

CONFIDENTIALITY AGREEMENT

DATED this ____ day of _____, 2019.

This Confidentiality Agreement (the “**Agreement**”) entered into among:

TRANSCANADA PIPELINES LIMITED, a corporation under the laws of Canada, (“**TransCanada**”)

- and -

TRANSCANADA PIPELINE USA LTD., a corporation existing under the laws of Nevada, (“**TransCanada US**”)

- and -

(“**Interested Party**”)

(TransCanada, TransCanada US and Interested Party are each referred to as a “**Party**”, and collectively as “**Parties**”, as applicable).

Recitals:

- A. The Parties wish to share certain confidential and proprietary information for the purpose of allowing the Interested Party to receive and review open season documentation in order for the Interested Party to evaluate its potential participation in the Keystone 2019 Open Season (collectively, the “**Proposed Transaction**”).
- B. Each Party has agreed to disclose such confidential and proprietary information to each other on the condition that the information be retained in confidence by each Party and dealt with according to the following provisions.

In consideration of the disclosure of confidential and proprietary information, and of the mutual covenants and agreements of the Parties contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. Definitions

In this Agreement, the following words and phrases have the following meanings:

- (a) **“Affiliate”** means, in relation to a Party, any company or corporation which (i) directly or indirectly controls such Party; (ii) is directly or indirectly controlled by such Party; or (iii) is directly or indirectly controlled by a company or corporation which directly or indirectly controls such Party; where “controls”, “controlled by” and “under common control with” mean the possession directly, or indirectly through one or more intermediaries, of more than 50% of the outstanding voting stock of the company in question, or the power to direct or cause the direction of management policies of, any person, whether through ownership of stock, as a general partner or trustee, by contract or otherwise.
- (b) **“Confidential Information”** means all information, whether written, oral or electronic, furnished by Provider or its Representatives, directly or indirectly, to Recipient or its Representatives (including but not limited to all contracts, financial information, technical and economic data, marketing terms and arrangements, knowledge, know-how and related information) that is or may be applicable to the Proposed Transaction, together with all analyses, compilations, data studies or other documents prepared by Recipient containing or based upon, in whole or in part, information acquired by Recipient during the course of its Review. Confidential Information does not include Non-proprietary Information.
- (c) **“Non-proprietary Information”** means information with respect to which Recipient is able to establish:
 - (i) that at the time of disclosure it was or thereafter became generally available to the public other than as a result of any act or omission by Recipient or its Representatives or anyone to whom Recipient or its Representatives disclosed such information;
 - (ii) it was or became lawfully known to Recipient or its Representatives on a non-confidential basis and not in contravention of any applicable law from a source (other than Provider) that is entitled to disclose the information;
 - (iii) if the information is not subject to another confidentiality agreement or other obligation of secrecy; it was already in the possession of Recipient or its Representatives or was lawfully acquired by them; or
 - (iv) was independently developed by Recipient or its Representatives without violating its or their obligations under this Agreement,provided that, any combination of the information which comprises part of the Confidential Information shall not be deemed to be Non-proprietary Information merely because individual parts of that information were within the above clauses unless the combination itself was within any of the above clauses.
- (d) **“Provider”** means the Party that is providing Confidential Information to the other Party.
- (e) **“Recipient”** means the Party that is receiving Confidential Information from the other Party.

- (f) “**Representatives**” means the directors, officers, members, management committee, employees, lawyers, accountants, engineers, consultants, agents, partners, shareholder representatives, auditors and advisers, including financial, of a Party or those of its Affiliates.
- (g) “**Review**” means Recipient’s review of any information Provider gives for the purposes of the Proposed Transaction.

2. Use and Non-disclosure

Recipient:

- (a) shall keep the Confidential Information in strict confidence and shall ensure that it not be used for any purpose whatsoever, directly or indirectly, whether in competition with Provider or otherwise, other than for the purpose of conducting the Review;
- (b) may disclose only those portions of the Confidential Information to its Representatives as are required to conduct the Review and only to those Representatives who need to know the Confidential Information;
- (c) shall be liable for (i) any breach of this Agreement and (ii) any prohibited or unauthorized disclosure or use of the Confidential Information, by it or any of its Representatives;
- (d) covenants that, in the case of disclosure of Confidential Information to any of its Representatives, those persons will be (i) informed at the time of disclosure of the confidential and proprietary nature of the Confidential Information and instructed to observe the terms and conditions of this Agreement or comparable obligations of confidentiality, and (ii) except in the case of officers, directors, management committee members, partners, shareholder representatives or employees of Recipient, or those of its Affiliates or its legal counsel, shall agree in writing to be bound by the terms of this Agreement;
- (e) shall not disclose, without the prior written consent of Provider, (i) any Confidential Information, or the fact that the Confidential Information has been made available to it, or (ii) that it is conducting the Review, that negotiations or discussions are taking place concerning the Proposed Transaction, or that this Agreement has been entered into, to any person other than according to the terms of this Agreement, except, in any case, if Recipient or its Representatives are obliged by applicable law, rule or regulation, judicial order or legal process to otherwise disclose any Confidential Information. Prior to any such disclosure, Recipient, to the extent not prohibited by applicable law, shall promptly provide to Provider written notice of that obligation so that Provider may seek a protective order or other appropriate remedy or waive compliance by Recipient with this clause. If any court or administrative body requires disclosure of the Confidential Information, then Recipient or any of its Representatives required to provide that disclosure may furnish only that portion of the Confidential Information that is legally required and shall each exercise their best efforts to obtain reasonable assurances that confidential treatment will be accorded the Confidential Information. For the purposes of this subsection (e)(ii), Recipient shall be deemed to mean each of the Parties regardless of whether such Party has received any Confidential Information from the other Party; and

- (f) shall ensure that its Representatives to whom any Confidential Information is disclosed are aware of the general nature of the applicable security laws, including without limitation, all applicable securities laws which may prohibit any person, firm or corporation who has material, non-public information concerning the matters which are the subject of this Confidentiality Agreement from trading in securities of a company that is involved in the Proposed Transaction or of communicating such information to other persons under circumstances under which it is reasonably foreseeable that such other person is likely to purchase or sell such securities.

