

# MIDSTREAM CONTRACTS

## 1. Opening Remarks

Introduction to the Midstream, Midstream business objectives generally, Interrelationship between midstream contracts and business objectives

As probably everyone here knows, there are three distinct segments in the oil and gas industry: Upstream (Where products are produced), Midstream (Where products are extracted, processed, stored, transported and distributed) and Downstream where products are delivered. Here we are concerned with the Midstream segment. Midstream is a massive segment of the oil and gas industry. Sometimes, in the case of gas, the midstream is defined as a segment running from the producer to where it enters into a regulated segment of that industry. That destination could also be either interstate or intrastate pipelines. There are more than a million miles of pipelines, numerous processing plants, compressors and underground storages. Furthermore, since the network stretches across the entire nation, it faces more scrutiny; is more criticized; and must cope with local ordinances in additions to the federal laws. Operators of this segment must deal with numerous matters such as right of ways, easements, elaborate due diligences, environmental issues, dealing with upstream and downstream entities and legal issues to mention a few. AND every one of these issues involves some sort of CONTRACT.

## 2. Basics of Contract Drafting

### Objectives of contract, Elements of contract formation, Types of agreements

A contract may be defined in many different ways, but usually all encompass the fact that two entities agree, creating an enforceable obligation to do, or to be barred from doing, certain particular things.

In reality a contract has, in general, three objectives:

Parties remember what terms and conditions they agreed upon.

If one or both signatories are not around, their respective successors have legal reason to follow through with terms and conditions of the said contract.

What happens if one party breaches the contract?

Many people think that in order to have a contract, it has to be in writing (under seal). Well that is not exactly true. **In order to have a contract there should be an offer and an acceptance and consideration.** In another words, there should be a meeting of the minds. As for consideration, if one party's commitment does not actually require the said party to some performance or forbearance, it is an illusory promise, and there is no enforceable contract. Further, a contract could be oral as well unless required by law to be in writing, such as a real estate transaction. But, regardless of whether a contract is oral or in writing, either one can be EXPRESS or IMPLIED. [Implied by fact and implied by law. EXAMPLE

Other types of contracts:

Executed and Executory Contracts

Bilateral and Unilateral Contracts

Unconscionable Contracts

Aleatory Contract

Void and voidable

Adhesion Contracts

Discharge of Contract

Joint and several contracts

Furthermore, there are other conditions that must exist before a contract is recognized by law. For example, both parties must be of age, sanity, sound, lawful subject matter, consideration, Statute of Fraud, undue influence, duress, fraud, misrepresentation without fraud, etc. Therefore, a contract could be invalidated

And finally the quasi contract and quantum meruit: These are both in equity not in law.

Quasi Contract: Is a contract ordered by the court not between the parties and it is intended to prevent unjust enrichment.

Quantum meruit: In simple terms mean what one deserves for what he has done.

3. **Applicable law and consequences, Risks: Elements and allocation, Non-compete terms, Confidentiality (non-disclosure), Non-solicitation, Indemnifications, Breach, Remedies, Dispute resolution/law and equity, Damages, Limitations on liability and Enforceability.**

#### **A. Applicable law:**

This is another important issue that must be carefully addressed. Although contract law, supposedly, is somewhat uniform, but states frequently have treated different clause differently. This is especially true in equitable issues. Furthermore, when we write a contract, we have to have one eye on the fact that the parties may end up in court. Therefore, it is very important to choose jurisdiction AND venue. One may argue that jurisdiction and venue may be obvious based on where the contract was signed or where the breaching party is located etc. But, I would **rather** clearly identify them in the text of contract.

#### **B. Risk:**

There are several types of risk that must be identified in any transaction and addressed in the contract, if possible:

1. Strategic risks:
  - a. Economic, political, regulatory, etc.
2. Operational risk: i.e.
  - a. Financial, physical
  - b. Competition
  - c. Fluctuation of profit margin in gas gathering and processing:

This by itself is one of the biggest risks for the midstream processor due to fluctuation of processing margin. Fortunately, much of such risk can be somewhat managed

through careful contract provisions such as: Fee based, percent of proceeds, keep-whole, fixed recovery POP (percentage of profit), etc.

### **Defenses against risk or Risk Allocation and Protection Provisions:**

In essence many of the provisions of any contract may be considered as Risk Allocation and Protection Provisions. However, there are some specific provisions that should be clearly addressed.

1. Insurance
2. Earn-outs: This is a provision that commits the purchaser to pay certain extra money if the business meets its projection. This is not commonly used because parties always have difficulties in settling the dollar amount and or duration.
3. Indemnification (address later).
4. Price adjustment.
5. Establishing Escrow account and hold back.
6. Special contract:
  - a. Fee based: Producer pays based on the volume of the gas. Processor may make more money for side services such as gathering system, field compression, etc. This is price independent.
  - b. Percentage of Proceeds (POP): In this case, processor and producer share the proceeds retained by the producer from the sale of the products.
  - c. Wellhead purchase contract: Producer buys the entire BTU produced at the wellhead. The profit of the processor would be the difference between the market price of the products and processing cost.
  - d. Fixed efficiency contract: Here the processor agrees to provide a certain percentage of heavier product from the gas. Producer's profit comes from higher efficiency of fraction of liquid and is highly dependent on higher price margin.
  - e. Keep Whole contract: Processor buys the entire BTU, takes all liquid out and returns the same BTU back to the producer.

### **C. Non-Compete (“NC”) terms:**

In many circumstances when we enter into a contract we don't want the other side to turn around and become our competitor, as soon as the present contract is completed. The NC is sometimes written as a standalone contract and sometimes as a clause inside the comprehensive contract.

Ordinarily, it is written for either an “employment contract” or a “business contract.” Regardless of the objectives, NC must be clear, concise, reasonable and must have teeth. EXAMPLE (handout)

#### **D. Confidentiality (non-disclosure):**

These two terms are usually used by many attorneys interchangeably even though they have subtle differences. In Non-disclosure, the receiver of the information shall be under obligation to keep the received information private, where the disseminator of the information has the right to make such information public. In confidentiality, generally speaking, the information must remain confidential by all parties. EXAMPLE (handout)

#### **E. Non-solicitation:**

Ordinarily a Non-solicitation provision is used in two cases: Non-solicitation of customer/client or Non-solicitation of employee. In this provision, once again, we must be fair and reasonable; otherwise, it will not stand up in court. EXAMPLE (handout)

#### **F. Indemnifications:**

Indemnity may be defined as holding someone harmless against legal responsibility for one's actions. In general, Indemnity may be divided in two types: Express: A contractual indemnity and Implied: non-contractual or in equity. I do not recommend relying on implied indemnity.

