

# LM TOUCHDOWN CRUDE I, LLC

LOCAL TARIFF

CONTAINING

**RULES, REGULATIONS, AND RATES**

GOVERNING THE GATHERING AND TRANSPORTATION OF

**CRUDE PETROLEUM**

BY PIPELINE

---

Rules and regulations published herein apply only under tariffs making specific reference by number to this tariff; such references will include subsequent reissues hereof.

---

Filed in compliance with 18 CFR § ~~[W] 341.3~~ 342.3 (Indexing).

**[C] Request for Special Permission**

~~Issued on less than 1 day's notice under the authority of 18 C.F.R. § 341.14. This tariff publication is conditionally accepted subject to refund pending a 30-day review period.~~

---

The provisions published herein will, if effective, not result in an effect on the quality of human environment.

---

**ISSUED DATE: May 29, 2020**

**EFFECTIVE DATE: July 1, 2020**

---

**ISSUED BY:**

**COMPILED BY:**

**Elliot Gerson  
LM Touchdown Crude I, LLC  
2850 North Harwood, Suite 1050  
Dallas, Texas 75201  
(214) 224-0808**

**Ryan Godfrey  
LM Touchdown Crude I, LLC  
2850 North Harwood, Suite 1050  
Dallas, Texas 75201  
(214) 224-0808**

**TABLE OF CONTENTS**

**SECTION I ..... 3**

**1. DEFINITIONS ..... 3**

**2. NOMINATIONS ..... 5**

**3. MEASUREMENT AND QUALITY OF CRUDE OIL ..... 7**

**4. PAYMENT ..... 9**

**5. FINANCIAL RESPONSIBILITY ..... 9**

**6. TITLE ..... 10**

**7. FORCE MAJEURE ..... 11**

**8. CURTAILMENT ..... 12**

**9. PIPELINE LOSS ALLOWANCE FOR CRUDE ..... 12**

**10. LINE FILL ..... 12**

**11. PRORATIONING ..... 13**

**12. LIABILITY, INDEMNIFICATION AND INSURANCE ..... 13**

**13. WAIVER OF DAMAGES ..... 14**

**SECTION II RATES ..... 16**

## **SECTION I**

### **RULES AND REGULATIONS**

#### **1. DEFINITIONS**

“**Adequate Assurance**” has the meaning set forth in Section 5.

“**Adverse Claims**” has the meaning provided in Section 6.B.

“**Affiliate**” means, with respect to a particular Person, any other Person who is Controlled by, under common Control with, or in Control of, such particular Person.

“**Agreement**” means an effective Crude Oil Gathering Agreement between Gatherer and a Shipper executed during the Open Season for gathering service on the System.

“**API**” means the American Petroleum Institute and any successor thereto.

“**Applicable Law**” means all constitutions; statutes; laws; regulations; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; restraints, guidelines, directives, agreements with, requirements of, or instructions by any Governmental Authority; and general principles of common or civil law.

“**Barrel**” means a liquid measure equal to 42 U.S. gallons.

“**Business Day**” means any Day other than Saturday, Sunday, or legal holiday for commercial banks under the Applicable Laws applicable to national banking associations.

“**Claim**” or “**Claims**” means any and all claims, demands, causes of action, investigations, legal proceedings (whether in law or equity) or arbitrations of any kind.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise.

“**Controlled**” will have a correlative meaning.

“**Crude**”, “**Crude Oil**”, or “**crude oil**” means the mixture of hydrocarbons that exist in natural underground reservoirs after passing through surface separation and well site treatment facilities and remain liquid at atmospheric pressure but not including liquid components of the gas stream that may drop out of or be separated from the gas stream during gas gathering or compression or natural gas liquids produced from the gas stream at natural gas processing plants.

**“Crude Purchaser”** means a purchaser of crude oil that has entered into any arrangement with Shipper or its Affiliates.

**“Day”** means a period beginning at 7:00 a.m. Central Standard Time on a calendar day and ending 7:00 a.m. Central Standard Time on the following calendar day.

**“Delivery Point(s)”** means the point(s) for delivery of Crude Oil on from the System as set forth in Section II.

**“FERC”** means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers of such commission with respect to the regulation of pipelines that gather and/or transport Crude Oil in interstate commerce.

