

**JOINT TARIFF THROUGHPUT AND DEFICIENCY AGREEMENT -
VOLUME INCENTIVE PRICING**

This Joint Tariff Throughput and Deficiency Agreement - Volume Incentive Pricing (hereinafter "Agreement"), is made and entered into as of _____, 2020 ("Effective Date"), by and between Hiland Crude, LLC, an Oklahoma limited liability company, as the owner of the Double H Pipeline and Market Center Gathering System ("Carrier"), and _____, a _____ ("Shipper"). Carrier and Shipper are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, Carrier owns and operates a crude oil gathering system (the "Market Center Gathering System") from origin points in McKenzie County, Williams County, Burke County, and Mountrail County, North Dakota to an interconnection with the Double H Pipeline at Dore Station in McKenzie County, North Dakota;

WHEREAS, Carrier owns and operates a separate crude oil transportation pipeline (the "Double H Pipeline") from origin points in Richland County, Montana and McKenzie County, North Dakota, including Dore Station, to delivery points near Guernsey, Wyoming;

WHEREAS, Shipper desires to commit to Ship its Minimum Volume Commitment (as defined herein) and Carrier desires to accept such Minimum Volume Commitment;

WHEREAS, in exchange for such Minimum Volume Commitment, Carrier desires to give Shipper certain volume incentive pricing under the Joint Tariff (as defined herein) which would apply to the transportation of the Minimum Volume Commitment and Extra Barrels on the Pipeline (as defined herein); and

WHEREAS, Carrier will provide Transportation Service (as defined below) in accordance with the Joint Tariff (as defined below) filed with the Federal Energy Regulatory Commission ("FERC") subject to FERC's authority under the Interstate Commerce Act and any successor statute (the "ICA").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Defined Terms.

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the provisions used in this Agreement. Any terms not defined in this Agreement shall be defined as set forth in the rules and regulations of the Joint Tariff.

“Agreement” is defined in the preamble to this Agreement.

“Applicable Law” means all applicable laws, statutes (including the ICA), directives, codes, ordinances, rules, regulations, municipal by-laws, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, consent orders, consent decrees and policies of any Governmental Entity.

“Available Deficiency Payment Account Balance” means, on any date, the then-available balance of the Deficiency Payment Account.

“BPD” means barrels per day of Crude Petroleum.

“Carrier” is defined in the preamble to this Agreement and includes Carrier’s successors and permitted assigns.

“Carrier Condition” is defined in Section 7.

“Carrier Force Majeure” is defined in Section 5(c).

“Commencement Date” means the first of the month immediately following at least fifteen (15) days after the Effective Date.

“Compliance Costs” is defined in Section 4(c).

“Compliance Cost Threshold” is defined in Section 4(c).

“Crude Petroleum” means the common stream of crude oil transported on the Carrier systems, such product meeting the quality specifications as set forth in the Joint Tariff.

“Deficiency Payment” is defined in Section 5(a).

“Deficiency Payment Account” is defined in Section 5(b).

“Destination” means the destination identified in Exhibit A.

“Effective Date” is defined in the preamble to this Agreement.

“Excepted Barrels” means nominations or Tenders of Crude Petroleum that Carrier is unable to accept for Shipment due to the following: (i) a Carrier Force Majeure event (other than FM Deficient Barrels); (ii) non-acceptance of the Shipper’s Crude Petroleum at the Destination, as applicable, during such Month due to restrictions downstream of Carrier’s facilities; (iv) Shipper’s Tendering Crude Petroleum that does not meet the specifications of Crude Petroleum as set forth in the Joint Tariff; or (v) Shipper’s failure to comply with the Joint Tariff.

“Extra Barrels” is defined in Section 2(b).

“FERC” is defined in the recitals to this Agreement and includes any successor agency.

“FM Deficient Barrels” is defined in Section 5(c).

“FM Make-up Extension Period” is defined in Section 5(c).

“Force Majeure” means any event beyond the reasonable control of a Party, despite such Party’s exercise of due diligence, affecting such Party, including a strike, lockout, differences with workmen, fire, lightning, explosion, rain, flood, hurricane and hurricane warnings, tornado, windstorm, riot, road closures preventing access to truck loading and unloading stations, communications failure, power outages, war, rebellion, insurrection, acts of God, terrorism, or of a public enemy, acts or failures to act, omissions, delayed actions, denials, rejections, failure to issue certificates, permits, licenses, or any required approvals related to rates, tariffs, or environmental compliance, injunctions, orders, rules, legislation or regulations of Governmental Entities (federal, state, or local), inability or delays in obtaining rights-of-way, easements, materials, supplies or labor, and the freezing or breakage of or accident to, or the repair or maintenance of, any equipment or facilities or lines of Carrier; and no liability for damages shall attach against either Party on account thereof.

“Governmental Action” is defined in Section 4(c).

“Governmental Authorizations” means any and all approvals, orders, certificates, permits and authorizations from Governmental Entities necessary or requested by, and acceptable to, Carrier in order to acquire, convert, construct, lease, expand, extend, operate, and provide service on the Pipelines in the manner desired by Carrier and consistent with the provisions of this Agreement and all Applicable Laws, including any declaratory order(s) Carrier may seek from FERC with regard to Carrier’s proposed rates, rules, regulations, terms and conditions of Transportation Service for the Pipelines.

“Governmental Entity” means any federal, state, or local governmental authority, agency, board, commission, judicial body or other body having jurisdiction over the matter, including without limitation FERC.

“ICA” is defined in the recitals to this Agreement.

