

LM TOUCHDOWN CRUDE II, 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 § 342.2(b) (Establishing Initial Rates).

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

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SECTION I RULES AND REGULATIONS

1. DEFINITIONS

“**Adequate Assurance of Performance**” has the meaning given in Section 10.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person. Without limiting the foregoing, a Person is deemed to be an Affiliate of another specified Person if such Person owns 50% or more of the voting securities of the specified Person, or if the specified Person owns 50% or more of the voting securities of such Person, or if 50% or more of the voting securities of the specified Person and such Person are under common control.

“**Agreement**” means an effective crude oil gathering agreement between Gatherer and a Producer 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 or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**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.

“**Day**” and “**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 Points**” means the point(s) for the delivery of Crude Oil from the System as set forth in Gatherer’s rates tariff(s) making reference hereto.

“**Downstream Third Party Facilities**” means those pipelines and other facilities for the gathering, transportation or storage of Crude Oil that are owned and/or operated by Persons who are not Gatherer or Affiliates of Gatherer and located downstream of and directly connected to the LM Touchdown Crude Oil Gathering System.

“**Electrical Power Charges**” means the per-Barrel charges related to the electrical power consumed in the operation of the LM Touchdown Crude Oil Gathering System, as set forth in Gatherer’s rates tariff(s).

“**Equivalent Volume**” means, each Day, a volume of Crude Oil that is equivalent to the volume of Crude Oil delivered by Producer at the Receipt Point(s) on such Day, less a volume of Crude Oil equal to Producer’s Pipeline Loss Allowance.

“**Excused Party**” has the meaning given in Section 7.A.

“**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**” means an event that is not within the reasonable control of the Party claiming suspension (the “**Claiming Party**”), and that by the exercise of reasonable due diligence the Claiming Party is unable to avoid or overcome in a reasonable manner. To the extent meeting the foregoing requirements, Force Majeure includes: any acts of God; strikes, lockouts or other industrial disputes or disturbances; acts of the public enemy, sabotage, wars, blockades, insurrections, riots and other civil disturbances; epidemics; landslides, floods, lightning, earthquakes, fires, tornadoes, hurricanes, or other weather events, and warnings for any of the foregoing which may necessitate the precautionary shut-down of wells, plants, pipelines, gathering systems, loading facilities, refineries, terminals or any portion thereof, or other related facilities; arrests and restraints of governments (either federal, state, civil or military) (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent commercially reasonable, such action or restraint); explosions, breakage or accidents to equipment, machinery, plants or any portion thereof, or lines of pipe, freezing of lines of pipe, partial or complete failure of wells; constraints on or physical disruption to Downstream Third Party Facilities used by Gatherer or Producer; inability to secure labor, materials, permits or access rights on reasonable terms after the exercise of reasonable diligence, which are required for Gatherer or Producer’s performance hereunder; electric power shortages or outages; the necessity for compliance with any Applicable Law promulgated after effective date of the applicable Agreement; and other causes of a similar nature not reasonably within the control of the Party claiming Force Majeure. “Force Majeure” also includes any event of force majeure occurring with respect to the facilities or services of either Party’s Affiliates or service providers providing a service or providing any equipment, goods, supplies or other items necessary to the performance of such Party’s obligations under this Tariff or an Agreement. Anything to the contrary set forth herein or in any Agreement notwithstanding, none of the following events, under any circumstance, constitute a Force Majeure event: (a) the lack of financial resources, or the inability of a Party to secure funds or make payments as required by an Agreement absent the other Party’s breach of its Agreement which has a material adverse effect on such Party; (b) adverse market, financial or other economic conditions including changes in market conditions that either directly

or indirectly affect the demand for or price of Crude Oil; or (c) availability of more attractive markets or gathering services for Crude Oil.

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

“**Gatherer Indemnitees**” has the meaning given in Section 12.A.

“**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 Producer.

“**Guarantee**” has the meaning given in Section 10.

“**Inaccuracy Period**” has the meaning given in Section 6.B.

“**LACT Units**” means lease automated custody transfer units.