**“Force Majeure”** has the meaning provided in Section 7.B.

**“Gatherer”** means LM Touchdown Crude II, LLC or any successor or permitted assign thereof.

**“Governmental Authority”** means any governmental, administrative or regulatory entity (including the New York Stock Exchange and any applicable stock exchange on which a Party’s or its Affiliate’s securities are listed or traded), authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal or judicial or arbitral body (whether national, federal, state or local or, in the case of an arbitral body, whether governmental, public or private), having jurisdiction over Gatherer or Shipper.

**“LACT”** means Lease Automatic Custody Transfer units.

**“System”** means the LM Touchdown Crude I, LLC Crude Oil pipeline system located in Eddy County, New Mexico for the gathering and transportation of Crude Oil from the Receipt Points(s) to the Delivery Point(s).

**“Loss”** or **“Losses”** means any and all judgments, liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, losses, costs and expenses whether attributable to personal injury or death, property damage, contract, torts or other Claims (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any Claim, default or assessment).

**“Month”** means a period beginning on the first Day of the calendar Month and ending immediately prior to the commencement of the first Day of the next calendar Month.

**“Open Season”** means that open season held by Gatherer beginning on July 15, 2019 to obtain acreage dedications on the System, and any supplemental open season

held by Gatherer to obtain additional commitments on the System prior to the in-service date.

“**Party**” or “**Parties**” means the Shipper and Gatherer governed by this Tariff.

“**Person**” means an individual, corporation, company, limited liability company, partnership, statutory corporation, Government Authority, or any other legal entity.

“**Pipeline Loss Allowance**” has the meaning provided in Section 9.

“**psia**” means pounds per square inch absolute.

“**Receipt Point(s)**” means the point(s) for the receipt of Crude Oil on the System as set forth in Section II.

“**Redelivery Facilities**” means the LACT metering facilities provided by the interconnecting parties at the Delivery Point. The volume of Crude Oil delivered at the Delivery Point shall be based on the measurements provided by the interconnecting parties’ metering facilities.

“**Shipper**” means a party that contracts with Gatherer for the gathering of Crude Oil on the System in accordance with this Tariff and any other applicable tariffs of Gatherer

## 2. NOMINATIONS

A. Nominations. Gatherer and Shipper agree that scheduling and commencement of service must be consistent with the downstream receiving pipeline or transporter Nomination requirements. Each Party shall provide to the other Party all information reasonably requested for such nominations and confirmations with upstream and downstream pipelines or transporters.

1) Operational Information. Gatherer will use reasonable efforts to provide daily information related to Receipt Point volume and system performance, including, but not limited to, historical volume information in order to assist with Shipper’s nominations. Shipper will use reasonable efforts to make nomination changes as necessary, based on the information provided by Gatherer, at the Delivery Points to minimize imbalances; provided, however, that nothing herein is intended to require Gatherer to provide Shipper with information prohibited from disclosure by Applicable Law.

B. Delivery Point Nominations

1) Downstream Arrangements. Shipper will make all necessary

arrangements with pipelines or other third parties downstream of the applicable Delivery Points as necessary to accept Gatherer's delivery of an equivalent volume of Shipper's Crude Oil. It is Shipper's obligation to maintain balance between what it delivers to Gatherer at the Receipt Points and what it accepts at the Delivery Points. Those arrangements must be coordinated with Gatherer, and Gatherer will coordinate such arrangements with Shipper and such downstream pipelines or other third parties.