“Incentive Rates” means the charges for Transportation Service to be paid by Rate Incentive Shippers pursuant to a Joint Tariff throughput and deficiency agreement providing volume incentive pricing and Carrier’s effective Joint Tariff filed with FERC. The Incentive Rate will be determined based on the Rate Incentive Shipper’s Minimum Volume Commitment and/or actual volumes shipped and term of the Joint Tariff throughput and deficiency agreement. The Incentive Rates include the Initial Incentive Rates that will be filed with FERC and all changes to the Initial Incentive Rates and Incentive Rates that may be made pursuant to this Agreement.

“Indexed Rates” is defined in Section 4(a).

“Indexing Methodology” is defined in Section 4(a).

“Initial Incentive Rates” means the initial Incentive Rates filed by Carrier with FERC for Transportation Service on the Pipelines under the Joint Tariff for shippers that executed a Joint Tariff throughput and deficiency agreement providing volume incentive pricing in accordance with the terms of the Joint Exhibit A .

“Initial Term” is defined in Section 8(a).

“Joint Tariff” means the joint tariff filed by Carrier with FERC, and subsequent amendments and replacements thereto, including the rules and regulations, setting forth the Incentive Rate for Transportation Service from specified origin points on the Market Center Gathering System to the Destination on the Double H Pipeline.

“Letter of Credit” means an irrevocable letter of credit issued by a Qualified Institution in favor of Carrier, in form and substance acceptable to Carrier in its sole discretion, but which, without limitation, allows Carrier to demand full or partial payment thereunder in the event (A) of a Shipper Default, (B) Carrier experiences losses or is entitled to damages in connection with or arising out of this Agreement or the breach or termination thereof, or (C) Shipper does not deliver to Carrier a new Letter of Credit or extension satisfying the requirements of this definition at least ninety days (90) prior to the expiration of such Letter of Credit.

“Local Tariffs” means the tariffs filed by Carrier with FERC and subsequent amendments and replacements thereto, including the rates, rules and regulations, applicable to the transportation of Crude Petroleum provided by Carrier on each of the Pipelines individually.

“Minimum Monthly Payment” means an amount equal to the Monthly Minimum Volume Commitment multiplied by the Shipper’s then-applicable Incentive Rate applicable to Shipper’s Minimum Volume Commitment.

“Minimum Volume Commitment” means Shipper’s minimum volume commitment set forth in Exhibit A.

“Month” means a calendar month, commencing at 12:01 a.m. Mountain Time on the first day of each Month and ending at 12:00 a.m. Mountain Time on the first day of the following Month.

“Monthly Deficient Barrels” means any shortfall in the number of barrels actually Shipped by Shipper in a Month compared to Shipper’s Monthly Minimum Volume Commitment, which shortfall shall be reduced by the number of (i) FM Deficient Barrels, if any, (ii) Shipper FM Deficient Barrels, if any, and (iii) barrels, if any, of Shipper’s Monthly Minimum Volume Commitment nominated by Shipper for such Month and not accepted by Carrier pursuant to Carrier’s applicable prorationing policy; provided, however, that under no circumstances shall the Monthly Deficient Barrels be reduced for Excepted Barrels.

“Monthly Minimum Volume Commitment” means Shipper’s Minimum Volume Commitment in the applicable Month multiplied by the number of days in the applicable Month.

“Negotiation Notice” is defined in Section 15(a).

“Origin” is defined in Exhibit A.

“Parties” is defined in the preamble to this Agreement.

“Party” is defined in the preamble to this Agreement.

“Per Barrel Compliance Cost” is defined in Section 4(c).

“Pipelines” means the pipeline and other facilities of the Market Center Gathering System and the Double H Pipeline on which Crude Petroleum is transported pursuant to the Joint Tariff.

“Qualified Institution” means either: (a) a commercial bank or trust company not affiliated with the Shipper organized under the laws of (i) the United States or any State of the United States or a political subdivision thereof, or (ii) a country other than the United States or a political subdivision thereof, but which maintains throughout the term of the Letter of Credit issued by such entity one or more branches in the United States, that, in the case of (i) or (ii), (A) maintains the lowest of its long-term ratings for senior unsecured non-credit enhanced debt of A- (stable outlook) or better from S&P or A3 (stable outlook) or better from Moody’s, (B) has assets in excess of Fifty Billion US Dollars (\$50,000,000,000) and capital of no less than five percent (5%) of such assets (in each case as defined by the federal or other government authorized regulator of the respective bank) or more, as reported in the most recent edition of Polk’s World Bank Directory or a similar reporting service; and (C) is not subject to any supervisory agreement or regulatory order imposed by the U.S. Comptroller of the Currency or the Federal Deposit Insurance relating to its financial soundness; or (b) an international bank acceptable to Carrier in its sole discretion.

“Qualifying Monthly Rate” means the Incentive Rate applicable to the Minimum Volume Commitment and/or volume delivered and Term that is in effect at the end of each Month during the Term.

“Rate Incentive Shipper” means a shipper, including Shipper, that has entered into a Joint Tariff throughput and deficiency agreement providing volume incentive pricing.

“Ship,” “Shipment,” “Shipments,” “Ships,” “Shipping,” and “Shipped” mean receipts of Crude Petroleum from an Origin, transportation of such Crude Petroleum on the Pipelines, and delivery of such Crude Petroleum at the Destination under the terms of the Joint Tariff and a Joint Tariff throughput and deficiency agreement providing volume incentive pricing.

“Shipper” is defined in the preamble to this Agreement and includes Shipper’s successors and permitted assigns.

“Shipper Default” is defined in Section 14(a).

“Shipper Default Notice” is defined in Section 14(a).

