

**MACKENZIE GAS GATHERING AND PROCESSING FACILITIES
CAPACITY REQUEST AGREEMENT**

AMONG:

IMPERIAL OIL RESOURCES VENTURES LIMITED

and

EXXONMOBIL CANADA PROPERTIES

and

CONOCOPHILLIPS CANADA (NORTH) LIMITED

and

SHELL CANADA LIMITED

and

[PRODUCER]

_____, 2005

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MACKENZIE GAS GATHERING AND PROCESSING FACILITIES
CAPACITY REQUEST AGREEMENT

This Capacity Request Agreement is made as of the _____ day of _____, 2005 among:

IMPERIAL OIL RESOURCES VENTURES LIMITED, a Canadian corporation, with an office in the City of Calgary, in the Province of Alberta ("**IORVL**")

and

EXXONMOBIL CANADA PROPERTIES, a partnership having an office at the City of Calgary in the Province of Alberta ("**EMCP**")

and

CONOCOPHILLIPS CANADA (NORTH) LIMITED, a body corporate having an office at the City of Calgary in the Province of Alberta ("**ConocoPhillips**")

and

SHELL CANADA LIMITED, a body corporate having an office at the City of Calgary in the Province of Alberta ("**Shell**")

and

_____, a
_____, with an office in the City of
_____, in the Province of _____
("**Producer**")

RECITALS:

WHEREAS IORVL, ConocoPhillips, Shell and EMCP are currently proposing to develop facilities which generally consist of gathering lines from the Niglintgak, Taglu and Parsons Lake fields, a gas and liquids processing facility in the Inuvik area and a liquids transportation line from the outlet of the gas and liquids processing facility to an interconnection with the existing Enbridge pipeline at Norman Wells, as set out in Schedule "A" hereto (the "**Facilities**");

AND WHEREAS, on or before September 1, 2005, Producer informed the Operator in writing of its interest in utilizing a specified capacity in the Facilities;

AND WHEREAS Producer has requested the Owners to provide the Requested Capacity and, subject to the terms and conditions of this Agreement, has expressed a *bona fide* intent to either become an owner in the Facilities or to contract for firm capacity in the Facilities;

AND WHEREAS the commitments given by Producer in this Agreement and commitments given by other Capacity Request Parties may be used in support of applications to be made by the Operator on behalf of the Owners for regulatory approvals in respect of the Facilities;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the Recitals and Schedules, the following words and phrases have the following meanings:

"**AFE**" means authority for expenditure;

"**Affiliate**" means a corporation, partnership or trust that is affiliated with the Person for which the expression is being applied, and, for the purpose of this definition:

- (a) a corporation, partnership or trust is affiliated with another corporation, partnership or trust if it directly or indirectly controls or is controlled by that other corporation, partnership or trust, and for the purpose of determining whether a corporation, partnership or trust so controls or is so controlled, it will be deemed that:
 - (i) a corporation is directly controlled by another corporation, partnership or trust if shares of the corporation to which are attached more than fifty percent (50%) of the votes that may be cast to elect directors of the corporation are beneficially owned by that other corporation, partnership or trust and the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the corporation;
 - (ii) subject to (a)(iii) below, a partnership is directly controlled by another partnership, corporation or trust if that partnership, corporation or trust holds more than a fifty percent (50%) aggregate voting interest in the partnership;
 - (iii) a limited partnership is controlled by the Person that controls the general partner of such limited partnership or, if there is more than one (1) general partner, by any Person that controls a general partner or general partners having more than a fifty percent (50%) aggregate voting interest in the limited partnership;

- (iv) a trust is controlled by the Person that is entitled to elect or appoint the majority of the trustees of the trust; and
 - (v) a corporation, partnership or trust is indirectly controlled by another corporation, partnership or trust if control, as defined in (a)(i) through (iv) above is exercised through one (1) or more other corporations, partnerships or trusts;
- (b) where two (2) or more corporations, partnerships or trusts are affiliated at the same time with the same corporation, partnership or trust, they will be deemed to be affiliated with each other;

and an "Affiliate" of Shell shall include N.V. Koninklijke Nederlandsche Petroleum Maatschappij, a Netherlands Company; the "Shell" Transport and Trading Company p.l.c., an English company; their respective successors and any other body corporate, partnership or trust affiliated with either or both of those companies within the meaning of paragraphs (a) and (b) of this definition of "Affiliate", other than Shell, as long as, with respect to those companies, such company remains part of the group of companies that controls Shell;

"Affiliated Guarantor" means:

- (a) an Affiliate of Producer, which Affiliate meets the Minimum Ratings Requirement and has provided to the Operator a guarantee, in a form acceptable to the Operator at the time of the execution of such guarantee, guaranteeing all of the obligations of Producer pursuant to this Agreement; or
- (b) an Affiliate of a proposed assignee of Producer pursuant to Section 7.1, which Affiliate meets the Minimum Ratings Requirement and has provided to the Operator a guarantee, in a form acceptable to the Operator at the time of the execution of such guarantee, guaranteeing all of the obligations such proposed assignee will assume from Producer pursuant to this Agreement;

as the case may be;

"Agreement" means this agreement, as may be amended from time to time;

"Authorities" means all governmental and regulatory authorities and other bodies, including the NEB, to the extent having valid jurisdiction or authority over or in respect of: (a) the Facilities; or (b) any Producer's Authorizations;

"Authorizations" means all those necessary governmental and regulatory authorizations required from the Authorities, including any supplements or amendments thereto and any exemptions therefrom as the context may require;

"Business Day" means any day of the week except Saturday, Sunday and those days that are a statutory holiday in the Province of Alberta;

"**Capacity**" means the volumetric throughput capacity for gathering, processing and transportation services in the Facilities that has been requested by the Owners, Producer and other Capacity Request Parties, without duplication;

"**Capacity Request Party**" means a Person, including Producer, that has executed a capacity request agreement with the Owners;

"**Code of Conduct**" means the code of conduct applicable to the Facilities adopted by the Owners from time to time;

"**COGOA**" means the *Canada Oil and Gas Operations Act*, as amended from time to time, and includes any Canadian federal legislation that is enacted in replacement thereof;

"**Confidential Information**" has the meaning ascribed to it in Section 9.1;

"**Construction AFE**" means one (1) or more AFEs which, in the aggregate, contain the proposed scope and the estimated cost of the initial development, design, preparation, engineering, construction, installation and testing of the Facilities;

"**Control**" shall have the meaning ascribed to "control" in (a)(i) to (a)(v), inclusive, of the definition of "Affiliate";

"**Controlling Party**" means, in respect of a Person, an Affiliate that directly or indirectly Controls that Person;

"**Day**" means any calendar day;

"**Decision to Construct**" means the decision of the Owners, or some of them, to proceed with the construction of the Facilities, which decision may be conditional upon the occurrence of certain defined events;

"**Development and Operating Agreement**" means the Mackenzie Gas Gathering and Processing Facilities Development and Operating Agreement dated as of September 30, 2005 among the Owners, as may be amended from time to time;

"**Draft Construction AFE**" means the draft form of Construction AFE setting out Operator's most recently prepared estimate of the scope and costs to be included therein and distributed to the Owners when initiating the formal process of considering whether to make the Decision to Construct;

"**Excise Tax Act**" means the *Excise Tax Act* (Canada), as amended from time to time and includes any Canadian federal legislation enacted in replacement thereof;

"**Facilities**" has the meaning ascribed to it in the recitals to this Agreement;

"**Force Majeure**" means any act of God, war, civil insurrection or disobedience, strikes, lockouts or other industrial disturbances, accidents, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, civil disturbances, or other cause

whether of the kind enumerated or otherwise which is beyond the control of any applicable Party and which by the exercise of due diligence such Party is unable to prevent or overcome, but shall specifically exclude the inability or failure of Producer to obtain any Producer's Authorization;

"Functional Unit" means a separate component of the Facilities identified by a Functional Unit identifier in Schedule "A" or, if no specific Functional Unit or combination of Functional Units is indicated, any such Functional Unit, together, in all cases, with all property of every nature and kind that is jointly owned by those Owners with an interest in such Functional Unit and is attached to, forms part of or is used in connection therewith, to the extent not forming part of or allocated to another Functional Unit;

"Functional Unit Interest" means the undivided beneficial ownership interest in a Functional Unit allocated to an Owner, as may change from time to time, expressed as a percentage;

"GPF Cost Allocation Agreement" means the letter agreement dated the 29th day of October, 2004 among IORVL, EMCP, ConocoPhillips, Shell, the Mackenzie Valley Aboriginal Pipeline Limited Partnership and TransCanada PipeLines Limited, or their respective successors in interest, if any, regarding the allocation of costs between the Facilities and other facilities under certain circumstances, as may be amended from time to time;

"GST" means goods and services taxes imposed under part IX of the Excise Tax Act;

"Inlet Substances" means any mixture primarily of hydrocarbons which is to be delivered from outside the Facilities to a Receipt Point;

"Issuer Rating" means the opinion of a particular Rating Agency of the ability of a Rated Person to honour senior unsecured financial obligations and contracts without taking into account any form of credit enhancements, with such opinion focusing on the capacity and willingness of such Rated Person to meet its financial commitments as they come due;

"Minimum Ratings Requirement" means, in respect of a Rated Person, that it has a credit rating issued by a Rating Agency that is not less than the minimum rating set out for such Rating Agency in Schedule B, or the then equivalent rating used by any such Rating Agency in substitution or replacement for such minimum rating, for its unsecured, unsubordinated, non credit enhanced long term debt; provided that:

