



(d) the Receiving Party can demonstrate was independently developed by it or for it and that was not obtained, in whole or in part, from the Disclosing Party.

2. *Non-Disclosure of Confidential Information.* Except as expressly provided in this Agreement, unless the prior written consent of the other Party shall have been obtained, each Party agrees (and agrees to direct its Representatives) to keep confidential all Confidential Information and not disclose such Confidential Information to any third party, firm, corporation, company, partnership, individual, trust, estate, association or other entity (individually or collectively, a “person”), except for permitted disclosures to a Party’s Representatives. Each Party shall limit the disclosure of Confidential Information to only such of those officers, directors, employees, agents and other representatives (including attorneys, accountants, technical advisors, financial advisors and other consultants and advisors) of the Party or of its Affiliates (defined below), which, in each case, may reasonably be expected to engage in the Evaluation (collectively, a Party’s “Representatives”). The term “Affiliate” as used herein shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party, where the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. In addition, except as may be required by law, rule or regulation, without the prior consent of the other Party, neither Party nor its Representatives will (i) confirm or deny any statement made by a third party regarding the Confidential Information or (ii) disclose to any person the fact that Confidential Information has been made available to it. Each Party agrees that, in complying with its confidentiality obligations under this Agreement, such Party shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information. The Parties agree to be responsible for any breach of this Agreement by their respective Representatives.

3. *Required Disclosure.* In the event that either Party is required by any judicial, regulatory, legislative or other government entity with jurisdiction over it, whether by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar process to disclose any Confidential Information, then such Party will, to the extent legally permissible, promptly provide to the other Party notice of such request(s) and will use reasonable efforts to resist disclosure until an appropriate protective order may be sought and/or a waiver of compliance with the provisions of this Agreement granted. If, in the absence of a protective order or the receipt of a waiver hereunder, such Party is nonetheless legally required to disclose such information, then such Party may disclose such information to the extent so required without liability hereunder.

4. *Disclosure of Own Information.* Notwithstanding anything to the contrary in this Agreement, the aforesaid restrictions on disclosure of Confidential Information shall not apply to disclosure by a Disclosing Party of its own Confidential Information.

5. *Termination of Access; Return of Documents and Deletion of Electronic Records.* The Disclosing Party may elect at any time to terminate further access to such Party’s Confidential Information. The Receiving Party agrees to return or, to the extent not prohibited by law, destroy or

delete all of the Disclosing Party's Confidential Information except the Receiving Party's notes, summaries, or other material derived therefrom (collectively, "Notes") upon written request from the Disclosing Party, including all computer or other electronic records or any other form of said material, without retaining any copy or duplicate thereof (except to the extent that backup copies of computer or other electronic records are automatically retained by the Receiving Party in the ordinary course of its business, which shall remain subject to this Agreement) and, to the extent not prohibited by law shall promptly destroy or delete all Notes (except for retention for archival purposes only, which shall remain subject to this Agreement).

6. *Nature of Information and Remedies.* Each Party hereby accepts the representations of the other Party that the Confidential Information of the other Party is of a special, unique, unusual, extraordinary, and intellectual character and that money damages would not be a sufficient remedy for any breach of this Agreement by it or its Representatives and that specific performance and injunctive or other equitable remedies for any such breach shall be available to it. The Parties also acknowledge that the interests of the other Party in such Confidential Information may be irreparably injured by disclosure of such Confidential Information. The remedy stated above may be pursued in addition to any other remedies available at law or equity for breach of this Agreement. Notwithstanding the foregoing, neither Party shall be liable to the other Party for any special, punitive, exemplary, indirect, incidental or consequential damages, including without limitation lost profits, arising out of or in connection with this Agreement, whether based on contract, tort, including negligence, or otherwise.

7. *No Representation or Warranties.* With respect to any information, including but not limited to Confidential Information, which the Disclosing Party furnishes or otherwise discloses to the Receiving Party for purposes of the Evaluation, it is understood and agreed that the Disclosing Party does not make any representations or warranties as to the accuracy, completeness or fitness for a particular purpose thereof. It is further understood and agreed that neither the Disclosing Party nor its Representatives shall have any liability or responsibility to the Receiving Party or its Representatives in connection with the use of any information so furnished or otherwise provided. Neither this Agreement, nor the transfer of Confidential Information hereunder, shall be construed as granting any license or rights to any information or data now or hereafter owned or controlled by the Disclosing Party to the Receiving Party and all such Confidential Information shall remain the property of the Disclosing Party. Notwithstanding the foregoing, the Disclosing Party represents and warrants to the Receiving Party that it may disclose its Confidential Information to the Receiving Party without breaching any contractual, legal, fiduciary, or other obligation to any other person.

