

RULES AND REGULATIONS

Governing the TRANSPORTATION of CRUDE PETROLEUM

By BOE PIPELINE, LLC

FERC ICA OIL TARIFF

F.E.R.C. No. _____

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RULES AND REGULATIONS

These Rules and Regulations apply to all transactions pursuant to the Crude Petroleum Transportation Agreement, and are incorporated into and made a part of the Crude Petroleum Transportation Agreement. In the event of a conflict between the Crude Petroleum Transportation Agreement and the Rules and Regulations, the Crude Petroleum Transportation Agreement shall govern.

1. DEFINITIONS

- a. “**Affiliate**” means, in relation to a Party, any entity that (i) directly or indirectly controls such Party; (ii) is directly or indirectly controlled by such Party; or (iii) is directly or indirectly controlled by an entity that directly or indirectly controls such Party. The term “control”, including the terms “controlled by”, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.
- b. “**API**” means the American Petroleum Institute.
- c. “**Applicable Law**” shall mean the laws of the State of North Dakota, without regard to conflicts of laws principles that would require the application of any other law.
- d. “**ASTM**” means American Society for Testing and Materials.
- e. “**Available Capacity**” means the quantity, stated in Barrels per day that a Pipeline Segment is capable of transporting, as determined by Operator to reflect such things as scheduled maintenance, total Shipper Nominations and other relevant factors.
- f. “**Barrel**” means forty-two (42) United States gallons at a temperature of 60 degrees Fahrenheit.
- g. “**Committed Rate**” means the transportation rate per Barrel to be paid by a Committed Shipper for Committed Volumes as stated in the CPTA.
- h. “**Committed Shipper**” means a Shipper that executes a CPTA and commits a minimum volume of throughput to the BOE PIPELINE System.
- i. “Committed Transportation” means transportation service provided to a Committed Shipper pursuant to a Crude Oil Transportation Agreement subject to a Committed Volume.

- j. **“Committed Volume”** means the daily throughput volume of Crude Petroleum committed under a CPTA.
- k. **“Consignee”** means a party operating as a sub-contractor of a Shipper under the agency of that Shipper that has been authorized by the Shipper to Tender or receive Crude Petroleum to or from Operator for transportation.
- l. **“Contract Quarter”** means each calendar quarter during the term of this Agreement.
- m. **“CPI”** means the National Consumer Price Index for Urban Wage Earners and Clerical Workers of Labor, Bureau of Labor Statistics (1982-84 = 100% base). In the event that if the CPI-W is canceled or changed, a comparable index will be substituted.
- n. **Crude Petroleum** shall be as defined in Section 2 below.
- o. **“Crude Petroleum Transportation Agreement,” or CPTA**, means the agreement entered into between Shipper and OPERATOR governing the transportation of Crude Petroleum on the BOE PIPELINE System.
- p. **“Date of First Delivery”** means the first day that Crude Petroleum is delivered to the BOE PIPELINE System at a Receipt Point for transportation to the Redelivery Point pursuant to a CPTA.
- q. **“Day”** means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Central Time. The reference date for any Day shall be the calendar date upon which the 24 hour period commences.
- r. **“Density”** means mass per unit volume specified in °API.
- s. **“Dollar(s)” or “\$”** or any derivation thereof shall mean the lawful currency of the United States of America.
- t. **“Transportation Rate”** means the rate, in Dollars per Barrel, at which OPERATOR has agreed to receive Shipper’s Crude Petroleum from each Receipt Point and transport and redeliver Crude Petroleum back to Shipper at each Redelivery Point as set forth in Operator’s current FERC Tariff No. _____.

- u. “**Force Majeure**” has the meaning set out in Section 15 below.

- v. “**Gross Standard Volume**” is volume corrected to a temperature of sixty degrees (60°) Fahrenheit, in accordance with the latest API/ASTM measurement standards, and at equilibrium vapor pressure.

