

# Dakota Midstream, LLC

## DAKOTA MIDSTREAM PIPELINE PROJECT – MCKENZIE COUNTY, N.D.

### OPEN SEASON NOTICE

January 2, 2015

#### I. OPEN SEASON

##### A. INTRODUCTION

On January 2, 2015, Dakota Midstream, LLC (“Dakota Midstream”) issued a press release announcing this binding Open Season (“Open Season”) for the planned construction of a new crude oil gathering pipeline system (the “Project”) that will gather crude oil from Origination Points set forth below in McKenzie County, N.D., to Destination Points set forth below in McKenzie County, N.D. The purpose of this Open Season is to solicit interest in the Project and to assist Dakota Midstream in structuring the Project, including the potential location of additional Origination and Destination Points, maximum point and pipeline capacities, and potential rates and service offerings to serve the needs of potential shippers on the Project. The Project may be operated by a wholly-owned subsidiary of Dakota Midstream.

Dakota Midstream has executed a precedent agreement with an unaffiliated committed firm shipper which serves as the basis for the Transportation Service Agreement and Rates proposed in this Binding Open Season Notice.

##### B. PROJECT DESCRIPTION

The Project will be physically located completely within the state of North Dakota. The pipeline will be located in T149N, R102W; T149N, R103W; T148N, R102W; T148N, R103W; and T-149N, R101W, McKenzie County, North Dakota. The pipeline will have the following Origination Points:

Origination Point	Location
RP 1	NW/Q of NE/Q Sec. 2 of T149N-R102W
RP 2	Reserved
RP 3	NW/Q of NW/Q of Sec. 25 of T149N-R102W
RP 4	SW/Q of SE/Q of Sec. 33 of T149N-R102W
RP 5	Center of North Line of Sec. 18 of T148N-R102W
RP 6	Center of West Line of Sec. 27 of T149N-R102W
RP 7	SE/Q of SE/Q of Section 22 of T149N-R102W
RP 8	NE/Q of NE/Q of Section 16 of T149N-R102W

The pipeline will have the following Destination Points:

Destination Point	Location
DP-1	N/2 Section 16, T149N-R102W
DP-2	S/2 Section 30, T149N-R101W

The pipeline will be constructed of 6.625" O.D. and 10.750" O.D. w.t. steel pipe.

The Project will provide interstate oil transportation service, subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). The Project is tentatively planned to become operational in February 2015.

### **C. OPEN SEASON NOTICE**

Dakota Midstream is conducting this Open Season to provide interested parties the opportunity to submit executed pro forma Transportation Service Agreements ("TSA") based on the TSA executed by Dakota Midstream with its Foundation Shipper. The Open Season will commence on January 2, 2014 and will end at 5:00 p.m. Central Time on January 31, 2015 ("Open Season Period"). Interested parties should submit their binding bids for transportation service on the Project by completing the pro forma TSA in accordance with Section III.A. of this Notice and sending it to Dakota Midstream no later than the close of the Open Season Period.

## **II. COMMITMENT OPTIONS AND RATES**

### **A. TRANSPORTATION SERVICES**

Dakota Midstream is offering two classes of Committed Service applicable to the Project:

- Committed Firm Service; and
- Committed Non-Firm Service.

Consistent with the common carriage requirements of the Interstate Commerce Act ("ICA"), Dakota Midstream is also offering to reserve more than ten percent (10%) of the capacity in the Project for shippers who are not Committed Shippers ("Uncommitted Shippers").

#### **1. Committed Shipper Capacity**

During the Open Season, prospective shippers may make long-term volumetric commitments to the Project in exchange for access to the pipeline capacity reserved for "Committed Shippers" (the "Committed Capacity"). The minimum Committed Capacity is 1,000 Bbl/day.

##### **(a) Committed Firm Service**

Committed Firm Shippers shall have access to Committed Capacity on a firm (non-apportionable) basis ("Committed Firm Capacity"). Committed Firm Shippers shall pay a premium rate (the "Committed Firm Service Rate") greater than the Uncommitted Shipper Rate. Committed Firm Shippers shall be exempt from the capacity allocation

provisions of Dakota Midstream’s Tariff with respect to the volume of crude oil up to the Committed Firm Capacity.

