

**NATURAL GAS STORAGE AGREEMENT**

Between

**WARWICK GAS STORAGE LP,  
by its general partner  
Warwick Gas Storage Ltd.**

- and -

**[Customer]**

Dated the \_\_\_ day of \_\_\_\_\_, 20\_\_

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## NATURAL GAS STORAGE AGREEMENT

THIS AGREEMENT made the \_\_\_ day of \_\_\_\_\_, 20 \_\_,

### BETWEEN:

**WARWICK GAS STORAGE LP, by its general partner Warwick Gas Storage Ltd.**, a corporation incorporated under the laws of Alberta (hereinafter referred to as "WGSLP")

- and -

**[Customer]**, a • under the laws of **[Canada]** (hereinafter referred to as "**Customer**")

WHEREAS WGSLP operates the Storage Facility and provides natural gas storage services; and

WHEREAS Customer wishes to acquire certain storage services from WGSLP;

NOW THEREFORE, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties hereto covenant and agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

Capitalized words, terms and phrases used in this Agreement and the Schedules hereto and in all communications and notices expressed to be made pursuant to this Agreement shall, unless the context otherwise requires, have the meanings set out in Schedule "A" hereto.

#### 1.2 Interpretation

Unless otherwise stated or the context otherwise necessarily requires, in this Agreement:

- (a) references herein to any agreement, legislation or instrument, including this Agreement, shall be a reference to the agreement, legislation or instrument as varied, amended, modified, supplemented or replaced from time to time;
- (b) the terms "in writing" or "written" include printing, typewriting or facsimile transmission;
- (c) words importing the singular number only shall include the plural and vice versa, and words importing the use of any gender shall include all genders;
- (d) "including", "includes" and like terms means "including without limitation" and "includes without limitation";
- (e) the headings of Articles and Sections in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;

- (f) unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement;
- (g) words, phrases or expressions which are not defined herein, and which in the usage or custom of the North American petroleum and natural gas industry have an accepted meaning, shall have that meaning;
- (h) unless clearly stated otherwise, all references to time shall be to Mountain Standard Time and the parties shall observe strictly the timing requirements set out in this Agreement;
- (i) all references to currency, unless otherwise specified, are to the lawful money of Canada and all payments contemplated herein shall be in the currency of Canada; and
- (j) in the event of any inconsistency between the provisions of any Confirmation and the provisions of this Agreement, the provisions of that Confirmation will prevail for the purpose of the relevant Transaction.

### **1.3 Schedules**

The following Schedules are incorporated into and form a part of this Agreement:

|              |   |                      |
|--------------|---|----------------------|
| Schedule "A" | - | Definitions          |
| Schedule "B" | - | Form of Confirmation |

## **ARTICLE 2 SERVICE TRANSACTIONS**

### **2.1 Storage Service**

Subject to the terms and conditions hereof, in respect of each Transaction:

- (a) during the Injection Period, WGSLP agrees to receive from Customer and Customer agrees to deliver to WGSLP a quantity of Gas for the credit of the Customer Inventory, up to the Contract Quantity, at a rate up to the Injection Rate at the Storage Point of Delivery in response to nominations properly given hereunder from time to time by Customer; provided that where a Transaction is a 100% load factor Transaction, Customer agrees to deliver to WGSLP and WGSLP agrees to receive from Customer a quantity of Gas for the credit of the Customer Inventory equal to the Contract Quantity at a rate equal to the Injection Rate;
- (b) during the Withdrawal Period, WGSLP agrees to deliver to Customer and Customer agrees to receive from WGSLP a quantity of Gas from the Customer Inventory, provided the Customer Inventory is greater than zero (0), at a rate up to the Withdrawal Rate at the Storage Point of Delivery in response to nominations properly given hereunder from time to time by Customer; provided that where a Transaction is a 100% load factor Transaction, WGSLP agrees to deliver to Customer and Customer agrees to receive from WGSLP a quantity of Gas from the Customer Inventory at a rate equal to the Withdrawal Rate provided the Customer Inventory is greater than zero (0); and

- (c) Each of WGSPL and Customer agrees to receive and deliver, as applicable, Gas hereunder on a Firm Basis in response to nominations properly given hereunder from time to time by Customer.

## **2.2 Transaction Confirmations**

- (a) WGSPL and Customer may enter into Transactions orally or in writing (whether by fax, e-mail, an electronic system established by WGSPL or otherwise). A telephone conversation with an offer and acceptance shall constitute the agreement of the Parties to a Transaction. Each Transaction constitutes a binding agreement between WGSPL and Customer and is in full force and effect whether or not Customer signs and returns the relevant Confirmation with respect to that Transaction, and is subject to the terms and conditions set out herein. If WGSPL does not confirm a Transaction by sending Customer a Confirmation within three (3) Business Days of the date of the Transaction, Customer may so confirm a Transaction by sending WGSPL a Confirmation by similar means. If a sending party's Confirmation is materially different from the receiving party's understanding of the Transaction, such receiving party shall notify the sending party within three (3) Business Days of receipt of the Confirmation. If the receiving party does not notify the sending party of any material differences within such three (3) Business Day period, or does not otherwise sign and return a Confirmation within such three (3) Business Day period, the receiving party shall be conclusively deemed to have accepted that the terms of the Transaction are as set forth in the Confirmation sent by the sending party, absent manifest error. A failure to send a Confirmation shall not invalidate the oral agreement of the Parties.
- (b) If a Confirmation contains any provisions other than those relating to the commercial terms of the Transaction (i.e., price, quantity, whether or not a 100% load factor Transaction, Injection Period and/or Withdrawal Period), which modify or supplement this Agreement, such provisions shall not be deemed to be accepted pursuant to Section 2.2(a) but must be expressly agreed to by both Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.
- (c) At any time during the term of this Agreement there may be one or more Transactions in effect (each to be uniquely numbered). Each Confirmation shall refer to a separate Transaction between the parties hereto on the terms therein specified and on the terms and conditions contained in this Agreement. However, all such Transactions and all Confirmations shall form a single agreement between the parties.
- (d) WGSPL and Customer may by mutual agreement, at any time and from time to time, execute and deliver additional Confirmations and terminate, substitute, amend, supplement or replace any Confirmation hereto and any substituted, amended, supplemented or replaced Confirmation shall come into force on the date indicated thereon as the effective date hereof.

## **2.3 Nominations**

- (a) The nomination procedure set forth in this Section 2.3 shall not apply to a Transaction which WGSPL and Customer have designated to be a 100% load factor Transaction.
- (b) Customer may, at such time as provided in Section 2.3(c) with respect to a Transaction, nominate for:

- (i) the delivery of Gas for injection into storage during the Injection Period at the Storage Point of Delivery at a Daily rate not in excess of the applicable Injection Rate; and/or
  - (ii) the delivery of Gas for removal from storage during the Withdrawal Period at the Storage Point of Delivery at a Daily rate not in excess of the applicable Withdrawal Rate.
- (c) Customer's nominations for the delivery of Gas shall be made to WGSLP by telephone or, where permitted or directed by WGSLP, by email or pursuant to an electronic system maintained by WGSLP. Where nominations are made by telephone, they shall be followed immediately by email or pursuant to an electronic system as prescribed by WGSLP, from time to time, acting reasonably. Customer's nominations shall be made to WGSLP, during normal business hours, at least five (5) hours prior to the time that the nomination is to take effect. WGSLP shall, at the time of Customer's telephoned request, accept or refuse Customer's nomination having regard to the provisions of this Section 2.3. WGSLP's verbal acceptance or refusal shall serve as notification in that regard and written notice will not be provided by WGSLP to Customer.
- (d) A nomination given and confirmed in accordance with the foregoing shall be binding on the parties and shall remain in effect until changed in accordance with the terms of this Section 2.3. Notwithstanding the foregoing, Customer shall use all reasonable efforts to limit its nomination changes to not more than two (2) per Day per Transaction and WGSLP shall use reasonable efforts to accommodate nomination changes made beyond normal business hours.
- (e) Subject to advance written notice to Customer, WGSLP may change the nomination procedures set forth in Sections 2.3(b), (c) and (d) from time to time, as required to adjust to changes made to the nomination procedures of NGTL or any other delivering or receiving natural gas transmission pipeline.
- (f) WGSLP shall not be obligated to accept:
  - (i) a nomination from Customer if, after giving effect to that nomination, the Customer Inventory under the applicable Transaction would exceed the Contract Quantity for such Transaction;
  - (ii) a nomination from Customer if, after giving effect to that nomination, the Customer Inventory under the applicable Transaction would be less than zero (0); or
  - (iii) a nomination for a Daily rate in excess of the Injection Rate or Withdrawal Rate, as applicable.
- (g) Notwithstanding subsection 2.3(b), WGSLP, in its sole discretion, may accept a Gas injection or withdrawal nomination from Customer which is at a rate in excess of the applicable Injection Rate or Withdrawal Rate. It is expressly understood and agreed by Customer that any such acceptance by WGSLP shall be on an interruptible basis and that to the extent such nomination is at a rate in excess of that otherwise permitted hereunder, such excess service may be terminated by WGSLP immediately upon giving notice of such termination to Customer. Nothing in this Section 2.3 shall be construed as obliging

