

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ENERGY TRANSFER CRUDE OIL COMPANY, LLC	)	
	)	Docket No. 14-0755
	)	
APPLICATION PURSUANT TO SECTIONS 15-401	)	
OF THE COMMON CARRIER	)	
BY PIPELINE LAW AND SECTION 8-503 and 8-509	)	
OF THE PUBLIC UTILITIES ACT FOR A	)	
CERTIFICATE IN GOOD STANDING AND	)	
RELATED AUTHORITY TO CONSTRUCT AND	)	
OPERATE A PETROLEUM PIPELINE AS A	)	
COMMON CARRIER PIPELINE AND WHEN	)	
NECESSARY TO TAKE PRIVATE PROPERTY AS	)	
PROVIDED BY THE LAW OF EMINENT DOMAIN	)	

**ETCO EXHIBIT 4.1**

**OPERATING AGREEMENT BETWEEN ETCO  
AND DAPL-ETCO OPERATIONS MANAGEMENT, LLC**

**OPERATING AGREEMENT**

**BETWEEN**

**ENERGY TRANSFER CRUDE OIL COMPANY, LLC**

**AND**

**DAPL-ETCO OPERATIONS MANAGEMENT, LLC**

**Dated October 15, 2014**

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## OPERATING AGREEMENT

This OPERATING AGREEMENT (as the same may be amended from time to time in accordance herewith, this “*Agreement*”) by and between ENERGY TRANSFER CRUDE OIL COMPANY, LLC, a Delaware limited liability company (“*Owner*”), and DAPL-ETCO OPERATIONS MANAGEMENT, LLC, a Delaware limited liability company, is made and entered into as of October 15, 2014 (the “*Effective Date*”). Owner and Operator (as hereinafter defined) may be referred to herein collectively as the “*Parties*” or each, individually, as a “*Party*”.

### RECITALS

**WHEREAS**, Owner is owned 75% by ETCO Holdings LLC, a Delaware limited partnership (“*Energy Transfer*”), and 25% by Phillips 66 PDI Sub 2 LLC, a Delaware limited liability Company (“*P66*”);

**WHEREAS**, Energy Transfer and P66 have entered into that certain Amended and Restated Limited Liability Company Agreement of Owner, dated effective as of the Effective Date (as such agreement may be amended, modified or supplemented from time to time, the “*LLC Agreement*”), to govern the management, ownership and operation of Owner and its assets;

**WHEREAS**, Owner intends, pursuant to the Construction Management Agreement (as hereinafter defined), to Design (as hereinafter defined), Procure (as hereinafter defined) and Construct (as hereinafter defined) the Subject Facilities (as hereinafter defined), any applicable Qualifying Capital Projects (as hereinafter defined), any applicable Other Project (as hereinafter defined) and any applicable Required Upgrades (as hereinafter defined);

**WHEREAS**, Owner desires to retain the services of Operator to (a) Operate (as hereinafter defined) the Facilities (as hereinafter defined), and (b) provide certain services related to the Facilities and the Business (as hereinafter defined), in each case, on the terms and conditions set forth in this Agreement; and

**WHEREAS**, contemporaneously herewith, Operator has caused Energy Transfer Partners, L.P., one of its indirect owners, to provide a guaranty of the payment obligations of Operator hereunder.

**NOW, THEREFORE**, for and in consideration of the foregoing, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

### AGREEMENT

**1.0 Definitions.** The following terms, as used in this Agreement, shall have the meanings given such terms as set forth below:

“**200% Payout**” has the meaning set forth in the LLC Agreement.

“**200% Payout Account**” has the meaning set forth in the LLC Agreement.

“**200% Payout Monthly Estimate**” has the meaning set forth in Section 5.5.1(b).

“**200% Payout Shortfall Estimate**” has the meaning set forth in Section 5.5.2(b).

“AAA” has the meaning set forth in Section 12.4.2.

“*Affiliate*” has the meaning set forth in the LLC Agreement.

“*Agreement*” has the meaning set forth in the introductory paragraph of this Agreement.

“*Annual Financial Statements*” has the meaning set forth in the LLC Agreement.

“*Assets*” has the meaning set forth in the LLC Agreement.

“*Audit Period*” has the meaning set forth in Section 7.4.2.

“*Authorized Officer*” means the President or any Vice President.

“*Available Cash*” has the meaning set forth in the LLC Agreement.

“*Bankrupt*” means, with respect to any Person, (a) the filing by such Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under the U.S. Bankruptcy Code (or corresponding provisions of future Laws) or any other insolvency Law, or a Person’s filing an answer consenting to or acquiescing in any such petition, (b) the making by such Person of any assignment for the benefit of its creditors or the admission by a Person of its inability to pay its debts as they mature or (c) the expiration of 60 days after the filing of an involuntary petition under the U.S. Bankruptcy Code (or corresponding provisions of future Laws) seeking an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other insolvency Law, unless the same shall have been vacated, set aside or stayed within such 60 day period.

“*Board*” has the meaning set forth in the LLC Agreement.

“*Budget Amendment*” has the meaning set forth in Section 5.2.

“*Business*” has the meaning set forth in the LLC Agreement.

“*Business Day*” means a day (other than a Saturday or Sunday) on which commercial banks in Texas are generally open for business.

“*Calendar Month*” has the meaning set forth in the LLC Agreement.

“*Calendar Quarter*” has the meaning set forth in the LLC Agreement.

“*Calendar Year*” has the meaning set forth in the LLC Agreement.

“*Capital Account*” has the meaning set forth in the LLC Agreement.

“*Capital Expenditures*” means all expenditures, costs and expenses (including capital leases) made or incurred by or on behalf of Owner with respect to the Facilities that are capitalized on the books and records of Owner with respect to the Facilities according to GAAP, but specifically excluding Construction Costs.

“*Cash Reserves*” has the meaning set forth in the LLC Agreement.

**“Claim”** means any claim, demand, suit, action, investigation, proceeding (whether civil, criminal, arbitrative, investigative, or administrative), governmental action, cause of action, and expenses and costs associated therewith (including attorneys’ fees and court costs), whether now existing or hereafter arising, whether known or unknown, including any such item involving or sounding in the nature of breach of contract, tort, statutory liability, strict liability, products liability, Liens, contribution, indemnification, fines, penalties, malpractice, professional liability, design liability, premises liability, environmental liability (including investigatory and cleanup costs and natural resource damages), safety liabilities (including OSHA investigations, litigation and pending fines), deceptive trade practices, malfeasance, nonfeasance, negligence, misrepresentation, breach of warranty, tortious interference with contractual relations, slander or libel.

**“CMA Contractor”** has the meaning given to the term “Contractor” in the Construction Management Agreement.

**“Commencement Date”** means the date on which Final Acceptance occurs with respect to the first Segment of the Subject Facilities pursuant to the Construction Management Agreement.

**“Confidential Information”** has the meaning set forth in Section 11.1.1.

**“Construction”** and its derivatives have the meaning set forth in the Construction Management Agreement.

**“Construction Costs”** has the meaning set forth in the Construction Management Agreement.

**“Construction Management Agreement”** means that certain Construction Management Agreement, dated effective as of the Effective Date, by and between Owner and the Construction Manager, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof and of the LLC Agreement.

**“Construction Manager”** means DAPL-ETCO Construction Management, LLC, a Delaware limited liability company, in its role as “Construction Manager” under the Construction Management Agreement, and any successor “Construction Manager” that is appointed pursuant to the LLC Agreement and the Construction Management Agreement.

**“Construction Schedule”** has the meaning set forth in the Construction Management Agreement.

**“Contract”** means any written or oral contract or agreement, including any such agreement regarding indebtedness, any lease, mortgage, license agreement, purchase order, commitment, letter of credit and any other legally binding arrangement.

**“Contractor”** means any Person engaged by Owner with Operator’s assistance pursuant to this Agreement to provide services or materials related to (or in place of) the services to be provided by Operator pursuant to this Agreement. For the avoidance of doubt, no employee of Operator or its Affiliates shall be considered a Contractor for purposes of this Agreement.

**“Crude Petroleum”** has the meaning set forth in the LLC Agreement.

**“Default Direct Bill Budget”** has the meaning set forth in Section 5.1.3(c).

**“Design”** and its derivatives have the meaning set forth in the Construction Management Agreement.

**“Direct Bill Budget”** means a budget covering all forecasted expenditures associated with Direct Bill Items, in a form consistent with the form set forth in Exhibit E, that Operator anticipates to be made or incurred by or on behalf of Owner during a Calendar Year (or longer, as applicable, with respect to the Initial Direct Bill Budget).

**“Direct Bill Items”** has the meaning set forth in Exhibit C.

**“Director”** has the meaning set forth in the LLC Agreement.

**“Effective Date”** has the meaning set forth in the introductory paragraph of this Agreement.

**“EH&S Audit Period”** has the meaning set forth in Section 6.3.1.

**“EH&S Laws”** has the meaning set forth in Section 6.3.1.

**“Emergency”** has the meaning set forth in Section 5.6.

**“Emergency Expenditure”** has the meaning set forth in the LLC Agreement.

**“Energy Transfer”** has the meaning set forth in the recitals.

**“Existing Facilities”** means that certain segment of a 30-inch diameter interstate natural gas pipeline and related assets and properties, in each case, as described on Exhibit A-1.

**“Facilities”** means, collectively, from and after the time that Final Acceptance has occurred with respect thereto (a) each Segment of the Subject Facilities, (b) each Segment of a Qualifying Capital Project (if any), (c) all Other Projects (if any), and (d) all Required Upgrades (if any). For the avoidance of doubt, until the Option Agreement Transfer occurs, no portion of the Existing Facilities shall be considered part of the “Facilities”.

**“FERC”** means the U.S. Federal Energy Regulatory Commission.

**“Final Acceptance”** has the meaning set forth in the Construction Management Agreement.

**“Final Completion”** has the meaning set forth in the Construction Management Agreement.

**“Fixed Operating Fee”** means the fee set out in Section 4.2, as such fee may be adjusted from time to time in accordance with the terms of this Agreement and the LLC Agreement.

**“Force Majeure”** has the meaning set forth in Section 8.2.

**“Full Time Employees”** has the meaning set forth in Exhibit C.

**“GAAP”** has the meaning set forth in the LLC Agreement.

**“Governmental Authority”** has the meaning set forth in the LLC Agreement.

**“Initial Default Direct Bill Budget”** has the meaning set forth in Section 5.1.3(a).

**“Initial Direct Bill Budget”** has the meaning set forth in Section 5.1.

**“Initial Facilities”** means that certain Crude Petroleum pipeline system and related facilities described on Exhibit A-2.