**(b) Committed Non-Firm Service**

Committed Non-Firm Shippers shall have access, on an apportionable basis, to the portion of the Committed Capacity that is not subscribed as Committed Firm Capacity (the “Committed Non-Firm Capacity”). Committed Non-Firm Shippers shall pay a discounted rate (the “Committed Non-Firm Service Rate”) which shall be less than the Uncommitted Shipper Rate. Committed Non-Firm Shippers shall be subject to the capacity allocation provisions of Dakota Midstream’s Tariff.

**2. Uncommitted Capacity**

Dakota Midstream will reserve more than ten percent (10%) of the pipeline capacity, for Uncommitted Shippers that elect to make timely monthly nominations. Uncommitted Shippers are not required to make capacity or term commitments. Committed Non-Firm Shippers and Uncommitted Shippers shall be equally subject to the capacity allocation provisions of Dakota Midstream’s Tariff.

**B. RATES**

**1. Committed Firm Service Rate**

The Committed Firm Service Rate paid by Committed Firm Shippers shall be a negotiated rate that is greater than the rate paid by Uncommitted Shippers (the “Uncommitted Rate”). The tentatively proposed Committed Firm Service Rates and respective minimum Committed Quantity are set forth in the table of Committed Service Rates below.

**2. Committed Non-Firm Service Rate**

The Committed Non-Firm Service Rate paid by Committed Non-Firm Shippers shall be a rate that is lower than the Uncommitted Rate. The tentatively proposed Committed Non-Firm Service Rates and respective minimum Committed Quantity are set forth in the table of Committed Service Rates below.

COMMITTED SERVICE RATES (PER BBL)				
Committed Service	< 15-Year Term		15-Year Term	
	< 8,000 Bbl/d	≥ 8,000 Bbl/d	< 8,000 Bbl/d	≥ 8,000 Bbl/d
<b>Firm</b>	\$1.31	\$1.26	\$1.26	\$1.21
<b>Non-Firm</b>	\$1.10	\$1.075	\$1.075	\$1.05

**3. Rate Adjustments**

Based upon final construction costs, the tentatively proposed rates may be subject to adjustment.

Future Committed Service Rates will be subject an inflation-related index adjustment. Commencing with calendar year 2020, and annually thereafter, the Committed Service Rates may be adjusted based on the percentage change in the annual average in the “Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average – All items” which occurred in the preceding calendar year as published by the United States Department of Labor, Bureau of Labor Statistics for the previous calendar year. If there is a decrease in the referenced Index, the Firm Committed Rate will not be reduced, but will remain the same as the Firm Committed Rate in effect during the immediately preceding year.

#### **4. Larger Volume And Longer Term Commitments**

Larger volume commitments (*i.e.*,  $\geq 8,000$  Bbl/D) and/or longer term commitments (*e.g.*, fifteen (15) years) will qualify for a larger discount (in the case of Committed Non-Firm Shippers) or a smaller premium (in the case of Committed Firm Shippers). Any such larger discount or smaller premium shall be made available on a not unduly discriminatory basis to all prospective shippers who submit executed TSAs during the Open Season and satisfy the requirements for qualification for the lower rate (*i.e.*, larger discount or smaller premium).

#### **C. BIDS FOR COMMITTED CAPACITY AND CAPACITY ALLOCATION**

The opportunity to bid for Committed Capacity ends upon the closing of the Open Season. Shippers who submit an executed TSA for Committed Service during the Open Season will be permitted to specify a mix of Committed Firm and Committed Non-Firm Capacity up to the aggregate volume of Committed Capacity set forth in the prospective shipper’s TSA.

If the executed TSAs for Committed Capacity exceed the maximum volume of capacity reserved for Committed Service, Dakota Midstream will allocate the available Committed Capacity in a not unduly discriminatory manner among those prospective shippers who submitted Expressions of Interest in Committed Capacity. In any such preliminary allocation process, Committed Capacity will be allocated based upon a modified net present value (“NPV”) methodology.<sup>1</sup> Under the modified NPV methodology, Dakota Midstream will allocate capacity first to bids for Committed Firm Service. Any capacity that remains available for allocation to Committed Shippers after the allocation to the Committed Firm Shippers, will be allocated to bids for Committed Non-Firm Service using the NPV methodology. The same methodology will be employed if capacity at any Origination Point or Destination Point is oversubscribed.