WGSLP to accept (or having accepted, to not terminate) any injection or withdrawal nomination at a rate in excess of the applicable Injection Rate or Withdrawal Rate, even if WGSLP's refusal to do so results in Customer breaching its obligation under subsection 2.3(h).

- (h) Customer shall nominate for the delivery of Gas from the Customer Inventory for a Transaction in such quantities as will result in the reduction of the Customer Inventory to zero (0) by the end of the Transaction Period for the relevant Transaction.
- (i) If at the end of any Transaction Period the applicable Customer Inventory remains greater than zero (0) other than as a result of a failure of WGSLP to deliver gas from storage as required herein, WGSLP may, in its sole discretion, elect to:
  - (i) extend the Withdrawal Period for the applicable Transaction to permit Customer the right to nominate for the delivery of Gas from such Customer Inventory, which nominations WGSLP may accommodate in its sole discretion, acting reasonably; provided Customer shall pay WGSLP an amount equal to the product of (i) the Extended Storage Fee stated in the applicable Transaction and (ii) the amount of Gas, in GJs, remaining in the Customer Inventory, for each Day or portion of each Day that the Withdrawal Period is extended; and
  - (ii) if Customer Inventory remains after a period of 10 days following the end of the Transaction Period, WGSLP may elect, in its sole discretion, to purchase from Customer, by providing notice thereof to Customer, some or all of the Gas remaining in Customer Inventory (as WGSLP may elect) for a price equal to 70% of the Spot Price for the Day immediately prior to the Day on which such purchase occurs and upon the delivery of such notice WGSLP shall hold the entire legal and beneficial interest in and to such purchased Gas free and clear of all encumbrances, burdens, liens and adverse claims of any kind whatsoever, and the Customer Inventory shall be reduced by the amount of Gas so purchased by WGSLP. WGSLP shall pay Customer for such purchased Gas, or setoff such amounts against amounts owing by Customer to WGSLP, on the date by which the next invoice is to be provided by WGSLP.

The reduction of the Customer Inventory under this subsection shall not relieve Customer of its obligation to pay WGSLP all applicable charges which accrued prior thereto.

## 2.4 Measurement

- (a) WGSLP will install and operate, or cause to be installed and operated, meters and related equipment (collectively, the "**Measuring Equipment**") as required in accordance with the *Electricity and Gas Inspection Act* (Canada).
- (b) In the event that all or any Gas delivered to/by WGSLP hereunder is measured by a meter that is owned and operated by NGTL or another interconnecting pipeline, then WGSLP and Customer agree to accept that metering for the purpose of determining the volume and energy of Gas delivered to/by WGSLP on behalf of Customer. The standard of measurement and tests for the Gas delivered to/by WGSLP hereunder shall be in accordance with the general terms and conditions as incorporated in NGTL's or the other interconnecting pipeline's gas tariff.



- (c) Customer shall have the right to have representatives or other designees present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the Measuring Equipment. WGSLP will give Customer reasonable advance written notice of its intention to carry out the acts herein specified. Upon request from Customer, WGSLP will submit to Customer WGSLP's records and charts, together with calculations there from, for inspection and verification, subject to return within five (5) Business Days after receipt thereof.
- (d) The accuracy of the Measuring Equipment shall be verified by WGSLP at reasonable intervals, and if requested, in the presence of representatives or other designees of Customer, but WGSLP shall not be required to verify the accuracy of the Measuring Equipment more frequently than once in any thirty (30) Day period. In the event either party hereto shall notify the other that it desires a special test of any Measuring Equipment, the parties shall co-operate to secure a prompt verification of the accuracy of such equipment. The expense of any such special test, if called for by Customer, shall be borne by Customer if the measuring equipment tested is found to be in error by not more than two percent (2%) and by WGSLP otherwise. If, upon test, any measuring equipment is found to be in error by not more than two per cent (2%), previous recordings of such equipment shall be considered accurate in computing deliveries of Gas, but such equipment shall be adjusted at once to record as near to absolute accuracy as possible. If the test conducted shows a percentage of inaccuracy greater than two percent (2%), the financial adjustment from WGSLP to Customer, shall be calculated in accordance with the *Electricity and Gas Inspection Act* (Canada) and the equipment shall be adjusted at once to record as near to absolute accuracy as possible.
- (e) WGSLP shall preserve for a period of at least three (3) years all test data and other relevant records.

## **2.5 Quality**

All Gas delivered by Customer or WGSLP to the other at the Storage Point of Delivery shall be of merchantable quality and shall comply with the Gas quality specifications of NGTL or any other connecting pipeline.

## **2.6 Delivery Pressure**

The delivery pressure of the Gas delivered under this Agreement shall be no less than the pressure required to effect delivery and no greater than the maximum pressure permitted at the Storage Point of Delivery by NGTL or any other connecting pipeline.

## **2.7 Storage Point of Delivery**

The Storage Point of Delivery for all Gas delivered hereunder shall be the interconnection between the NGTL pipeline system and WGSLP's pipeline system known as the Warwick Southeast meter station, No. 3948, which connects to the Storage Facility.

## **2.8 Risk, Possession and Title**

- (a) Subject always to the duties owed Customer by WGSLP as a bailee for hire, possession of Gas passes to WGSLP when it is delivered to WGSLP, but legal title to and ownership of Gas, or possessory title as bailor of Gas, remains at all times with Customer,

notwithstanding any commingling of such Gas with Gas owned by others. WGSLP and Customer may, but shall not be required to, agree in advance and in writing to an exchange of title to specified Gas to be stored pursuant to a particular Transaction. WGSLP expressly acknowledges that it is bound to perform the provisions of the Warehouse Receipts Act (Alberta) and, in particular but without limitation, expressly acknowledges that it is bound by the duty of care set forth in Section 14 thereof.

- (b) Customer and WGSLP acknowledge and agree that while in storage at the Storage Facility, Customer's Gas may be commingled with Gas owned by other customers of WGSLP and with Gas owned by WGSLP, as a necessary requirement of the trade and business of gas storage conducted by WGSLP. Notwithstanding such commingling and notwithstanding Section 2.8(c) of this Agreement, it is intended by Customer and WGSLP that the delivery of Gas by Customer to WGSLP pursuant to this Agreement shall constitute a bailment for reward and WGSLP shall have the common law duties and liabilities of such a bailee, except where those duties are modified by the express terms of a Transaction entered into by the Parties.
- (c) WGSLP shall have the right to remove constituents other than methane from Gas delivered to it by Customer and WGSLP shall have no duty to account for the constituents so removed nor to make any payment to Customer on account thereof; provided that nothing in this Section 2.8(c) will permit WGSLP to return to Customer Gas that does not meet the quality specifications of the connecting pipeline.
- (d) Notwithstanding the transfer of possession of Customer's Gas to WGSLP when it is delivered to WGSLP, the risk of loss and legal title to and ownership of Customer's Gas, or possessory title as bailor of Gas, remains at all times with Customer. Further, Customer expressly acknowledges and agrees that WGSLP shall be under no obligation to provide for any insurance for the risk of loss of Customer's Gas, or any other insurable risk.