- 2) Downstream Nominations. One Business Day prior to the nomination deadline each Month for the applicable downstream pipeline(s) receiving Shipper's Crude Oil, Shipper will notify Gatherer of the estimated quantity of Crude Oil per Day, if any, to be delivered at each Delivery Point, and any other information reasonably requested by Gatherer that is relevant to Gatherer's operation of the System, provided that nominations at the Delivery Points are subject to confirmation by the applicable downstream pipeline. At any time, Shipper may adjust its nomination prospectively for the remainder of such Month by providing Gatherer notice prior to the nomination deadline of the applicable pipeline at the Delivery Points for making such changes.
- C. **Unexpected Changes**. Gatherer and Shipper will immediately inform each other of any discovered unanticipated changes in deliveries at either the Receipt Point(s) or the Delivery Point(s). Nominations may be made by telephone, but will be confirmed in writing by email, facsimile or other electronic means to Gatherer as soon as reasonably practical. Shipper is obligated to nominate and deliver a quantity of Crude Oil to the Receipt Point(s) that is an equivalent volume of the Crude Oil it receives at the Delivery Point(s) on a Monthly basis, net of Shipper's Pipeline Loss Allowance. While imbalances may occur due to operations, dispatching and other causes, Shipper and Gatherer will each use their commercially reasonable efforts to cause the receipts at the Receipt Point(s) (less Pipeline Loss Allowance) to be an equivalent volume of the Crude Oil delivered to Shipper or for Shipper's account at the Delivery Point(s), on a Monthly basis.
- D. **Curtailment**. Each party will use reasonable efforts to provide timely notification to the other Party by telephone, with subsequent e-mail notification, of any downstream capacity disruptions (including scheduled and unscheduled disruptions) affecting any of Shipper's Crude Oil, including the potential size and duration thereof. Shipper must immediately adjust its nomination after receiving notification from Gatherer or the downstream pipeline of any such curtailment. If Shipper does not so adjust its nomination, and Gatherer reasonably determines such failure to adjust nominations could materially impact operations on the System, Gatherer may curtail or shut in Shipper's Crude Oil as necessary to accommodate

such curtailment.

### 3. **MEASUREMENT AND QUALITY OF CRUDE OIL**

- A. Quantities, quality and gravities of Crude will be determined in accordance with generally accepted industry practices in the effect at the time, using the latest American Society for Testing and Materials or API test methods and the latest edition of API volume correction tables. Corrections will be made for temperature to correct from actual observed temperatures to 60 degrees Fahrenheit; and to correct actual pressures to 14.696 psia.
- B. Shipper will verify the calibration of its meters and make adjustments as necessary at least once each six Months, or more frequently if required by governmental authorities having jurisdiction. With respect to any test made hereunder, a registration within 0.25% of the previous meter calibration will be considered correct. However, the meter will be adjusted to read as accurately as practicable. Either Party at any time may request a special test of any meter. Each Party will notify the other at least three (3) Days in advance of any testing, and each Party will have the right to have a representative witness all tests and measurements. The expense of any special test requested by Shipper will be borne by Shipper if the meter registration is found to be correct and by Gatherer if found to be incorrect. Settlement for any period during which the meter registration deviates by more than 0.25% will be corrected at the rate of inaccuracy for any period of inaccuracy which is definitely known or agreed upon; but in case the period is not definitely known or agreed upon, then for a period of one-half of the time since the date of the last test. Each of the Parties hereby grants an irrevocable license to the other Party, for the term of this Agreement, to, upon twenty four (24) hours' prior notice, enter onto their property or rights-of-way of such granting Party for the purpose performing any of its rights or obligations under these measurement provisions.
- C. The Parties agree that all Crude Oil delivered to Gatherer at the Receipt Point(s) hereunder will conform to the following specifications:
- 1) Maximum organic chlorides of 1 PPM
  - 2) Maximum sulfur content of 0.4%
  - 3) Maximum Reid Vapor Pressure of 9 psia
  - 4) Less than 1% of basic sediment, water and other impurities
  - 5) Maximum API Gravity of 55

- 6) Maximum temperature of 120 degrees (120°) Fahrenheit
- 7) Anything in this Agreement to the contrary notwithstanding, Crude Oil delivered or caused to be delivered by Shipper at the Receipt Points shall conform to the more restrictive of the following: (a) the specifications set forth in Section 3(C) or (b) the specifications of Crude Oil, as may be amended or enforced from time to time, of the interconnecting pipelines at the Delivery Points. The fact that specifications imposed in this Agreement or imposed by any downstream pipeline may differ, shall not be considered a conflict and Shipper's Crude Oil shall comply with the more restrictive of such specifications. For this purpose, the quality measurements of Shipper's Crude shall be determined at the Receipt Points.

Gatherer may at its sole discretion accept Crude Oil from Shipper that does not meet the preceding specifications.

