

## **TRANS MOUNTAIN CODE OF CONDUCT**

### **1. PURPOSE AND OBJECTIVES**

#### **1.1 Purpose**

The purpose of this Code of Conduct (“Code”) is to establish guidelines to govern interaction between Trans Mountain, Trans Mountain Personnel, Affiliates and Affiliate Personnel, in relation to the provision of Transportation Services. This Code sets parameters for transactions, information sharing and the sharing of services and resources which are intended to protect Trans Mountain’s Shippers against economic harm that may result from inappropriate behaviour and practices between Trans Mountain and Affiliates.

#### **1.2 Objectives**

The objectives of this Code are:

**1.2.1** to create a set of guidelines to be followed by Trans Mountain Personnel with respect to interactions between them and Affiliate Personnel to ensure no economic harm is suffered by Shippers as a result of such interaction, and in particular these guidelines shall support the following concepts:

- a) Shippers shall not be economically harmed as a result of Affiliates having access to Shippers’ Confidential Information, obtained through their affiliation with Trans Mountain as more specifically contemplated in Section 6 below;
- b) Affiliates shall not receive Transportation Services that are not also available to Shippers on the same terms and conditions; and
- c) fees paid for Shared Services will be determined based on a fair sharing of costs between Trans Mountain and the Affiliate;
- d) fees for services, other than Shared Services, paid by an Affiliate, to Trans Mountain, shall be calculated based on Market Value.

**1.2.2** to allow Trans Mountain and its Shippers to share advantages of economies of scale and scope with Affiliates, provided that such sharing does not offend the objectives set out in this Code.

## **2. GENERAL PROVISIONS**

### **2.1 Compliance**

Trans Mountain is committed to upholding the objectives of this Code. This Code applies to all Trans Mountain Personnel.

### **2.2 Amendments to this Code**

This Code may be reviewed or amended from time to time by Trans Mountain, upon application to the NEB.

### **2.3 Exemptions**

Trans Mountain may apply to the NEB for an exemption with respect to compliance with any provision of this Code. Any such exemption application will specify necessary details, including whether the requested exemption is in respect of a particular transaction, series of transactions, for a specified period of time, or is for a general exemption from a particular provision.

### **2.4 Authority of the NEB**

This Code does not detract from, reduce or modify in any way, the powers of the NEB to deny, vary, approve with conditions, or overturn the terms of any transaction or arrangement between Trans Mountain and one or more Affiliate(s), regardless of whether such transaction or arrangement is otherwise in compliance with this Code. Compliance with this Code does not eliminate the requirement for specific NEB approvals or filings where required by statute, regulation, or by NEB decisions, orders or directions.

## **3. RECORD KEEPING AND SHARING**

### **3.1 Separate Financial Records and Books of Account**

Trans Mountain will maintain separate financial records and books of accounts for Transportation Services, Merchant Lease, other non-rate regulated business and Affiliate business.

### **3.2 Separate Information Services**

All Confidential Information shall be protected from unauthorized use by an Affiliate or any other Person. Access to any of Trans Mountain's Information Services that contain Confidential Information shall be restricted through the use of computer data management and data access protocols. Any known material non-compliance with the access protocols shall be reported in the Compliance Report.

### **3.3 Assets**

The operational plant, physical assets and equipment of Trans Mountain shall be separately identifiable from the operation plant, physical assets and equipment of Affiliates. To the extent any Trans Mountain operational plant, physical assets and equipment are common facilities utilized for both Transportation Service and the Merchant Lease, costs associated with such sharing shall be allocated in accordance with the NEB approved cost allocation methodology for the Merchant Lease.

### **3.4 Shared Services**

Affiliate may provide Shared Services, provided that each of Trans Mountain and Affiliates sharing such Shared Services are allocated their proportionate share of the costs related to such Shared Services. Costs for Shared Services shall be allocated on a Cost Recovery Basis.