## **2.9 Transportation**

Customer shall be responsible for securing and maintaining all necessary transportation services associated with the transportation of Gas prior to the delivery to WGSLP or subsequent to the delivery to Customer hereunder, all at the Storage Point of Delivery and all related fees, charges or expenses (including receipt, delivery or exchange fees) shall be for the account of Customer.

## **2.10 Representations and Indemnities**

- (a) WGSLP represents and warrants that:
  - (i) it has full right and absolute authority to enter into and perform this Agreement and each Transaction;
  - (ii) it is a duly incorporated and organized corporation validly existing under the laws of the Province of Alberta and covenants and agrees to maintain itself in good standing; and
  - (iii) it has, and at all times shall have, the right to deliver all Gas delivered by or on behalf of WGSLP to Customer at the Storage Point of Delivery free and clear of all liens, charges, encumbrances and adverse claims whatsoever, including liens

to secure payment of taxes and any claims relating to the payment of royalties thereon, created by, through or under WGSLP.

Such representations and warranties will be deemed to be repeated on the date each Transaction is entered into and, in respect of the representations in Section 2.10(a)(iii), on each date of withdrawal.

- (b) Customer represents and warrants that:
- (i) it has full right and absolute authority to enter into and perform this Agreement and each Transaction;
  - (ii) it is duly formed, organized and validly existing under the laws of its jurisdiction of incorporation and in the Province of Alberta and covenants and agrees to maintain itself in good standing; and
  - (iii) it has, and at all times shall have, good and merchantable title to, or good right to deliver, all Gas delivered by or on behalf of Customer to WGSLP at the Storage Point of Delivery free and clear of all liens, charges, encumbrances and adverse claims whatsoever, including liens to secure payment of taxes and any claims relating to the payment of royalties thereon.

Such representations and warranties will be deemed to be repeated on the date each Transaction is entered into and, in respect of the representations in Section 2.10(b)(iii), on each date of delivery.

- (c) Customer hereby agrees to be liable for and indemnify and save WGSLP, including its officers, directors and agents, harmless from and against, any and all claims, demands, suits, actions, debts, accounts, damages, costs, losses, liabilities and expenses arising from or out of claims of any and all Persons to Gas delivered to WGSLP or to royalties, fees, levies, expenses, taxes or other charges thereon, or arising out of Customer's negligence or breach of this Agreement.

### **ARTICLE 3 TERM**

#### **3.1 Term**

This Agreement, made effective as of the date first above written, creates the contractual relationship between WGSLP and Customer for entering into Transactions. From time to time there may be no Transaction then in effect, in which case this Agreement will continue until either party delivers a written termination notice to the other party, which will terminate this Agreement on the date specified therein, provided such date is: (a) at least thirty (30) days after the date such notice is received; and (b) subject to Article 6, not earlier than the end of the Transaction Period of any outstanding Transaction.

Any termination of this Agreement shall not affect the rights and obligations of the parties hereto that accrue or arise prior to the effective date of such termination and the provisions in Section 11.15 shall continue notwithstanding such termination for a further period of two years from the date of such termination.

## **ARTICLE 4 FEES**

### **4.1 Fees**

Customer shall pay to WGSLP, and WGSLP shall pay to Customer, all fees, charges and amounts agreed to with respect to a Transaction.

### **4.2 GST**

Customer and WGSLP each acknowledges that all fees and charges set out in any Transaction to be paid by one party to the other party are exclusive of GST, and agrees to pay the other party hereto all applicable GST on all such fees and charges.

### **4.3 Taxes and Other Charges**

If any federal, provincial, city, county or other governmental entity, or regulatory agency imposes any fee, tax, charge, levy or other amount on WGSLP in connection with the services provided to Customer hereunder, whether such amounts are in effect now or at any time during the term of this Agreement, in relation to the environment, climate change, emission reduction or any other matter, WGSLP may require Customer to pay a proportionate share of such fees and the parties hereto agree that the fees and charges set out in any Confirmation to be paid by Customer to WGSLP are exclusive of any such amounts.

## **ARTICLE 5 BILLINGS AND PAYMENTS**

### **5.1 Statements**

In respect of each Transaction, WGSLP shall deliver to Customer, on or before the 15th Day of each Month in which amounts are due hereunder, a statement ("**Billing Statement**") setting forth for the immediately preceding Month the following:

- (a) the amount payable by Customer in accordance with Section 4.1;
- (b) the amount, if any, payable by Customer in accordance with subsection 2.3(i)(i);
- (c) the amount, if any, of interest charges determined in accordance with Section 5.3;
- (d) any other amounts due and payable by Customer to WGSLP, or by WGSLP to Customer, hereunder; and
- (e) the amount of any applicable GST and any other taxes, fees, levies or amounts for which Customer is responsible pursuant to Sections 4.2 and 4.3.

### **5.2 Payments**

Unless otherwise specified herein, payments to be made by Customer to WGSLP, or by WGSLP to Customer, in accordance with the Billing Statement shall be mailed or tendered by the paying party to the receiving party or deposited by electronic bank transfer in an account designated by the receiving party such that the receiving party shall receive payment in full of all amounts specified to be due and

owing under the Billing Statement within fifteen (15) Days of the date the Billing Statement was delivered. If, in respect of any Billing Statement, amounts are both due from WGSLP to Customer and from Customer to WGSLP on the same date and in the same currency, those amounts will be netted against each other, and the party with the net payable amount will be responsible to make payment to the party with the net receivable amount.

### 5.3 Interest

If either party hereto fails to make any payment under this Agreement when due, interest thereon shall accrue at a rate of interest equal to the Prime Rate plus 2 percentage points. Interest shall be calculated based on a 365 or 366-day calendar year, as applicable.

## ARTICLE 6 DEFAULTS

### 6.1 Events of Default

The occurrence of any of the following events shall constitute an "**Event of Default**" with respect to a party (the "**Defaulting Party**"):

- (a) the failure by the Defaulting Party or, as applicable, its guarantor or other provider of Security to make, when due, any payment required under this Agreement or, as applicable, under any guarantee or other Security if such failure is not remedied within a cure period of five (5) Business Days after written notice of such failure is given to the Defaulting Party;
- (b) any representation or warranty made by the Defaulting Party or, as applicable, its guarantor or other provider of Security in or with respect to this Agreement or, as applicable, under any guarantee or other Security shall prove to have been false or misleading in any material respect when made or deemed to be repeated;
- (c) subject to Sections 6.3 and 6.4, the failure by the Defaulting Party or, as applicable, its guarantor or other provider of Security to perform (unless such performance is excused by Interruption or Force Majeure) any material covenant or other material agreement set forth in this Agreement or, as applicable, such guarantee or Security (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Section as a separate Event of Default), and such failure is not cured within five (5) Business Days after written notice thereof is given to the Defaulting Party;
- (d) an assignment or transfer by the Defaulting Party in violation of Section 11.8;
- (e) the Defaulting Party, or, as applicable, its guarantor or other provider of Security:
  - (i) makes an assignment or any general arrangement for the benefit of creditors;
  - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for protection from its creditors;

- (iii) has a petition under any bankruptcy or similar law filed against it and such petition is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution thereof;
- (iv) otherwise becomes bankrupt or insolvent (however evidenced); or
- (v) is unable to pay its debts as they fall due;
- (f) the failure to provide, establish, maintain, extend or increase Security when required pursuant to Article 9 of this Agreement, if such failure is not remedied within a cure period of five (5) Business Days after written notice of such failure is given to the Defaulting Party; or
- (g) the occurrence of a Receipt Default or Delivery Default.