**“Interstate Commerce Act”** means the version of the Interstate Commerce Act under which FERC regulates oil pipelines, 49 U.S.C. app. §§ 1, *et seq.* (1988), and the regulations promulgated by the FERC thereunder.

**“Law”** has the meaning set forth in the LLC Agreement.

**“Liabilities”** has the meaning set forth in the LLC Agreement.

**“Liability Claim”** has the meaning set forth in Section 10.1.1.

**“Lien”** means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, claim, security interest, restrictive covenant or easement or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected under applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset; excluding, however, the terms and conditions (other than any purchase money lien) in the instrument creating such property or asset.

**“LLC Agreement”** has the meaning set forth in the recitals.

**“Manage”** or **“Management”** and their respective derivatives have the meaning set forth in the Construction Management Agreement.

**“Member”** has the meaning set forth in the LLC Agreement.

**“Member Interest”** has the meaning set forth in the LLC Agreement.

**“Monthly Estimate”** has the meaning set forth in Section 5.5.1(a).

**“Non-Billable Item”** has the meaning set forth in Exhibit B.

**“Non-Participatory Capital Project”** has the meaning set forth in the LLC Agreement.

**“Non-Participatory Operating Costs”** has the meaning set forth in the LLC Agreement.

**“Operate”** and **“Operation”** and their respective derivatives (other than “Operator”) mean, with respect to the Facilities, the management, operation (including the provision of Transportation Services thereon), repair, maintenance, inspection and up-keep of the Facilities as set forth in this Agreement and the LLC Agreement.

**“Operating Account”** has the meaning set forth in Section 7.2.

**“Operating Expenses”** means all costs, expenses and expenditures made or incurred by or on behalf of Owner in connection with (a) the Operation of the Facilities and (b) the other services provided by Operator hereunder with respect to the Facilities and the Business, in each case, that are not Capital Expenditures.

**“Operations Phase Default Direct Bill Budget”** has the meaning set forth in Section 5.1.3(b).

“**Operator**” means DAPL-ETCO Operations Management, LLC, a Delaware limited liability company, or any successor operator appointed pursuant to Section 2.3.3.

“**Operator Group**” means, collectively, Operator, Energy Transfer Partners, L.P., Energy Transfer Equity, L.P., Sunoco Logistics Partners, L.P., and any of such Persons’ respective Affiliates.

“**Operator Indemnitees**” has the meaning set forth in Section 10.2.1.

“**Operator Suggested Activity**” has the meaning set forth in Section 10.2.4.

“**Option Agreement Transfer**” has the meaning set forth in Construction Management Agreement.

“**Other Project**” has the meaning set forth in the Construction Management Agreement.

“**Owner**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Owner Indemnitees**” means Owner and its Affiliates and its and their respective directors, officers, managers and employees.

“**P66**” has the meaning set forth in the recitals.

“**Parties**” and “**Party**” have the meaning set forth in the introductory paragraph of this Agreement.

“**Percentage Interest**” has the meaning set forth in the LLC Agreement.

“**Person**” has the meaning set forth in the LLC Agreement.

“**Pre-Commencement Date**” means the date that is six months prior to date upon which Final Acceptance is estimated to occur with respect to the first Segment of the Subject Facilities pursuant to the Construction Management Agreement, as set forth in the initial Construction Schedule with respect to the Subject Facilities under the Construction Management Agreement.

“**PPI-FG**” has the meaning set forth in Section 4.2.

“**President**” has the meaning set forth in the LLC Agreement.

“**Procurement**” and its derivatives have the meaning set forth in the Construction Management Agreement.

“**Qualifying Capital Project**” has the meaning set forth in the LLC Agreement.

“**Qualifying Subscription Contracts**” has the meaning set forth in the LLC Agreement.

“**Recovery Claim**” has the meaning set forth in Section 10.1.2.

“**Required Upgrade**” has the meaning set forth in the LLC Agreement.

“**Segment**” has the meaning set forth in the Construction Management Agreement.

“**Shortfall Estimate**” has the meaning set forth in Section 5.5.2(a).

“**Subject Direct Bill Items**” means any power costs and ad valorem tax amounts constituting Capital Expenditures or Operating Expenses.

“**Subject Facilities**” means the Initial Facilities and the Existing Facilities.

“**Subject Facilities Final Acceptance**” has the meaning set forth in the Construction Management Agreement.

“**Subscriptions**” has the meaning set forth in the LLC Agreement.

“**Successor Operator Effective Date**” means (a) in connection with any resignation by Operator, under Section 2.3.1, the date that is the earlier of (i) the date that is nine months after the date of Operator’s resignation notice to Owner, and (ii) the date that a successor operator has been appointed pursuant to Section 2.3.3, and (b) in connection with any removal of Operator under Section 2.3.2, the date that is the earlier of (i) the date that is nine months after the date of Owner’s removal notice to Operator, and (ii) the date that a successor operator has been appointed pursuant to Section 2.3.3.

“**Third Party**” means any Person that is not a Party or a Member or an Affiliate of a Party or a Member.

“**Transportation Services**” means, with respect to the Facilities, transportation services on the applicable Facilities provided on behalf of Owner and in conformity with applicable tariffs and Laws, including the Interstate Commerce Act, applicable to Crude Petroleum pipeline common carriers.

“**Unit**” has the meaning set forth in the LLC Agreement.

“**Vice President**” has the meaning set forth in the LLC Agreement.

**1.1 References and Rules of Construction.** All references in this Agreement to Exhibits, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Articles, Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement and shall be disregarded in construing the language hereof. The words “this Agreement,” “herein,” “hereby,” “hereunder” and “hereof,” and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection or other subdivision unless expressly so limited. The words “this Article,” “this Section” and “this subsection,” and words of similar import, refer only to the Article, Section or subsection hereof in which such words occur. The word “including” (in its various forms) means “including without limitation.” The word “U.S.” means the United States of America, the word “Federal” means U.S. federal and the word “State” means any U.S. state. All references to “\$” or “dollars” shall be deemed references to U.S. Dollars. Each accounting term not defined herein shall have the meaning given to it under GAAP. Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Exhibits referred to herein are attached hereto. References to any Law or agreement shall mean such Law or agreement as it may be amended from time to time. Except as expressly set forth herein, references herein to matters that require the “approval of Owner” or similar statements mean the “approval of the Board of Owner pursuant to the LLC Agreement.”

## **2.0 Operator.**

**2.1 Operator Identified.** Subject to the terms of this Agreement, DAPL-ETCO Operations Management, LLC, is hereby retained as Operator to Operate the Facilities and to perform, or cause to be performed, the other services of Operator expressly specified in this Agreement.

**2.2 Term.** The term of this Agreement begins on the Effective Date and ends upon the earlier to occur of (a) the termination of the LLC Agreement in accordance with the terms thereof and (b) the mutual written agreement of the Parties.

## **2.3 Resignation or Removal of Operator.**

**2.3.1 Resignation of Operator.** Operator may resign by delivering written notice to Owner (a) at any time, (b) if Owner breaches any payment provision of this Agreement and, after receipt of notice of such alleged breach by Owner from Operator (which notice shall provide with particularity details of such alleged breach), Owner fails to correct such breach within five days after receipt of such notice from Operator, or (c) if Owner breaches any material provision of this Agreement (other than a payment provision) in any material respect and, after receipt of notice of such alleged breach by Owner from Operator (which notice shall provide with particularity details of such alleged breach), Owner fails to correct or to diligently pursue correction of such breach in a manner reasonably acceptable to Operator within 30 days after receipt of such notice from Operator; provided that if Owner disputes the material breach claimed by Operator pursuant to subsection (c) above, then such dispute shall be settled pursuant to the terms of Section 12.3 prior to Operator's resignation notice becoming effective. Following the settlement of such dispute which results in a determination that such material breach did in fact occur, if such breach is not corrected by Owner or corrective action reasonably acceptable to Operator is not commenced by Owner, in each case, within ten days after such determination, then Operator's resignation notice delivered pursuant to subsection (c) above shall be deemed to be effective as of the day such notice was originally delivered. Notwithstanding any such resignation by Operator, Operator shall not be relieved of its duties as Operator under this Agreement and shall continue to perform all of the duties, responsibilities and obligations of Operator hereunder, in each case, until the applicable Successor Operator Effective Date.

**2.3.2 Removal of Operator.** Operator may be removed by Owner by written notice from Owner to Operator if (a) Operator becomes Bankrupt, (b) Operator breaches any material provision of this Agreement in any material respect and, after receipt of notice of such alleged breach by Operator from Owner (which notice shall provide with particularity details of such alleged breach), Operator fails to correct or to diligently pursue correction of such breach in a manner reasonably acceptable to Owner within 30 days after receipt of such notice from Owner; provided that if Operator disputes the material breach claimed by Owner pursuant to subsection (b) above, then such dispute shall be settled pursuant to the terms of Section 12.3 prior to Owner's removal notice becoming effective, or (c) if the Operator Group in the aggregate owns less than 25% of the Owner. Following the settlement of such dispute which results in a determination that such material breach did in fact occur, if such breach is not corrected by Operator or corrective action reasonably acceptable to Owner is not commenced by Operator, in each case, within ten days after such determination, then Owner's removal notice delivered pursuant to subsection (b) above shall be deemed to be effective as of the day such notice was originally delivered. Notwithstanding any such removal of Operator, Operator shall not

be relieved of its duties as Operator under this Agreement and shall continue to perform all of the duties, responsibilities and obligations of Operator hereunder, in each case, until the applicable Successor Operator Effective Date.

**2.3.3 Appointment of Successor Operator.** Upon the resignation or removal of Operator, a successor operator shall be appointed by Owner as soon as practicable and Owner shall promptly notify Operator of any such appointment. Operator shall reasonably cooperate in the transition to the successor operator prior to the applicable Successor Operator Effective Date. Upon such appointment of the successor operator, Operator shall (a) assign its rights and obligations under this Agreement to such successor operator at the request of Owner and (b) promptly deliver all Records in Operator's possession to such successor operator. From and after the appointment of any successor operator, the successor operator shall be deemed to be the "Operator" hereunder for all purposes. Except in the case where (i) Operator resigns pursuant to Section 2.3.1(b) or Section 2.3.1(c), or (ii) Operator is removed pursuant to Section 2.3.2(c), Operator shall bear all transition costs associated with the transition to a successor operator due to the removal or resignation of Operator.