“**LM Touchdown Crude Oil Gathering System**” or “**System**” means the Crude Oil pipeline system located in Lea and Eddy Counties, New Mexico (including all facilities and equipment required at each Receipt Point(s) to effect the receipt and delivery of Crude Oil) owned or leased by Gatherer, and any other extension, expansion or modification thereof.

“**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). The term “Losses” does not include any damages excluded from recovery by a Party pursuant to Section 12.C.

“**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.

“**Monthly Statement**” has the meaning given in Section 9.A.

“**Party**” or “**Parties**” means the Producer and Gatherer governed by this Tariff and any of Gatherer’s rates tariff making reference hereto.

“**Permitted Liens**” means (a) any liens, security interests or other encumbrances benefitting one or more lenders to Producer as part of a senior secured financing provided by such lender to Producer for which such lenders have not taken actions to foreclose on such liens; and (b) normal and customary liens under financing agreements, operating agreements, unitization agreements, pooling orders, drilling contracts and similar agreements for upstream operators and mechanic’s and materialman’s liens, tax liens or mineral liens related to claims or obligations that are not delinquent or that are being contested in good faith and by appropriate proceedings.

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

“**Pipeline Loss Allowance**” means a volume of Crude Oil equal to 0.20% of Producer’s Crude Oil gathered by Gatherer at the Receipt Point(s).

“**Prime Rate**” has the meaning given in Section 9.A.4.

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

“**Producer Indemnitees**” has the meaning given in Section 12.B.

“**Producer SCADA System**” means any Supervisory Control and Data Acquisition monitoring equipment that Producer installs on or near any Receipt Point(s).

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

“**psig**” means pounds per square inch gauge.

“**Qualified Institution**” has the meaning given in Section 10.

“**Receipt Point(s)**” means the point(s) for the receipt of Crude Oil on the System as set forth in Gatherer’s rates tariff(s) making reference hereto.

“**S&P**” has the meaning given in Section 10.

“**Stated Rate**” has the meaning given in Section 9.A.3.

“**Year**” and “**year**” means a period of twelve (12) consecutive Months.

2. QUALITY SPECIFICATIONS

A. Subject to 2.C below all Crude Oil delivered by Producer to Gatherer at the Receipt Point(s) must conform to the following specifications:

- (1) Maximum sulfur content of 0.4%
- (2) Maximum Reid Vapor Pressure of 9 psia
- (3) Less than 1% of basic sediment, water and other impurities
- (4) Maximum API Gravity of ≤ 49.9 API
- (5) Maximum temperature of 120 degrees (120°) Fahrenheit.

If, at any time after the Effective Date, the applicable Downstream Third Party Facilities changes its quality specifications to be more stringent, and subject to the provisions of the Agreement, Gatherer has the right to make corresponding revisions to the quality

specifications set forth herein in amounts consistent with such Downstream Third Party Facilities' changes as reasonably determined by Gatherer to be necessary for Gatherer to meet the Downstream Third Party Facilities' specifications in accordance with its obligations under the Agreement. In the event of any such modification to the quality specifications set forth above, the provisions of the Agreement continue to apply.

- B. Quality. All Crude Oil delivered by Producer at the Receipt Point(s) must comply with the quality specifications set forth herein. Gatherer may, upon mutual written agreement with the applicable Producer, modify the quality specifications herein. Gatherer's receipt of Producer's Crude Oil that does not comply with one or more of the applicable quality specifications does not modify the continuing requirement that Producer so comply. Gatherer reserves the right, at any time, to reject delivery of any Crude Oil that does not comply with the applicable quality specifications. If Gatherer rejects the delivery of any Crude Oil that does not comply with the applicable quality specifications, Producer shall use commercially reasonable efforts, and Gatherer will work in good faith with Producer, to conform the Crude Oil to the applicable quality specification(s), which commercially reasonable efforts may require the investment by Producer of capital for new equipment or the payment by Producer of additional fees to Gatherer or a third party for the provision of services needed to conform the Crude Oil.
- C. Liability for Delivery of Nonconforming Crude Oil. If, without Gatherer's prior actual knowledge or affirmative waiver of the applicable quality specification, Producer delivers Crude Oil or other substances at the Receipt Point(s) that does not conform to the applicable quality specifications as set forth herein that causes Loss of, damage to or contamination of the LM Touchdown Crude Oil Gathering System, downstream facilities, or other Crude Oil not delivered by Producer, Producer shall be solely responsible for all Losses associated therewith (subject to any insurance proceeds recovered by Gatherer for such Losses under its applicable insurance policies), including all costs associated with remediating any contaminated facilities and compensating other shippers for Losses incurred as a result of such contamination.
- D. Common Stream. Producer's Crude Oil may constitute part of the supply of Crude Oil from multiple sources in the LM Touchdown Crude Oil Gathering System, and Gatherer will have the absolute and unqualified right to commingle Producer's Crude Oil with other Crude Oil and, subject to Gatherer's obligations under this Tariff, to handle the molecules delivered at the Receipt Point(s) in any manner; *provided, however*, that, to the extent Producer delivers Crude Oil that meets the quality specifications set forth in this Tariff (subject to any agreement of the Parties in accordance with Section 2.B above for Gatherer to blend and/or treat Producer's Crude Oil), Gatherer shall deliver Crude Oil that meets the quality specifications at the Delivery Points as required for any Downstream Third Party Facilities.