If the maximum volume of Committed Capacity is not fully subscribed under TSAs executed during the Open Season, the unsubscribed portion of the maximum volume of Committed Capacity shall become available for subscription as Committed Capacity on a not unduly discriminatory basis following the close of the Open Season and the execution of binding TSAs by Dakota Midstream. Such unsubscribed Committed Capacity shall first be made proportionately available for additional subscription by shippers who have executed binding TSAs with Dakota Midstream. Any Committed Capacity remaining unsubscribed thereafter shall be offered on a not unduly discriminatory basis to other prospective shippers. The rates charged for the unsubscribed Committed Capacity may be higher than those applicable to

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<sup>1</sup> For purposes of the NPV calculation, the maximum term shall be fifteen (15) years.

Committed Capacity subscribed during the Open Season.

**D. VOLUME COMMITMENT**

Each shipper making a volume commitment (“Committed Shipper”) pursuant to an executed TSA will thereby agree to transport a specified minimum quantity of crude oil (the “Committed Quantity”) on the Project, and agree to pay a Deficiency Payment if the actual quantity of crude oil tendered at an Origination Point on the Project for transportation in the month is less than the Committed Quantity. Shippers may propose graduated increases (minimum annual increase 1,000 Bbls) in the Committed Quantity over time. The rate for Committed Firm Capacity shall be the Committed Firm Service Rate set forth in the Rates Tariff and the TSA. The rate for Committed Non-Firm Capacity shall be the Committed Non-Firm Service Rate set forth in the Rates Tariff and the TSA. The rate on the basis of which the Deficiency Payment shall be charged shall be the Deficiency Rate set forth in the Rates Tariff and the TSA.

**E. TERM**

The primary term of the TSA will be a minimum of four (4) years from the Contract Commencement Date<sup>2</sup> (“Primary Term”). Upon the expiration of the Primary Term and each successive Renewal Term, the TSA will automatically renew for one (1) year (“Renewal Term”) unless terminated by Dakota Midstream or Committed Shipper upon written notice to the other given not less than sixty (60) days prior to the expiration of the Primary Term or the then-current Renewal Term.

**F. CRUDE OIL QUALITY SPECIFICATIONS**

The Tariff will include the following crude oil specifications:

1. Gravity of fifteen degrees (15°) API or higher;
2. Basic sediment, water, and other impurities not greater than one-half of one percent (0.5%), no more than two-tenths of one percent (0.2%) of which may be water (measured above a point four inches (4") below the pipeline connection);
3. Free from contaminants, including chlorinated or oxygenated hydrocarbons and/or lead;
4. Sulfur content not exceeding two-tenths of one percent (0.2%) by weight; and
5. Hydrogen sulfide (H<sub>2</sub>S) not more than 10 ppm (ASTM D5705-12).

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<sup>2</sup> The Contract Commencement Date is the first day of the month following receipt by a Committed Shipper of a notice provided by Dakota Midstream that Dakota Midstream has constructed sufficient facilities to accept tenders of Committed Shipper’s crude oil at Origination Points specified in the TSA for redelivery to Destination Points specified in the TSA.

### **III. OPEN SEASON PROCESS**

#### **A. OPEN SEASON DOCUMENTS**

The following documents will be provided as part of the Open Season (“Open Season Documents”):

- Exhibit No. 1: Confidentiality Agreement
- Exhibit No. 2: Form of Transportation Services Agreement
- Exhibit No. 3: *Pro forma* FERC Tariffs
- Exhibit No. 4: Project Map
- Exhibit No. 5: Creditworthiness Standards

Dakota Midstream will provide Exhibit Nos. 2, 3, and 4 upon execution of the Confidentiality Agreement attached hereto as Exhibit No. 1.<sup>3</sup> Dakota Midstream will inform prospective shippers of the availability of any additional information regarding or changes to the Open Season process or the Open Season Documents by e-mailing the potential shippers that have received the Open Season Documents.

Prospective shippers that wish to become Committed Shippers must complete the pro forma TSA set forth as Exhibit No. 2, along with a rate election under Schedule 2 to the TSA, and submit two copies of the executed TSA no later than the close of the Open Season Period via hand delivery, courier, or e-mail to:

Dakota Midstream, LLC  
1600 Broadway, Suite 1330  
Denver, CO 80202  
Phone: 704-773-7227

Attn: Heath Norman  
heath@dakota-midstream.com

Submission of an executed TSA constitutes a firm offer by a potential Committed Shipper to enter into a binding TSA and shall be non-revocable. By executing and submitting a TSA to Dakota Midstream, the potential Committed Shipper represents that it has management approval to enter into a binding TSA.