- (a) long term debt, as determined at any date, means the indebtedness of the Rated Person which would be classified as such on its balance sheet in accordance with generally accepted accounting principles in Canada or, at the option of the Producer if the Rated Person trades on a United States stock exchange, in accordance with generally accepted accounting principles in the United States, and which in all events matures by its terms at a date more than one year after the date of determination; and
- (b) if the unsecured, unsubordinated, non credit enhanced long term debt of the Rated Person is rated by more than two Rating Agencies, at least two of such ratings, established by such Rating Agencies, must meet the minimum rating set out for the applicable Rating Agency in Schedule B, or the then equivalent rating used by

any such Rating Agency in substitution or replacement for such minimum rating, for its unsecured, unsubordinated, non credit enhanced long term debt;

and provided further that if the Rated Person does not have any unsecured, unsubordinated, non credit enhanced long term debt or if its unsecured, unsubordinated, non credit enhanced long term debt has not been rated by any Rating Agency, then "**Minimum Ratings Requirement**" means that the Rated Person has obtained an Issuer Rating from at least one of the Rating Agencies meeting the minimum rating set out for such Rating Agency in Schedule B, or the then equivalent rating used by any such Rating Agency in substitution or replacement for such minimum rating;

"**NEB**" means the National Energy Board of Canada established by the NEB Act or any replacement or successor regulatory or government authority or authorities having jurisdiction to approve certain activities under COGOA;

"**NEB Act**" means the *National Energy Board Act (Canada)*, as amended from time to time and includes any Canadian federal legislation enacted in replacement thereof;

"**NEB Decision Date**" means the date on which the NEB releases its decision or decisions, including any reasons for decision, in connection with the application of the Owners for a certificate of public convenience and necessity for the Transportation System pursuant to Part III of the NEB Act and in respect of the toll principles and the tariff principles for the Transportation System pursuant to Part IV of the NEB Act; provided that if the NEB does not release its decision or decisions on all such matters on a single date, then the date on which the last of the reasons for decision respecting each of such matters is released shall be the "**NEB Decision Date**";

"**Operator**" means the Person designated to serve as the operator of the Facilities pursuant to the Pre-Development Agreement or the Development and Operating Agreement, as applicable, and, as of the date hereof, is IORVL;

"**Originating Party**" has the meaning ascribed to it in Section 9.1;

"**Owners**" means those Persons which are from time to time parties to the Pre-Development Agreement or the Development and Operating Agreement, whichever is in effect at the applicable time, and, as of the date hereof, are IORVL, ConocoPhillips, Shell and EMCP;

"**Owners' Authorizations**" means Authorizations which the Operator determines are necessary for the construction and operation of the Facilities and to render gathering, processing and transportation service;

"**Participation Notice**" means the Notice to be delivered by Operator to Producer pursuant to Section 4.2(b);

"**Party**" means a party to this Agreement;

"**Performance Assurance**" means any assurance of performance of Producer's obligations under this Agreement, which may be provided in cash, by a letter of credit, by guarantee or by another

form of security or other assurance, in an amount and a form acceptable to the Operator, acting reasonably, from time to time by a Performance Assurance Provider in favour of the Owners;

"Performance Assurance Provider" means, if Producer has elected to become an Owner, an Affiliated Guarantor of Producer or of a proposed assignee of Producer pursuant to Section 7.1, or if Producer has elected to become a Shipper, an Affiliated Guarantor or other third Person which is providing a Performance Assurance for or on behalf of Producer or of a proposed assignee of Producer pursuant to Section 7.1;

"Person" means an individual, a partnership, a limited partnership, a corporation, a limited or unlimited liability company, a trust, an unincorporated organization, a union, a government, including any political subdivision, agency, instrumentality, department, commission or board, thereof, and the heirs, executors, administrators or other legal representatives of an individual;

"Pre-Development Agreement" means the Mackenzie Gas Gathering and Processing Facilities Pre-Development Agreement dated as of December 31, 2003 among IORVL, EMCP, ConocoPhillips and Shell, or their respective successors in interest, if any, to govern the project definition phase and regulatory approvals for the Facilities, as such agreement may be amended from time to time;

"Producer Default" has the meaning ascribed to it in Section 6.1(a);

"Producer's Authorizations" means those Authorizations listed in the most recent notice which Producer has provided to the Operator in accordance with Section 5.2;

"Proposed Initial Functional Unit Interest" means the proposed initial Functional Unit Interest of a Capacity Request Party that has elected to become an Owner or of an Owner, as applicable, expressed as a percentage, as set out in the applicable Participation Notice;

"Proposed Initial Relative Weightings" means the proposed initial relative weightings for the Functional Units, expressed as a percentage, as set out in the applicable Participation Notice;

"Rated Person" means Producer, the proposed assignee of Producer, the Performance Assurance Provider of Producer or the Performance Assurance Provider of Producer's proposed assignee, as applicable, or, if such applicable Person is a partnership which is not itself a rated entity and the partners of which are all Affiliates, the general partner of such partnership having the highest credit rating;

"Rating Agency" means any one of the credit rating agencies set out in Schedule B;

"Receipt Point" means the point where Inlet Substances enter the Facilities, as designated in Schedule C;

"Receiving Party" has the meaning ascribed to it in Section 9.1;

"Request for Capacity" means the "Request for Capacity" attached hereto as Schedule C;

"Requested Capacity" means the capacity, in thousands of standard cubic meters per day, as set out in the Request for Capacity;

"Shipper" means a Person in its capacity as a potential user of the Facilities (or any part thereof) which has executed a TPA;

"Termination Fee" has the meaning ascribed to it in Section 4.4;

"Transportation and Processing Agreement" or **"TPA"** means an executed agreement, or the form of agreement to be executed, as applicable, between a Shipper and the Operator for gathering, processing or transportation services, as the case may be, in the Facilities (or part thereof);

"Transportation System" means the facilities that transport Facilities products from the outlet of Functional Unit 4b to the NOVA gas transportation system in Northern Alberta; and

"Work Program and Budget" means, for the applicable period, a work program for the development, design, construction, ownership and operations of the Facilities and the budget therefor as prepared and approved in accordance with the Pre-Development Agreement or the Development and Operating Agreement, as applicable.

1.2 Schedules

The following schedules are attached to and made part of this Agreement:

Schedule A - FACILITIES AND TRANSPORTATION SYSTEM

Schedule B - RATING AGENCIES AND MINIMUM RATINGS REQUIREMENT

Schedule C - REQUEST FOR CAPACITY

1.3 Interpretation and References

Whenever the singular or masculine or neuter is used in this Agreement the same will be construed as meaning plural or feminine or body politic or corporate and vice versa where the context or the Parties hereto so require. References to Recitals, Articles, Sections, or Schedules are references to the Recitals, Articles, Sections, and Schedules of this Agreement. Words such as "hereunder", "hereto" and "herein" and similar expressions refer to the whole of this Agreement and not to any particular Section, or Schedule hereof. The word "including" and derivatives thereof shall mean "including, without limitation". References to any statute or law shall be construed as a reference to such statute or law as amended or re-enacted from time to time, and to any statute or law that may be substituted therefor, and to all subsidiary instruments made pursuant to such statute or law.

1.4 Operator

The Operator is the agent of the Owners and, except as expressly otherwise provided herein:

- (a) the Operator is authorized, as between the Owners and Producer, to represent and bind the Owners with respect to any matter related to this Agreement; and
- (b) no Owner that is not the Operator is entitled to represent the Owners with respect to any matter related to this Agreement.

ARTICLE 2 TERM

2.1 Term

This Agreement shall become effective as of the date hereof and shall continue in effect until it is terminated in accordance with its terms.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties

Each Party, with respect to itself only, represents and warrants to each other Party that:

- (a) if it is a corporation, it is duly organized and validly existing under the laws of its jurisdiction of incorporation and is authorized to carry on business in the Northwest Territories and has all requisite corporate power and authority to execute this Agreement and perform the terms, conditions and provisions hereof;
- (b) if it is a partnership, it is a partnership, duly established and validly existing under the laws of its jurisdiction of establishment and is authorized to carry on business in the Northwest Territories and has or, in the case of a limited partnership, its general partner has, all requisite partnership power and authority to execute this Agreement and perform the terms, conditions and provisions hereof;
- (c) the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder shall not violate, nor be in conflict with, its constating documents, by-laws or governing documents or any judgment, decree, order, law, statute, rule or regulation applicable to it or any agreement, indenture or other contract to which it is a party or by which it is bound;
- (d) this Agreement has been duly authorized by all requisite actions and constitutes a valid, legal and binding obligation of it enforceable in accordance with the terms hereof, subject only to laws of general application applying to equitable remedies and the enforcement of creditor's remedies; and
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it before any court that might reasonably be expected to materially and adversely affect its ability to meet and carry out its obligations under this Agreement.

3.2 Limitation on Owners' Representations and Warranties

Producer agrees that the Owners have made no representation or warranty whatsoever, either expressed or implied, except as expressly set out in Sections 3.1 and 9.7. Without limiting the generality of the foregoing, Producer acknowledges that the Owners make no representation or warranty with respect to:

- (a) the cost of the Facilities or of any Functional Unit;
- (b) the size of any Functional Unit Interests that Producer may be allocated in the Facilities as a consequence of its Requested Capacity, or the costs for which Producer might become responsible as a consequence of ownership in the Facilities;
- (c) the fees charged for service pursuant to a TPA;
- (d) the availability of, or the terms and conditions that might be applicable to, the Owners' Authorizations;
- (e) when or whether the Facilities will be constructed or the actual capacity thereof;
or
- (f) whether any or all of the current Owners will continue:
 - (i) as Parties to this Agreement prior to a Decision to Construct, if any; or
 - (ii) to participate as parties to the Development and Operating Agreement at any time, whether before or after a Decision to Construct, if any.