Simply we need to make sure that the party who promises to indemnify, Indemnitor, to pay for the liability of the promisee, Indemnitee. This should also include a promise to defend the Indemnitee in a claim or lawsuit.

Indemnity is an extremely important provision of any contract and must be carefully drafted. However, if it is going to be a part of a broader contract, then it must be a clear and explicit provision. It has to be fair, balanced, not over reaching. Furthermore, the other side of the contract may ask for a mutual provision. It is also important to find out where a given State stands in re-enforceability and extent of the provision.

A few things to remember: Give timely notice of the claim and or law suit against you to Indemnitor. Timely inform your insurance company. I would always put this provision in bold font. Finally if this provision is one sided, you need to have a consideration for it. HANDOUT

#### **G. Breach:**

Usually, a breach happens when one party to the contract fails to meet one or more of its commitments made in the contract. Needless to say, first there should be a valid contract. Furthermore, breach has to be a “material” to justify abandonment of the contract and to have any legal consequence.

## Damages and Remedies:

In general there are two types of remedies available for breach of contract: Legal and Equitable.

1. **Legal damages:** These are the damages that, at law, if the claim of breach of contract is proved, may be granted by the court: **Compensatory and Punitive Damages.**
  - i. **Compensatory damages** (sometimes called “actual damages”) compensate the losses incurred due to the breach of contract by the non-breaching party. The amount awarded is intended to make the non-breaching party whole again. **Compensatory damages** are divided into two: **General Damages and special Damages.**

**General Damages**, most common type,: It pays for the loss directly incurred by the breach of contract. **EXAMPLE:** Midstream Processor places an order to a pipe supplier for some 14 inch pipe of a particular type. Once delivered, it turns out to be the wrong type. The supplier refuses to pick up the wrong pipe and replace it with the right order. Processor wins in court for cost of removal, any advance payment and price of the right type of pipe.

**Special damages (consequential damages):** losses incurred due to the breach of contract because of circumstances that are not usually predictable. **EXAMPLE.** In the above example, if the Processor ends up paying a certain amount of money to the third party due to delay of the project. There is an important issue that I need to bring up here and that is called duty to mitigate by non-breaching party. **EXAMPLE:** In the case at hand, Processor, should stop the delivery as soon as it notices the first shipment of the wrong pipe.

- ii. **Punitive or Exemplary Damages:** Basically it is to punish the wrong doers for disregard for the law and/or willful, malicious or fraudulent act. However, these damages are usually not granted in contract cases.

2. **Equitable Damages:** These are the damages that, in equity, if the claim of breach of contract is proved, may be granted by the court: **Rescission and Restitution.**

- i. Rescission: Material breach could give rise to unilateral rescission. Ordinarily no notice is required to rescind a contract..

- ii. Restitution:

- iii. Sometimes the contract is not clear as to certain terms. In such situations, UCC steps in and provides guide lines:

UCC §1-106: Remedies to be liberally administered so as to put Promisee in position he would be in had the contract been performed (General Expectancy)

UCC §2-712: Cost of substitution to Promisee minus Contract Price ("Cover")

UCC §2-713: Market Price minus Contract Price, plus incidental damages (2-715) UCC

§2-717: On notice to Promisor, Promisee may deduct damages caused by breach from any part of the price still due under the same contract

## **H. Dispute resolution/ law and equity**

Once a material breach incurred, first the non-breaching party must be able to identify specific damage(s). Then, ordinarily parties try to resolve the issues between them. Assuming a friendly resolution could be worked out, in that there are two alternatives. One is through Alternative Dispute Resolution (Mediation and Arbitration) and the other is through litigation. These two alternatives should be clearly spelled out, in detail, in the contract. EXAMPLE Handout

## **I. Limitation on liability & enforceability**

Limitation on Liability (“LOL”) and how to enforce the liability is an important provision that if not properly worded could lead to major financial issues. Courts usually enforce the clause if it is clearly worded, constructed fairly and reasonably and parties were in similar bargaining positions. The courts may also consider LOL provision and see whether the risks have been fairly allocated. It is advisable that the LOL provision includes a certain reasonable dollar value limit. If you decide to equate that value to the limit of your liability insurance coverage make sure that is the limit of coverage at the time of settlement. American Institute of Architects or Engineers Joint Contract Documents Committee has good LOL sample clauses.

**Reserve issues, pricing determination, shipping issues, operational considerations, and boilerplate**

### **A. Reserve issues:**

Frequently, when a company plans to develop a field (upstream), the delivery of its product to the end user (downstream) is a major consideration. Very few, if any, such companies have the capacity or desire to get involved with midstream operation and therefore they approach a midstream company for help. Obviously for the midstream company, it is a matter of profit and loss calculation. One of the major considerations for this calculation is how long this project is going to be in the business vis-à-vie, how much recoverable reserve is there. I highly recommend that you retain a qualified petroleum engineer to go over the Upstream Company’s reserve calculation and production plan so that you have a reasonable idea about the life of the project and the volume of the product for your profit loss calculation. Furthermore, the study of the quality of the reserve will help the processor determine what kind of contract is more advisable.

## **B. Pricing determination:**

In order to have a better understanding of how to determine the prices we must first address the issues that ordinarily face a midstream processor:

### **a. Physical and Geographical Issues**

One of the main elements that must be considered when the midstream processor is planning to bid for a gas contract is calculates their cost associated with gathering, processing, and transporting of products for the expected volume of the produced gas in advance of negotiations with the gas producer. For example, how is the terrain for setting the gathering line, how many compressors and how many processing plants are needed? Etc.

### **b. Fluctuation in Commodity Price**

Midstream processing used to be fairly simple and very profitable. When the price of gas was fairly low (around 1.7 \$/mmbtu) this in turn meant that the fuel costs required to gather and process the gas were low. But since the gas cost has gone as high as 12 \$/mmbtu and above, it lowers the profit margin considerably. It is true that there has been increase in NGL price as well, but somehow their trend does not necessarily identical and the processor must continually watch the margin. Therefore, the commodity price plays a much larger role in price determination.

### **c. Contractual issues**

In the Reference part of the Risk Section we discussed a variety of contracts available to a midstream processor in order to address and help it to achieve a better price control.

### **d. Nomination**

Processors must arrange for their products (processed Gas and NGL) to be delivered into the main pipeline system. In effect, processor “nominates” the amount of products that it intends to deliver to any given mainline.

### **e. Cash Flow**

As is true with any business, midstream processors must increase their cash flow. It used to be simple: Buy for assets (gas source). But, since the assets have become more expensive, it has become necessary to run a much tighter ship. Therefore, increasing cash flow is now more achieved through better run business.