“Shipper Force Majeure” means any Force Majeure event, whether or not of the type listed in the definition of Force Majeure, not reasonably within the control of Shipper that prevents or materially impedes Shipper from Tendering barrels.

“Shipper FM Deficient Barrels” is defined in Section 5(d).

“Shipper FM Make-up Extension Period” is defined in Section 5(d).

“Tender,” “Tenders,” and “Tendered” means the Shipper’s presentation for delivery to Carrier of a quantity of Crude Petroleum at an Origin for Transportation Service from the Origin to the Destination in accordance with this Agreement and the Joint Tariff.

“Term” is defined in Section 8.

“Transportation Service” means the Shipment of Crude Petroleum in interstate commerce under Carrier’s Joint Tariff from an Origin to the Destination, not inclusive of storage.

“Uncommitted Rates” means the joint and local rates filed with FERC applicable to movements by Uncommitted Shippers under the Joint Tariff or Local Tariffs from an origin to a destination via one or both of the Pipelines.

“Uncommitted Shipper(s)” has the definition set forth in the Local Tariffs.

“Volume Tier” means the volume tranches set forth in the Incentive Rates table in Exhibit A.

2. Volume Commitment(s); Extra Barrels.

- (a) Monthly Minimum Volume Commitment. Commencing on the Commencement Date, during each Month of the Term, Shipper shall Ship, or pay a Deficiency Payment for failure to Ship, its Monthly Minimum Volume Commitment, in accordance with the provisions of this Agreement. Shipper shall be entitled to satisfy its obligations under this Section 2(a) by Shipping from the Origins specified in Exhibit A to the Destination specified in Exhibit A. Shipper shall specify in its Monthly nominations its selected Origin(s) and the Destination.
- (b) Extra Barrels. Subject to available capacity, Shipper shall have the right during the Term, but not the obligation, to Ship Crude Petroleum in excess of Shipper’s Monthly Minimum Volume Commitment from the Origin(s) to the Destination (“Extra Barrels”).
- (c) Carrier shall provide Transportation Service for Shipper’s Monthly Minimum Volume Commitment and any Extra Barrels, upon and subject to the provisions set forth in the Joint Tariff, including Carrier’s prorationing provisions set forth therein.

3. Agreement to Provide Service.

In consideration of the terms and conditions herein and in response to Shipper's request, Carrier shall, commencing on the Commencement Date and subject to Applicable Laws and the terms and conditions set forth in this Agreement, provide Transportation Service under the Joint Tariff to Shipper and other potential shippers.

4. Rates for Service.

- (a) Incentive Rates. Subject to the provisions of this Agreement, commencing on the Commencement Date, Shipper shall each Month pay the applicable Incentive Rates and charges under the Joint Tariff for Transportation Service provided to Shipper, as such rates and charges may change from time-to-time in accordance with this Agreement, for each barrel Tendered by Shipper for Shipment. The applicable Incentive Rates shall be determined based on Shipper's total Shipments in the Month and/or Shipper's Minimum Volume Commitment and the Term of this Agreement. If Shipper Ships Extra Barrels in a Month then all barrels Shipped by Shipper in such Month shall be charged the Incentive Rate applicable to the Volume Tier in which the total volume delivered for Shipper in such Month falls and the Term of this Agreement. Except as provided in Sections 4(b) and 4(c), the Incentive Rates shall not be subject to modification by regulatory action, including FERC regulation, as long as such rates are below the applicable ceiling rate. Exhibit A attached hereto sets forth Shipper's Minimum Volume Commitment, and the corresponding Initial Incentive Rates for Transportation Service from the Origins to the Destination dependent upon the term selected.
- (b) Indexed Rates. Carrier may, but is not obligated to, file changes to the Incentive Rates to reflect the inflation adjustments promulgated annually by FERC pursuant to Section 342.3 of Title 18, Code of Federal Regulations, or any successor indexing methodology that FERC may adopt (the "Indexing Methodology"), and rates derived from the application(s) of the Indexing Methodology are "Indexed Rates." Shipper agrees to support, and not to oppose, any FERC inflation adjustment filing made by Carrier in accordance with this Agreement and pay the Indexed Rates applicable to Shipper's Minimum Volume Commitment and Extra Barrels. Carrier agrees that it shall not increase the Incentive Rates to reflect inflation adjustments available pursuant to the Indexing Methodology until July 1, 2021.
- (c) Compliance Costs. Governmental Entities may, through the adoption or implementation of Applicable Laws subsequent to the Effective Date ("Governmental Action") cause Carrier to incur additional costs and expenses

(i) for required additions or modifications to Carrier's facilities, (ii) to operate the Pipelines (including any taxes, fees, or other charges imposed by any Governmental Entity), (iii) to implement increased training, testing or verification programs, (iv) to comply with the conditions of any permit necessary to operate the Pipelines, or (v) to prevent, reduce, control or monitor any emission, exposure or discharge into the environment (expenses, including without limitation capital expenditures, incurred for items (i) through (v), are collectively hereinafter referred to as "Compliance Costs"). If during the time between the Effective Date and the end of the Initial Term, Carrier becomes obligated as a result of one or more Governmental Actions to incur an aggregate amount of Compliance Costs in excess of two (2) million dollars (US) ("Compliance Cost Threshold"), then Carrier shall be entitled to increase the Incentive Rates one or more times in an amount equal to the Per Barrel Compliance Cost. "Per Barrel Compliance Cost" equals the Compliance Costs for a Pipeline divided by the total volumes shipped on such Pipeline in the preceding twenty four (24) months.