## 6.2 General Remedies

Upon the occurrence of an Event of Default with respect to the Defaulting Party at any time during the term of this Agreement, the Non-Defaulting Party may in its sole and absolute discretion and in addition to any other rights or remedies which it may have at law or equity or otherwise available to it, exercise any one or more of the following remedies:

- (a) if the Non-Defaulting Party is WGSLP, it shall be entitled to refuse to accept further deliveries of Gas from Customer during the Injection Period, suspend deliveries of Gas to Customer during the Withdrawal Period, or both, under any one or more Transactions until such Event of Default has been remedied and no further Event of Default by Customer exists;
- (b) the Non-Defaulting Party may, upon written notice to the Defaulting Party, and which notice shall be given no later than thirty (30) Days after the occurrence of the Event of Default, establish a date on which any one or more outstanding Transactions designated by the Non-Defaulting Party will terminate or, alternatively at the discretion of the Non-Defaulting Party, a date on which this Agreement and all outstanding Transactions will terminate (the "**Early Termination Date**"). In respect of any Early Termination Date, the Non-Defaulting Party shall within five (5) Days after the Early Termination Date in good faith calculate the Liquidated Damages as defined herein resulting from the termination of each such Transaction and notify the Defaulting Party of same. The Liquidated Damages shall be paid by the Party owing same within three (3) Days of Defaulting Party's receipt of such notice. For the purposes of this subsection, the term "**Liquidated Damages**", with respect to the Non-Defaulting Party, shall mean the sum of:
  - (i) with respect to a terminated Transaction, the difference between:
    - (A) any amounts owed (whether or not then due) by the Defaulting Party to the Non-Defaulting Party and for which payment has not yet been made as of the Early Termination Date plus all other charges or net amounts owed (whether or not then due) by the Defaulting Party to the Non-Defaulting Party relating to Gas deliveries or receipts in respect of the terminated Transaction (including, without limitation, under Section 6.3 or 6.4); minus

- (B) any amounts owed (whether or not then due) by the Non-Defaulting Party to the Defaulting Party and for which payment has not yet been made as of the Early Termination Date plus all other charges or net amounts owed (whether or not then due) in respect of the terminated Transaction by the Non-Defaulting party to the Defaulting Party in respect of the terminated Transaction (including, without limitation, under Section 6.3 or 6.4); plus
- (ii) the sum for each terminated Transaction of the present value of the economic loss, if any, minus the present value of the economic gain, if any, up to but not exceeding the amount of the present value of any economic loss deemed to have been suffered or realized, as applicable, by the Non-Defaulting Party in securing a replacement contract or meeting any other obligation as a result of the termination of each terminated Transaction, including, without limitation, any costs of implementing such placement transactions.

If the sum of (i) and (ii) is positive, the Defaulting Party shall pay the Non-Defaulting Party such amount and if the sum of (i) and (ii) is negative, the Non-Defaulting Party shall pay the Defaulting Party the absolute value of such amount, and all such amounts, in respect of all such terminated Transactions, may be set off against each other.

If any Customer Inventory remains to the credit of Customer after such termination, Customer has the right to nominate for the delivery of Gas from such Customer Inventory and WGSLP shall use reasonable efforts to accommodate such nominations provided that:

- (i) WGSLP may elect to make the payment or setoff contemplated in 2.3(i)(ii) and acquire title to such Gas in the manner contemplated therein, mutatis mutandis; failing which
- (ii) Customer shall pay to WGSLP the Extended Storage Fee in the manner contemplated in Section 2.3(i)(i);
- (c) if the Non-Defaulting Party is WGSLP, it shall be entitled to exercise its rights under any lien at law on Gas stored in the Storage Facility by Customer including the lien provided under the *Warehousemen's Lien Act* (Alberta);
- (d) if the Non-Defaulting Party is WGSLP, it shall be entitled to exercise any and all rights and remedies available under this Agreement or at law in respect of the security interest granted pursuant to Section 9.2, and any related Security, and apply the proceeds thereof to satisfy any Customer Obligations; and
- (e) the Non-Defaulting Party may exercise any rights of set-off contemplated in Article 7.

### 6.3 Delivery Defaults

- (a) **By WGSLP** - Upon the occurrence of a Delivery Default by WGSLP, Customer may elect by written notice to WGSLP within two (2) Business Days after the date of such occurrence to have the Gas at issue treated as Default Gas and if WGSLP has not cured the Delivery Default, the following shall apply:

- (i) WGSLP shall be liable to Customer for, and shall pay to Customer within two (2) Business Days of an invoice from Customer, the aggregate of the following amounts:
    - (A) the product of the quantity of Default Gas and the Spot Price; multiplied by
    - (B) 105%;
  - (ii) upon payment by WGSLP of the amount referred to in paragraph (i) above, WGSLP shall be deemed to have delivered Customer's nomination on the relevant Day or period and the Customer Inventory shall be deemed to be decreased by the quantity of Default Gas; and
  - (iii) Customer shall be liable for the payment of all other amounts payable hereunder in respect of the Default Gas prior to the Delivery Default including injection fees and demand fees.
- (b) **By Customer** - Upon the occurrence of a Delivery Default by Customer, WGSLP may elect by written notice to Customer within two (2) Business Days after the date of such occurrence to have the Gas at issue treated as Default Gas, in which case the following shall apply:
- (i) Customer shall be liable to WGSLP for, and shall pay to WGSLP within two (2) Business Days of an invoice from WGSLP, the aggregate of the following amounts:
    - (A) the product of the quantity of Default Gas and the Spot Price; multiplied by
    - (B) 105%;
  - (ii) upon payment by Customer of the amount referred to in paragraph (i) above within the time specified therein, Customer shall be deemed to have delivered Customer's nomination on the relevant Day or period and the Customer Inventory shall be deemed to be increased by the quantity of Default Gas; and
  - (iii) Customer shall be liable for the payment of all other amounts payable hereunder in respect of the Default Gas prior to the date upon which the payment in paragraph (ii) above is received, including injection fees and demand fees.
- (c) For greater certainty, upon the Defaulting Party curing a Delivery Default in accordance with the provisions of this Section 6.3, such Delivery Default shall not constitute an Event of Default.

#### 6.4 Receipt Defaults

- (a) **By WGSLP** - Upon the occurrence of a Receipt Default by WGSLP, Customer may elect by written notice to WGSLP within two (2) Business Days after the date of such occurrence to cause WGSLP to arrange for the purchase and injection of Default Gas for the account of Customer and the following shall apply:



- (i) Customer shall pay to WGSLP for the aggregate of the following amounts:
    - (A) the product of the quantity of Default Gas and the Spot Price; multiplied by
    - (B) 95%;
  - (ii) upon payment by Customer of the amount referred to in paragraph (i) above, Customer shall be deemed to have delivered Customer's nomination on the relevant Day or period and the Customer Inventory shall be deemed to be increased by the quantity of Default Gas; and
  - (iii) Customer shall be liable for the payment of all other amounts payable hereunder in respect of the Default Gas prior to the date upon which the payment in paragraph (ii) above is received, including injection fees and demand fees.
- (b) **By Customer** – Without limiting the provisions of subsection 2.3(i), but not in duplication thereof, upon the occurrence of a Receipt Default by Customer, WGSLP may elect by written notice to Customer within two (2) Business Days after the date of such occurrence to have the Gas at issue treated as Default Gas in which case the following shall apply:
- (i) WGSLP shall pay to Customer for the aggregate of the following amounts:
    - the product of the quantity of Default Gas and the Spot Price; multiplied by 95%; Provided that WGSLP shall not be obligated to pay such amount to Customer until such time as Customer has fully performed all of its obligations under this Agreement;
  - (ii) upon payment by WGSLP of the amount referred to in paragraph (i) above, WGSLP shall be deemed to have delivered Customer's nomination on the relevant Day or period and the Customer Inventory shall be deemed to be decreased by the quantity of Default Gas; and
  - (iii) Customer shall be liable for the payment of all other amounts payable hereunder in respect of the Default Gas prior to the Receipt Default, including injection fees and demand fees.
- (c) For greater certainty, upon the Defaulting Party curing a Receipt Default in accordance with the provisions of this Section 6.4, such Receipt Default shall not constitute an Event of Default.