- w. “**Operator**” means BOE Pipeline, LLC.

- x. “**Quarterly Deficiency**” means, for any Contract Quarter, the amount of any shortfall, measured in Barrels, between the Committed Volume for such Contract Quarter and the volume of Crude Petroleum actually delivered by Shipper during such Contract Quarter to the Receipt Point(s) for transportation to OPERATOR’s Redelivery Point(s).

- y. “**Quarterly Deficiency Payment**” means, in respect of any Contract Quarter, the Dollar amount equal to the Crude Petroleum of (i) the Quarterly Deficiency (if any) multiplied by (ii) the Priority Transportation Rate then in effect for the transportation of Crude Petroleum as set forth in Operator’s current FERC Tariff No. _____.

- z. “**Quarterly Volume Commitment**” means the product of the Committed Volume set forth on Exhibit 1 of the CPTA, multiplied by the number of days in the Contract Quarter. For any partial Calendar Quarter at the beginning or end of the Term, the Volume Commitment shall be based on actual days in the concerned period.

- aa. “**Receipt Point(s)**” means the pipeline connection point(s) shown in Exhibit 1 where Crude Petroleum may be accepted for transportation from Shipper on the BOE PIPELINE System.

- bb. “**Redelivery Point**” and any derivative thereof, means the Bakken Oil Express oil terminal located in Section 11, T139N-R97W, near Dickinson, ND, or any other points established from time to time by Operator for the redelivery of Crude Petroleum back to Shipper.

- cc. “**Month**” means the period beginning at the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

- dd. “**Net Standard Volume**” means the Gross Standard Volume minus the basic sediment, water component, and other impurities.

ee. "**Nomination Form**" means the form(s) (including electronic forms) prescribed by Operator to be used by Shipper in notifying Operator of proposed Tenders; as such form(s) may be amended from time to time.

ff. "**Nomination**" or any derivative thereof, means the volume of Crude Petroleum to be specified in a monthly notice of shipment as described in Section 5.

gg. "**Pipeline Segment**" means all tanks, lines, valves, fittings, and appurtenant equipment required to transport Crude Petroleum from Receipt Point(s) to Redelivery Point(s).

hh. "**Prepaid Transportation Credit**" means a credit applied to volumes in excess of Committed Volumes as provided for in the CPTA.

ii. "**Prime Rate**" means the prime rate of interest on corporate loans at large US money center commercial banks, found in the Wall Street Journal "Money Rates" table (or its successor) on the first date of publication for the calendar month in which payment is due.

jj. "**Shipper**" means the party for whom Crude Petroleum is transported under the terms of the CPTA.

kk. "**Tender**" and any derivative thereof means the delivery by a Shipper to Operator at a Receipt Point of a stated quantity and type of Crude Petroleum for transportation from a Receipt Point to a Redelivery Point.

ll. "**Uncommitted Transportation**" means transportation service provided to a shipper pursuant to a contract that is NOT subject to a Committed Volume.

mm. "**Uncommitted Rate**" means the rate, in Dollars per Barrel, at which OPERATOR has agreed to receive Shipper's Uncommitted Volume of Crude Petroleum from each Receipt Point and transport and redeliver such Uncommitted Volume of Crude Petroleum back to Shipper at each Redelivery Point as set forth in Operator's current FERC Tariff No.

_____.

- nn. “**Uncommitted Shipper**” means a Shipper who has not committed volumes under a CPTA but receives transportation services under a CPTA on an interruptible basis.
- oo. “**Year**” means a calendar year from January 1st through December 31st.