ARTICLE 4 PRODUCER'S ELECTIONS

4.1 Producer's Review of Documents and Election

Producer acknowledges that it has received from the Operator copies of the Development and Operating Agreement, the form of the TPA and the GPF Cost Allocation Agreement. After reviewing such documents, Producer has elected to:

- (a) become an Owner and not a Shipper in accordance with Section 4.2, execute the Development and Operating Agreement, and become bound by the GPF Cost Allocation Agreement and, if requested by the Operator, the Code of Conduct; provided that Producer may elect to become an Owner only if (i) its Requested Capacity is at least seven hundred and eight thousand (708,000) standard cubic meters per day of capacity, and (ii) it or its Affiliated Guarantor meets the Minimum Ratings Requirement; or
- (b) become a Shipper and not an Owner in accordance with Section 4.3 and to execute a TPA with respect to the capacity described in the Request for Capacity,

provided that it or its Performance Assurance Provider meets the Minimum Ratings Requirement;

as specified in the Request for Capacity. If Producer has elected to become a Shipper and not an Owner, Producer shall promptly return to the Operator all copies of the Development and Operating Agreement and the GPF Cost Allocation Agreement in its control or possession, along with a certificate of an officer of Producer, in form and content acceptable to the Operator, certifying that it has done so.

4.2 Election to Own

The provisions of this Section 4.2 shall apply only if Producer has elected to become an Owner.

- (a) Between the date of this Agreement and the date of the Decision to Construct or the termination of this Agreement, the Operator will advise Producer on an ongoing basis, in a timely fashion and in any event not less frequently than every six (6) months, of the proposed Facilities development and construction schedule, cost estimates and the general status of Owners' Authorizations. In addition, when the Owners have initiated the formal process of considering whether to make the Decision to Construct, the Operator will also provide to Producer copies of the Draft Construction AFE and the related draft Work Program and Budget that are distributed to the Owners for such purpose at the same time such documents are distributed to the Owners.
- (b) As soon as reasonably practicable following the Decision to Construct, if any, the Operator shall deliver to Producer a notice (the "**Participation Notice**") which includes:
 - (i) the aggregate initial Capacity, indicating the aggregate volumes requested by:
 - (A) each of the Owners;
 - (B) Capacity Request Parties that have expressed an intent to become Owners; and
 - (C) Capacity Request Parties that have expressed an intent to become Shippers;in each case by Functional Unit;
 - (ii) the Proposed Initial Functional Unit Interests for each of the Owners and the Capacity Request Parties that have expressed an intent to become Owners;
 - (iii) the Proposed Initial Relative Weightings for each Functional Unit;

- (iv) execution copies of the Development and Operating Agreement and the documents required to become bound by the GPF Cost Allocation Agreement and, if acceptance thereof is required by the Operator, the Code of Conduct;
 - (v) a copy of the Construction AFE and the related Work Program and Budgets;
 - (vi) all other information that the Operator reasonably considers may be relevant to the determination of the Proposed Initial Functional Unit Interests, the Proposed Initial Relative Weightings, the costs of equalization under the Development and Operating Agreement and the election of Producer provided for in this Section 4.2; and
 - (vii) if the Decision to Construct is conditional, the condition or conditions to which the Decision to Construct is subject.
- (c) Producer will have a period of thirty (30) Days following Receipt of the Participation Notice (which period shall be referred to as the "**Confirmation Period**") to deliver to the Operator either:
- (i) a notice (a "**Confirmation Notice**") confirming that Producer elects to obtain the Proposed Initial Functional Unit Interests allocated to it, as set out in the Participation Notice, subject always to Section 4.2(e) and the terms of the Development and Operating Agreement, together with the required number of copies of execution pages of the Development and Operating Agreement and the documents required to become bound by the GPF Cost Allocation Agreement and, if requested by the Operator, the Code of Conduct, each of which shall have been duly executed by Producer, and, if Producer does not meet the Minimum Ratings Requirement, a guarantee duly executed by an Affiliated Guarantor assuring the performance by Producer of its obligations as an Owner pursuant to the Development and Operating Agreement with respect to the Construction AFE, in form and substance acceptable to the Operator; or
 - (ii) notice of Producer's election to terminate this Agreement, along with payment of the Termination Fee.
- (d) If Producer:
- (i) elects pursuant to, and fulfils each of its obligations as set out in, Section 4.2(c)(i), this Agreement shall terminate effective immediately or, if Producer has been notified of a condition or conditions to the Decision to Construct pursuant to Section 4.2(b)(vii), effective upon the satisfaction or waiver of all such conditions. The Operator shall deliver to Producer notice of the satisfaction or waiver of such conditions as soon as reasonably practicable after satisfaction or waiver thereof. Upon such termination of this Agreement, the Owners' and Producer's rights and

obligations related to the ownership of the Facilities shall in all respects be subject to the terms and conditions of the Development and Operating Agreement, the GPF Cost Allocation Agreement and, if requested by the Operator, the Code of Conduct. If the Decision to Construct is conditional and such conditions are not satisfied or waived, the Operator shall deliver to Producer notice of the Owners' decision not to proceed with construction of the Facilities and shall return to Producer the documents delivered to the Operator pursuant to Section 4.2(c)(i), at which time this Agreement shall terminate and the documents delivered by Producer shall be deemed to have never been effective;

- (ii) elects to terminate this Agreement pursuant to Section 4.2(c)(ii), this Agreement shall terminate effective as of the date that such notice is received by the Operator; or
 - (iii) fails to make an election pursuant to Section 4.2(c)(i) or Section 4.2(c)(ii), or elects pursuant to Section 4.2(c)(i) or Section 4.2(c)(ii) but fails to fulfil each of its obligations as set out therein, during the Confirmation Period, Producer shall be deemed to have elected to terminate this Agreement, this Agreement shall terminate and the Termination Fee shall become immediately due and payable to the Operator.
- (e) Producer acknowledges and agrees that if it becomes an Owner, its initial Functional Unit Interest for each Functional Unit will be determined based upon the relationship that its Requested Capacity in such Functional Unit bears to the aggregate capacity in such Functional Unit that has been requested by all Owners and all Capacity Request Parties that become Owners.
 - (f) Subject to the satisfaction or waiver of any conditions to the Decision to Construct and provided that there is not then a subsisting Producer Default, if, during the Confirmation Period, Producer has delivered to the Operator a Confirmation Notice and the other documents contemplated in Section 4.2(c)(i), and if it or its Affiliated Guarantor, as the case may be, meets the Minimum Ratings Requirement, the Owners shall be deemed to have accepted Producer as a party to the Development and Operating Agreement and Producer shall be deemed to have approved the Construction AFE and the related Work Program and Budgets, effective immediately. Operator shall conduct an equalization of the monetary expenditures of the Owners as soon as reasonably practicable after the effective date of the Development and Operating Agreement in accordance with the terms of the Development and Operating Agreement.
 - (g) If, at any time prior to the expiry of the Confirmation Period, there is an amendment to the Development and Operating Agreement that would have a material adverse effect on the rights of Producer or a material change in the design of the Facilities that would have a material adverse effect on the ability of the Facilities to provide capacity as specified in the Request for Capacity, the Operator shall forthwith notify Producer of such amendment or change. The sole

remedy of Producer in respect of such an amendment or change shall be to terminate this Agreement, without payment of the Termination Fee, by so notifying the Operator within (but not after) thirty (30) Days of Receipt by Producer of such notice of material amendment or material change. Failing any such termination by Producer, Producer shall be deemed to have accepted any amendments to the Development and Operating Agreement and any such changes in the design of the Facilities prior to the expiry of the Confirmation Period and shall be bound by the Development and Operating Agreement, as amended, upon the termination of this Agreement in accordance with Section 4.2(d)(i).

4.3 Election to Become a Shipper

The provisions of this Section 4.3 shall apply only if Producer has elected to become a Shipper.