3. Acknowledgment by Recipient

Recipient acknowledges that:

- (a) the Confidential Information is provided to Recipient solely for the purpose of the Review;
- (b) the provision by Provider of any Confidential Information to any other third party does not render such Confidential Information Non-proprietary Information;
- (c) without prejudicing the terms and conditions of any eventual agreement or agreements relating to the Proposed Transaction, Provider does not make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information;
- (d) it will rely upon its own investigations, due diligence and analysis in evaluating and in satisfying itself as to all matters relating to the Proposed Transaction;
- (e) Provider shall have no liability to Recipient or any of its Representatives resulting from any use of the Confidential Information by Recipient or any of its Representatives;
- (f) no commitment or contract relating to the Proposed Transaction exists unless and until definitive agreements have been executed and delivered by or on behalf of the Parties;
- (g) nothing in this Agreement restricts the use by Provider of its own information that, when disclosed to Recipient, constitutes Confidential Information under this Agreement; and
- (h) nothing in this Agreement implies any partnership or joint venture between the Parties or is to be construed as making one Party the agent or fiduciary of the other with respect to the Proposed Transaction.

4. Return or Destruction of Confidential Information

At any time, upon Provider's request for any reason, and within five days of that request, Recipient must return all original copies of the Confidential Information to Provider and destroy any copies or other reproductions or extracts of it, together with all documents, memoranda, notes and other writings prepared by Recipient and its Representatives based on the Confidential Information, provided however that Recipient may keep one copy of the Confidential Information or any documents prepared therefrom for its internal records. Notwithstanding the foregoing, the Parties agree that: (a) the Recipient is not obliged to destroy any of its decision-making documents submitted to its management or board of directors, or corporate documents which are required by applicable law to be retained, that incidentally reflect or refer to Confidential Information, provided that the Recipient will take appropriate measures, using not less than a reasonable degree of care, to preserve the confidentiality of such Confidential Information; (b) the computer system of the Recipient or any of its Representatives may automatically back-up Confidential Information disclosed under this Agreement, and to the extent the computer back-up procedures of the Recipient or any of its Representatives create

copies of Confidential Information, the Recipient and its Representatives may retain those copies for the period they normally archive backed-up computer records, which copies shall be subject to the provisions of this Agreement until they are destroyed.

5. Failure or Delay Not Waiver

It is understood and agreed by Recipient that any failure or delay by Provider in exercising any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise or any right equitable or otherwise, power or privilege hereunder.

6. Duration of Agreement

This Agreement remains in force and effect from the date it was signed and will terminate two (2) years from the close of the Open Season, including any extensions, notwithstanding that the Confidential Information may have been returned or copies of it destroyed prior to the expiration of that time period.

7. Injunctive Relief

Recipient acknowledges that monetary damages alone would not be sufficient for a breach of this Agreement by Recipient or any of its Representatives and agrees that in addition to any other remedy to which Provider may be entitled under this Agreement, at law or in equity, Provider shall be entitled to injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions thereof, provided, however, that in no event is Recipient liable to Provider for any consequential, indirect, punitive or special damages for breach of this Agreement.

8. Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (each, a “**Notice**”) shall be given in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by other electronic document transmission to the address shown below in respect of such Party (or at such other address as shall be designated by such Party by Notice to the other Party). Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted.

In the case of a Notice to TransCanada:

450 – 1st Street SW
Calgary, AB T2P 5H1

Attn: Crude Oil Contract Administration
Email: oil_pipelines@transcanada.com

In the case of a Notice to Interested Party:

Attn: _____
Email: _____

In the case of a Notice to TransCanada US:

Bank of America Center
700 Louisiana Street
Houston, TX 77002-2700

Attn: Crude Oil Contract Administration
Email: oil_pipelines@transcanada.com

9. Severance

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially unenforceable for any reason, such unenforceability will not affect the enforceability of the balance of this Agreement and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the enforceability hereof.

10. Entire Agreement

This Agreement expresses the entire agreement between Parties with respect to the communication and delivery of Confidential Information and supersedes and cancels all prior communications, understandings and agreements between Parties, whether written or oral, express or implied.

11. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta without regard to choice of law or conflict of law provisions that would allow or require the application of the law of another jurisdiction, and the courts located in Alberta shall have jurisdiction to entertain applications for injunctive relief and all other actions arising in connection with this Agreement.

12. Enurement and Assignment

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective Affiliates, successors and permitted assigns. No Party may assign this Agreement and any purported assignment without the prior written consent of all other Parties shall be null and void.

13. Counterpart Execution

This Agreement may be signed and delivered in counterparts with the same effect as if both Parties had signed and delivered the same copy, and when each Party has signed and delivered a counterpart, all counterparts together constitute one Agreement. Delivery of a copy of this Agreement by electronic document transmission is good and sufficient delivery.

IN WITNESS OF WHICH the Parties have duly executed this Agreement.

TRANSCANADA PIPELINES LIMITED

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

TRANSCANADA PIPELINE USA LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

LEGAL	CONTENT