

## **PRO FORMA MEMORANDUM OF DEDICATION AGREEMENT**

This Memorandum of Dedication and Commitment Agreement (“**Memorandum**”) is entered into this \_\_ day of \_\_\_\_\_, 20\_\_ (“**Effective Date**”) by \_\_\_\_\_ (“**Producer**”) and Oryx Southern Delaware Oil Gathering and Transport LLC (“**Oryx**”). Oryx and Producer are sometimes referred to herein individually as a “**Party**” or collectively as the “**Parties.**”

### **RECITALS**

**WHEREAS**, Oryx owns and operates a gathering and transportation pipeline system capable of delivering Crude Petroleum from the Origin Points described in this Memorandum to the Destination Points described in this Memorandum (“**Pipeline**”);

**WHEREAS**, Producer owns and controls, and has the right to deliver, Crude Petroleum produced from the AMI (as hereinafter defined) for gathering on such Pipeline and, subject to the terms hereof, agrees to commit and deliver such Crude Petroleum to Oryx for transportation on the Pipeline; and

**WHEREAS**, the Parties desire to file this Memorandum of record in the real property records of \_\_\_\_\_ County, Texas to give notice of the existence of this Memorandum and the dedication being made hereunder.

**IN CONSIDERATION OF** the mutual agreements herein and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

### **Article I** **Definitions**

- 1.1 For purposes of this Memorandum, the following capitalized terms shall have the meanings ascribed to them in this Article I:
- (a) “**AMI**” means the area of mutual interest, as described in Schedule 2 of this Memorandum.
  - (b) “**Applicable Law**” means all applicable: laws, statutes, directives, codes, ordinances, rules (including the rules of any securities exchange), regulations and municipal by-laws; and judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, consent orders, consent decrees and policies of any Governmental Authority.
  - (c) “**Crude Petroleum**” means liquid hydrocarbons that meet the quality specifications set forth in the Tariff.
  - (d) “**Dedicated Production**” has the meaning set forth in Section 2.1.

- (e) “**Destination Point**” means the delivery point(s) of the Pipeline where Crude Petroleum is delivered to Producer, as such points are specified in the Tariff.
- (f) “**Effective Date**” has the meaning set forth in the Preamble.
- (g) “**Governmental Authority**” means any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal or judicial or arbitral body (whether national, federal, state or local or, in the case of an arbitral body, whether governmental, public or private), having jurisdiction over any Party.
- (h) “**Memorandum**” has the meaning set forth in the Preamble.
- (i) “**Origin Point**” means the receipt/inception point(s) where Crude Petroleum is received into the Pipeline, as such points are specified in the Tariff.
- (j) “**Oryx**” has the meaning set forth in the Preamble.
- (k) “**Party**” or “**Parties**” has the meaning set forth in the Preamble.
- (l) “**Person**” means any individual, corporation, limited liability company, partnership, trust or other entity, or any Governmental Authority.
- (m) “**Pipeline**” has the meaning set forth in the Recitals.
- (n) “**Producer**” has the meaning set forth in the Preamble.
- (o) “**Shipper Leases**” means those certain oil and gas leases where Producer owns or controls the right to sever and produce Crude Petroleum therefrom, as such leases are specified in Schedule 2 attached hereto.
- (p) “**Tariff**” means Oryx’s then-current tariff that sets forth the rules, regulations and rates for transportation services on the Pipeline, as such tariff may be reissued, amended, supplemented or superseded by Oryx from time to time. A copy of the then-current Tariff is publicly accessible via Oryx’s website.
- (q) “**Term**” has the meaning set forth in Section 3.1.

1.2 The headings and titles in this Memorandum are for guidance and convenience of reference only and do not limit or otherwise affect or interpret the provisions of this Memorandum. Each reference made in this Memorandum to a section or article is to the applicable section or article in this Memorandum unless the context clearly indicates otherwise.

- 1.3 The words “this Memorandum”, “herein”, “hereby”, “hereunder”, “hereof”, and words of similar import refer to this Memorandum as a whole and not to any particular part of this Memorandum, unless the context clearly indicates otherwise.
- 1.4 Each reference made in this Memorandum to a schedule or exhibit is to the applicable schedule or exhibit attached hereto, unless the context clearly indicates otherwise. Each schedule and exhibit attached hereto is made a part hereof and as may be amended from time to time during the Term hereof. If there is any conflict between the body of this Memorandum and any schedule or exhibit, the body of this Memorandum will control.
- 1.5 As used in this Memorandum, (a) any pronoun in masculine, feminine or neuter gender shall be construed to include all other genders, (b) the term “including” shall be construed to be expansive rather than limiting in nature and to mean “including without limitation”, except as expressly otherwise provided, (c) each term that is defined in this Memorandum in the singular shall include the plural of such term, and each term that is defined in this Memorandum in the plural shall include the singular of such term, and (d) the words, phrases, and terms used herein shall have their ordinary meaning unless it is clearly indicated otherwise in this Memorandum or unless such word, phrase or term is defined in this Memorandum.
- 1.6 Both Parties participated in the negotiation of this Memorandum. If any ambiguity is contained herein, no weight shall be given in favor of or against a Party in resolving that ambiguity on account of that Party’s drafting of this Memorandum.