### **C. Shipping issues:**

Once the product is made available to the processor, it must be transported, either by pipeline, vessel, rail, or truck, to the respective destinations. Each one of these modes of transportation has its respective type of contract. However, the core of each contract is somewhat similar to what we have already discussed. A reminder to include the following terms in your contract:

- Tariff rate
- Volumes deficiency
- A very clear remedy for possible defaults.

### **D. Operational consideration:**

A midstream operation could be one simple tanker truck, in the case of oil, or a myriad of pipelines, processing plants, compressors stations, etc. The following may be considered the most important parts of operation:

#### a. Pipeline

Pipeline represents the only way to transport gas and most common way to transport liquid products. There are many issues involved in the piping of products because pipelines usually are laid in long distances. Some of the more prominent issues are:

a.1: Compressor/Pumping Stations: Unfortunately, due to long distance, gas or fluid, regardless of their original pressure need to be pumped to keep the flow moving.

a.2: Physical condition of the path: For better or for worse, pipelines must go through a variety of terrains: it has to go up and down, flat and mountainous, cold or hot temperature, etc. Each one of these conditions requires especial design and construction consideration.

a.3: Operation and Maintenance: Rupture of a given pipeline could cause irreparable damage to the owner of the line. This is not only due to the loss of product, but also the environmental impact of such event.

#### b. Other modes of transport (Liquid only)

Frequently other modes of liquid transport such as trucks, vessels and rail become necessary. This may happen due to lack of pipe or the distance between the end of the pipeline and the final destination.

#### b. Processing plants

This by itself is whole course and left for another time. (This by itself is an entire course and is better left for another time.)

**E. Boilerplate:**

Frequently, operators are accustomed using boilerplate contracts. This could be for convenience or financial reasons. I advise that an operator spend the time and money to develop its own boilerplate rather than using someone else's.

## Real Estate Issues with Midstream Contracts

7. Zoning
8. Easements, rights-of-way
9. Condemnation

These four topics should be addressed together. The sheer business of Midstream, piping, processing and compressor stations needs land. Obviously buying all the necessary land would be prohibitively expensive. That leaves easement or right of way. Obtaining easements could involve dealing with individual landowners and/or the government (in cases of public lands) and in some cases the issues of zoning must be faced.

Easement: Is a contract between the land owner and another party where the land owner allows another party to use a particular part of its property for, usually, for a specific purpose. This limits and/or totally eliminates the right of the land owner on the easement property. Easements can be temporary or perpetual (EXAMPLE and tax issue).

Right of way: This is somewhat different than easement. Right of way usually does not give the right to use the property, but merely allows another party to walk or drive through the property, for example.

However, frequently, in this concept, both terms are effectively used synonymously or together.

Here, like any other contract, parties have different concerns.

### **A. Landowner's areas of concerns about easement contract (EC) or Right of Away:**

- a. Find out who is the eventual user of the easement (Land company may obtain the easement for a Midstream company).
- b. Are they interested in easement (for pipe) or right of way (for trucking through) or both.
- c. For right of way, what kind of road they are going to build, who will be maintaining it, how wide will be and who else is going to use the road.
- d. Check the eventual user for credibility and past experiences.
- e. Make sure the EC, if assigned, is fully assigned.
- f. What kind of line is it: gathering lines, interstate pipeline or the distribution system.
- g. The Exact width and length of the easement. This has to be done by official survey before and after the construction.
- h. Check for appurtenance.
- i. Is it going to be over or under ground and if it is underground how deep

- j. How much of it is for the pipe and how much on each side? Try to have it as deep as possible and as far underground as possible.
- k. If they have to make a temporary road and/or build a temporary structure, how are they going to use it and reclaim the property after the pipe is laid.
- l. Check for potential nuisance.
- m. Does the pipeline carry different products? If yes, then what. Some product such as salt water and unscented natural gas could be environmentally hazardous.
- n. Are they going to put down one or more lines?
- o. How will they handle the possible removal of timber or brush?
- p. Addressing the right of Ingress and Egress.
- q. Addressing the potential damage to the property, physically and financially.
- r. Right of sublease of EC.
- s. **Issue of potential liability, indemnification and other issues addressed in ordinary contract.**
- t. Damage to residue ( damage to land not used)
- u. **Everything in this agreement MUST have time limits.**
- v. Hold Company responsible for the acts of its contractors.
- w. Stream crossing, how and restorations.
- x. Third party easement. Conditions and prohibition.
- y. Construction time table
- z. Abandonment: Clearly state what they mean by “abandonment” of the pipeline and the terms of termination of easement. The Company must remove all abandoned pipes and reclaim the property.
- aa. Price, bonus, possible royalty. Don’t forget restitution for damages to timber, crops, etc.

**B. Midstream companies areas of concern in EC:**

Obtaining easement is a tedious and cumbersome job. Many Midstream companies (“Company”) simply contract this job to land man companies (“Landman”). (EXAMPLE, personal experience). In this case, generally, Company actually does not enter into EC with landowner.

The first thing Company must be careful about is the background of the Landman. (Explain the reason). Then enter into a contract with Landman addressing exactly what Company needs to have in EC. Followings are some of the points that need to be addressed:

- a. Always ask for wider easement (if economically feasible) than your technical people need.
- b. Try to have your options open as to having the pipe under or over the ground.

- c. Have your Landman check the ownership and type of ownership of the property. (EXAMPLE).
- d. Make sure your Landman checks for zoning.
- e. Make sure your Landman has the tentative consent of all landowners in the path of your pipe, before he finalizes EC (EXAMPLE, personal experience).
- f. Issues of land owners' negligence.
- g. Try to make all easements permanent if possible.
- h. Check for eminent domain.
- i. If the pipe is going through federal lands and different state owned lands, make sure there is no conflict of law, among other applicable laws.

