

# CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the “**Agreement**”) is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), and entered into among:

**MARKETLINK, LLC**, a limited liability company existing under the laws of Delaware (“**Marketlink**”)

– and –

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(“**Interested Party**”)

(Marketlink 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 purposes of:
- (1) allowing the Interested Party to receive and review open season documentation in order for the Interested Party to evaluate its potential participation in the open season held by or on behalf of Marketlink, LLC, in April, 2022 (the “**Open Season**”); and
  - (2) entering into transportation service agreements between the Parties or their respective applicable Affiliate(s) in accordance with the Open Season procedures (the “**TSAs**”);
  - (3) if TSAs are entered into between Marketlink and the Interested Parties or their applicable Affiliates, the provision by Marketlink of the information under the TSAs,
- (collectively and as applicable, the “**Purposes**”).
- 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 any Person that, directly or indirectly: (i) controls a Party; (ii) is controlled by a Party; or (iii) is controlled by the same Person that controls a Party; it being understood and agreed that for purposes of this definition the terms "controls" and "controlled by" shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact, but notwithstanding the foregoing includes, with respect to the control of or by a corporation or partnership, the ownership of shares or equity interests carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above.
- (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 Purposes and, if applicable the TSAs, 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) “**Marketlink**” has the meaning given in the recitals.
- (d) “**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.

- (e) **“Open Season”** has the meaning given in the recitals.
- (f) **“Person”** means any natural person, firm, trust, partnership, corporation, limited liability company, joint venture, association, joint stock company, enterprise, unincorporated entity, government, governmental agency or other entity.
- (g) **“Provider”** means the Party that is providing Confidential Information to the other Party.
- (h) **“Purposes”** has the meaning given in the recitals.
- (i) **“Recipient”** means the Party that is receiving Confidential Information from the other Party.
- (j) **“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.
- (k) **“Review”** means Recipient’s review of any information Provider gives for the purposes of the Purposes.
- (l) **“TSAs”** has the meaning given in the recitals.

## 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 Purposes, 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 Parties; 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 respect of the Purposes 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 Purposes, 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 Purposes;
- (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 Purposes exists unless and until the TSAs have been executed and delivered by or on behalf of the applicable parties to the TSAs;
- (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;
- (h) all Confidential Information provided by Provider shall remain the sole and exclusive property of Provider; and

- (i) 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 Purposes.

#### **4. Return or Destruction of Confidential Information**

At any time, upon Provider's request for any reason, and within five (5) days of that request, Recipient must either destroy or 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 when required to do so by law or bona fide corporate policies and provided that Recipient will take appropriate measures, using not less than a reasonable degree of care, to preserve the confidentiality of such Confidential Information. Recipient shall provide written confirmation of destruction and deliver same to Provider within fifteen (15) days of Provider's request for destruction or return of all original copies of the Confidential Information. Notwithstanding the foregoing, the Parties agree that: (a) 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 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 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 Recipient or any of its Representatives create copies of Confidential Information, 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 Effective Date and will terminate on the earlier of: (a) two (2) years from the close of the Open Season, including any extensions, or the termination of the Open Season; and (b) if the Interested Parties and Marketlink or each party's applicable Affiliates have entered into the TSAs, the term of the TSAs, 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 seek injunctive relief to prevent breaches or threatened breaches of this Agreement and to specifically enforce the terms and provisions thereof.

**8. Liability**

Notwithstanding anything contained herein to the contrary, and to the fullest extent permitted by law, no Party shall be liable to the other Parties for any consequential, exemplary, incidental, indirect, punitive or special damages in connection with this Agreement, whether arising in tort, contract, indemnity, strict liability or otherwise, unless caused by gross negligence, willful misconduct or fraud. This limitation of liability shall survive any termination of this Agreement.

**9. 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 Parties). 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 Marketlink:

In the case of a Notice to Interested Party:

TC Energy Center  
700 Louisiana Street  
Houston, TX 77002

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Liquids Pipelines Contract  
Administration  
Email: liquids\_pipelines@tcenergy.com

Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
\_\_\_\_\_

**10. 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.

**11. 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 related to the Purposes, whether written or oral, express or implied.

**12. 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 shall be treated in all respects as an

Alberta agreement, 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.

### **13. Assignment**

Except as otherwise provided for herein, no Party shall assign or otherwise dispose of an interest in this Agreement without the prior written consent of each Party, not to be unreasonably withheld. Each Party hereto may assign this Agreement to an Affiliate or as necessary in connection with any bona fide financing leases, reorganizations and amalgamations, provided that such assignment shall not relieve the assigning Party of its obligations hereunder, and that Notice prior to the assignment has been provided to each Party.

### **14. Enurement**

The provisions hereof shall be binding upon and shall enure to the benefit of the Parties and their respective Affiliates, successors and permitted assigns.

### **15. Amendments**

No modification of, or amendment to, this Agreement shall be valid or binding unless set forth in writing and duly executed by authorized representative of each Party and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and unless otherwise provided, shall be limited to the specific breach which is waived.

### **16. Counterpart Execution**

This Agreement may be signed and delivered in counterparts and may be delivered by facsimile or scanned email with the same effect as if all 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. Electronic signatures of representatives of the Parties or signatures transmitted by email, facsimile or other electronic means will be deemed to be original signatures for all purposes.

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

**MARKETLINK, LLC**

\_\_\_\_\_

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

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

LEGAL	CONTENT