## 6.5 Expenses

Should an Event of Default occur, the Defaulting Party shall be liable to the Non-Defaulting Party for all reasonable expenses incurred by the Non-Defaulting Party, including legal costs on a solicitor and his own client basis and other expenses, in connection with the enforcement of this Agreement by the Non-Defaulting Party.

**ARTICLE 7  
SET OFF**

**7.1 Set Off**

- (a) In addition to any rights now or hereafter granted under the terms of this Agreement or any other agreement between the parties or under applicable law and not by way of limitation of any such rights, upon the occurrence of an Event of Default hereunder, the Non-Defaulting Party is hereby authorized by the Defaulting Party at any time or from time to time without notice to the Defaulting Party or to any other Person, any such notice being hereby expressly waived to the extent permitted by law, to set off and to appropriate and to apply any sum or obligation, whether or not arising under this Agreement, whether matured or unmatured and irrespective of currency, place of payment or booking office of the sum or obligation, at any time held or owing by the Non-Defaulting Party or for the credit or account of the Defaulting Party (including all amounts owing by or to Customer under any other agreement with WGSLP ("**Related Agreement**")) against and on account of any sum or obligations of the Defaulting Party to the Non-Defaulting Party due and payable or to become due and payable to the Non-Defaulting Party, whether matured or unmatured and irrespective of currency, place of payment or booking office of the sum or obligation; and for this purpose may convert one currency into another. If any sum or obligation is unascertained, the Non-Defaulting Party may in good faith estimate that sum or obligation and set off in respect of that estimate.
- (b) For the purposes of the foregoing, the Non-Defaulting Party shall be entitled to:
  - (i) convert any obligation denominated in one currency into another currency at such rates of exchange as it deems appropriate in good faith and in a commercially reasonable manner;
  - (ii) except as described herein or in any Related Agreement, convert any obligation to deliver non-cash property into an obligation to deliver cash in an amount determined by it as it deems appropriate in good faith and in a commercially reasonable manner;
  - (iii) set off and recoup any amounts irrespective of the currency or place of payment of any obligation to or from the Defaulting Party; and
  - (iv) if an obligation is unascertained, in good faith estimate the obligation and set off and recoup in respect of that estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
- (c) For the purposes of converting any Gas in storage under a Related Agreement into an obligation to deliver cash for the purposes of this Section 7.1, the value of all Gas in storage for the account of Customer under such Related Agreement shall be equal to the product of the quantity of Gas in storage and the Spot Price.
- (d) The Non-Defaulting Party shall not be required to pay the Defaulting Party any amounts owing to it hereunder until the Non-Defaulting Party receives confirmation satisfactory to it in its sole discretion that all other obligations of any kind whatsoever of the Defaulting Party to the Non-Defaulting Party has been fully and finally performed.

**ARTICLE 8  
INTERRUPTION AND FORCE MAJEURE**

**8.1 Interruptions**

- (a) Notwithstanding the provisions of this Agreement, WGSLP may at any time and from time to time restrict, interrupt or curtail the Injection Rate and/or the Withdrawal Rate in order to perform repairs, maintenance or construction on the Storage Facility, to change the operating mode of the Storage Facility from injection to withdrawal or vice versa, and/or to monitor pressures of the Storage Facility under static conditions.
- (b) The ability of WGSLP to deliver or receive Gas hereunder may be limited by low or high pressure, respectively, in the NGTL pipeline system or any other connecting pipeline system at the Storage Point of Delivery. When any such low or high pressure limits WGSLP's ability to deliver or receive Gas hereunder, WGSLP may restrict, interrupt or curtail the Injection Rate or Withdrawal Rate.
- (c) NGTL and the other connecting pipelines at the Storage Point of Delivery may restrict, interrupt or curtail receipts or deliveries of Gas from or to the Storage Facility. WGSLP shall not be obligated hereunder to receive or deliver more Gas than NGTL and the other connecting pipelines receive or deliver to the Storage Facility.
- (d) WGSLP shall give Customer notice and the particulars of any Interruption to Customer as soon as practicable. In the case of repairs, maintenance or construction planned at least thirty (30) Days in advance, WGSLP shall give Customer at least thirty (30) Days prior written notice of such activities, including reasonable particulars thereof.
- (e) Any restriction, interruption or curtailment pursuant to this Section 8.1 shall only occur after all interruptible service has been restricted, interrupted or curtailed first and all firm service shall be restricted, interrupted or curtailed pro rata based on the quantity of Gas nominated for delivery or receipt in accordance with this Agreement relative to the applicable Contract Quantity (or similar) under all WGSLP's firm service gas storage transactions.
- (f) The occurrence of an Interruption shall be deemed not to be a breach of the covenants or obligations of WGSLP hereunder and WGSLP shall not be liable to Customer, in damages or otherwise, by reason thereof. In the event of an Interruption during the Withdrawal Period or the Injection Period, the Withdrawal Period or the Injection Period shall be extended by an equal number of Days to the number of Days the Interruption was occurring.

**8.2 Force Majeure**

- (a) Subject to the other provisions of this Article, if either party to this Agreement fails to observe or perform any of the covenants or obligations herein imposed upon it and such failure shall have been occasioned by, or in consequence of, Force Majeure, as hereinafter defined, such failure shall be deemed not to be a breach of the covenants or obligations of the affected party hereunder and the party affected by the Force Majeure shall not be liable to the other party, in damages or otherwise, by reason thereof. In the event of the occurrence of a Force Majeure during the Withdrawal Period, the

Withdrawal Period shall be extended by an equal number of Days to the number of Days the interruption was occurring.

- (b) For the purposes of this Agreement, "**Force Majeure**" shall mean any cause, event or condition that prevents the party claiming Force Majeure from performing, in whole or in part, any covenant or obligation of it under this Agreement, which cause, event or condition is not within the control of the party claiming Force Majeure and which by the exercise of due diligence and planning such party could not have prevented or is unable to overcome, including but not limited to:
- (i) any acts of God, including, but not limited to, lightning, earthquakes, storms, floods, fires, washouts, landslides and epidemics;
  - (ii) any strikes, lockouts or other industrial disturbances;
  - (iii) acts of the Queen's enemy, sabotage, wars, blockades, insurrections, riots, arrests, restraints or civil disturbances;
  - (iv) explosions, breakages of or accidents to machinery or lines of pipe, hydrate obstructions of lines of pipe, freezing of wells or delivery facilities, well blowouts, craterings or any other interruption of the storage facility that are not within the control of WGSPL; and
  - (v) any event of force majeure declared by NGTL or any other connecting pipeline.

In this subsection 8.2(b), the term "**due diligence and planning**" when applied to WGSPL shall mean that the standards and practices generally prevailing among prudent operators of similar commercial storage facilities in the Province of Alberta have been adhered to, and when applied to Customer shall mean that the standards and practices generally prevailing among natural gas producers and marketers in the Province of Alberta have been adhered to.

- (c) Neither party shall be entitled to the benefit of the provisions of subsection 8.2(a) under any or all of the following circumstances:
- (i) to the extent that the failure was caused by the negligence of the party claiming suspension; or
  - (ii) to the extent that the failure was caused by the party claiming suspension having failed to remedy the condition where it is within that party's ability to do so and to resume the performance of such covenants or obligations, with reasonable dispatch; or
  - (iii) if the failure was caused by lack of funds or is with respect to the payment of any amount or amounts then due under this Agreement, or was caused by any change in the market price of Gas, the failure of native reserves or production there from or other economic hardship; or
  - (iv) unless as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any

of its covenants or obligations under this Agreement, the party claiming suspension shall have given to the other party notice to the effect that such party is unable by reason of Force Majeure (the nature whereof shall be therein specified) to perform the particular covenants or obligations.