## SECOND DAY

### 1. General principles of environmental exposure

The oil and gas industry, in general, and Midstream processing and transportation, specifically, could potentially have adverse effects on the environment, some real and some alleged. Such effects could be in the form of simple disturbance of ground surface (temporary and permanent, erosion, sedimentation, etc.), polluting the groundwater, caused by spillage, air pollution and disturbing the ecosystems, etc. Pipeline leaks and ruptures are the more prevalent causes of environmental damage. Another cause of concern is Green House Gas (GHG), which environmentalists allege more than 20% is caused by Midstream operations. Therefore, it is very important that environmental issues be addressed in the Midstream Contracts. Ordinarily, one would try to pass the liability to the other party of the contract through transfer of liability provision or indemnification provision. But federal laws have made it very difficult (42 U.S. Code § 9607). Analysis of this code is all together a different issue and would take several days. However, the drafters of the contracts should be aware of this code and similar states' code and write the provisions accordingly. Furthermore, Midstream operators should be aware of EPA's involvement and power in the cleanup process granted to it through "The Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA"

## 2. Midstream Contract's ("MC") provisions addressing environmental concerns

Allocating the environmental liabilities should be central to any MC. Drafters of MC must spend a great deal of time carefully wording this allocation. The main provision is the negotiation of indemnity clause. Here one side tries to include a provision that the other side covers all costs relating to environmental liabilities, whether such liabilities have risen directly due to operation or as side effect of it. As I indicated before, such provisions may not be upheld in court!

HANDOUT (sample of indemnity provisions)

Important note: Drafter must be careful that the terms of general indemnity provision do not contradict the environmental indemnity provisions.

### 3. Review of NAESB contract and other forms of contract

The North American Energy Standard Board (NAESB) succeeded the Gas Industry Standard Board in 2001. In 2002, NAESB put out a general base contract for sale and purchase of natural gas. It was intended to be used for long or short term gas transaction. Generally speaking the NAESB contract has four sections.

- a. Base contract,
- b. General terms,
- c. Confirmation and
- d. Special Provisions.

In reality, the NAESB contract usually acts as a master agreement, and parties through individual confirmation set the terms for a given transaction. For example, one party may be a purchaser in one and a seller in another. Considering this mode of contract, the NAESB contract is more suitable for short term transactions. A short term transaction, or spot, usually is a one-time transaction with specific terms and conditions, particularly PRICE. In contrast, long term contracts must address a great many elements that may change as time passes.



## Specific Contracts: Gathering, Processing and Fractionation Agreements.

Essential terms: Quality and Measurement terms.

Midstream activities' contracts such as gathering, dehydration, compression, and fractionation, can be divided into 2 or 3 types, based on mode of purchase. Ordinarily producers deliver the gas to the inlet of the Midstream Operator and MO buys the amount that can be sold down the line and that its facility can handle. However, MO may "accept" (accept is the operative word) only gas that meets the MO's quality requirement. Now, if the gas is under "fix fee gathering contract," then MO acts only as a custodian of the gas; otherwise, MO takes the title to the gas at inlet.

Therefore, in general, either the MO buys the gas or acts as a service provider. In the first type of transaction, the price shall be somewhat tagged to an index, such as "Percentage-of-proceeds arrangements," "Percentage-of-index arrangements," and "Index-minus-fees arrangements."

In the second type, it would be just a "fee for service agreement."

### LETTER OF CREDIT ("L/C")

One element of just about any contract that we have not discussed is modes of payment. After all, whether one provides a service or sells a commodity, one must get paid. Earlier we mentioned that in order for a contract to be valid, it needs to have consideration. Although the payment could be made in cash or cash equivalent, in Midstream business, payments are almost always made by L/C.

Let us see how L/C operates. The best way to begin is to consider a simple sale and purchase transaction. In such transaction, the sellers do not want to part with their commodity unless they get paid, and the buyers do not want to pay unless they are assured of delivery of the commodity. Therefore, the buyer goes to the bank and obtains a document (L/C) in which buyer instructs the bank, and bank commits itself to follow such instructions; the buyer agrees to pay the seller the agreed upon amount, if seller presents the bank with proof of delivery. Such a simple concept has grown to be a major field of business transactions. L/C now is even used to guarantee performance (performance bond) and to enhance collateral.

There are several elements that must be carefully considered in accepting an L/C:

1. The ability of the issuing bank to perform (pay).
2. The timing of bank payments.
3. Location of payment.
4. Terms and conditions: irrevocable, transferable, assignable, divisible etc.
5. Cash advance
6. Revolving L/C : cash and time

## 7. Standby L/C

There are several occasions when L/Cs are used.

1. Producer wants guarantee to get paid.
2. MO wants to be assured that downstream entity shall pay.
3. Any one of the parties may want performance guarantee.
4. All kind of contractors are involved on both sides and need to be paid.

SAMPLE of L/C for attendee study:

“Acceptable Letter of Credit” means one or more direct-pay, irrevocable, standby letters of credit from a major U.S. commercial bank or a foreign bank with a U.S. branch office in either case having a credit rating of at least “A-” (or its equivalent successor rating) from Standard & Poor’s Corporation or “A3” (or its equivalent successor rating) from Moody’s Investor Services, Inc.”

### **Processing and Fractionation Agreement**

Such agreements contain the same fundamental elements of contracts. However, in Processing and Fractionation Agreements the quality and measurements of stalk gas and end products must be included in the text of the contract.

Quality of Gas:

Ordinarily, MO uses the online Chromatographic instrument to identify the quality (composition, gravity, and gross heating value of the hydrocarbon in Btu/ft<sup>3</sup> on a dry basis at standard conditions of the gas) on a given period basis. In general, the gas should be free of impurities such as: oil, water or brine, air, dust, etc. Furthermore, there are acceptable limits for impurities on stalk gas and redelivered gas such as: sulfur and H<sub>2</sub>S, water vapor, CO<sub>2</sub>, N, O, Temp,

Quality of end product (NGL):

NGL should also be free from impurities such air, dust, bacteria etc. and have acceptable limits on: N, CO<sub>2</sub>, Ethane and all heavier than C<sub>5</sub>, S, etc.

### **Gathering Agreement:**

Such agreements contain the same fundamental elements of contracts. Here, usually, the gatherer gets a flat fee based on the volume of gas moved. The gatherer must ascertain that the producer has the title to the gas and obtain indemnity against breach of this section. It is important to note that the gatherer does not have the title to the gas it is moving but for the purpose of liability, the gatherer is in full control of the gas from the point it accepts the gas to the point it delivers the gas.

# CONFIDENTIALITY PROVISION

Confidentiality and NON-disclosure.