- (a) Between the date of this Agreement and the date of the Decision to Construct or the termination of this Agreement, the Operator will advise Producer on an ongoing basis, in a timely fashion and in any event not less frequently than every six (6) months, of the proposed Facilities development and construction schedule, the then current preliminary estimate of fees by Functional Unit and the general status of Owners' Authorizations.
- (b) As soon as reasonably practicable after the Decision to Construct, the Operator shall deliver to Producer a notice which includes:
 - (i) a preliminary estimate of fees and Capacity by Functional Unit;
 - (ii) execution copies of the TPA for the Requested Capacity; and
 - (iii) if the Decision to Construct is conditional, notification of the condition or conditions to which the Decision to Construct is subject.
- (c) Producer will have a period of thirty (30) Days following Receipt of the notice referred to in Section 4.3(b) to deliver to the Operator either:
 - (i) the TPA for the Requested Capacity, duly executed by Producer and, if Producer does not meet the Minimum Ratings Requirement, such guarantees or other financial assurances as are required pursuant to the TPA; or
 - (ii) notice of Producer's election to terminate this Agreement, along with payment of the Termination Fee.
- (d) If Producer:
 - (i) elects pursuant to, and fulfils each of its obligations as set out in, Section 4.3(c)(i), this Agreement shall terminate effective immediately or, if Producer has been notified of a condition or conditions to the Decision to Construct pursuant to Section 4.3(b)(iii), effective upon the satisfaction or

waiver of all such conditions. The Operator shall deliver to Producer notice of the satisfaction or waiver of such conditions as soon as reasonably practicable after satisfaction or waiver thereof. Upon such termination of this Agreement, the Owners' and Producer's rights and obligations related to gathering, processing and transportation of the Requested Capacity in the Facilities shall in all respects be subject to the terms and conditions of the TPA. If the Decision to Construct is conditional and such conditions are not satisfied or waived, the Operator shall deliver to Producer notice of the Owners' decision not to proceed with the construction of the Facilities and shall return to Producer the documents delivered to the Operator pursuant to Section 4.3(c)(i), at which time this Agreement shall terminate and the documents delivered by Producer shall be deemed to have never been effective;

- (ii) elects to terminate this Agreement pursuant to Section 4.3(c)(ii), this Agreement shall terminate effective as of the date that such notice is received by the Operator; or
 - (iii) fails to make an election pursuant to Section 4.3(c)(i) or Section 4.3(c)(ii), or elects pursuant to Section 4.3(c)(i) or Section 4.3(c)(ii), but fails to fulfil each of its obligations as set out therein, within thirty (30) Days following Receipt of such notice from the Operator, Producer shall be deemed to have elected to terminate this Agreement, this Agreement shall terminate, and the Termination Fee shall become immediately due and payable to the Operator.
- (e) If, at any time prior to the expiry of the thirty (30) Day period set out in Section 4.3(c), there is a material change in the design of the Facilities that would have a material adverse affect on the ability of the Facilities to provide capacity as specified in the Request for Capacity, the Operator shall forthwith notify Producer of such change. The sole remedy of Producer in respect of such change shall be to terminate this Agreement, without payment of the Termination Fee, by so notifying the Operator within (but not after) thirty (30) Days of Receipt by Producer of such notice of material change. Failing any such termination by Producer, Producer shall be deemed to have accepted any such changes to the design of the Facilities prior to the expiry of the Confirmation Period.

4.4 Termination Fee

The "**Termination Fee**" shall be an amount equal to ten thousand six hundred dollars (\$10,600) for each thousand standard cubic meters of gas per day of the Requested Capacity; provided that if Producer is, at the time of the expiry or earlier termination of this Agreement, a party to a valid and subsisting agreement with the operator of the Transportation System for firm transportation service on the Transportation System which requires Producer to pay a termination fee if Producer terminates such Agreement, or was a party to and has paid a termination fee pursuant to such an agreement, the Termination Fee shall be zero dollars (\$0). The Parties hereby acknowledge that the Termination Fee provides compensation to the Owners in an amount which

is reasonable for providing Producer with an option to terminate this Agreement even though the Owners have incurred significant costs in pursuing Owners' Authorizations based, in part, on this Agreement. The Termination Fee shall not, under any circumstances, be construed as a penalty of any kind or nature and is not intended, under any circumstances, to be subject to review. The Parties hereby waive, to the extent permitted by law, any entitlement to review, modification or relief with respect to the rights of termination and the Termination Fee provided for in this Agreement pursuant to the equitable discretion of any court.

ARTICLE 5 OBLIGATIONS OF PARTIES

5.1 Application for Owners' Authorizations

The Owners reserve the right to file and prosecute any and all applications for Owners' Authorizations, any supplements and amendments thereto, and, if necessary, any court review, in such manner as they deem to be in the Owners' best interest. If requested by Producer, the Operator will provide a copy of each significant Owners' Authorization to Producer as soon as reasonably practicable after receipt of same.

5.2 Listing of Producer's Authorizations

Upon request of the Operator, Producer will provide a notice to the Operator specifically listing the significant Authorizations which will be sought by or on behalf of Producer or an Affiliate of Producer in connection with:

- (a) the development of a particular gas field or gas fields, including approval of the NEB under COGOA; and
- (b) the construction of facilities to connect such gas field to the Receipt Point;

in relation to the capacity specified in the Request for Capacity. From time to time thereafter, and no less frequently than once every six (6) months, Producer shall provide a notice to the Operator which sets out a current listing and the current status of significant Producer's Authorizations and identifies any additions, changes or deletions to the immediately preceding listing of Producer's Authorizations.

5.3 Application for Producer's Authorizations

Producer may file and prosecute any and all applications for Producer's Authorizations, any supplements or amendments thereto, and, if necessary, any court review, in such manner as it deems to be in its best interest. Producer will notify the Operator when an application for a significant Producer's Authorization has been filed with an Authority. Upon the request of the Operator, Producer will also provide the Operator, in a timely fashion, with a copy of any application made by Producer for any Producer's Authorization and a copy of each Producer's Authorization upon receipt of same; provided that Producer shall not be required to provide the Operator with any information in connection with any application for a Producer's Authorization which was filed and accepted by an Authority on a confidential basis.

5.4 Information

- (a) Within ten (10) Business Days of a request by the Operator, Producer will provide the Operator with any public information available to Producer and required by the Owners in connection with any application to be made by the Owners for an Owners' Authorization, including public information relating to Producer's resources and supply of Inlet Substances which are to be delivered to the Facilities as contemplated in the Request for Capacity, the deliverability of such Inlet Substances, upstream and downstream transportation arrangements and market arrangements; provided that Producer will not be required to supply any information other than that which may be necessary for the Owners to comply with the requirements of the particular Authority which will be reviewing the application for such Owners' Authorization. If any particular Authority requests the Operator to provide additional information respecting any Producer matter which is not public information, then within ten (10) Business Days of the Operator's request, Producer will provide the Operator with any non-public information available to Producer which has been requested by such Authority; provided that, if Producer has a reasonable basis for having a concern about the confidentiality or security of any such information, Producer may elect to provide such information directly to the Authority requesting such information within the aforesaid time period, rather than to the Operator.
- (b) Producer shall make available and shall cause any Performance Assurance Provider to make available to the Operator such information regarding the business affairs, operations, assets and financial condition of Producer or any Performance Assurance Provider as the Operator may reasonably request from time to time in order to assess the creditworthiness of Producer or any Performance Assurance Provider. Producer shall provide and shall cause any Performance Assurance Provider to provide the requested information within ten (10) Business Days of the Operator's request.

5.5 Initial Credit Requirement

- (a) Producer warrants that it or its Performance Assurance Provider meets the Minimum Ratings Requirement.
- (b) The monetary value of Producer's obligations under this Agreement shall never be considered to be greater than an amount equal to the Termination Fee.

5.6 Change in Circumstances

- (a) If, at any time during the term of this Agreement:
 - (i) either Producer or its Performance Assurance Provider is or may reasonably be expected to become unable to meet its obligations under this Agreement or under any Performance Assurance, as applicable;

- (ii) the financial circumstances of either Producer or its Performance Assurance Provider have deteriorated since the date of this Agreement such that it no longer meets the Minimum Ratings Requirement; or
- (iii) Producer has reasonable grounds for believing that a Performance Assurance provided by a Performance Assurance Provider may be void or unenforceable, in whole or in part, by the Operator against such Performance Assurance Provider as a result of any development or change in applicable law;

then Producer shall immediately so notify the Operator and provide the Operator with a new or replacement Performance Assurance, as applicable, which is satisfactory to the Operator, prior to the expiry of a period of thirty (30) days from the earlier of the date that Producer issued such notice or the Receipt by Producer of notice from the Operator pursuant to Section 5.6(a), failing which the Owners shall have the right to terminate this Agreement with immediate effect by causing the Operator to provide a termination notice to Producer as long as any of the circumstances set forth in (i) through (iv) above exist.

- (b) If, at any time during the term of this Agreement, the Operator has reasonable grounds for believing that:
 - (i) Producer or its Performance Assurance Provider may be unable to meet its obligations under this Agreement or under any Performance Assurance, as applicable; or
 - (ii) the financial circumstances of Producer or its Performance Assurance Provider have deteriorated since the date of this Agreement, and in the reasonable opinion of the Operator have reached an unacceptable level;

then the Operator may provide notice to Producer, stating its reasonable grounds and requesting a new or replacement Performance Assurance. If Producer or its Performance Assurance Provider is unable or unwilling to provide a Performance Assurance which is satisfactory to the Operator within thirty (30) Days of Receipt of the Operator's notice, then the Owners shall have the right thereafter to terminate this Agreement with immediate effect by causing the Operator to provide a termination notice to Producer.

- (c) If, at any time during the term of this Agreement, the Operator has reasonable grounds for believing that any Performance Assurance provided by a Performance Assurance Provider may be void or unenforceable, in whole or in part, by the Operator against such Performance Assurance Provider as a result of any development or change in applicable law, then the Operator may provide notice to Producer, stating its reasonable grounds and requiring a replacement Performance Assurance. The replacement Performance Assurance shall be in a form which addresses the matter which gave rise to the Operator's belief that the previous Performance Assurance may be void or unenforceable in whole or in part. If any

Producer is unable or unwilling to provide a replacement Performance Assurance which addresses such matter to the satisfaction of the Operator, acting reasonably, within thirty (30) Days of receipt of the Operator's notice, then the Owners shall have the right thereafter to terminate this Agreement with immediate effect by causing the Operator to provide a termination notice to Producer.