- (d) The party claiming suspension shall likewise give notice, as soon as possible after the Force Majeure condition is remedied, to the effect that the same is remedied and that such party has resumed, or is then in a position to resume, the performance of such covenants or obligations.
- (e) Notwithstanding anything to the contrary in this Article expressed or implied, the parties agree that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the particular party involved therein and such party may make settlement thereof at such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement shall deprive such party of the benefit of this Section 8.2 hereof.
- (f) To the extent WGSPL declares a Force Majeure under this Agreement, WGSPL shall first restrict its obligations with respect to interruptible service and then shall restrict its obligations for firm service pro rata based on the Contract Quantity under this Agreement relative to the Contract Quantity under all WGSPL's firm service gas storage transactions.

## **ARTICLE 9 FINANCIAL INFORMATION, SECURITY AND CREDIT SUPPORT**

### **9.1 Information**

Customer shall provide to WGSPL as soon as reasonably possible all financial and other information WGSPL reasonably requests, including, without limitation, the most recently completed annual and quarterly financial statements of Customer, or, if applicable, the guarantor of the Customer Obligations, in order that WGSPL may within 120 Days of its fiscal year end, in the case of annual financial statements, and within 60 Days of the end of each fiscal quarter, in the case of quarterly financial statements, and, as soon as reasonably possible after request, all other financial information reasonably requested by WGSPL to enable WGSPL to establish Customer's credit worthiness in the context of the Customer Obligations.

### **9.2 Security Interest**

In addition to, and not in substitution for, any lien provided under the *Warehousemen's Lien Act* (Alberta) at law in favor of WGSPL, Customer hereby grants, assigns, transfers and charges to and in favor of WGSPL a continuing security interest in, and a secured charge and mortgage on (i) all Gas comprising the Customer Inventory and the rights of Customer under this Agreement and (ii) all Security pledged or delivered to or received by WGSPL hereunder, as security for the Customer Obligations. Upon the return by WGSPL to Customer of any Security (including the withdrawal of Gas), the security interest and lien granted on such Security will be released immediately and, to the extent possible, without any further action by either party.

### 9.3 Credit Support Obligations

- (a) Customer agrees that it shall deliver to WGSLP from time to time at the request of WGSLP all security (the "**Security**") in form, substance and amount as is satisfactory to WGSLP in its sole discretion having regard to the exposure of WGSLP on a mark to market basis under the Transactions from time to time and any other amounts which may be or become due and owing by Customer to WGSLP from time to time hereunder. The Security may be in the form of a letter of credit, third party guarantee or such other property of Customer which is, in the sole discretion of WGSLP, adequate to secure the Customer Obligations hereunder.
- (b) If a demand for Security is made by WGSLP the relevant Security shall be delivered not later than the close of business on the next Business Day after such demand.
- (c) In the event of a dispute as to value of the Security, the determination made by WGSLP shall be final and binding absent manifest error.
- (d) Customer shall not, without WGSLP's prior written consent: (i) grant, create, assume or suffer to exist any encumbrance affecting any of its properties, assets or other rights charged or otherwise encumbered by WGSLP under the Security and having priority over the Security; or (ii) dispose of any of its properties or assets charged or otherwise encumbered by WGSLP under the Security.

### 9.4 Security Comprised of Letters of Credit

Where Security is comprised of letters of credit, the following terms shall apply to such letters of credit, in addition to the other terms of this Article 9:

- (a) Renewal and Replacement
  - (i) Customer shall renew or cause to be renewed each outstanding letter of credit on a timely basis as provided in the relevant letter of credit.
  - (ii) If the financial institution issuing a letter of credit has indicated its intention not to renew such letter of credit, Customer shall provide a substitute or replacement letter of credit at least twenty (20) Business Days prior to the expiration of the outstanding letter of credit.
  - (iii) A failure by the financial institution issuing a letter of credit to honor WGSLP's properly documented request to draw on the outstanding letter of credit shall constitute an Event of Default by Customer pursuant to subsection 6.1(a) hereunder.
- (b) Drawing under Letter of Credit
  - (i) In addition to the remedies set forth in Article 6, upon the occurrence of an Event of Default by Customer, WGSLP may at any time and from time to time draw on a letter of credit granted by Customer in favor of WGSLP in an amount necessary to satisfy any Customer Obligations.

(ii) A drawing may be made on a letter of credit upon submission to the financial institution issuing the letter of credit of a certificate of an officer of WGSLP specifying the amounts of the unsatisfied Customer Obligations.

(c) Return of Letter of Credit

WGSLP agrees to return any letters of credit as soon as practicable after all Customer Obligations are fully and finally satisfied, subject to any return by WGSLP of any excess Security held by it from time to time.

(d) Failure to Renew or Replace Letter of Credit

If Customer shall fail to renew or replace an outstanding letter of credit as required by WGSLP, then WGSLP may draw on the entire undrawn portion of any outstanding letter of credit upon submission to the issuing financial institution of a certificate of an officer of WGSLP specifying the full amount of the letter of credit, all in accordance with the specific requirements of the letter of credit. The proceeds of such draw down (the "Cash Collateral") shall be subject to the terms and conditions of this Section 9.4.

(e) Cash Collateral

(i) Any Cash Collateral received by WGSLP shall be immediately deposited with a financial institution which is acceptable to WGSLP acting reasonably.

(ii) The Cash Collateral shall be held by the WGSLP (i) in all circumstances in Calgary, Alberta and (ii) in accordance with the terms of this Agreement.

(iii) The WGSLP shall invest and reinvest the Cash Collateral in an interest-bearing account.

(iv) The parties hereto agree that WGSLP is under no obligation to release the Cash Collateral to Customer unless and until the conditions set out below in subsection 9.4(e)(v) are fully satisfied. Until such conditions are fully satisfied, WGSLP may retain the Cash Collateral and may, without any notice to Customer or any other preliminary step whatsoever, set-off, draw upon and apply the Cash Collateral (and any interest which has accrued thereon from time to time) as against and in payment of any amounts that are due and owing to WGSLP in respect of any Customer Obligations that have not been paid to WGSLP within the time allowed for payment under this Agreement.

(v) Customer shall be entitled to have the entire amount (or such balance thereof remaining at any time after WGSLP's exercise of its set-off rights in subsection 9.4(e)(iv)) of the Cash Collateral together with accrued interest thereon released to it upon providing to WGSLP a replacement letter of credit or other Security in the amount of the Cash Collateral or upon full and final satisfaction of the Customer Obligations.

## 9.5 Care of Security

Without limiting the rights of WGSLP under Section 9.6, WGSLP will exercise reasonable care to assure the safe custody of all Security to the extent required by applicable law, and in any event

WGSLP will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except, as specified in the preceding sentence, WGSLP will have no duty with respect to Security, including, without limitation, any duty to enforce or preserve any rights pertaining thereto.

**9.6 Use of Security**

Without limiting the rights and obligations of WGSLP hereunder, WGSLP will have the right to:

- (a) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Security it holds, free from any claim or right of any nature whatsoever of Customer, including any equity or right of redemption by Customer; and
- (b) register any Security in the name of WGSLP.

For purposes of any rights or remedies authorized under this Agreement, WGSLP will be deemed to continue to hold all Security, regardless of whether WGSLP has exercised any rights with respect to any Security pursuant to paragraphs (a) or (b) above.