3. NOMINATIONS

- A. Nominations. Gatherer and Producer 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 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 Producer's nominations. Producer 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 Producer with information prohibited from disclosure by Applicable Law.

B. Delivery Point Nominations.

- (1) Downstream Arrangements. Producer 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 Producer's Crude Oil. It is Producer'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 Producer 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 Producer's Crude Oil, Producer 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 LM Touchdown Crude Oil Gathering System, provided that nominations at the Delivery Points are subject to confirmation by the applicable downstream pipeline. At any time, Producer 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 Producer 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 e-mail, facsimile or other electronic means to Gatherer as soon as reasonably practical. Producer 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 Producer's Pipeline Loss Allowance. While imbalances may occur due to operations, dispatching and other causes, Producer 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 Producer or for Producer'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 Producer's Crude Oil, including the potential size and duration thereof. Producer must immediately adjust its nomination after receiving notification from Gatherer or the downstream pipeline of any such curtailment. If Producer does not so adjust its nomination, and Gatherer reasonably determines such failure to adjust nominations could materially impact operations on the LM Touchdown Crude Oil Gathering System, Gatherer may curtail Producer's Crude Oil as necessary to accommodate such curtailment.

4. CURTAILMENT PROCEDURES

- 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 4.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.

5. CUSTODY TRANSFER

- A. Custody. Custody and risk of loss of Producer's Crude Oil (other than Producer's Pipeline Loss Allowance) transported through the LM Touchdown Crude Oil Gathering System will pass from Producer to Gatherer immediately downstream of the meter located at the Receipt Point(s) and back to Producer at the outlet flange of Gatherer's meter at the Delivery Point(s).
- B. Title. Producer represents and warrants to Gatherer that upon the delivery of Producer's Crude Oil to Gatherer at the Receipt Point(s), Producer will have defensible title to Producer's Crude Oil and/or the right to deliver such Crude Oil for gathering services under the Agreement and for all other purposes of the Agreement. Producer will indemnify and hold harmless Gatherer from and against all Claims and Losses arising out of or in connection with any breach by Producer of the representation and warranty in the immediately preceding sentence (other than the Permitted Liens) regarding said Crude Oil prior to delivery of Producer's Crude Oil at the Receipt Point(s).