### **3.5 Shared Personnel**

An employee may be a Shared Employee provided that the Shared Employee is able to carry out their responsibilities in a manner that preserves the form, spirit and intent of this Code. In particular, an employee:

- a) shall not be a Shared Employee if it could reasonably be considered detrimental to the economic interests of Shippers, and
- b) if a Shared Employee, finds themselves in a position where they will be in contravention of Section 3.5 (a) such Shared Employee shall identify the situation to the President of Trans Mountain and shall excuse themselves from further involvement in the situation giving rise to the contravention.

### **3.6 Shared Infrastructure**

Affiliate may provide Shared Infrastructure, provided that each of Trans Mountain and Affiliates using such Shared Infrastructures are allocated their proportionate share of the costs related to such Shared Infrastructure. Costs for Shared Infrastructure shall be allocated on a Cost Recovery Basis.

## **4. PRICING**

### **4.1 Supplies and Services Provided by Trans Mountain to Affiliates**

Transportation Services shall be provided to Affiliates at rates as approved by the NEB in a Tariff. Fees and costs associated with supplies and services provided to Affiliates other than Transportation Services or Shared Service, shall be at a level

no less than Market Value. Trans Mountain shall document the provision of such supplies and services and record fees and costs charged to Affiliates for the provision of such supplies and services.

#### **4.2 Supplies and Services Provided by Affiliate to Trans Mountain**

Other than Shared Services, Trans Mountain shall procure supplies and services from Affiliates at no greater than Market Value. Trans Mountain shall document supplies and services received from Affiliates and fees and costs paid to Affiliates for the provision of such supplies and services.

#### **4.3 Asset Transfers to Affiliates**

In the event that Material Trans Mountain assets are transferred, leased, sold or otherwise disposed of by Trans Mountain to an Affiliate, Trans Mountain shall notify CAPP not less than 90 days prior to such transfer. In the event that such transfer requires an application to the NEB, Trans Mountain shall notify CAPP not less than 45 days prior to such application. With respect to any such transfer, Trans Mountain shall generally apply NEB “Oil Pipeline Uniform Accounting Regulations” (“OPUAR”), which regulations prescribe the accounting treatment of assets transferred, leased, sold or otherwise disposed of by Trans Mountain. To the extent that Trans Mountain makes application to the NEB to apply accounting regulations other than OPUAR to a transfer, CAPP shall be notified no less than 45 days prior to such application.

#### **4.4 Asset Transfers from Trans Mountain to Affiliate for the Purpose of Shared Infrastructure**

Where efficiencies between Trans Mountain and an Affiliate can be achieved through the use of Shared Infrastructure, individual assets or groups of assets may be transferred in the ordinary course of business between Trans Mountain and Affiliates at net book value or at some other standard acceptable to the NEB.

#### **4.5 Asset Transfers from Affiliate to Trans Mountain**

With respect to a transfer from an Affiliate to Trans Mountain, Trans Mountain shall generally apply NEB OPUAR, which regulations prescribe the accounting treatment of assets transferred, leased, sold or otherwise disposed of by Trans Mountain. To the extent Trans Mountain makes application to the NEB to apply accounting regulations other than OPUAR to a transfer, CAPP shall be notified no less than 45 days prior to such application.

## **5. EQUAL ACCESS AND TREATMENT**

### **5.1 Impartial Tariff and Equal Access**

Trans Mountain will provide Transportation Services impartially and without preference to Affiliates, and in accordance with a tariff approved by the NEB. Trans Mountain shall not make Transportation Services available to an Affiliate that it would not also make available to a Shipper.

## **6. CONFIDENTIALITY**

### **6.1 Use of Confidential Information**

Trans Mountain shall not, without the prior consent of the relevant Shipper, make use of, for the purpose of pursuing non-rate regulated business development activities, any Confidential Information received by Trans Mountain in connection with the provision of Transportation Services.