**ARTICLE 10  
NOTICES AND PAYMENTS**

**10.1 Notices**

- (a) Other than in respect to nominations, which shall be provided in accordance with Section 2.3, all communications and notices to the parties pursuant to this Agreement shall be directed as follows:

|              |  |
|--------------|--|
| If to WGSLP: | Warwick Gas Storage LP, by its general partner<br>Warwick Gas Storage Ltd.<br>400, 607 8 <sup>th</sup> Avenue SW<br>Calgary, AB<br>T2P 0A7<br>Attention: Marketing |
|--------------|--|

|                 |                                      |
|-----------------|--------------------------------------|
| If to Customer: | ●<br>●<br>●<br>●<br><br>Attention: ● |
|-----------------|--------------------------------------|

- (b) Subject to the terms and conditions hereof, any notice may be given by sending the same by prepaid courier, in an envelope properly addressed to the Person to whom the notice is being given and shall be deemed to be given when received by such Person. Any notice may also be given by facsimile addressed to the Person to whom such notice is to be given at such Person's address for notice, and any such notice so served shall be deemed to have been given upon the earlier of acknowledgement of receipt by a responsible



employee of the recipient and twenty-four (24) hours after effective transmission of the same, Saturdays, Sundays and statutory holidays excepted. Any notice may also be delivered by hand to the Person to whom such notice is to be given at such Person's address for notice, and such notice shall be deemed to have been given when received by such Person or his representative. Any notice may also be given by telephone followed immediately by letter or facsimile and any notice so given shall be deemed to have been given as of the date and time of the telephone notice.

- (c) Either party hereto may change its address for notice by providing written notice of same to the other party hereto in the manner contemplated in this Section 10.1.

## **10.2 Payments**

Customer shall make such payments to WGSLP as are required hereunder to the bank account identified by WGSLP in an invoice. WGSLP may change the bank account at any time by providing written notice of same to Customer.

## **ARTICLE 11 MISCELLANEOUS**

### **11.1 Canadian Securities Matters**

To the extent any Transaction shall constitute a "commodity contract" or an "OTC derivative" pursuant to the *Securities Act* (Alberta), each party confirms that it is a "Qualified Party" within the meaning of paragraph 9.1 of the Alberta Securities Commission Blanket Order BOR#91-503.

### **11.2 Eligible Financial Contracts**

The parties confirm that this Agreement and all Transactions and any related guarantee each and together constitute an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-up and Restructuring Act* (Canada) and will be similarly treated under and in all proceedings related to bankruptcy or insolvency of a party.

### **11.3 Reference Price**

Notwithstanding any term or provision of this Agreement to the contrary, if at any time any reference price, whether posted or otherwise, or any reference price publication, referred to in this Agreement should cease to exist, either permanently or temporarily, or if the basis upon which it was determined as at the date hereof is changed, altered or varied in any material respect, for whatever reason, then the Parties shall promptly meet together to agree upon a replacement reference price or reference price publication, as the case may be, and failing such agreement within five (5) Business Days after the Parties first meet, the matter shall be resolved by the Parties pursuant to an arbitration conducted pursuant to the *Arbitration Act* (Alberta).

### **11.4 Entire Agreement**

This Agreement supersedes all other agreements, documents, writings and verbal understandings among the Parties relating to the subject matter hereof, and expresses the entire agreement of the parties hereto with respect to the subject matter hereof.

### **11.5 Recording of Conversations**

Each party hereto agrees and acknowledges that the other party may record conversations relating to Transactions and that such recorded conversations may be used as evidence in any legal, arbitration or other dispute resolution procedure. The parties expressly waive all rights to, and expressly agree not to contest or otherwise argue against such use of, any such recordings relevant to a disputed Transaction nor to contest or assert a defense to the validity or enforceability of Transactions entered into orally under laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound.

### **11.6 Further Assurances**

From time to time, as and when reasonably requested by a party hereto, the other party hereto shall execute and deliver or cause to be executed and delivered all such documents and instruments and shall take or cause to be taken all such further or other actions to implement or give effect to the transaction herein described, provided such documents, instruments or actions are consistent with the provisions of this Agreement and accepted industry practices. All such further documents, instruments or actions shall be delivered or taken at no additional consideration other than reimbursement of any expenses reasonably incurred by the party providing such further documents or instruments or performing such further acts by the party at whose request such documents or instruments were delivered or acts performed.

### **11.7 Units of Measurement**

The definitions of all units of measurement and their prefixes used throughout this Agreement shall be in accordance with the International System of Units (SI).

### **11.8 Assignment**

- (a) No assignment, transfer or conveyance of this Agreement by Customer shall be effective and binding on WGSLP unless made in compliance with this Section 11.8.
- (b) Customer may not assign its rights and obligations hereunder without the prior written consent of WGSLP, which consent shall not be unreasonably withheld, and no such assignment shall release Customer from its obligations hereunder without the prior written consent of WGSLP to such release, which consent shall not be unreasonably withheld.
- (c) In the event Customer wishes to assign its rights and obligations hereunder, Customer shall provide to WGSLP any information in respect of the assignee, including, without limitation, any financial information, as WGSLP may require to establish the assignee's creditworthiness and its general ability to perform its obligations under this Agreement. Upon receipt of the prior written consent of WGSLP to a proposed assignment by Customer and its rights and obligations hereunder, Customer shall only be entitled to complete the assignment and such assignment shall only be binding upon WGSLP if and when:
  - (i) the assignee has delivered to WGSLP all such documents, agreements and instruments as may be required by WGSLP to give effect to the assignment by Customer of all of its rights and obligations hereunder to the assignee, which may

include the execution by the assignee of the then current form of WGSLP's Natural Gas Storage Agreement; and

- (ii) all necessary amendments to any applicable Confirmations shall have been made by Customer and WGSLP;

all in form and substance satisfactory to WGSLP, acting reasonably.

- (d) WGSLP shall be entitled to assign this Agreement, and any rights or obligations hereunder, without the consent of Customer:

- (i) to an Affiliate; or

- (ii) to a Person other than an Affiliate, who is the assignee of a corresponding interest in the Storage Facility;

and otherwise, with the consent of Customer, such consent not to be unreasonably withheld.

- (e) Nothing in this Agreement prohibits a party from pledging or hypothecating any interest given it pursuant to this Agreement as security for its indebtedness, provided that the secured party is subject to, and agrees to be bound by, the provisions of this Agreement in any enforcement of that security.

## **11.9 Governing Laws**

This Agreement shall be construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Courts of Alberta and all courts of appeal there from for all purposes hereof, provided that the foregoing shall not restrict a party hereto from enforcing a judgment outside of Alberta including the ability to initiate an original action in the courts of another jurisdiction if the judgment cannot be enforced.

## **11.10 Severability**

If any portion of any provision of this Agreement shall be held to be or make such provision invalid or unenforceable, such portion shall be deleted and shall not in any manner effect or render invalid or unenforceable any other portion of such provision or any other provision of this Agreement, except to the extent such portion or provision materially impairs the economic benefits or protections to be derived by a party hereto from the transactions contemplated hereby, taken as a whole.

## **11.11 Counterpart**

This Agreement may be executed by facsimile and in counterpart, no one copy of which need be executed by both parties hereto, provided that any party executing by facsimile shall promptly provide the other party hereto with an original of its signed execution page of this Agreement. A valid and binding contract shall arise if and when counterpart execution pages (including as may be delivered by facsimile) are executed and delivered by both parties hereto.

### 11.12 Limitation of Damages

Subject to Sections 6.3 and 6.4, in no event shall either party be liable hereunder to the other party for special, consequential damages, exemplary, incidental, indirect or other similar damages including loss of profits or revenues.

### 11.13 Waivers

Except as otherwise provided in this Agreement, no failure on the part of any party hereto in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. Except as otherwise provided in this Agreement, no waiver of any provision of this Agreement, including this Section 11.13, shall be effective otherwise than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of the party making such waiver.

### 11.14 Amendments

This Agreement shall not be varied in its terms or amended by oral agreement or otherwise other than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of each party hereto.

