** means the Petroleum Specifications attached as Appendix 1 to the Tariff Bulletin.

**"Pipeline System"** means Carrier's pipeline system for the transportation of Crude Petroleum, as specified in the Tariff Bulletin.

**"Prime Rate"** means the rate of interest, expressed as a rate per annum, which is established as a reference rate for the purposes of determining rates of interest charged by Carrier's primary banker on Canadian dollar commercial demand loans made by it in Canada which is quoted by such bank, from time to time, as its "Prime Rate".

**"Qualified Financial Institution"** means a major Canadian or United States bank or foreign bank with a Canadian or United States subsidiary and any other bank that is, from time to time, acceptable to Carrier in its sole discretion; provided that such bank has (A) assets of at least Canadian \$10 billion dollars; and (B) a Credit Rating of at least "A" from S&P, "A2" from Moody's or "A" from DBRS. In the event of a split rating between the applicable Credit Rating Agencies, the lower rating shall prevail.

**"Receipt Point"** means a location on Carrier's Pipeline System at which Carrier has facilities to permit Shipper to Tender Crude Petroleum, as identified in the Tariff Bulletin.

**"Retention Stock"** means the volume of Crude Petroleum required by Carrier from time to time for operational and scheduling purposes, and includes working stock, tank bottoms and idle line fill.

**"S&P"** means Standard & Poor's Financial Services LLC, its successors and assigns.

**"Shipper"** means a Person who (i) is approved by the Carrier and submits a Notice of Shipment for the transportation of Crude Petroleum on the Pipeline System pursuant to the Tariff; (ii) contracts with the Carrier for the transportation of Crude Petroleum subject to these Rules and Regulations, and/or (iii) has agreed to sell Petroleum to Carrier for shipment subject to these Rules and Regulations.

**"Shipper's Balance"** means the document, including electronic versions, that details the actual inventory, receipts, deliveries, purchases and sales of Crude Petroleum for a calendar month, plus or minus any adjustments thereto in compliance with the Tariff (including loss allowance).

**"Tariff"** means these Rules and Regulations, the Tariff Bulletin and, in the case of a Contract, the Contract that such Shipper is a party to, all as amended, supplemented, modified or replaced from time to time.

**"Tariff Bulletin"** means a schedule of tolls, fees and other charges in respect of the Pipeline System that specifically reference these Rules and Regulations, as published by Carrier from time to time, annexed to these Rules and Regulations as Schedule "A".

**"TSA Shipper"** means a Shipper that is party to a Transportation Services Agreement, or its designate.

**"Tender"** means the delivery by Shipper to Carrier at a Receipt Point of a stated quantity and type of Crude Petroleum for transportation from such Receipt Point to a Delivery Point.

**"Transportation Services Agreement" or "TSA"** means an agreement pursuant to which Carrier provides transportation service to a Shipper on the Pipeline System.

**"Weathered"** means Crude Petroleum which when left in a specified container open to specified atmospheric conditions for a period of at least 24 hours does not experience a change in volume greater than 0.2% or density greater than 2 kg/m<sup>3</sup>, other than those changes attributable to a change in the temperature of such Crude Petroleum. For greater certainty, Crude Petroleum experiencing changes greater than 0.2% in volume or 2 kg/m<sup>3</sup> with respect to density shall not be considered Weathered.

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## **Article 2 Commodity**

The Tariff applies to the receipt, transportation and delivery of Crude Petroleum by Carrier on the Pipeline System and no commodity other than Crude Petroleum will be transported under the Tariff. Carrier will not accept other commodities unless specifically approved in advance and in writing by Carrier.

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## **Article 3 Receipt and Delivery**

### **3.1 Acceptance and Delivery.**

Crude Petroleum shall be accepted for transportation on the Pipeline System only when Tendered in accordance with Sections 4.1 and 6.1 at one or more Receipt Points and Nominated for Delivery to Shipper at one or more Delivery Points. Shipper shall accept and remove its Crude Petroleum from the Pipeline System upon Delivery of the Crude Petroleum.

### **3.2 Delivery Facilities.**

Crude Petroleum will be accepted for transportation only when Shipper has provided or made arrangements for the necessary facilities and/or transportation service satisfactory to Carrier at the named Delivery Point for handling the Crude Petroleum at the rate of flow at which Carrier is then operating its Pipeline System at such Delivery Point.

### **3.3 Access to Facilities.**

Carrier and its representatives, upon reasonable notice to Shipper, shall have the right to enter upon Shipper's or its Affiliates' owned or controlled premises where Crude Petroleum is received or delivered by Carrier and shall have access to any and all facilities of Shipper or its Affiliates for the purpose of making any examination, inspection, measurement or test provided for under the Tariff.

### **3.4 Receipt Point Facilities.**

All facilities of Shipper or its Affiliates located at a Receipt Point shall comply with the following:

- (a) Shipper shall arrange for or provide and maintain sufficient shipping tank storage for a minimum of 24 hours of average Crude Petroleum Tender (or more as determined by Carrier, in its sole discretion);
- (b) Shipper shall arrange for and maintain lines with a minimum diameter of 219.0 millimeters or larger as stipulated by Carrier, in its sole discretion, from the tank to the tank firewall;
- (c) the tank to tank firewall line shall include full opening valves sized at a minimum size equal to the line size;
- (d) the minimum installation height above the tank floor for tank nozzles shall be 1,000 millimeters;
- (e) Carrier shall have the right to put seals on all Receipt Points, and Shipper shall provide facilities to accommodate such seals on all shipping tanks;
- (f) Shipper shall not use branch connections on the line between the tank storage and the Receipt Points;
- (g) Shipper shall provide Carrier a method of receiving shipment tank level measurements, as stipulated by Carrier, in its sole discretion;
- (h) all stairways and walkways on all tanks must be constructed and maintained by Shipper in accordance with Applicable Law;
- (i) all shipment tender tanks must include an appropriately sized thief hatch;
- (j) the minimum size for a shipment tank shall be 80 Cubic Meters;
- (k) Carrier shall have the right to install and maintain pipelines, piping manifolds, LACT Equipment, pumping equipment, control equipment and power service facilities upon and across the surface of any premises Shipper or its Affiliate owns or controls;
- (l) Shipper shall use commercially reasonable efforts to ensure that all weather access roads to LACT Equipment or other facilities are maintained. Carrier shall have the right to use such access roads in connection with the operation or maintenance of the Pipeline System;
- (m) Carrier shall have the right to require tank storage temperature sensing probes to shut off pumps if the Crude Petroleum temperature drops below 0°C or is greater than 40°C. The temperature-sensing probe shall be on the same level and within 15 centimeters of the market line outlet and shall extend a minimum of 90 centimeters inside the tank;

- (n) Carrier shall have the right to install a monitor to determine basic sediment and water or other impurities and other meter and sampling devices as part of each Receipt Point;
- (o) Carrier shall have the right to require that Shipper install and maintain recycle line pipe, pump, valves and fittings, including a three-way valve and valve operator, to allow Non-Specification Product to return to Shipper's tank storage;
- (p) Shipper shall use commercially reasonable efforts to obtain maximum Weathering;
- (q) when, in Carrier's sole discretion, Shipper's tanks are unsafe or unsuitable for use because of improper connections or any other unacceptable condition, Carrier may refuse to accept Crude Petroleum from such facilities until the conditions are rectified to Carrier's sole satisfaction, with no cost or liability to Carrier; and
- (r) at the request of Carrier, Shipper shall provide equipment, instrument air, heating medium, natural gas, and/or a connection to a continuously burning flare to Carrier. No charge will accrue to Carrier for such services or for the installation or maintenance of the facilities required to supply the same.