## **Article II** **Dedication**

- 2.1 Subject to the provisions of Section 2.3, Producer does hereby commit to deliver and dedicate to Oryx an exclusive commitment of all of the Crude Petroleum attributable to Producer’s working interest that is produced from the Shipper Leases located within the AMI (“**Dedicated Production**”) for transportation on the Pipeline. Producer’s dedication and commitment is a present transfer and covenant running with the land. Producer shall not deliver any of the Dedicated Production anywhere except to the Pipeline unless otherwise expressly permitted in this Memorandum.
- 2.2 Subject to the provisions of Section 2.3, the total amount of the acreage being dedicated to the Pipeline pursuant to this Memorandum is set forth on Schedule 1 attached hereto.
- 2.3 Notwithstanding Section 2.1 above and Schedule 4 attached hereto, the following shall be excluded from Producer’s Dedicated Production:
- (a) Crude Petroleum from Producer’s Dedicated Production that is to be used for fuel for development or operation of the Shipper Leases; delivery to Producer’s lessors entitled to a portion of Producer’s Crude Petroleum; or for fuel for operation of Producer’s production facilities required to deliver Producer’s Crude Petroleum to the Pipeline;

- (b) Any Crude Petroleum from Producer's Dedicated Production that is not produced to tank batteries serviced by the Origin Points listed in Schedule 3 to this Memorandum.
- (c) Producer shall have the right to pool or unitize all or part of the Shipper Leases with other leases, but the Crude Petroleum attributable to Shipper's operated interest in the pooled unit will remain subject to this Memorandum.
- (d) Unless otherwise agreed to between the Parties, as such agreement is specified in Schedule 4 attached hereto, any Crude Petroleum attributable to a Shipper Lease acquired by Producer before or after the Effective Date and that is subject to a prior dedication when acquired by Producer; provided, that Producer shall provide Oryx with evidence of such prior dedication from any such acquisition. Notwithstanding the foregoing, to the extent that Crude Petroleum from any Shipper Lease is subject to a prior dedication, and such dedication expires during the Term of this Memorandum, or (ii) Producer terminates, at Producer's election in Producer's sole discretion, any such prior dedication during the Term of this Memorandum, Producer may elect as of the effective date of such termination or expiration as provided in (i) or (ii) of this sentence, or at any time thereafter, that all such Crude Petroleum shall constitute Dedicated Production from and after such written election delivered to Oryx.

2.4 Producer represents and warrants that:

- (a) Producer is in the business of drilling and producing oil and gas wells, is the owner of working interests in oil and gas leases that cover lands located within the Shipper Leases, as described in Schedule 2 hereto, and has the right to dedicate Crude Petroleum produced to tank batteries serviced by the Origin Points listed in Schedule 3 for transportation on the Pipeline pursuant to the terms of this Memorandum.
- (b) Producer has the right, power and authority to make the dedications and commitments and associated covenants herein.
- (c) Producer owns and/or controls all Dedicated Production delivered to the Pipeline, and, on the date delivered, the Dedicated Production are not subject to any other gathering, transportation, fractionation, exchange, purchase, sale or other agreement or commitment that conflicts with this Memorandum, subject to any prior dedication described herein.