5. Deficiency Payments.

- (a) Deficiency Payments. If Shipper Ships less than its Monthly Minimum Volume Commitment in any Month of the Term commencing on the Commencement Date, in addition to paying Carrier the applicable Incentive Rate for the actual number of barrels that Shipper Shipped for such Month, Shipper shall also pay Carrier an amount equal to Shipper's Monthly Deficient Barrels multiplied by the Incentive Rate applicable to the Monthly Minimum Volume Commitment, as set forth in Exhibit A ("Deficiency Payment"). Shipper shall pay Carrier any such Deficiency Payment by the due date listed on the invoice for the Deficiency Payment. Deficiency Payments shall become fully vested property of Carrier upon receipt from Shipper and shall not be refundable. Shipper shall receive history for the volumes for which the Deficiency Payment is paid for the Month in which those volumes were not Shipped. All Shipper payments shall be made in compliance with the Joint Tariff.
- (b) Deficiency Payment Account.
- (i) In each Month that Shipper makes a Deficiency Payment in accordance with Section 5(a), Carrier shall book in a "Deficiency Payment Account" an amount that is equal to one hundred percent (100%) of such Deficiency Payment.
- (ii) Carrier shall apply, at Shipper's election, any dollar amounts in the Available Deficiency Payment Account Balance as a credit, on a dollar-for-dollar basis, against transportation charges due by Shipper to Carrier

for the Shipment of Extra Barrels. Such credits shall be applied on a first in, first out basis. If Shipper elects to apply such credits to Extra Barrels Shipped, such Barrels Shipped shall not count towards Shipper's history for such Month. Shipper may also elect not to have dollar amounts in the Available Deficiency Payment Account Balance applied as a credit, on a dollar-for-dollar basis, against transportation charges due by Shipper to Carrier for the Shipment of Extra Barrels. Extra Barrels Shipped in a Month for which no credit is applied will count towards Shipper's history for such Month. Notwithstanding anything in this Section 5 to the contrary, amounts in the Deficiency Payment Account may not be used as a credit (A) against Deficiency Payments or for barrels Shipped by Shipper up to Shipper's Monthly Minimum Volume Commitment, or (B) as a credit towards transportation charges for Extra Barrels during any period when a Shipper Default is then continuing.

- (iii) The dollar amounts in the Available Deficiency Payment Account Balance attributable to a Deficiency Payment may be credited in accordance with Section 5(b)(ii) during the twelve (12) Months immediately following the expiration of the Month for which such Deficiency Payment was made. The Available Deficiency Payment Account Balance shall be reduced by the amount of any credit made in accordance with Section 5(b)(ii) at the time such credit is made. Any right to credit any dollar amounts in the Available Deficiency Payment Account Balance in accordance with Section 5(b)(ii) will be permanently forfeited by Shipper (whether or not there was sufficient capacity on the Pipeline to permit shipment of Extra Barrels) after the earlier of (i) the expiration of twelve (12) Months immediately following the applicable Month for which the relevant Deficiency Payment was made, or (ii) the expiration of the Term or earlier termination of this Agreement.

- (c) Carrier Force Majeure Relief. In the event that Carrier is unable to provide Transportation Service for any portion of Shipper's Monthly Minimum Volume Commitment that is nominated or Tended by Shipper to Carrier in any Month due to a Force Majeure event declared by Carrier ("Carrier Force Majeure"), and if such Carrier Force Majeure event continues for longer than ten (10) days, Shipper shall thereafter have the right to request that Shipper's Monthly Deficient Barrels for the balance of that month and any immediately following Month(s) be reduced by the number of barrels with respect to which Carrier is unable to provide Transportation Service due to such Carrier Force Majeure ("FM Deficient Barrels"). Any such requested reduction shall continue for each Month thereafter until the Carrier Force Majeure has been remedied or this Agreement is

terminated. The Initial Term or any Renewal Term of this Agreement shall be extended by the number of days that is equal: (i) the difference between (A) the product of (1) the Minimum Volume Commitment and (2) the number of days in the Carrier Force Majeure period occurring within such term, and (B) the Shipments on the Pipeline by Shipper in the Carrier Force Majeure period, divided by (ii) the Minimum Volume Commitment (“FM Make-up Extension Period”), rounded to the nearest whole day. If Shipper does not request a reduction in its Monthly Deficient Barrels and continues to make Deficiency Payments to Carrier during the period of Carrier Force Majeure, Shipper shall be entitled to the credit rights provided in Section 5(b) of this Agreement.

- (d) Shipper Force Majeure Relief. In the event that Shipper is unable to Tender its Monthly Minimum Volume Commitment in any Month due to a Shipper Force Majeure event, and if such Shipper Force Majeure event continues for longer than thirty one (31) days, Shipper shall thereafter have the right to request that Shipper’s Monthly Deficient Barrels for the balance of that month and any immediately following Month(s) be reduced by the number of barrels with respect to which Shipper is unable to Tender due to such Shipper Force Majeure (“Shipper FM Deficient Barrels”). Any such requested reduction shall continue for each Month thereafter until the Shipper Force Majeure has been remedied or this Agreement is terminated. The Initial Term or any Renewal Term of this Agreement shall be extended by the number of days that is equal to: (i) the difference between (A) the product of (1) the Minimum Volume Commitment and (2) the number of days in the Shipper Force Majeure period occurring within such term, and (B) the Shipments on the Pipeline by Shipper in the Shipper Force Majeure period, divided by (ii) the Minimum Volume Commitment (“Shipper FM Make-up Extension Period”), rounded to the nearest whole day. If Shipper does not request a reduction in its Monthly Deficient Barrels and continues to make Deficiency Payments to Carriers during the period of Shipper Force Majeure, Shipper shall be entitled to the credit rights provided in Section 5(b) of this Agreement.