**2.4 Effect of Removal or Resignation.** Any removal of or resignation by Operator pursuant to Section 2.3 shall release Operator from any Liability for any obligation and duties of "Operator" hereunder accruing on or after the applicable Successor Operator Effective Date, including Liabilities for which a successor operator is responsible on and after the Successor Operator Effective Date. Any removal of or resignation by Operator pursuant to Section 2.3 shall not relieve Operator from (a) any Liability that it would otherwise have under this Agreement for acts or omissions that occurred prior to the applicable Successor Operator Effective Date, or (b) its obligations accruing prior to the applicable Successor Operator Effective Date to properly account for any remaining funds in the Construction Account and to make all books and records relating to such account and Operator's performance under this Agreement available to Owner and any successor operator.

### **3.0 Duties of Operator.**

**3.1 Independent Contractor.** In the performance of any work or services by Operator for Owner pursuant to this Agreement, Operator conclusively shall be deemed an independent contractor, with the right and authority to (a) direct and control all services and other work being performed by the employees of Operator and its Affiliates and (b) oversee all services and other work to be performed by all Contractors; provided that all such services and other work shall be subject to Owner's general right of inspection. Owner shall have no right or authority to supervise or give instructions to any such Persons, and such Persons at all times shall (i) if employees of Operator or its Affiliates, be under the direct and sole supervision and control of Operator and (ii) if employees of any Contractor, be under the direct and sole supervision and control of such Contractor. Any suggestions that may be given by Owner shall be given only to the supervisor or to the other Person in charge of such Person's employees and it is the understanding and intention of the Parties that no relationship of master and servant or principal and agent shall exist between Owner and the employees, agents or representatives of Operator or its Affiliates or any Contractors.

**3.2 No Agency.** Nothing in this Agreement shall be deemed or construed to authorize Operator to act as an agent, principal, servant or employee for Owner for any purpose whatsoever and Operator shall not hold itself out as an agent, principal, servant or employee of Owner to any Person.

**3.3 Administrative Duties of Operator.** Except to the extent any of the following are included in the services to be provided by the Construction Manager under the Construction Management Agreement, (a) from and after the Commencement Date, Operator shall be responsible for administering the accounting and regulatory affairs of Owner with respect to each such Segment and related facilities with respect to which Final Acceptance has occurred, including maintaining the accounting and regulatory records with respect thereto, and (b) from and after the Effective Date, Operator shall be responsible for administering the financial and tax affairs of Owner and the Business, including maintaining the financial and tax records with respect thereto. Operator also shall be responsible for preparing and distributing financial statements, information, notices and reports (including reports to Governmental Authorities) required in connection with the Facilities pursuant to Section 3.4, Section 6.2, Section 7.1, Section 7.2, Section 7.3, Section 7.5 and Section 7.6.

**3.4 Operate and Maintain the Facilities.**

3.4.1 Prior to the expected Commencement Date, Operator shall (a) coordinate with the Construction Manager under the Construction Management Agreement and take all necessary actions for Operator to be prepared to perform all of its obligations under this Agreement, and (b) perform any other obligations contemplated by this Agreement to be performed by Operator prior to the Commencement Date.

3.4.2 Operator shall Operate the Facilities for the sole benefit (and on behalf) of Owner and (at all times) in accordance with the terms and provisions of this Agreement.

(a) Subject to the limitations set forth in Section 3.5, Section 3.8 and Section 5.3, Owner hereby authorizes Operator to cause to be done and performed any and all acts and things reasonably necessary for the efficient and safe Operation of the Facilities, including (i) incurring (or causing an Authorized Officer, on behalf of Owner, to incur) any expense authorized in an approved Direct Bill Budget or as otherwise permitted hereunder (including Emergency Expenditures), and (ii) entering into (or causing an Authorized Officer, on behalf of Owner, to enter into) Contracts, in each case, in order to accomplish the efficient and safe Operation of the Facilities, including Operations for the receiving, transporting, delivering, terminalling and storing of Crude Petroleum on the Facilities.

(b) Operator shall manage and direct the Operation of the Facilities in accordance with the terms and provisions of this Agreement and in accordance with all valid and applicable Laws and other requirements of Governmental Authorities.

(c) Operator shall be responsible for assisting Owner in (i) developing and maintaining reasonable safety, health and environmental management systems, policies, procedures and practices to ensure the safety and health of Persons working in connection with the Operation of the Facilities, (ii) complying with applicable environmental and safety Laws, (iii) collecting data relating to the foregoing, (iv) reporting findings (if applicable) to the appropriate Governmental Authorities and (v) maintaining all records relating thereto.

3.4.3 From and after the Commencement Date, Operator shall meet with the Board no fewer than once per Calendar Quarter (or more or less frequently as the Parties may mutually agree) during the term of this Agreement to review Operator's Operation of the Facilities in accordance with this Agreement.

3.4.4 Notwithstanding anything herein to the contrary, in no event shall Operator be required to directly enter into any Contract with respect to the services to be provided by Operator hereunder, including the Operation of the Facilities. Owner may delegate to an Authorized Officer, on behalf of Owner, the right to execute any such Contracts as requested by Operator, subject to the limitations set forth in Section 3.5, Section 3.8 and Section 5.3.

### **3.5 Purchase and Sale of Materials and Supplies; Entry into Contracts.**

3.5.1 Subject to the limitations set forth in Section 3.4.4, this Section 3.5, Section 3.8 and Section 5.3, Operator shall assist Owner in procuring all services, materials, supplies and equipment necessary in connection with the Operation of the Facilities. Such actions shall include requesting that an Authorized Officer, on behalf of Owner, enter into: (a) Contracts for the Operation of the Facilities, including any adjustments, repairs, additions and replacements thereto (e.g., pipeline lowering or relocations as required by Governmental Authorities), and (b) Contracts for power, fuel, other utilities and communication facilities related to the Operation of the Facilities. Subject to the limitations set forth in Section 3.8, Operator may sell or dispose of materials and equipment that are no longer required for the Operation of the Facilities to any non-Affiliate of the Operator in an arm's length transaction.

3.5.2 Notwithstanding anything to the contrary set forth in this Agreement, Operator agrees that any Contracts that Operator requests that an Authorized Officer, on behalf of Owner, enter into with any Contractor for the provision (by such Contractor) of services and/or materials for the Operation of the Facilities or with respect to any other service that Operator is obligated to provide pursuant to this Agreement shall, in each case (a) be at an arm's length basis, (b) contain insurance provisions that are, in Operator's reasonable opinion, either customary in the industry in connection with the services or materials to be provided under such Contract or consistent with the insurance provisions set forth herein (or that are otherwise approved in writing by Owner, such approval not to be unreasonably withheld, conditioned or delayed), (c) contain indemnity provisions that are, in Operator's reasonable opinion, customary in the industry with respect to the services or materials to be provided under such Contract, (d) contain warranty provisions that are, in Operator's reasonable opinion, customary in the industry with respect to the services or materials to be provided under such Contract and (e) if applicable, contain audit rights that are enforceable by Owner.

**3.6 Personnel.** Subject to the limitations set forth in Section 3.4.4, Section 3.5, Section 3.8 and Section 5.3, from and after the Effective Date, Operator (and/or its Affiliate(s)) may (a) utilize its or any of its Affiliates' employees for services in connection with the Operation of the Facilities and/or the other services provided by Operator hereunder, in each case, with respect to Direct Bill Items; *provided, however*, that records of time spent by employees for Direct Bill Items shall be maintained by Operator or its Affiliates, as applicable, so that proper charges may be made in accordance with Section 4.2, and (b) request that an Authorized Officer, on behalf of Owner, enter into Contracts to engage the services of Contractors in the performance of such services and otherwise in accordance with the provisions of Section 3.5.2 in order for the Facilities to be Operated in a safe and efficient manner. Notwithstanding the above, Operator shall not charge Owner for any services provided by such employees or by Contractors that are Non-Billable Items.

- 3.7 Payment of Expenses.** Subject to the limitations set forth in Section 3.5, Section 3.8 and Section 5.3, to the extent of available funds in the Operating Account, Operator shall pay and discharge all Operating Expenses and Capital Expenditures on a timely basis (including any such Operating Expenses or Capital Expenditures incurred by Owner). Notwithstanding anything herein to the contrary, in no event shall Operator be liable in connection with the performance of its services hereunder or otherwise in breach of this Agreement if Operator fails, or is otherwise unable, to perform any of such services or its other obligations hereunder, including any obligations to pay or cause to be paid any such Operating Expenses or Capital Expenditures, due to (a) the failure of Owner to pay when due any amounts payable hereunder by Owner into the Operating Account, whether pursuant to Section 5.5, Section 5.6 or otherwise, or (b) the lack of available funds in the Operating Account.
- 3.8 Limitation of Authority.** Except in the case of Emergencies, notwithstanding anything in this Agreement to the contrary, Operator shall obtain the prior written consent of Owner (such approval not to be unreasonably delayed, but which approval may otherwise be provided or withheld in Owner's sole and absolute discretion), prior to (a) taking any of the following actions with respect to Owner, the Facilities or any other Assets, or (b) requesting that an Authorized Officer execute a Contract on behalf Owner in respect of any of the following:
- 3.8.1 the taking of any action that would require the prior affirmative vote, consent or approval of the Directors or the Board under Section 5.1(c) or Section 5.1(d) of the LLC Agreement;
  - 3.8.2 the possession of, or in any manner the dealing with, any of the Assets or the transfer of the rights of Owner in such Assets other than for the sole benefit of Owner; or
  - 3.8.3 except with respect to powers of attorney granted for the procurement of easements and rights of way relating to the Operation of the Facilities, the granting of powers of attorney with respect to the Facilities.
- 3.9 Post-Final Completion Cooperation with the Construction Manager.** From and after the Final Completion of any Segment of the Facilities, Owner shall cause the Construction Manager to assign to Operator, and, Operator, subject to Section 3.8 and Section 10.1, shall manage the pursuit and enforcement of, any and all outstanding post-construction Claims (including in respect of CMA Contractor insurance), warranties, indemnities and other rights, and the payment or retention of any retainage or other contingent payments (which shall be deemed Claims), in each case, arising under or related to any Contract with any CMA Contractor engaged in the Design, Procurement and/or Construction of such portion of the Facilities, as applicable, pursuant to the Construction Management Agreement.
- 3.10 Required Upgrades.** From and after the Effective Date, if Operator reasonably believes that a Required Upgrade is needed with respect to all or any portion of the Facilities, then Operator shall provide written notice to Owner of such circumstance. Such written notice shall contain the following: (a) a description of the Asset(s) requiring such Required Upgrade, (b) the type of upgrade, modification, expansion or other similar improvement needed with respect to such Required Upgrade, (c) a description of the applicable Law or material Contract containing the requirements or obligations, as applicable, that such Required Upgrade is needed to satisfy, and (d) a good faith estimate of the costs and expenses of the design, construction, development, operation and maintenance of such Required Upgrade (including the incremental increase to the Fixed Operating Fee payable to the Operator attributable to such Required Upgrade, if any), including an estimated schedule of such costs and expenses.