ARTICLE 6 DEFAULT AND TERMINATION RIGHTS

6.1 Termination by the Owners

- (a) If Producer:
 - (i) materially breaches any of its obligations under this Agreement other than those referred to in Section 5.4; or
 - (ii) repudiates this Agreement or evidences its intention not to perform its obligations under, or to be bound by this Agreement, except as permitted hereunder;

(each, a "**Producer Default**"), then, unless such Producer Default has occurred as a result of a breach by the Owners of their obligations under this Agreement, the Operator may give Producer notice specifying in reasonable detail the nature of the Producer Default and indicating the Owners' intent to terminate this Agreement pursuant to this Section 6.1(a). Unless the Producer Default is cured within thirty (30) Days after Receipt of such notice, the Termination Fee will become immediately payable and this Agreement will terminate effective upon the expiry of such thirty (30) Day notice period except as provided hereunder.

- (b) The Owners may elect to terminate this Agreement if Producer fails to provide the information, financial statements, data or interpretations thereof that are required to be provided by Producer pursuant to any of the provisions of Section 5.4 by the end of the time period specified in the applicable section if such default is not cured within ten (10) Business Days of the Receipt of a notice from the Operator indicating that Producer is in default of its obligations pursuant to Section 5.4. Upon such termination by the Owners, the Termination Fee will become immediately payable.
- (c) If Producer, its Controlling Party, any Performance Assurance Provider, or any partner (other than a limited partner) of Producer if Producer is a partnership, becomes subject to any of the following events:
 - (i) a receiver or receiver manager of all or any part of its assets is appointed by any of its creditors or by a court of competent jurisdiction;
 - (ii) it enters into, or resolves to enter into, an arrangement, or reorganization or reconstruction or composition with all or any class of its creditors, or it

proposes a moratorium or other administration involving any of them for reasons relating to insolvency;

- (iii) it seeks relief respecting creditors' rights under any companies or corporations legislation (including the *Business Corporations Act* (Canada) or similar provincial or territorial legislation);
- (iv) it resolves to wind-up or dissolve for reasons relating to insolvency or bankruptcy, or commits any act of bankruptcy as such term is defined in the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**");
- (v) it institutes any proceeding with respect to it under the BIA, the *Companies' Creditors Arrangement Act* (Canada), the *United States Bankruptcy Code* or any other applicable bankruptcy or insolvency laws (collectively, "**Bankruptcy or Insolvency Laws**");
- (vi) any involuntary proceeding is commenced against it (A) seeking bankruptcy, liquidation, reorganization, dissolution, winding-up, or a composition or arrangement with creditors, readjustment of debts, or other relief with respect to it or its debts under any Bankruptcy or Insolvency Laws, or (B) seeking the appointment of a trustee, receiver, liquidator, or other similar official of it or over any substantial part of its assets, or the issuance of a writ of attachment, execution or similar process against any substantial part of its assets; provided, in each such case, that neither Section 6.1(c)(vii) nor Section 6.1(c)(viii) applies, and such involuntary proceeding either (C) results in a judgment of insolvency or bankruptcy or an order for relief, or (D) remains undismissed and unstayed for a period of sixty (60) Days;
- (vii) it consents to, or takes any action to authorize, any proceeding referred to in Section 6.1(c)(vi);
- (viii) it files an answer or response admitting the material allegations of a petition filed against it in any proceeding regarding bankruptcy or insolvency commenced against it or fails to contest any such petition;
- (ix) anything analogous or having a substantially similar effect to any of the events specified above in relation to a trust, trust estate, trustee of a trust, partnership or any other Person that is not a body corporate; or
- (x) anything analogous or having a substantially similar effect to any of the events specified above under the laws of any jurisdiction having authority over it or its property or assets;

then the Owners shall have the right to terminate this Agreement by giving notice to Producer. For clarity, the foregoing shall not include any voluntary proceeding for the purpose of amalgamation, arrangement, reconstruction or reorganization unless such proceeding is taken at the request of, or to meet the requirements of,

the creditors of Producer or its Controlling Party or any Performance Assurance Provider or, if Producer is a partnership, any of its partners (other than limited partners). Where the notice of termination relates to Producer or its Controlling Party or any Performance Assurance Provider that is an Affiliate of Producer, then the termination of this Agreement will be effective upon delivery of such notice. Where the notice of termination relates to a Performance Assurance Provider that is not an Affiliate of Producer, then the termination of this Agreement will be effective upon the expiry of ten (10) Business Days from the date of delivery of such termination notice unless, within such period, Producer has provided another Performance Assurance to Operator which is satisfactory to the Operator. Notwithstanding the foregoing provisions of this Section 6.1(c), where the notice of termination relates to an insolvency event experienced by a partner (other than a limited partner) of Producer and Producer is a partnership, then the termination of this Agreement will be effective upon the expiry of five (5) Days from the occurrence of such event unless, at the expiry of such five (5) Day period, there is another partner (other than a limited partner) of Producer that causes Producer to satisfy the Minimum Ratings Requirement. Upon any termination by the Owners pursuant to this Section 6.1, the Termination Fee will become immediately payable.

- (d) The Owners may also terminate this Agreement in accordance with the provisions of Section 5.6, for which termination no Termination Fee shall be payable.

6.2 Termination by Producer

- (a) If the Owners:
 - (i) materially breach any of their obligations under this Agreement; or
 - (ii) repudiate this Agreement or evidence their intention not to perform their obligations under, or to be bound by this Agreement, except as permitted hereunder;

(each, an "**Owner Default**"), then, unless such Owner Default has occurred as a result of a breach by Producer of its obligations under this Agreement, Producer may give the Operator notice specifying in reasonable detail the nature of the Owner Default and indicating its intent to terminate this Agreement pursuant to this Section 6.2(a). Unless the Owner Default is cured within thirty (30) Days after Receipt of such notice, this Agreement will terminate effective upon the expiry of such thirty (30) Day notice period except as permitted hereunder.

- (b) An Owner that withdraws from the Pre-Development Agreement or does not elect to acquire a Functional Unit Interest upon the Decision to Construct ceases to be a Party to this Agreement, and shall have no liability to Producer as a result thereof. Producer acknowledges and agrees that an Owner ceasing to be an Owner and a Party hereunder is not a repudiation of this Agreement by the Owners, shall not, under any circumstances, constitute an Owner Default and shall not, under any

circumstances, give rise to any liability of the Owners to Producer or any right of Producer to make a claim against or receive damages from the Owners or any of them.

- (c) If the Operator or its Controlling Party or, if the Operator is a partnership, any partner (other than a limited partner) of the Operator experiences any of the following insolvency events:
- (i) a receiver or receiver manager of all or any part of its assets is appointed by any of its creditors or by a court of competent jurisdiction;
 - (ii) it enters into, or resolves to enter into, an arrangement, or reorganization or reconstruction or composition with all or any class of its creditors, or it proposes a moratorium or other administration involving any of them for reasons relating to insolvency;
 - (iii) it seeks relief respecting creditors' rights under any companies or corporations legislation (including the *Business Corporations Act* (Canada) or similar provincial or territorial legislation);
 - (iv) it resolves to wind-up or dissolve for reasons relating to insolvency or bankruptcy, or commits any act of bankruptcy as such term is defined in the BIA;
 - (v) it institutes any proceeding with respect to it under any Bankruptcy or Insolvency Laws;
 - (vi) any involuntary proceeding is commenced against it (A) seeking bankruptcy, liquidation, reorganization, dissolution, winding-up, or a composition or arrangement with creditors, readjustment of debts, or other relief with respect to it or its debts under any Bankruptcy or Insolvency Laws, or (B) seeking the appointment of a trustee, receiver, liquidator, or other similar official of it or over any substantial part of its assets, or the issuance of a writ of attachment, execution or similar process against any substantial part of its assets; provided, in each such case, that neither Section 6.2(c)(vii) nor Section 6.2(c)(viii) applies, and such involuntary proceeding either (C) results in a judgment of insolvency or bankruptcy or an order for relief, or (D) remains undismissed and unstayed for a period of sixty (60) Days;
 - (vii) it consents to, or takes any action to authorize, any proceeding referred to in Section 6.2(c)(vi);
 - (viii) it files an answer or response admitting the material allegations of a petition filed against it in any proceeding regarding bankruptcy or insolvency commenced against it or fails to contest any such petition;

- (ix) anything analogous or having a substantially similar effect to any of the events specified above in relation to a trust, trust estate, trustee of a trust, partnership or any other Person that is not a body corporate; or
- (x) anything analogous or having a substantially similar effect to any of the events specified above under the laws of any jurisdiction having authority over it or its property or assets;

then Producer shall have the right to terminate this Agreement by giving notice to the Operator. For clarity, the foregoing shall not include any voluntary proceeding for the purpose of amalgamation, arrangement, reconstruction or reorganization unless such proceeding is taken at the request of, or to meet the requirements of, the creditors of the Operator, its Controlling Party or, if the Operator is a partnership, any of its partners (other than limited partners). The termination of this Agreement will be effective upon the expiry of ten (10) Business Days from the date of delivery of such termination notice unless, within such period, the Owners have provided Producer with a notice of appointment of a new Operator or, where the Operator is a partnership and the notice of termination relates to an insolvency event experienced by a partner (other than a limited partner) of the Operator, unless, at the expiry of such ten (10) Business Day period, there is another partner (other than a limited partner) of the Operator that is not subject to any of the insolvency events set out in this Section 6.2(c). In either such case, Producer's notice of termination of this Agreement shall be void.