### **6.2 Disclosure of Confidential Information**

Trans Mountain and Trans Mountain Personnel will not disclose to an Affiliate or Affiliate Personnel, or to any other Person, Confidential Information unless:

- a) Trans Mountain has received prior written consent from the Shipper;
- b) disclosure of the Confidential Information is required by law or by order of any court or administrative tribunal exercising jurisdiction over Trans Mountain;
- c) the confidential or proprietary information is, or becomes, part of the public domain other than through the action of Trans Mountain; or
- d) the employee is a Shared Employee, who requires such Confidential Information to perform services for Trans Mountain, provided that the employee:
  - i. shall not be a Shared Employee if it could reasonably be considered detrimental to the economic interests of Shippers, and
  - ii. if a Shared Employee, finds himself/herself in a position where he/she will be in contravention of Section 3.5 (a) such Shared Employee shall identify the situation to the President of Trans Mountain and shall excuse himself/herself from further involvement in the situation giving rise to the contravention.

Notwithstanding the foregoing, Trans Mountain may disclose Confidential Information to Trans Mountain Canada Inc. officers and Affiliate officers, to allow

such officers to fulfill their responsibilities with respect to corporate governance, policy and strategic direction of and affiliated group of businesses, but only to the extent necessary and not for any other purpose.

## **7. COMPLIANCE**

### **7.1 Communication of the Code**

Trans Mountain will ensure that Trans Mountain Personnel are made aware and acknowledge their obligation to comply with the contents of this Code.

### **7.2 Compliance Officer**

The President of Trans Mountain shall appoint a Compliance Officer to oversee compliance with this Code as more particularly described in Section 7.3. Trans Mountain shall ensure that the Compliance Officer has adequate resources to fulfill his/her responsibilities.

### **7.3 Responsibilities of the Compliance Officer**

The responsibilities of the Compliance Officer shall include:

- a) providing advice and information to Trans Mountain Personnel for the purpose of ensuring compliance with this Code;
- b) overseeing compliance with this Code by Trans Mountain Personnel;
- c) preparation and updating of a Compliance Plan for Trans Mountain as contemplated in Section 7.5 hereof;
- d) performing an annual review of compliance and preparing an annual “Compliance Report” containing the information required in Section 7.6 hereof. The Compliance Officer shall file the Compliance Report with the NEB within 120 days of the fiscal year end of Trans Mountain with respect to the immediately preceding fiscal year, and advise interested parties promptly when the Compliance Report has been filed with the NEB;
- e) receiving and investigating internal and external disputes, complaints and inquiries with respect to the application of, and alleged noncompliance with, this Code;
- f) recommending measures required to address events of noncompliance with this Code; and

- g) maintaining adequate records with respect to all aspects of the Compliance Officer's responsibility.

#### **7.4 Compliance Review**

The Compliance Officer will perform or co-ordinate the performance of compliance reviews as indicated below to ensure the provisions of this Code have been followed:

- a) Trans Mountain senior management will review all affiliate transactions and agreements that have been entered into annually;
- b) senior management of Trans Mountain will require all Trans Mountain Personnel to complete an annual review of this Code and confirmation of compliance;
- c) prepare an annual report in Section 7.6 below; and
- d) all of the records with respect to the foregoing shall be made available to the NEB upon request for audit purposes.

#### **7.5 Compliance Plan**

The Compliance Officer shall prepare and update as required a Compliance Plan that details the measures used to ensure compliance with the provisions of this Code by Trans Mountain Personnel.