6. MEASUREMENT

- A. Provings. Gatherer is responsible for proving all LACT Units when initially placed into service and every thirty (30) Days thereafter. Gatherer is responsible for and will bear all costs associated with proving LACT Units. Each Party agrees to allow the other Party to witness all meter provings and any measurement activities that may affect measurement (including but not limited to pulling sample pot, witnessing shake-outs and repairs, calibration of BS&W monitors). Gatherer shall notify Producer at least three (3) Business Days in advance of all meter provings. Producer SCADA Systems may be installed by Producer, at its sole cost and expense, for historical and real time monitoring of Gatherer's equipment hereunder provided that such Producer SCADA System does not interfere with the operation of Gatherer's equipment.
- B. Testing and Inaccuracy Periods. If, at any time any of the measuring or testing equipment is found to be out of service or registering outside applicable industry standards, such equipment will be adjusted promptly to read accurately within the limits prescribed by the manufacturer of the measuring or testing equipment. The time during which such measuring or testing equipment is known to be, or is agreed by the Parties to be, registering outside of applicable standards shall be an "**Inaccuracy Period**." If the duration of the Inaccuracy Period is unknown and the Parties cannot agree on the duration, then the Inaccuracy Period shall be deemed to be one-half of the registered amount since the meter in question was last proven and calibrated. If any measuring equipment is found to be inaccurate or out of service by an amount exceeding + or - 0.25% , then the previous readings taken during any Inaccuracy Period will be adjusted to correct for the error. Meter factor shift tolerances shall not exceed + or - 0.25% between provings. If a meter factor shifts greater than + or - 0.25%, then the new meter factor will be applied to the gross Barrels that were metered during the time the error existed. If the time of meter factor shift is known, then the new meter factor will apply for the gross volumes during this time. If the time of meter factor shift is not known, then the new meter factor will apply to half of the gross volumes delivered since the last good proving was performed not to exceed thirty (30) Days. All test equipment used by the Parties will be traceable to NIST and documentation shall be available to the Parties' respective representatives upon request during proving events and otherwise during normal business hours and with at least seventy two (72) hours' advance notice. Any leases located on federal land shall follow the Bureau of Land Management's guidelines as set forth in Onshore Order 4, until the requirements within 43 CFR 3170, 43 CFR 3173, and 43 CFR 3174 become effective, at which time the guidelines as set forth within will take precedence over Onshore Order 4.
- C. Volume Adjustments. If the volume of Crude Oil delivered to the System during an Inaccuracy Period is to be adjusted, such adjustment will be made using the first of the following methods that is feasible:
- using the data recorded by check measuring equipment, if such equipment is registering accurately and within industry standards;
 - correcting the error mathematically, if the percentage of error is ascertainable by calibration, tests, or mathematical calculation; or

by estimating the quantity, based upon oil deliveries and using prior gas/oil ratio trend made during periods of similar conditions when the meter was registering accurately.

- D. Binding Measurements. The measurements taken by each LACT Unit shall be binding on both Parties, absent fraud or manifest error. If either Party determines that any abnormal pipeline losses have occurred in the System, the Parties will mutually agree, using standard Crude Oil pipeline industry practice, to make adjustments to the volume of Crude Oil ultimately delivered by Producer, after prior notification to Producer.

7. **FORCE MAJEURE**

- A. Force Majeure. Except as to payment or indemnity obligations, neither Gatherer nor Producer will be liable or considered in default when delay or failure of performance is caused by an event of Force Majeure. If either Party is rendered unable, wholly or in part, to perform its obligations hereunder due to Force Majeure, then the affected party (“**Excused Party**”) shall give prompt notice within twenty-four (24) hours, either in writing or orally (followed as soon as practicable with written notice), with full particulars of such Force Majeure, to the other Party, and the obligations of the Excused Party will be suspended for the duration of such inability to perform and such cause must, so far as possible, be remedied with all reasonable dispatch.
- B. Strikes. Despite the foregoing, it is understood and agreed that the settlement of strikes or lockouts is entirely within the discretion of the Party having the difficulty, and any obligation hereunder to remedy Force Majeure does not require the settlement of strikes or lockouts by acceding to the demands of the opposing Person when such course is inadvisable in the sole discretion of the Party having the difficulty.
- C. Remedy of Event. The Excused Party shall use commercially reasonable efforts to mitigate the effect of the event of Force Majeure on its performance hereunder, to continue to perform as much of its obligations under this Tariff and any applicable rates tariff(s) of Gatherer making reference hereto as soon as reasonably practicable, and to overcome the effect of the Force Majeure so as to resume the full performance of its obligations under this Tariff and any applicable rates tariff(s) of Gatherer making reference hereto as soon as reasonably practicable.
- D. Limitations on Force Majeure. If an event of Force Majeure that prevents a Party from performing any obligation or obligations under this Tariff and any applicable rates tariff(s) of Gatherer making reference hereto is not reasonably capable of being cured or removed, then each Party has the rights set forth herein and in any applicable Agreements.