- D. If at any time Gatherer has verified through its measuring equipment that Shipper's Crude Oil fails to meet the quality specifications set forth in Section 3(C), Gatherer will notify Shipper, and Shipper will promptly correct such failure. If Shipper is unable or unwilling to deliver Crude Oil according to such specifications, Gatherer may refuse to accept delivery of such Crude Oil hereunder for so long as such condition exists; provided that Gatherer shall use commercially reasonable efforts to blend and commingle such Crude Oil with any other crude oil in the System so that it meets the applicable specifications. If Gatherer accepts deliveries of Crude Oil not conforming to the specifications set forth in Section 3(C), Shipper will be responsible for all liability and costs incurred by Gatherer with respect to the non-conforming Crude, including without limitation, costs to dispose of the non-conforming Crude, and costs to remove any contamination from the System. If Gatherer accepts non-conforming Crude Oil from more than one Shipper that is commingled in the System and delivered to a downstream transporter, which imposes fees or penalties as a result of the receipt of such non-conforming crude oil, Gatherer will allocate such fees or penalties to each Shipper delivering non-conforming crude oil on an equitable basis, based on the relative volumes of non-conforming crude oil delivered and the degree to which such non-conforming crude oil is inconsistent with the specifications set forth in Section 3(C).
- E. Gatherer may waive any of the above quality specifications at its sole discretion at any time. Any waiver may be revoked at any time and does not constitute a continued waiver of the quality specification. Gatherer is under no obligation to accept such non-conforming Crude, and Gatherer's non-acceptance of non-conforming Crude shall not be considered a failure of Gatherer to receive Crude Oil, nor shall such non-acceptance by Gatherer be considered an event of Force Majeure, as defined herein,



sufficient to relieve Shipper of its performance obligations under the Agreement.

#### 4. **PAYMENT**

- A. Crude Oil Payment. After delivery of Shipper's Crude has commenced on the System, Gatherer will provide a settlement statement to Shipper, or Shipper's Crude Purchaser, on or before 20th Day of the Month following Month of deliveries hereunder. Such statement will include but not be limited to:
- 1) The volume delivered to the Receipt Points and the volume redelivered to the Delivery Point, net of the Pipeline Loss Allowance.
  - 2) An itemization of the Service Fee and Third Party Fees.
- B. Gatherer will provide Shipper an invoice for each of the settlement statements by the 20th Day of the Month following service. Shipper will pay, or cause to be paid, the settlement statements amount in full by the twenty eighth Day of the Month following service. Past due amounts will accrue interest from the due date until paid in full at the rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, multiplied by 125%; or (ii) the maximum applicable lawful interest rate. Notwithstanding any transfers of obligations under Section 9 of the Agreement, Shipper will remain responsible for the payment of all amounts due under the Agreement. Gatherer will have the right to suspend the performance of services under the Agreement if any then due payments remain unpaid; and, if such remain unpaid for thirty (30) Days after notice to Shipper, Gatherer will have the right to sell such portions of Crude Oil at auction as necessary to reimburse Gatherer for all then due amounts, including interest.

#### 5. **FINANCIAL RESPONSIBILITY**

If Gatherer has reasonable grounds for insecurity regarding the performance of any payment obligation under the Agreement (whether or not then due) by Shipper (including, without limitation, the occurrence of a material change in the creditworthiness), Gatherer may demand Adequate Assurance. In the event Shipper is requested to provide Adequate Assurance and fails to give Adequate Assurance of its ability to perform its further payment obligations under the Agreement within five (5) Business Days of a reasonable request therefor, Gatherer may suspend its obligations under the Agreement until such time as Shipper provides such Adequate Assurance. "**Adequate Assurance**" for the purposes of the Agreement may include, but is not limited to, providing an irrevocable letter of credit or prepayment in an amount equal to ninety (90) Days of the average payment obligation to be incurred

under the Agreement, or a guarantee from a creditworthy entity. No course of dealing between the Parties will modify or act as a waiver of Gatherer's continuing right to demand Adequate Assurances.