2. CRUDE PETROLEUM SPECIFICATIONS

- a. Crude Petroleum consists of hydrocarbons that are the direct liquid product of oil wells, oil processing plants, oil sands, or a mixture of such products. Crude Petroleum does not include natural gas liquids, natural gasoline, reclaimed petroleum or indirect liquid products. Crude Petroleum shall have a minimum gravity of 36°API and a maximum gravity of 44°API.
- b. Crude Petroleum must meet the following specifications using the prescribed ASTM and industry standard testing methods and procedures, and substantially distilled below seven hundred (700°) Fahrenheit.
- c. Crude Petroleum shall meet the following detailed specifications:

QUALITY	UNIT	MIN	MAX	TEST
API Gravity	°API	36	44	ASTMD5002
Sulfur	wt %	0	0.2	ASTM D5453
Reid Vapor Pressure	psi	0	9	ASTM D323M
BS&W	vol %	0	0.5	ASTM D95
Organic Chlorides	ppm	0	1	ASTM D4929
Olefins	wt %	0	1	ASTM 6729
Total Suspended	mg/L	0	200	ASTM D4807
Benzene	vol %	0	1.6	ASTM 6729
Oxygenates	ppm	0	100	ASTM 6729
Mercury	ppb	0	10	UOP 938
Mercaptans	ppm	0	175	ASTM D5623
H ₂	ppm	0	10	ASTM D5623

- d. If a Shipper Tenders to Operator Crude Petroleum that fails to comply with the specifications herein, Operator shall not be obligated to accept the Shipper’s Crude Petroleum. If Operator accepts Crude Petroleum from Shipper that fails to comply with the specifications herein, Shipper shall be responsible to Operator for all losses incurred by Operator in respect thereto unless Shipper notified Operator in advance of delivery to Shipper that the Crude Petroleum

failed to comply.

- e. No Crude Petroleum will be accepted which has been contaminated by any excessive metals or chemicals including but not limited to, chlorinated or oxygenated hydrocarbons, arsenic or lead or other objectionable material. Topped crude mixtures, chemical plant by-products, and refinery residues will not be accepted.
- f. Shippers desiring to ship Crude Petroleum that is not in compliance with the Crude Petroleum Specifications must have prior approval from Operator for the non-compliant Crude Petroleum prior to tendering for transportation. The Shipper must obtain and provide to Operator a certificate from a qualified, competent, independent laboratory setting forth, in detail, the specifications (named in Section 2c) of each shipment of non-compliant Crude Petroleum proposed for tender.
- g. Operator may, in its reasonable discretion, accept non-compliant Crude Petroleum; provided, however, that such acceptance does not constitute an ongoing waiver of the Product Specifications.

3. **RECEIPT AND REDELIVERY POINTS**

- a. Crude Petroleum will be accepted for transportation at Receipt Point(s) only when such Crude Petroleum is confirmed by the downstream party for redelivery at one or more Redelivery Point(s).
- b. Crude Petroleum will be accepted for transportation only when the Shipper has made provision for the necessary storage or other downstream transportation at Redelivery Point(s).
- c. Operator shall not be responsible for Crude Petroleum that cannot be delivered as specified by the Shipper due to any regulatory intervention.
- d. As a condition of service, Shipper shall provide facilities at the Shipper's receipt point to the deliver crude petroleum to the Pipeline Segment at pressures and flow rates required by Operator.
- e. As a condition of service, Shipper shall provide facilities at the Shipper's Redelivery Point to receive Crude Petroleum from the Pipeline Segment at pressures and flow rates required by Operator.

- f. Facilities owned by Shipper downstream of Operator's Redelivery Point manifold but located on Operator's property shall be subject to approval by Operator of Shipper's engineering and operational procedures.