8. **LINE FILL**

Line Fill. Producer agrees to provide its pro rata share of the volume of Crude Oil determined by Gatherer to be needed for line fill in the System. As Producer’s pro rata share of the required line fill increases or decreases (due to the addition or removal of third party Crude Oil volumes on the System), on a quarterly basis, Gatherer will either increase the volume of Producer’s Crude Oil maintained for line fill on the System or redeliver to Producer the applicable volume of Crude Oil

in kind, as applicable based on third party volumes. When a Producer has not shipped Crude Oil on the System for a consecutive ninety (90) day period or, in the case of a Producer with an Agreement, the Agreement is expired or terminates, Gatherer will either (a) redeliver to such Producer within thirty (30) Days following such ninety (90) day period or such expiration or termination, as applicable, a volume of Crude Oil in kind equal to Producer's share of line fill as such expiration or termination or (b) purchase such volume of Producer's Crude Oil at a market price less all fees incurred by Gatherer for the disposition of such Crude Oil.

9. PAYMENT

A. Invoicing.

- (1) On or before the twenty-fifth (25th) Day of each Month, Gatherer will render to Producer an invoice and statement for the preceding Month (the "**Monthly Statement**") showing (i) the total volume (in Barrels) of Producer's Crude Oil delivered to Gatherer at the Receipt Point(s), (ii) the calculation and total amount of the Gathering Fee and any applicable redelivery fee, (iii) the calculation and total amount of Producer's Pipeline Loss Allowance and Producer's Electrical Power Charges (if applicable), and (iv) any other fees, allocations and payments due hereunder, and information sufficiently detailed to explain and support any calculations made by Gatherer in determining the foregoing amounts.

The owing Party under any Monthly Statement will pay to the other Party by wire transfer the amounts shown on the Monthly Statement as owing by such Party by the later of the twenty-fifth (25th) Day of the Month or ten (10) Days from the date of delivery of such Monthly Statement. All payments to be made by one Party to the other Party will be made as provided on the applicable Monthly Statement or invoice or as otherwise provided in written notice provided sufficiently in advance of payment by such Party in accordance with the terms of the Agreement.

If the owing Party fails to pay any amount hereunder when such amount is due (other than amounts promptly disputed by such Party in good faith in accordance with its Agreement or the terms hereof), then interest will accrue at a per annum rate of interest equal to the lower of (i) Prime Rate or (ii) the maximum legal rate (such lower amount being the "**Stated Rate**"). "**Prime Rate**" means the prime rate on corporate loans at large U.S. money center commercial banks as set forth in the Wall Street Journal "Money Rates" table under the Heading "Prime Rate," or any successor thereto, on the first date of publication for the Month in which payment is due. Invoices falling due on a weekend or holiday need not be paid until the following regular workday and no interest will accrue until after such regular workday.

- B. Payment. With its payment, the owing Party shall identify, by number, the invoice(s) being paid. Acceptance by a Party of any payment from the other Party for any charge or service after termination or expiration of an Agreement is not (and should not be deemed) a renewal of such Agreement or waiver by such Party of any default by the other Party hereunder. In the event the owing Party disputes any portion of any invoice, such Party shall promptly notify the other Party in writing of the disputed portion and pay the

undisputed portion according to the terms hereof. After receipt of notice, the Parties shall promptly meet to resolve the dispute within thirty (30) Days of receipt of notice.

10. FINANCIAL RESPONSIBILITY

If (i) Gatherer has reasonable grounds for insecurity regarding payment or performance of any obligation under this Tariff or any applicable rates tariff(s) of Gatherer making reference hereto (whether or not then due) by Producer including the occurrence of a material change in the creditworthiness of Producer or Producer's credit support provider (if applicable), or (ii) a Party (or its credit support provider) is rated (A) the senior unsecured long-term debt of Producer or Producer's credit support provider (1) falls below BBB- as rated by Standard & Poor's ("**S&P**") or (2) falls below Baa3 as rated by Moody's, or (B) Producer's or Producer's credit support provider's senior unsecured long-term debt is no longer rated by either S&P and or Moody's, then Gatherer may demand Adequate Assurance of Performance. "**Adequate Assurance of Performance**" means sufficient security in the form of: (a) a Guarantee (as defined below) and/or (b) an irrevocable standby letter of credit issued by a Qualified Institution (as defined below), with the amount of such letter of credit to be the amount estimated in good faith for the next sixty two (62) Days of performance hereunder. In order to assure continuity of Adequate Assurance of Performance, if Producer provides a letter of credit in accordance with the above provisions, Producer shall provide a replacement letter of credit or other Adequate Assurance of Performance that is reasonably satisfactory to Gatherer no less than ten (10) Business Days prior to the expiration of the letter of credit then in effect. For purposes hereof: (i) "**Guarantee**" means a guarantee of the obligations of Producer which is provided by Producer's credit support provider in favor of Gatherer with such form of guarantee being acceptable to Gatherer in its reasonable discretion; and (ii) "**Qualified Institution**" means the domestic office of a commercial bank or trust company that is not an Affiliate of Producer and that has assets of at least Ten Billion Dollars (\$10 billion) and a credit rating of at least A by S&P and at least A2 by Moody's.