6. Joint Tariff

- (a) Scope of Joint Tariff. Commencing on the Commencement Date and continuing during the Term, Transportation Service, including transportation, scheduling, apportionment/prorationing, Crude Petroleum quality specifications, and billing will be governed by the Joint Tariff. Shipper shall comply with the Joint Tariff. For the avoidance of doubt, no history is granted under this Agreement, and instead history must be accrued under the terms of the Joint Tariff.

7. Carrier Condition.

- (a) Carrier Condition. Carrier's obligations and agreements in this Agreement are subject to the following condition (the "Carrier Condition") being waived by, or satisfied to the satisfaction of, Carrier in its sole discretion:
 - (i) Carrier shall have received approval of its Joint Tariff from the FERC to Carrier's satisfaction, in its sole discretion.
- (b) Waiver of Carrier Condition. The Carrier Condition set forth herein is for the sole benefit of Carrier and may be waived, in whole or in part, only by Carrier at any time, or from time to time, in Carrier's sole discretion.
- (c) Failure of Carrier Condition. Carrier may terminate this Agreement upon ten (10) days' prior written notice to Shipper if FERC has not approved, whether by operation of law or order, the Joint Tariff by April 20, 2020. If this Agreement is terminated pursuant to this Section 7(c), Carrier and Shipper shall each be released from any and all obligations to the other under this Agreement except the provisions of Section 27.

8. Term.

- (a) Term. This Agreement shall be effective as of the Effective Date and shall continue in effect until the date that is either five (5) or seven (7) years, based on Shipper's election shown on Exhibit A, after the Commencement Date (the "Initial Term," including an extensions thereof provided for herein), unless terminated earlier in accordance with the terms hereof.
- (b) Renewal Terms. At the end of the Initial Term, this Agreement will automatically renew for successive one year periods (each a "Renewal Term"), unless and until terminated by either Party giving a minimum of one hundred and eighty (180) days written notice to the other Party prior to expiration of the Initial Term or any then applicable Renewal Term (the Initial Term and all Renewal Terms, if any, collectively the "Term").
- (c) FM Make-up Extension/Shipper FM Make-up Extension. At the end of the Initial Term or Renewal Term, as applicable, the same shall be extended by the FM Make-up Extension Period and Shipper FM Make-up Extension Period, if any, occurring within such term. During the FM Make-up Extension Period and/or Shipper FM Make-up Extension Period, Shipper shall be obligated to Ship its Monthly Minimum Volume Commitment and to make any Deficiency Payment in accordance with Section 5(c). For the avoidance of doubt, the FM Make-up

Extension Period and the Shipper FM Make-up Extension Period shall be consecutive and not concurrent periods, except to the extent the events underlying such extensions overlap in the same time periods.

9. Force Majeure.

- (a) Carrier Suspension of Services. If Carrier is unable to provide some or all of the Transportation Services or perform any other obligations under this Agreement, including any obligation to perform or complete any action by a date certain, due to an event of Force Majeure, such failure will be deemed not to be a breach of Carrier's obligations for the period when Carrier is unable to provide the Transportation Services or perform or complete any other obligation or action as a result of such event of Force Majeure. Carrier will remedy such event with commercially reasonable dispatch, taking into account the facts and circumstances of the event of Force Majeure and generally accepted industry customs and practices (it being agreed, without limitation, that the terms of settlement of any strike, lockout, or other industrial disturbance will be wholly in the discretion of Carrier). Carrier will promptly notify Customer in writing of any event of Force Majeure affecting Carrier's ability to provide the Transportation Services or perform or complete any other obligation or action.
- (b) Impact of Carrier Force Majeure/Shipper Force Majeure. It is expressly agreed that (i) except as set forth in Section 9(c), no cause or event whatsoever, including an event of Carrier Force Majeure or Shipper Force Majeure, will permit or provide a basis for Shipper to terminate this Agreement, and (ii) except as set forth in Sections 5(c), 5(d), 9(c), and 9(e), no cause or event whatsoever, including an event of Carrier Force Majeure or Shipper Force Majeure, will excuse or suspend Shipper's obligation to perform its obligations under this Agreement.
- (c) Termination Based on Carrier Force Majeure. If an event of Force Majeure prevents Carrier from accepting at least sixty percent (60%) of the nomination of Shipper's Minimum Volume Commitment for a continuous period of at least eighteen (18) months, Shipper will then have the right to terminate this Agreement by providing at least ninety (90) days' prior written notice to Carrier given at any time after the expiration of such eighteen (18) month period, but prior to the cessation of the applicable event of Force Majeure, time being of the essence; provided, that such termination notice will not have any force or effect if Carrier has commenced to remedy such Carrier Force Majeure prior to the expiration of such ninety (90) day notice period. If Shipper so terminates the Agreement, Shipper shall not incur any further Deficiency Payment obligations

on or after the effective date of termination, Carrier and Shipper shall be released from any and all obligations under this Agreement other than any accrued but unpaid liabilities as of the date of termination and Shipper's obligations under Section 27, and any Available Deficiency Payment Account Balance as of the date of any such termination shall be forfeited.

- (d) Shipper Suspension of Obligations. If Shipper is unable to Tender barrels under this Agreement due to an event of Shipper Force Majeure, such failure will be deemed not to be a breach of Shipper's obligations for the period when Shipper is unable to perform or complete any other obligation or action as a result of such event of Shipper Force Majeure. Shipper will remedy such event with commercially reasonable dispatch, taking into account the facts and circumstances of the event of Force Majeure and generally accepted industry customs and practices (it being agreed, without limitation, that the terms of settlement of any strike, lockout, or other industrial disturbance will be wholly in the discretion of Shipper). Shipper will promptly notify Carrier in writing of any event of Force Majeure affecting Shipper's ability to Tender barrels.