4. SEGREGATION AND CHANGES IN QUALITY

- a. Subject to Section 5 below, Operator shall endeavor to redeliver substantially the same type of Crude Petroleum as that received from a Shipper; however Operator shall not be obligated to redeliver of the identical Crude Petroleum received by Operator.
- b. Crude Petroleum Tendered to Operator for transportation will be received by Operator on the condition that it shall be subject to such changes in density or quality that may result from the comingling and mixing of Crude Petroleum of varying specifications in the pipeline while in transit. Operator shall not be liable for any damage, loss or consequential loss resulting from a change in the quality of a Shipper's Crude Petroleum as a result of Operator's normal operations.
- c. When requested by one or more Shippers, and if operationally feasible in Operator's reasonable discretion, Operator will endeavor to segregate a batch of crude petroleum of a certain kind and/or quality on the condition that requesting Shipper(s) supply buffers before and after the batch in proportion to Shipper's share of the batch. Shipper shall cause Consignee(s) to arrange for acceptance at the Redelivery Point(s) of such leading and trailing buffers as mixed in transit together with its batch. Operator shall not be liable for variation in the gravity and/or quality of crude in prior or subsequent batches.

5. NOMINATIONS, SCHEDULING, TENDERS, AND QUANTITIES

- a. Shipper shall nominate and confirm all transportation hereunder in accordance with this Section 5.
- b. By the fifteenth day of each prior month, Shipper shall provide Operator, by written notice, the information required by OPERATOR to schedule volumes for the following month. Such written notice shall include the Receipt Point(s), quantity and quality of the Crude Petroleum it expects to tender from each Receipt Point, Redelivery Point(s), receiving party at each Redelivery Point, and other information required by OPERATOR to operate the BOE PIPELINE System.
- c. Shipper shall make a separate nomination for each Month. Nominations shall not carry forward from month to month.

- d. Operator may, subject to Available Capacity and the operating conditions of the BOE PIPELINE System, accept Nominations or revised Nominations that are received by Operator after the Nomination deadline set out in Section 5b.
- e. By the fifth day prior to the beginning of the Month, Operator will confirm each Nomination, including any reduced level of service due to Available Capacity and over-nomination on any Pipeline Segment. Operator will not confirm a nomination until the redelivery has been confirmed by the receiving party at the Redelivery Point.
- f. Operator will normally take full stream receipts at the Receipt Point(s) and will make full stream deliveries of Crude Petroleum at the Delivery Point(s) at flow rates and volumes compatible with Operator's operations. Operator may take less than full stream receipts at the Receipt Point(s) provided that, in Operator's reasonable discretion, such Crude Petroleum can be received into Operator's facilities without disrupting Operator's operations. Shipper shall provide, or arrange for, the facilities necessary to immediately remove the Crude Petroleum at the Redelivery Point(s) at flow rates, volumes, and pressure designated by Operator.

6. **BILLING AND PAYMENT**

- a. Charges for services will be assessed and collected by Operator in accordance with each CPTA. The Priority Transportation Rate and the Interruptible Transportation Rate, as appropriate, will be applied to the metered Gross Standard Volume at the Receipt Point(s) after making adjustments provided for in Section 8 of this Agreement.
- b. For each month, Operator shall invoice Shipper for Committed Volume and Uncommitted Volume transported that month, and Shipper shall pay such invoice in accordance with the terms herein. All payments due shall be made on the day due (or if any such day is not a day on which banks are open for business in New York, NY, then on the next succeeding banking day) by electronic wire transfer of immediately available Dollars to such bank and account as the Party seeking payment shall have designated from time to time in writing to the other Party.
- c. In the event that Shipper disputes any portion of an invoice, Shipper shall pay the undisputed portion of the invoice when it is due, and shall then promptly notify OPERATOR of the disputed matters, and provide reasonable detail for the disputed matters as part of the notification. Shipper and OPERATOR will endeavor to resolve the disputed

matters as soon as practicable. If Shipper and OPERATOR are unable to resolve the disputed matters within sixty (60) days, then the disputed matters will be resolved pursuant to the Dispute Resolution procedure set forth in Section 11 below.