### **3.5 Facilities Not Owned or Operated by Shipper.**

Where Shipper is not the owner or operator of the facilities referenced in Sections 3.3 or 3.4, it shall cause such owner or operator to comply with the provisions set forth in Sections 3.3 and 3.4.

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## **Article 4 Quality Specifications**

### **4.1 Specifications of Crude Petroleum.**

Shipper shall only Tender Crude Petroleum to Carrier that meets the Petroleum Specifications. Carrier shall have no obligation to receive and transport petroleum substances:

- (a) that do not satisfy the Petroleum Specifications;
- (b) that have on the Tendering of such petroleum substances physical or chemical characteristics that may render such petroleum substances not readily transportable by Carrier, that may materially affect the quality of other Crude Petroleum transported by Carrier or that may otherwise adversely affect Carrier, the Pipeline System and/or other Shippers, as determined by Carrier in its sole discretion;
- (c) that have been blended at facilities upstream of the Receipt Point or that contains excessive amounts of butane,  
(such petroleum substances being "**Non-Specification Product**" herein).

Shipper shall immediately advise Carrier of the Tendering of Non-Specification Product. The requirements in this Section 4.1 apply to each Tender by Shipper; quality will not be averaged over multiple Tenders.

### **4.2 Change to Petroleum Specifications.**

Notwithstanding any other provision to the contrary expressed or implied in these Rules and Regulations, Carrier shall have the right to change the Petroleum Specifications set forth in the Tariff Bulletin from time to time in its sole discretion. Carrier shall provide Shipper with notice of such change to the Petroleum Specifications.



#### **4.3 Certification of Petroleum Specifications.**

Shipper shall at its cost provide to Carrier an independent laboratory analysis report or certificate with respect to the specifications of Crude Petroleum to be Tendered by Shipper for transportation on the Pipeline System:

- (a) prior to its first shipment of Crude Petroleum pursuant to a Contract or these Rules and Regulations;
- (b) immediately following any new well being tied in to facilities upstream of the Receipt Point;
- (c) immediately following the workover or re-completion of wells upstream of the Receipt Point or the shutdown or turnaround of storage, processing or other facilities of Shipper upstream of the Receipt Point; and
- (d) within three days of a request by the Carrier.

Such report or certificate shall, for each type of Crude Petroleum to be Tendered by Shipper, include results for all of the Petroleum Specifications (utilizing the testing methods referenced in the Tariff Bulletin), and any other specifications requested by Carrier. In the event that Shipper fails to provide Carrier with such certificate or report, Carrier shall have the right to refuse to accept Shipper's Crude Petroleum for transportation on the Pipeline System, and to enter Shipper's facilities to obtain samples of and test Crude Petroleum (the costs of which shall be charged to Shipper).

#### **4.4 Quality Determination.**

Carrier shall have the right to perform quality and component analysis on any and all of the Crude Petroleum that has been Tendered by Shipper (typically based on a monthly composite). Carrier's determinations in this regard shall be final and binding on Shipper.

#### **4.5 Remedies Relating to Non-Specification Product.**

If the Carrier in its discretion determines that Shipper has Tendered Non-Specification Product, then Carrier may:

- (a) refuse to accept or transport such Non-Specification Product;
- (b) impose a quality surcharge on such Non-Specification Product as set out in the Tariff Bulletin;
- (c) invoice Shipper for any costs, expenses, damages or losses incurred by Carrier as a result of such Tender, including:
  - (i) in relation to any quality and component testing of the Pipeline System to determine the source of such Non-Specification Product;
  - (ii) charges for the terminalling, storage, handling, treatment, and disposal of Non-Specification Product, both Shipper's and any third-party Crude Petroleum that may have become contaminated by Shipper's Non-Specification Product; and
  - (iii) any Consequential Losses suffered by Carrier due to the shutting in of the Pipeline System;
- (d) require Shipper to remove such Non-Specification Product from the facilities of the Carrier as directed by the Carrier; or
- (e) any combination of the foregoing.

If a Shipper fails to remove such Non-Specification Product from Carrier's Pipeline System pursuant to Section 4.5(d), or fails to pay the invoice referred to in Section 4.5(c) within ten Business Days of its issuance, then Carrier shall have the right to either remove such Non-Specification Product and cause it to be processed to acceptable quality, at the sole cost and risk of Shipper, or remove and sell such Non-

Specification Product on whatever terms the Carrier can arrange, acting reasonably. Carrier shall pay from the proceeds of such sale all costs incurred by Carrier with respect to the storage, removal and sale of such Non-Specification Product and Carrier shall be entitled to retain a reasonable pre-estimate of any damages, costs, expenses and other damages, costs and expenses incurred or anticipated to be incurred by Carrier in respect of such Non-Specification Product. The remainder of such proceeds, if any, shall be paid by Carrier to such Shipper. Carrier may take such further action and remedies as it deems appropriate to lessen or mitigate any adverse impact to Carrier or Carrier's Pipeline System. In the event that the proceeds of the sale of such Non-Specification Product are insufficient to cover all damages, costs and expenses incurred by Carrier, Shipper will be liable to Carrier for remaining unrecovered damages, costs and expenses.

#### **4.6 Liability for Receipt of Non-Specification Product.**

In the event that Carrier has accepted Non-Specification Product for any reason, including but not limited to device or instrument error within Carrier's Receipt Point facilities, Carrier is not liable to Shipper for any costs relating thereto. It is Shipper's responsibility to ensure compliance with the provisions of Section 4.1. Shipper acknowledges that Carrier does not test all Crude Petroleum prior to acceptance of the Crude Petroleum by Carrier at a Receipt Point and that Carrier relies on Shipper to ensure the Crude Petroleum tendered complies with the provisions of Section 4.1.

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## **Article 5 Changes in Quality**

### **5.1 Delivery of Types of Crude Petroleum.**

Carrier shall use commercially reasonable efforts to deliver substantially the same type of Crude Petroleum to Shipper as received by Carrier from Shipper; provided, however, Carrier shall not be obligated to make delivery of identical Crude Petroleum to Shipper as Tendered by Shipper to Carrier.

### **5.2 Alteration of Quality.**

Crude Petroleum Tendered for transportation shall be subject to such changes in density or quality while in Carrier's custody as may result from the transportation thereof, or the mixture of said Crude Petroleum with other petroleum substances in Carrier's Pipeline System. Carrier shall not be liable for any direct or indirect costs, losses or damages resulting from an alteration in density or other quality of Crude Petroleum transported by Carrier. For greater certainty, (i) Carrier shall have no obligation to segregate Shipper's Crude Petroleum from other Crude Petroleum during transportation, (ii) Carrier shall have the right to commingle Shipper's Crude Petroleum with other petroleum substances, and (iii) Crude Petroleum delivered to Shipper by Carrier at the Delivery Point shall have the density, quality and other characteristics that results from Shipper's Crude Petroleum having been commingled with other petroleum substances.