- (d) If Producer's work program activities during the winter of 2005-2006 in the • field, as described below, have not, in Producer's sole opinion, been successful, Producer may elect to immediately terminate this Agreement by providing notice to the Operator on or before the earlier of the date that is the tenth (10th) Business Day immediately following the NEB Decision Date or July 1, 2006. The winter of 2005-2006 work program activities consist of:
 - (i) •
 - (ii) •; and
 - (iii) •.
- (e) Producer may also terminate this Agreement in accordance with the provisions of Sections 4.2(c)(ii), 4.2(g), 4.3(c)(ii) and 4.3(e).

6.3 Other Events of Termination

This Agreement shall terminate:

- (a) immediately upon notice to Producer if the Owners decide not to proceed with construction of the Facilities or a Functional Unit which was expected to provide capacity for Producer's Requested Capacity; and

- (b) automatically on November 1, 2009 if, prior to that date, the Owners have not made a final decision to proceed with the construction of the Facilities or, if there were conditions to that decision of which Producer has been notified pursuant to Section 4.2(b)(vii) or Section 4.3(b)(iii), any of those conditions have not been waived by the Owners or satisfied;

and Producer acknowledges and agrees that such a termination shall not, under any circumstances, give rise to any liability of the Owners to Producer or any right of Producer to make a claim against or receive damages from the Owners or any of them.

6.4 Effect of Termination

No termination of this Agreement, however effected, shall affect or extinguish any rights or obligations of the Parties which accrued prior to the date of termination or affect or extinguish any remedies available to any Party at law, equity or as provided for herein, including Producer's obligation to pay the Termination Fee; provided that Producer shall not be obligated to pay the Termination Fee if this Agreement is terminated:

- (a) pursuant to Section 6.3;
- (b) by the Owners pursuant to Section 5.6; or
- (c) by Producer pursuant to Section 4.2(g), 4.3(e), 6.2(a), 6.2(c) or 6.2(d).

ARTICLE 7 ASSIGNMENT

7.1 By Producer

At any time at which Producer is in full compliance with all of its duties and obligations hereunder, Producer shall have the right to assign all or a portion of its rights and obligations under this Agreement subject to:

- (a) the assignee or its Performance Assurance Provider, as applicable, meeting the Minimum Ratings Requirement;
- (b) the assignee having executed and delivered to the Operator replacements for each of the documents required to be delivered by Producer pursuant to Producer's election pursuant to Section 4.2(c)(i) or Section 4.3(c)(i), as applicable;
- (c) if such assignment is an assignment of less than all of Producer's rights and obligations under this Agreement and Producer has elected to become an Owner, each of Producer and the assignee having, after the implementation of such assignment, a Requested Capacity of at least seven hundred and eight thousand (708,000) standard cubic meters per day of capacity;
- (d) the assignee or an Affiliate of the assignee owning properties from which Inlet Substances will be produced and delivered to the Facilities, or part thereof, either

through an ownership interest in the Facilities or through a TPA, as applicable; and

- (e) the Operator having provided its prior written approval, which shall not be unreasonably withheld, provided that the Operator shall not be allowed to withhold its approval based upon the financial condition of the assignee or its Performance Assurance Provider if the assignee or its Performance Assurance Provider meets the Minimum Ratings Requirement pursuant to Section 7.1(a).

No assignment by Producer of all or any portion of its rights and obligations under this Agreement shall entitle Producer or its assignee to make any amendment to the Request for Capacity or to revisit or change any elections made by Producer hereunder prior to such assignment.

7.2 By Owners

Each of the Owners may, without obtaining any approval from Producer, assign any or all of its rights and obligations under this Agreement to:

- (a) any Affiliate of such Owner; or
- (b) any Person to which such Owner has assigned its interest in the Pre-Development Agreement and the Development and Operating Agreement.

Further, if any Owner withdraws as a party to the Pre-Development Agreement, such Owner shall immediately cease to be a Party to this Agreement.

7.3 Succession

Any Person that:

- (a) succeeds by purchase of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of, or merger or consolidation with, either Producer or an Owner, as the case may be;
- (b) signs and delivers a counterpart of this Agreement to each of the other Parties; and
- (c) in the case of a successor to Producer, if Producer has made an election pursuant to Section 4.2(c)(i) or Section 4.3(c)(i), as applicable, executes and delivers to the Operator replacements for each of the documents required to be delivered by Producer pursuant to the applicable Section;

shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Agreement.

7.4 Pledging

The provisions of this Article 7 shall not in any way prevent the Owners from pledging or mortgaging their respective rights hereunder, or under a TPA or the Development and Operating Agreement, as security for indebtedness. Producer shall execute all consents to assignment and acknowledgements as reasonably requested by an Owner of any security interests granted by an Owner in relation to the Facilities, this Agreement, a TPA or the Development and Operating Agreement.

ARTICLE 8 AUTHORITIES

8.1 Authorities

Performance of this Agreement shall be subject to all valid laws, orders, decisions, rules and regulations of duly constituted governmental authorities having jurisdiction or control of any matter related hereto, including the Authorities. Should a Party, by force of any such law, order, decision, rule or regulation, at any time during the term of this Agreement be ordered or required to do any act inconsistent with the provisions hereof, then for the period during which the requirements of such law, order, decision, rule or regulation are applicable, this Agreement shall, to the extent reasonably required, be deemed modified to conform with the requirement of such law, order, decision, rule or regulation; provided that nothing in this Section 8.1 shall alter, modify or otherwise affect the respective rights of the Parties to terminate this Agreement under the terms and conditions hereof, and provided further that the inability of Producer to obtain any Producer's Authorizations shall not relieve Producer of any of its obligations hereunder, or the Owners of any of their rights and remedies hereunder.

ARTICLE 9 CONFIDENTIALITY

9.1 Definitions

- (a) "**Confidential Information**" means, except as otherwise expressed in this Article 9:
 - (i) the terms and conditions under discussion between the Parties, and the content of such discussions, with respect to any proposed business arrangements regarding the Facilities, the identification of the Parties as participants in such discussions, and the status of such discussions; and
 - (ii) all information related to the Facilities and the use or proposed use of the Facilities, which information may include financial, technical, biophysical, geological, geophysical, geochemical, engineering and production information, and other commercially sensitive information provided by the Originating Party to the Receiving Party, directly or indirectly, whether in written, oral, visual or electronic form, which has been designated by the Originating Party, prior to or concurrently with the initial direct disclosure hereunder, as confidential either in writing or verbally, and if verbally,

confirmed in writing by the Originating Party to the Receiving Party to which the information was directly disclosed within five (5) Business Days of providing it to the Receiving Party, and is also deemed to include analysis, compilations, data studies or other documents prepared by the Receiving Party to the extent containing or based upon Confidential Information;

provided, however, that information provided by Producer pursuant to Section 5.4(a) and, unless agreed to in writing by the Operator prior to disclosure, any proprietary technology provided by Producer are not Confidential Information for the purposes of this Agreement. Information that is otherwise Confidential Information for the purposes of this Agreement shall continue to be Confidential Information regardless of whether it is disclosed by the Originating Party to the Receiving Party in the presence of other Persons with which the Originating Party has entered into a confidentiality agreement.

- (b) **"Originating Party"** means:
 - (i) an Owner making a disclosure of Confidential Information directly to Producer, or indirectly to Producer through another Owner; or
 - (ii) Producer making a disclosure of Confidential Information directly to an Owner, or indirectly to an Owner through another Owner.
- (c) **"Participants"** means:
 - (i) with respect to an Owner, the other Owners; and
 - (ii) with respect to Producer, a joint venture participant of Producer whose production would be unavoidably co-mingled with Producer's production in the event Producer's production is tied into the Facilities.
- (d) **"Receiving Party"** means:
 - (i) an Owner receiving Confidential Information directly from Producer, or indirectly from Producer through another Owner; or
 - (ii) Producer receiving Confidential Information directly from an Owner or indirectly from an Owner through another Owner.
- (e) **"Representatives"** means employees, directors, officers, agents, contractors, consultants, Affiliates or Participants of a Party, and the employees, directors, officers, agents contractors or consultants of such Affiliates or Participants.

9.2 Owners' Rights and Obligations

Without in any way limiting the rights and obligations of Producer pursuant to this Article 9, the Owners agree that this Article 9 is not intended to affect the rights and obligations of the Owners,

as between themselves, as provided in the Pre-Development Agreement, the Development and Operating Agreement or any other agreement.

9.3 Disclosure by Owners to Other Owners of Transportation System

Notwithstanding the provisions of this Article 9, the Owners shall be entitled to disclose to the Mackenzie Valley Aboriginal Pipeline Limited Partnership and to TransCanada PipeLines Limited the existence, general status and progress of discussions relating to this Agreement, as well as the details of the Request for Capacity.

9.4 Proprietary Technology

Producer's proprietary technology shall only be subject to restrictions on use or disclosure to the extent such restrictions are contained in a separate agreement, which restrictions shall apply only to those Owners that have entered into such an agreement.