## 6. TITLE

- A. Other than with respect to Pipeline Loss Allowance, title to all of Crude Oil will at all times be retained by Shipper, its Affiliate, or the Crude Purchaser, as applicable.
- B. Shipper warrants that it, or its Affiliate, or the Crude Purchaser has title to Crude Oil delivered hereunder, and the right of Shipper to deliver Crude Oil to Gatherer for the purposes of the Agreement; and Shipper warrants that all such Crude is Shipper's owned or controlled interest, or that Shipper has the right to commit and deliver for gathering said Crude, free from all liens and adverse claims of title ("**Adverse Claims**"), excluding liens to secure payments of production taxes, severance taxes, and other taxes. Shipper agrees to indemnify Gatherer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of Adverse Claims and any such tax liens, whether meritorious or not, of any and all Persons, firms, or corporations to said Crude or to royalties, overriding royalties, taxes, license fees, or charges thereon. Gatherer will be entitled to recover all reasonable costs and attorneys' fees incurred by it as a result of its involvement in any action or Claim involving Adverse Claims or any such taxes or tax liens.
- C. Shipper will have the sole and exclusive obligation and liability for the payment of all Persons due any proceeds derived from Crude Oil delivered under the Agreement, including royalties, overriding royalties, and similar interests, in accordance with the provisions of the leases or agreements creating those rights to proceeds. In no event will Gatherer have any obligation to those Persons due any of those proceeds of production attributable to Crude Oil.
- D. Shipper will pay and be responsible for all taxes levied against or with respect to Crude Oil. Gatherer will under no circumstances become liable for those taxes, unless designated to remit those taxes on behalf of Shipper by any duly constituted jurisdictional agency having authority to impose such obligations on Gatherer, in which event the amount of those taxes remitted on Shipper's behalf will be reimbursed by Shipper upon receipt of invoice, with corresponding documentation from Gatherer setting forth such payments. Gatherer will pay and be responsible for all taxes levied with respect to Gatherer's Systems, or the services provided under the Agreement.

**7. FORCE MAJEURE**

- A. Except for the obligation to make payments or indemnify, in the event either Party is rendered unable, by reason of an event of Force Majeure to perform, wholly or in part, any obligation or commitment set forth in the Agreement, then such Party, so far as and to the extent that it is affected by such Force Majeure, will be relieved of its performance obligations under the Agreement, and will not be liable in damages to the other Party for its failure to carry out its obligations during the continuance of any inability so caused; provided, however, (i) as possible, that such cause will be remedied with reasonable dispatch, and (ii) the affected Party shall provide the other Party with notice and a reasonable explanation (including, as appropriate, any supporting documentation) of such event as soon as practicable after the occurrence thereof. The foregoing provision will not require (1) the institution of litigation, or (2) the settlement of strikes or lockouts by acceding to the demands of the opposing parties, when such course is inadvisable at the discretion of the Party hereto having the difficulty.
- B. The term “**Force Majeure**,” as used herein, will mean acts of God, strikes, lockouts or industrial disputes or disturbances, civil disturbances, arrest and restraint of rulers or people, interruptions by government or court orders, necessity for compliance with any present and future valid orders of court, or any law, statute, ordinance or regulation promulgated by any governmental or regulatory authority having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, including inability or delays in obtaining materials, equipment, supplies, labor and services, epidemics, landslides, lightning, earthquakes, fires, storm, floods, washouts, inclement weather which necessitates extraordinary measures and expense to construct facilities and/or maintain operations, explosions, partial or entire failure of Crude supply, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, the shutting in of facilities for the making of repairs, alterations or maintenance to wells, pipelines or plants, delays with third parties in obtaining interconnects for the Redelivery Facilities, the inability of either Party to acquire, or delay on the part of such Party in acquiring, at reasonable cost and after the exercise of reasonable diligence, materials and supplies, permits and consents, and easements and or rights of way, the interruption or suspension of the receipt of Crude deliveries hereunder by Gatherer due to the declaration of Force Majeure by Shipper or third party transporters, or any other cause whether of the kind herein enumerated or otherwise, not within the commercially reasonable control of the Party claiming Force Majeure.
- C. Notwithstanding the foregoing, if an event of Force Majeure continues for at least one hundred eighty (180) consecutive Days, or two hundred seventy (270) total Days within a three hundred sixty (360) consecutive Day period,

the Party who is not receiving performance as a result of such condition will have the right to terminate the Agreement as to the affected Crude upon thirty (30) Days written notice to the Party claiming Force Majeure.