- a. "Confidential Information" means data and information: (a) relating to the business of Company and its affiliates, regardless of whether the data or information constitutes a "trade secret;" (b) disclosed to Contractor or of which Contractor became aware of as a consequence of Contractor's relationship with Company; (c) having value to Company and/or its affiliates; and (d) not generally known to competitors of Company and/or its affiliates. Confidential Information includes trade secrets, methods of operation, names of customers, price lists, financial information and projections, route books, personnel data, and similar information.
- b. Notwithstanding the forgoing, Confidential Information shall not mean data or information (a) which has been voluntarily disclosed to the public by Company, except where such public disclosure has been made by Contractor without authorization from Company; (b) which has been independently developed and disclosed by others; or (c) which has otherwise entered the public domain through lawful means.
- c. Contractor agrees that Confidential Information is the sole and exclusive property of Company or its affiliates. Contractor covenants that Contractor shall keep secret and confidential such Confidential Information and shall not use or disclose such information for any purpose not pre-authorized by Company in writing. Contractor shall ensure that all of its members, managers, officers, directors, employees and subcontractors are bound by this paragraph 2. This paragraph 2 shall survive any termination of this Agreement.
- d. In the event that Contractor receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or governmental body, Contractor agrees to notify Company promptly of the existence, terms and circumstances surrounding such request, and if disclosure of such Confidential Information is required to prevent Contractor from being held in contempt or other penalty, to furnish only such portion of the Confidential Information as it is legally compelled to disclose.
- e. Upon termination of this Agreement, Contractor agrees to return to Company all Confidential Information in Contractor's possession, as well as any copies, records, notes or other pertinent written, printed, or tangible materials.

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Independent Contractor hereby recognizes and acknowledges that any information about the Company, regarding the Company's business methods, the Company's executives and employees, price lists, customers, clients, vendors, contracts,

contractual relations with suppliers as it may exist from time to time, all trade secrets, know how, forms, processes, developments, sales and promotional systems, prices and operations, which information may be obtained from tariffs, contracts, freight bills, letters, reports, disclosures, reproductions, books, records, or other sources of any kind resulting under this Agreement or otherwise is a valuable, special and unique asset of the business of the Company (collectively referred to herein as "Confidential Information"). Independent Contractor agrees to protect all Confidential Information provided to it by the Company, and not to publish or disclose the Confidential Information to any third party.

Non-Disclosure. Independent Contractor, in consideration for rates paid by Company for services contracted to carry freight for Company and for any waivers on charges, hereby agrees as follows: a) Independent Contractor shall keep in confidence and not disclose any part of the Confidential Information to a third party during the term of this Agreement and for a period of two (2) years thereafter; b) Independent Contractor shall obligate its Personnel who shall have access to any portion of the Confidential Information to protect the confidential and proprietary nature of the information ; and c) any agreements made with Independent Contractor are for the benefit of Independent Contractor and cannot be extended to any other carriers or operators.

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Confidentiality; Work Product

A. During the effectiveness of this Agreement and at all times thereafter, no Receiving Party shall use, copy, or disclose to any third party, or permit any unauthorized person access to the Company's Confidential Information (as defined in Paragraph I.B. herein). The Receiving Party acknowledges that all Confidential Information, together with all notes, reports, graphics, and records relating thereto, and all copies, in written or tangible form, including, but not limited to, reproductions or other media containing such Confidential Information, electronic versions and facsimiles thereof, are the Company's Clients' exclusive property. The Receiving Party shall return to the Company all such Confidential Information, without retaining any copies, notes or extracts, promptly upon the Company's request or upon the termination of the employment relationship with the Company, regardless of the reason for the termination. The Receiving Party hereby acknowledges and agrees that the Company and Clients' Confidential Information have significant commercial value that would be diminished by unauthorized disclosure. Accordingly, the commitments of confidentiality, as well as the commitments of non-competition, non-solicitation and non-circumvention, contained in this Agreement are a condition to the Company's willingness to retain the services of the Receiving Party.

B. “Confidential Information” shall include, but shall not be limited to, any trade, secret, proprietary or Confidential Information concerning the organization, business, finances, or future business and/or strategic plans of the Company and/or Clients. Such Confidential Information shall include, but shall not be limited to, trade secrets or confidential or proprietary information with respect to existing and future products and services, designs, methods, formulas, drafts of publications, research, know-how, techniques, systems, databases, processes, software programs or code, developments or experimental work, work of authorship, customer lists and/or customer information, business plans, marketing plans, financial information, sales techniques, projects, salaries and/or pay rates, or other Company and/or Clients’ information, and all other plans and proposals.

C. During the effectiveness of this Agreement and at all times thereafter, the Receiving Party shall not make, use or permit to be used any Company Documentation (as defined in Paragraph I.D. herein) other than for the Company’s benefit. The Receiving Party further agrees that the Receiving Party shall not, after termination of the employment relationship of such Receiving Party with the Company for any reason, use or permit others to use any such Company Documentation, or that of its customers. It being agreed that all Company Documentation shall be and remain the sole and exclusive property of the Company. Immediately upon the termination of a Receiving Party’s employment relationship with the Company for any reason whatsoever, the Receiving Party shall deliver to the Company, all Company Documentation, including copies, notes or extracts thereof, whether in hardcopy or in digital format.

D. The term “Company Documentation” shall include, but shall not be limited to, notes, drafts, research, memoranda, manuscripts, reports, proposals, business plans, marketing plans, lists, correspondence, records, drawings, sketches, charts, case studies, blueprints, specifications, software programs, data, documentation or other materials of any nature and in any form, whether written, printed, or in digital format or otherwise, relating to any matter within the scope of the business of the Company and/or Clients concerning any of its dealings or affairs.

E. The Receiving Party recognizes that the Company has received and in the future will receive from Clients or third parties their confidential or proprietary information subject to a duty on the Company’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. The Receiving Party agrees that such Receiving Party owes the Company and said Clients, during the term of such Receiving Party’s employment relationship with the Company and at all times thereafter, a duty to hold all such information in the same manner as Confidential Information, Company Documentation or proprietary information in the strictest of confidence and not to disclose to any person or entity (except as necessary in carrying out such Receiving Party’s work on behalf of the Company consistent with the

Company's agreement with its customers and/or such Receiving Party) or to use it for the benefit of anyone other than for the Company and/or its customers (consistent with the Company's agreement with its customers and/or such Receiving Party) without the Company's prior written authorization.

F. The Receiving Party agrees that such Receiving Party will not, during its employment relations with the Company and at all times thereafter, use or disclose any proprietary information or trade secrets of the Company and/or of Clients, unless previously consented to in writing by the Company.