#### 4.0 Schedule of Charges.

4.1 **Direct Bill Items.** In connection with performing the services described in this Agreement, including the Operation of the Facilities, and subject to the then-current Direct Bill Budget and the provisions of Section 5.3, Operator may incur, or cause Owner to incur, Operating Expenses and Capital Expenditures constituting Direct Bill Items. Subject to (a) the limitations set forth in Section 3.8, (b) the provisions of Section 5.3, and (c) the then-current Direct Bill Budget, Owner shall be responsible for contributing to the Operating Account, pursuant to Section 5.5, Section 5.6 or otherwise, all Operating Expenses and Capital Expenditures constituting Direct Bill Items (including any Emergency Expenditures) incurred by Operator (without markup), Owner or any Contractor.

4.2 **Fixed Operating Fee.** As compensation for performing the Non-Billable Items with respect to the Facilities, commencing on the Pre-Commencement Date and continuing thereafter during the term of this Agreement, Owner shall pay Operator an annual fee (the “**Fixed Operating Fee**”) of \$4,500,000, as the same may be adjusted pursuant to this Agreement (including this Section 4.2) or the LLC Agreement; provided, however, that for the period beginning on the Pre-Commencement Date and ending on the Commencement Date, the Fixed Operating Fee will be deemed to be \$1,125,000 on an annual basis. The Fixed Operating Fee will be prorated for the Calendar Year in which the Pre-Commencement Date occurs and (a) increased (annually, effective on the first day of each applicable Calendar Year for the first five years after the Calendar Year in which the Commencement Date occurs) by an amount equal to 3% of the immediately preceding Calendar Year’s Fixed Operating Fee, (b) increased (annually, on the first day of the Calendar Year that begins six years after the Calendar Year in which the Commencement Date occurs) by an amount equal to a percentage equal to the greater of zero and the positive change in the Producer Price Index for Finished Goods (Series ID WPUSOP3000) (such Index, the “**PPI-FG**”), as reported during the October immediately before the effective date of the adjustment, with respect to the 12-Calendar Month period ending at the end of the September immediately preceding such publication, *provided that* if, with respect to any such 12-Calendar Month period or periods, the PPI-FG has decreased, the Fixed Operating Fee may subsequently increase only to the extent that the percentage change in the PPI-FG since the most recent previous increase in such fees is greater than the aggregate amount of the cumulative decreases in the PPI-FG during the intervening period or periods, and (c) adjusted by the agreement of Owner and Operator relating to expansions or reductions of the Facilities (after Subject Facilities Final Acceptance), any Qualifying Capital Project, any Other Project, any Required Upgrade and/or the decommissioning of any of the Facilities. The Parties hereby acknowledge and agree that the Fixed Operating Fee will be increased to reflect services required on account of any Qualifying Capital Project, Other Project or Required Upgrade (once Final Acceptance has occurred with respect thereto) and decreased to reflect the decommissioning of any of the Facilities by an amount mutually agreed upon by Owner and Operator. From and after the Pre-Commencement Date, Owner will pay Operator the applicable annual Fixed Operating Fee on a Calendar Month basis, in equal installments, by depositing each installment in the Operating Account by the fifth day of each Calendar Month; provided that with respect to the first payment of the Fixed Operating Fee, such fee shall be deposited into the Operating Account by Owner no later than five days following the Pre-Commencement Date.

4.3 **Taxes.** Operator shall use commercially reasonable efforts to take such actions as are necessary to obtain available exemptions from, reductions in, or rebates or refunds of, applicable state and local taxes, including sales and use taxes and property taxes, and Owner shall cooperate with Operator to the extent such cooperation is required to obtain such exemptions, reductions, rebates or refunds.

## 5.0 Budgets and Authority for Expenditures.

**5.1 Preparation and Approval of the Direct Bill Budget.** From and after the Commencement Date and subject to the remainder of this Section 5.1, Operator shall prepare, in reasonably concise form, and shall present to Owner (a) on or before each September 1<sup>st</sup> a draft of, and (b) on or before each November 15<sup>th</sup> a final version of, in each case, the Direct Bill Budget for the next succeeding Calendar Year, which Direct Bill Budget shall include expenditures that may extend over a multi-Calendar Year period and shall be detailed on at least a quarterly basis for the next succeeding Calendar Year. Notwithstanding the foregoing, 90 days prior to the Pre-Commencement Date, Operator shall prepare, in reasonably concise form, and shall present to Owner the Direct Bill Budget for the remainder of the Calendar Year in which the Pre-Commencement Date occurs and the immediately subsequent Calendar Year (the Direct Bill Budget covering such time period, the “**Initial Direct Bill Budget**”). Operator shall confer with Owner during the preparation of such Direct Bill Budgets.

**5.1.1 Direct Bill Budget.** Each Direct Bill Budget for the Facilities shall include (a) itemized anticipated costs related to Direct Bill Items, and (b) itemized expenses that are chargeable to specific asset groups and expensed in accordance with GAAP, and shall identify the asset groups to which such expenses relate. Each Direct Bill Budget will include only those cost estimates associated with Direct Bill Items.

**5.1.2 Approval of Direct Bill Budget.** Owner shall have 30 days from the date Operator submits a Direct Bill Budget to approve or reject such Direct Bill Budget, in whole or in part. With respect to any part of any Direct Bill Budget that is rejected, Operator shall then have 15 days to resubmit such Direct Bill Budget, or portion thereof, for approval by Owner in accordance with this Section 5.1.2, and, if Operator elects to resubmit such Direct Bill Budget, or portion thereof, Owner shall have 15 days to approve or reject such resubmitted Direct Bill Budget, or portion thereof.

### 5.1.3 Default Direct Bill Budgets.

(a) If the Parties are unable to reach agreement with respect to the Initial Direct Bill Budget pursuant to Section 5.1.2, then the Direct Bill Budget to be used for the periods of time covered by the Initial Direct Bill Budget shall be those portions of the Initial Direct Bill Budget proposed by Operator pursuant to Section 5.1 (i) that are undisputed between the Parties or (ii) for which the Parties are able to mutually agree upon revisions (collectively, an “**Initial Default Direct Bill Budget**”).

(b) If the Parties are unable to reach agreement with respect to any Direct Bill Budget pursuant to Section 5.1.2 other than the Initial Direct Bill Budget, the Direct Bill Budget to be used by Operator and deemed approved by Owner shall include the (i) Direct Bill Budget for the preceding Calendar Year, excluding extraordinary items completed in such previous Calendar Year (if any), multiplied by (ii) 103% (such amounts, collectively the “**Operations Phase Default Direct Bill Budget**”).

(c) As used herein, the term “**Default Direct Bill Budget**” means either the Initial Default Direct Bill Budget or an Operations Phase Default Direct Bill Budget, as the context requires. Any Default Direct Bill Budget shall be in effect only until such time as a new Direct Bill Budget is approved by Owner.

**5.2 Preparation and Approval of Direct Bill Budget Amendments.** At any time from and after the Effective Date, Operator may propose amendments to the then-current Direct Bill Budget by presenting a written budget amendment for approval by Owner (each, a “*Budget Amendment*”). Each Budget Amendment shall comply with the provisions of Section 5.1.1 and Section 5.1.2 concerning specific itemization of expenses and the identification of particular asset groups to which such expenses relate. Owner shall have 30 days from the date Operator submits a Budget Amendment to approve or reject such Budget Amendment, in whole or in part. Should Owner fail to respond with its election within such 30 day time period, Owner shall be deemed to have approved such Budget Amendment. Any part of any Budget Amendment that is rejected shall either be deleted or, at Operator’s option, be resubmitted to Owner for approval. Operator shall have 15 days after receipt of notice of Owner’s rejection to resubmit any such rejected Budget Amendment or portion thereof for approval by Owner in accordance with this Section 5.2. If Owner agrees with any such proposed Budget Amendment or the Parties agree with respect to any revisions to any such proposed Budget Amendment, then the then-current Direct Bill Budget shall be amended accordingly to reflect such agreed upon Budget Amendment.

**5.3 Authority for Extra-Budget Expenditures.** From time to time from and after the Effective Date, Operator shall have the right and authority with respect to the then-current Direct Bill Budget, to make expenditures up to 110% of such Direct Bill Budget; provided, however, that nothing in this Section 5.3 or elsewhere in this Agreement shall restrict Operator’s right and authority to make expenditures in excess of the then-current Direct Bill Budget with respect to any Subject Direct Bill Items. The determination as to whether expenditures exceed 110% of such Direct Bill Budget shall exclude Subject Direct Bill Items.

**5.4 Notice of Direct Bill Budget Variances.** If it appears at any time that the actual expenditures for any Year will exceed the approved Direct Bill Budget, Operator shall notify Owner of such expected excess. If Operator reasonably believes that a Direct Bill Item expenditure to be incurred would cause the total amount of the then-current Direct Bill Budget to be exceeded by more than 10% of the total amount of such Direct Bill Budget, then Operator shall (a) give written notice to Owner of such projected excess, including information regarding the nature of such excess expenditures and the reasons therefor, and (b) other than with respect to any such expenditure to the extent constituting Subject Direct Bill Items, solicit the written approval of Owner with respect to the incurrence of such projected excess. If Operator has not received written approval from Owner within 15 days of the date of Owner’s receipt of Operator’s request, Owner shall be deemed to have rejected the incurrence of such projected excess amount and, other than with respect to any such expenditure to the extent constituting Subject Direct Bill Items, Operator shall have no (i) right to charge to Owner, or (ii) obligation to perform, in each case, the functions or services related to the rejected projected excess charge.