### 11.15 Confidentiality

Each party shall keep this Agreement, any Transactions and all documents and communications provided pursuant to this Agreement including specifically all Confirmations (the "**Confidential Information**") confidential at all times and shall not disclose the Confidential Information to any third party without the other party's prior written consent; **provided however** that a party shall be entitled to disclose the Confidential Information (a) to its employees, consultants, professional advisors, Affiliates, parents or partners and to employees, consultants, professional advisors of its Affiliates, parents or partners, who have a need to know such information ("**Representatives**"); or (b) to the extent that any information must be disclosed to a third party as required by applicable laws, rules, and regulations of governmental authorities. Notwithstanding the foregoing, the Confidential Information does not include information that:

- (i) was at the time of disclosure or thereafter became generally available to the public other than as a result of any act or omission by the recipient or anyone to whom the recipient or the recipient's Representatives disclosed such information;
- (ii) was or became lawfully known to the recipient or the recipient's Representatives on a non-confidential basis and not in contravention of any applicable law from a source (other than the disclosing party) that is entitled to disclose the information; or
- (iii) if the information is not subject to another confidentiality agreement or other obligation of secrecy, it was already in the possession of the recipient or the recipient's Representatives or was lawfully acquired by them.

IN WITNESS WHEREOF this Agreement has been properly executed by the parties hereto as of the date first above written.

**WARWICK GAS STORAGE LP, by its  
general partner Warwick Gas Storage Ltd.**

**[CUSTOMER]**

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

Per: \_\_\_\_\_  
[Name]  
[Title]

## SCHEDULE "A" DEFINITIONS

"**Affiliate**" means, in respect of any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with that Person, and for the purposes of this definition "**control**" means possession, directly or indirectly, of the power to direct or cause the direction of management and policies through ownership of voting securities, contract, voting trust or otherwise;

"**Agreement**", "**this Agreement**", "**herein**", "**hereof**", "**hereunder**" and similar expressions mean or refer to this Natural Gas Storage Agreement including any amendments hereto and all Transactions hereunder;

"**Billing Statement**" shall have the meaning ascribed thereto in Section 5.1;

"**Business Day**" means any day which is not Saturday, Sunday or a statutory holiday in Calgary, Alberta;

"**Confidential Information**" shall have the meaning ascribed thereto in Section 11.15;

"**Confirmation**" means each Confirmation in the form attached hereto as Schedule "B" entered into by Customer and WGSLP with respect to a Transaction and "**Confirmations**" means all such Confirmations;

"**Contract Quantity**" means the quantity of Gas, applicable to the relevant Transaction, expressed in GJs, WGSLP agrees to receive from Customer, for the credit of the Customer Inventory;

"**Customer Inventory**" means, with respect to each Transaction, the quantities of Gas, expressed in GJs, that Customer has delivered to WGSLP at the Storage Point of Delivery less the quantities of Gas, if any, that WGSLP has delivered to Customer at the Storage Point of Delivery subject to the terms hereof, provided that the Customer Inventory shall not exceed the Contract Quantity for such Transaction;

"**Customer Obligations**" means all obligations of Customer to WGSLP under this Agreement;

"**Day**" means a period of twenty-four (24) consecutive hours, beginning and ending at eight hours (08:00) Mountain Standard Time or such other period as is then standard or customary in the North American petroleum and natural gas industry as designated by WGSLP and "**Daily**" shall have a similar meaning;

"**Default Gas**" means:

- (a) in the case of a Receipt Default, the number of GJs of Gas not delivered due to a Receipt Default, provided that the limit of Default Gas for the applicable Day shall be, in the case that the Non-Defaulting Party is Customer, the Injection Rate for that Day and in the case that the Non-Defaulting Party is WGSLP, the Withdrawal Rate for that Day; and
- (b) in the case of a Delivery Default, the number of GJs of Gas not received due to a Delivery Default, provided that the limit of Default Gas for the applicable Day shall be, in the case that the Non-Defaulting Party is Customer, the Withdrawal Rate for that Day and in the case that the Non-Defaulting Party is WGSLP, the Injection Rate for that Day;

"**Defaulting Party**" means a party hereto in respect of which an Event of Default has occurred;

"**Delivery Default**" means a party's failure during any Day or Month of the Transaction Period to discharge its obligations to deliver Gas to the other party at the Storage Point of Delivery, as required under the terms of a Transaction;

"**Early Termination Date**" shall have the meaning ascribed thereto in Section 6.2(b);

"**Extended Storage Fee**" shall mean that fee payable on a Daily basis in respect of extended storage services which fee shall be equal to \$0.50 per GJ per Day, or as otherwise specified for a Transaction;

"**Event of Default**" shall have the meaning ascribed thereto in Section 6.1;

"**Firm Basis**" means the parties shall not be relieved of their obligations under this Agreement except to the extent permitted by Interruption or a valid condition of Force Majeure;

"**Force Majeure**" shall have the meaning ascribed thereto in subsection 8.2(b);

"**Gas**" means all natural gas both before and after it has been subjected to any treatment or process by absorption, purification, scrubbing or otherwise, and includes all fluid hydrocarbons;

"**GJ**" means gigajoules or one billion (1,000,000,000) joules;

"**GST**" means the federal Goods and Services Tax imposed under the provisions of the Excise Tax Act, R.S.C. 1985 c. E-15 as amended, or similar tax of like effect;

"**Interruption**" shall mean the occurrence of any event contemplated in any of subsections 8.1(a), (b) and (c);

"**Injection Period**" means the period of time for the relevant Transaction, during which WGSLP agrees to receive Gas from Customer for Customer Inventory;

"**Injection Rate**" means the maximum rate, for the relevant Transaction, at which WGSLP will receive Gas from Customer for Customer Inventory;

"**Liquidated Damages**" shall have the meaning ascribed thereto in Section 6.2(b);

"**Measuring Equipment**" shall have the meaning ascribed thereto in Section 2.4;

"**Month**" means a period beginning at eight hours (08:00), Mountain Standard Time, on the first Day of a calendar month and ending at eight hours (08:00), Mountain Standard Time, on the first Day of the next succeeding calendar month;

"**NGTL**" means NOVA Gas Transmission Ltd., a body corporate carrying on business in the Province of Alberta, and its successors and assigns;

"**Non-Defaulting Party**" means a party hereto which is not a Defaulting Party;

"**Person**" means an individual, firm, partnership, body corporate, trust or other legal entity, a government or any department or agency thereof, a trustee, any unincorporated organization and the heirs, executors, administrators or other legal representatives of an individual, as the case may be;

"**Prime Rate**" means the rate of interest, expressed as an annual rate of interest, announced from time to time by the main branch of the Bank of Montreal, Calgary, Alberta as the reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada;

**"Receipt Default"** means a party's failure during any Day or Month of a Transaction Period to discharge its obligation to receive Gas made available by the other party at the Storage Point of Delivery as required under the terms of a Transaction;

**"Related Agreement"** shall have the meaning ascribed thereto in Section 7.1;

**"Representatives"** shall have the meaning ascribed thereto in Section 11.15;

**"Security"** has the meaning ascribed thereto in subsection 9.3(a);

**"Spot Price"** means the price in dollars per GJ for the applicable Month as published in the first of the Month AECO Index as reported Monthly by Canadian Enerdata Ltd. in the publication entitled "Canadian Gas Price Reporter" under the category "AECO 'C' & NIT One Month Spot"; provided that if this index is replaced, reviewed or varied, a replacement index will apply as determined in accordance with Section 11.3;

**"Storage Facility"** means the underground natural gas storage facility operated by WGSLP and located near Vegreville Alberta, together with associated equipment and facilities;

**"Storage Point of Delivery"** means that delivery point described in Section 2.7;

**"Transaction"** means an agreement between the Customer and WGSLP for service hereunder;

**"Transaction Period"** means, in respect of a Transaction, the period of time beginning on the first day of the applicable Injection Period and ending on the last day of the Withdrawal Period, inclusively, as provided for the applicable Transaction;

**"Withdrawal Period"** means the period of time as set forth for the relevant Transaction, during which WGSLP agrees to deliver Gas to Customer from Customer Inventory; and

**"Withdrawal Rate"** means the maximum rate, as set forth for the relevant Transaction, at which WGSLP agrees to deliver Gas to Customer from Customer Inventory at the Storage Point of Delivery.