- 2.5 Producer covenants and agrees to:
- (a) Take all actions to enable Producer to take delivery and control of the Dedicated Production recovered within the AMI and to deliver (or cause to be delivered) the same to Oryx for transportation on the Pipeline under this Memorandum.
  - (b) Subject to Section 2.3 and Schedule 4, not deliver any of the Dedicated Production to any other party or Crude Petroleum transportation system, the delivery to which would otherwise prevent the Dedicated Production from being transported on the Pipeline in accordance with the terms of this Memorandum.
  - (c) Take such further action as may be reasonably requested from time-to-time by Oryx in furtherance of the dedications and commitments herein.
- 2.6 Producer covenants and agrees that (a) no subsequent transfer of any interest in the Dedicated Production shall be made without such interest continuing to be made subject to the dedication obligations in this Memorandum, and (b) prior to the effectiveness of any such transfer, Producer shall provide to Oryx the transferee's acknowledgement of the dedication obligations of this Memorandum.
- 2.7 Notwithstanding the foregoing, if, at any time during the Term of this Memorandum, Oryx suspends, curtails, is unable or fails to take receipt of any volume of Producer's Dedicated Production for more than twenty-four (24) consecutive hours for any reason, the volume of Producer's Dedicated Production upstream of the affected Pipeline facilities shall be temporarily released from dedication under this Memorandum. Producer may, at its sole option, deliver all or any portion of Producer's Dedicated Production temporarily released hereunder to an alternative market, purchaser, pipeline or transporter. This temporary release shall cease, the affected volume of Producer's Dedicated Production shall again become dedicated under this Memorandum, and Producer shall resume delivery of the affected volumes of Producer's Dedicated Production to Oryx at the end of the next calendar month following the month of receipt of Oryx's written notice to Producer that the cause of Oryx's inability to or failure to receive the affected volumes of Producer's Dedicated Production has been alleviated and that Oryx is ready, willing and able to receive the affected volumes of Producer's Dedicated Production. For clarity, if Oryx provides written notice to Producer pursuant to this Section 2.7 on February 15, for example, Producer's temporary release would end on March 31.
- 2.8 Oryx shall, at its sole expense, provide, design, construct, own, install, commission, operate, maintain and repair the Pipeline. Oryx is responsible, at its sole cost, for the acquisition of rights of way, crossing permits, use agreements, licenses, access agreements, leases, fee parcels, and other rights in the land necessary to construct, install, own, operate, and connect Pipeline to Origin Points listed in Schedule III hereunder; provided, however, that nothing in this Section 2.8 shall prohibit Oryx from seeking to recover any such expenses in its gathering and/or transportation rates in its Tariff.

**Article III**  
**Term**

- 3.1 The term of this Memorandum shall not be less than three (3) months, and shall not extend for more than twelve (12) months. Subject to the other provisions hereof, this Memorandum shall commence as of the Effective Date and shall continue and remain in full force and effect for \_\_\_ (\_\_) months following the first delivery of oil by Producer into Pipeline (“**Term**”).
- 3.2 The termination of this Memorandum in accordance with this Article III shall not impair, impede or otherwise adversely affect any right, claim or cause of action that a Party may have arising prior to or as a result of that termination.

**Article IV**  
**Rates and Tariff**

- 4.1 The transportation of Producer’s Dedicated Production is subject to the rules and regulations published in the Tariff, including the lien provisions set forth therein, which shall apply to all volumes tendered for transportation on the Pipeline by Producer. By executing this Memorandum, Shipper agrees to comply with all terms and conditions set forth in the Tariff. In the event of an express conflict between the terms of this Memorandum and the Tariff, the terms of the Tariff shall govern and control.
- 4.2 The rates payable for the transportation of Producer’s Dedicated Production shall be the rates applicable to Uncommitted Shippers (as such term is defined in the Tariff) that have executed a short-term dedication agreement with Oryx, as such rates are set forth in Oryx’s then-current Tariff. For the avoidance of doubt, such rate as currently defined in the Tariff for Producer’s dedication tier is specified in Schedule \_\_\_, Table \_\_\_. Upon completion of the interconnect at Enterprise’s oil terminal in Midland, Texas, a new rate shall be filed for such Destination Points and Producer’s dedication tier as specified in Schedule \_\_\_, Table \_\_\_, as such rate may be adjusted pursuant to Applicable Law. By executing this Memorandum, Producer agrees to pay the applicable Uncommitted Shipper rate for the transportation of Producer’s Dedicated Production shipped on the Pipeline.

**Article V**  
**Miscellaneous**

- 5.1 This Memorandum is in all respects subject to all Applicable Law. In the event that any term of this Memorandum or any attachment, schedule or exhibit hereto conflicts with Applicable Law, the latter shall prevail.
- 5.2 THIS MEMORANDUM SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS THAT, IF APPLIED, MIGHT REQUIRE THE APPLICATION OF LAWS OF ANOTHER JURISDICTION. ANY

DISPUTE UNDER THIS MEMORANDUM MAY BE BROUGHT BEFORE THE FEDERAL OR STATE COURTS OF COMPETENT JURISDICTION IN HARRIS COUNTY, TEXAS, AND EACH PARTY WAIVES ALL RIGHTS TO CHALLENGE VENUE AND THE CONVENIENCE OF THE FORUM FOR ANY SUIT BROUGHT IN SUCH COUNTY.