9.5 Confidential Information

Each Party hereby agrees:

- (a) that the Confidential Information referred to in Section 9.1(a)(ii), and any Confidential Information disclosed by a Party to the other Parties in the discussions referred to in Section 9.1(a)(i), remains the property of the Party that is the Originating Party with respect to that Confidential Information;
- (b) to keep the Originating Party's Confidential Information confidential and not to disclose the Originating Party's Confidential Information, or the identities of the Parties as participants in the discussions referred to in Section 9.1(a)(i) and the status of those discussions, directly or indirectly to any Person other than as specifically permitted under this Agreement, including pursuant to Section 5.4 or any notices delivered by the Operator pursuant to Section 4.2(b), without the prior written consent of the Originating Party;
- (c) to restrict copies or other disclosure of the Originating Party's Confidential Information and the identities of the Parties as participants in the discussions referred to in Section 9.1(a)(i) and the status of those discussions to Representatives of the Receiving Party, or to another Party hereto, or its Representatives, who have a need to know and who have been informed of these confidentiality provisions by the Receiving Party with respect to such Confidential Information. Receiving Party shall take such steps as it considers appropriate to ensure compliance by such Representatives with the confidentiality obligations of this Article 9, and shall be responsible for the breach of any of the terms of this Article 9 by any of its Representatives. Producer shall advise the Operator in writing within five (5) Business Days of the identity of any Participant to whom Producer discloses Confidential Information and of the Confidential Information that it has disclosed;

- (d) unless the Originating Party otherwise consents in writing, to use the Originating Party's Confidential Information only for the purposes of this Agreement, and for no other purpose. For greater certainty, the Confidential Information shall not be used by Producer or its Representatives to oppose any Owners' Authorizations or any Authorizations for downstream facilities to which the Facilities may be connected; and
- (e) the Originating Party may demand the return of Confidential Information disclosed by it at any time upon giving written notice to the Receiving Party. Within thirty (30) Days of receipt of such notice, the Receiving Party shall return all of the original Confidential Information provided on behalf of such Originating Party and shall destroy or cause to be destroyed all copies and reproductions (in whatsoever form, including electronic media) in its possession and in the possession of its Representatives to the extent containing such Confidential Information (except that any Confidential Information that is retained in the Receiving Party's or its Representatives' computer backup system will be destroyed in accordance with the Receiving Party's or its Representatives' ongoing records retention process).

9.6 Exceptions

The obligation of confidentiality imposed by this Article 9 upon the Receiving Party shall not extend to those portions of the Confidential Information which:

- (a) at the time of disclosure are, or thereafter become, known to the Receiving Party on a non-confidential basis, including information that subsequently and lawfully comes into the possession of the Receiving Party without restriction on disclosure from a third Person that has the right to disseminate such information at the time it is acquired by the Receiving Party, or that is independently developed by the Receiving Party; or
- (b) are currently in the public domain or which become part of the public domain other than through a breach of this Article 9; or
- (c) the disclosure of which is mandated by operation of law or the Authorities, including disclosure required to comply with applicable securities laws or the requirements of a stock exchange having jurisdiction over the Receiving Party. If such disclosure is required, the Receiving Party will provide prompt written notice of such requirement, so that the Originating Party may seek, at its expense, an appropriate protective order prior to the time required for disclosure, and will furnish only that portion of the Confidential Information which it is advised, by written opinion of counsel, is legally required; or
- (d) is approved for release by the written authorization of the Originating Party.

9.7 Representation and Warranty

The Originating Party hereby represents and warrants that it has the right and authority to disclose the Confidential Information disclosed by it to the Receiving Party (or its Representatives). Each Party further acknowledges that, while it shall not knowingly provide incorrect information to the Receiving Party, neither the Originating Party, nor any of its Representatives, makes any representation or warranty as to the accuracy or completeness of the Originating Party's Confidential Information, nor shall any of such Persons have any liability to the Receiving Party or any of its Representatives arising out of the use of the Confidential Information by the Receiving Party or any of its Representatives.

9.8 Representatives

The Receiving Party shall be responsible to the Originating Party for the compliance by any of Receiving Party's Representatives with the terms of this Article 9 as though such Representatives are the Receiving Party. The Receiving Party shall:

- (a) be liable to the Originating Party for all losses, costs, damages, expenses and liabilities whatsoever which the Originating Party may suffer, sustain, pay or incur; and
- (b) indemnify and hold harmless the Originating Party against all claims, liabilities, damages, costs and expenses whatsoever which may be brought against or suffered by the Originating Party;

arising out of or related to disclosure or use by the Receiving Party, or any of its Representatives, of all or any part of the Confidential Information in breach of the terms of this Article 9. In addition, each Party is responsible for ensuring that its Representatives to whom it discloses Confidential Information are aware of applicable laws concerning trading or dealing in securities or passing on information by Persons who have information that is not disclosed to the public.

9.9 Remedies

Each Party agrees that money damages alone would not be sufficient remedy for a breach of this Article 9 and, accordingly, the Originating Party shall be entitled, to the extent permitted by law, to injunctive relief to prevent breaches of this Article 9 and to specifically enforce the terms and provisions of this Article 9 in addition to any other remedy it may have at law or in equity. Before or during the time that the Parties follow the dispute resolution procedures contained in Section 10.2, any Party may go to the appropriate court to obtain a preliminary injunction or other preliminary judicial relief if it believes that such a step is necessary to avoid irreparable damage or harm to such Party. Even if a Party takes such action, all Parties will continue to participate in the procedures provided for in Section 10.2.

9.10 Separate Obligations

Notwithstanding Section 9.8, any liabilities and obligations arising out of the breach by an Owner of its obligations under this Article 9 shall be separate, and not joint or joint and several, liabilities and obligations, of that Owner.

9.11 Survival

The obligations in this Article 9 shall remain in effect for a period of five (5) years following the termination or expiry of this Agreement; provided that, with respect to the terms of the Development and Operating Agreement and the GPF Cost Allocation Agreement, such obligations shall remain in effect for the maximum period permitted by law.

ARTICLE 10 CHOICE OF LAW AND ATTORNMENT

10.1 Choice of Law and Attornment

This Agreement shall be governed by, construed, interpreted and applied in accordance with the laws in effect in the Province of Alberta, excluding any choice of law rules which would refer the matter to the laws of another jurisdiction.

10.2 Dispute Resolution

Any and all claims, demands, causes of action, disputes, controversies and other matters in question arising out of or relating to this Agreement (each a "**Dispute**"), including any question regarding its breach, existence, validity or termination, which the Parties do not resolve amicably, shall be resolved by three (3) arbitrators in accordance with the arbitration procedure of the ADR Institute of Canada, Inc. or its successor ("**ADRIC**"). The place of arbitration shall be Calgary, Alberta, Canada. The proceedings shall be in the English language. The resulting arbitral award shall be final and binding, and judgment upon such award may be entered in any court having jurisdiction thereof. A Dispute shall be deemed to have arisen when any Party to the Dispute notifies the other Party or Parties to the Dispute in writing to that effect. The application for such measures or for the enforcement of such measures ordered by the arbitrators shall not be deemed an infringement or waiver of the agreement to arbitrate and shall not affect the powers of the arbitrators. Any monetary award issued by the arbitrators shall be payable in Canadian dollars. It is expressly agreed that the arbitrators shall have no authority to award special, indirect, consequential, exemplary or punitive damages, and the arbitrators shall certify in the decision that no part of the award includes such damages. Notwithstanding the foregoing provisions of this Section, only one (1) arbitrator shall be used in arbitrations where the net amount in controversy does not exceed five hundred thousand dollars (\$500,000.00), or where the controversy involves a geoscience or engineering technical issue and the Parties to the Dispute unanimously agree. Such arbitrator shall be appointed jointly by the Disputing Parties; failing agreement, ADRIC shall appoint such arbitrator.

ARTICLE 11 MISCELLANEOUS

11.1 Force Majeure

If a Party fails to perform any obligation under this Agreement due to an event of Force Majeure then, subject to the provisions of this Agreement, such failure shall be deemed not to be a breach of such obligation for so long as the event of Force Majeure is continuing. A Party that fails to perform any obligation under this Agreement where such failure is caused by an event of Force

Majeure shall promptly remedy the cause of the Force Majeure insofar as it is commercially reasonable to do so; provided that, the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the Party claiming suspension of its obligations hereunder by reason thereof. Notwithstanding the above provisions, no event of Force Majeure shall:

- (a) relieve any Party from any obligation pursuant to this Agreement unless such Party gives notice with reasonable promptness of such event to the other Party;
- (b) relieve any Party from any obligation pursuant to this Agreement after the expiration of a reasonable period of time within which, by the use of due diligence, such Party could have remedied or overcome the consequences of such event of Force Majeure;
- (c) arise as a result of a Party's lack of finances nor shall any Force Majeure suspend any obligation for the payment of money; or
- (d) result in the extension to any specific date or specific time referred to in Article 4.

11.2 Supersedes Other Agreements

This Agreement reflects the whole and entire agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all prior agreements and understandings between the Parties with respect to and to the extent of such subject matter; provided that:

- (a) the Mackenzie Valley Pipeline Monthly Shippers Meetings Meeting Participation Agreement executed by Producer shall remain in full force and effect with respect to its subject matter; and
- (b) any prior confidentiality agreement between Producer and the Owners with respect to the subject matter hereof, other than that referred to in Section 11.2(a), shall be superseded with respect to such subject matter by this Agreement in respect of information disclosed during the currency hereof and, following the expiry or termination hereof, such prior confidentiality agreement shall continue to apply in accordance with its terms in respect of information disclosed other than during the currency hereof.

11.3 Amendment

This Agreement may only be modified or amended by written agreement executed by each Party.

11.4 Notices

Except as otherwise specifically provided, all notices authorized or required between the Parties by any of the provisions of this Agreement shall be in writing, in the English language and delivered in person or by courier service or by any electronic or other means of transmitting written communications which provides written confirmation at the originating Party's end of a complete transmission, and addressed to the other Party as set out below. Oral communication

does not constitute notice for purposes of this Agreement, and telephone numbers for the Parties are listed below as a matter of convenience only.