- d. All amounts owed which are not timely paid shall accrue interest from the date due until the date paid at an annual rate equal to the lesser of the following: (a) one percent (1%) per annum greater than the Prime Rate, or (b) the maximum lawful amount of interest allowed. The interest unpaid at the end of each Month shall be added to the amount due hereunder for the purposes of the calculation of interest due the next Month.
- e. In addition, if Shipper owes any amounts which are past due in excess of 45 days, Operator, at its election, may, to the extent permitted under Applicable Laws, (i) refuse to accept Crude Petroleum from Shipper for handling or transporting under this Agreement, (ii) refuse to deliver Crude Petroleum to Shipper at the Redelivery point, (iii) require Shipper to pre-pay prior to further acceptance of Crude Petroleum for shipment under this Agreement, or (4) any combination of (i), (ii) and (iii).
- f. In the event Operator determines that the financial condition of a Shipper or Shipper's guarantor, if any, is or has become impaired or unsatisfactory or Operator determines it is necessary to obtain security from a Shipper, Operator, upon notice to Shipper, will require any or all of the following prior to Operator's delivery of Shipper's Crude Petroleum in Operator's possession or prior to Operator's acceptance of Shipper's Crude Petroleum: (i) prepayment of all charges by wire transfer and shall be held by the Operator without interest accruing thereon until credited to Shipper, (ii) a letter of credit at Shipper's expense in favor of Operator in an amount sufficient to ensure payment of all such charges, in a form and from an institution acceptable to Operator, or (iii) a guaranty in any amount sufficient to ensure payment of all such charges, and in a form, and from a third party acceptable to Operator.
- g. In the event Shipper fails to comply with any such requirement to provide security to Operator on or before the date supplied by Operator's notice to Shipper, Operator shall have a lien on all Crude Petroleum accepted from Shipper under the CPTA to secure the payment of all charges and obligations of Shipper and may refuse to deliver such Crude Petroleum until all charges and obligations (including finance charges) have been paid. If charges remain unpaid 90 days after the due date stated on the invoice, Operator may apply any open credits or collect such charges by selling Shipper's Crude Petroleum at a public or private sale in a commercially reasonable manner. Out of the proceeds of said sale, Operator may also pay itself for expenses of notice, advertising, and care and maintenance of the Crude Petroleum. The remaining balance will be remitted to the Shipper. Operator shall have the right to file all such documents as it deems appropriate to record and perfect its security interest

hereunder and Shipper shall cooperate and execute all such documents as may be reasonable requested by Operator.

7. **TESTING**

- a. Shipper shall provide Operator a certificate from a qualified, competent, independent laboratory setting forth, in detail, the Crude Petroleum specifications (named in Section 2) Crude Petroleum nominated for transportation. Operator shall have the right to conduct such test on the Crude Petroleum nominated for transportation as Operator deems appropriate.
- b. Shipper shall allow Operator to collect and retain a sample of the Crude Petroleum from the Receipt Point as a condition of service.

8. **MEASUREMENT AND ADJUSTMENTS**

- a. All Crude Petroleum tendered for transportation may be tested, gauged or metered by a representative of Operator prior to or at the time of Tender to Operator.
- b. All measurement procedures are to be conducted in accordance with API/ASTM standards and pipeline industry practice or such other tests as may be agreed upon by Operator and Shipper.
- c. Operator shall account to each Shipper for one hundred percent (100%) of Crude Petroleum received for its account at the Receipt Point(s) less one-fourth of one percent (0.0025) as stipulated payment to Operator for shrinkage, evaporation and other customary losses incident to shipment through the BOE PIPELINE SYSTEM. In the event Operator experiences greater losses as a result of normal operation, Operator may adjust this percentage from time to time upon notice to Shipper by an amount equal to the reasonably estimated amount of such losses as realized by Operator.
- d. The net balance, after deductions specified in Section 8c, will be the quantity deliverable by Operator. Operator will furnish to each Shipper a monthly statement of (1) volumes received by Operator for the account of that Shipper, (2) volumes delivered for Shipper's account to each Consignee, (3) volumes in inventory, and (4) volume adjustments for batch interfaces occurring as a result of normal pipeline operations.