**5.5 Payment of Budgeted Costs.**

**5.5.1 Operations Period.** If, during any Calendar Month commencing in the Calendar Month immediately prior to the Commencement Date:

- (a) Operator believes that Owner’s current cash assets and projected gross receipts are reasonably projected to be insufficient to satisfy Owner’s projected expenditures to be incurred during such current Calendar Month (i) pursuant to the then-current Direct Bill Budget, and/or (ii) otherwise in accordance with this Agreement, including Operator’s right and authority to make (or cause Owner to make) expenditures in excess of the then-current Direct Bill Budget pursuant to Section 5.3, then Operator shall prepare and deliver to Owner and the President a

notice of the estimated amount of the shortfall for such Calendar Month plus a reasonable contingency amount (the entirety of such projected amounts, the “*Monthly Estimate*”). Owner shall cause each Monthly Estimate to be deposited in the Operating Account as follows: (A) if such Monthly Estimate was delivered by the Operator to Owner on or prior to the 15th day of a Calendar Month, then by no later than the last day of the Calendar Month in which such Monthly Estimate is delivered, or (B) if such Monthly Estimate was delivered by the Operator to Owner following the 15th day of a Calendar Month, then by no later than the 15th day after such Monthly Estimate is delivered. Notwithstanding anything in this Section 5.5.1(a) to the contrary, no amounts included in any 200% Payout Monthly Estimates shall be included in any Monthly Estimate delivered to the President by Operator pursuant to this Section 5.5.1(a).

- (b) (i) a Non-Participatory Capital Project Budget has been approved by the Non-Participating Member pursuant to Section 12.1(d)(ii) of the LLC Agreement for a Non-Participatory Capital Project, and (ii) 200% Payout has not yet occurred with respect to such Non-Participatory Capital Project, then, if Operator believes that Owner’s current cash assets and projected gross receipts (in each case, calculated to only include the cash assets and gross receipts that relate solely to such Non-Participatory Capital Project, if any) are reasonably projected to be insufficient to satisfy the Non-Participatory Operating Costs reasonably projected to be incurred in the following Calendar Month in accordance with the then-current Non-Participatory Capital Project Budget therefor, then Operator shall prepare and deliver to Owner and the President a notice of the estimated amount of the shortfall for such Calendar Month with respect to such Non-Participatory Capital Project plus a reasonable contingency amount (the entirety of such projected amounts, the “*200% Payout Monthly Estimate*”). Owner shall cause each 200% Payout Monthly Estimate to be deposited in the Operating Account as follows: (A) if such 200% Payout Monthly Estimate was delivered by the Operator to Owner on or prior to the 15th day of a Calendar Month, then by no later than the last day of the Calendar Month in which such 200% Payout Monthly Estimate is delivered, or (B) if such 200% Payout Monthly Estimate was delivered by the Operator to Owner following the 15th day of a Calendar Month, then by no later than the 15th day after such 200% Payout Monthly Estimate is delivered.

**5.5.2 Budget Shortfalls.** If, during any Calendar Month after the Commencement Date:

- (a) Operator believes that Owner’s current cash assets and projected gross receipts plus any additional payments made pursuant to Section 5.5.1(a) with respect to such current Calendar Month are reasonably projected to be insufficient, or are insufficient, as applicable, to satisfy Owner’s actual incurred expenditures, or projected to be incurred expenditures, as applicable, during such current Calendar Month (i) under the then-current Direct Bill Budget, (ii) in connection with any Emergency, or (iii) otherwise in accordance with this Agreement, including Operator’s right and authority to make (or cause Owner to make) expenditures in excess of the then-current Direct Bill Budget pursuant to Section 5.3, then Operator shall prepare and deliver to Owner and the President a notice of the estimated amount of the shortfall for such Calendar Month plus a reasonable contingency amount (the entirety of such amounts, “*Shortfall Estimate*”). Owner shall cause each Shortfall Estimate to be deposited in the Operating Account

within five Business Days of its receipt of such Shortfall Estimate. Notwithstanding anything in this Section 5.5.2(a) to the contrary, no amounts included in any 200% Payout Shortfall Estimates shall be included in any Monthly Estimate delivered to the President by Operator pursuant to this Section 5.5.2(a).

- (b) (i) a Non-Participatory Capital Project Budget has been approved by the Non-Proposing Member pursuant to Section 12.1(d)(ii) of the LLC Agreement for a Non-Participatory Capital Project, and (ii) 200% Payout has not yet occurred with respect to such Non-Participatory Capital Project, then, if Operator believes that Owner's current cash assets and projected gross receipts (in each case, calculated to only include the cash assets and gross receipts that relate solely to such Non-Participatory Capital Project, if any) plus any additional payments made pursuant to Section 5.5.1(b) with respect to such current Calendar Month are reasonably projected to be insufficient, or are insufficient, as applicable, to satisfy the Non-Participatory Operating Costs incurred or reasonably projected to be incurred in such Calendar Month in accordance with the then-current Non-Participatory Capital Project Budget therefor, then Operator shall prepare and deliver to Owner and the President a notice of the estimated amount of the shortfall for such Calendar Month with respect to such Non-Participatory Capital Project plus a reasonable contingency amount (the entirety of such amounts, the "**200% Payout Shortfall Estimate**"). Owner shall cause each 200% Payout Shortfall Estimate to be deposited in the Operating Account within five Business Days of its receipt of such Monthly Estimate.

**5.5.3 Objections to Estimates.** With respect to any Monthly Estimate, 200% Payout Monthly Estimate, Shortfall Estimate or 200% Payout Shortfall Estimate submitted by Operator hereunder, Owner may notify Operator in writing of any objections to all or any portion of such amounts on or before the expiration of the applicable Audit Period with respect to such amounts. Owner shall be responsible for paying the amounts set forth in the notices from Operator pursuant to Section 5.5.1 and Section 5.5.2 in full, but such payment shall not be construed as a waiver by Owner of any of its rights under this Section 5.5.3 or Section 7.4.2.

**5.6 Emergencies.** From and after the Commencement Date, in the event of an Emergency, Operator shall promptly (a) make all notifications (or cause Owner to make such notifications) required under applicable Law to appropriate Governmental Authorities, (b) implement (or cause Owner to implement) Emergency response and mitigation measures as are either required by applicable Law or as deemed advisable by Operator for a prudent operator to respond to or mitigate the Emergency, including to protect human health and the environment, (c) commence (or cause Owner to commence) any required remediation, maintenance or repair work necessary to keep the Facilities Operating safely (or to restore such Facilities to safe operating condition) and in compliance with all applicable Law or otherwise to minimize damage and (d) as soon as practicable after the occurrence of the event, notify Owner of (i) such Emergency, (ii) all mitigation, repair, restoration or remedial plans to be undertaken by Operator or Owner, (iii) all material correspondence with Governmental Authorities and (iv) any permits or approvals required in connection with Operator's and Owner's Emergency response, restoration, repair, remedial or restoration activities. Operator's notification of Owner may be made by any method deemed appropriate by Operator under the circumstances and does not have to comply with Section 12.1. To the fullest extent possible, Operator may cause an Authorized Officer, on behalf of Owner, to enter into Contracts in connection with any required remediation, maintenance or

repair work necessary to keep the Facilities in compliance with all applicable Laws or otherwise to minimize damage and may cause all Contractors to directly bill Owner for expenses incurred in an Emergency. To the extent funds are not available in the Operating Account to pay for any costs incurred by Operator or Owner in connection with an Emergency, then Operator shall submit invoices for such costs incurred by Operator or Owner during such Emergency to Owner and Owner shall deposit such amounts in the Operating Account within five Business Days of receipt of such invoices. For purposes of this Agreement, an “**Emergency**” shall be defined as a sudden or unexpected event which causes, or risks causing, (A) substantial damage to any of the Facilities or the property of a Third Party, (B) death of or injury to any Person, (C) damage or substantial risk of damage to natural resources (including wildlife) or the environment, or (D) non-compliance with any applicable Law (except where complying with such Law would require a Required Upgrade that would not otherwise be immediately required under applicable Law), in each case, which event is of such a nature that a response cannot, in the discretion of Operator reasonably exercised, await the decision of Owner. For the avoidance of doubt, an “Emergency” shall include any release or threatened release of hazardous substances into the environment that requires notification to any Governmental Authority under applicable Law.

**5.7 No Waiver by Payment.** No payment by Operator out of the Operating Account or payment by Owner pursuant to Section 5.6 shall preclude Owner from (a) questioning the accuracy of the statement or the justification of any charge related to such payment; provided, any such protest with respect to charges and credits made during the period covered by an audit must be made within the Audit Period specified in Section 7.4.2, or (b) any of its rights under the indemnity set forth in Section 10.2.2.

**5.8 Payment of Funds from Operating Account.** Subject to (a) Section 3.7 and (b) the Operator’s right to withdraw and/or use any funds constituting the Fixed Operating Fee at its sole discretion, Operator shall only use the funds in the Operating Account to pay expenses owed by Owner or Operator for the Operation of the Facilities and/or the other services provided by Operator pursuant to this Agreement or that are otherwise chargeable to Owner or due to Operator hereunder.

**6.0 Operating Procedure.**

**6.1 Common Carrier Operations.** From and after the Commencement Date, Operator shall provide Transportation Services on the applicable Facilities.

**6.2 Environmental, Health and Safety Reporting.** From and after the Commencement Date, Operator shall prepare and furnish (or cause a Contractor to prepare and furnish) to Owner a report describing any material accidents and environmental incidents experienced with respect to the Facilities and known to Operator, in each case, as soon as reasonably practical but no later than 30 days of such occurrence.

**6.3 EH&S Audit Rights.**

6.3.1 From and after the Commencement Date, upon not less than 30 days’ prior written notice to Operator, but not more than once during any Calendar Year (unless more frequent audits are required by applicable Law and then, in such case, as frequently as required by applicable Law), Owner may audit all records, procedures and performance of Operator relating to the Operation of the Facilities and compliance with (a) applicable Laws enacted to protect the environment and the health and safety of employees, customers, Contractors and the public (“**EH&S Laws**”) and (b) Operator’s environmental, health and

safety policies and practices, in each case, for any Calendar Year within the 24 Calendar Month period immediately preceding the date of such notice (such 24 Calendar Month period, the “*EH&S Audit Period*”).