- (e) Termination Based on Shipper Force Majeure. If an event of Shipper Force Majeure prevents Shippers from Tendering at least sixty percent (60%) of Shipper's Minimum Volume Commitment for a continuous period of at least eighteen (18) months, then Carrier will then have the right to terminate this Agreement by providing at least ninety (90) days' prior written notice to Shipper given at any time after the expiration of such eighteen (18) month period, but prior to the cessation of the applicable event of Shipper Force Majeure, time being of the essence; provided, that such termination notice will not have any force or effect if such Shipper Force Majeure is remedied prior to the expiration of such ninety (90) day notice period. If Carrier so terminates the Agreement, Shipper shall not incur any further Deficiency Payment obligations on or after the effective date of termination, Carriers and Shipper shall be released from any and all obligations under this Agreement other than any accrued but unpaid liabilities as of the date of termination and Shipper's obligations under Section 27, and any Available Deficiency Payment Account Balance as of the date of any such termination shall be forfeited.

10. No Set-off.

Except as otherwise expressly set forth in this Agreement and the Joint Tariff, the obligations and liabilities of each Party to pay to the other Party any amounts in accordance with the terms of this Agreement or the Joint Tariff shall not be subject to any counterclaim, setoff, reduction or defense based upon any claim that such Party may have against the other Party.

11. No Joint Venture or Partnership.

Nothing in this Agreement shall be construed to create a joint venture or partnership between the Parties or to constitute one Party as the agent of the other for any purpose.

12. Qualifying Crude Petroleum.

- (a) Qualifying Crude Petroleum. Shipper shall not Tender, and Carrier shall not be required to accept, for Transportation Service any Crude Petroleum that does not satisfy all of the product quality specifications identified in the Joint Tariff.

13. Assignment; Successors and Assigns.

- (a) By Shipper. Shipper shall not be entitled to assign or transfer Shipper's rights and obligations with respect to all or any portion of the Minimum Volume Commitment without the prior written consent of Carrier, which consent shall not be unreasonably withheld, conditioned or delayed. Carrier shall, without limitation, be deemed reasonable in refusing its consent to an assignment if the assignee or transferee fails to satisfy Carrier's credit requirements as set forth in the Joint Tariff and this Agreement, does not assume in writing Shipper's obligations under this Agreement or if a Shipper Default has occurred and is continuing. Any purported assignment in violation of this Section 13(a) shall be null and void.
- (b) By Carrier. Carrier will be entitled to assign all or part of this Agreement or any or all of its rights and obligations hereunder to an affiliate or any legal entity which may acquire all or substantially all of the Pipeline. Any other assignment by Carrier (other than an assignment permitted under Section 13(c)) shall be subject to Shipper's prior written consent, which consent shall not to be unreasonably withheld, conditioned, or delayed.
- (c) Assignment to Lenders. Without limiting Section 13(b), Carrier will be entitled, without restriction, to make one or more assignments of this Agreement and/or any or all of its rights and benefits hereunder to or for the benefit of any and all lenders, indenture trustees or agents or trustees for any such lenders, trustees or holders of bonds, debentures, notes or other evidences of indebtedness (collectively, the "Financing Parties"), or grant to any and all Financing Parties a lien on or security interest in any right, title or interest in all or any part of Carrier's rights hereunder; provided, that such assignment shall recognize Shipper's rights under this Agreement so long as Shipper is not in breach of this

Agreement. In order to facilitate such assignment, pledge, granting of a lien or security interest or similar transaction, Shipper shall cooperate with Carrier and shall execute and deliver such consents, acknowledgements, agreements or similar documents as may be reasonably requested by any Financing Party with respect thereto.

- (d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the respective Parties hereto.

14. Event of Default.

- (a) Shipper Default. Shipper shall be in default (“Shipper Default”) upon the occurrence and continuation of Shipper’s failure to make any payment when due under this Agreement, which is not cured within ten (10) business days after written notice from Carrier to Shipper describing the breach in reasonable detail and requiring Shipper to cure the breach (the “Shipper Default Notice”).
- (b) Remedies on Shipper Default.
 - (i) Upon the occurrence of a Shipper Default, Carrier (i) shall have the right to enforce any financial assurances provided by Shipper (including exercising and enforcing its rights and remedies under any guaranty and calling on any Letter of Credit or other financial assurances), (ii) shall have all other rights and remedies provided for in this Agreement, the Joint Tariff or which Carrier may otherwise have at law, in equity or by statute or regulation, and (iii) shall not be obligated to accept Shipper’s Crude Petroleum for transportation and may suspend the provision of other Transportation Services to Shipper;
 - (ii) If the Shipper Default continues for a period of not less than thirty (30) days from Shipper’s receipt of the Shipper Default Notice, Carrier shall be entitled, by notice in writing to Shipper, to terminate this Agreement, any such termination to be effective upon receipt of the applicable notice by Shipper, in which event Shipper shall be liable to Carrier for (A) all of its accrued obligations up to and including the effective date of termination, and (B) all losses and damages sustained by Carrier as a result of or arising out of such termination.
 - (iii) The exercise by Carrier of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise by Carrier of other rights or remedies.

- (c) Enforcement of Joint Tariff. Notwithstanding anything in this Section 14 to the contrary, nothing in this Section 14 is intended to or shall restrict enforcement by Carrier of the Joint Tariff in accordance with its terms.