### **5.3 Condensate and Blending.**

Carrier may add such condensate at Receipt Points or other locations on Carrier's Pipeline System as Carrier determines is advantageous for the operation of Carrier's Pipeline System or to meet a prescribed blended stream viscosity, Density or quality specification. As a condition to accepting Crude Petroleum, Carrier may require of those Shippers Tendering Crude Petroleum either at Receipt Points to be specified by Carrier or having a Density or quality in excess of parameters specified by Carrier, to provide for each Month the volume of condensate prescribed to be provided for such Month by Carrier, of a quality and quantity acceptable to Carrier, commensurate with the volume and Density or quality of Crude Petroleum Tendered by Shipper. Shipper shall be responsible for the blending shrinkage resulting from adding such condensate.

#### **5.4 Quality Equalization.**

Where in any Month, Crude Petroleum with differing density or quality is Tendered to Carrier's Pipeline System from two or more Shippers and blended together as a common stream, then Carrier may, but shall not be obligated to, provide quality equalization services to Shippers. In the event Carrier elects to provide such quality equalization services, such services shall be provided in accordance with downstream carrier requirements and/or industry-accepted quality equalization procedures. If there is a shortfall in the payments received by Carrier, the payments actually received by Carrier shall be allocated pro rata to Shippers entitled to a payment on the basis of each Shipper's relative share of entitlement.

#### **5.5 Additives.**

At the request of the Carrier, Shipper shall, at its sole cost and expense, provide and inject into Crude Petroleum Tendered for transportation:

- (a) a corrosion inhibitor compound;
- (b) a drag reducing agent; or
- (c) a wax dispersant.

Shipper must obtain prior written approval from Carrier for the type and amount of corrosion inhibitor, drag reducing agent or wax dispersant, and must accept Delivery of Petroleum containing such corrosion inhibitor, drag reducing agent or wax dispersant at the Delivery Point.

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### **Article 6      Nominations, Tenders and Flow Rates**

#### **6.1 Monthly Nominations.**

On or before Carrier's scheduled Monthly Nomination Date or prior to Tendering any new or incremental volume of Crude Petroleum, Shipper shall provide Carrier with a Notice of Shipment for the following Month, or a revised Notice of Shipment, showing the volume of Crude Petroleum to be Tendered, the Receipt Points, the Delivery Points, Consignees and type of Crude Petroleum. If Shipper fails to provide a Notice of Shipment, Shipper's Monthly Nomination will be deemed to be zero. When apportionment occurs pursuant to Section 8.1, Shipper shall be deemed to have submitted a Monthly Nomination equal to its Monthly Nomination reduced proportionately by the level of apportionment. Shipper shall, upon notice from Carrier, also provide written verification of the availability of its supply of Crude Petroleum and of its capability to remove such Crude Petroleum from any Delivery Point as may be required by Carrier. Carrier shall not be obligated to accept Shipper's Notice of Shipment where such verification is, in the sole discretion of Carrier, unacceptable to Carrier.

#### **6.2 Restriction of Tenders.**

Shipper being unable to remove from the Delivery Point the Nomination or the volume of Crude Petroleum Tendered shall be an Event of Default. In addition to the remedies referred to in Section 19, Carrier may reduce the amount of Crude Petroleum accepted from Shipper for transportation to the amount which Shipper has verified it will be able to remove from the Delivery Point.

#### **6.3 Late or Revised Nominations.**

If space is available and operating conditions permit, Carrier may, at its discretion, accept Nominations or revised Nominations after Carrier's scheduled Monthly Nomination Date.

#### **6.4 Retention Stock.**

The Pipeline System operates as a single shipper pipeline system. Carrier will therefore provide the necessary Retention Stock, but may impose a Retention Stock charge reflective of the additional costs to Carrier.

Should Carrier decide to switch the Pipeline System to a non-single shipper system:

- (a) each Shipper will provide its pro rata share of Retention Stock by types and volumes of Crude Petroleum as determined by Carrier from time to time for any portion of Carrier's Pipeline System used or to be used to transport such Shipper's Crude Petroleum. The pro rata calculation will be based on Shipper's relative share of Tenders into the applicable segment of Carrier's Pipeline System for the current Month; and
- (b) Shipper shall remove and dispose of all Retention Stock following the termination of Shipper's use of the Pipeline System. The Carrier shall be entitled, at its sole discretion and in accordance with Article 12, to dispose of any Retention Stock which is unclaimed by Shipper within fifteen Business Days after notification by Carrier to do so. The Carrier shall not be liable to Shipper or any Consignee of Shipper for any loss or damage suffered by Shipper or such Consignee arising out of such disposition, and Shipper or its Consignee shall pay for all costs incurred in disposing of such Crude Petroleum, as if Shipper or such Consignee had requested and authorized such disposition.

#### **6.5 Tenders by Tank Truck.**

- (a) Only those tank truck operators pre-approved by Carrier shall be entitled to Tender Crude Petroleum to a truck terminal Receipt Point provided by Carrier.
- (b) Tenders of Crude Petroleum by tank truck to a truck terminal Receipt Point provided by Carrier shall contain only Crude Petroleum originating from a single well, battery or processing facility; only one custody transfer ticket will be issued for each tank truck delivery.
- (c) Tank trucks shall: (i) have adequately maintained facilities for inspecting the tank and the contents before and after unloading of Crude Petroleum at any Receipt Point; and (ii) be equipped with proper bottom loading and unloading facilities and pumps to permit the transfer of Crude Petroleum with a minimum of delay (no less than 1 M3/minute).
- (d) Carrier may, at its sole discretion, refuse to accept Tenders of Crude Petroleum by tank truck when the driver disregards good housekeeping practices or the procedures or instructions relative to tank truck unloading issued by Carrier from time to time, or where in the opinion of Carrier there exists a risk of: (i) injury to a worker; (ii) fire or explosion; (iii) release of Crude Petroleum; (iv) release of dangerous or offensive odours; (v) environmental damage; (vi) inaccurate quantity or quality measurement due to improper tank truck equipment or lack of maintenance thereof; or (vii) the Crude Petroleum being Tended not meeting the Petroleum Specifications.
- (e) Each Shipper delivering or receiving Crude Petroleum to Carrier's truck receiving or loading terminals shall ensure that it has, or if applicable, its contractors have in place the following types of insurance and limits of liability; Commercial General Liability \$5,000,000 (including a specific endorsement for sudden and accidental pollution coverage), Automobile Liability \$5,000,000, Non-Owned Automobile Liability \$5,000,000 and Excess Automobile Liability \$5,000,000. The specified limits of liability are the minimum amount acceptable to Carrier hereunder. Each Shipper shall provide to Carrier a valid Certificate of Insurance as evidence of insurance in place before initial deliveries or loading are commenced, at any time a material change is made to the relevant insurance policy or upon the request of Carrier. The Carrier and its Affiliates and subsidiaries shall

be named as additional insureds, but only with respect to liability arising out of operations of the Carrier. A waiver of subrogation shall be provided in favour of the Carrier, its Affiliates and subsidiaries. The insurance shall be primary and non-contributory. Notwithstanding anything herein contained, Shipper shall be fully responsible for, and liable to Carrier for any loss or damage (including environmental damage) caused by or attributable to its employees, contractors, agents or representatives or by the release of Crude Petroleum on Carrier's owned or leased property prior to custody transfer and Shipper will indemnify, defend and hold Carrier harmless for any loss or damage (including environmental damage) cause by or attributable to its employees, contractors, agents or representatives or by the release of Crude Petroleum on Carrier's owned or leased property prior to custody transfer.