#### **7.6 Compliance Report**

A Compliance Report shall be prepared annually, and filed with the NEB, and will include the following information in respect of the period of time covered by the Compliance Report:

- a) a copy of the Compliance Plan and any amendments thereto;
- b) an overall assessment of compliance with this Code by Trans Mountain, and Trans Mountain Personnel;
- c) in the event of any material non-compliance with this Code, a description thereof and an explanation of all steps taken to correct such non-compliance;
- d) subject to the confidentiality provisions of Section 6 hereof, a summary of disputes, complaints and inquiry activity during the year; and

- e) a certificate in the form attached hereto as Schedule “A”, attesting to completeness of the Compliance Report signed by the Compliance Officer and the President of Trans Mountain;
- f) a list of relevant and material transactions with whom Trans Mountain transacted business, including business addresses, a list of the Affiliates’ officers and directors, and a description of Affiliates’ business activities, and
- g) a list of agreements the effect of which was to have a material economic impact on Trans Mountain’s tolls for Transportation Service.

To the extent that any of the foregoing items in this Section 7 result in disclosure of information that would be considered confidential by an Affiliate, such information will be provided on a summarized and confidential basis to the NEB and could be reviewed by CAPP, subject to CAPP executing a confidentiality agreement. Trans Mountain will notify CAPP in writing when such confidential material has been provided to the NEB.

## **8. COMPLAINTS**

### **8.1 Complaints Filing**

A Shipper may file a written complaint with Trans Mountain in circumstances where a breach of this Code is alleged. Such written complaint shall set out the details and nature of the complaint. Upon receipt of such a complaint, Trans Mountain shall meet with the complainant in an attempt to resolve the complaint. If a resolution satisfactory to both parties cannot be reached within 30 days of receipt the dispute resolution provisions of Section 9 shall apply.

## **9. DISPUTE RESOLUTION**

### **9.1 Good Faith**

It is agreed that any requirement of or obligation set out in this Code to concur with or agree on the application of any matter identified herein as requiring such concurrence or agreement shall be construed as an obligation to act in good faith to make all reasonable efforts to achieve resolution of the matter at issue.

### **9.2 Dispute Resolution Process**

Prior to referring a Dispute to the NEB, a Shipper or Trans Mountain, as the case may be, shall initiate a dispute resolution process by giving written notice to the other party advising of the initiation of the dispute resolution process and outlining, in reasonable detail, the nature of the Dispute and the facts relied upon to support



its position. Within seven (7) days following the delivery of the notice, each Person to the Dispute shall appoint a representative or representatives to attempt to resolve the Dispute. The representatives shall be individuals who are technically qualified to appreciate and assess the Dispute and who have authority to negotiate a resolution to the Dispute. If the dispute resolution process has not resulted in a resolution to the Dispute within 30 days of the delivery of the notice, either party may refer the Dispute to the NEB and such party may request an expedited hearing by the NEB.

## **10. NON- COMPLIANCE WITH THE CODE**

### **10.1 Non- Compliance**

Any non-compliance with this Code by any Trans Mountain Personnel with respect to the interactions of an Affiliate with Trans Mountain will be considered to be non-compliant by Trans Mountain.

### **10.2 Consequences for Non-Compliance with Code**

Non-Compliance with this Code by Trans Mountain shall subject Trans Mountain, as the case may be, to the full range of powers and authorities of the NEB. Non-Compliance with this Code by Trans Mountain Personnel, may subject such individual to disciplinary action by Trans Mountain.

## **11. DEFINITIONS**

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Trans Mountain Petroleum Tariff – Rules and Regulations.

**“Affiliate Personnel”** means any employee, contractor or other Person providing services to an Affiliate.

**“CAPP”** means the Canadian Association of Petroleum Producers.

**“Confidential Information”** means any information relating to a specific Shipper or to a potential Shipper of Trans Mountain, including information related to operations, finances or strategy, which information Trans Mountain has obtained or compiled in connection with the provision or Transportation Services to such Shipper or potential Shipper, and which information is not otherwise available to the public.

**“Cost Recovery Basis”** means a proportionate share, allocated based on methodology accepted/approved by the NEB, of the fully burdened costs resulting from:

- i. utilization of Trans Mountain Personnel or Affiliate Personnel, which shall include all costs associated with salary, benefits, vacation, materials, disbursements and applicable overheads;
- ii. the use by either Trans Mountain or an Affiliate, as the case may be, of Shared Infrastructure, including an allocated share of capital and operating costs appropriate for the portion of Shared Infrastructure utilized; and
- iii. the use by either Trans Mountain or an Affiliate, as the case may be, of Shared Services.