15. Dispute Resolution.

- (a) Negotiation. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business (the “Negotiation Notice”). Within seven (7) days after the delivery of the Negotiation Notice, the receiving Party shall submit to the other Party a written response. The Negotiation Notice and response shall include (i) a statement of that Party’s position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fourteen (14) days after the delivery of the Negotiation Notice, the executives of the Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to attempt to resolve the dispute.
- (b) No Resolution. If any dispute is not settled within forty five (45) days after delivery of the Negotiation Notice or the executives of the Parties have not met within the required fourteen (14) day period after the delivery of the Negotiation Notice, the Parties shall be free to resolve such dispute through litigation, subject to the terms of this Agreement; provided, that either Party may file a cause of action in a Court earlier if necessary to avoid the application of an applicable statute of limitations.

16. Governing Law; Venue; Waiver of Trial by Jury.

THIS AGREEMENT SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO RULES CONCERNING CONFLICTS OF LAW AND THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS SEPARATELY BARGAINED-FOR CONSIDERATION, EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING

TO THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 16, THAT IT HAD AN OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL, AND THAT THIS JURY WAIVER HAS BEEN ENTERED INTO KNOWINGLY AND VOLUNTARILY BY IT.

17. Limitation of Liability.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN THE EVENT OF ANY BREACH OF OR DISPUTE UNDER THIS AGREEMENT, A PARTY SHALL BE LIABLE ONLY FOR ACTUAL DAMAGES AS A DIRECT RESULT OF THE BREACH OF THIS AGREEMENT AND NEITHER PARTY SHALL SEEK OR BE ENTITLED TO, AND NO COURT OR ARBITRATOR SHALL AWARD, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES IN ANY FORM OR AMOUNT REGARDLESS OF WHETHER SUCH CLAIM ARISES UNDER OR RESULTS FROM CONTRACT, TORT, OR STRICT LIABILITY. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL LIMIT SHIPPER'S OBLIGATIONS TO MAKE DEFICIENCY PAYMENTS IN ACCORDANCE WITH THE TERMS HEREOF.

18. Notices.

Any and all notices or other communications permitted or required to be given hereunder shall be considered validly given or made in writing if: (a) personally delivered, on the day of delivery; (b) delivered by a reputable overnight delivery service, on the day received or rejected if delivered by 5:00 p.m. local time on a business day or the next business day if after 5:00 p.m. local time; (c) deposited in the United States mail, first class, postage prepaid, certified or registered, return receipt requested, on the third day; or (d) delivered via electronic mail to the email address set forth below, 24 hours following delivery thereof, addressed as follows:

To Carrier:

Hiland Crude, LLC
1001 Louisiana St., Suite 1000
Houston, TX 77002
Attn: Vice President Business Development
Email: KMPP_ContractAdmin@kindermorgan.com

With a copy to:
Hiland Crude, LLC
1001 Louisiana St., Suite 1000
Houston, TX 77002

Attn: Assistant General Counsel
Email: KMPP_ContractAdmin@kindermorgan.com

To Shipper:

Attn: _____

Email:

Each Party hereto has the right to change its address for all purposes of this Agreement by notifying the other Party thereof in writing.

19. Representations and Warranties.

- (a) Carrier represents and warrants that:
 - (i) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is in good standing in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Carrier;
 - (ii) Subject to the satisfaction and/or waiver of the Carrier Condition, this Agreement constitutes the valid, legal and binding obligation of Carrier, enforceable in accordance with the terms hereof; and
 - (iii) There are no actions, suits or proceedings pending or, to Carrier's knowledge, threatened against or affecting Carrier before any court or administrative body that might materially adversely affect the ability of Carrier to meet and carry out its obligations under this Agreement.

- (b) Shipper represents and warrants that:
 - (i) It is duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is in good standing in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Shipper;

- (ii) This Agreement constitutes the valid, legal and binding obligation of Shipper, enforceable in accordance with the terms hereof;
- (iii) There are no actions, suits or proceedings pending or, to Shipper's knowledge, threatened against or affecting Shipper before any court or administrative body that might materially adversely affect the ability of Shipper to meet and carry out its obligations under this Agreement; and
- (iv) Shipper has taken all corporate or other necessary action to authorize the execution and delivery by Shipper of this Agreement.

20. Duty to Support.

Shipper shall not directly or indirectly protest, complain, or take any action that is designed to or may delay review or approval of the Joint Tariff, including the Incentive Rates (and the Indexed Rates, unless the foregoing are in conflict with the terms of this Agreement; provided, that nothing in the foregoing shall restrict Shipper from protesting any future changes to the the Joint Tariff that is not consistent with this Agreement.

21. Non-Waiver.

No waiver by either Party of any one or more defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other existing or future defaults, whether of a like or different character. No waiver will be effective unless made in writing and signed by the Party to be charged with such waiver. The rights of the Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

22. No Third-Party Beneficiaries.

This Agreement is intended for the exclusive benefit of the Parties and their respective heirs, successors and permitted assigns. Nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any third party.

23. Counterparts.

This Agreement may be executed in one or more counterparts, each of which, when executed and delivered, including by electronic mail and .pdf, shall be an original, but all of which together shall constitute but one and the same instrument.