8. *Term.* This Agreement shall be effective as of the Effective Date and shall remain in full force and effect for two (2) years from and after such date.

9. *Notices.* Any notice provided or permitted to be given under this Agreement shall be in writing, and may be served by facsimile provided the sender has received a machine-generated confirmation of delivery, personal delivery or by depositing same in the mail, addressed to the Party to be notified, postage prepaid, and registered or certified with a return receipt requested. Notice deposited in the mail in the manner hereinabove described shall be deemed to have been given and received on the date of the delivery as shown on the return receipt. Notice served in any other manner shall be deemed to have been given and received only if and when actually received by the addressee (except that notice given by facsimile shall be deemed given and received upon

receipt only if received during normal business hours and if received other than during normal business hours shall be deemed received as of the opening of business on the next business day). For purposes of notice, the addresses and facsimile numbers of the Parties shall be as follows:

Notices to Transco shall be sent to:

Transcontinental Gas Pipe Line Company, LLC  
2800 Post Oak Blvd.  
Houston, Texas 77056  
Attn: Director, Business Development  
Facsimile: 713-215-4608

Notices to \_\_\_\_\_ shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Each Party shall have the right, upon giving five days prior notice to the other in the manner hereinabove provided, to change its address for purposes of notice.

10. *Governing Law.* The validity and interpretation of this Agreement and the legal relations of the Parties to it shall be governed by the laws of the State of Texas, excluding, however, any conflicts of laws principles or rules that might require the application of the laws of another jurisdiction.

11. *No Other Agreement.* Neither this Agreement, nor the disclosure of Confidential Information under this Agreement, nor the ongoing discussions and correspondence between the Parties, nor any joint activities, shall constitute or imply a commitment or binding obligation, other than the obligation of confidentiality stated herein, between the Parties or their respective Affiliates, if any, regarding the Evaluation or the project that is the subject of the Evaluation. The Parties acknowledge and agree that each Party reserves the right, in its sole and absolute discretion, to reject any and all proposals and to terminate discussions hereunder at any time subject to the provisions set forth herein. Except for the obligations of confidentiality set forth herein, neither Party shall be restricted in any of its activities whatsoever by virtue of this Agreement. If, in the future, the Parties elect to enter into a binding commitment regarding the Evaluation or the project that is the subject of the Evaluation, such commitment shall be explicitly stated in a separate written agreement executed by both Parties (“Definitive Agreement”), and the Parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding any project or any other transaction between them (including without limitation, any joint venture) without execution of such separate written agreement. For purposes of this Agreement, a Definitive Agreement does not include a proposal, a negotiated term sheet, an executed letter of intent or any other preliminary written agreement or offer (whether or not signed by either of the Parties), unless specifically stated in writing to be a definitive agreement or binding and executed by both Parties. Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the Parties’ discussions are

implicitly subject to all necessary management and government approvals and may be withdrawn by either Party for any reason or for no reason at any time. Without limitation of the generality of the foregoing, the Parties expressly disavow the five factor test for a partnership set forth in Section 152.052 of the Texas Business Organizations Code and the “totality of the circumstances” test as set forth in *Ingram v. Deere*, 288 S.W.3d 886 (Tex. 2009).

12. *Assignment.* Any purported assignment of this Agreement by either Party shall be null and void *ab initio* without the prior written consent of the other Party.

13. *Entire Agreement.* This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, documents or other instruments with respect to the matters covered hereby. The Parties make, and have made, no oral agreements or undertakings pertaining to the subject matter of this Agreement, except for any that are no longer in effect.

14. *Waiver.* No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

15. *Captions.* The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

16. *Severability.* If a provision of this Agreement that does not affect the essential nature of, or consideration for, the arrangement between the Parties reflected hereby is ruled to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remaining provisions of this Agreement, which shall continue in full force and effect. In such event, however, the Parties shall negotiate in good faith to replace such invalid or unenforceable provision with a valid and enforceable provision that places each Party in substantially the same position it would have been in had such original provision been valid and enforceable.

17. *Amendment.* This Agreement may not be amended except by an instrument in writing signed by both Parties.

18. *Counterparts.* This Agreement may be executed in one or more counterparts (delivery of which may be made by facsimile, electronic mail or other similar means of transmission), each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, duly authorized representatives of the Parties hereby execute this Agreement as of the Effective Date.

TRANSCONTINENTAL GAS PIPE LINE  
COMPANY, LLC

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

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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