- 6.3.2 The cost of each such audit shall be borne by Owner. Any such audit shall be conducted during normal business hours at the principal office of Operator and in a manner designed to result in a minimum of inconvenience and disruption to the operations of Operator.
- 6.3.3 For the avoidance of doubt, any Confidential Information obtained by Owner or its representatives in connection with the conduct of an audit (whether related solely to Operator or otherwise) shall be subject to the confidentiality provisions of Section 11.
- 6.3.4 Within 90 days following completion of any such audit, Owner must provide Operator with a copy of the written audit report and a written notice of any alleged instances of non-compliances with applicable EH&S Laws and any alleged deficiencies in Operator’s environmental, health and safety policies or procedures related to the EH&S Audit Period disclosed in such report. Operator shall make a reasonable effort to reply to such instances of non-compliance and alleged deficiencies in writing as soon as possible and in any event no later than 30 days after its receipt of such report and notice.
- 6.3.5 Upon agreement by Owner and Operator of necessary corrective action, if any, Operator shall then prepare a written action plan and shall provide a copy to Owner. Additionally, Operator shall track and document close-out of all audit findings agreed to by Operator and Owner, the status of which shall be reported to Owner at each meeting of the Board. If any dispute shall arise in connection with an audit and/or the results thereof, the Parties shall use their reasonable efforts to resolve such disputes within 30 days after delivery of Operator’s reply to such report and notice delivered by Owner pursuant to Section 6.3.4. If any such dispute is not resolved within such time period, then either Party may seek to have such dispute settled pursuant to Section 12.4.

## **7.0 Accounting; Reports.**

- 7.1 **Maintenance of Accounts; Statements.** From and after the Effective Date, Operator shall maintain (a) true and accurate accounts of (i) all expenses, disbursements and costs chargeable to Owner pursuant to this Agreement, and (ii) all revenue of Owner, all of which shall be charged or credited to Owner and maintained in accordance with GAAP and in accordance with the Uniform System of Accounts (including any subsequent modifications or revisions thereof) prescribed for oil pipeline companies by the FERC, its successors or by any other Governmental Authority having regulatory jurisdiction over Owner or the Facilities, consistently applied, and (b) the Capital Accounts (and 200% Payout Accounts, if applicable) for each Member. Operator shall maintain such books of account at its principal place of business and such books of account shall be open to inspection and examination in accordance with Section 7.4. If necessary, Operator shall request from Owner and the Construction Manager any information necessary for Operator to fulfill its duties pursuant to this Agreement (including this Section 7.1). Operator shall prepare, or caused to be prepared, and shall submit to Owner the statements, reports and notices specified in Section 8.3 of the LLC Agreement within the periods established in Section 8.3 of the LLC Agreement. Operator shall cause the Annual Financial Statements to be audited initially by KPMG LLP. Failure of Operator to fulfill its obligations pursuant to this Section 7.1 solely as a result of the failure of (A) the Construction Manager or (B) Owner to provide Operator with any information Operator has reasonably requested from the Construction Manager or Owner, as applicable, shall not be deemed to be a breach of Operator’s duties hereunder.

- 7.2 Banking.** Owner shall establish, in Owner's name and under Owner's control, a bank account or accounts (the "**Operating Account**"). Owner shall designate only Operator, and such Persons as reasonably requested by Operator, as authorized signatories to the Operating Account, and all withdrawals by Operator from the Operating Account shall be made only by Operator or such designated Persons. All revenues attributable to the Facilities received by Operator shall be deposited by Operator into the Operating Account. All funds of Owner in the Operating Account shall be used by Operator solely for the Operation of the Facilities, the other services provided by Operator hereunder and otherwise in accordance with Section 3.7 and Section 5.8. All interest and other benefits pertaining to the Operating Account belong to Owner. At no time may Operator commingle the funds in the Operating Account with Operator's funds or the funds of any other Person, and such funds may not be subject to the Liens or Claims of any kind in favor of Operator or its creditors.
- 7.3 Disbursements to Members.** From and after the Effective Date, Operator shall, within ten days after the end of each Calendar Month, provide written notice in accordance with Section 4.5(a) of the LLC Agreement to Owner and the Board of Operator's determination of Available Cash, including information as to the cash position, anticipated cash receipts and disbursements, Cash Reserves and such other information reasonably requested by Owner. If necessary, Operator shall request from Owner and the Construction Manager any information necessary for Operator to fulfill its duties pursuant to this Agreement (including this Section 7.3). Failure of Operator to fulfill its obligations pursuant to this Section 7.3 solely as a result of the failure of (a) the Construction Manager or (b) Owner, in each case, to provide Operator with any information Operator has reasonably requested from the Construction Manager or Owner, as applicable, shall not be deemed to be a breach of Operator's duties hereunder.
- 7.4 Audits.**
- 7.4.1 From and after the Effective Date, in accordance with this Section 7.4, Owner, shall have the right to audit costs charged to Owner's accounts and other accounting records maintained for Owner by Operator under this Agreement no more than twice during any Calendar Year.
- 7.4.2 Subject to the restrictions contained in Section 7.4.1, upon not less than 30 days' prior written notice to Operator, Owner may audit Operator's books and records for any Calendar Year within the 24 Calendar Month period immediately preceding the date of such notice (such 24 Calendar Month period, the "**Audit Period**"). The cost of each such audit shall be borne by Owner. Any such audit shall be conducted during normal business hours at the principal office of Operator and in a manner designed to result in a minimum of inconvenience and disruption to the operations of Operator.
- 7.4.3 In conducting any such audit, Owner, may request access to information relating to such audit prior to the commencement of such audit, and, if such information is in the possession of Operator or its Affiliates, Operator shall, provide access to such information requested as soon as practical (but in any event, not later than 10 days after Owner's request, therefor) in order to facilitate the forthcoming audit.
- 7.4.4 For the avoidance of doubt, any Confidential Information obtained by Owner or its representatives in connection with the conduct of such audit (whether related solely to Operator or otherwise) shall be subject to the provisions of Section 11.

- 7.4.5 Within 90 days following completion of such audit, Owner must provide Operator with a copy of the written audit report and a written notice of any claims of Owner arising from such audit report. Operator shall make a reasonable effort to reply to such claims in writing as soon as possible and in any event no later than 90 days after delivery of such report and notice.
- 7.4.6 All adjustments agreed to between Owner and Operator resulting from such audit shall be reflected promptly in Operator's books and records and reported to Owner. If any dispute shall arise in connection with an audit, the Parties shall use their reasonable efforts to resolve such disputes within 60 days after delivery of Operator's reply to such report and notice delivered by Owner. If any such dispute is not resolved within such time period, then either Party may seek to have such dispute settled pursuant to Section 12.4.
- 7.4.7 Notwithstanding anything herein to the contrary, Operator shall have no liability for, and shall not be in breach of this Agreement with respect to, any outstanding matters at the conclusion of an audit that result from actions by the Construction Manager, or that are attributable to reports, statements, notices or other information provided to Operator by the Construction Manager.
- 7.5 Government Reports.** From and after the Commencement Date, Operator shall prepare and file any reports required by any Governmental Authority having jurisdiction over the Facilities, in each case, in the correct number of copies required; provided that Operator shall have no obligation under this Section 7.5 with respect to any Segment of the Subject Facilities and/or any Qualifying Capital Project until Final Acceptance has occurred with respect to the Subject Facilities and/or such Qualifying Capital Project (or applicable Segment thereof).
- 7.6 Maintenance of and Access to Records.** From and after the Effective Date, Operator shall keep, or cause to be kept, true and complete books of account for Owner with respect to the Facilities in accordance with Section 8.1, Section 8.2 and Section 8.3 of the LLC Agreement. Operator shall maintain such books of account at its principal place of business. Operator shall give access to each Member to inspect any of the books, records and operations of Owner maintained by Operator for any purpose reasonably related to the Member's Member Interest. Any such inspection shall occur during normal business hours at the principal office of Operator upon reasonable advance notice to Operator and the other Members and shall be conducted in a manner designed to result in a minimum of inconvenience and disruption to the operations of Operator. In addition, if any Member is engaged in bona fide negotiations with a Third Party or Affiliate of a Member related to a proposed disposition of its Member Interest and requests books, records and other information for disclosure to such Third Party or Affiliate of a Member in accordance with the LLC Agreement, Operator agrees to reasonably cooperate with such Member and, upon reasonable notice, provide access to such books, records and other information maintained by Operator as may be reasonably required by such Member. Any such review by any Member shall be conducted during normal business hours, at the principal office of Operator and in a manner designed to result in a minimum of inconvenience and disruption to the operations of Operator.
- 8.0 Force Majeure.**
- 8.1 Procedure.** If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than to make payments then or thereafter due hereunder, upon such Party giving notice and full particulars of such Force Majeure to the other Party as soon as possible after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, will be suspended during

the continuance of any inability so caused but for no longer period, and such cause must as far as possible be remedied with all reasonable and diligent dispatch by the Party claiming such in order to put itself in a position to carry out its obligations under this Agreement.

- 8.2 Definition.** The term “*Force Majeure*” means any event not within the control of the Party (or any of its Affiliates) claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome, including (to the extent such event satisfies the foregoing) events of nature or the elements, strikes, lockouts or other labor disturbances, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, storm warnings, floods and washouts, restraints of Governmental Authorities, civil disturbances, environmental accidents affecting the land, air or water, explosions, breakage or accident to or freezing of equipment, machinery or lines of pipe, or other casualty occurrences, in each case, materially affecting the Operation of the Facilities, terrorist acts or the threat thereof, inability to obtain pipe, materials, equipment, rights of way, permits or labor and any actions by Governmental Authorities that are resisted in good faith.
- 8.3 Strikes, etc.** Notwithstanding anything to the contrary contained herein, it is understood and agreed that the settlement of strikes, lockouts or other labor disturbances is entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure must be remedied with all reasonable and diligent dispatch shall not require the settlement of any such strike, lockout or other labor disturbance by acceding to the demands of opposing Persons when such course is inadvisable in the discretion of the Party having the difficulty.
- 8.4 Notice of Force Majeure Termination.** The Party claiming a Force Majeure must provide notice to the other Party of the date of termination of such Force Majeure event.
- 9.0 Insurance.**
- 9.1 Primary Liability Insurance.** From and after the Commencement Date, Operator shall obtain on Owner’s behalf and, on behalf of Owner, Operator shall maintain in force with insurance companies acceptable to Owner, the kinds of primary insurance and amounts of coverage set forth in Exhibit D.
- 9.2 Premiums, Deductibles, etc.** All guaranteed cost insurance premiums, expenses, deductibles (reasonably acceptable to Owner), or similar programs applicable to the insurance required hereunder shall be included in the Direct Bill Budget as Direct Bill Items.
- 9.3 Cooperation.** Should any Member desire to obtain, for itself, any additional insurance in excess of the insurance coverage mandated by this Agreement and Section 7.5 of the LLC Agreement, Operator agrees to cooperate with such Member to provide such information as may be reasonably requested by such Member in furtherance of obtaining such additional insurance.
- 9.4 Insurance Limits.** In the event that the damages resulting from any Claim or Liability exceed the coverage limits under an insurance policy covering such Claim or Liability, such coverage limits shall not affect either Party’s obligations under Section 10.2 for any such damages in excess of the limits associated with any such insurance policy covering any such Claim or Liability.