11. LOSS ALLOWANCE

Producer is responsible for (a) Producer's Pipeline Loss Allowance to account for the loss of Crude Oil on the System due to evaporation, measurement and other losses in transit and (b) to the extent Gatherer uses electric power to operate the lease automated custody transfer units at the Receipt Point(s), Producer will be responsible for, and pay Gatherer for, Electrical Power Charges associated therewith.

12. INDEMNIFICATION AND DAMAGES

- A. PRODUCER INDEMNIFICATION. PRODUCER AGREES TO RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS GATHERER, GATHERER'S SUBSIDIARIES AND AFFILIATES, AS WELL AS THE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS AND AGENTS OF EACH OF GATHERER AND SUCH SUBSIDIARIES AND AFFILIATES (COLLECTIVELY, THE "**GATHERER INDEMNITEES**") FROM ANY AND ALL CLAIMS AND LOSSES ASSERTED AGAINST THE GATHERER INDEMNITEES FOR (I) PERSONAL INJURY TO, OR DEATH OF, ANY PERSON, OR (II) FOR LOSS OF, OR DAMAGE TO, ANY PROPERTY, ARISING OUT OF, OR IN ANYWAY

CONNECTED WITH, THE AGREEMENT (IN THE CASE OF A PRODUCER THAT HAS ENTERED INTO AN AGREEMENT), THIS TARIFF AND ANY RATES TARIFF OF GATHERER MAKING REFERENCE HERETO, AND RESULTING FROM, BUT ONLY TO THE EXTENT OF, THE (1) STRICT LIABILITY, (2) FAULT, (3) ANY BREACH OF THIS TARIFF AND ANY RATES TARIFF MAKING REFERENCE HERETO, (4) FRAUD, OR (5) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OR BY THE PRODUCER INDEMNITEES. NOTHING IN THIS SECTION 12 SHALL REQUIRE PRODUCER TO RELEASE, INDEMNIFY, DEFEND OR HOLD HARMLESS ANY GATHERER INDEMNITEE FOR ANY OF THE MATTERS SET FORTH IN CLAUSES (1) THROUGH (5) (INCLUSIVE) OF THIS SECTION 12.A THAT ARE ATTRIBUTABLE TO ANY GATHERER INDEMNITEE AND, TO THE EXTENT THE STRICT LIABILITY, FAULT, NEGLIGENCE OR GROSS NEGLIGENCE IS JOINT OR CONCURRENT BETWEEN THE PRODUCER INDEMNITEES AND THE GATHERER INDEMNITEES, THE OBLIGATION TO INDEMNIFY UNDER THIS SECTION 12 SHALL BE COMPARATIVE, AND PRODUCER SHALL INDEMNIFY THE GATHERER INDEMNITEES ONLY TO THE EXTENT THAT THE STRICT LIABILITY, FAULT, NEGLIGENCE OR GROSS NEGLIGENCE OF THE PRODUCER INDEMNITEES WAS THE CAUSE OF SUCH PERSONAL INJURY, DEATH, LOSS OR DAMAGE.