24. Interpretation; Joint Efforts.

- (a) Unless the context requires otherwise: (i) words in the singular form shall be construed to include the plural and vice versa; (ii) the term “including” shall be construed to be expansive rather than limiting in nature and to mean “including, without limitation”; (iii) unless otherwise indicated, references to Sections refer to Sections of this Agreement; (iv) the words “herein,” “hereof,” “hereby,” “hereunder” and words of similar import refer to this Agreement as a whole, including the Exhibit attached hereto, and not to any particular subdivision unless expressly so limited; (v) references to Exhibit is to the Exhibit attached to this Agreement, which is hereby incorporated herein and made a part hereof for all purposes as if set forth in full herein; (vi) the preamble and recitals above are each hereby incorporated herein and made a part hereof for all purposes as if set forth in full herein; and (vii) the Section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Terms defined in this Agreement shall have the same meaning in any Exhibits hereto unless expressly defined otherwise therein.
- (b) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties, and will not be construed against one Party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution of it.

25. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, proposals, term sheets, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof. No amendments to or modifications of this Agreement or the Exhibit hereto shall be effective unless agreed upon in a written instrument which expressly refers to this Agreement and is executed by both Carrier and Shipper, except that the Joint Tariff is subject to amendment by Carrier from time to time to the extent permitted by Applicable Law.

26. Severability.

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all Applicable Laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, is for any reason or to any extent invalid or unenforceable, the remainder of this Agreement and the application of such provision to the other persons or circumstances shall not be affected thereby, but rather is to be enforced to the greatest extent permitted by law; provided, however, that the Parties shall

negotiate in good faith any amendments to this Agreement necessary to restore the original intent of the Parties.

27. Confidentiality.

Except as otherwise provided herein, this Agreement and the terms set forth herein are confidential and the Parties agree not to disclose such terms other than as set forth herein, and as may be required by or advisable under Applicable Laws, regulation, or stock exchange rule; provided that (i) each Party may disclose the terms hereof to its officers, employees, agents, lenders, accountants, attorneys and other advisors and to each of its affiliates and its respective affiliates' officers, employees, agents, lenders accountants, attorneys and other advisors that have a *bona fide* need to know such information and that have agreed to use this information only for purposes intended herein and have agreed to keep such information confidential, and (ii) Carrier may disclose the terms hereof to Governmental Entities having jurisdiction for the purposes of obtaining Governmental Authorizations or complying with filing or reporting requirements. In the event that disclosure occurs consistent pursuant to subsection (ii) of the preceding sentence, the disclosing Party will use commercially reasonable efforts to obtain confidential and/or protected treatment of such information or limit the scope of disclosure to the extent practicable. Notwithstanding the foregoing, Carrier is permitted to disclose the existence of this Agreement and the provisions contained herein, provided that Carrier does not disclose the identity of the Shipper or otherwise violate the terms of the ICA by making such disclosure. In the event this Agreement is terminated pursuant to the terms and conditions hereof or otherwise by mutual agreement of the Parties, then this Section 27 shall survive for a period of two (2) years from the effective date of such termination.

28. Survival.

Notwithstanding the termination of this Agreement for any reason, each Party will be liable for all of its accrued obligations hereunder up to and including the date on which the termination becomes effective.

[Signatures are on the next page]

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, have executed this Agreement to be effective as of the Effective Date.

CARRIER:

HILAND CRUDE, LLC

By: _____

Name: _____

Title: _____

SHIPPER:

[INSERT NAME]

By: _____

Name: _____

Title: _____

**Exhibit A to the
Joint Tariff Throughput and Deficiency Agreement - Volume Incentive Pricing**

ELECTION FORM

This is Exhibit A to the Joint Tariff Throughput and Deficiency Agreement - Volume Incentive Pricing referenced above (the “Agreement”). This Exhibit A is incorporated into the Agreement and shall be subject to all of the terms and conditions thereof.

Term:

_____ five (5) years after the Commencement Date; or

_____ seven (7) years after the Commencement Date.

Minimum Volume Commitment (*Shipper election must be not less than 10,000 BPD*):

_____ BPD

Origins:

Epping, Williams County, ND
East Camp Creek, McKenzie County, ND
Bainville, Roosevelt County, MT/Williams County, ND
Bethel, Williams County, ND
Scandia, Williams County, ND
Spring Brook, Williams County, ND
White Earth South, Mountrail County, ND
White Earth North, Burke County, ND
Albin Terminal (Double H)
Johnson’s Corner Station, McKenzie County, ND
Watford, McKenzie County, ND
Tioga Station, Williams County, ND
ITT Terminal Dore Station, McKenzie County, ND
ITT Terminal New Town Mountrail, ND
ITT Terminal Alexander Station, McKenzie County, ND

Destination: Independent Trading & Transportation Terminal Guernsey, WY

Incentive Rates:

<u>Minimum Volume Commitment / Volume Tier (BPD)</u>	<u>5 Yr</u>	<u>7 Yr</u>
10,000 - 14,999	2.65	2.50
15,000 +	2.50	2.35

- (1) In addition to the Incentive Rates, the Shipper shall pay all applicable incremental fees, surcharges, pump-over charges, or penalties expressly stated in Carrier's Joint Tariff. Carrier may, but is not obligated to, adjust the Incentive Rates under the Indexing Methodology and Compliance Costs, in accordance with the terms of this Agreement.
- (2) If the total volume delivered for Shipper in a given month is less than or equal to the Volume Tier in which Shipper's Minimum Volume Commitment falls, all delivered volumes for Shipper under this Agreement for such month will be assessed the Incentive Rate for that Volume Tier and applicable term (5 or 7 years as indicated in this Agreement). If the total volume delivered for Shipper in a given month is in excess of Shipper's Minimum Volume Commitment and falls within a higher Volume Tier, all delivered volumes for Shipper under this Agreement for such month will be assessed the Incentive Rate for that Volume Tier and applicable term (5 or 7 years as indicated in this Agreement).