#### **B. RESERVATIONS**

Dakota Midstream reserves the right to reject any TSA that is not received on or before the time and date specified in the Binding Open Season notice. Dakota Midstream also reserves the right to reject any and all TSAs that do not satisfy the requirements set forth in this Open Season Notice. Without limiting the foregoing and in order to ensure that all potential Committed Shippers are presented the same terms, conditions, and service commitment options

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<sup>3</sup> The Confidentiality Agreement in Exhibit 1 is intended to protect the confidentiality of the information shared between Dakota Midstream and potential Committed Shippers during the Open Season; it does not, however, limit a potential Committed Shipper’s ability to engage in discussions with FERC regarding the terms of service being offered by Dakota Midstream during the Open Season.

in the TSA, Dakota Midstream may reject any TSA that is incomplete, is inconsistent with the terms and conditions outlined in this Open Season Notice, contains additional or modified terms, or is otherwise deficient in any material respect.

### **C. ACCEPTANCE BY DAKOTA MIDSTREAM**

Dakota Midstream will indicate its acceptance of each TSA by countersigning both copies and returning one copy to the shipper. Once countersigned and delivered by Dakota Midstream, the TSA shall constitute a binding agreement, subject to its terms and conditions at the time of receipt.

If a submitted TSA has not been countersigned by Dakota Midstream and returned to the potential Committed Shipper within the period set forth in the Binding Open Season notice, the submitted TSA shall become null and void, and any rights or obligations relating to the Project on the part of the Committed Shipper and Dakota Midstream shall be extinguished. If Dakota Midstream decides not to proceed with construction and operation of the Project pursuant to the terms set forth in the TSA, Dakota Midstream shall notify potential Committed Shippers of such determination. In the event of such a determination, all submitted TSAs shall become null and void.

### **IV. CREDIT REQUIREMENTS**

As further specified in Exhibit No. 5, each Committed Shipper shall provide financial data sufficient for Dakota Midstream, in its sole discretion, to demonstrate satisfaction of the Creditworthiness Requirements set forth in Exhibit No. 5. Pursuant to Exhibit No. 5, Dakota Midstream may request financial assurance(s) from the Committed Shipper, which may be in the form of a letter of credit, a guaranty agreement, or other security. Committed Shippers must meet the Creditworthiness Requirements at the time the Shipper submits an executed TSA, and thereafter until the end of the Security Period specified in Exhibit No. 5.

### **V. DISCLAIMERS**

The issuance of this Notice does not constitute a commitment on the part of Dakota Midstream to proceed with any transaction. This Notice is not intended to form the basis of any investment decision by a potential shipper and should not be considered as a recommendation by Dakota Midstream or any affiliate of Dakota Midstream with respect to the Project. In furnishing this Notice, Dakota Midstream shall not be obliged to provide the recipients of this Notice with any additional information, to update this Notice, or to correct any inaccuracies herein which may become apparent. Dakota Midstream reserves the right to amend or replace this Notice at any time, and the information contained in this Notice is subject to change or amendment without notice. The description of agreements and other documents contained in this Notice, if any, are summary only, and such summaries are qualified in their entirety by reference to the complete text of such agreements and other documents.

Dakota Midstream may at any time conduct discussions and negotiations with any number of prospective shippers and on any basis with any prospective shippers as it or they consider appropriate, including different classes of service, terms and conditions, rates and volumes for different prospective shippers, provided that any final service offerings, terms and conditions of service and rates are made available to all similarly situated shippers on a not unduly discriminatory basis. Any changes to the terms of this Notice will be reflected on the

Open Season webpage (accessed via the link found on Dakota Midstream's website), without prior notice, and interested parties are solely responsible for following such changes without further notification by Dakota Midstream. Negotiations may be withdrawn and discontinued with respect to any or all prospective shippers at any time, and any or all proposals or offers may be rejected at any time without any obligation or liability by Dakota Midstream or any affiliate of Dakota Midstream.

In each case above Dakota Midstream may act in its sole and absolute discretion without giving any reasons and without any liability or obligation of any kind. In no circumstance shall Dakota Midstream or any affiliate of Dakota Midstream, or any of their respective directors, officers, employees, agents, attorneys, advisers and representatives be responsible for any costs or expenses incurred by any recipient of this Notice, or for any other liability, howsoever arising, incurred by any recipient, in each case, in connection with any investigation or evaluation of the Project or this Open Season Notice.