- 5.3 This Memorandum expresses the entire agreement of the Parties with respect to its subject matter, and all prior or contemporaneous agreements or negotiations with respect to the subject matter hereof are hereby superseded. This Memorandum may be modified or amended only by a writing executed by the Parties.
- 5.4 This Memorandum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be considered one and the same instrument. Faxes, emails and other electronic transmissions of signed copies of this Memorandum shall have the same force and effect as a signed original contract.
- 5.5 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY SHALL BE LIABLE OR RESPONSIBLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, OR FOR LOSS OF PROFITS OR REVENUES INCURRED BY SUCH PARTY OR ITS AFFILIATED ENTITIES THAT ARISE OUT OF OR RELATE TO THIS MEMORANDUM, REGARDLESS OF WHETHER SUCH CLAIM ARISES UNDER OR RESULTS FROM CONTRACT, TORT OR STRICT LIABILITY.
- 5.6 If any provision of this Memorandum or the application of any such provision shall be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof or any subsequent application of such provision held invalid, illegal or unenforceable. The Parties hereto intend that in lieu of any such invalid, illegal or unenforceable provision, there shall be added, as part of this Memorandum, a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and may be valid, legal and enforceable.
- 5.7 To give public notice of the existence of this Memorandum and the dedication and commitment hereunder, Oryx may file this Memorandum in local land records from time to time, in Oryx's sole discretion, and Producer will cooperate with Oryx in all reasonable respects in filing them. Within thirty (30) days after termination of the Term, Oryx will file a release of the dedication and commitment hereunder in the land records of each county in which Oryx files this Memorandum and shall furnish Producer a copy of such release.
- 5.8 The facsimile transmission of any signed original document, and transmission or retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party, the Parties hereto will confirm facsimile transmitted signatures by signing an original document for delivery between them.

5.9 Any notice, request, claim, demand, waiver, consent, approval or other communication that is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally to the address set forth below (to the attention of the person identified below) or sent by facsimile, recognized courier or registered or certified mail, postage prepaid, as follows:

If to Producer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
Email: \_\_\_\_\_

If to Oryx:

Oryx Southern Delaware Oil Gathering and Transport LLC  
4000 N. Big Spring, Suite 400  
Midland, Texas 79705  
Attn: \_\_\_\_\_  
Facsimile: (432) 253-7727  
brett@oryxmidstream.com

or to such other address or attention as the addressee may have specified in a notice duly given to the other Party as provided herein. Such notice, request, claim, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered if by personal delivery; if by courier, upon receipt; if mailed, three (3) Business Days after the date so mailed; if by email, upon acknowledgment of receipt by the recipient; or if by facsimile, upon telephone or facsimile confirmation of receipt.



**THE DULY AUTHORIZED REPRESENTATIVES** of the Parties have executed this Memorandum on the date shown with their respective signatures, effective for all purposes as of the date first written above.

**Oryx Southern Delaware Oil Gathering and Transport LLC**

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

\_\_\_\_\_

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

## **Schedule 1**

### **Initial Term and Acreage Dedication**

Producer's Term Election: \_\_\_\_\_ (must be between 3 – 12 months)

Amount of Producer's acreage dedication: \_\_\_\_\_ acres

**Schedule 2**

**AMI**

The following townships and ranges located within Reeves County, Texas:

<b>Block</b>	<b>Section(s)</b>	<b>Survey</b>	<b>County</b>

**Schedule 3**  
**Origin Point List**

<b>Tank Battery Name</b>	<b>Location</b>	<b>County/State</b>

**Schedule 4**  
**Prior Dedication Rights**

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**Schedule 5**

**Producer's Uncommitted Rates**

TABLE 1  
RATES APPLICABLE TO PRODUCER FOR PHASE I<sup>1</sup>

Rates in Dollars per Barrel

<b>Tier</b>	<b>Origin</b>	<b>Destination</b>	<b>Acreage Dedication (# Acres)</b>	<b>Uncommitted Rate</b>

**Notes Applicable to Table 1**

- 1.

TABLE 2  
RATES APPLICABLE TO SHIPPER FOR PHASE II<sup>2</sup>

Rates in Dollars per Barrel

<b>Tier</b>	<b>Origin</b>	<b>Destination</b>	<b>Acreage Dedication (# Acres)</b>	<b>Uncommitted Rate</b>

**Notes Applicable to Table 2**

- 2.

### Acknowledgements

STATE OF TEXAS §  
 COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Oryx Southern Delaware Oil Gathering and Transport LLC, a Delaware limited liability company, on behalf of such entity.

\_\_\_\_\_  
 Notary Public in and for Texas

\_\_\_\_\_  
 Printed or Typed Name of Notary

STATE OF \_\_\_\_\_ §  
 COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
 Notary Public in and for \_\_\_\_\_

\_\_\_\_\_  
 Printed or Typed Name of Notary