9. **EVIDENCE OF RECEIPTS AND REDELIVERIES**

- a. Crude Petroleum received from and redelivered to Shipper shall, in each instance, be

evidenced by receipt and delivery tickets containing a record of the volume, type, producing well identification, temperature, density, sediment and water and any other data with respect to such Crude Petroleum as may be specified from time to time by Operator.

- b. Operator will issue receipt and delivery tickets by automatic record printing equipment including conversion of gross volume to net volume. This report shall constitute full receipt for the Crude Petroleum received or redelivered.

10. DELIVERY AND ACCEPTANCE

- a. Operator will transport Crude Petroleum with reasonable diligence and dispatch. Shipper shall immediately accept and take delivery of quantities from Redelivery Point(s) as scheduled and confirmed by Operator.
- b. Operator does not offer storage service. Shipper will be required to supply adequate storage at the Redelivery Point(s) or make other arrangements at the Redelivery Point(s) to receive its redeliveries in accordance with Section 10(a) as a condition of service.
- c. Operator will assess a demurrage charge of one dollar U.S. (\$1.00) per Barrel for each Day (or fractional part thereof) plus any third party transportation and storage costs incurred by Operator for Shipper's failure to act in accordance with this Section 10 and Operator's liability for loss, damage or delay with respect to Crude Petroleum offered for delivery, but not taken by Shipper, shall be that of a warehouseman only.
- d. If a Shipper fails to take delivery of Crude Petroleum from Operator's Pipeline Segment in accordance with the provisions of Section 10(a) above, then five days after expiration of the 24-hour period, Operator shall also have the right to remove and sell such Crude Petroleum in a manner conforming to the conditions and procedures described in Section 6f herein.

11. ADDITIVES

Any additives including but not limited to corrosion inhibitors, viscosity depressants, pour point depressants, drag reducing additives, or other such additives in the Crude Petroleum shall require written approval by Operator thirty (30) days prior to acceptance of Crude Petroleum into Operator's Pipeline Segment.

12. ALLOCATION AND PRORATION.

- a. If the total volume of Crude Petroleum nominated exceeds the Available Capacity, Operator

shall allocate Available Capacity as follows:

- i. 90 % of Available Capacity shall be reserved for Committed Shippers (“Committed Capacity”);
 - ii. 10% of Available Capacity shall be reserved for Uncommitted Shippers (“Uncommitted Capacity”);
 - iii. Committed Capacity and Uncommitted Capacity shall be allocated and prorated as follows:
 1. First, Committed Capacity will be allocated to each Committed Shipper an amount equal to the lesser of each Committed Shipper’s confirmed nomination, or the maximum of each Committed Shipper’s Committed Volume under their CPTA. In the event of a pipeline capacity limitation or reduction, Committed Capacity will be prorated based on Committed Volume.
 2. Second, any Committed Capacity remaining available after the initial allocation above will then be allocated to Committed Shippers nominating volumes that exceed the Committed Volume specified in their CPTA, up to a maximum of 125% of the Committed Volume specified in the CPTA.
 3. Third, if any Committed Capacity remains after all Committed Shipper confirmed nominations have been satisfied as set forth above, such remaining Committed Capacity shall be considered Uncommitted Capacity until such time that Committed Shipper nominations increase.
 4. Uncommitted Capacity, including any unused Committed Capacity as determined above, shall be allocated to Uncommitted Shippers based on each Uncommitted Shipper’s confirmed nomination.
 5. Available Capacity remaining after allocation to Uncommitted Shippers as set forth above shall be allocated to Committed Shippers nominating Prepaid Transportation Credits. Such remaining Available Capacity shall be prorated based on Committed Volume.
- b. Use of Committed Capacity by the Uncommitted Shippers shall in no way relieve a Committed Shipper of any of its obligations for making Deficiency Payments to Operator or in any way create or represent a credit for Deficiency Payments owed to Operator by a

Committed Shipper.