The Project, including the pipeline configuration, is subject to revision after the conclusion of the Open Season Period. Prior to the time that all TSAs are returned to Dakota Midstream by prospective Committed Shippers and have been fully executed by both the Committed Shippers and Dakota Midstream, Dakota Midstream further reserves the right, in its sole discretion, to (1) modify any of the Open Season terms, including the applicable rates, if necessary, as indicated by economic, engineering design, environmental, legal, or other factors, or (2) decide not to proceed with the transportation service commitment terms offered in the TSA and the Open Season. In such an event, Dakota Midstream will notify all interested shippers as soon as reasonably practicable.

These Open Season procedures, this Notice and the Open Season Documents are informal marketing documents, and they establish no contractual relationship between or among Dakota Midstream or any of its affiliates and any party who receives them. These procedures are intended to be used solely for the Project discussed herein and are not intended to be in lieu of the requirements of FERC or any applicable federal or state laws.

## **VI. QUESTIONS AND FURTHER INFORMATION**

If you have questions or comments regarding the Open Season, Project timing, the configuration of the Project (including potential Origination and Destination Points), or the service commitment options and rates related thereto, please contact:

Heath Norman  
Dakota Midstream, LLC  
1600 Broadway, Suite 1330  
Phone: 704-773-7227  
Email: [heath@dakota-midstream.com](mailto:heath@dakota-midstream.com)

## **EXHIBIT NO. 1**

### **CONFIDENTIALITY AGREEMENT**

Dakota Midstream, LLC (“Dakota Midstream”) has notified interested parties that it is planning to construct a new gathering and transportation pipeline system that will transport crude oil from Origination Points in McKenzie County, N.D., to Destination Points in McKenzie County, N.D.

Dakota Midstream will conduct a Binding Open Season for the Project (“Open Season”), which will commence on January 2, 2015. The purpose of this letter is to confirm the understanding as to the treatment of certain documents and information, such as the proposed form Transportation Services Agreement (“TSA”) and the proposed tariff rules, all of which are set forth in Exhibits Nos. 2 and 3 of the Open Season Documents. As a condition to our furnishing such information to you, we are requesting that you agree, as set forth below, to treat confidentially such information and any other information Dakota Midstream or its directors, officers, employees, agents, or representatives (collectively, “Company Representatives”) furnish to you, together with all other documents that contain or otherwise reflect or are generated from such information (all documents provided to you and generated therefrom are referred to collectively herein as the “Confidential Materials,” and all information provided to you and generated therefrom are referred to collectively herein as the “Confidential Information”). As used herein, “you” and “your” shall mean you and all entities that are affiliated with you by contract or by common ownership and all entities controlled by you by ownership or by contract.

Confidential Materials and Confidential Information do not include documents or information that (1) was, is or becomes generally available to the public other than as a result of disclosure by you or your directors, officers, employees, agents, or representatives (collectively, “Shipper Representatives”), or (2) was, is or becomes available to you on a non-confidential basis from a source other than Dakota Midstream or Company Representatives, provided that such source is not bound by a confidentiality agreement with Dakota Midstream. In the case of the Open Season, Dakota Midstream is making the Open Season Notice available to the public, and such Open Season Notice therefore does not constitute Confidential Materials or Confidential Information pursuant to this agreement.

You agree that the Confidential Materials and Confidential Information will be used solely for the purpose of evaluating the Open Season, and that the documents and information contained therein will be kept strictly confidential by you, provided that any such Confidential Materials and Information may be disclosed to your Shipper Representatives who need to know such Information for the purpose of evaluating the Open Season (it being understood and agreed that such Shipper Representatives shall be informed by you of the confidential nature of the Confidential Materials and Information, and shall be directed by you to treat such Confidential Materials and Information confidentially and not to use them other than for the purpose described above). You shall be responsible for a breach of this letter agreement by any of your Shipper Representatives.

If you are requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar process) to disclose

any Confidential Materials or Confidential Information, it is agreed that you will (1) provide Dakota Midstream with prompt notification of such request or requirement and the documents requested thereby so that either Dakota Midstream and/or you may seek an appropriate protective order and/or by mutual agreement waive compliance with the provisions of this letter agreement, and (2) consult with Dakota Midstream on the advisability of taking legally available steps to resist or narrow such request. It is further agreed that, if in the absence of a protective order or the receipt of a waiver hereunder, you and your Shippers Representatives are nonetheless, in the written opinion of your counsel, compelled by law to disclose any such Confidential Materials or Information or else stand liable for contempt or suffer other legal penalty, you or your Shipper Representatives may disclose such Materials and/or such Information without liability hereunder.