### **6.6 Uniform Tenders.**

Each Shipper shall endeavor to Tender its Nomination of Crude Petroleum to Carrier in equal daily quantities over each Month. Carrier will normally accept Tenders at a Receipt Point at an hourly flow rate not exceeding 120% of the Nomination for such Receipt Point divided by the number of Days in the applicable Month divided by 24 hours. Each Shipper shall also endeavor to Tender a consistent density and quality of Crude Petroleum. In the event the quality of petroleum is not consistent, Carrier may utilize spot sampling and testing and apply that crude quality for the duration of the time period in question. If Carrier is required to test and calibrate its meters more frequently than would normally be required, pursuant to Section 7.9, due to inconsistent Crude Petroleum quality, the cost of such incremental testing and calibration shall be borne solely by Shipper.

### **6.7 Delivery Flow Rates and Volumes.**

Carrier will make full stream Deliveries of Crude Petroleum at Delivery Points at flow rates and volumes compatible with Carrier's Pipeline System operations, provided that Carrier will Deliver Crude Petroleum at a pressure not lower than the downstream carrier's requirements or at pressures deemed appropriate by Carrier, at its sole discretion. Carrier will provide Shipper with the forecast flow rates at any Delivery Point upon request.

### **6.8 Transfers.**

Carrier may, upon written request of Shipper following such Shipper's Tender, allow such Shipper to transfer its rights and obligations over a shipment to another Shipper at a location on Carrier's Pipeline System specified or approved by Carrier provided that: (i) the successor Shipper satisfies the Financial Assurances requirement specified in Section 19; (ii) the successor Shipper assumes all obligations of the predecessor Shipper under this Tariff as of the time Carrier approves the transfer; (iii) the transfer request is confirmed in writing by both the transferor and transferee within two Business Days of the transfer request; (iv) Carrier shall incur no liability for any direct or indirect losses or damages accruing to any Shipper arising from Carrier's acceptance or rejection of a transfer; and (v) Carrier has not rejected the transfer request. Carrier may charge each successor Shipper a transfer fee for each transfer to such Shipper that is paying less than a prescribed amount of transportation tolls on the segment of Carrier's Pipeline System on which the transfer is made; both the transfer fee and the threshold at which the transfer fee becomes payable shall be specified in the applicable Tariff Bulletin.

### **6.9 Batch Size.**

A Tender for segregated Delivery in any Month will be accepted only when the total quantity covered thereby will be Tendered to Carrier at a Receipt Point for transportation within said Month in quantities (batch sizes) and at times to be specified or accepted by Carrier. A single batch Receipt or Delivery is a Receipt or Delivery in one continuous operation from or into a single facility to which Carrier's Pipeline

System is connected. Shipper shall not Tender Crude Petroleum for transportation on the Pipeline System at intervals of less than 180 Days.

#### **6.10 Diversion and Reconsignment.**

Diversion or reconsignment to Carrier's Delivery Points may be made without charge if requested in writing by Shipper and received by Carrier prior to delivery at the original Delivery Point, provided operating conditions permit and upon the condition that no out-of-line or backhaul movement will be made.

#### **6.11 Termination of Service.**

Should the volume of Crude Petroleum Tendered at a Receipt Point fall below the level required for the economic operation of the Receipt Point, as determined by Carrier at its sole discretion, or for any other reason as determined by Carrier in its sole discretion, Carrier may terminate pipeline service immediately and subsequently remove Carrier's Receipt Point facilities. Following the termination of pipeline service, Carrier shall be provided with reasonable access for the removal of its Receipt Point facilities.

#### **6.12 Revision of Nominations.**

In each Month, Shipper shall deliver to the Carrier a volume of Petroleum equal to its volume Nominated for that Month. The Carrier reserves the right, in its sole discretion, to accept a volume of Petroleum Tendered for transportation that differs from the volume Nominated by the Shipper, where the Carrier is of the opinion that the volumes identified in the Notice of Shipment have been either under or over estimated. In this case, the Shipper shall be required to submit a revised Notice of Shipment to the Carrier within 48 hours. Should the Shipper fail to do so, its Nomination will be deemed to be zero for that Month, or adjusted at Carrier's sole discretion. Carrier will not be liable to the Shipper for costs, losses, or damages due to any such suspension or apportionment. Shipper shall be responsible for and indemnify Carrier from and against any non-performance penalty or any other penalty, fine or third-party charge incurred by Carrier as a result of Shipper delivering less volume than it has indicated in a Notice of Shipment.

#### **6.13 Annual Volume Forecast.**

Upon the request of Carrier, Shipper shall provide a forecast of the volumes it intends to produce and deliver to the Pipeline System in the next calendar year, or such other period as determined by Carrier.

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### **Article 7 Measurement, Testing and Deductions**

#### **7.1 Unit of Measurement.**

The volumetric measurement unit of Crude Petroleum on the Pipeline System shall be Cubic Meters.

#### **7.2 Metering and Testing.**

Crude Petroleum received by Carrier for transportation shall be metered or gauged and may be sampled and tested by a representative of Carrier prior to, during or after its receipt. Shipper may have a representative present at the metering and testing.

#### **7.3 Measurement and Correction.**

Carrier shall:

- (a) correct the metered volume of Crude Petroleum in accordance with the applicable API MPMS standards and any applicable standards of a Government Authority;
- (b) determine the percentage of sediment and water in Crude Petroleum and deduct the amount of sediment and water from the corrected volume of Crude Petroleum;

- (c) adjust the measured volume of Crude Petroleum for shrinkage in accordance with the applicable API MPMS procedures in effect at that time or as determined by Carrier in its sole discretion; and
- (d) have the right, in its sole discretion, to adjust the volume of Crude Petroleum for losses that result from such Crude Petroleum not being Weathered or accepting a Tender of Crude Petroleum that contains different types of Crude Petroleum that are not homogeneous before Tender. Carrier shall have the right to apply a Weathering factor to improperly Weathered Crude Petroleum.