“**Dispute**” means any matter in respect of which the Parties fail to reach agreement or concurrence as contemplated in this Code.

“**Information Services**” means any computer systems, computer services, databases, electronic storage services or electronic communication media utilized by Trans Mountain relating to Trans Mountain Shippers.

“**Market Value**” means a value that reflects a price that would be determined between two arms length parties in a competitive market at the time of contracting for such service or product. Methods of Market Value determination may include but are not limited to competitive tendering, competitive quotes, bench-marking studies, catalogue pricing, replacement cost comparison, or recent market transactions. In the event that Market Value is not a practicable method of valuation for the particular service or product, the value may be determined on a Cost Recovery Basis.

“**Material**” means an asset that is of market value greater than \$500,000.00 or the loss of which will have a significant adverse affect on the ability of Trans Mountain to provide the current or any reasonably foreseeable transportation services to Shippers;

“**Merchant Lease**” means the lease of tanks, connections and common facilities owned by Trans Mountain and located within its Edmonton Terminal to a third party.

“**NEB**” means the National Energy Board or any successor regulatory body or agency.

“**Shared Employee**” means an individual that by the nature of the work they perform could be classified as either Affiliate Personnel or as Trans Mountain Personnel.

“**Shared Infrastructure**” means an asset that is used by both Trans Mountain and an Affiliate which is designated as shared infrastructure and charged on a Cost Recovery Basis. Shared Infrastructure includes assets which support the provision of Information Services and the control centre. Shared Infrastructure



does not include operational plant and equipment that is used directly by Trans Mountain for the provision of Transportation Services, Merchant Lease or other non-rate regulated business.

“**Shared Service**” means a service that is provided on a Cost Recovery Basis to both Trans Mountain and an Affiliate and which is designated as shared.

“**Shipper**” means a Person that Tenders Petroleum pursuant to a Trans Mountain Tariff.

“**Trans Mountain**” means collectively Trans Mountain Pipeline ULC and Trans Mountain Pipeline L.P. Trans Mountain owns assets which are used for the purpose of Transportation Services, Merchant Lease and other non-rate regulated business.

“**Trans Mountain Personnel**” means any employee, contractor or other Person providing services to Trans Mountain.

“**Transportation Services**” means NEB rate regulated pipeline transportation services provided by Trans Mountain to Shippers and governed by an NEB approved Tariff.

**Schedule A****President [Compliance Officer] Certificate**

To: The National Energy Board

I, \_\_\_\_\_ of the City of \_\_\_\_\_, in the Province of Alberta, acting in my position as an officer [Compliance Officer] of Trans Mountain Pipeline L.P. (Trans Mountain) and not in my personal capacity, to the best of my knowledge do hereby certify as follows:

1. My position with Trans Mountain is \_\_\_\_\_, and as such I have personal knowledge of, or have conducted due inquiry of individuals who have personal knowledge of, the facts and matters herein stated.
2. Capitalized terms used herein (which are not otherwise defined herein) shall have the meanings ascribed thereto in the Trans Mountain Code of Conduct (the Code).
3. I have read the Code, the Compliance Plan of Trans Mountain dated \_\_\_\_\_ and the Compliance Report of Trans Mountain for the Reporting Period.
4. The form and contents of the Compliance Report comply with the requirements of the Code and the matters reported therein are fully and accurately described.
5. I am not aware of any material non-compliance with the provisions of the Code by any director, officer, employee, consultant, contractor or agent of Trans Mountain, as applicable, or by any Affiliate of Trans Mountain (including any director, officer, employee, consultant, contractor or agent of the Affiliate) with respect to the any interaction between an Affiliate and Trans Mountain that is not fully and accurately described in the Compliance Report.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_