G. The Receiving Party acknowledges and agrees that all inventions, innovations, modifications, discoveries, processes, software programs, works of authorship, formulas, techniques, know-how, improvements, developments, methods, designs, analyses, drawings, reports, secret or intellectual property rights or interest therein, and all similar or related information whatsoever (whether or not patentable or registrable or subject to analogous protection) that (i) relate to the actual or anticipated business, research and development or existing or future products or services of the Company and/or its customers, or (ii) result, directly or indirectly, and that are made, conceived, developed, or reduced to practice by such Receiving Party (alone or with others), its employees, while having a employment relationship with the Company or any of its predecessors and successors and at all times thereafter (the "Work Product") shall be considered works made for hire and shall belong solely to the Company. The Receiving Party hereby conveys, transfers, assigns, and agrees to convey, transfer or assign all right, interest and title in and to the Work Product, under patent, trademark, and copyright laws of the United States and of any jurisdiction in which Work Product or any portion thereof is displayed. Additionally, the Receiving Party expressly agrees that all rights, title and interest in and to the Work Product shall vest and be assigned to the Company and that third party suppliers, if any, shall agree to assist in the performance of such Receiving Party's obligations hereunder and to indemnify and hold the Company harmless from any copyright action or any other action or claim in connection thereto. The Receiving Party agrees to execute and to have the third party suppliers, if any, execute any documents necessary for the Company to obtain or perfect any and all of the rights in and to the Work Product. Any Work Product prepared in whole or in part by any Receiving Party in the course of his/her employment relationship with the Company and at all times thereafter shall be deemed a "work made for hire" under the copyright laws, and the Company shall own all unconditional and unencumbered title and rights therein. To the extent that any such copyrightable work is not a "work made for hire" the Receiving Party hereby assigns and agrees to assign to the Company all right, interest and title including, without limitation, copyright in and to such copyrightable work, without the necessity of any further consideration, and the Company shall be entitled to obtain and hold in the Company's own name all copyrights in respect of such materials. The

Receiving Party shall promptly disclose such Work Product and copyrightable work to the Company and perform all actions requested by the Company's (whether during or after the employment relationship) to establish and confirm the Company's ownership (including, but not limited to, assignments, consents, powers of attorney and other instruments).

H. In no event shall the Receiving Party be entitled to claim any ownership interest to the Work Product, reports, or other data or materials generated or developed by the Receiving Party under this Agreement, the Receiving Party transfers, grants, conveys, assigns, and relinquishes exclusively to the Company all of its/his/her rights, title, and interests in and to such materials, under patent, copyright, trade secret, trademark and all other laws, in perpetuity, unless otherwise, permitted by law.

I. To the extent that any moral rights as defined under foreign law or by state or federal law of the United States (including without limitation The Visual Artists Rights Act of 1990), which may accrue to a Receiving Party by virtue of the creation of the Work Product, the Receiving Party on his/her behalf shall obtain such written waiver from any such employee) waives all moral rights throughout the world relating to the Work Product as such rights now exist or hereinafter may be created. To the extent that any moral rights accrue to third party suppliers assigned to work on any Work Product, the Receiving Party agrees to require all of them to waive in writing all moral rights to the Work Product as such moral rights now exist or hereinafter may be created. In the event the Company or its customers, by and through the Company is unable, after reasonable effort to secure the Receiving Party's signature on any letters, patent, copyright or other analogous protection relating to the Confidential Information, the Company Documentation and/or the Work Product or any other item described in this Article I, whether because of its physical or mental incapacity or for any reason whatsoever, the Receiving Party hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as such Receiving Party's agent and attorney-in-fact to act for and on his/her behalf, name and stead, to execute and file any such application(s) or any other item described in this Article I, and to take all other lawful actions to further the prosecution and issuances of letters, patent, copyright, or other analogous protection relating to the Confidential Information, the Company Documentation, and/or the Work Product, with the same legal force and effects as if by such Receiving Party.

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Each Party shall maintain strict confidentiality with respect to Confidential Information and shall:

- i. not distribute, disclose or disseminate Confidential Information to any person other than those of its employees, who reasonably need to know such information for the purpose of the performance of the obligations under this Agreement;
- ii. treat Confidential Information with the same degree of care as it itself observes towards its own information of like importance which is to be kept confidential;
- iii. keep all documents and materials which constitute or contain Confidential Information in safe custody and restrict access to such documentation to employees who reasonably need to have such access for the purpose of the performance of this Agreement;
- iv. use the Confidential Information solely for the purposes for which such Confidential Information is disclosed to it.

The Parties shall impose the confidentiality obligations upon their respective employees by written agreement and shall see to it that their employees shall at all times fully comply with such obligations.

The confidentiality obligations shall not apply if and insofar as:

- i. the disclosing Party consents in writing to the receiving Party disclosing such information to a third party or third parties (such consent not to be withheld unreasonably), provided that upon such disclosure the receiving Party shall impose the confidentiality obligations set forth in this Article on such third party or third parties; or
- ii. the receiving Party is under a statutory obligation to disclose such information to the competent authorities.

Each Party may request the other Party to disclose Confidential Information if such a disclosure is necessary for a justifiable specific purpose. The other Party shall – subject to the nature of the specific purpose – not unreasonably withhold its consent. This Article shall continue to apply after the Agreement for a period of three (3) years.



# INDEMNIFICATION PROVISION

a) Independent Contractor shall defend, indemnify and hold Company, its owners, Managers, successors and assigns, and its customers harmless from all fines, costs, penalties, liabilities and claims, including attorneys' fees, costs of litigation or dispute resolution, settlements, judgments, and all other expenses to which Company or its customers may be subjected on account of (a) bodily injury to person(s) (including injury resulting in death), (b) loss of or damage to any real or personal properties (including cargo), (c) violation of law, or any other claim arising out of or in connection with the transportation of cargo under this Agreement by Independent Contractor or personnel of Independent Contractor. Independent Contractor's obligation to defend indemnify and hold Company and its Customers harmless under this provision shall not in any manner be subject to any limitation on the amount or types of damages, compensation or benefits payable by Independent Contractor or Personnel of Independent Contractor under applicable worker's compensation acts, disability benefit acts or other employee benefit acts, and Independent Contractor hereby specifically waives, and shall cause it's Personnel to waive any immunity any of them may have under such acts.

b) Company shall defend, indemnify and hold harmless from all fines, costs, penalties, liabilities and claims, including attorneys' fees, costs of litigation or dispute resolution, settlements, judgments, and all other expenses to which Independent Contractor may be subjected on account of bodily injury to persons (including injury resulting in death) and loss of or damage to any real or personal property (including cargo), violation of Law or any other claim caused by the sole gross negligence or intentional wrongful acts or omissions of Company.

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The Receiving Party, shall indemnify, release, defend and hold the Company harmless from and against any and all such claims, loss, or damages, arising directly or indirectly from, or as a result of, or in connection with any breach by the Receiving Party of this Agreement, including, but not limited to, all costs and expenses, including, but not limited to court costs and attorney's fees (whether in a court of original jurisdiction or one or more courts of appellate jurisdiction). If the Company shall be subject to any claim, demand or penalty or become a party to any suit or other judicial or administrative proceeding by any reason of any claimed act or omission by the Receiving Party, the Receiving Party, shall indemnify, release, defend and hold the Company and/or its customers harmless against all judgments, settlements, penalties, and expenses, including attorney's fees, court costs and other expenses of litigation or administrative proceeding, incurred by or imposed on in connection with the investigative or defense relating to such claim or litigation or administrative proceeding.