## 10.0 Claims.

### 10.1 Claims. Liabilities and Claims involving Owner and Operator shall be handled in the following manner:

10.1.1 **Liability Claims.** Subject to the limitations set forth in Section 3.8 and Section 3.9, Operator shall manage and process any Claim by a Third Party against Operator or Owner that arises out of the Operation of the Facilities, or arises out of or is incidental to the activities carried on pursuant to, or work performed, required or contemplated by, this Agreement (each such Claim, a “**Liability Claim**”) in accordance with Section 10.1.3.

10.1.2 **Recovery Claims.** Subject to the limitations set forth in Section 3.8 and Section 3.9, Operator shall assist Owner with prosecuting and/or settling any Claim that Owner has against a Third Party (each such Claim, a “**Recovery Claim**”). Operator may not name a Member as party plaintiff on a Recovery Claim unless Operator has obtained that Member’s consent to do so. If any Member so desires, in addition to counsel employed by Operator on behalf of Owner, a Member may be represented in any such lawsuit at its expense by counsel selected by it.

10.1.3 **Notice of Claim.** In the event that Operator receives a Liability Claim in writing that exceeds \$5,000,000, Operator shall provide Owner, within 30 days of receipt of such Liability Claim, a notice that includes a brief written summary of the facts then known to Operator regarding such Liability Claim and a copy of the demand letter, petition, or similar documentation relating thereto.

## 10.2 Release and Indemnification.

10.2.1 **Indemnification by Owner.** Notwithstanding anything to the contrary herein (including any breach by Operator of the provisions of Section 3.4.2), Owner shall be responsible for, shall pay on a current basis and hereby releases, defends, indemnifies and holds harmless Operator and its Affiliates (other than Owner) and their respective directors, officers, managers and employees (such Persons, excluding, for the avoidance of doubt, any Contractors, the “**Operator Indemnitees**”) from and against all Liabilities and Claims arising out of, attributable to, in connection with or incidental to (a) the Operation of any of the Facilities, including any act or omission of any of the Operator Indemnitees in connection therewith, or (b) any other activities carried on or work performed or required by this Agreement, in each case, EVEN IF SUCH LIABILITIES OR CLAIMS ARE AS A RESULT OF THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR ANY OTHER LEGAL FAULT, INCLUDING STRICT LIABILITY, OF ANY OPERATOR INDEMNITEE, ANY OWNER INDEMNITEE, ANY THIRD PARTY OR ANY OF THEM; provided, however, that except as provided in Section 10.2.4, Owner will not be required to release or indemnify the Operator Indemnitees from any such Liabilities or Claims to the extent such Liabilities or Claims arise out of or in connection with or are attributable or incident to (i) any fraud of any Operator Indemnitee or (ii) the gross negligence or willful misconduct of the Operator.

10.2.2 **Indemnification by Operator.** Except with respect to any Liabilities and Claims with respect to which Owner is required to indemnify Operator pursuant to Section 10.2.1, but otherwise notwithstanding anything herein to the contrary, Operator shall be responsible for, shall pay on a current basis and hereby releases, defends, indemnifies and holds harmless the Owner Indemnitees from and against all Liabilities and Claims arising out

of or in connection with or attributable or incidental to (a) any fraud of any Operator Indemnitee or (b) the gross negligence or willful misconduct of the Operator.

- 10.2.3 **Survival of Indemnification Provisions; No Double Recovery.** The provisions of this Section 10.2 shall survive any termination of this Agreement. In calculating any amount to be paid by an indemnifying Party by reason of the provisions of this Section 10.2, the amount shall be reduced by all cash reimbursements (including insurance proceeds) actually received (directly or indirectly, including by virtue of the indemnified Party's direct or indirect ownership interest in Owner) by the indemnified Party with respect to the applicable Claim or Liability.
- 10.2.4 **Operator Suggested Activities.** If Operator makes a recommendation to Owner regarding a specific potential operational issue to Owner that may reasonably be expected to result in damages to Persons or property or cause a material adverse effect with respect to Owner, the Business or the Facilities, but would not otherwise constitute an Emergency or a Required Upgrade, and Owner does not timely approve such recommendation or any part thereof (an "*Operator Suggested Activity*"), Operator shall not be liable for, and Owner hereby releases and defends, indemnifies and holds harmless Operator Indemnitees from and against, all Liabilities and Claims arising out of, attributable to, in connection with or incidental to Owner's failure to approve such Operator Suggested Activity, or Operator's failure to undertake an Operator Suggested Activity absent Owner's approval thereof (as applicable). OWNER'S AGREEMENT TO RELEASE AND INDEMNIFY THE OPERATOR INDEMNITEES PURSUANT TO THIS SECTION 10.2.4 SHALL INCLUDE ANY LIABILITIES AND CLAIMS ARISING OUT OF, ATTRIBUTABLE TO, IN CONNECTION WITH OR INCIDENTAL TO THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR ANY OTHER LEGAL FAULT, INCLUDING STRICT LIABILITY, OF ANY OPERATOR INDEMNITEE, ANY OWNER INDEMNITEE, ANY THIRD PARTY OR ANY OF THEM; provided, however, that Owner will not be required to release or indemnify the Operator Indemnitees from any such Liabilities or Claims to the extent such Liabilities or Claims arise out of or in connection with or are attributable or incident to (i) any fraud of any Operator Indemnitee or (ii) the gross negligence or willful misconduct of the Operator.
- 10.2.5 **Disclaimer of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AS BETWEEN THE PARTIES, A PARTY'S DAMAGES RESULTING FROM A BREACH OR VIOLATION OF ANY COVENANT, AGREEMENT OR CONDITION CONTAINED HEREIN OR ANY ACT OR OMISSION ARISING FROM OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND NONE OF THE OPERATOR INDEMNITEES OR THE OWNER INDEMNITEES SHALL BE ENTITLED TO RECOVER FROM OPERATOR OR OWNER OR THEIR RESPECTIVE AFFILIATES (AS APPLICABLE) ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING LOST PROFITS) OR ANY EXEMPLARY OR PUNITIVE DAMAGES. EXCEPT AS PROVIDED BELOW IN THIS SECTION 10.2.5, EACH PARTY EXPRESSLY RELEASES THE OTHER PARTY FROM ALL SUCH CLAIMS FOR DAMAGES OTHER THAN ACTUAL DAMAGES. IF A PARTY BECOMES OBLIGATED TO PAY A PERSON THAT IS NOT A PARTY OR AN AFFILIATE OF ANY PARTY ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING LOST PROFITS) OR ANY EXEMPLARY OR

**PUNITIVE DAMAGES, AND SUCH PARTY IS ENTITLED TO INDEMNIFICATION UNDER THE TERMS OF THIS AGREEMENT, THEN SUCH PARTY'S INDEMNIFICATION RIGHT SHALL INCLUDE ALL INDIRECT, SPECIAL, CONSEQUENTIAL AND INCIDENTAL DAMAGES, INCLUDING LOST PROFITS AND ALL EXEMPLARY AND PUNITIVE DAMAGES IT IS OBLIGATED TO PAY.**

10.2.6 **Compliance with Laws.** The exculpation and indemnifications provisions included herein shall be effective to the maximum extent permitted by applicable Law. The Parties agree that in the event any Law, when applied to this Agreement, limits in any way the extent to which exculpation and/or indemnification may be provided to the beneficiary thereof in accordance with the terms hereof, this Agreement shall automatically be amended to provide that the exculpation and indemnification provisions included herein shall extend to the maximum extent permitted by applicable Law.

## **11.0 Confidential Information; Publicity.**

### **11.1 Confidential Information.**

11.1.1 The Parties agree that all confidential shipper information, pricing, cost data and other commercially or operationally sensitive information relating to the Business and/or the Operation of the Facilities that is typically considered confidential shall be considered "**Confidential Information**" hereunder, shall be kept confidential and shall not be disclosed to any Person that is not a Party, except, in each case, to the extent not prohibited by the provisions of Section 15(13) of the Interstate Commerce Act:

- (a) to an Affiliate of Owner or a Member;
- (b) to the extent any Confidential Information is required to be furnished in compliance with applicable Law, or pursuant to any legal proceedings or because of any order of any Governmental Authority that is binding upon a Party;
- (c) to prospective or actual attorneys engaged by any Party where disclosure of such Confidential Information is essential to such attorney's work for such Party;
- (d) to prospective or actual contractors and consultants engaged by any Party where disclosure of such Confidential Information is essential to such contractor's or consultant's work for such Party;
- (e) to a bona fide prospective transferee of a Member's Member Interest and Units to the extent appropriate in order to allow the assessment of such Member Interest and Units (including a Person with whom a Member and/or its Affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares), as long as the Member provides ten days prior written notice to Owner of its intention to share such Confidential Information and the transferee executes a confidentiality agreement with Owner and Operator containing substantially similar terms and conditions as those set forth in this Section 11.1;
- (f) to a bank or other financial institution to the extent appropriate to a Party or Member arranging for funding;

- (g) to the extent such Confidential Information must be disclosed pursuant to any rules or requirements of any stock exchange having jurisdiction over a Party or its Affiliates; *provided* that if such Party desires to disclose Confidential Information in an annual or periodic report to its or its Affiliates' shareholders and the public and such disclosure is not required pursuant to any rules or requirements of any stock exchange, then such Party shall comply with Section 11.2;
- (h) to its respective employees, subject to each Party taking customary precautions to ensure such Confidential Information is kept confidential; and
- (i) any Confidential Information which, through no fault of or breach of this Agreement by a Party, becomes a part of the public domain.

11.1.2 Disclosure pursuant to Section 11.1.1(d) or Section 11.1.1(e) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the recipient to keep the Confidential Information strictly confidential and to use the Confidential Information for the sole purpose described in Section 11.1.1(d) and Section 11.1.1(e), whichever is applicable, with respect to such disclosing Party.