- c. To penalize inflation of Shipper's nominations, a Shipper's capacity allocation for the next proration month shall be reduced by the amount of capacity allocated to a Shipper but not used during the calendar month under proration.

13. **PRODUCTS INVOLVED IN LITIGATION AND LEGALITY OF SHIPMENT**

Shipper warrants that it owns or controls and has the right to deliver or have delivered for its account, all crude petroleum tendered to Operator and shall indemnify and hold Operator harmless from and against any claims or liabilities (including attorney fees and costs) regarding such ownership, control or right to deliver. Crude Petroleum which is in any way involved in litigation, or the ownership of which may be in dispute, or which are encumbered by a lien or charge of any kind, will not be accepted for shipment unless and until the Shipper shall furnish a bond or other form of indemnity satisfactory to Operator protection it against any liability or loss arising as a result of such litigation, dispute, lien or charge. Operator may agree to accept Crude Petroleum which is subject to a lien in favor of a lender of Shipper; provided, Shipper, Operator and the lender enter into an agreement in from reasonably acceptable to Operator whereby lender subordinates its rights under that lien to those of Operator under this Agreement.

14. **FORCE MAJEURE**

- a. "Force Majeure" means any act, event, condition or occurrence that (i) prevents Operator from performing its obligations under this Agreement; (ii) is beyond the reasonable control of Operator; and (iii) Operator is unable to overcome by the exercise of due diligence.
- b. "Enumerated Circumstance" means any of the following acts, events, conditions and occurrences in respect to Operator:
 - i. act of God, fire, lightning, landslide, earthquake, storm, hurricane, flood, washout, natural disaster or explosion;
 - ii. act of war, act of terrorism, blockade, insurrection, riot, order or act of civil or military authority;
 - iii. breakage, damage, or destruction of or accident or damage to machinery, equipment,

or lines of pipe, necessity to make unscheduled or unexpected replacements, repairs, tests, or alterations to machinery, equipment or lines of pipe, or line freeze-up; or

- iv. act, order, or requisition of any Governmental Authority.
- c. Operator shall not be liable for damages or in any other remedy, legal or equitable, to Shipper for nonperformance or delay in performing Operator's obligations under the CPTA to the extent such nonperformance or delay is due to or results from a Force Majeure or Enumerated Circumstance, and Operator shall not be required to perform hereunder to the extent of and for the duration of any Force Majeure or Enumerated Circumstance.

15. **INDEMNITY**

- a. OPERATOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SHIPPER, ITS PARENT AND AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES FROM AND AGAINST ANY CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, COSTS, DAMAGES, FINES, PENALTIES AND EXPENSES (COLLECTIVELY "**LIABILITIES**") TO THE EXTENT ARISING IN CONNECTION WITH THIS AGREEMENT FROM: (A) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF OPERATOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND OTHER REPRESENTATIVES; OR (B) THE FAILURE OF OPERATOR TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THIS AGREEMENT.
- b. SHIPPER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OPERATOR, ITS PARENT AND AFFILIATES, AND ITS AND THEIR RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES, INCLUDING OPERATOR AND ITS PARENT AND AFFILIATES, AND ITS AND THEIR RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES AGENTS AND OTHER REPRESENTATIVES FROM AND AGAINST ANY LIABILITIES TO THE EXTENT ARISING IN CONNECTION WITH THIS AGREEMENT FROM: (A) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SHIPPER, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND OTHER REPRESENTATIVES; OR (B) THE FAILURE OF SHIPPER TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THIS AGREEMENT.
- c. THE INDEMNITIES EXPRESSED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. WITHOUT LIMITATION OF THE DISPUTE RESOLUTION PROVISIONS OF SECTION (17) HEREOF, THE PARTIES HEREBY

WAIVE AND RELINQUISH ALL RIGHTS AND REMEDIES INCONSISTENT WITH THE INDEMNITIES SET FORTH HEREIN.