## 8. CURTAILMENT

- A. Shut-In of Facilities. Each Party has the unilateral right, for the protection of people, property, or environment, to shut in their respective facilities whenever, and for only so long as, such Party, in its sole and reasonable discretion and only for such purposes, finds it necessary. In such event, no liabilities will arise between nor will any Losses be owed by either Party as a result of such Party's exercise of its rights under this Section 8.A. Such Party will, if reasonably practicable, notify the other Party at least twenty-four (24) hours in advance of any shut-in and will use commercially reasonable efforts to remedy the cause of such shut-in of its facilities and its facilities shall be reactivated as soon as any risks to people, property or the environmental are remedied as determined by such Party.
- B. Interruption of Performance. Either Party may interrupt its performance hereunder for the purpose of making necessary or desirable inspections, alterations, and repairs and for scheduled and unscheduled maintenance on their respective facilities, or resulting from Force Majeure. In such an event, the affected Party will use commercially reasonable efforts to provide timely notification to the other Party by telephone, with subsequent e-mail notification, of the potential size and duration of any such disruption and will use commercially reasonable efforts to remedy the cause of such interruption, suspension or curtailment of its facilities with reasonable dispatch.

## 9. PIPELINE LOSS ALLOWANCE FOR CRUDE

The difference between the volume of Crude Oil as measured at the Receipt Point LACTs and the summation of the measurements provided by the interconnecting parties at the Delivery Point shall be considered as a pipeline loss allowance for all losses sustained on the System due to evaporation, measurement and other losses in transit ("**Pipeline Loss Allowance**"). Shipper's share of Pipeline Loss Allowance under this Agreement shall be a fixed volume equal to 0.20% of the total Shipper's Crude Oil delivered at the Receipt Point(s).

## 10. LINE FILL

Line fill will be provided by Shipper and credited back to Shipper in kind if and when third party Shippers add production to the System. Gatherer will credit line fill back in kind to Shipper at the termination of the agreement based upon the ending balance net of any debits and credits.

**11. PRORATIONING**

When Gatherer receives nominations in excess of available capacity, capacity shall be allocated in accordance with the Proration of Pipeline Capacity, dated October 1, 2019, which is published on Gatherer's public website.

**12. LIABILITY, INDEMNIFICATION AND INSURANCE**

- A. As between the Parties hereto, Shipper and any of its designees will have custody, control and possession of Crude Oil until Crude Oil is delivered to the Receipt Points, and after any portion of Crude Oil is redelivered at the Delivery Point.
- B. As between the Parties hereto, Gatherer and any of its designees will have custody, control and possession of Crude Oil delivered hereunder after Crude Oil is delivered at the Receipt Points and until any portion of Crude Oil is redelivered at the Delivery Point.
- C. The Party that is in custody, control, and possession of Crude Oil pursuant to this Tariff will be responsible for all injury, damage, pollution, or contamination, or violation of or the need to comply with any applicable law, regulation, or legal requirement caused thereby, except to the extent attributable to the breach of this Tariff (including, with respect to Shipper, the delivery of Crude Oil not conforming to the specifications set forth in Section 3(C)), or the negligence, gross negligence or willful misconduct of the other Party or any of its representatives acting on behalf of such Party in connection with this Tariff. Further, the Party having responsibility for Crude Oil under this Tariff will release, defend, indemnify, and hold the other Party, its Affiliates, and its and their officers, employees, and agents harmless from and against any and all Claims arising from (i) actual and alleged loss of Crude Oil; (ii) personal injury, death, damage, pollution or contamination, or violation of or the need to comply with any applicable law, regulation, or other legal requirements, caused by Crude Oil deliverable under this Tariff while such Crude Oil was in the custody, control, and possession of the Party as set forth in this Section 11 of this Tariff; or (iii) personal injury, death, damage, pollution or contamination, or violation of or the need to comply with any applicable law, regulation, or other legal requirements arising out of the Party's facilities or operations; **WITHOUT REGARD TO WHETHER THE ACT, OCCURRENCE, OR CIRCUMSTANCE GIVING RISE TO ANY SUCH INDEMNIFICATION OBLIGATION IS THE RESULT OF THE SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE), OR OTHER FAULT OF OR VIOLATION OF ANY LAW BY ANY SUCH INDEMNIFIED PERSON; PROVIDED**