#### **7.4 Custody Transfer Tickets.**

All measurement of Crude Petroleum tendered or delivered for each month, shall be documented with custody transfer tickets (determined to 3 decimals to meet downstream carrier standards), or the electronic equivalent, showing the location and dates of Tendering or Delivery to which the custody transfer ticket applies, the metered or gauged volume, the weighted average density, weighted average sediment and water, deductions for sediment and water, any other volumetric corrections or adjustments provided for in this Tariff and the calculated Tendered or Delivered volume. The Carrier, at its sole discretion, may summarize the custody transfer tickets into a single report. This report will be provided to Shipper by the fourth Business Day of the month following the month of production.

#### **7.5 Measurement Procedures.**

All measurement procedures are to be conducted in accordance with API and/or ASTM standards and in accordance with all applicable governmental and regulatory requirements, inclusive of SASK Directive PNG017. Carrier's determinations in this regard shall be final and binding on Shipper.

#### **7.6 Low Density Crude Petroleum.**

When Carrier accepts low density Crude Petroleum for commingling with Crude Petroleum, the volume of low density Crude Petroleum accepted is subject to adjustment for volumetric shrinkage if, in the sole discretion of Carrier, the volume of such low-density Crude Petroleum affects the total volume of the resulting Crude Petroleum mixture. Carrier shall, in its sole discretion, determine the volumetric shrinkage. The net volume resulting from such determination shall be the volume to be delivered by Carrier to Shipper at the Delivery Point.

#### **7.7 Meter Failure.**

In the event of a meter failure, Carrier shall close off the meter and shall place a standby meter in operation. Where a standby meter is not available, Carrier shall stop the custody transfer process until Carrier installs a replacement meter. Should failure or malfunction of a meter result in material inaccuracies, Carrier shall make appropriate adjustments to Crude Petroleum quality or quantity, at the Carrier's sole discretion, on the basis of the most accurate information available. In the event of a failure to negotiate an acceptable adjustment, Carrier and Shipper shall submit the matter to arbitration in accordance with the Arbitration Act (Alberta). All fees, expenses and costs of such arbitration shall be paid equally by Carrier and Shipper.

#### **7.8 Loss Allowance.**

Carrier shall have the right to implement a loss allowance, deduction or other similar charge with respect to the Crude Petroleum Tendered by Shipper, at a rate specified from time to time in the Tariff Bulletin.

#### **7.9 Meter Prover Calibration.**

All meter provers used for proving meters shall be calibrated using the water draw method in accordance with the latest revision of API Manual of Petroleum Measurement Standards Chapter 4, Chapter 11.2.2M, and Chapter 12.2, the AER Directive 017 and SASK Directive PNG017. Prover calibration frequency must always comply to the higher calibration interval. Currently, for portable provers, the calibration intervals must meet AER Directive 017 and SASK Directive PNG017 (latest revision) calibration frequency which

currently states biannually (once every two years) and for stationary provers they shall be calibrated at intervals not exceeding four years. Shippers shall have the right to witness any and/or all proving or verification of Measurement Instruments.

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## **Article 8 Apportionment**

### **8.1 Pipeline System Apportionment.**

If more Crude Petroleum (or more than one type of Crude Petroleum) is Nominated for a Month than can be transported on the Pipeline System (or any segment thereof) by Carrier, Carrier shall allocate available capacity on the Pipeline System (or any segment thereof) among such Nominations as follows:

- (a) firstly, among TSA Shippers Nominating for Firm Volumes based on a pro rata share of the capacity of the Pipeline System (or any segment thereof), on the basis of the Nominations by such TSA Shippers for Firm Volumes up to a maximum level of such TSA Shippers' Nominations for Firm Volumes; and;
- (b) secondly, among all Shippers Nominating for non-Firm Volumes based on a pro rata share of the remaining capacity of the Pipeline System (or any segment thereof), on the basis of the Nominations by such Shippers for non-Firm Volumes.

### **8.2 Receipt Point/Delivery Point Apportionment.**

If more Crude Petroleum (or more than one type of Crude Petroleum) is Nominated for a Month for receipt at a Receipt Point or delivery at a Delivery Point than can be received by Carrier at such Receipt Point or delivered by Carrier at such Delivery Point, Carrier shall allocate available capacity among such Nominations as follows:

- (a) firstly, among TSA Shippers Nominating for Firm Volumes based on a pro rata share of the capacity of such Receipt Point or Delivery Point, as applicable, on the basis of the Nominations by such TSA Shippers for Firm Volumes up to a maximum level of such TSA Shippers' Nominations for Firm Volumes; and
- (b) secondly, among all Shippers Nominating for non-Firm Volumes based on a pro rata share of the remaining capacity of such Receipt Point or Delivery Point, as applicable, on the basis of the Nominations by such Shippers for non-Firm Volumes.

### **8.3 Tenders.**

If more Crude Petroleum (or more than one type of Crude Petroleum) is Tendered to the Pipeline System (or any segment thereof) than can be transported on the Pipeline System or received at a Receipt Point or delivered at a Delivery Point by Carrier, Carrier shall have the right, in its sole discretion, to apportion or otherwise manage capacity on the Pipeline System (or any segment thereof) or at the Receipt Point or Delivery Point, as applicable, among such Tenders.

### **8.4 Revised Nomination.**

If Carrier apportions available capacity of the Pipeline System pursuant to Sections 8.1, 8.2 and 8.3, Carrier shall, as soon as reasonably practicable, notify Shipper of such apportionment. Within 24 hours of receipt of notice of apportionment by Shipper, Shipper shall provide Carrier with a revised Nomination accounting for such apportionment. If Shipper fails to provide a revised Nomination in accordance with this Section 8.4, Shipper's Nomination shall be deemed to be zero (0) for that Month.



### **8.5 Carrier Not Liable.**

Carrier will not be liable to Shipper for any direct costs, losses or damages or Consequential Losses due to such apportionment. Carrier will, on a commercially reasonable efforts basis, endeavor to remove such restrictions as soon as practical in accordance with internal economic assessments and reasonably prudent industry practice.

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### **Article 9 Outages**

Without limiting Section 10, Carrier shall have the right to suspend, reduce and/or interrupt the transportation of Crude Petroleum on the Pipeline System in the event of any planned or unplanned Outage. In this regard, Carrier shall:

- (a) provide all Shippers on the Pipeline System with as much notice as reasonably practicable of a planned Outage; and
  - (b) advise all Shippers on the Pipeline System as soon as reasonably practicable that an unplanned Outage has occurred.
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### **Article 10 Force Majeure**

#### **10.1 Force Majeure Claim.**

If either Carrier or Shipper fails to perform any obligation under this Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations. The party claiming Force Majeure shall promptly give notice to the other party, but not later than seven days from the occurrence of such event. The notice shall describe in reasonable detail the following:

- (a) the Force Majeure event that has occurred and the date as of which such Force Majeure Event has occurred;
- (b) the extent to which the affected Party is or will be affected by the Force Majeure event; and
- (c) the proposed mitigation and remediation of the Force Majeure event.