You recognize and acknowledge the competitive value and confidential nature of the Confidential Materials and Confidential Information, therefore, it is further understood and agreed that money damages would not be a sufficient remedy for any breach of this letter agreement by you, and that Dakota Midstream shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for any breach of this letter agreement by you or your Shipper Representatives, but shall be in addition to all other remedies available at law or in equity to Dakota Midstream.

By executing this Confidentiality Agreement you represent and acknowledge that you have a valid and true interest in entering into a transportation services agreement with Dakota Midstream for the transportation options set forth herein and described more fully in Dakota Midstream's Open Season Notice.

This letter agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, without giving effect to the principles of conflict of laws thereof that might refer the governance or the construction of this letter agreement to the law of another jurisdiction.

If you are in agreement with the foregoing, please so indicate by signing both copies of this letter agreement, returning one copy to Dakota Midstream and retaining the other for your records, whereupon it will constitute our entire agreement with respect to the subject matter hereof.

Very truly yours,

Dakota Midstream, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACCEPTED AND AGREED TO** as of the \_\_\_\_ day of January 2015:

[NAME OF POTENTIAL SHIPPER]

By: \_\_\_\_\_  
Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT NO. 2**

**TRANSPORTATION SERVICE AGREEMENT**

**DAKOTA MIDSTREAM PIPELINE PROJECT  
MCKENZIE COUNTY, N.D.**

[To Be Provided]

**EXHIBIT NO. 3**

***PRO FORMA* FERC TARIFF**

**DAKOTA MIDSTREAM PIPELINE PROJECT  
MCKENZIE COUNTY, N.D.**

[To Be Provided]

**EXHIBIT NO. 4**

**PROJECT MAP**

**DAKOTA MIDSTREAM PIPELINE PROJECT  
MCKENZIE COUNTY, N.D.**

[To Be Provided]

## EXHIBIT NO. 5

### CREDITWORTHINESS STANDARDS

#### DAKOTA MIDSTREAM PIPELINE PROJECT MCKENZIE COUNTY, N.D.

- (a) Shipper must satisfy the requirements specified in this Rule No. 30 (the “Creditworthiness Requirements”) until the end of the Security Period.
- (b) Shipper shall satisfy the Creditworthiness Requirements if –
- (1) Shipper maintains an Investment Grade Credit Rating, and
  - (2) the sum of the fees and charges, including potential Monthly Deficiency Payments related to Shipper’s Committed Volume under Shipper’s TSA for thirty-six (36) Months is less than fifteen percent (15%) of Shipper’s tangible net worth, as calculated by Transporter.
- (c) If Shipper does not satisfy the requirements of Rule No. 30(b) at the time of executing the TSA or at any time during the Security Period, or if any guarantor ceases to satisfy the requirements of Rule No. 30(b) during the Security Period (each a “Downgrade Event”), then Shipper shall satisfy the Creditworthiness Requirements by delivering to Transporter, prior to or concurrently with the execution and delivery of the TSA, or within one (1) Month after the occurrence of the Downgrade Event, as applicable, any one or more of the financial assurances set forth in Rule No. 30(d) (the “Financial Assurances”), as selected by Shipper, for payment of all charges and costs as provided for in this tariff or otherwise lawfully due to Transporter.
- (d) The Financial Assurances include the following:
- (1) an irrevocable, transferable unconditional guaranty of payment and performance of all obligations of Shipper under the TSA for the full Security Period, in form and substance reasonably acceptable to Transporter, issued in favor of Transporter by –
    - (A) a Qualified Institution;
    - (B) an unaffiliated entity (a “Third Party Guarantor”) that maintains an Investment Grade Credit Rating or that is unrated but is nevertheless determined by Transporter to be creditworthy in Transporter’s sole discretion, provided that the sum of the fees and charges, including potential Monthly Deficiency Payments related to Shipper’s Committed Volume for thirty-six (36) Months of service (rounded upwards to the nearest \$100,000) is less than 15 percent (15%) of Third Party Guarantor’s tangible net worth, as calculated by Transporter; or
    - (C) Shipper’s ultimate parent company (“Parent Guarantor”), provided Parent Guarantor has a Credit Rating of either –

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- (i) at least B+ by S&P or
- (ii) at least B1 by Moody's,

but without any requirement that Parent Guarantor satisfy both such Credit Ratings; or

(2) one or more Letters of Credit in a total amount not less than the Security Amount, issued for the benefit of Transporter by a Qualified Institution, in form and substance, including drawing conditions, reasonably acceptable to Transporter; or

(3) cash in an amount not less than the Security Amount.