**THAT NO SUCH INDEMNIFICATION WILL BE APPLICABLE TO THE EXTENT OF ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PERSON.**

At all times while this Tariff is effective, and for all applicable statutes of limitations periods, each of the Parties agrees to maintain and keep in force and effect, at their own expense, provided that either Party may self-insure all coverages required herein to the extent legally permitted, the following insurance coverages and minimum amounts: (i) Workman's Compensation in full compliance with all applicable state and federal laws and regulations; (ii) Employer's Liability in the minimum limits of \$2,000,000 per accident covering injury or death to any employee which may be outside the Workman's Compensation statute of the state in which the work is performed; (iii) Commercial General Liability insurance with minimum limits of \$2,000,000 combined single limit for injury or death of any one person and for property damage; (iv) Excess Liability Insurance Umbrella Form with minimum limits not less than \$5,000,000 per occurrence and aggregate (or any other combination of coverages that is sufficient to produce the same minimum limits set forth above) and (v) Automobile Liability Insurance covering owned, non- owned and hired automotive equipment with minimum limits of \$1,000,000 combined single limit for injury or death of any one person and property damage. To the extent of the liabilities assumed hereunder, each Party will be named an additional insured on all such insurance policies of the other Party (with the exception of Workers' Compensation coverage) with all such insurance being primary to any insurance of the Indemnified Party that may apply to such occurrence, accident or claim. No "other insurance" provision will be applicable to the Indemnified Party by virtue of having been named an additional insured under any policy of insurance. Each Party agrees to furnish the other Party with a certificate or certificates evidencing insurance coverage in accordance with the above requirements.

**13. WAIVER OF DAMAGES**

**IN NO EVENT WILL ANY PARTY HAVE LIABILITY TO THE OTHER PARTIES FOR REMOTE OR INDIRECT CONSEQUENTIAL LOSSES OR DAMAGES, OR PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE AND LOSS OF ANTICIPATED PROFIT (EXCEPT TO THE EXTENT SUCH LOSS OF REVENUE OR ANTICIPATED PROFIT IS ALSO DIRECT, ACTUAL DAMAGES), IRRESPECTIVE OF WHETHER THE LOSSES OR DAMAGES WERE FORESEEABLE, RESULTING FROM OR ARISING OUT OF THE PERFORMANCE, DEFECTIVE PERFORMANCE OR NON-PERFORMANCE BY ANY OR ALL OF THE PARTIES OF ITS OR THEIR OBLIGATION(S) UNDER THE AGREEMENT, OR THE RESULT OF THE SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT**

**LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE), OR OTHER FAULT OF OR VIOLATION OF ANY LAW OF THE PARTY WHOSE LIABILITY IS BEING WAIVED, EXCEPT TO THE EXTENT SUCH LOSSES OR DAMAGES ARE OWED TO A THIRD PARTY PURSUANT TO A CLAIM FOR WHICH A PARTY IS REQUIRED TO PROVIDE AN INDEMNITY UNDER THE AGREEMENT; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THIS SECTION 9 OR ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY LOSSES OF REVENUE SUFFERED BY LM TOUCHDOWN ASSOCIATED WITH GATHERER'S INABILITY TO FULLY OPERATE THE SYSTEM AS A RESULT OF SHIPPER'S FAILURE TO DELIVER THE CRUDE OIL TO GATHERER SHALL BE DIRECT, ACTUAL DAMAGES AND FULLY RECOVERABLE HEREUNDER.**

**SECTION II RATES**

Rates in Dollars per Barrel:

| Receipt Point(s)                             | Deliver Point(s)                              | Committed Shipper Gathering Rate <sup>1</sup> | Uncommitted Shipper Gathering Rate |
|--|---|---|------------------------------------|
| Blossom and Bubbles, Eddy County, New Mexico | XTO Big Eddy Station, Eddy County, New Mexico | [I] <u>\$0.6886</u>                           | [I] <u>\$0.6784</u>                |

Notes:

1. Shippers qualify for the Committed Shipper Gathering Rate by entering into a Crude Oil Gathering Agreement during the Open Season.

**Explanation of Reference Marks:**

- [C] Cancel
- [I] Increased rate
- [W] Change in wording only