#### **10.2 Force Majeure.**

The term "Force Majeure", as employed herein shall mean any event or circumstance not reasonably within the control of the Person claiming suspension, whether or not foreseeable, including:

- (a) any act of God, war, terrorism, sabotage, civil insurrection or disobedience, acts of public enemies, strikes, lockouts or other industrial disturbances, shortage of labour, accidents, blockades, riots, epidemics, quarantines, landslides, storms, lightning, earthquakes, explosions, fires, floods, washouts, civil disturbances, or the act, regulation, order, direction or requisition of any Governmental Authority;
- (b) any fires, explosions, ruptures, contamination or obstruction of, freezing, breakages of or accidents to the Pipeline System, any portion thereof, or any other equipment or facilities necessary to operate the Pipeline System or any portion thereof whatsoever;
- (c) an Outage, or any preventative shut down of the Pipeline System or any portion thereof as a result of conditions that could pose a material threat to safety, the environment or the Pipeline System;  
or

- (d) inability to obtain or revocation or amendment of any permit, licence, certificate or authorization of any Government Authority having jurisdiction with respect to the Crude Petroleum or the Pipeline System, unless the revocation or amendment of such permit, licence, certificate or authorization was caused by the violation of the terms or conditions thereof or consented to by the Person holding the same.

### **10.3 Force Majeure Exclusions.**

Notwithstanding Section 10.2, the following shall not be events of Force Majeure:

- (a) insufficiency of Shipper's Crude Petroleum supplies;
- (b) lack of funds, or other financial circumstance;
- (c) Shipper's lack of takeaway capacity at the Delivery Point;
- (d) failure, for any reason, to obtain any Provincial export or other regulatory authorization required for Shipper to be entitled to remove Crude Petroleum from a Province;
- (e) Shipper's failure to meet the Petroleum Specifications;
- (f) the existence of, and Shipper's diversion to more attractive markets; or
- (g) a change in economic or market conditions including a change in Crude Petroleum or other commodity prices.

### **10.4 Remediating Cause of Force Majeure.**

A Party that fails to perform any obligation under this Tariff where such failure is caused by an event of Force Majeure shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so, provided that the terms and conditions of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the Party claiming suspension of its obligations hereunder by reason thereof. Notwithstanding the foregoing, no Party shall have an obligation to rebuild in part or in full any facility damaged or destroyed in an event of Force Majeure unless such Party determines that it is commercially reasonable for such Party to do so.

### **10.5 Force Majeure Application.**

Notwithstanding Section 10.2 through Section 10.4, no event of Force Majeure shall:

- (a) relieve any Party from any obligation pursuant to this Tariff unless such Party gives notice with reasonable promptness of such event to the other Party; for greater clarity, notice in respect of Carrier's mechanical or equipment failure shall be required to be given only after the first 48 hours of such failure; or
- (b) relieve Shipper from any obligation pursuant to this Tariff to make payments to Carrier.

### **10.6 Notice.**

As soon after the cessation of an event of Force Majeure as possible, the Party claiming Force Majeure shall give written notice of its ability to resume performance of its obligations hereunder.

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## **Article 11 Application of Tolls**

Crude Petroleum accepted for transportation on the Pipeline System shall be subject to the tolls and other charges set out in the Tariff Bulletin in effect on the date of receipt of such Crude Petroleum by Carrier, irrespective of the date of Nomination. The tolls and other charges payable by Shipper shall be allocated

as to the volume of Crude Petroleum and types of Crude Petroleum in accordance with the Tariff Bulletin. The tolls charged to Shipper shall be determined based on Delivered volumes of Crude Petroleum.

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## **Article 12 Payment and Lien**

### **12.1 Tariff Charges.**

Shipper shall pay to Carrier all charges, tolls, costs and adjustments as provided in this Tariff or any Contract for the previous Month's Tendered volume of Crude Petroleum on or before the Payment Due Date.

### **12.2 Invoicing.**

Carrier will provide Shipper a Monthly invoice by the date such information is to be available according to the COLC Calendar, or any successor organization providing this information, detailing:

- (a) the tolls payable to Carrier pursuant to this Tariff for Shipper's Tenders and Contract obligations, if applicable, during the previous Month; and
- (b) any other charges for which Shipper is liable under this Tariff or Shipper's other obligations. Carrier may deliver such invoices by mail, courier, electronic data interchange or other acceptable means as may be agreed to by Shipper and Carrier, acting reasonably.

### **12.3 Lien on Crude Petroleum.**

In addition to any other remedies available to Carrier at law, in equity, or under this Tariff, and in addition to any lien or security interest otherwise provided by Applicable Law, Carrier shall have a lien, charge and security interest in and on all Crude Petroleum and Non-Specification Product in its possession Tendered by Shipper to secure the payment of any and all amounts payable to Carrier including for any costs, expenses, losses or liabilities for which the Shipper is responsible under these Rules and Regulations, any Contract or any other arrangement whatsoever between the Parties, whether liquidated or unliquidated

### **12.4 Interest on Unpaid Amounts.**

Should Shipper fail to pay all of the amount of any invoice as herein provided, on or before the Payment Due Date, interest on the unpaid portion of the invoice accrues daily at a rate of interest per annum equal to the Prime Rate plus 4%) and the principal and accrued interest to date shall be payable and due immediately upon demand.

### **12.5 Disputed and Inaccurate Amounts.**

- (a) If Carrier determines, acting reasonably, that an invoice previously delivered to Shipper was inaccurate, Carrier may deliver an adjusted invoice to Shipper.
- (b) If there is a dispute as to the amount due under any Monthly invoice, Shipper must make full and timely payment of the subject invoice, and shall concurrently provide notice of the nature, extent, and details of the dispute to Carrier within ten Business Days from the date the invoice is received by Shipper. Both Parties shall work together to investigate and resolve any dispute, and upon resolution, any amount determined to be due or credited shall be paid promptly with interest at a rate equal to the Prime Rate plus 4%) per annum, compounded monthly, from and after the Payment Date until paid in full. Both Parties shall continue to work together in good faith to resolve the dispute and any amount determined to be due or credited shall be paid promptly upon resolution.

### **12.6 Taxes.**

The Parties acknowledge that the amounts payable by Shipper pursuant to this Tariff or any Contract are exclusive of any sales tax, GST and any other like value-added taxes payable. Each Party shall be responsible for the payment of all sales and value added taxes, including GST, that are due in respect of all amounts payable by it under this Tariff or any Contract, and any such tax shall be paid by such Party when and as it is due to be paid under applicable law, and in the case of GST, as provided in Part IX of the Excise Tax Act (Canada). Each Party represents and warrants to the other that it is a registrant and will continue to be a registrant in accordance with the provisions of the Excise Tax Act (Canada) for the term.

### **12.7 Right to Sell.**

If an Event of Default occurs or any amounts payable to Carrier remain unpaid ten Days after the Payment Due Date, Carrier, in addition to any other right or remedy whether granted by these Rules and Regulations, any Contract or otherwise at common law or equity, may, in its sole discretion: (i) suspend receipt and/or Delivery of Shipper's Crude Petroleum until any and all Carrier Receivables (including interest thereon) are paid to Carrier; (ii) withhold any amounts owing to Shipper under the Rules and Regulations, or any Contract or other arrangement between the Carrier and the Shipper and set-off such withheld amounts against any Carrier Receivables; (iii) enforce its lien, charge and security interest as against any Crude Petroleum or Non-Specification Product in its possession or control and received from or belonging to Shipper in any manner permitted by law and including, without limitation, taking possession of such Crude Petroleum and disposing thereof on whatever terms the Carrier can arrange, acting reasonably; (iv) exercise any rights it may have under any Financial Assurances provided by Shipper in accordance with Article 18; or (v) any combination of the foregoing. Shipper covenants and agrees not to dispose of its Crude Petroleum other than subject to the lien afforded Carrier hereby.