## 11.2 Publicity.

- 11.2.1 Without reasonable prior notice to the other Party, no Party shall issue, or permit any agent or Affiliate of it to issue, any press releases or otherwise make, or cause any agent or Affiliate of it to make, any public statements with respect to this Agreement, the LLC Agreement, the Construction Management Agreement, any Confidential Information or the activities contemplated hereby or thereby, except where such release or statement is deemed in good faith by such releasing Party to be required by Law or under the rules and regulations of a recognized stock exchange on which shares of such Party or any of its Affiliates are listed, and in any case, prior to making any such press release or public statement, such releasing Party shall provide a copy of the proposed press release or public statement to the other Party reasonably in advance of the proposed release date as necessary to enable such other Party to provide comments on it; *provided* such other Party must respond with any comments within two Business Days after its receipt of such proposed press release.
- 11.2.2 Notwithstanding anything to the contrary in Section 11.1 or Section 11.2.1, any Party or Affiliate of a Party may disclose information regarding the Business and/or the Operation of the Facilities that is not Confidential Information in investor presentations, industry conference presentations or similar disclosures; If a Member wishes to disclose any Confidential Information in investor presentations, industry conference presentations or similar disclosures, such Member must first (a) provide the other Party with a copy of that portion of the presentation or other disclosure document containing such Confidential Information and (b) obtain the prior written consent of the other Party to such disclosure (which consent may not be unreasonably withheld, conditioned or delayed).
- 11.2.3 Notwithstanding anything to the contrary in Section 11.1 or Section 11.2.1, in the event of any Emergency endangering property, lives or the environment, Operator may issue such press releases or public announcements as it deems necessary in light of the

circumstances and shall promptly provide Owner with a copy of any such press release or announcement.

**12.0 General Provisions.**

**12.1 Notices.** All notices and communications required or permitted to be given hereunder shall be sufficient in all respects (a) if given in writing and delivered personally, (b) if sent by overnight courier, (c) if mailed by U.S. Express Mail or by certified or registered United States Mail with all postage fully prepaid or (d) sent by facsimile transmission (provided any such facsimile transmission is confirmed either orally or by written confirmation) and, in each case, addressed to the appropriate Party hereto at the address for such Party shown below:

Operator:

DAPL-ETCO OPERATIONS MANAGEMENT, LLC  
c/o Energy Transfer Partners, L.P.  
1300 Main Street  
Houston, Texas 77002  
Attention: President of DAPL-ETCO Operations Management, LLC  
Telephone: 210-403-6455  
Facsimile: 210-403-7500

With a copy to:

DAPL-ETCO OPERATIONS MANAGEMENT, LLC  
c/o Energy Transfer Partners, L.P.  
1300 Main Street  
Houston, Texas 77002  
Attention: General Counsel  
Telephone: 713-989-7000  
Facsimile: 214-981-0701

Owner:

ENERGY TRANSFER CRUDE OIL COMPANY, LLC  
c/o Energy Transfer Partners, L.P.  
800 E. Sonterra Blvd. #400  
San Antonio, Texas 78258  
Attention: President of Energy Transfer Crude Oil Company, LLC  
Telephone: 210-403-6455  
Facsimile: 210-403-7500

With a copy to:

ENERGY TRANSFER CRUDE OIL COMPANY, LLC  
c/o Energy Transfer Partners, L.P.  
1300 Main Street  
Houston, Texas 77002  
Attention: General Counsel

Telephone: 713-989-7000  
Facsimile: 214-981-0701

Any notice given in accordance herewith shall be deemed to have been given (i) when delivered to the addressee in person, or by courier, during normal business hours, or on the next Business Day if delivered after business hours, (ii) when received by the addressee via facsimile during normal business hours, or on the next Business Day if received after business hours, or (iii) upon actual receipt by the addressee after such notice has either been delivered to an overnight courier or deposited in the U.S. Mail, as the case may be. The Parties may change the address, telephone number and individuals to which such communications to any Party are to be addressed by giving written notice to the other Parties in the manner provided in this Section 12.1. Any notice delivered pursuant to this Section 12.1 shall be accompanied by a copy to each Member in accordance with the provisions for notice to the Members set forth in Section 15.2 of the LLC Agreement.

**12.2 Governing Law.** THIS AGREEMENT AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT REFER CONSTRUCTION OF SUCH PROVISIONS TO THE LAWS OF ANOTHER JURISDICTION. IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH OF THE PARTIES CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY FEDERAL OR STATE COURT LOCATED WITHIN HARRIS COUNTY, TEXAS, WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON SUCH PARTY, CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY FIRST CLASS REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, DIRECTED TO SUCH AT THE ADDRESS SPECIFIED PURSUANT TO SECTION 12.1, AGREES THAT SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT THEREOF, AND WAIVES ANY OBJECTION TO JURISDICTION OR VENUE OF, AND WAIVES ANY MOTION TO TRANSFER VENUE FROM, ANY OF THE AFORESAID COURTS. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE.

**12.3 Dispute Resolution.** Except as set forth in Section 6.3.5 and Section 7.4.6, all disputes, Claims and controversies arising out of or relating to this Agreement shall be determined and resolved in accordance with the procedures set forth in Section 14.2 of the LLC Agreement.

**12.4 Expert Proceedings.** For any decision referred to an independent expert under Section 6.3.5 or Section 7.4.6, the Parties hereby agree that such decision shall be conducted expeditiously by an expert selected unanimously by the Parties.

12.4.1 The fees and costs of the expert shall be borne 100% by Owner. The expert is not an arbitrator of the dispute and shall not be deemed to be acting in an arbitral capacity.

12.4.2 The Party desiring an expert determination shall give the other Party written notice of the request for such determination. If the Parties are unable to agree upon an expert within ten days after receipt of the written notice of request for an expert determination, then, upon the request of any of the Parties, the Houston, Texas office of the American Arbitration Association (the "AAA") shall appoint such expert. The expert, once appointed, shall have no ex parte communications with the Parties concerning the expert

determination or the underlying dispute. Each expert appointed by the AAA shall have such qualifications as would be reasonably sufficient to be qualified as an expert under the federal rules of civil procedure for the specific dispute in question.

12.4.3 All communications between any Party and the expert shall be conducted in writing, with copies sent simultaneously to the other parties participating in the expert proceeding in the same manner, or at a meeting to which representatives of all Persons participating in the expert proceeding have been invited and of which such Persons have been provided at least five Business Days' notice.

12.4.4 Within 15 days after the expert's acceptance of its appointment, the Parties shall provide the expert with a report containing their proposal for the resolution of the matter and the reasons therefor, accompanied by all relevant supporting information and data. Within 30 days of receipt of the above-described materials and after receipt of additional information or data as may be required by the expert, the expert shall select the proposal or solution or value which it finds more consistent with the terms of this Agreement. The expert may not propose alternate positions or award damages, interest or penalties to any Party with respect to any matter. The expert's decision shall be final and binding on the Parties. Any Party that fails or refuses to honor the decision of an expert shall be in default under this Agreement.

**12.5 Entirety of Agreement.** THIS AGREEMENT AND THE LLC AGREEMENT CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES REGARDING THE OPERATION OF THE FACILITIES, AND SUPERSEDE ALL OTHER PRIOR AND CONTEMPORANEOUS AGREEMENTS, WHETHER WRITTEN OR ORAL, BETWEEN THE PARTIES AND RELATED THERETO. NO VARIATION, MODIFICATION OR CHANGE SHALL BE BINDING UPON A PARTY UNLESS EFFECTUATED BY AN INSTRUMENT IN WRITING EXECUTED BY A DULY AUTHORIZED OFFICER OR A DULY AUTHORIZED AGENT FOR IT.

**12.6 Captions or Headings.** The headings appearing at the beginning of each Section are all inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision or provisions hereof, or in connection with determining the duties, obligations or liabilities of the Parties or in ascertaining intent, if any question of intent should arise.

**12.7 Assignment.** Except as set forth in Section 2.3.3, this Agreement and its attendant rights may not be assigned, transferred, subcontracted or otherwise conveyed by either Party without the express written consent of the other Party; provided, however, a Party may assign its rights and obligations under this Agreement to (a) an Affiliate and (b) in the case of Operator, to any member of the Operator Group, in each case, without the prior consent of the other Party and any transition costs associated with this assignment shall be borne by the Operator. Except as provided in the preceding sentence, any assignment without consent shall be void. No assignment by any Party shall relieve such Party (or any guarantor of such Party's obligations hereunder) from any liability hereunder.

**12.8 Duplicate Originals.** This Agreement is executed in duplicate originals, with one original to be retained by Operator and one original to be retained by Owner.

**12.9 No Third Party Beneficiary.** Except as provided in Section 10.2, nothing in this Agreement, express or implied, shall entitle any Person other than the Parties and their respective successors

and permitted assigns to any Claim, remedy or right of any kind under (or pursuant to) this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that only a Party, or its successor or permitted assign, shall have the right to (it being understood and agreed that such Person shall not have the obligation to) enforce the provisions of (or exercise any of right or remedy under) this Agreement on its own behalf or on behalf of any of its related indemnified parties.

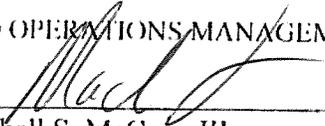
- 12.10 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not materially affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.
- 12.11 Waiver.** No waiver by either Party of the performance of any provision, condition or requirement in this Agreement shall be deemed to be a waiver of, or in any manner release the other Party from performance of any other provision, condition or requirement in this Agreement; and it shall not be deemed to be a waiver of, or in any manner release the other Party from, future performance of the same provision, condition or requirement; and no delay or omission of a Party in exercising any right under this Agreement shall in any manner impair the exercise of any such right or any like right accruing to it thereafter. No waiver shall be effective unless made in writing and signed by the Party to be charged with such waiver.
- 12.12 Exhibits.** In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Exhibit, the terms and conditions of the applicable Exhibit shall govern and control.
- 12.13 Joint Efforts.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and shall not be construed against one Party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution of the Agreement.
- 12.14 Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a Party by facsimile or other electronic transmission shall be deemed an original signature hereto.

*Remainder of page intentionally left blank.*

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the Effective Date.

**OPERATOR:**

DAPL-ETCO OPERATIONS MANAGEMENT, L.L.C

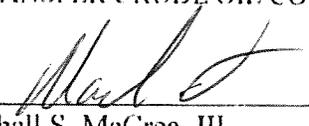
By: 

Name: Marshall S. McCrea, III  
Title: President and Chief Operating Officer

*with  
MCS*

**OWNER:**

ENERGY TRANSFER CRUDE OIL COMPANY, L.L.C

By: 

Name: Marshall S. McCrea, III  
Title: President and Chief Operating Officer

*with  
MCS*