- B. GATHERER INDEMNIFICATION. GATHERER AGREES TO RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS PRODUCER, PRODUCER'S SUBSIDIARIES AND AFFILIATES, AS WELL AS THE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS AND AGENTS OF EACH OF PRODUCER AND SUCH SUBSIDIARIES AND AFFILIATES (COLLECTIVELY, THE "**PRODUCER INDEMNITEES**") FROM ANY AND ALL CLAIMS AND LOSSES ASSERTED AGAINST THE PRODUCER INDEMNITEES FOR (I) PERSONAL INJURY TO, OR DEATH OF, ANY PERSON, OR (II) FOR LOSS OF, OR DAMAGE TO, ANY PROPERTY, ARISING OUT OF, OR IN ANYWAY CONNECTED WITH, THE AGREEMENT (IN THE CASE OF A PRODUCER THAT HAS ENTERED INTO AN AGREEMENT), THIS TARIFF AND ANY RATES TARIFF OF GATHERER MAKING REFERENCE HERETO, AND RESULTING FROM, BUT ONLY TO THE EXTENT OF, THE (1) STRICT LIABILITY, (2) FAULT, (3) ANY BREACH OF THIS TARIFF AND ANY RATES TARIFF OF GATHERER MAKING REFERENCE HERETO, (4) FRAUD, OR (5) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OR BY THE GATHERER INDEMNITEES. NOTHING IN THIS SECTION 12 SHALL REQUIRE GATHERER TO RELEASE, INDEMNIFY, DEFEND OR HOLD HARMLESS ANY PRODUCER INDEMNITEE FOR ANY OF THE MATTERS SET FORTH IN CLAUSES (1) THROUGH (5) (INCLUSIVE) OF THIS SECTION 12.B THAT ARE ATTRIBUTABLE TO ANY PRODUCER INDEMNITEE AND, TO THE EXTENT THE STRICT LIABILITY, FAULT, NEGLIGENCE OR GROSS NEGLIGENCE IS JOINT OR CONCURRENT BETWEEN THE PRODUCER INDEMNITEES AND THE GATHERER INDEMNITEES, THE OBLIGATION TO INDEMNIFY UNDER THIS SECTION 12 SHALL BE COMPARATIVE, AND GATHERER SHALL INDEMNIFY THE PRODUCER INDEMNITEES ONLY TO THE EXTENT THAT THE STRICT LIABILITY, FAULT, NEGLIGENCE OR GROSS NEGLIGENCE OF THE GATHERER

INDEMNITEES WAS THE CAUSE OF SUCH PERSONAL INJURY, DEATH, LOSS OR DAMAGE.

- C. CONSEQUENTIAL DAMAGES. EXCEPT WITH RESPECT TO THIRD PARTY CLAIMS, LOSSES INCURRED BY GATHERER UNDER SECTION 2.C AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS TARIFF AND ANY RATES TARIFF OF GATHERER MAKING REFERENCE HERETO, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY (OR THE PRODUCER INDEMNITEES OR THE GATHERER INDEMNITEES, AS THE CASE MAY BE), FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, BY STATUTE, IN TORT, OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE STRICT LIABILITY OR NEGLIGENCE OF ANY PARTY, WHETHER SUCH STRICT LIABILITY OR NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE.

13. PRORATIONING

When Gatherer receives nominations in excess of available capacity, capacity shall be allocated in accordance with the Proration Policy, dated April 30, 2020, which is published on Gatherer's public website.

SECTION II
TABLE OF RATES

Rates in Dollars per Barrel

<u>Receipt Point</u>	<u>Delivery Point</u>	<u>Rate</u>
Phase I-A tank battery receipt points located in Eddy County, New Mexico ^{1,2}	Plains Big Eddy Station, Eddy County, New Mexico	\$0.7500
Phase I-B tank battery receipt points located in Eddy County, New Mexico ^{1,2}	Plains Big Eddy Station, Eddy County, New Mexico	\$0.6750

Notes Applicable to the Table of Rates

1. A list of all of the Phase I-A and Phase I-B tank battery receipt points located in Eddy County, New Mexico is available on Gatherer's website at www.lmenergypartners.com. Gatherer shall update its website any time additional tank battery receipt points are added to the System.
2. For those tank battery receipt points constructed by Gatherer where Producer elects for Gatherer to provide electric power to operate the LACT Units, a charge of \$0.07 per barrel shall be assessed in addition to the gathering rates applicable to such Producer, as set forth in the Table of Rates.