From the proceeds of said sale Carrier will deduct the transportation, equalization obligations, negative Shipper's Balance positions and all other lawful charges under this Tariff or the Contract not received by Carrier, whether or not due, as of the Day of sale, including reasonable storage charges pending sale and expenses incident to said sale, and Carrier shall be entitled to retain a reasonable pre-estimate of any damages, costs, expenses and other damages, costs and expenses incurred or anticipated to be incurred by Carrier in respect of such Event of Default, and the balance remaining, if any, shall be held in trust by Carrier for whomever may be lawfully entitled thereto, without the obligation to pay interest thereon.

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## **Article 13 Liability of Shipper**

### **13.1 Liability of Shipper.**

Shipper shall:

- (a) be liable to Carrier for all losses, costs, damages and expenses whatsoever (including Consequential Losses) which Carrier may suffer, sustain, pay or incur; and
- (b) indemnify and hold harmless Carrier from and against any and all actions, proceedings, claims, demands, losses, costs, liens, damages and expenses whatsoever (including Consequential Losses) which may be brought by a third party against, or suffered, sustained, paid or incurred by, Carrier

as a result of the breach of the Tariff by Shipper or as a result of the negligence, gross negligence or wilful misconduct of Shipper in connection with, or relating to, or arising out of, Shipper's performance, purported performance or non-performance of the Tariff.

### **13.2 Duties, Charges.**

Shipper shall pay or cause to be paid any and all duties, charges, levies or any other assessments whatsoever made or imposed by any Government Authority with respect to the transactions governed by these Rules and Regulations and shall indemnify and hold harmless Carrier from and against any and all such duties, charges, levies or assessments so made or imposed.

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## **Article 14 Liability of Carrier**

### **14.1 Liability of Carrier.**

Carrier shall not be liable to Shipper for any loss, cost, damage or expense whatsoever (including Consequential Losses) while Shipper's Crude Petroleum is in the custody of Carrier, except as caused by the gross negligence or wilful misconduct of Carrier (provided that in such event Carrier shall not be liable to Shipper for Consequential Losses).

### **14.2 Allocation of Cost.**

If damage to or loss of Crude Petroleum results while such Crude Petroleum is in the custody of Carrier, then Carrier shall allocate the cost of such damage or loss on a pro rata basis among all Shippers on the Pipeline System. Each Shipper's share of such cost shall be determined by Carrier based on the proportion of the volume of Shipper's Crude Petroleum in the custody of Carrier in the Pipeline System on the date of such loss to the total volume of Crude Petroleum in the custody of Carrier in the Pipeline System on the date of such loss. Carrier shall be obligated to deliver only that portion of the Crude Petroleum remaining after such deduction.

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## **Article 15 Crude Petroleum Involved in Disputes and Claims, Suits and Filing**

### **15.1 Title/Control.**

Shipper represents and warrants that it owns or controls and has the right to Tender to Carrier, or have Tendered for its account, the Crude Petroleum that it has Tendered to Carrier.

### **15.2 Legal Disputes.**

Carrier shall not be obligated to accept any Tender of Crude Petroleum and Shipper shall not Tender to Carrier Crude Petroleum which is in any way subject to litigation, the ownership of which may be in dispute or which is subject to a lien, security interest or charge of any kind whatsoever, unless Shipper provides to Carrier notice of such litigation, dispute, lien, security interest or charge at least 30 Days prior to Tendering such Crude Petroleum to Carrier, and Shipper furnishes Performance Assurance or an indemnity satisfactory to Carrier, in its sole discretion, fully protecting Carrier from and against any and all liability, loss, damage, cost and expense whatsoever (including consequential and indirect loss and lost profits) as a result of such litigation, dispute, lien, security interest or charge.

### **15.3 Subsequent Legal Disputes.**

Shipper shall immediately notify Carrier in writing if, at any time while Shipper's Crude Petroleum is in the custody of Carrier, such Crude Petroleum becomes involved in litigation, the ownership of such Crude Petroleum becomes in dispute or such Crude Petroleum becomes subject to a lien, security interest or charge of any kind whatsoever. Shipper shall, upon demand in writing from Carrier, furnish as soon as reasonably practical Performance Assurance or an indemnity satisfactory to Carrier, in its sole discretion, fully protecting Carrier from and against any and all liability, loss, damage, cost and expense whatsoever (including consequential and indirect loss and lost profits) as a result of such litigation, dispute, lien, security interest or charge.

#### **15.4 Time for Filing Claims and Suits.**

Any claim for loss, damage, delay or otherwise in connection with the receipt, transportation or delivery of Crude Petroleum Tendered under the Tariff by Shipper must be submitted in writing to Carrier within 30 Days after Delivery of the Crude Petroleum, or, in the case of failure to make Delivery, then within 30 Days after the expected time for Delivery has elapsed; and suits arising out of such claims must be instituted against Carrier within 2 years from the date of such Delivery or expected time for Delivery. Claims advanced beyond such 2-year period shall be null and void as between Shipper and Carrier. In causing Crude Petroleum to be transported under the Tariff, Shipper agrees to be bound by the provisions of this Section 15 and waive any and all rights which it might otherwise have at law, equity or otherwise to make a claim after the expiration of such period 30 Days or to bring an action after the expiration of such period of 2 years.

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### **Article 16 Non-Performance Charge**

#### **16. Non-Performance.**

During periods of apportionment, if the volume of Crude Petroleum Tendered by Shipper on any Day is less than Shipper's apportioned volume by more than 5% of the apportioned volume, Shipper shall pay to Carrier a per Cubic Meter charge (the "**Non-Performance Charge**") for each Cubic Meter of the difference between that Shipper's apportioned volume for such Day and the volume Tendered by Shipper on that Day. The Non-Performance Charge in effect from time to time shall be set forth in the Tariff Bulletin.