16. **DISPUTE RESOLUTION**

- a. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement (“**Dispute**”), the parties shall first undertake to settle their Dispute by good faith negotiations. Any party may commence this process by serving another party with a Notice of Dispute that concisely describes the nature of the Dispute and the relief or remedy requested. The party or parties receiving such Notice of Dispute shall, within fifteen (15) business days of its receipt thereof, provide the giver of the notice a concise written response setting forth the responder’s position with respect to the asserted Dispute. If for any reason whatsoever the Dispute has not been settled within forty-five (45) days of service of the Notice of Dispute, then the parties agree to submit the Dispute to final and binding arbitration in Dallas, North Dakota or such other location as agreed to by the parties and the arbitrator in accordance with the then-current Rules for Non-Administered Arbitration of the CPR International Institute for Conflict Prevention and Resolution and this provision. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. sections 1-16, to the exclusion of any provisions of state law inconsistent therewith or which would produce a different result. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. There shall be one neutral arbitrator, either agreed to in writing by the parties or selected by CPR from its Panel of Distinguished Neutrals. The arbitrator shall determine the Dispute of the parties and render a final award in accordance with the substantive law of the State of North Dakota, excluding the conflicts provisions of such law, and subject to the limitation of liability provisions of Section 10.6 of this Agreement. The arbitrator shall set forth the reasons for the award in writing. The terms hereof shall not limit any obligation of a party to defend, indemnify or hold harmless another party against court proceedings or other claims, losses, damages, or expenses. In the event such ancillary dispute between the applicable parties arises out of the Dispute, it may be resolved in the arbitration proceedings. The decision of the arbitrator shall be final and binding upon the Parties without appeal to the courts. Judgment may be rendered upon such decision in any court of competent jurisdiction. The arbitrator is not empowered to render any award other than monetary damages or to award damages inconsistent with the provisions of this Agreement or in excess of compensatory damages, and each party waives its right, if any, to recover any damages in excess of those provided for under this Agreement. The parties shall share equally the costs of the arbitrator and any hearing expenses. In determining any matter submitted to arbitration, the arbitrators will apply the law controlling the Agreement, as specified herein.

- a. BY AGREEING TO BINDING ARBITRATION, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ARBITRATION CLAIM. FURTHERMORE, WITHOUT

INTENDING IN ANY WAY TO LIMIT THIS AGREEMENT TO ARBITRATE, TO THE EXTENT ANY ARBITRATION CLAIM IS NOT ARBITRATED, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH ARBITRATION CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

- b. THIS DISPUTE RESOLUTION PROVISION DOES NOT LIMIT THE RIGHT OF EITHER PARTY TO: (1) EXERCISE SELF-HELP REMEDIES, SUCH AS SETOFF; (2) INITIATE JUDICIAL OR NONJUDICIAL FORECLOSURE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL; (3) EXERCISE ANY JUDICIAL OR POWER OF SALE RIGHTS, OR (4) ACT IN A COURT OF LAW TO OBTAIN AN INTERIM REMEDY, SUCH AS BUT NOT LIMITED TO, INJUNCTIVE RELIEF, WRIT OF POSSESSION OR APPOINTMENT OF A RECEIVER, OR ADDITIONAL OR SUPPLEMENTARY REMEDIES.

- c. As a condition precedent to recovery, claims for loss, damage or delay by Shipper must be filed in writing with Operator within three months after the delivery of the Crude Petroleum or in case of failure to make delivery, within three months after a reasonable time for delivery has elapsed; and the Dispute Resolution process must be commenced by Shipper within three months thereafter. If claims are not filed and the Dispute Resolution process timely commenced, Operator shall not be liable and such claims will not be paid.

17. OTHER CONTRACTS REQUIRED

Separate contracts in accordance with these rules and regulations covering further details may be required by Operator before any duty for transportation shall arise.

END