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Indemnification by Seller. Seller, at its expense, will defend, indemnify, and hold Purchaser harmless from and against any and all damages, judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorneys' fees (collectively, "Claims"), incurred by Purchaser in connection with any breach of this Agreement or any misuse by Seller of the Site or user data. Purchaser shall notify Seller of any Claims, and Seller shall employ counsel chosen by Purchaser to defend such claims. Seller shall not agree to any settlement which would result in an admission of liability by Purchaser or would impose any obligations on the part of Purchaser.

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You agree to indemnify, defend, and hold Thrive College Consulting and its officers and employees harmless from and against any and all claims, liabilities, expenses, penalties, and damages of any and all kinds (including, without limitation, reasonable attorney's fees and costs of litigation) arising in connection with any action or inaction by you or your child.

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In the event of Employee's breach of this agreement, Employee hereby agrees to indemnify, defend, and hold harmless Employer and its managers, members, employees, agents, successors, and assigns from and against Losses arising from causes of action alleged by any third party that arise in connection with Employee's performance of the Services ("Third Party Claim") that were not approved by Employer. "Losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (such as punitive damages), diminution in value, fines, fees, and penalties or other charge, and litigation expenses. Employer shall promptly notify Employee in writing of any claim, event, or fact that may give rise to a claim by Employer for indemnification by Employee, stating the nature and basis of the claim, event, or fact, and the amount claimed, to the extent known (the "Notice"). Employee agrees to consult with Employer to pick mutually acceptable legal counsel to defend such claim, and Employee shall be responsible for all such legal fees. If Employee fails or refuses to defend the Third Party Claim as set forth herein within fifteen (15) days of the Notice, Employer shall defend such Third Party Claim with counsel of its own choosing. In this case, Employee shall immediately and continuously reimburse Employer for all litigation expenses in defending such claim from the date Employer assumes such defense until the final resolution of such Third Party Claim.

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RCP shall defend, indemnify, and hold TEB and its employees, contractors and agents from and against any and all damage, cost liability, and expense whatsoever

(including, for example, court costs and legal fees) incurred by reason of third party claims brought against TEB and/or its employees, contractors and agents in connection with RCP's negligence or willful misconduct, except where such claims arise out of the gross negligence or willful misconduct of TEB. This paragraph shall survive any termination of this Agreement.

NON-COMPETE  
&  
NON-SOLICITATION

NONCOMPETITION PROVISION

The Employee specifically agrees that for a period of \_\_\_\_\_ [months/years] after the Employee is no longer employed by the Company, the Employee will not engage, directly or indirectly, either as proprietor, stockholder, partner, officer, employee or otherwise, in the same or similar activities as were performed for the Company in any business [within a \_\_\_ mile radius of the Company] [within \_\_\_ miles of an office of the Company] [within a State where the Company has offices] [within the State of \_\_\_\_\_ ] which distributes or sells products or provides services similar to those distributed, sold, or provided by the Company at any time during the \_\_\_\_\_ [months/years] preceding the Employee's termination of employment. For a period of \_\_\_\_\_ [months/years] after the Employee is no longer employed by the Company, the Employee will not, directly or indirectly, either as proprietor, stockholder, partner, officer, employee or otherwise, distribute, sell, offer to sell, or solicit any orders for the purchase or distribution of any products or services which are similar to those distributed, sold or provided by the Company during the \_\_\_\_\_ [months/years] preceding the Employee's termination of employment with the Company, to or from any person, firm or entity which was a customer of the Company during the \_\_\_\_\_ [months/years] preceding such termination of employment.

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## NON-SOLICITATION PROVISION

During the Term and for a period of 24 months following any termination of this Agreement for any reason by either party, Contractor will not solicit, accept, or attempt to solicit or accept, directly or by assisting others, business from any of Company's customers which business would be in competition with the products or services offered by Company. This paragraph applies only to those of Company customers and prospective customers: with whom Contractor had actual contact; whose dealings with Company Contractor coordinated or supervised; about whom Contractor obtained Confidential Information during the Term; and/or about which Contractor received compensation, commissions, or earnings during the two years prior to Contractor's termination. Contractor shall ensure that all of Contractor's members, managers, officers, directors, employees and subcontractors are bound by this paragraph 3. This paragraph shall survive any termination of this Agreement.

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For a period of \_\_\_\_\_ [months/years] from the date that Employee is no longer employed by the Company, Employee shall not take any actions to assist Employee's successor employer or any other entity in recruiting any other employee who works for or is affiliated with the Company. This includes, but is not limited to: (a) identifying to such successor employer or its agents or such other entity the person or persons who have special knowledge concerning the Company's processes, methods or confidential affairs; and (b) commenting to the successor employer or its agents or such other entity about the quantity of work, quality of work, special knowledge, or personal characteristics of any person who is still employed at the Company. Employee also agrees that Employee will not provide such information set forth in (a) and (b) above to a prospective employer during interviews preceding possible employment.

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With teeth

Non-Solicitation. Independent Contractor hereby agrees that neither he and/or his Personnel will, directly or indirectly solicit or accept traffic from, bill, contact, communicate with, write or telephone any shipper, consignor, consignee or customer of the Company during the term of this Agreement or during the two (2) years thereafter where (1) the knowledge of such customer first became known to Independent Contractor as a result of Company's efforts or (2) the traffic of the shipper, consignor, consignee or customer of Company was first tendered to Independent Contractor by Company. Company shall be entitled to an injunctive relief and/or restraining order against Independent Contractor or his Personnel for any of the foregoing acts. Nothing hereunder shall be construed as prohibiting Company from pursuing any remedies available to Company at law or in equity

for such breach, including the recovery of monetary damages from Independent Contractor. Company may immediately proceed in any court of competent jurisdiction to pursue such remedies and avoid the parties' alternative dispute resolution process defined below. The parties agree that Independent Contractor shall pay to Company, as liquidated damages and not as a penalty, an amount equal to thirty-five percent (35%) of the gross revenue of any and all business obtained by Independent Contractor by virtue of Independent Contractor's breach of this paragraph for a period of two (2) years thereafter as just and reasonable compensation to Company, and the parties further agree that Independent Contractor shall pay Company all costs of collecting these liquidated damages, including reasonable attorney's fees. If requested, Independent Contractor shall provide Company, within ten (10) days of such request, all information and documentation regarding such gross revenues to assist Company in verifying that the correct amount of liquidated damages is paid.