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### **Article 17 Overage and Shortage Fees**

Subject to the loss allowance set forth in Section 7.8 and any intra-system transfers pursuant to Section 6.8, Shipper's Monthly closing inventory position on its Shipper's Balance shall equal zero for each Month. In the event that Shipper's Monthly closing inventory is:

- (a) greater than zero, Carrier shall have the right to charge Shipper an amount equal to the product of (i) the overage fee set out in the Tariff Bulletin multiplied by (ii) the volume of Crude Petroleum in excess of the Shipper's required pro rata share of Retention Stock; and
  - (b) less than zero, Carrier shall have the right to charge Shipper an amount equal to the product of (i) the shortage fee set out in the Tariff Bulletin multiplied by (ii) the volume of Petroleum deficient of the Shipper's required pro rata share of Retention Stock.
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### **Article 18 Performance Assurance**

#### **18.1 Performance Assurance.**

If at any time Carrier, in its sole discretion, has grounds for insecurity regarding the payment, performance or enforceability of any obligation of Shipper pursuant to the Tariff or otherwise relating or incidental to the receipt, transportation and delivery of Shipper's Crude Petroleum by Carrier (including, without limitation, amounts in respect of equalization and/or component trading applicable to Shipper's Crude Petroleum), whether or not there has been a default by Shipper under the Tariff including, without limitation, a failure to pay under the Tariff, Carrier may request and Shipper shall provide to Carrier Performance Assurance in a form and an amount as determined by Carrier in its sole discretion; provided that, the amount of all Performance Assurance provided by Shipper to Carrier shall not exceed an amount equal to 3 Months of the tolls, charges and costs (including, without limitation, any pending increases to such tolls, charges and

costs) as provided for in the Tariff and otherwise relating or incidental to the receipt, transportation and delivery of Shipper's Crude Petroleum by Carrier (including, without limitation, amounts in respect of equalization and/or component trading applicable to Shipper's Crude Petroleum) based on the quality of Crude Petroleum Tender by Shipper for the prior 3 Months and:

- (a) with respect to a TSA Shipper, the Firm Volume set forth in the TSA; and
- (b) with respect to a non-TSA Shipper, the volumes Nominated by such non-TSA Shipper, historically Nominated by such non-TSA Shipper or increased volumes that Carrier reasonably expects such non-TSA Shipper to Nominate.

With respect to a Letter of Credit provided by Shipper, Shipper shall renew or cause the renewal of such Letter of Credit provided to Carrier no later than 30 Days prior to the expiry thereof. If the financial institution that issued such Letter of Credit has indicated its intention not to renew such Letter of Credit, Shipper shall provide to Carrier either a substitute Letter of Credit in the amount determined in accordance with this Section 18.1 or such other Performance Assurance acceptable to Carrier, in its sole discretion, in each case 30 Days prior to the expiration of such Letter of Credit. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Failure to provide Performance Assurance to Carrier within 2 Business Days of Carrier's written request thereof shall constitute an Event of Default.

### **18.2 Financial Information.**

On the request of Carrier, Shipper shall furnish to Carrier (i) as soon as available, and, in any event, within 90 Days after the end of each fiscal year of Shipper or its Credit Support Provider, as applicable, its annual audited financial statements for each of the three prior fiscal years of Shipper; and (ii) an organizational chart for Shipper and its Affiliates (that includes full legal names of all entities and ownership percentage of all entities). In addition, upon request of Carrier, Shipper shall furnish to Carrier, as soon as available, and, in any event, within 45 Days after the end of each of the first three fiscal quarters of each fiscal year of Shipper or its Credit Support Provider, as applicable, its quarterly unaudited financial statements prepared on a basis consistent with the corresponding period for the preceding fiscal year. Failure to provide the foregoing information within the periods set forth above shall constitute an Event of Default.

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## **Article 19 Default of Shipper**

In addition to other Events of Default identified in these Rules and Regulations, each of the following shall constitute an "**Event of Default**" for the purposes of these Rules and Regulations:

- (a) if Shipper or its Credit Support Provider:
  - (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation;
  - (iv) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

- (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all 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, enforced or sued on or against all or substantially all its assets; or
- (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(b) If the Shipper fails to cure any breach or default specified in a Default Notice within the Cure Period.

If an Event of Default occurs, Carrier may immediately suspend receipt and Delivery of Shipper's Crude Petroleum, set off proceeds pursuant to Section 12.7, sell Shipper's Petroleum pursuant to Section 12.7 or seek any other remedy available to it at law or equity.

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## **Article 20     Governing Law**

These Rules and Regulations and the Tariff Bulletin shall be governed by, construed and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each Shipper accepts the jurisdiction of the courts of the Province of Alberta and all courts of appeal therefrom with respect to matters arising out of, or in connection with, these Rules and Regulations.

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## **Article 21     Miscellaneous**

### **21.1 New Shippers.**

Prior to a Person becoming Shipper on the Pipeline System and the commencement of transportation service by Carrier in respect of such Person pursuant to the Tariff, such Person must (i) satisfy the Performance Assurance requirements set forth in Section 18.1; (ii) provide to Carrier the financial information set forth in Section 18.2; and (iii) provide to Carrier a notional new shipper fee if specified in the Tariff Bulletin, a portion of which may be refunded by Carrier. Shippers that do not Tender Crude Petroleum for 6 consecutive Months shall be deemed to have ceased to be Shipper on the Pipeline System, and must comply with the requirements of this Section 21.1 in order to re-attain Shipper status.

### **21.2 No Interest in Pipeline System.**

Shipper does not acquire any right to, title or interest in the Pipeline System or any part thereof and, except as set forth in a TSA, Carrier does not dedicate any portion and/or capacity of the Pipeline System for any Shipper.

### **21.3 Waiver.**

No waiver of any default or right under these Rules and Regulations or in respect thereof by Carrier shall be effective unless given in writing. No waiver by Carrier of any default under these Rules and Regulations shall operate as a waiver of any future or other default, whether of a like or different character.

### **21.4 Notices.**

Publication of these Rules and Regulations or Tariff Bulletin (including any appendix thereto) on the website [www.secure-energy.com](http://www.secure-energy.com) shall be deemed to constitute notice of these Rules and Regulations and the Tariff Bulletin (including any appendices thereto) to all Shippers and other applicable Persons (including Shipper's Credit Support Provider). The Rules and Regulations and Tariff Bulletin (including



any appendices thereto) published on the foregoing website and in effect at the time of Tendering Crude Petroleum by Shipper shall govern the receipt, transportation and delivery of such Crude Petroleum. Subject to the foregoing, any notice, designation, statement, invoice or other communication hereunder from Carrier to Shipper or from Shipper to Carrier shall be made in writing and sent by ordinary mail, by personal delivery, or by electronic transmission by such Person to (i) in the case of notices to Carrier, its addresses set forth in the Tariff Bulletin, or (ii) in the case of notices to Shipper, to the last address for Shipper provided by Shipper to Carrier. In this regard, Shipper shall, by notice to Carrier, provide its address and other relevant contact information to Carrier prior to Shipper's initial Tender of Crude Petroleum into a Pipeline System and shall provide notice of any charges that are made thereto at anytime thereafter. The deemed receipt date for a mail communication is 3 Business Days following the mailing date. The deemed receipt date for a communication by personal delivery or electronic transmission is the Day on which such notice was sent; provided that if such Day is not a Business Day or such notice was received after 2:00 p.m. Mountain Standard Time on such Day, such notice shall be deemed to have been received on the immediately following Business Day.

**21.5 Producer Compliance.**

Where Shipper is not the owner or operator of the production facilities of the Crude Petroleum it wishes to Tender, it shall cause such owner or operator to be bound by and comply with these Rules and Regulations. Shipper shall indemnify the Carrier against any and all claims, demands, suits, actions, damages, costs, losses, expenses and other consequential damages or claims of whatsoever nature or kind, resulting directly or indirectly from the failure of such party to comply with these Rules and Regulations.