(e) Shipper may, at any time, substitute one form of Financial Assurance ("Substitute Assurance") for the then outstanding Financial Assurance ("Original Assurance"), and Transporter shall return to Shipper the Original Assurance within two (2) Business Days of Transporter's receipt of the Substitute Assurance. Shipper hereby grants to Transporter a present and continuing security interest in and to, and a general first lien upon and right of set off against, any and all Financial Assurance which has been or may in the future be transferred to, or received by, Transporter and/or a Qualified Institution (in the case of cash deposited pursuant to Rule No. 30(f), and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing, and Shipper agrees to take such action as Transporter reasonably requests in order to perfect Transporter's continuing security interest in, and lien on (and right of setoff against), such Financial Assurance.

(f) If Shipper chooses at any time to satisfy the Creditworthiness Requirements by delivering cash, such cash shall be deposited and held in escrow in a segregated, safekeeping or custody account (the "Collateral Account") established and owned by Shipper at a Qualified Institution selected by Transporter and approved by Shipper (which approval shall not be unreasonably withheld). The terms of control of such account and other agreements as are necessary or appropriate to perfect and protect the security interest of Transporter in such Financial Assurance pursuant to Section 9-314 of the Uniform Commercial Code ("U.C.C.") or otherwise shall be subject to the reasonable approval of Transporter. The Qualified Institution shall serve as custodian with respect to the cash and other property in the Collateral Account, and shall hold such cash in accordance with the terms of Rule No. 30 and the applicable account control agreements. The Qualified Institution holding the cash will pay interest to Shipper after the end of each calendar quarter in accordance with such agreements. Transporter shall have no responsibility for any losses resulting from such Collateral Account in accordance with such agreements.

(g) All costs of any Letter of Credit provided on behalf of Shipper hereunder shall be borne by Shipper. Shipper shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit. If the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, Shipper shall provide substitute Financial Assurances for the benefit of Transporter in

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accordance with Rule No. 30(c) at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit. If a Qualified Institution issuing a Letter of Credit shall fail to honor Transporter's properly documented request to draw on such Letter of Credit, Shipper shall, as soon as practical and in no event later than two (2) Business Days after such refusal, provide substitute Financial Assurances for the benefit of Transporter in accordance with Rule No. 30(c).

(h) Upon or at any time after the occurrence and continuation of a Default (which shall include Shipper's failure to timely provide or replace Security hereunder), and without limiting Shipper's obligations to Transporter or Transporter's rights and remedies hereunder, Transporter may draw on the entire, undrawn portion of any outstanding guaranty, Letter of Credit, or Collateral Account by submitting to the entity issuing such guaranty or Letter of Credit or the institution at which such Collateral Account is maintained, as applicable, one or more certificates specifying that such Default has occurred and is continuing. Cash proceeds received from drawing upon a guaranty, Letter of Credit or Collateral Account shall be deemed security for Shipper's obligations to Transporter, and Transporter shall have –

(1) all rights and remedies available to a secured party pursuant to Section 9-314 of the U.C.C. in New York, and other applicable laws with respect to Security held by or for the benefit of Transporter; and

(2) the right to set off any Security held by or for the benefit of Transporter against and in satisfaction of any amount payable by Shipper in respect of any its obligations under the TSA.

(i) Within five (5) Business Days after termination of the Security Period, Transporter shall return to Shipper the amount of any Security then remaining hereunder.

(j) If Rule No. 30(b) is not satisfied, or required Financial Assurances are not provided in accordance with Rule No. 30(c), upon the request of Transporter any prospective or existing Shipper that is not a publicly held company shall provide information to Transporter that will allow Transporter to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, Monthly Deficiency Payments, equalization obligations and the value of the negative Shipper's balance positions. Transporter shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper that is not a publicly held company if Shipper or prospective Shipper fails to provide the requested information to Transporter within ten (10) Business Days of Transporter's written request, or if Transporter's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform the financial obligations that could arise from the transportation of Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, Monthly Deficiency Payments, equalization obligations and negative Shipper's balance positions.