# DAMAGE SAMPLE QUESTIONS

Exercise 1

Breach and damages.

On March 1, 2015, Pipe Supplier ("PS") ordered 5 miles of 6 inches pipe from Pipe Manufacturer ("PM") at the going rate of 1 \$/ft. (going pipe price) for April 1 delivery. In their contract it was stated that on April 2, PS is selling the pipe to a Midstream Operator. On March 15, PS called PS and told them that they cannot supply the pipe.

On April 4, PS files suit against PM for breach of contract and wins the case. PS asks for consequential damages that will reimburse him for the amount of profit that he would have been paid by Midstream Operator, if he had been able to deliver. PM presents evidence proving that PS had not even tried to find substitute pipes, even though he had sufficient time before his deadline and there were other pipe manufacturer nearby that could have supplied him with similar pipes for the same price.

What do you think the result would be?

A. PS should not recover any damages because he did not look for another pipe supplier.

B. PS should get damages, but such recovery should be reduced by the amount that he could have avoided if he had tried to buy his pipes elsewhere.

C. PS should get full damages equal to the amount he would have been paid by Midstream Operator, if he had delivered the pipes.

## Exercise 2

Types of damages for breach of contract.

A Midstream Operator (“MO”), with a reputation of not getting project done on time, completed a complicated gathering system among 4 fields on time, to everyone’s surprise. MO decided to make a huge deal out of it and once and for all remove the stigma of slow operator from his image. He arranged for a massive party for July 1st and invited numerous producers for an afternoon of food and drink and inauguration of the gathering system. He hired Catering Company (“CC”) on April 1 and gave him the entire order along with US\$10,000 (50% of the total cost) as advance. Here came July 1 everyone had arrived, but sign of CC. Apparently CC had entered a wrong date for the party.

MO filed suit for breach of contract and demanded compensatory damage of US\$10,000. And punitive damage of US\$50,000. Court ruled on MO favor, but how should judge grant the damages?

How should the judge rule?

- A. Award US\$50,000 for compensatory damage and no punitive damages.
- B. Award US\$50,000 as compensatory and US\$50,000 as punitive damages, because CC should have known that the breach would adversely affect MO’s business.
- C. Award US\$50,000 as compensatory and an amount less than compensatory damage as punitive damage. Because, punitive damage cannot be higher than compensatory damage.

### Exercise 3

Importance of contract terms in breach and damages.

Midstream Operator (MO) hired Joe Painter (JP) to paint the processing plant. In the contract it was stated that JP should finish the job in 3 days. JP, for one reason or the other, finished the job in 8 days. MO file against JP for breach of contract.

What do you think the result would be?

- A. MO should win, since JP breached the contract when he did not finish the job in 3 days.
- B. JP should win, since the breach was not a material breach.
- C. Court will sanction MO for frivolous litigation.

#### Exercise 4

##### Type of breach!

MO needed a dozer. While MO was driving along the pipeline, he saw a two dozer in the field one was a red Comatso and one green Caterpillar. But, MO misidentified the dozer when he approached the farmer to buy the Caterpillar and he told farmer he wanted the red one. In the conversation, farmer noticed that MO wanted the caterpillar. They signed the sale and purchase agreement for the red dozer. Farmer said he will deliver and get the money. When dozer was delivered, MO said that's not the caterpillar I wanted. Farmer wave the contract and MO refused to pay. Suit was filed for breach of contract and demand for specific performance (payment).

What do you think is the ruling?

- A. For Farmer, because they had written contract and MO was obligated to pay for the red dozer.
- B. For MO, because Farmer knew that MO wanted the Caterpillar and MO had made a mistake.
- C. For Farmer, because MO has clearly asked for red dozer.

### Exercise 5

This exercise is about terms of breach of contract.

MO had a right away through a property that would expire on July 24th. He place an order for a truck load of pipe a supply company (SC) to be delivered not later than July 24th. In the contract it was clearly stated that “the time is of the essence.” SC delivered the truck load of pipe on July 25th. MO refuse to accept or pay for the pipes due to delay of delivery. Red company file suit for breach and specific performance (payment).

Which way do you think the case will go?

- A. For MO, because the late delivery of pipe constituted a material breach.
- B. For Farmer, because the delivery was only one day late and it does not constitute material breach
- C. For farmer, because he performed his duty under the contract and delivered the pipe.

### Exercise 6

This exercise is about breach of contract.

A MO entered into a valid and binding contract with a gas field owner (GFO) to buy all the gas his only well can produce (change the title) when the well completed. The Test had shown that that well is going to be a big producer. However, there was a major explosion and the well was completely destroyed. MO filed for breach of contract and for damages.

How should the judge rule?

- A. For GFO, because it has become impossible for GFO to perform the contract.
- B. For MO, because under the contract, GFO must supply MO with the gas.
- C. For MO, because he has suffered damages by setting up his system to accept gas from GFO.

### Exercise 7

Change of contract terms and conditions.

MO needed fuel to run its fractionation plant. He entered into a written sale and purchase contract to buy 1,000 gallons of number 2 diesel fuel with a fuel supplier (FS) for delivery on November 1st. A week later MO realize that he actually needs another 500 gallons of the same type of fuel. So, MO and FS modified, in writing, their contract to read total fuel amount 1500 gallons and the extra amount to be delivered on December 1st. On November 1st, no fuel was delivered. MO demanded the delivery and FS claimed that modification was not valid, since there was no consideration for the modification. MO filed suit.

Any idea?

- A. For MO, because additional consideration was not necessary.
- B. For FS, because additional consideration was necessary in order to modify their contract.
- C. For FS, because FS still had time to deliver.



## Exercise 8

Issues with modification.

A smaller midstream operator (SMO) was selling his processing plant to a bigger midstream operator (BMO). They walked through the plant and then entered into a valid contract for everything in the premise. On the way out, BMO noticed that there was a pickup truck was parked outside. BMO said that the truck should be included and SMO agreed. Next day when BMO came to the plant, the truck was not there. BMO sued SMO stating that although the written agreement did not include the pickup truck (it was no in the premise), but they had orally agreed right afterward, in front of witnesses. SMO sates that it would violate parole evidence rule. Can BMO bring evidence to that effect?

Well?

- A. For SMO, because the contract states that it is the complete and final agreement.
- B. For BMO, because he is presenting evidence that is an exception to the parole evidence rule.
- C. For SMO, because modification was not in writing.