The originating notice given under any provision of this Agreement shall be deemed delivered when Received by the Party to whom such notice is directed, and the time for such Party to deliver any notice in response to such originating notice shall run from the date the originating notice is Received. The second or any responsive notice shall be deemed delivered when Received. "**Received**" for purposes of this Section 11.4 shall mean actual delivery, on a Business Day prior to 3:00 p.m. at the place of receipt, of the notice to the address of the Party to be notified as specified below. If a notice is not delivered prior to 3:00 p.m. at the place of receipt, such notice shall be deemed to have been Received by such Party at the commencement of the next following Business Day.

Each Party shall have the right to change its address at any time and/or designate that copies of all notices be directed to another Person at another address, by giving written notice thereof to the other Party. Any such change of address shall become effective ten (10) Business Days after such notice is Received by the Party so notified.

If to the Owners:

Imperial Oil Resources Ventures Limited
237 Fourth Avenue S.W.
Calgary, Alberta
T2P 0H6
Attention: Commercial Manager, Mackenzie Gas Project
Telecopy: (403) 237-2102
Telephone: (403) 237-4022

If to Producer:

Attention: _____
Telecopy: _____
Telephone: _____

11.5 Severability

The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder.

11.6 Waiver

Any Party may from time to time waive, at its sole discretion, the strict performance, in whole or in part, of any condition or term of this Agreement by any other Party if such waiver is confirmed in writing; provided that:

- (a) except as set out in paragraph (b) below, only the Operator shall be entitled to waive the strict performance of a term or condition by Producer;
- (b) conditions to the Decision to Construct as provided for in Sections 4.2 and 4.3 may only be waived by the unanimous decision of the Owners; and
- (c) only the Originating Party may waive the strict performance of any term or condition relating to Confidential Information disclosed by it or its Representatives as set out in Article 9.

The failure of any Party to insist upon the strict performance of any of the provisions of this Agreement or to take advantage of any of the rights hereunder shall not be construed as a waiver of any such provision or relinquishment of any such rights, but the same will continue in full force and effect. A waiver by any Party of any breach or non-performance of any of the obligations to be performed by any other Party shall not take effect or be binding upon the waiving Party unless the waiver is expressed in writing by the waiving Party. Any waiver so given shall extend only to the particular breach or non-performance so waived and shall not limit or affect any rights with respect to any other future breach or non-performance.

11.7 Further Assurances

Each Party shall from time to time and at all times do all such further acts and execute and deliver all documents as may be reasonably required in order to perform and carry out the terms of this Agreement.

11.8 GST

Notwithstanding any other provision of this Agreement, in the event that any amount becomes payable to a Party as a result of a breach, modification or termination of this Agreement, and Section 182 of the Excise Tax Act applies to that amount, the amount payable shall be increased by an amount equal to the product of the applicable GST percentage rate multiplied by the amount otherwise payable and the payor shall pay the increased amount.

11.9 Counterpart Execution

This Agreement may be executed in any number of counterparts and signature pages from separate counterparts may be faxed or delivered by other electronic means. Each such counterpart shall be deemed an original Agreement for all purposes, provided that no Party shall be bound to this Agreement unless and until all Parties have executed a counterpart. For purposes of assembling all counterparts into one (1) document, the Operator is authorized to detach the signature page from one (1) or more counterparts and, after signature thereof by the respective Party, attach each signed signature page to a counterpart.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized representatives with effect as of the day first above written.

IMPERIAL OIL RESOURCES VENTURES LIMITED

EXXONMOBIL CANADA PROPERTIES

Per: _____

Per: _____

Per: _____

Per: _____

CONOCOPHILLIPS CANADA (NORTH) LIMITED

SHELL CANADA LIMITED

Per: _____

Per: _____

Per: _____

Per: _____

[PRODUCER]

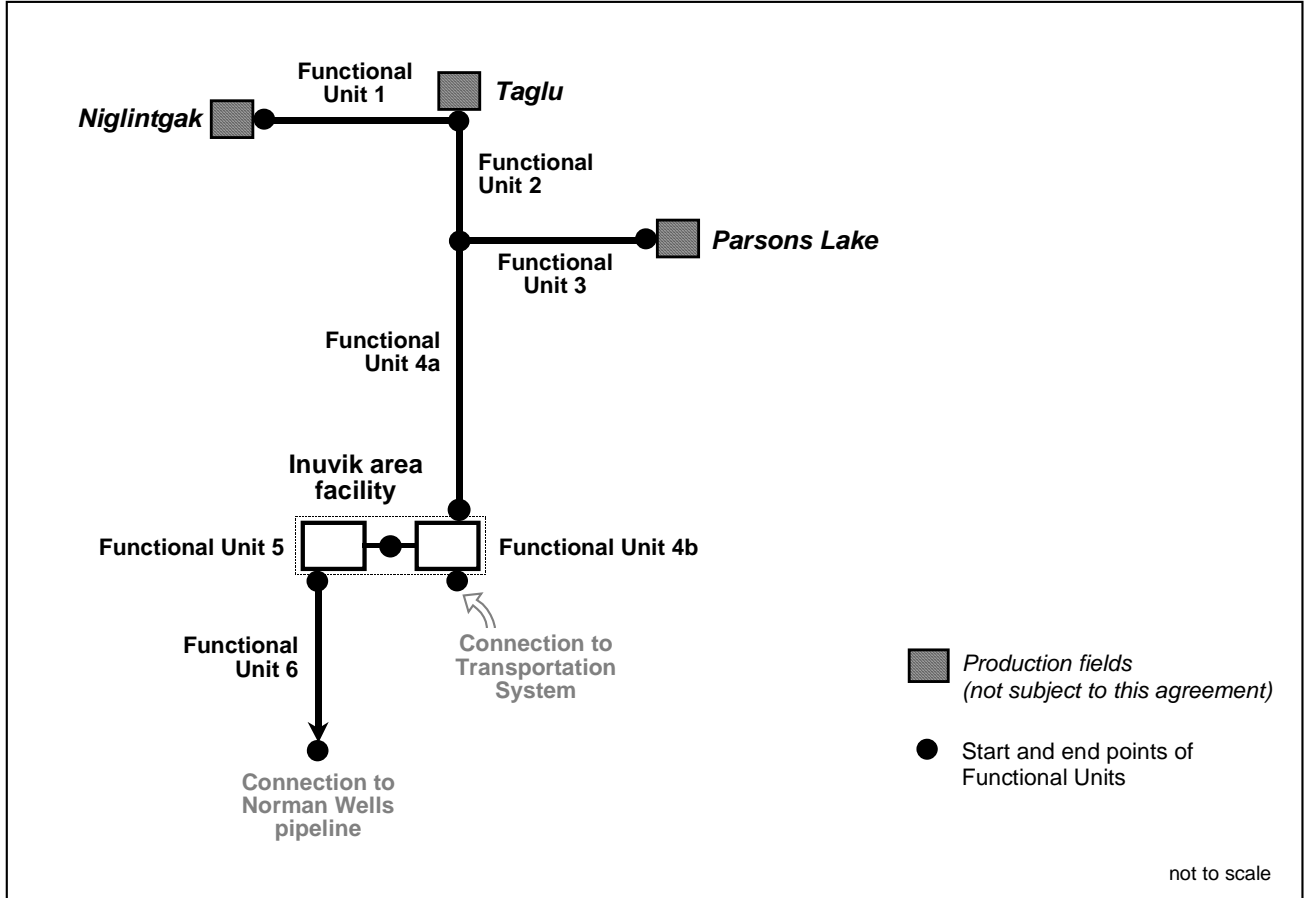
Per: _____

Per: _____

SCHEDULE A

FACILITIES AND TRANSPORTATION SYSTEM

This Schedule A forms part of the Mackenzie Gas Gathering and Processing Facilities Capacity Request Agreement dated the _____ day of _____, 2005 and shall be deemed to be attached thereto.



SCHEDULE B

RATING AGENCIES AND MINIMUM RATINGS REQUIREMENT

This Schedule B forms part of the Mackenzie Gas Gathering and Processing Facilities Capacity Request Agreement dated the _____ day of _____, 2005 and shall be deemed to be attached thereto.

<u>Rating Agency</u>	<u>Minimum Ratings Requirement</u>
1. Moody's Investor Services	Baa2
2. Standard & Poor's	BBB
3. Dominion Bond Rating Service	BBB
4. Fitch Ratings	BBB

SCHEDULE C

REQUEST FOR CAPACITY

This Schedule C forms part of the Mackenzie Gas Gathering and Processing Facilities Capacity Request Agreement dated the _____ day of _____, 2005 and shall be deemed to be attached thereto.

Producer: _____

Producer Elects to Become: _____ an Owner _____ a Shipper

Receipt Point: _____

Name and Location of Field: _____

Requested Capacity: _____ thousand standard cubic meters per day
(to be Delivered to the Receipt Point)

Inlet Substances Composition:

COMPONENT		MOLE PERCENTAGE (%)
Carbon Dioxide	CO ₂	
Hydrogen	H ₂	
Hydrogen Sulphide	H ₂ S	
Helium	He	
Nitrogen	N ₂	
Methane	C ₁	
Ethane	C ₂	
Propane	C ₃	
i - Butane	i-C ₄	
n - Butane	n-C ₄	
i - Pentane	i-C ₅	
n - Pentane	n-C ₅	
Hexanes	C ₆	
Heptanes - plus	C ₇₊	
TOTAL		100.00%

Initials

Operator _____

Producer _____